THE ALL INDIA DIGEST, CRIMINAL
1836—1915.

SANJIVA ROW'S

ALL INDIA DIGEST

SECTION I—CRIMINAL: 1836—1915

REVISED AND BROUGHT UP-TO-DATE

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ABBREVIATIONS EXPLAINED.

REPORTS.

A.	Indian Law Reports, Allahabad Series.
Agra	Agra High Court Reports.
Agra F. B.	Agra High Court Reports Full Bench Volume.
A. H. C. R.	Agra High Court Reports.
A. L. J.	Allahabad Law Journal.
A. W. N.	Allahabad Weekly Notes.
B.	Indian Law Reports, Bombay Series.
B. H. C.	Bombay High Court Reports.
B. L. R.	Bengal Law Reports.
B. L. R. Sup. Vol.	Bengal Law Reports, Supplemental Volume.
Bom. L. R.	Bombay Law Reporter.
Book Cir.	Book Circular, Oudh.
Bourke	Bourke's Reports.
Bur. L. R.	Burma Law Reports.
C.	Indian Law Reports, Calcutta Series.
C. L. J.	Calcutta Law Journal.
C. L. R.	Calcutta Law Reports.
Col. Dig.	Columar (or Coleman's ?) Digest, Central Provinces.
Cor.	Coryton's Reports.
C. P. L. R.	Central Provinces Law Reports.
C. W. N.	Calcutta Weekly Notes.
Cr. L. J.	Criminal Law Journal.
Cr. Rg.	Criminal Rulings of the Bombay High Court
Hay	Hay's Reports.
Hyde	Hyde's Reports.
I. A.	Law Reports, Indian Appeals.
I. A. Sup. Vol.	Law Reports, Indian Appeals, Supplemental Volume.
Ind. Cas.	Indian Cases.
Ind. Jur. N. S.	Indian Jurist, New Series.
Ind. Jur. O. S.	Indian Jurist, Old Series.
J. G.	Joy Gobind Shome's Reports.
L. B. R.	Lower Burma Rulings.
M.	Indian Law Reports, Madras Series.
Marsh	Marshall's Reports.
M. H. C.	Madras High Court Reports.
M. I. A.	Moore's Indian Appeals.
M. L. J.	Madras Law Journal.
M. L. T.	Madras Law Times.
N. L. R.	Nagpur Law Reports.
N. W. P.	North West Provinces High Court Reports.
O. C.	Oudh Cases.
Old S. C.	Old Selected Cases (Oudh).
P. R.	Punjab Record.
P. L. R.	Punjab Law Reporter.

P. W. R. ... ... Punjab Weekly Reporter.
R. and J. ... ... Rafique and Jackson's Oudh P.C. Decisions.
Rat. Un. Cr. C. ... ... Ratanlal's Unreported Criminal Cases.
S. C. ... ... Select Cases (Oudh).
Sel. Cas. ... ... Select Cases (Central Provinces).
S. L. R. ... ... Sind Law Reporter.
U. B. R. ... ... Upper Burma Rulings.
W. R. ... ... Sutherland's Weekly Reporter.
W. R. Cr. ... ... Sutherland's Weekly Reporter, Criminal Cases.
W. R. Cr. Cir ... ... Sutherland's Weekly Reporter, Criminal Circulars.
W. R. F. B. ... ... Sutherland's Weekly Reporter, Full Bench Volume.
W. R. Cr. Let. ... ... Do. Criminal Letters.
Weir ... ... Weir's Criminal Rulings, Madras.

OTHER ABBREVIATIONS.

Appl. ... ... Applied.
Appr. ... ... Approved.
B. ... ... Bench (Oudh Cases).
Cons. ... ... Considered.
D. or Dist. ... ... Distinguished.
Disc. ... ... Discussed.
Diss. ... ... Dissented from.
Expl. ... ... Explained.
F. ... ... Followed.
F. B. ... ... Full Bench.
Obs. ... ... Observed.
P. C. ... ... Privy Council.
R. or Refd. to. ... ... Referred to.
S. B. ... ... Special Bench.

N.B.—In the Punjab Record, the Punjab Law Reporter, and the Punjab Weekly Reporter, the cases are known by their numbers and not by the pages where they are printed.

TABLE

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SANJIVA ROW'S
ALL INDIA DIGEST
1836—1915.

Section I.—Criminal—Vol. II.

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False Charge.

See PENAL CODE, ss. 182, 211.

(1)—*Penal Code, ss. 182 and 211—Scope of the sections.*—The actual institution of criminal proceedings on a false charge is essential to the application of the latter part of s. 211; if the offence of the accused stops at making a false charge, his case falls under the first part of the section, irrespective of the fact that the false charge relates to "an offence punishable with death, transportation for life, or imprisonment for seven years or upwards" EMPRESS OF INDIA v. PITAM RAI, 5 A. 215=A W.N. 1882, 225. [*F.*, 14 C 633, 16 A. 124; *Diss.*, 20 M. 79=1 Weir 189, 4 Cr. L J. 20=2 N W P. 119; *R.*, 31 A. 522=10 A L J. 61=13 Cr. L.J. 702 =16 Ind. Cas. 510.]

(2)—*False charge of an offence punishable with death, transportation for life, or imprisonment for seven years—Penal Code, s. 211.*—When no

False Charge—*continued.*

criminal proceeding is instituted on a false charge of an offence punishable with death, transportation for life, or imprisonment for seven years and upwards the accused making such charge is punishable only under the first part of s. 211, Penal Code. EMPRESS v. PARAHU, **5 A. 598 = A.W N. 1883, 149.** [*F.*, 14 C. 633, 16 A. 124; *Diss*, 4 Cr. L.J. 240 = 2 N.L.R. 119; *R.*, 34 A. 522 = 10 A.L J. 61 = 13 Cr. L.J. 702 = 16 Ind. Cas. 510, 22 B. 596.]

(3)—*Penal Code, s.* 211—*Scope of.*—S. 211 of the Penal Code is not limited to attempts at substantiating false charges in Courts of Justice; so that a false charge before the Police and never intended to be prosecuted in Court is quite within the contemplation of the section. ASHROF ALI v. EMPRESS, **5 C. 281.** [*F.*, 6 C. 582 = 8 C.L.R. 255; *R.*, 6 C. 496, 7 M. 292 = 1 Weir 186.]

(4)—*Ss.* 182 *and* 211, *Penal Code—Scope and application of.*—S. 182 applies to information given to a public servant. S. 211 applies to false charges of an offence involving criminal proceedings. Where a charge is found to be false by the Police, a Magistrate, except in certain cases, is not competent to order, merely on a perusal of the Police report, the prosecution of the person preferring the charge, summarily under s. 182. He should be tried under s. 211. When a charge is pronounced false by the Police, proceedings should not be taken by the Magistrate, *suo motu*, until a reasonable interval has shown that the complainant accepts the result of the investigation, and takes no further steps. *In the matter of* RUSSICK LAL MULLICK, **7 C.L.R. 382.** [*F.*, 8 C.L.R. 289, 32 C. 180; *R.*, 14 C. 707, F.B.; *D.*, 7 C. 208 = 8 C.L.R. 267.]

(5)—*Penal Code, s.* 211—*Offence of preferring false charge, what constitutes.*—To constitute the offence of preferring a false charge contemplated in s. 211, Penal Code, it is not necessary that the charge should be made before a Magistrate. It is enough, if it appear that the charge was deliberately made before an officer of Police, with a view to its being brought before a Magistrate. It is also not necessary that the charge should appear to have been fully heard and dismissed. It is enough if it is not pending at the time of the trial. But an indictment for falsely charging could not be sustained, if the accusation were entertained and still remained under proper legal inquiry. QUEEN v. SUBBANNA GOUNDAN, **1 Weir 184 = 1 M.H C. 30.** [*F.*, 1 A. 497, 527, 4 A. 182, 7 M. 292 = 1 Weir 185; *R.*, 22 B. 596, 14 C. 707, F.B., 9 Cr.L.J. 77 = 31 M. 506 = 18 M.L.J. 573.]

(6)—*S.* 211, *Penal Code—Offence under.*—To convict a person under s. 211, Penal Code, it must be shown, not merely that he made the charge without reasonable or probable grounds, but that he knew there was no just or lawful ground for the charge. Where a person believed that a forgery had been committed, and being irritated by what he believed to be an attempt to injure him, at once instituted a charge which, on inquiry, was shown to be unfounded, *held*, that the accused had not committed an offence under s. 211, Penal Code, but was merely liable to a civil suit for damages. *In re* VRIDA CHELLA PILLAI, **1 Weir 185.**

(7)—*S.* 211, *Penal Code—Offence under.*—The offence referred to in s. 211, I.P.C., consists not in the prosecution of a false complaint, but in the making of it. EMPRESS OF INDIA v. ABUL HASAN, **1 A. 497.** [*F.*, 1 A. 527, 6 C. 582 = 8 C.L.R. 255, 4 A. 182, 7 M. 292 = 1 Weir 186; *R.*, 6 C. 496 = 7 C L.R. 467, 14 C. 707, F.B., 22 B. 596.]

(8)—*S.* 211, *Penal Code—Offence under.*—If a false charge had been made and if it is not pending at the time of the trial of the accused, an offence under s. 211 has been committed. EMPRESS OF INDIA v. SALIK, **1 A. 527.** [*R.*, 6 C. 496 = 7 C.L.R. 467, 22 B. 596.]

(9)—*Penal Code s.* 211—*False charge of having voluntarily causing hurt.*—Where a person charges another with voluntarily causing hurt, and the charge is wilfully false, and is made with intent to injure, he is chargeable with the offence described in s. 211. QUEEN v. MATA DYAL, **4 N.W.P. 6.**

(10)—*Penal Code, s.* 211—*Gist of the offence under.*—A person may in good faith institute a charge which is subsequently found to be false, or he may, with intent to cause injury to an enemy, institute criminal proceedings, believing there are just and lawful grounds for them, but in neither case does he commit an offence under s. 211, I.P.C. To render him liable to conviction for an offence under that section, it must be shown that he knew there were no just or lawful grounds for such proceeding. QUEEN v. CHIDDA, **3 N.W.P. 327.**

(11)—*Penal Code. s.* 211—*Construction.*—Per *Ranade, J.*—The word "falsely charging" used in s. 211, must be construed along with the words which speak of the "institution of proceedings." These latter words are used in a technical and exclusive sense, and by parity of reasoning, the same restricted sense must be given to the words which relate to a false charge. QUEEN-EMPRESS v. KARIGOWDA, **19 B. 51.**

(12)—*Penal Code, s.* 211—*Meaning of the term "falsely charges."*—The word "charges" as used in the section, means something different from "gives information." The words "falsely charges" must be construed with reference to the words which speak of the institution of proceedings. The true test seems to be:—"Does the person who makes the statement which is alleged to constitute the "charge" do so with the intention and object of setting the criminal law in motion against the person against whom the statement is directed." Such object and intention may be inferred from the language of the statement and the circumstances in which it was made. Where the language of a petition made it clear that the intention of the accused was merely to bring

False Charge—*continued.*

to the knowledge of the authorities certain matters as to which he had received information, in order that there might not be a repetition of the alleged offence, and where it was found that it was not the petitioner's object or intention that the authorities should institute criminal proceedings against the person in question, *held*, that the petition did not amount to a charge within the meaning of s. 211. RAYAN HUTTI v. EMPEROR, **26 M. 640 = 1 Weir 190 = 1 Weir 122 = 2 Weir 704.**

(13)—*Penal Code, s. 211—Institution of any charge or criminal proceeding under.*—Where the accused sent a petition to a Magistrate praying for inquiry as to whether a police officer was fit for his office and alleging that he (the accused) and others believed the officer to have connived at offences of various sorts, *held* that the accused had not instituted any charge or criminal proceeding within the meaning of s. 211 of the Penal Code. EMPRESS v. SHEOSARAN, **A.W.N. 1882, 242.**

(14)—*Penal Code, s. 211—False information of civil nature.*—A false information laid before a Magistrate complaining of the infraction of a right of a civil nature, is not an offence under s. 211 of the Penal Code. REG. v. RAGHOO, **Rat. Un. Cr. C. 3.**

(15)—*Penal Code, s. 211—Prosecution under the section, when to be made—Crim. Pro. Code, 1872, s. 147—Dismissal of complaint—Sanction to prosecute.*—A prosecution under s. 211 for preferring a false charge should be instituted only after an opportunity has been afforded to the complainant of producing all his evidence in support of the charge made by him. Per *Maclean, J.* — The proper principle which should guide a Magistrate is, that, if no complaint is made before him after a reasonable time has elapsed from the conclusion of a police enquiry, he would be justified in proceeding against a person who made a complaint to the police, which has been found to be false, but if a complaint is made, the complaint must be dealt with judicially. Per *Mitter, J.*—Although a Magistrate has the discretion under s. 147, Crim. Pro. Code, 1872, to dismiss a complaint without examining witnesses, in such cases, no sanction for prosecution, under s. 211, should be granted. *In the matter of* CHUKRADAR POTTI, **8 C.L.R. 289.** (7 C.L.R. 582, 4 C.L.R. 131, *F.*; 8 C.L.R. 267, *R.*) [*R.*, 14 C. 707, F.B., 33 C. 1 = 10 C.W.N. 158 = 2 C. L.J. 228.]

(16)—*Penal Code, s. 211—Prosecution under the section, when to be ordered.*—So far as the positive provisions of the Code go, the complainant, on appearing before the Magistrate, is entitled to demand that his examination should be taken and reduced into writing. The Magistrate is authorized by s. 146, if he sees cause to distrust the truth of the complaint, to "postpone the issuing of process or compelling the attendance of the person complained against, and to direct a previous enquiry or investigation to be made into the truth of the complaint;" and if, as the result of such enquiry, it appears to the Magistrate, that there is no sufficient ground for proceeding, he may dismiss the complaint, and thereupon, proceedings under s. 182 and s. 211 may be directed or sanctioned. In such a case, the Magistrate is not bound, before sanctioning proceedings under s. 211, to hear the witnesses in support of the accusation, in order to ascertain whether the complaint is true or unfounded. *In the matter of* BIYOGI BHAGUT, **4 C.L.R. 134.** [*Appr.*, 7 C. 208; *F.*, 8 C.L.R. 289; *R.*, 14 C. 707, F.B., 6 C. 582 = 8 C.L.R. 255.]

(17)—*Penal Code, s. 211—False charge—Order for prosecution not to be made in every case of false charge.*—It is not in every case that a Magistrate considers to be false that he should direct a prosecution under s. 211 of the Code. DEPUTY LEGAL REMEMBRANCER v. GOPAL BARIK, **11 C.W.N. 123 = 34 C. 42 = 4 Cr. L.J. 460.** (26 M. 98, *Diss.*) [*R.*, 4 N.L.R. 140, 7 P.W.R. 1908, Cr., F.B.]

(18)—*S. 211, I.P.C.—False information by A, that another person has committed an offence—Opportunity of substantiating charge.*—Where a person specially complains that another man has committed an offence, and does so falsely with the object of causing injury to that person, he is guilty of making a false charge of an offence under s. 211, I.P.C., and not under s. 182. Before a person can be put upon his trial for making a false charge under s. 211, I.P.C., he must be allowed an opportunity of proving the truth of the complaint made by him; and such an opportunity should be afforded to him, if he desires to take advantage of it, not before the police, but before the Magistrate. ARIAN v. JIJIBHAI, **Cr. Rg. 65 of 1896.**

(19)—*Penal Code, s. 211, scope of.*—A man ought not to be tried for making a false complaint under s. 211 of the Penal Code, until he has had an opportunity of proving the truth of the complaint made by him, if he desire to take advantage of it, not before the police, but before the Magistrate. GOVERNMENT v. KARIMDAD, **6 C. 496 = 7 C.L.R. 467 = 3 Shome L.R. Cr. 48.** [*F.*, 7 C. 87, 8 A. 38 = A.W.N. 1885, 323, 10 M. 232 = 2 Weir 183; *R.*, 22 B. 596; *Concurred in*, 5 A. 36; *Cons.*, 14 C. 707, F.B.; *D.*, 7 C. 208, 7 M. 292 = 1 Weir 185, Rat. Un. Cr. C. 524.]

(20)—*Police Report.*—Where a prosecution for bringing a false charge, ordered upon a police report after local enquiry, ended in a conviction, *held* that the prisoner should have been given an opportunity, on receipt of the police report, of substantiating the charge and that the conviction was bad. *In the matter of the petition of* SOKHINA BIBI; EMPRESS v. GIRISH CHUNDER NUNDI, **7 C. 87 = 8 C.L.R. 387 = 4 Shome L.R. 70.** (6 C. 496, *R.*) [*R.*, 14 C. 707, 7 M. 292 = 1 Weir 187.]

(21)—*Crim. Pro. Code (1882), s. 195—False charge to police—Conviction, before giving the*

False Charge—*continued.*

complainant an opportunity to prove the truth of the charge, validity of.—Where a complaint of theft to a police officer was referred to a Magistrate as false and the latter dismissed the complaint, after merely examining the complainant, and sanctioned the prosecution of the complainant under s. 211, Penal Code, on the faith of the police report, and the complainant was convicted by the Sessions Court, *held*, that the conviction was legal, although he was not given an opportunity to prove his case, before he was himself tried. RAMASAMI v. QUEEN-EMPRESS, **7 M. 292 = 1 Weir 185 = 8 Ind. Jur. 139.** [*F.*, 10 M. 232 (237), F.B. = 2 Weir 181; *R.*, 22 B. 596 (600), 28 B. 226 (230), 14 C. 707 (711), F.B., 33 C. 1 = 2 C.L.J. 228 (230) = 10 C W.N. 158, 37 C. 250 (254) = 10 C.L.J. 564 (566) = 11 Cr. L.J. 37 (38) = 14 C.W.N. 330 (332) = 4 Ind. Cas. 710 (711), 13 Cr. L.J. 480 = 15 Ind. Cas. 320.]

(22)—*I.P.C., s.* 211—*Prosecution for false charge—Judicial inquiry.*—A prosecutor should not be directed to be put on his trial under s. 211 of the Penal Code, without first giving him an opportunity of obtaining a judicial enquiry into the charge originally preferred by him. GRIDHARI MONDUL v. UCHIT JHA, **8 C 435 = 10 C L.R. 46.** [*R.*, 7 M. 292 = 1 Weir 186. 10 M. 232, F.B. = 2 Weir 183; *Cons*, 14 C. 707, F B.]

(23)—*Crim. Pro. Code* (1898), *s.* 476—*Prosecution for false charge under s.* 211—*Necessity for preliminary inquiry.*—In a prosecution for making a false charge under s. 211, I.P.C., it is not always necessary that there should be a preliminary inquiry under s. 476, Crim. Pro. Code. SURJYA HARIANI v KING-EMPEROR, **6 C.W.N. 295.** (14 C. 707, *R.*; 27 C. 921, *D.*)

(24) *Penal Code, s.* 211—*Prosecution for false charge on dismissal of complaint upon police report—Maintainability.*—Where a Magistrate dismissed a complaint upon a report by the police and without examining even the complainant, and the police thereupon prosecuted the complainant without any sanction, *held*, that the accused had not committed an offence under s. 211, inasmuch as there was no legal evidence before the Magistrate, nor was there a legal sanction for the charge. *In re* GUBALA RAMI REDDI, **1 Weir 188 = 2 Weir 162.**

(25)—*Exaggeration of facts—Prosecution for false evidence or false charge—Penal Code, ss.* 193 *and* 211.—If a young girl, forcibly abducted, exaggerates the force used and resistance offered, such exaggeration is not a sufficient ground for prosecuting her for intentionally giving false evidence and for making a false charge. MA PWA YON v. MAUNG PO MYA, **L B R. 1893—1900, 443.**

(26)—*Penal Code, s.* 211—*Bringing vexatious charge - No offence under the section.*—To bring a vexatious charge is not an offence under s. 211, Indian Penal Code. *In re* TATIA HARI, **1 Bom L.R 11.**

(27)—*Penal Code, ss.* 182, 211, *offences under—Nature and scope of the offences—Procedure.*

False Charge—*continued.*

—An offence under s. 211 of the Penal Code includes an offence under s. 182; a Magistrate can proceed under either section, though, in cases of a serious nature, the proper course may be to proceed under s. 211. BHOKTERAM v. HEERA KOLITA, **5 C. 184.** (8 W.R. Cr. 67, *R.*) [*F.*, 32 C. 180; *R.*, 14 C. 707, F.B.]

(28)—*Penal Code, s.* 211, *conviction under—Necessity for making false charge to Court or Officer with jurisdiction.*—To sustain a conviction under s. 211 of the Penal Code, it is necessary that the false charge should be made to a Court or to an officer, who has powers to investigate and send up for trial. A station staff officer having neither magisterial nor police powers, s. 211 will not apply to a false charge made to him. EMPRESS v. JAMOONA, **6 C. 620 = 8 C.L.R. 215.** [*F.*, 31 M. 506 = 18 M.L J. 573 = 9 Cr. L.J. 77; *R.*, 32 M. 258 = 5 M.L.T. 269 = 9 Cr. L.J. 170, 27 M.L.J. 37 = 15 Cr. L.J. 431 = 24 Ind. Cas. 167; *D.*, 19 B. 51, 1 Ind. Cas. 187.]

(29)—*Crim. Pro. Code* (1872), *s* 468—*Application for sanction to prosecute for an offence under s.* 211, *I.P.C., by whom to be made.*—A District Magistrate, who, after examining the complainant's witnesses, dismisses the case, disbelieving the story of the prosecution, is competent to grant sanction, under s. 468 of the Code of 1872, for the prosecution of the complaint under s. 211, I.P.C. It is not the rule that the sanction could only be granted on the application by a private prosecutor. JUGUT MOHINI DASSEE v. MODHU SUDHAN DUTT, **10 C.L.R. 4.**

(30)—*Crim. Pro. Code* (1898), *s.* 203—*Proceedings under s.* 211, *when can be taken*—Until a complaint is dismissed under s. 203, Crim. Pro. Code, or otherwise disposed of, no proceedings can be taken under s. 211, I.P.C., against the complainant. GUNAMONY SAPIN v. QUEEN-EMPRESS, **3 C.W N. 758.** [*F.*, 4 C.L J. 88 = 4 Cr. L. J. 68; *R.*, 33 C. 1 = 10 C. W.N. 158 = 2 C.L.J. 228.]

(31)—*Crim. Pro. Code, s.* 195—*Sanction to prosecute—False report by a police officer—Penal Code, s.* 211.—Where a police officer made a coloured or false report that a certain offence investigated by him was proved, *held*, that a sanction for his prosecution under s. 211, I.P.C., could not be granted, as it could not be said that the accused instituted or caused to be instituted any criminal proceeding against any person. THAKUR TEWARY v. QUEEN-EMPRESS, **4 C W.N. 347.**

(32)—*Crim. Pro. Code* (1898), *ss.* 157, 159 *and* 476—*Complaint of trespass — Application to withdraw the complaint—Order under s.* 476, *validity of.*—Where a person made a complaint of criminal trespass alleging an intention to the accused, and the police, although finding that the intention alleged was not true, stated that they believed the charge of trespass, and the complainant did not desire to take further proceedings against the accused, *held*, that the Magistrate was not competent to order,

False Charge - *continued.*

under s. 476, Crim. Pro. Code, the prosecution of the complainant under s. 211, I.P.C., for making a false complaint, on taking evidence, as there was no judicial proceedings. MOULI DURZI v. NAURANGI LALL, **4 C.W.N.351.** [*R.*, 32 A. 30=6 A.L.J. 963=10 Cr. L.J. 424=3 Ind. Cas. 952.]

(33)—*Penal Code, s.* 182 — *Writing false anonymous petition to Collector.*—A person, writing an anonymous petition to a Collector, cannot be convicted under s. 182, Penal Code, unless it is proved that he knew the contents of the petition which he wrote and that the information contained in it was false. It must, further, be shown that it was he who sent the petition to the Collector. *In re* GOPALA KRISTNAYYA, **1 Weir 121.**

(34)—*Penal Code* (*Act* XLV *of* 1860), *s.* 211 —*False charge, making of—Petition to Deputy Commissioner.*—Where the accused submitted a petition to the Deputy Commissioner while he was on tour, making certain complaints against a manager of the Court of Wards, and the accused was convicted of an offence under s. 211 of the Indian Penal Code for making a false charge against such manager, *held*, that, the petition submitted by the accused not being a complaint within the meaning of s. 4, cl. (*h*), Crim. Pro. Code, and there being no institution of criminal proceedings, the conviction was illegal. AHMAD KHAN v. KING-EMPEROR, **109 P.L R. 1904=1 Cr.L.J. 957.**

(35)—*Penal Code, ss.* 211, 182—*Complaint, when it can form subject of charge under—Accused filing complaint under, before the disposal of original complaint against him—Conviction under—Effect.*—A complaint must be disposed of in one way or another, before it can form the subject of a charge under s. 211, or, at the least, the responsibility of instituting proceedings under s. 182 must be assumed by the police themselves. So, it is not open to any accused person to file a complaint against his accusers under s. 211 before that pending against himself has been disposed of. And if, before final orders have been passed upon the original complaint, a Magistrate accepts a complaint against the accusers under s. 211 and convicts them thereon, the conviction is bad and ought to be set aside. CROWN v. TOPAN CHATOMAL, **3 S.L.R. 189, Cr. =4 Ind. Cas. 1160 =11 Cr.L.J.** 199.

(36)—*Penal Code, ss.* 182, 211—*Making false charges to police.*—Where a person prefers a false complaint of theft before the police knowing it to be false, the offence properly falls under s. 211 of the Penal Code and not under s. 182. JAI NARAIN v. RAM KRISHNA, **A.W.N. 1885, 95.**

(37)—*Of murder made to Police.*—A false charge of murder made to the police comes under the first paragraph of s. 211, if no criminal proceedings have been instituted thereupon. QUEEN-EMPRESS v. BISHESHAR, **16 A. 124=A.W.N. 1894, 10.** (5 A. 215; 5 A. 598, *F.*; 17 C. 574 *Diss.*) [*Diss.*, 20 M. 79=1 Weir 189, 2 N.L.R. 119=2 Cr. L.J. 240; *F.*, 6 A.L.J. 989=11 Cr. L.J. 54=4 Ind. Cas. 812; *R.*, 24 A. 368, 34 A. 522=10 A.L.J. 61=13 Cr. L J. 702 =16 Ind. Cas. 510, 22 B. 596.]

(38)—*Penal Code, s.* 211—*False information to police.*—Where a person falsely informs the police, not only that he had been robbed, but also that a specified individual committed that offence, *held* that he was liable to be charged with an offence under s. 211, I.P.C., and not under s. 182, I.P.C. EMPRESS v. ARJUN, **7 B. 184.** [*R.*, 22 B. 596, 15 Bom. L.R. 574=2 Bom. Cr. C. 86=14 Cr. L.J. 491=20 Ind. Cas. 747.]

(39)—*False charge to police—Penal Code, s.* 211, *scope and application of.*—The latter part of s. 211 is confined to cases in which criminal proceedings have been instituted, and it does not apply to false charges merely. By the earlier part of the section, the distinction is drawn between criminal proceedings instituted and false charges alone. Where the accused made a charge before the police, which he did not, afterwards, press before the Magistrate, *held*, that the only offence he had committed was one under the earlier part of the section. QUEEN-EMPRESS v. KARIM BUKSH, **14 C. 633.** (5 A. 215, 598, *F.*) [*Overruled*, 17 C. 574, F.B.; *Diss.*, 20 M. 79=1 Weir 189; *F.*, 7 C.W.N. 556; *R.*, 34 A. 522=10 A.L.J. 61=13 Cr. L.J. 702=16 Ind. Cas. 510, 22 B. 596; *R. and Expl.*, 32 C. 180.]

(40)—*False complaint to police.*—A person who makes a false complaint to the police may be proceeded against under s. 211 of the Penal Code, and it is not competent to a Magistrate to refuse to entertain the case on the ground that the accused had not been afforded an opportunity of proving his original complaint. QUEEN-EMPRESS v. BHIKA LALA, Rat. Un. **Cr.C. 524=Cr.Rg. 55 of 1890.** (6 C. 496, 6 C. 582, *R.*)

(41)—*Penal Code, s.* 211—*False charge of dacoity made to a police officer.*—There is nothing to limit the words "the institution of criminal proceedings" to the bringing of a charge before a Magistrate or to action by the Magistrate or police against the person charged. When a charge of a cognisable offence is made to the police against a specified person, criminal proceedings within the meaning of the section have been instituted just as much as if the charge had been made before the Magistrate. Where a false charge of dacoity was made against certain persons to a police Station House Officer, who referred the charge to the Magistrate as false and the Magistrate ordered the charge to be dismissed as false without taking any action against the accused, *held*, that the offence came under the latter part of s. 211 and amounted to "institution of criminal proceedings." QUEEN-EMPRESS v. NUNJUNDA RAU, **20 M. 79=1 Weir 188=7 M L J 16.** [*R.*, 31 M. 506=9 Cr. L J. 77=18 M.L J 573, 4 Cr. L J. 240=2 N.L.R. 119, 34 A. 522=10 A.L J. 61=13 Cr. L.J. 702=16 Ind. Cas. 510.]

False Charge—*continued.*

(42)—*Penal Code, ss.* 182, 211—*False charge to police of cognisable offence—Punishment.*—When a false charge is made to the police of a cognisable offence, the offence committed by a person making the false charge falls within the meaning of s. 211. GIRIDHARI NAIK v. EMPRESS, **5 C.W.N. 727.** [*R.*, 4 C.L.J. 88=4 Cr. L.J. 68 ; *Cons.*, 32 C. 180.]

(43)—*False information to police.*—Giving false information to the police that a certain person has committed a cognizable offence, punishable with death, transportation for life or imprisonment for seven years or upwards, comes within the concluding part of s. 211 of the Code. When such an offence is committed, the punishment indicated in the latter part of s 211 ought, generally, to be awarded. Having regard to the circumstances of the particular case, the Judicial Commissioner of Nagpur refused to interfere with the sentence that had been passed. EMPEROR v. MUSSAMMAT CHHOTI BI, **2 N.L.R. 119=4 Cr. L J 240.**

(44)—*Penal Code, s.* 211—*Person answering questions put by police officer under s.* 161, *Crim Pro. Code.*—A person, who answers questions put to him by a police officer making an investigation under s. 161, Crim. Pro. Code, does not institute, or cause to be instituted, criminal proceedings within the meaning of s. 211, Penal Code, nor does he thereby charge any person within the meaning of that section. *In re* VEEREPALLI PENCHALUGADU, **1 Weir 193.**

(45)—*Penal Code, s.* 211—*Statement to police of mere suspicion.*—Where a statement is made to the police of a suspicion that a particular person had committed an offence, *held*, that the information to the police would not, if the statement was false, amount to a false charge, and it would amount only to providing the police with a possible clue for investigating the matter which they might or might not follow up as they considered fit. *In the matter of* BRAMANUND BHUTTACHARJEE, 8 **C.L.R.** 233. [*R.*, 14 C. 707, F.B.]

(46)—*Penal Code, s.* 211—*Preferring false charge to the police—Statement of accused not reduced to writing under s.* 154, *Crim. Pro. Code* (1898).—Where a person who made a false charge to the police by stating that certain of the prosecuting witnesses had stolen his goats, and the police officer to whom the statement had been made did not reduce it to writing, in accordance with the requirements of s. 154, Crim. Pro. Code, *held*, that the accused intended to set the criminal law in motion against the persons against whom the charge was made, and that the fact that the statement was not reduced to writing in accordance with the requirements of s. 154, Crim. Pro. Code, did not prevent the statement made from being a false charge. MALLAPPA REDDI v. EMPEROR, 27 **M 127=1 Weir 192=2 Weir 119.** [*R.*, 1 Ind. Cas. 187, 32 M. 258=9 M.L.J. 170=5 M.L.T. 209=9 Cr. L.J. 170.]

False Charge—*continued.*

(47)—*Penal Code, ss.* 182, 211—*False charge of theft both to police and Magistrate.*—Cases may arise when the conduct of a person may fall under both the ss. 182 and 211, I.P.C. Where the accused charged another with theft at a police station, and subsequently brought a formal charge of theft before a Magistrate, and, enquiries being held both by the police and the Magistrate, the charge of theft was not established, *held* that the case came both under s. 182 and under s. 211, I.P.C. But the accused distinctly brought himself within the first part of s. 211, I.P.C., and showed a determination and persistence in his accusation which, when it was found to be untrue, rendered his conduct far too serious to be adequately met by prosecution under, and by the punishment provided in, s. 182, I.P.C. EMPRESS v. RAM SARAN, **A.W.N. 1886, 259.**

(48)—*Penal Code, s.* 211—*False complaint to the police—Complaint to Magistrate, if necessary to constitute offence under s.* 211—*Opportunity to substantiate complaint not given—Effect.*—When one person complains that another has committed an offence, and such complaint is shown to have been falsely made with the object of injuring that other person, the offence falls under s. 211, and not under s. 182. To constitute an offence under the first part of s. 211, it is not necessary that the complaint should have been made to a Magistrate; it is enough if it is made to the police authorities, and relates to a cognizable offence, and action is taken thereupon by the police authorities. The fact that no opportunity was allowed to the accused by the Magistrate to whom the accused had presented a complaint, to substantiate the charge before he ordered the complaint to be struck off, although such a course is very desirable in the ends of justice, is not a circumstance which invalidates a commitment duly made ; a conviction otherwise good cannot be set aside on account of such omission. The trial before the committing Magistrate and in the Sessions Court offered ample opportunity to substantiate his complaint, and the omission is not one which has prejudiced the interests of the accused. IMPERATRIX v. JIJIBHAI GOVIND, **22 B. 596.** [*R.*, 33 C. 1=10 C.W.N. 158=2 C.L.J. 228.]

(49)—*Penal Code, ss.* 161 *and* 211—*Crim. Pro. Code, ss.* 195 *and* 439—*Complaint to the Inspector-General, Police—Ss.* 5 *and* 36 *of Act* V *of* 1861—*Investigation by District Superintendent of Police—Its dismissal—Sanction to prosecute—Revision.*—H.D. sent to the Inspector-General of Police a few specific charges of bribery against the Sub-Inspector of Police and asked for investigation. The Inspector-General, who is a Magistrate under s. 5 of Act V of 1861 and is empowered by s. 36 of the Act to enquire into and determine as a Magistrate any charge against a police officer above the rank of a constable, ordered the District Superintendent of Police to investigate, and that officer forwarded the result of his investigation to the District Magistrate. *Held*, that a false charge of an

False Charge—*continued.*

offence, preferred to a person empowered to order investigation by the police, though not followed by further proceedings in any Court, brings the matter of the charge within the 1st part of s. 211, I.P.C. HAMAYUN v. KING-EMPEROR, 9 P.W R. 1908, Cr.=26 P.R. 1908, Cr.=7 Cr. L J. 291. (14 P.R. 1879, Cr., 3 P.R. 1888, Cr., *F.*; 5 C. 281, 6 C. 620, *R.*; 5 P.R. 1888, Cr., 17 C. 574, *D.*)

(50)—*Penal Code*, s. 211—*False charge—Jurisdiction of Magistrate — Commitment to Court of Sessions.*—Where the offence consists in the giving of false information to the police, and the case does not go further than a police enquiry, the offence falls within the first paragraph of s. 211, Penal Code. Where the Magistrate commits the accused for trial to the Court of Sessions, only on the ground that the offence charged falls within the second paragragh of that section, and does not say that the fine or sentence which he can impose will not be adequate to meet the ends of justice, the commitment is bad in law. KING-EMPEROR v. JAG MOHAN, 6 A.L.J. 989=11 Cr.L J. 54=4 Ind. Cas. 812. [*Rel.*, 10 A.L.J. 429=17 Ind. Cas. 791.]

(51)—*Penal Code*, s. 211—Ss. 161, 162, *Crim. Pro. Code—Statement under* s. 162, *not forming basis of prosecution for false charge—To whom false charge must be made.*—When a statement is made under s. 162, Crim. Pro. Code, in answer to questions put by a police officer making an investigation under s. 161, Crim. Pro. Code, such statement cannot be made the basis of a prosecution for an offence under s. 211, I.P.C. False charge must be made to a Court or to an officer who has powers to investigate and send up for trial. Accusing a person of the commission of an offence or giving information against him to a person other than an official cannot be treated as a charge under s. 211, I.P.C. A village munsiff has no power to make any investigation in cases of dacoity. When a village munsiff, on information of an alleged dacoity given to him, sends a report to the police, who, on investigation, reject it as false, the informant cannot be held to have instituted any criminal proceedings under s. 211, I.P.C., nor can he be said to have made any false charge within the meaning of that section. CHINNA RAMANA GOWD v. EMPEROR, 31 M. 506=9 Cr.L.J. 77=18 M.L. J. 573. (17 C. 574, *F.*). [*Overruled*, 1 Ind. Cas. 187; *F.* 11 Cr.L.J. 286=5 Ind. Cas. 908=20 M.L.J. 132=8 M.L.T. 87; *Diss.*, 32 M. 258=9 Cr. L.J. 170=5 M.L.T. 269; *R*, 227 P.L.R. 1914=35 P.W.R. 1914, Cr., 1914 M.W N. 382.]

(52)—*Penal Code*, ss. 211, 182—*False charge—Institution of criminal proceedings—Whether statement before Village Magistrate is a "charge"—Crim. Pro. Code* (*Act* V *of* 1898), *ss.* 45, 154, 157, 161, 162 *and* 191.—S, the accused, made a statement before the Village Magistrate that certain persons committed dacoity in his house. It was reduced into writing by the Village Magistrate, who submitted the statement with a report of his own to the Sub-Magistrate, and sent another to the Station-House Officer requesting him to enquire into the case. The police referred the charge as false, and the Sub-Magistrate agreeing with the police struck the case off the file. The accused was charged under s. 211, I.P.C., for instituting false criminal proceedings or a false charge in regard to the information or a complaint of dacoity which he laid before the Village Magistrate, and committed to the Sessions. The question was whether the facts alleged amounted to an offence under s. 211, I.P.C. *Held* (Per *Benson and Munro, JJ., Sankaran Nair, J, dissenting*), that the commitment was right. The complaint to the Village Magistrate was a "charge" of dacoity and was also the institution of criminal proceedings against the persons named, within the meaning of s. 211, I.P.C. A "false charge" in s. 211 must not be understood in any restricted or technical sense, but in its ordinary meaning of a false accusation made to any authority bound by law to investigate it or to take steps in regard to it with a view to investigation or other proceedings; and the institution of criminal proceeding includes the setting of the criminal law in motion. Under s. 45, Crim. Pro. Code, the Village Magistrate is bound to "forthwith communicate to the nearest Magistrate or officer in charge of the police station, whichever is the nearer, any information which he may obtain respecting" certain grave offences. When a person gives information or makes his complaint to the Village Magistrate, he sets the criminal law in motion, just as effectually as an information given under s. 154, Crim. Pro. Code, or a complaint made under s. 191, Crim. Pro. Code, for the village headman is bound by law to pass on the information or complaint to those officers. *Obiter.*—If a man makes a complaint to one of the persons having a legal obligation under s. 45, Crim. Pro. Code, to report to the police or Magistrate, and does this with the intention of setting the criminal law in motion, he will come not only within the terms of s. 211, I P.C., but within the mischief which the law desired to meet. Per *Sankaran Nair, J.* (*contra*).—The commitment must be quashed. The Village Magistrate, and not the accused, having been the first informant of the Station-House Officer, and the information being in writing, the statement taken from the accused cannot be regarded as one *legally* made under s. 154, but was one really made under ss. 161 and 162, Crim. Pro Code. To hold that it is a statement under s. 154 would be to deny the protection afforded by law to a person making a statement to the police under ss. 161, 162, Crim. Pro. Code. The statement before the Village Magistrate does not come within s. 211, I.P.C. A false charge made to a person who has no magisterial or police authority does not come within s. 211, I.P.C. The statement before the Village Magistrate is not the first step in a proceeding, which in the ordinary course will result in a conviction of the accused. The Village Magistrate cannot enquire into the

False Charge—*continued.*

case, cannot place the accused before a Magistrate for trial, and cannot do anything to the prejudice of the accused on that statement. A criminal proceeding can be instituted only in the King's Court or before any person appointed by the King for that purpose, and the persons named in s. 45, Crim. Pro. Code, are not constituted authorities before whom criminal proceeding may be instituted, for the sole reason that they have to communicate any information they might receive about the offence. (It was admitted that the facts will constitute an offence under s. 182, I P.C.) *In re* SIVAN CHETTI, **5 M.L.T. 269, F.B.=9 Cr. L J. 170=32 M. 258.**

(53)—*Penal Code, ss.* 182 *and* 211—*False charge of theft to Village Magistrate.*—A false charge of theft of a tree made to a Village Magistrate is an offence under s. 182, though it does not amount to an offence under s. 211, Penal Code, inasmuch as the Magisterial powers of a Village Magistrate are confined to the case of petty thefts only. PUBLIC PROSECUTOR v. THAVASIANDI THEVAN, **1 Weir 122=1 Weir 194.**

(54)—*Penal Code, ss.* 182 *and* 211—*False charge to police for self-protection—Offence under s.* 211, *if triable by Second Class Magistrate—Procedure.*—A man is presumed in law to intend the ordinary and natural consequences of his acts, and when he falsely charges another before the police with the commission of an offence, knowing the charge to be false, there can be no doubt but that he is guilty of an offence, punishable both under s. 182 and s. 211 Penal Code, even though his primary object may have been to protect himself than to injure the persons falsely charged. An offence under s. 211, Penal Code, is not triable by a Second Class Magistrate. He should, therefore, forward the complaint to a Magistrate having jurisdiction. PUBLIC PROSECUTOR v. D. VENKATA REDDI, **1 Weir 120.**

(55)—*Penal Code, s.* 211—*False charge—Report of police officer—Enquiry.*—Where a state of facts is brought to the notice of a Magistrate by a police report, which affords ground for supposing that an offence has been committed under s. 211 of the Penal Code, he has jurisdiction to enquire into or try the charge himself, or send it for enquiry or trial to one of his subordinates. QUEEN-EMPRESS v. SHAM LALL, **14 C. 707, F.B.** [*F.*, 37 C. 250=14 C. W.N. 330=10 C.L.J. 564=4 Ind. Cas. 710=11 Cr. L.J. 37; 6 Ind. Cas. 415=14 C.W.N. 765=11 Cr. L.J. 354.]

(56)—*Penal Code, s.* 211—*False charges made to police—Institution of criminal proceedings.*—A man, setting the criminal law in motion by making a false charge to the police of a cognisable offence institutes criminal proceedings within the meaning of s. 211 of the Penal Code, and, if the offence fall within the description in the latter part of the section, he is liable to the punishment there provided. KARIM BUKSH v. QUEEN-EMPRESS, **17 C. 574.** [*Diss.*, 16 A. 124; *F.*, 20 M. 79=1 Weir 189, 5 C.W.N. 727, 2 N.L.R. 119, 31 M. 506=9 Cr.L.J. 77=18 M. L.J. 573, 32 M. 258=9 Cr. L.J. 170=5 M.L. T. 269, 1 Ind. Cas. 187; *R.*, 34 A. 522=10 A. L J. 61=13 Cr. L.J. 702=16 Ind. Cas. 510, 19 B. 51, 22 B. 596, 8 A.L.J. 1106=12 Cr. L.J. 433=11 Ind. Cas. 617; *D.*, 32 C. 180, 26 P.R. 1908, Cr.=9 P.W.R. 1908, Cr.]

(57)—*Penal Code, ss.* 182, 211—*Charge of unnatural offence to police and subsequently to a Magistrate—Discharge—Prosecution under s.* 211.—Where a person preferred to the police a charge of an unnatural offence and subsequently preferred the same charge to a Magistrate who inquired into the case and discharged the person complained against, the prosecution of the complainant should be under s. 211 and not under s. 182 of the Penal Code. EMPRESS v. BALDEO, **A.W.N. 1882, 178.**

(58)—*Penal Code, s.* 211—*Charge before Police reported false—Petition to Magistrate impugning the police report—Magistrate's order to complainant to show cause against his prosecution under the section, legality of.*—The police after the investigation of a charge, under s. 436, I.P.C., laid before them by petitioner, reported the same to be false. Petitioner then presented a petition to the Sub-Divisional Magistrate, impugning the police report and praying for trial of the persons charged. Without examining the petitioner and disposing of his complaint, the Magistrate directed him to show cause why he should not be prosecuted under s. 211, I.P.C., and, in result, ordered his prosecution. *Held*, that the petition presented to the Magistrate was a complaint and must have been dealt with as such, before a prosecution, under s. 211 of the I.P C., could be instituted against petitioner, and that the order for his prosecution under the section was, therefore, bad and should be set aside. JOGENDRA NATH MOOKERJEE v. EMPEROR, **33 C. 1=2 C L J. 228=10 C W.N. 158=2 Cr. L J. 615.** [*F.*, 37 C. 250=10 C.L.J. 564=14 C. W N. 330=11 Cr. L.J. 37=4 Ind. Cas. 710; *R.*, 8 Cr. L.J. 349=4 N L R. 136, 13 Cr. L.J. 578=15 Ind. Cas. 994=5 Bur. L.T. 129.]

(59)—*Crim. Pro. Code* (1872), *ss.* 146, 147—*Penal Code, s.* 211—*Prosecution for preferring a false charge.*—Where a Magistrate dismissed a complaint as false, after examining the complainant and after directing an enquiry by the police, and under s. 471, Crim Pro. Code, 1872, after making a preliminary enquiry, committed him to the Sessions on charges of an offence under s. 211, I.P.C., *held*, that there was nothing illegal in the procedure of the Magistrate, as there was nothing in law which required that a complainant should have an opportunity of substantiating his complaint, by being allowed to produce evidence before the Magistrate, before the latter could take steps against him under s. 471, Crim. Pro. Code. EMPRESS OF INDIA v. BHAWANI PRASAD, **4 A. 182.** [*R.*, 14 C. 707, F.B.]

(60)—*Crim. Pro. Code* (1872), *s.* 471—*Dismissal of complaint--Order for prosecution under s.* 211,

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I.P.C., without preliminary enquiry.—Where a Magistrate ordered a prosecution for a false complaint, after dismissal of the complaint under s. 471, Crim. Pro. Code, but took upon himself to direct the institution of a prosecution acting under s. 471, without making such preliminary enquiry as might be necessary, *held*, that he was bound to give the complainant an opportunity of showing that there were no grounds for instituting such a prosecution. *In the matter of* CHOOLHAIE TELEE, **2 C.L.R. 315.** [*D.*, 7 C. 208.]

(61)—*Penal Code, s.* 182—*Prosecution under the section, on rejection of complaint with reference to Police report—Prosecution by whom to be instituted.*—Where a complaint made to a Police officer was reported by him to the Magistrate to be false, and the Magistrate rejected the complaint with reference to the Police report, and afterwards, the accused, on the sanction of the Police officer concerned, prosecuted the complainant under s. 182, *held*, that his conviction was wrong, because the Magistrate ought to have sifted, for himself, the original complaint, before the complainant was prosecuted. The application of s. 182 and the institution of prosecution for offences under that section are limited to the public servant against whom the offence has been committed or his official superior. The provisions of s. 182 should not be enforced at the instance of private persons. EMPRESS OF INDIA v. RADHA KISHEN, **5 A. 36 = A.W N. 1882, 145.** [*Overruled*, 8 A. 382 ; *Diss.*, 13 C. 270 ; *D.*, 11 Cr. L.J. 347 = 5 Ind. Cas. 991 = 107 P.L.R. 1911 = 11 P. W.R. 1910, Cr.]

(62)—*Penal Code, ss.* 182, 211—*Complaint to Magistrate—Prosecution of complainant for preferring false charge before disposal of complaint.*—Where a woman, who made a complaint of rape to the Police, was prosecuted under s. 182, I.P.C., on the Police having reported the charge to be false, and, in the meantime, the woman repeated the complaint before the Magistrate, *held*, that the Magistrate should have stopped the proceedings against her under s. 182, until her complaint to him had been disposed of, and that her conviction should, therefore, be set aside. EMPRESS v. JAMNI, **5 A. 387 = A W.N. 1883, 71.** [*R.*, 14 C. 707, 11 Cr. L.J. 347 = 5 Ind. Cas. 991 = 107 P.L.R. 1911 = 11 P.W.R. 1910]

(63)—*Crim. Pro. Code* (1882), *s.* 195—*Sanction to prosecute—Complaint thrown out—Opportunity to complainant to prove his case.*—Sanction under s. 195 should not be given, until the complainant has been afforded an opportunity of proving his case, which has been thrown out merely on the report of the Police. QUEEN EMPRESS v. GANGARAM, **8 A. 38 = A. W N. 1885, 323.** (6 C. 496, *R*) [*F.*, A.W.N. 1907, 268 = 6 Cr. L.J. 340 ; *R* , 14 C. 707, F.B., A.W.N. 1907, 195 = 4 A.L.J. 471 = 29 A 587 = 6 Cr. L.J. 42, A.W N. 1907, 288 = 6 Cr. L.J. 396 = 30 A. 52 = 4 A.L.J. 790 ; *Diss.*, 2 P.R. 1907, Cr. = 18 P.W.R. 1907, Cr., 49 P.L.R. 1907 = 5 Cr. L.J. 491 = 6 Cr. L.J. 258, 11 M.L.T. 367 = (1912), M.W.N. 499 = 22 M.L.J. 419 = 14 Ind. Cas. 305 = 13 Cr. L.J. 209.]

(64)—*Penal Code, ss.* 182, 211—*Prosecution by private person—Crim. Pro. Code* (1882), *s.* 195—*Specific false charge.*—A prosecution under s. 182, I.P.C., may be instituted by a private person, provided that he first obtains the sanction of the public officer to whom the false information was given or of his official superior. Where a specific false charge is made, the proper section for proceedings to be adopted under, is s. 211. QUEEN-EMPRESS v. JUGAL KISHORE, **8 A. 382 = A.W.N. 1886, 133.** (5 A. 36, *R.*)

(65)—*Penal Code, s.* 211—*Opportunity to prove complaint—Commitment* —The fact that the accused had no opportunity given to him to substantiate the complaint he made, is not a bar to his commitment for trial under s. 211 of the Penal Code. QUEEN EMPRESS v. GOLI, **A.W.N. 1882, 1.** (1 A. 497, 1 M.H.C. 30, *R.*)

(66)—*Commitment for false charge, under s.* 211 *of the Penal Code on Police report—Legality.*—A commitment for trial for false charge (s. 211 of the Penal Code) is sustainable, though based on a Police report, the complaint by the accused not having been judicially enquired into. EMPRESS v. SALIK ROY, **6 C. 582 = 8 C.L R 255.** [*R.*, Rat. Un. Cr. C. 524, 28 B. 226 ; *Cons.*, 14 C. 707.]

(67)—*Penal Code, s.* 211—*Accused charging another with assault—Offence of abetment of assault established—False charge, conviction for, maintainability of.*—The accused charged another with having assaulted him and knocked out his tooth. The accused was charged under s. 211, I.P.C., after the dismissal of this complaint. The Judge found that, although the person charged with assaulting him did not himself assault the accused, he had instigated his servants to do so, and was present at the occurrence. *Held* that, under the circumstances, the complaint brought by the accused could not be said to have been false. EMPRESS v. MINDAI LALL, **A.W.N. 1883, 39**

(68)—*Penal Code, s.* 211—*Plea of guilty—Admission of false charge without admission of malicious intent* —The accused was convicted, without trial, as on a plea of guilty, of an offence punishable under s. 211, I.P.C. When called on to plead in the Sessions Court, she said :—"I admit presenting the petition, and even that it is untrue, but I did so under the influence of "certain persons," or, words to that effect." *Held*, that this was not a plea of guilty of the offence defined in the section. The woman should have been tried on the questions whether her intention in presenting the petition was malicious, or to obtain an enquiry in good faith into circumstances which she then believed to require enquiry : whether, when she moved the Magistrate, she knew that the charge she made was false, and that there was no just or lawful ground for such proceeding or charge or whether she was misled or influenced by other

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people into a *bona fide*, though erroneous, belief on these subjects. EMPRESS v. SUNDAR, **A. W.N. 1886, 66.**

(69)—*Penal Code, s.* 211—*Statement at trial by prisoner—Record of plea—Crim. Pro. Code (Act* X *of* 1872), *s.* 237—*Essential for offence under s.* 211.—A conviction for false charge under s. 211 of the Penal Code, based on the statement at the trial by the prisoner that he made the false complaint unthinkingly, there being no record of the prisoner's plea as required by s. 237 of the Crim. Pro. Code, nor a compliance with other requirements, is bad. The prisoner's statement does not amount to a plea of guilty. Moreover, the intention to injure another is essential for an offence under s. 211, I.P.C. *In the matter of the petition of* GOPAL DHANUK; EMPRESS v. GOPAL DHANUK, **7 C. 96=8 C.L.R. 471.** [*Appl.*, 10 M. 232=2 Weir 183, F B.]

(70) — *Separate convictions under s.* 182, *Penal Code, for one false statement—Illegality.* —Where an accused person was charged with having given a false information to a public servant, in which he mentioned the names of two persons, in whose house he informed that stolen property would be found, *held*, the statement being one, he could be charged only with having made one false statement and could not be tried for and convicted of two distinct offences under s. 182 of the Penal Code. POONIT SINGH v. MADHO BHOT, **13 C. 270.**

(71)—*Penal Code, ss.* 182 *and* 211—*Prosecution for false charge to police—Crim. Pro. Code* (1898), *s.* 195—*Sanction to prosecute.*—A prosecution for a false charge may be under s. 182 or s. 211. If the false charge is of a serious offence, the proper course is to proceed under s. 211; otherwise, it is enough if the sanction be for the prosecution for an offence under s. 182. EMPEROR v. SARDA PROSAD CHATTERJEE, **32 C. 180=2 Cr.L.J. 171.** (5 C. 184, 7 C.L.R. 382, *F.*) [*F.*, 11 Cr. L.J. 420=6 Ind. Cas. 944=20 P R. 1910, Cr.=140 P.L.R. 1910=30 P.W.R. 1910, Cr.; *R.*, 11 Cr.L.J. 252 =5 Ind. Cas. 829=6 P.R. 1910, Cr.=170 P L. R. 1910=10 P.W.R. 1910, Cr.]

(72)—*Penal Code, s.* 211—*Prosecution for false complaint before the examination of all witnesses for complainant—Validity.*—An order for the prosecution of the complainant before the examination of all the witnesses cited by him, is bad in law. *In the matter of* GANGOO SINGH, **2 C L.R. 389.** [*D.*, 7 C. 208.]

(73)—*Crim. Pro. Code, s.* 476—*Order for prosecution—Indian Penal Code, s.* 211—*False charge, laying of—Charge laid before the police —Police report, directing charge as false—Judicial inquiry, order directing—Procedure.*—A criminal proceeding was instituted by a person before the police who reported the case to be false, and, the matter coming on before a Magistrate empowered to dispose of police reports, he made an order making over the case to another Magistrate, for judicial inquiry. This Magistrate, after holding a judicial inquiry as directed, submitted a report, upon which the other Magistrate made an order to the following effect, *viz.* :—"The complainant's charge has been established to be false and hence no process shall be issued against the accused and the complainant shall be proceeded against under s. 211, Indian Penal Code;" and, upon prosecution, the complainant was convicted under s. 211 of the Penal Code: *Held*, that the offence of instituting a false complaint, not having been committed before the Magistrate who ordered the prosecution of the petitioner, or brought to his notice in the course of judicial proceedings, the prosecution of the petitioner was bad and contrary to law and the proceedings must be quashed. *Held*, also, that the proper course, in such a case, should have been to direct the police to lodge a complaint. ABDUL RAHMAN v. EMPEROR, **7 C. L.J. 371=7 Cr. L J. 338.** (33 C. 30, *F.*) [*F.*, 37 C. 250=10 C.L J. 564=14 C.W.N. 330=11 Cr. L.J. 37=4 Ind. Cas. 710; *R.*, 40 C. 360= 13 Cr. L J. 826=17 Ind. Cas. 570.]

(74)—*Proof—Penal Code, s.* 211.—Where the accused informed the police that he had been informed, by certain residents of the village, that there was a suspicion that the complainant had committed an offence, and there was no proof that the accused was on inimical terms with the complainant, *held*, that the accused was not guilty under s. 211, I.P.C. KARIM BAKHSH v. EMPEROR, **12 P.R. 1905, Cr. =74 P L.R. 1905=2 Cr. L.J. 66.** (29 P.R. 1894, Cr, *F.*) [*R.*, 9 N.L.R. 81.]

(75)—*Proof—Penal Code, s.* 211.—To establish an offence under s. 211, I.P.C., it must be affirmatively proved that the accused had falsely charged and that there was no just or lawful ground for such charge. A conviction cannot be made by a reference to the record of a former case. RAMPAT v. EMPRESS, **26 P.R. 1900, Cr.**

(76)—*Proof.*—To establish an offence under s. 211, I.P.C., it must be proved that the accused had falsely charged the complainant, without any just or lawful grounds for that charge. Evidence of the actual falsity of the charge, recklessness in acting upon information without testing it or scrutinising its source and actual motive may also be adduced. MURAD v. EMPRESS, **29 P.R. 1894, Cr.**

(77)—*False charge—Nature of proof necessary to support charge.*—A Deputy Magistrate, prosecuting a complainant and his witnesses for having preferred a false charge of theft before him, ought to prove the falsity of the complaint of theft in the presence of the accused, without simply relying on the decision in the case of theft. QUEEN v. RAM DAS BOISTUB, **11 W.R. Cr. 35.**

(77-*a*)—*Penal Code, s.* 211—*Criminal Proceedings—Quære.*—Whether the provisions of s. 211, I.P.C., as to the institution of criminal proceedings are restricted to criminal proceedings in a Court. KHAN BAHADUR v. EMPRESS, **26 P.R. 1888, Cr.** (17 P.R. 1884, 3 P. R. 1888, Cr., *R.*)

False Charge—*continued.*

(78)—*Penal Code, s.* 211—*Institution of criminal proceedings.*—Where a false charge before a Magistrate is merely sent for police enquiry, without the taking of any further proceedings in any Court, the false charge does not come within the second clause of s. 211, I.P.C. SULTAN v. EMPRESS, **3 P.R. 1888, Cr.** (17 P.R. 1884, *cited* as Criminal Appeal No. 1099 of 1883, *Diss.*) [*R.*, 7 Cr. L.J. 291=9 P.W.R. 1908, Cr.=26 P.R. 1908, Cr.]

(79)—*Prosecution, when to be instituted—Penal Code, s.* 211.—A Magistrate should not issue process or sanction a prosecution without ascertaining whether the charge instituted by the accused had terminated in a regular manner, although all the evidence offered by the accused has not been accepted by the Magistrate. A Magistrate, if he has taken action inadvertently, should stay proceedings, in order to give the accused the opportunity he desires. MANGA RAM v. EMPRESS, **28 P R 1886, Cr.**

(80)—*Gist of the offence—Penal Code, s.* 211.—To constitute an offence under the section, it is necessary to show not merely that the criminal proceeedings against the complainant have failed, but that the charge was in fact false and that the accused brought it with the knowledge that there was no just or lawful ground for the charge, and with the intention to injure the complainant, JAN MUHAMMAD HUSEN v. EMPRESS, **1 P.R. 1886, Cr.**

(81)—*Penal Code, s.* 211—*Gist of the offence,*—To constitute the offence of "falsely charging a person with having committed an offence," under s. 211, I.P.C., something more is necessary than to falsely impute against a person that he has committed the offence. The charge contemplated in the section means a charge made in order to the institution of criminal proceedings. GULAM HUSSAIN v. CROWN, **14 P. R. 1879, Cr.** [*R.*, 26 P.R. 1908, Cr.=7 Cr. L. J. 291=9 P.W.R. 1908, Cr]

(82)—*False charge of murder—Penal Code, s.* 211.—Where the accused made a false charge of murder against the complainant at a police station, and set the police in motion on that charge, although the police, after enquiry, found the charge to be false, *held* that the accused was guilty under s. 211, I.P.C., and that as the false charge was one of murder, he was punishable under the latter part of the section. SULLA v. EMPRESS, **17 P.R. 1884, Cr.** [*Diss.*, 3 P.R. 1888.]

(83)—*False charge—Penal Code, s.* 211.—Where, on the accused representing to the police that a burglary had been committed and that he suspected the complainant, the complainant's premises were searched and some property belonging to the accused was found there, but the Magistrate discharged the complainant, holding that the accused had placed the property where it was discovered, *held,* that these facts were sufficient to convict the accused under s. 211, I.P.C. CROWN v. NIHALA, **14 P.R. 1872, Cr.**

False Charge—*continued.*

(84)—*Police officers liable to be convicted for false charge.*—S. 211 of the Penal Code is not limited in its application to private individuals alone. A police-officer, who maliciously commences criminal proceedings against any person or charges such person with an offence or causes him to be charged falsely, not only commits the offence under s. 211 but commits it in a very aggravated manner. *In re* NABODEEP CHUNDER SIRKAR, **11 W.R. Cr. 2.**

(85)—*Complaint to police is instituting a criminal proceeding.*—Preferring a complaint to the police in respect of an offence which they are competent to deal with and thereby setting the police in motion is instituting a criminal proceeding within the meaning of s. 211 of the Penal Code. QUEEN v. BONOMALLY SOHAI, **5 W R. Cr. 32.**

(86)—*Charge made to police—If instituting a criminal proceeding—Ss.* 182 *and* 211 *distinguished.*—S. 182 clearly refers to informations of which that given in ill. (*b*) is an instance. S. 211 on the other hand clearly applies to the present case (*viz.*) of a person who, with intent to cause injury to another person, institutes a criminal proceeding against that person on a false charge of an offence punishable with death, namely, of having caused the death of a child by poisoning it, knowing that there is no just or lawful ground for such a proceeding RAFEE MAHOMED v. ABBAS KHAN, **8 W.R. Cr. 67.**

(87)—*Statement to a police officer by a person interested or having official responsibility and application for search of the house—Offence of false charge.*—If a man, especially one interested in the matter, or having a certain official responsibility, says to a police officer. "A tells me that X has committed a certain offence, and B and C confirm the statement, and I accordingly suspect X" and follows that statement by an application to have X's house searched, he has in truth preferred a charge against X. QUEEN v. HUNOOMAN LALL, **19 W.R. Cr. 5.**

(88)—*Charge on insufficient grounds.*—It is not enough for a charge under s. 211, Penal Code, that a person to whom a wrong has been done, or who conceives that a wrong has been done to him makes a charge or complaint upon evidence, or a statement which is not or ought not to be sufficient to satisfy a reasonable mind. However rashly he may act in receiving and believing such statement, if in fact and truth, he does not know, at the time he makes the complaint that there are no just and lawful grounds for making the complaint, he cannot be convicted of making a false charge under the above section. QUEEN v. PRAN TISSEN BID, **6 W. R. Cr. 15.**

(89)—*Accused burning his own house and making a false charge against the complainant—Separate convictions under ss,* 195 *and* 211, *Penal Code, illegal.*—Where a man burns his own house and charges another with the offence of doing so, he should be convicted and sentenced under s. 211 (and not under s. 195) of

False Charge—*continued.*

the Penal Code. Separate convictions under s. 195 and under s. 211, Penal Code, are illegal, where the first offence is committed only in furtherance of the second (*viz.*) for being used as evidence in the false complaint which the accused brought against the complainant. QUEEN v. BHUGWAN AHIR, **8 W.R. Cr. 65.**

(90)—*S. 211, Penal Code, capable of being split up into two separate offences—Prisoner not justifying himself in the first instance before prosecution makes out a distinct case against him—Facts consistent with guilt as well as innocence—Presumption of innocence—Deposition in a former case relevant only to contradict —In summing up, judge to avoid all unnecessary discussion and argument—Judge to point out weakness of case—Whole diary, not mere extracts, to be admitted in evidence.*—Under s. 211, Penal Code, instituting a criminal proceeding may be treated as an offence in itself, apart from "falsely charging" a person with having committed an offence. Where a person is put on his trial, as for a criminal offence, it is for the prosecution to make out a distinct case against him, not for the prisoner in the first instance to justify himself and show that he had just and lawful grounds. Where the facts are as consistent with the prisoner's innocence as with his guilt, innocence must be presumed. The depositions of a witness in a former case are not evidence in a subsequent case except when, at the trial in the subsequent case, the witness was expressly examined as to his former deposition and it was put in to contradict him. Judges in charging juries should avoid all extraneous and unnecessary discussion and argument, and should confine themselves as directed by s. 379, Crim. Pro. Code (1861), to a mere summing up of the evidence on both sides, showing how the law applies to it. He should also point out to the jury the extraordinary weakness of the case as presented to them by the prosecution, and the fact that so many of the witnesses who ought to have been called were not called. When certain portions of a police diary are admitted in evidence against the prisoner, he has a perfect right to place before the jury any other portions which explain those which were admitted. The whole diary and not mere extracts or garbled portions of it must be used. QUEEN v. NOBO KISTO GHOSE, **8 W.R. Cr. 87.**

(91)—*Penal Code, s. 211—Knowledge by accused of offence.*—To establish a charge under s. 211 of the Penal Code, it is necessary to show that the accused knew or had reason to believe that an offence had been committed. QUEEN v. BITTOO KOHAR, **1 Ind. Jur. O.S. 123.**

(92)—*Penal Code, s. 211—False charge of refusal to give stamped receipt for money paid.* —Where a person preferred a false charge against another of refusing to give him a stamped receipt for money paid to him, *held* that the act of the accused did not fall under s. 211, I.P C., as there was no charge of any offence. REG. v. GOPAU *kom* KUSAJI, **1 B.H. C. 92.**

False Charge—*continued.*

(93)—*Penal Code, Act* XLV *of* 1860, *s.* 211—*Proof of information acted upon* —In a case under s. 211 for preferring a false charge with knowledge of its falsity, the Judge should be satisfied not only that the facts, on being informed of which the accused preferred the charge, were false, but also that he did not believe the information or knew it to be false. REG. v. NAVALMAL *valad* UMEDMAL, **3 B H. C. Cr. 16.** [*R.*, 22 B. 596.]

(94)—*Charge of theft reported false—Institution of proceedings under s 211—Subsequent renewal of charge—Conviction with decision on the charge—Proper procedure.*—A charge of theft made by the appellant before the police having been reported to be false, the Magistrate instituted proceedings under s. 211, Penal Code. Immediately after, the appellant appeared before the Court and renewed the charge. The Magistrate, without passing any judicial decision thereon, convicted him. *Held*, on appeal, that the Magistrate's procedure was wrong and that the proper procedure under the circumstances of the case was, first to enquire into the charge of theft and pass orders thereon before proceeding to enquire into the offence of false charge. *In re* BISHOO BARIK, **16 W R. Cr. 77.**

(95)—*Actual information made at the* thannah *to be given in evidence and form part of the record—Trial not invalidated if prisoner not materially prejudiced.*—Where the charge is one of instituting a false charge of an offence with intent to injure the actual information or charge which the prisoner made at the *thannah* ought to be given in evidence and made part of the Sessions record. A trial is not vitiated by this short-coming if the prisoner is not materially prejudiced thereby. QUEEN v. HOOLAS, **23 W R. Cr. 32.**

(96)—*Penal Code, s. 211—Conviction under the section—Nature of false charge to be mentioned in finding and calendar.*—A Magistrate, in convicting a person under s. 211, I.P.C., for preferring a false charge, should state the nature of the false charge in the finding and enter it in the calendar. REG. v. ARJUN, **1 B.H C. 87.** [*R.*, 22 B. 596.]

(97)—*Procedure before framing charge.*—The procedure before framing a charge, under s. 211 of the Penal Code, of the offence of making a false charge with intent to injure considered. *In the matter of the petition of* GAUR MOHAN SING, **8 B L.R. App. 11 = 16 W.R. Cr. 44.**

(98)—*Penal Code, s. 376—False charge of rape—Jurisdiction.*—Rape is an offence punishable with transportation for life or with imprisonment for a term which may extend to ten years. The offence, therefore, of making a false charge of rape is triable exclusively by the Court of Sessions. QUEEN-EMPRESS v. BHIKHI, **Rat. Un. Cr C. 933 = Cr. Rg. 4 of 1898.**

See ABETMENT, **9 B.L.R. App. 16, 18 W.R. Cr. 28.**

See ACT XIII OF 1859, s. 1, **2 L.B.R. 300.**

False Charge—*concluded.*

Compensation in false cases of theft—*See* COMPENSATION—GENERAL, 3 W.R. Cr. 70.

See COMPENSATION—GENERAL, 7 Bom. L. R. 998=2 Cr. L.J. 88, 10 Bom. L.R. 1056=9 Cr. L.J. 186, 9 Cr. L.J. 268, F.B.=1 S.L.R. 28, Cr.

Order for prosecution of complainant for making false charge—Necessity for examination and dismissal of complaint—*See* COMPLAINT—DISMISSAL OF COMPLAINT, 27 C. 921.

See COMPOUNDING OFFENCE, 11 C. 79.

See CONVICTION, 4 C.L.R. 338.

Threat to bring false charge—*See* CRIMINAL INTIMIDATION, 1 Weir 623.

See CRIM. PRO. CODE, 1898, ss. 195, 537, 5 O.C. 164.

See CRIM. PRO. CODE, 1898, s. 198, Colm. Dig. Cr. 28 of 1875.

See CRIM. PRO. CODE, 1898, s. 203, 4 C.L.R. 413.

See MALICIOUS PROSECUTION, 5 W.R. 134.

See SANCTION TO PROSECUTE—AUTHORITIES COMPETENT TO GRANT SANCTION, ETC., 7 C. 208=8 C.L.R. 267.

Sanction to prosecute for abetment of the offence of preferring a—*See* SANCTION TO PROSECUTE—NATURE AND FORM OF SANCTION, 2 Weir 167=2 Weir 243.

Making a—*See* SANCTION TO PROSECUTE—CONDITIONS REQUISITE FOR GRANT OF SANCTION, ETC., L.B.R. 1893—1900, 542.

See SANCTION TO PROSECUTE—CONDITION REQUISITE FOR GRANT OF SANCTION, ETC., 6 C 584=8 C.L.R 265, 2 P W R. 1909. Cr.=9 Cr.L.J. 152=37 P.L.R. 1909=1 Ind.Cas. 93, 3 C.W.N. 33.

See SANCTION TO PROSECUTE—MISCELLANEOUS CASES, Rat. Un. Cr. C. 701=Cr. Rg. 36 of 1894.

See SENTENCE—CUMULATIVE AND SEPARATE SENTENCES, 7 W.R. Cr. 59.

False Claim.

For payment of lost currency notes—*See* ATTEMPT, 16 C. 310.

See PENAL CODE, s. 209, 38 P.R 1888, Cr.

False Complaint.

See COMPENSATION TO ACCUSED.

See CRIM. PRO CODE, 1898, s. 250.

See FALSE CHARGE.

(1)—*False prosecution story, effect of.*—If the prosecution story, taken as a whole, is false the accused is entitled to an acquittal. MOTIJAN BIBEE v. CROWN, 6 C.W N 380.

(2)—*Crim. Pro. Code (1872), s. 209 (s. 250 of the Code of 1898)—False complaint, whether vexatious.*—A false complaint is also a vexatious complaint. *In re* PONNAMMAL, 2 Weir 313.

See COMPLAINT — DISMISSAL OF COMPLAINT, 3 N.W.P. 272.

False Complaint—*concluded.*

See CRIM. PRO. CODE, 1898, ss. 195, 476, U.B.R. 1892—1896, Vol. I, 26.

Preferring—Dismissal of complaint—Order for compensation, validity of—*See* DISMISSAL OF COMPLAINT, 28 C. 251.

Sent by post—*See* SANCTION TO PROSECUTE— MISCELLANEOUS CASES, A.W.N. 1900, 189.

False Declaration.

See ACT III OF 1877, s. 81, 6 O.C. 153.

False Defence.

(1)—*Duty of Court.*—Although a false defence necessarily affects the credit to be attached to the accused's case, the Court is not saved the trouble of weighing the evidence and of arriving at a right conclusion. JEHANGEER KHAN v. CROWN, 22 P.R. 1868, Cr.

(2)—*False* alibi.—A false defence of *alibi*, although not sufficient evidence of the accused's guilty, may add probability to the suspicion of guilty. AZEEM v. CROWN, 57 P.R. 1866, Cr.

False Description.

When, would make document a forgery—*See* FALSE DOCUMENT, 4 M.L.T. 463=30 M. 90=9 Cr. L.J. 85.

False Divorce.

Registration of—*See* PENAL CODE, s. 419, 17 C. 606.

False Document.

See FORGERY.

See PENAL CODE, ss. 464 to 467.

(1)—*Penal Code, s. 464—When false description would make document a forgery.*—It would be going too far to hold that, whenever the executant of a document attaches a false description to his name, he comes within the purview of s. 464, I.P.C. But a false description may make a document a forgery, when it is found that the accused, by giving such a false description, intended to make out or wanted it to be believed that it was not he that was executing the document, but a fictitious person. RAMAN v. ADAIKALAMMAL, 4 M.L T. 463=32 M. 90=9 Cr.L.J. 85=1 Ind. Cas. 731=19 M L. J. 78.

(2)—*Penal Code, ss 463, 471—False document prepared with the object of securing a situation.*—Along with an application for employment in the police force, the accused produced two certificates, known to him to be false. One of them was a wholly fabricated document, whilst the other was altered by several additions made subsequent to the issue of the certificate. *Held* that the accused was punishable under s. 471, I P.C, for using a forged document. QUEEN-EMPRESS *v.* KHANDU SINGH, 22 B. 768.

(3)—*Penal Code, s. 464—"False document," what constitutes.*—The making of a document, untrue in certain particulars, is not, necessarily, the making of a false document within the meaning of the Code. To constitute such a document, a false document, it must be shown

False Document—*concluded.*

that it was made with such an intention as is implied in the term "fraudulently" or in the term "dishonestly." A mere intention to deceive is not sufficient. *In re* GUDDAPPA, **1 Weir 542.**

See CHARGE—GENERAL, 6 W.R. Cr. 20.

Filed in Court but not given in evidence—Commitment for trial—*See* CRIM. PRO. CODE, 1898, ss. 195, 478, 22 C. 1004.

Interpolation of the name of a person as an attesting witness if forgery—Material part of document, if altered—Dishonestly and fraudulently—*See* PENAL CODE, ss. 24, 25, 464, 471, 14 C.W.N. 1076 = 12 C.L.J. 277.

See PENAL CODE, s. 471, 7 M.L.T. 428 = 20 M.L.J. 534 = 6 Ind. Cas. 776 = 11 Cr.L.J. 401.

False Entry.

See FORGERY.

(1)—*Penal Code, s.* 477-*A*—"*Fraudulently,*" *meaning of—False entries made for concealing fraud previously committed.*—Certain sums of money were received into a Munsiff's Court for payment into Government treasury but they were never paid. The accused, an accountant in the Munsiff's Court, did not enter these sums in the Chalan Register. But after the commencement of an inquiry into the matter, he, for the purpose of concealing the non-payment, made false entries in the Chalan Register showing that these sums had been paid to the credit of the Collector. *Held, per Geidt, J.*—That inasmuch as the accused, in making the false entries, was in reality furthering the fraud which had been committed upon the Government, he acted fraudulently and was, therefore, guilty under s. 477-A, I.P.C. *Per Woodroffe, J.*—That even if the intention with which the false entries were made was to conceal a fraudulent or dishonest act previously committed, the intention would be to defraud and the case would fall within s. 477-A of the I.P.C. EMPEROR v. RASH BEHARI DAS, **35 C. 450 = 12 C.W.N. 581 = 7 Cr. L.J. 378.** (22 C. 313, 1 Weir 554, *F.*; 5 A. 221, 8 A. 653, 13 C. 349, *Diss.*) [*F.*, 37 B. 666 = 2 Bom. Cr. C. 115 = 15 Bom. L.R. 708 = 14 Cr. L J. 518 = 20 Ind. Cas. 998; *R.*, 41 C.722 = 18 C.W.N. 1152 = 15 Cr. L J. 153 = 22 Ind. Cas. 729, 11 Cr. L.J. 185 = 4 Ind. Cas. 1089 = U.B.R. 1909, Penal Code, p. 19; *D.*, 36 C. 955 = 10 Cr. L.J. 581 = 14 C.W.N. 82 = 4 Ind Cas. 416.]

Correction of false entries to conceal attempted misappropriation—*See* PENAL CODE, s. 465, Rat. Un. Cr. C. 595 = Cr. Rg. 15 of 1892.

False Evidence.

See FALSE STATEMENT.

See PENAL CODE, ss. 191 to 200.

See PERJURY.

See SANCTION TO PROSECUTE.

(1)—*Penal Code, ss.* 191—193 — *Offence of giving false evidence—Witness, not sworn or affirmed.*—The offence of giving false evidence may be committed, although the person giving evidence has been neither sworn nor affirmed. GOBIND CHANDRA SEAL v. QUEEN-EMPRESS, **19 C. 355.**

(2)—*Penal Code, s.* 191—*False verification in a written statement—Civ. Pro. Code* (1882), *ss.* 51, 151.—A person filing a written statement is bound by law to state the truth, and if he makes a statement which is false to his knowledge or belief, or which he believes not to be true, he is guilty of giving false evidence within the meaning of s. 191 of the Penal Code. QUEEN-EMPRESS v. MEHRBAN SINGH, **6 A. 626 = A.W N. 1884, 253.** [*F.*, 27 P.R. 1894, Cr.; *Cited*, 1 Weir 174; *R.*, 14 Cr. L.J. 456 = 20 Ind. Cas. 616.]

(3)—*Penal Code, ss.* 193 *and* 199—*False statements in a written statement by defendant.*—A written statement is not a declaration, within the meaning of s. 199, Penal Code, which a Court of Justice or any public servant or any other person is bound or authorized by law to receive as evidence of any fact. Therefore, a defendant, who makes a false statement in his written statement, is not liable to be convicted under s. 199, but might be convicted of giving false evidence under s. 193, Penal Code. *In re* MURUGHANDI, **1 Weir 154 = 1 Weir 179.**

(4)—*False statement in defendant's written statement.*—A defendant, being bound to verify his written statement, is bound to make a true statement, and, therefore, if he makes a statement which he knows to be false, he is punishable for giving false evidence within the meaning of s. 191, Penal Code. HIGH COURT PROCEEDINGS, 11TH JAN. 1889, No. 35, **1 Weir 174.**

(5)—*Proof of intention.*—In order to support a charge of giving false evidence, it is not necessary that there should be proof of corrupt intention. It is sufficient that there is proof of intention and, if the statement was false and known to the accused to be false, it may be presumed that in making it the accused intentionally gave false evidence. QUEEN v. AMEER ALI KHAN, **3 N.W.P. 133.**

(6)—*Penal Code, s.* 191—*Charge not to be based on statement not containing the substance of all that witness said.*—A charge of perjury should not be based upon a statement which does not contain the substance of all that the witness said, but only of what was thought relevant by the Court which took down the statement. It is essential to consider, not the form of the statement alleged to be false, but its meaning which is to be gathered not merely from the words selected for the purpose of framing the charge, but also from any other statements which are to be found in the deposition of the accused which may reasonably be construed to affect the meaning of the selected words. *In re* PURUSHOTTAM LALL KHETTRI, **2 J.G. 38.**

(7)—*Penal Code, ss.* 191, 194—*Preliminary inquiry.*—Where a person gave false evidence

False Evidence—*continued.*

in a preliminary inquiry, the result of which could only be a commitment to the Sessions, he cannot be convicted under s. 194. REG. v. GOKALDAS, **Rat. Un. Cr. C. 80=Cr. Rg. 22-1 1874.**

(8)—*Penal Code, s.* 193—" *Judicial proceeding," defined—Solemn affirmation.*—A " judicial proceeding " in nothing more or less than a step taken by the Court in the course of the administration of justice in connection with a pending case. Where a witness to prove the service of summonses was, at the beginning of the case, solemnly affirmed before the presiding Judge once for all to speak the truth in all cases coming before the Court on that day for hearing, the fair construction of that would be that he was affirmed to tell the truth in each and every case in which he had been concerned, and respecting which the Court should, on that day, question him. QUEEN v. VENKATACHALAM PILLAI, **2 M.H.C. 43.** [*Rel. on,* 12 Cr. L.J. 326=10 Ind. Cas. 622.]

(9)—*Penal Code, ss.* 191 *and* 193—*False statement made to police officer investigating a case—Conditions necessary to convict the accused —Crim. Pro. Code, s.* 161.—Before a person can be held guilty, under s. 193 of the Penal Code, for a false statement made before an investigating police officer, it is necessary, having regard to the provisions of s. 161 of Crim. Pro. Code, that it should be shown, by evidence that the statement was made in answer to questions put by such officer. The fact that the record of the statement is headed: "On being questioned, said" would be no evidence of the fact that the accused was questioned, and, in answer to the question, the statement was made. But that fact must be proved by oral evidence. Without such proof the person cannot be convicted under s. 193, even if the statement be proved to be false. Further, the prosecution should establish that the police officer was making an investigation under ch. XIV of the Crim. Pro. Code. EMPRESS v. BAIKANTA BAURI, **16 C. 349.** [*Appl.*, Rat. Un. Cr. C. 488; *D.*, U.B.R. 1892—1896, Vol. I, 195.]

(10)—*Penal Code, ss.* 191, 193—*False statement upon oath before police patel—Bombay Act* VIII *of* 1867, *s.* 13.—A person making a false statement upon oath before a police patel, acting under s. 13 of Bombay Act VIII of 1867, gives false evidence within the definition in s. 191, I.P.C., and is liable to punishment under s. 193 IMPERATRIX v. IRBASAPA, **4 B. 479.**

(11)—*Penal Code, s.* 193—*False evidence in police investigation—Crim. Pro. Code* (1882), *ss.* 155, 161.—A person under examination in the course of a police investigation under ch. XIV is bound by s. 161, Crim. Pro Code, to answer truly all questions put to him, unless the answer to any question has a tendency to expose him to a criminal charge, or to a penalty or forfeiture. If knowingly he answers falsely, he commits an offence under s. 193, I.P.C., *viz.*, of giving false evidence in a stage of a judicial proceeding. QUEEN-EMPRESS v. PARSHRAM RAYSING, **8 B. 216.** [*Diss.*, 11 B. 659.]

(12)—*Crim. Pro. Code (Act X of* 1872), *ss.* 118 *and* 119—*Investigations by the police under —Legal obligation to speak truth—Penal Code, s.* 191.—In police investigations under ss. 118 and 119 of the Crim. Pro. Code (of 1872), the persons giving information are under no legal obligation to state the truth, such as is contemplated in s. 191 of the Penal Code. EMPRESS v. KASSIM KHAN EMPRESS v. MESSAMUT DAHIA, **7 C. 121=8 C.L.R 300, F.B.=4 Shome L.R. 71.** [*Not F.*, 10 C. 405; *Appl.*, 23 M. 544=1 Weir 112; *R.*, 9 Cr. L J. 105=27 P. R. 1908, Cr.]

(13)—*False statement to police officer—Crim. Pro. Code* (1882), *s.* 161.—A witness, making a false statement to a police officer, in reply to a question which he is bound by s. 161 to answer, would be guilty of intentionally giving false evidence. The law in 7 C. 121 has been altered by s. 161 of the Crim. Pro. Code of 1882. NATHU SHEIKH v. QUEEN-EMPRESS, **10 C. 405.**

(14)—*Crim. Pro. Code* (1898), *s.* 161—*Examination of witnesses by the police—Refusal to answer questions—Obligation to speak the truth —Penal Code, ss.* 176, 179 *and* 187.—Under the law as is laid down in the Crim. Pro. Code of 1898, a person who is examined under s. 161 of the Code is not "legally bound to state the truth." The legal obligation to speak the truth, when so examined, no doubt existed under the Code of 1882; but the effect of the omission of the word "truly" in the Code of 1898 has been to do away with this legal obligation. Therefore, a person, who is examined under s. 161 of the Code of 1898, by a police officer making an investigation under Ch. XIV of the Code and who refuse to answer questions put to him, cannot be punished under ss. 176, 179 and 187 of the Penal Code. QUEEN-EMPRESS v. SANKARALINGA KONE, **23 M. 544=1 Weir 112=2 Weir 123=1 Weir 105.** [*R.*, 27 P.R. 1908, Cr.]

(15)—*Crim. Pro. Code* (1882), *ss.* 55 (*c*), 156, 161—*Arrest and investigation by police officer in cognizable case—Contradictory statements by witness during investigation and before Court—Penal Code, s.* 193.—Where, in a cognizable case, the police officer arrested a person charged under s. 55 (c), Crim. Pro. Code, 1882, and held an investigation in which the accused, a witness, made certain material statements, which he subsequently contradicted when examined as a witness in Court, *held* that, as the case in which the statement of the witness was taken came within s. 156, Crim. Pro. Code, 1882, and as, therefore, the witness was bound to tell the truth in the investigation before the police officer, he was properly convicted under s. 193, I.P.C., for making contradictory statements in the investigation by the police officer and before the Court. QUEEN-EMPRESS v. BHAJANS, **A.W.N. 1893, 124.**

False Evidence—*continued.*

(16)—*Agreement not to prosecute for giving false evidence—Validity.*—It is essential to the well being of society that persons who commit offences which are of a public nature, and which are punishable as crimes, should be brought to justice. Therefore a Court cannot take cognizance of a bargain to abstain from the prosecution of a person for such an offence as that of wilfully giving false evidence. QUEEN v. BALKISHAN, **3 N.W.P. 166 = Agra F.B., Ed. 1871, 252.**

(17, 18)—*Charge of giving false evidence—Fabricating false evidence—False statements in verification—What it should contain.*—A man who is called upon to answer to a charge of giving false evidence should know exactly what is the false evidence imputed to him. Although the verification of plaints containing false statements is punishable according to the provisions of the law for the time being in force for the punishment of giving or fabricating false evidence, still it is not quite the same thing as giving false evidence. QUEEN v. SHEO CHURUN, **3 N.W.P. 314.**

(19)—*Penal Code, ss.* 191 *and* 193—*Materiality of subject matter of statement, whether essential to constitute the offence of giving false evidence—English and Indian Law.*—The materiality of the subject-matter of the statement is not, according to the Indian Penal Code, a substantial part of the offence of giving false evidence. An indictment omitting the allegation of such materiality may be sufficient, if it alleges the substance of the offence. In this respect the Indian Law differs from the English Law inasmuch as, according to the latter, it is necessary to aver that the subject of the false statement was material to the result of the inquiry. But to constitute an offence under ss. 197, 198, 199 and 200, materiality is essential to the offence because the word "material" is used in those sections. The distinction appears to be this. When the act giving rise to the indictment occurs out of Court, then materiality is made essential to the offence, and must be, accordingly, averred in the indictment. But when the act occurs in the face of the Court, then materiality is not made essential and need not, therefore, be averred. QUEEN v. AIDRUS SAHIB, **1 Weir 146 = 1 M.H.C. 38.**

(20)—*Penal Code, Act* XLV *of* 1860, *ss.* 191, 193—*False evidence—Materiality—Intention.*—Ss. 191 and 193 of the Penal Code require that the evidence should be intentionally false to the knowledge of the person giving it. Materiality may not be essential to the offence of giving false evidence, but it must be taken into consideration in arriving at the intention of the accused. REG. v. TOOKARAM, **Rat. Un. Cr. C. 2.**

(21)—*Penal Code, s.* 193—*Fabricating false evidence—What must be established to sustain a conviction for—Application for partition by four co-sharers—Verification by all co sharers (including one deceased).*—In order to sustain a conviction for fabricating false evidence, it must be established that the accused made a document containing a false statement, that he intended that false statement should appear in evidence in a proceeding taken before a public servant, and that that false evidence might cause any person, who in such proceeding was to form an opinion on the evidence, to entertain an erroneous opinion touching any point mentioned in the result of the proceeding. After an application for partition had been presented by certain co-sharers, a second application was presented on behalf of four other co-sharers, asking that their shares should be partitioned and formed into a separate *patti.* The application was signed by the pleader only, but purported to be verified by the four co-sharers, and their pleader's *vakalathnama* authorising him to present the application also purported to be signed by all the four. As a matter of fact, one of the co-sharers was dead, and his name was signed, both on the *vakalathnama* and in the verification of the application by his brother, the accused. The accused was tried for the offence of fabricating false evidence in respect of both documents. *Held,* that he was not liable to be convicted at all, as the law did not require the verification of the petition. GANESHI v. EMPEROR, **2 A.L J. 203 = A.W.N. 1905, 52 = 2 Cr. L J. 100.**

(22)—*Penal Code, s.* 193, *Offence under—False evidence, nature of.*— For a conviction under s. 193, I.P.C., it is a material element that the false evidence should be given so as to cause the person who, in such proceedings, is to form an opinion on the evidence, to entertain an erroneous opinion touching any point material to the result of such proceedings. EMPEROR v. GANGA SAHAI, **A.W N. 1903, 68.** (3 C.W.N. 81, R.) [*R.*, 26 A. 509 = 1 A.L.J. 236 = A.W. N. 1904, 115, 2 A.L.J. 836 = 3 Cr. L.J. 45.]

(23)—*Penal Code, s.* 193—*Essential ingredient of the offence under—Contradictory statements in cross-examination.*— The essential ingredient in the constitution of an offence under s. 193 is the intention of the person. [*R.*, A.W.N. 1903, 68.] Where a person is charged with having made contradictory statements in a cross-examination, the Magistrate will be exercising a proper discretion, if he takes into consideration the fact that the statement has been made in the course of cross-examination, when possibly he may have been either confused, or under some mistake regarding the question put to him. *In the matter of* MUNNI BUKSH, **3 C.W.N. 81.**

(24)—*Penal Code, ss.* 192, 193—*Fabricating false evidence—Necessity of finding the intention.*—In order to convict a person of fabricating false evidence under s. 193, I.P.C., it is necessary to find that the person intended that the fabrication may appear in evidence in a judicial proceeding or in a proceeding taken by law before a public servant as such or before an arbitrator. The mere fact that the accused, by falsely representing to the Marriage Registrar that a marriage had been solemnised, induced

False Evidence—*continued.*

the registrar to make a false entry of the registration of the marriage, will not make the accused liable to be convicted under s. 193 in the absence of proof of the intention mentioned above. MOHAMED SIDDIQ v. EMPEROR, **11 C.W.N. 811=6 Cr. L J. 162.**

(25)—*Penal Code, ss.* 192, 196—*Fabricating false evidence and using evidence known to be false—Fabricating false evidence for use before Registrar or in a suit.*—Under s. 192, a false document is not fabricated evidence unless there was, at the time of making it, an intention that it should appear in evidence. S. 196 must be read with ss. 191 and 192, Penal Code, and can only apply to the use of evidence which is false evidence within the meaning of s. 191, or fabricated evidence within the meaning of s. 192. Where a person brought a suit on a registered bond, and, at the trial, he sought to support his claim by a letter fabricated at the time of the registration of the bond, for the purpose of its being used, either before the Registrar, or in the ultimate suit, held, that the accused was guilty under s. 196, Penal Code. LAKHMAJI v. QUEEN EMPRESS, **7 M. 289=1 Weir 177=8 Ind. Jur. 138.** [*R*, 15 Cr. L.J. 344=23 Ind. Cas. 696=139 P.L.R. 1914=1 P.R. 1914, Cr.]

(26)—*Penal Code, s.* 193 — *What must be proved to sustain a conviction under.*—In order to convict a person under s. 193, the prosecution should prove that the statements made by the accused were false, and were made by him knowing them to be false. PRAKASH CHANDRA SARKAR v. EMPEROR, **2 C L.J. 101=2 Cr. L. J. 455.**

(27)—*Penal Code, s.* 193—*Setting aside of a certain tenure by Court—Deposit of money re such tenure.*—Where, after the setting aside of a *mokurruri* tenure by a Civil Court, the accused deposited money in Court, and put in a petition stating that the deposit was in respect of the *mokurruri* tenure, *held* that he could not be convicted of fabricating false evidence. DABEE MAHTO v. RAM MOHUN MOOKHOPADHYA, **10 C.L.R 433.**

(28)—*Penal Code, s.* 193—*False statement in recital of title to a property.*—Where a person made a false statement in the recital of title to a property in a document, and the statement was not admissible in evidence against the person or persons against whose interest such statement was made, *held*, that he could not be convicted under s. 193 for fabricating false evidence. EMPEROR v. CHANDRA KUMAR MISSER, **2 C L.J 46=2 Cr. L J 383.** [*R.*, 15 Cr. L.J. 314=23 Ind. Cas. 696=1 P.R. 1914, Cr.=139 P.L.R. 1914]

(29)—*Penal Code, ss.* 196, 471—*Alteration of copy of jamabandi*—Where alterations were made in the copy of the jamabandi, and those alterations were not only false, but material to the result of a rent suit then pending, in which the document was used, the alterations changing the identity of the tenant, the amount of rent and the period of his tenancy, *held* that the copy of the jamabandi was fabricated false evidence. EMPRESS v. SIKANDAR KHAN, **A. W.N. 1887, 285.**

(30)—*Penal Code, s.* 193—*Irrelevant and foolish statement.*—It is wrong to lie, but to tell a foolish and irrelevant falsehood would not always or necessarily amount to giving false evidence in a judicial proceeding. EMPRESS v. NIDHI MAL, **A.W.N. 1888, 218.**

(31)—*Penal Code, s.* 193—*Accused person, fabricating a document for his defence.*—If an accused person in a criminal case fabricates a document for the purpose of making it appear to be what it is not and causes it to be produced in his defence to the charge, *held*, that he is guilty of an offence under s. 193 of Penal Code. EMPRESS v. AMRIT, **A.W.N 1890, 86.**

(32)—*Penal Code, s.* 193—*Crim. Pro. Code* (1882), s. 164—*Statement made on oath before Magistrate.*—A charge under s. 193, I. P. C., can be framed as regards a statement under s. 164, Crim. Pro. Code, 1882, made on oath before a Magistrate. QUEEN-EMPRESS v. ALAGA KONE, **16 M. 421=1 Weir 175.** [*F.*, 29 M. 89=3 Cr.L J. 370, 8 Bom. L.R. 589=4 Cr. L.J. 183; *R.*, 14 Bom. L.R. 753=13 Cr.L.J. 709=16 Ind. Cas. 517; *D.*, 13 Cr. L.J. 33=13 Ind. Cas. 273=5 S.L.R. 174.]

(33)—*Penal Code, s.* 193—*Perjury—Crim. Pro. Code (Act* V *of* 1898), *s.* 476, *enquiry under, if judicial proceeding.*—An enquiry under s. 476, Crim. Pro. Code, is a judicial proceeding and a witness giving false evidence in the course of such an enquiry is guilty of an offence under s. 193 of the Penal Code. ABDULLA KHAN v EMPEROR, **37 C. 52=14 C.W N. 132=5 Ind. Cas. 62=11 Cr. L J. 45.** (17 C. 872, 34 C. 42, *R.*) [*R.*, 40 C. 477=17 C.L.J. 245=17 C W.N. 647=14 Cr. L.J. 197=19 Ind. Cas. 197.]

(34)—*Crim. Pro. Code, Act* X *of* 1882, *s.* 512—*Penal Code, s.* 193—*Evidence given in absence of accused—Judicial proceeding.*—Where a Magistrate, professing to act under s. 512 of the Crim. Pro. Code, recorded a deposition in the absence of the accused while there was no proof that the accused had absconded or that there was no immediate prospect of arresting him, *held*, this was not a judicial proceeding within the meaning of s. 4 of the Crim Pro. Code, and that the witness cannot be prosecuted under s. 193 for giving false evidence. EMPRESS v. MAKHNI, **A W N. 1890, 100.** [*F.*, A W.N. 1896, 182; *R.*, 8 A.L.J. 674=12 Cr.L J. 373=11 Ind. Cas. 141.]

(35)—*Penal Code, s.* 193—*Crim Pro. Code, Act* V *of* 1898, *ss.* 157, 159, 202—*Applicability of, to enquiries made by Magistrate on police report—Further enquiry by Magistrate if a judicial proceeding.*—Neither s. 159 nor s. 202 of the Crim. Pro. Code applies to an enquiry made by a Magistrate to whom the police have submitted a report of the commission of an offence and of the results of an enquiry. The Magistrate has no jurisdiction to make further

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enquiry, and such enquiry is not a judicial proceeding so as to render a person giving evidence therein liable under s. 193 of the Penal Code. *In the matter of the petition of* KANDHAIYA LAL, **A.W.N. 1899, 87.** [*F.*, 32 A. 30 =6 A.L.J. 963=10 Cr. L.J. 424=3 Ind. Cas. 952=10 M.L.J. 424.]

(36)—*Penal Code, ss.* 193, 199—*False statement in a judicial proceeding—Proof of oath having been administered on the Holy Gospels to a Christian convert, necessity of—False statement in declaration* —In order to constitute the offence of giving false evidence in a judicial proceeding, it must be proved that the prisoner, at the time he made the false statement, was under a legal obligation as a witness to state the truth. To constitute that obligation in the case of a witness in a judicial proceeding, who professes the Christian faith, the sanction of an oath on the Holy Gospels is an absolute requirement of the law. Act V of 1840 (Act X of 1873), s. 6 which gives to the affirmation made by a prisoner the same legal effect as an oath, applies only to persons who are Hindus and Mahomedans by religion as well as by birth. Therefore, a Hindu convert to Christianity who is merely affirmed, but has not taken an oath on the Holy Gospels, is not under a legal obligation to speak the truth. [*R.*, 16 B. 359.] It is intended by s. 199 to make the penalty attached to the offence of giving false evidence applicable to declarations which, although not compellable, have, on being made, the same effect as the compulsory declarations referred to in ss. 51 and 191. The 'declaration' in the section means any statement of facts in the form simply of a declaration which, for the purpose of proof of the fact declared to, has by itself all the legal force of evidence given on oath or the solemn affirmation substituted for an oath, that is, a declaration receivable in lieu of personal testimony. *In re* A. VEDAMUTHU, **1 Weir 159=4 M.H C. 185.** [*R.*, 16 B. 359.]

(37)—*Penal Code, s.* 193—*Number of false statements in the same deposition.*—The making of any number of false statements in the same deposition is one aggregate case of giving false evidence, and charges of false evidence cannot be multiplied according to the number of false statements contained in the deposition. They are merely instances of the offence. Testing it by the law of evidence, the whole deposition must be looked at, if desired, and one part qualified by the other. H. C PROCEEDINGS, NO. 874, 1ST MAY, 1871, **1 Weir 160=6 M.H.C. App 27.**

(38)—*Penal Code, s.* 193—*Crim. Pro. Code, Act* V *of* 1898, *s.* 164—*Judicial proceeding—Contradictory statements.*—A statement made by an accused person under s. 164 of the Crim. Pro. Code is not a statement made in the course of a judicial proceeding within the meaning of s. 193 of the Penal Code, but may come under the second part of the section if made on oath. (11 B 702, *R.*) Where a person is alleged to have made the statement above mentioned and a contradictory statement when giving evidence before a Sessions Judge, *held*, that the proper procedure was to frame a charge about the contradictory statements, in the manner described in illustration (*b*) to s. 236 of the Crim. Pro. Code, and try the accused on this charge. QUEEN-EMPRESS v. PURAN, **A.W.N. 1899, 39.** (11 B. 702, *R.*) [*R.*, 28 B. 533=6 Bom. L.R. 379.]

(39)—*Penal Code, ss.* 191 *and* 193—*Contradictory statement—What must be proved to establish an offence under s.* 191.—In order to establish the offence of having intentionally given false evidence by reason of two contradictory statements, it is necessary to prove that both the statements are such that a charge of giving intentionally false evidence might be made in regard to either of them or in regard to both of them in the alternative. HARI CHARAN SINGH v. QUEEN-EMPRESS, **27 C. 455=4 C.W N. 249.**

(40)—*Penal Code, s.* 193—*Perjury—Contradictory statements—Form of charge—Crim. Pro. Code,* 1882, *sch.* V, *Form No.* XXVIII (4)—*Applicability of English decisions.*—Under the law of British India, it is not necessary that a charge of perjury under s 193 based on two contradictory statements on oath, should allege which of them is false, but it is sufficient (unless some satisfactory explanation of the contradiction should be established) to warrant a conviction, to show that an accused person has made one statement upon oath at one time, and a directly contradictory statement at another. But every possible presumption in favour of a reconciliation of the two statements should be made, and it must be found that they are absolutely irreconcilable, before a conviction can be had upon the ground that one of them is necessarily false. [*R.*, 26 M. 55 =1 Weir 167, 6 Bom. L R 279=28 B. 533.] In the interpretation of the law of India relating to the offence of perjury, the English cases upon it are irrelevant, as the Indian Legislature has intentionally declined to follow the law of England upon that point QUEEN-EMPRESS v. GHULET, **7 A. 44=A W N. 1884, 258.** [*R.*, 26 M. 55=1 Weir 167=15 Cr.L J. 488=24 Ind. Cas. 576=7 S L.R. 108=15 Cr.L. J. 379=23 Ind. Cas. 747=7 S.L.R. 96.]

(41)—*Penal Code, s.* 193—*Contradictory statements in a proceeding under s* 164, *Crim. Pro. Code before a third class Magistrate and in the trial of the case before a first-class Magistrate.*—Where a witness in a case of theft made one statement before a third-class Magistrate under s. 164, and a diametrically opposite statement before a first-class Magistrate who tried the case, *held* that the accused was liable to be convicted at least under the second paragraph of s. 193, and that the case reported in 11 B. 702 did not apply, as the Magistrate who recorded the statement under s. 164 had himself authority, inasmuch as the case was one of theft only, to complete the trial. QUEEN-EMPRESS v. KHEM, **22 A. 115= A.W.N. 1889, 207.**

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(11 B. 702, *Cons. and Dist.*) [*F.*, A.W.N. 1908, 73=7 Cr. L.J. 302; *R.*, 14 Bom. L.R. 753=13 Cr. L.J. 709=16 Ind. Cas. 517, 13 Cr. L.J. 33 =13 Ind. Cas. 273=5 S.L.R. 174.]

(42) *Contradictory statements in judicial proceeding and in investigation under Ch.* XIV, *Crim. Pro. Code—Alternative charges.*—A person cannot be charged in the alternative, with intentionally giving false evidence in a stage of a judicial proceeding before a Magistrate, or with intentionally giving false evidence before a police officer making an investigation under Ch. XIV, Crim. Pro. Code. Still less can he be convicted on such an alternative charge. Where there is no other evidence before the Magistrate but such contradictory statements made by the accused, separate charges could not be framed. QUEEN EMPRESS v. MUGAPA *bin* NINGAPA, **18 B. 377, F.B** [*R.*, 2 Weir 300, 26 M. 55=1 Weir 169; *D.*, 6 Bom. L.R. 379=28 B. 533.]

(43)—*Crim Pro. Code*, *s.* 161—*Alternative charges - False statement before an investigating police officer and before a Magistrate on oath—Penal Code*, *s.* 193—*Contradictory statements.*—Where a person was charged in the alternative with making a false statement to a police officer investigating under s. 161, Crim. Pro. Code or with making a false statement before the Magistrate on solemn affirmation, the charge being based on the irreconcilability of the two statements, *held*, that a conviction in the alternative could not be sustained, inasmuch as the accused was not bound by law to tell the truth when questioned by a police officer QUEEN-EMPRESS v. APPIGADU **23 M 544, Foot-note =1 Weir 166.** [*R.*, 23 M. 544.]

(44)—*Contradictory depositions—Crim. Pro. Code* (1861), *s.* 352—*Alternative finding.*—Where a person was convicted of having given false evidence, solely on the ground that his deposition in the Sessions Court differed from the one given by him before the Magistrate, *held* that, if this circumstance justified a conviction at all, the finding should have been an alternative one as specified in s. 352 of the Crim. Pro Code. REG. v. AMRITA SHAHAJI, **Rat. Un. Cr. C. 26=Cr. Rg. 20 10 1869.**

(45)—*Penal Code, s.* 193 — *Contradictory statements on oath or solemn affirmation—Alternative finding - English and Indian Law.*—According to the English Law, since the decision in *King* v. *Harris*, 5 Barn. and Ald. 296, mere proof of contradictory statements on oath, without proving which of those statements is false, is insufficient to support a conviction on a charge of perjury. But, in India, satisfactory proof of contradictory statements on oath or solemn affirmation is sufficient to justify an alternative finding of an offence under s. 193, Penal Code. *In re* PALANI CHETTY, **1 Weir 166=4 M.H.C. 51.** [*R.*, 7 A. 44, 26 M. 55=1 Weir 166, 6 M.H.C. 342=1 Weir 161, 21 W.R. 72, 2 Weir 299.]

(46)—*Penal Code, s.* 193—*False evidence—Proof—Contradictory statements on oath and not on oath.*—To establish the offence of giving false evidence, direct proof of the falsity of the statement on which the perjury is assigned is essential, except in the case of two or more contradictory statements on oath. But, as legitimate evidence for this purpose, the law makes no distinction between the testimony of the witness directly falsifying such statements, and the contradictory statement of the person charged, although not made on oath. Such a statement, when satisfactorily proved, is quite as good evidence in proof of the charge as the criminatory statement of a person charged with any other offence and on precisely the same ground, *viz*, that it is an admission of the accused person inconsistent with his innocence. A good conviction may take place on proof of two contradictory statements without confirmatory evidence as to the falsity of either, when both are on oath and made the subject of separate charges. But, when only one of them is on oath, a charge of perjury is not maintainable upon proof of one such statement, not on oath, or more than one if proved by a single witness, unless supported by confirmatory evidence tending to show the falsity of the statement charged. With respect to the kind of confirmatory proof requird, no general rule can be laid down. In each case, it must be considered whether the particular evidence offered is sufficient to induce a belief in the truth of the contradictory statement or direct testimony. But there is no doubt that, in every case of perjury, repeated contradictory statements, whether on oath or not on oath, or statements inconsistent with the proof of what is alleged in the charge to be false when proved by different witnesses, are good confirmatory proof. *In re* MILBOURNE ROSS, **1 Weir 161=6 M H.C. 342.**

(47)—*Contradictory statements to police and to Magistrate—Conviction in the alternative for false information or false evidence—Statements taken down in writing by police inadmissible—Police Officer not subordinate to Magistrate—Discharge of accused—Further enquiry—Reference to High Court—Crim. Pro. Code* (1898), ss. 161, 195, 162, 236 *and* 437.—False statements made before the police under s. 161, Crim. Pro. Code, are not now punishable under s. 193, Penal Code. A person, though bound to answer all questions (with certain exceptions) relating to the case under investigation which may be put by a police officer, is not under s. 161, Crim. Pro. Code, 1898, bound to answer those questions truly. He does not thereby commit the offence of giving false evidence, even if he makes false statements. By the provisions of s. 162 of the Crim. Pro. Code, no statement taken down in writing in the course of an investigation by a police officer is admissible in evidence. A Township Magistrate has no power under s. 195, Crim. Pro. Code, to sanction the prosecution of an accused for an offence under s. 182, I.P.C. A police sergeant is not subordinate to the Magistrate in the sense intended by s. 195, Crim. Pro. Code. Although Police Officers in a district are generally subordinate to the District Magistrate, yet, the subordination

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contemplated by s. 195, Crim. Pro. Code, is not such subordination, but is the subordination to some superior officer of police. (27 C 452, *F*) A conviction in the alternative under s. 193 or s. 182, Penal Code, is not sustainable on the ground that, where one statement has been on oath and a contradictory statement has been made before the police, the accused must be either guilty under s. 195, Penal Code, of giving false evidence in Court, or under s. 182, Penal Code, of giving false information. S 236, Crim. Pro. Code, does not apply to a state of facts in which it is doubtful what are the acts or series of acts that are proved, but to a state of facts in which it is doubtful which of several sections is applicable. The doubt is not as to facts but as to a matter of law. If there is sufficient evidence to prove a charge under s. 193 or s. 182, Penal Code, the District Magistrate has the power under s. 437, Crim. Pro. Code, to order further enquiry which will, in the natural course, be followed by charge and trial in case an offence is found to be *prima facie* established. It is not necessary to refer every case in which further enquiry is necessary to the High Court. The words 'further enquiry' may not include in their actual meaning *charge* and *trial*; but, if it appears on the further enquiry that a charge should be drawn up and the accused should be tried, then the trial will properly follow just as if the case had been newly instituted. CROWN v. MI ZAN, **1 L.B.R. 101**. (1 L.B.R. 9, 21 C. 955, 23 C. 174, 11 P.R 1887, Cr., 43 P.R. 1887, Cr., 14 B. 124, *R.*)

(48)—*Alternative charges of false evidence—Crim. Pro. Code* (1882), *ss* 161, 235, 236 —*Examinations before police officer and before Magistrate—I.P.C , s.* 72—*Punishment.*—An alternative charge framed according to sch. V, No. XXVIII, s. (2), cl. (4), is not proper where a person is accused of making contradictory statements when examined by a police officer under s. 161, Crim. Pro. Code, 1882, and subsequently when examined by a Magistrate or a Court of Session. In such a case, if the two statements are regarded as so connected together as to form parts of one and the same transaction, s. 235 of the Code should be applied to them. If they are regarded as unconnected, and it is doubtful whether the earlier or the later statement constituted the offence, s. 236 should be applied. Separate heads of a charge, therefore, should be framed, imputing to the accused falsehood on each of the occasions on which he made the contradictory statements. If each of the statements is found to be false, conviction should follow on both heads of the charge. If a conviction is justified only on one or other of the heads, and it is uncertain on which of the two occasions falsehood was uttered, then, s. 72 of the I.P.C. directly applies. The judgment should, in that case, be framed in the alternative, and punishment inflicted for the less serious of the two offences. QUEEN EMPRESS v. KABHAI, **Rat. Un. Cr. C 336 = Cr. Rg. 26 of 1887.** [*R.*, Rat. Un. Cr. C. 488, 518, 503, 18 B. 377.]

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(49)—*Penal Code, ss.* 193, 72—*Alternative charge of false evidence.*—Where the accused was charged in the alternative with having given false evidence either before the Chief Constable in a Police investigation or before the Magistrate in a criminal trial; *held* that, if the statement before the Police Constable was false, then, the offence committed by the accused was one punishable under the latter part of s. 193. If the statement made at the trial was false, the offence was punishable under the latter part of s. 193. As the two statements did not fall under the same enactment, a charge in the alternative was bad in law. The alleged offences being distinct, there must be separate charges under s. 233. Although there was no evidence to prove either offence, yet, as the two statements were so contradictory that one of them must be false, the provisions of s. 72, I.P.C., would apply to the case and justify a conviction in the alternative, as the accused did not appear to have been prejudiced by the irregularity in the charge. QUEEN EMPRESS v. BAPU NARAIN, **Rat. Un. Cr. C. 401 = Cr. Rg 62 of 1888.**

(50)—*Penal Code, s.* 193—*Perjury assigned upon distinct allegation—Proof.*—Where the perjury is assigned upon a distinct allegation, the evidence of its falsity must be regularly taken in the case in which it is tried. If the whole proof consists of two conflicting statements, an alternative charge and finding are the regular course. HIGH COURT PROCEEDINGS, 30TH NOVEMBER 1874, NO. 1975, **1 Weir 165.**

(51)—*Penal Code, s.* 193—*Perjury—Inconsistent statements.*—The petitioner was convicted of an offence under s 193, I.P.C., for having made two inconsistent statements. On appeal the conviction was upheld, the appellate Court finding that the first statement was the false one; the statement was to the effect that the petitioner saw the accused in the case in which he gave evidence striking blows In that case the accused was convicted, having been found to have caused hurt. *Held*, that the conviction must be set aside for it could not be said that the statement, for making which the petitioner was convicted by the appellate Court, was intentionally false. *Held*, further, that for the same reason and also for the reason that, according to the appellate Court, the petitioner reverted to the truth in his second statement, a conviction on the alternative charge was not proper. ASA NAND v. EMPEROR OF INDIA, **71 P L.R. 1904 = 1 Cr. L.J. 517.** (21 P.R. 1901, Cr., *F.*)

(52, 53) - *Giving false evidence in the same proceeding—Separate trials of accused—Alternative charge—Contradictory statements.*—Where four persons were charged with having given false evidence in the same proceeding, and the Sessions Judge while professing to try each accused separately, heard the witnesses only once, *held*, the procedure was improper, as it was substantially trying all the prisoners together. [*R.*, 2 Weir 304.] In order to sustain any conviction for giving false evidence upon

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an alternative charge, when no evidence is offered to prove the falsity of either statement in particular, it must be clear that the two statements are contradictory. NATHU SHEIKH v. QUEEN-EMPRESS, **10 C. 405.** [*F.*, 13 Cr. L J. 23=13 Ind. Cas. 215=5 S.L.R. 129]

(54, 55)—*Contradictory statements in single deposition—Alternative charge and conviction—Crim. Pro. Code* (1882), *ss.* 233 *and* 554.—A conviction upon an alternative charge of having given false evidence, consisting of contradictory statements in *a single* deposition, is good though there may be no finding as to which of the statements was false (per *Wilson and Tottenham, JJ., Norris, J., dissenting*). *Semble.*—The decision in 12 W.R. Cr. 11 would merely serve as a guide to the discretion of Courts in framing charges and dealing with them; but it does not, and was not intended to affect the law applicable to the matter—Per *Wilson, J.* HABIBULLAH v. QUEEN-EMPRESS, **10 C. 937.** [*Cons.*, 26 M. 55=1 Weir 167.]

(56, 57)—*Penal Code, s.* 193—*Conviction on alternative charges of giving false evidence.*—Where a person was convicted on alternative charges of giving false evidence in a judicial proceeding. *viz.*, the statement made to the Sub-Magistrate and its subsequent retraction before the Sessions Judge, and was sentenced to seven years' imprisonment, the High Court, pointing out that the mode of convicting on alternative charges was open to abuse in the hands of the police, reduced the sentence to six months. HIGH COURT PROCEEDINGS, 15TH FEBRUARY, 1873, NO. 334, **1 Weir 164.**

(58)—*Penal Code, s.* 193—*False evidence—Contradictory statements—Alternative charges.*—A person making two contradictory statements may be convicted of giving false evidence, even in the absence of an alternative charge, if there is evidence to show which statement is false. REG v. GANOJI PANDJI, **5 B.H.C. Cr. 49.**

(59)—*Statement inconsistent with previous one—Alternative charge—Crim. Pro. Code* (*Act* XXV *of* 1861), *s.* 172.—Where a witness makes a statement before the Sessions Court which contradicts that made by him before the committing officer, and no evidence is given to show which statement is true, it cannot, under s. 172, Act XXV of 1861, be said that an offence has been committed under the cognisance of the Sessions Court. A Judge's duty in dealing with the contradictory statements of a witness discussed. QUEEN v. NOMAL, **4 B.L R. A. Cr. 9 =12 W R Cr. 69.**

(60)—*Statements inconsistent with previous one Alternative charge—Penal Code, s.* 193—The statement made by a witness before the Magistrate was opposed to the statement made by him before the Sessions Court. On a charge of perjury being made, *held* that a statement made by the accused before one Court was no evidence of the falsity of a contrary statement before another Court to support a conviction of giving false evidence. *Held*, also, that neither the Judge nor Jury had any right to assume that an explanation could not have been given consistent with both the statements. QUEEN v. KOLA, **4 B.L.R. A. Cr. 4=12 W.R. Cr. 66.**

(61)—*Crim. Pro. Code* (*Act* X *of* 1872), *s.* 455, *sch.* III—*Penal Code* (*Act* XLV *of* 1860), *s.* 193—*Alternative finding.*—Where a person was convicted of giving false evidence upon an alternative charge in the form given in sch. III of the Crim. Pro. Code, *held* by the majority of the Court (*Jackson* and *Phear, JJ., dissenting*) that the conviction was good, notwithstanding that the jury had not distinctly found which of the two statements was false. *Held* (per *Jackson, J.*,) that such a charge was bad, and further that an alternative finding upon such charge was invalid. *Held* per *Phear, J.*, that, although a person may be lawfully tried upon such a charge, still the Court or jury must, for a conviction, find specially which branch of the alternative was true. QUEEN v. MAHOMED HOOMAYOON SHAW, **13 B.L.R. F B. 324=21 W R. 72.** *See also* QUEEN v. BIDU NOSHYO, **13 B.L.R. 325, note =12 W R. Cr. 11**; QUEEN v. BEDOO NOSHYO, **11 W.R. Cr. 37.**

(62)—*Inconsistent statements — Alternative charge—Plea of guilty on one charge, Effect of.*—Where a prisoner is charged separately for having given false evidence with regard to two statements directly opposed to each other, a plea of guilty on one of the charges does not involve an acquittal on the other. A Sessions Court is bound to take evidence and try a charge before it can acquit a prisoner of that charge. QUEEN v. HOSSAIN ALI, **8 B.L.R. Ap. 25.**

(63)—*One statement before the Civil Court and a contradictory statement before Magistrate—Commitment on an alternative charge strictly legal—Sanction of Civil Court necessary under s.* 169, *Crim. Pro. Code,* 1861.—The accused in this case made one statement before the Magistrate and a directly different statement before the Civil Court. The Magistrate committed him on an alternative charge having, so far as regards the statement made before the Civil Court, first obtained the sanction of that Court to the institution of the charge. *Held* that, under s. 169, Crim. Pro. Code, the procedure of the Magistrate was strictly legal. QUEEN v. OOTHUR NARAIN SINGH, **8 W.R. Cr. 79.**

(64)—*Scope of commitment by Sessions Court—S.* 172, *Crim. Pro. Code,* 1861—*Contradictory statements—Proof—Alternative charge.*—A Court of Session can, under s. 172, Crim. Pro. Code, 1861, commit only for offences committed before itself. If a person is accused of making two contradictory statements, direct evidence is necessary to prove that both the statements were made, and an enquiry must be held as to which statement is untrue, and whether the accused wilfully made the statement alleged to be false, knowing it to be such. *Norman, J.*, notwithstanding the Full Bench decision in 6 W.R. Cr. 65=B.L.R. Sup. Vol.

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521, doubted the correctness of a conviction for perjury upon alternative statements. QUEEN v. MATI KHOWEE, **3 B L.R.A. Cr. 36 = 12 W. R. Cr. 31.**

(65)—*Penal Code, s. 193 — Contradictory statements* —Where the contradiction alleged to exist in two statements made by an interested and ignorant witness was only in details and where the latter statement was found to be a reversion to the truth from an original false statement, *held*, that, under such circumstances, a prosecution for perjury could not be ordered. DAD v. EMPEROR, **21 P.R 1901, Cr.** (3 P.R. 1899, Cr., *R.*) [*R.*, 71 P.L.R. 1904.]

(66)—*Contradictory statement — Alternative finding* —A person, charged with giving false evidence in having made contradictory statements before the Magistrate or the Sessions Judge, can be convicted in the alternative without distinctly finding which of the statements made by him is false. MIR AFZAL v. EMPRESS, **20 P R. 1883, Cr.**

(67)—*Contradictory statements—Finding as to which is false, necessity for.*—Where a person is charged with an offence under s. 193, I.P.C., in having made two contradictory statements, it is necessary, in order to properly adjudicate the punishment, to enter into the circumstances of the case, the object with which the perjury is committed, and if possible, to determine which of the two statements was false. In cases where it is doubtful which of two contradictory statements is false, the accused must be given the benefit of the doubt and the punishment should be awarded to that statement which involves the least guilt. SANTA SINGH v. EMPRESS, **3 P.R. 1899, Cr.** [*R.*, 34 P.W R. 1911, Cr. = 12 Cr. L.J. 405 = 230 P.L. R. 1911 = 11 Ind. Cas. 589.]

(68)—*Alternative charge—Finding as to which of two statements is false, when becomes necessary.*—Although an alternative charge, in a case of false evidence based upon contradictory statements, is justifiable only when the prosecution is unable to prove which of the two is false, yet, such proof becomes important in awarding punishment, *e g* , false evidence given in a Court deserves greater punishment than a false statement made before the police. HARNAM SINGH v. EMPRESS, **27 P.R 1890, Cr.**

(69)—*To support alternative charge proof to be given of the truth of each branch of charge—When alternative charge justified—Deposition given in Hindustani taken down in English—Proper deposition—Endorsement by Magistrate, evidence of its truth and correctness of translation.*—To support a finding upon an alternative charge of perjury, there must be legal evidence of the truth of each branch of the charge. The only justification for the alternative charge is that, on the evidence, it is uncertain which branch of the charge is true. Under the Crim. Pro. Code, the Magistrate has authority to take down in English what the witness says in Hindustani, and the deposition in this form is a proper deposition within the provisions of the Crim. Pro. Code, even though the person who takes down in English what the prisoner says in Hindustani is not examined as a witness and the prisoner has no opportunity afforded to him for cross examining him under s. 80, Evidence Act. The endorsement or memorandum made at the foot of the deposition and signed by the Magistrate can be taken as evidence of the facts stated in it and as affording some evidence that the translation is correct. QUEEN v. GONOWRI, **22 W.R. Cr. 2.**

(70)—*Contradictory statements—Alternative charge, form of.*—A charge in the alternative form, as prescribed by Form No. XXVIII (4) of sch. V to the Crim. Pro. Code, 1882, is a lawful charge under s. 193, I.P.C., and a person can be convicted under the section, without determining which of the two contradictory statements is false. SOHAN SING v. EMPRESS, **32 P.R 1888, Cr.**

(71)—*Penal Code, s 193—Crim Pro. Code, 1882, s. 161—Incriminating questions—Contradictory statements — Alternative charge.*—A witness is not bound, under s. 161 of the Crim. Pro Code, to answer truly incriminating questions. An alternative charge under s. 193 of the Penal Code cannot be permitted in respect of contradictory statements, one of which is made to the Police and another to a Magistrate. QUEEN-EMPRESS v. ANNIA, **Rat. Un. Cr. C. 518 = Cr. Rg. 40 of 1890.**

(72)—*Evidence Act, s. 132— Incriminating questions— Duty of Magistrate— Penal Code, s. 191.*—Where an incriminating question is put to a witness, the Magistrate should explain to him his position, and should advise him of his right, as otherwise, he may be induced, through ignorance of the state of the law, to deny the truth for fear of penal consequences. If without such warning, he speaks untruth, the offence he has committed, namely, of intentionally giving false evidence, does not deserve punishment. *In re* JADDOONATH DUTT, **2 C. L.R. 181.**

(73) *Penal Code, ss. 191 and 193 —Incriminating false statement—Evidence Act,* II *of* 1885, *s.* 32 (*s.* 132 *of Act* I *of* 1872).—A person making an incriminating statement, which is at the same time false, is not protected from prosecution under s. 193, Penal Code, though he cannot be made subject to any other kind of prosecution H C. PROCEEDINGS, 21ST FEBRUARY, 1867, **1 Weir 153 = 3 M.H.C. App. 29.**

(74)—*Form of charge in commitments for giving false evidence.*—In commitments for giving false evidence under ss. 193, 194 and 195 of the Penal Code, the committing officer should invariably insert in the charge the particular statements to which perjury is assigned. CRIMINAL CIRCULAR NO. 3 OF 9TH FEBRUARY, 1866, **5 W.R. Cr. Cir. 2.**

(75)—*Penal Code, ss. 193, 511—Fabricating false evidence—False endorsement on a stamped paper.*—Where the accused, in order to injure the complainant, who had deposed against him

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in a civil suit, induced another person to personate the complainant and to purchase a stamped paper, and in consequence of such personation, the stamp vendor made the usual endorsements on the stamp paper in the name of the complainant, *held*, that inasmuch as the intention of the accused was to use the falsely endorsed stamp paper in a judicial proceeding, he was guilty of the offence of fabricating false evidence, and the other person was guilty of abetting the same. EMPRESS OF INDIA v. MULA, **2 A. 105.** [*F.*, 25 A. 75 = A.W.N. 1902, 196.]

(76)—*Penal Code, s. 192—False entry by police officer in a special diary — Fabricating false evidence.*—The offence of fabricating false evidence cannot be committed in respect of a document which is not admissible in evidence. A special diary kept by a police officer is not a document, which is capable of being used in evidence. Therefore, the offence of fabricating false evidence cannot be committed in respect of it. QUEEN EMPRESS v. ZAKIR HUSAIN, **21 A. 159 = A.W N. 1899, 5.** (6 A. 42, 5 M.H.C. 373, *R.*) [*R*, 15 Cr. L.J. 344 = 23 Ind. Cas 696 = 139 P.L.R. 1914 = 1 P.R. 1914, Cr., P.L.R. 1900, 63, Cr.]

(77)—*Examination of complainant—Judicial proceedings — Penal Code, s. 193.*—The examination of a complainant in reference to his complaint is an investigation directed by law, and is, therefore, a stage in a judicial proceeding. It follows that, if in the course of such examination, false evidence is intentionally given by him, he is legally chargeable with the offence described in s. 193, I.P.C. QUEEN v. MATA DYAL, **4 N W.P. 6.**

(78)—*Penal Code, s. 193—Accused setting fire to his own house to procure conviction of another.*—Where the accused himself set fire to the thatch of his own house in order to procure the conviction of a certain person, but the act was committed in a most public manner and not in a way calculated to lead to the conviction of that person, *held*, that he was not guilty of an offence under s. 193, I.P.C. QUEEN v. SHIB DYAL, **5 N.W.P. 188.**

(79)—*Inquiry under the Legal Practitioners' Act—False statement of the accused person made after being solemnly affirmed—Nature of enquiry under the Legal Practitioners' Act—Judicial proceeding—Penal Code, ss. 181 and 193.*—Where a pleader is called upon, in an enquiry under the Legal Practitioners' Act, to explain his conduct, it is not competent to the Court conducting the enquiry to take a statement from him on solemn affirmation. He is not, therefore, in such proceeding legally bound on oath to speak the truth, and, if he states what is false, does not render himself amenable to the charge of making a false statement under s. 181, and giving false evidence under s. 193, Penal Code. An enquiry under the Legal Practitioners' Act is a judicial proceeding, and false statements on solemn affirmation made by the witnesses therein, should be charged as offences under s. 193, Penal Code, and the persons so charged should be tried separately. KOTHA SUBBA CHETTI v. THE QUEEN, **6 M. 252 = 1 Weir 116 = 1 Weir 156 = 1 Weir 785 = 7 Ind. Jur. 247.** [*F.*, 13 Cr. L.J. 23 = 13 Ind. Cas. 215 = 5 S.L.R. 129.]

(80)—*Offence of abetment of offence committed before Magistrate—Jurisdiction.*—A Magistrate is not competent to convict a person of abetting the giving of false evidence in a judicial proceeding before himself. HIGH COURT PROCEEDINGS, 6TH NOVEMBER 1873, **7 M.H.C. App. 28.**

(81)—*Penal Code, ss. 193, 511—Abetting fabrication of false evidence.*—The accused had an ejectment case against a person, which was decided against him. After this, he took his servant to a certain place and there purchased an eight annas stamp paper in the name of the defendant in the ejectment suit, the servant personating him. The stamp paper was subsequently found in the possession of the accused, who had locked it up in a chest in his house. *Held*, that the accused was properly convicted of the offence of abetting the fabrication of false evidence. EMPEROR v. DURGA CHARN GIR, **25 A. 75 = A.W.N. 1902, 196.** (2 A. 105, *F.*)

(82)—*Penal Code, ss. 192, 193, 218, 471—Public servant in charge of records framing incorrect ones.*—Where a clerk of a Municipality in charge of its records, being required to produce certain documents, and being unable to find them, forged and produced certain documents purporting to be those required, *held*, that he could not be convicted under s. 218, as it was not any part of his duty to prepare or frame any record, but only to keep them safe, when given into his custody, nor could he be convicted under s. 471, as the documents were not made with the intent specified in that section. *Held*, also, that, as there was grave reason to suppose that the papers had been fabricated by the accused, and as, if this was done with the intention stated in s. 192, he would be guilty of an offence under s. 193, he should be retried for an offence under that section. EMPRESS v. MAZHAR HUSSAIN, **5 A. 553 = A.W.N. 1883, 133.** [*Diss.*, 37 B. 666 = 2 Bom. Cr. C. 115 = 15 Bom. L.R. 708 = 14 Cr. L.J. 518 = 20 Ind. Cas. 998; *R.*, U.B.R. 1892-1896, Vol. I, 279.]

(83)—*Penal Code, s. 218—Public servant.*—A public servant who does that which, if done to save another from legal punishment, would bring the public servant within s. 218, has equally committed the offence, if the person whom he intends to save from legal punishment is himself. QUEEN-EMPRESS v. NAND KISHORE, **19 A. 305 = A W.N. 1897, 64.**

(84)—*Penal Code, ss. 192, 218—Public servant framing an incorrect record to screen himself from punishment under the Police Act.*—Where a police officer suppressed two reports which had been entrusted to him to be forwarded by post to another police station, and interpolated in his diary that the document had been forwarded, thereby to conceal his conduct and to

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cause it to appear, in the event of his prosecution under the Police Act, that he had forwarded the document in due course, *held*, that he could not be convicted under s. 192, I.P.C., inasmuch as the evidence fabricated must be admissible in evidence to constitute the offence under s. 192, and as the entry in the diary would not have been admissible in evidence on his behalf, in a prosecution under s. 29, Police Act, though it might have been used against him, which was not his intention; *held*, further that the accused could not be convicted under s. 218, I.P.C., as his object was to screen himself, whilst the intention mentioned in that section had reference to other persons. EMPRESS v. GAVRI SHANKAR, **6 A. 42 = A.W.N. 1883, 189.** [*F.*, U.B.R. 1897—1901, Vol. I. 356, *Overruled*, 19 A. 305; *R.* 13 B. 384, 14 A, 354, 21 A. 159 = A.W.N. 1899, 5, 15 Cr. L.J. 344 = 23 Ind. Cas. 696 = 139 P.L.R. 1914 = 1 P.R. 1914, Cr.]

(85)—*Penal Code*, ss. 193, 199—*Charge under s. 199 on false petition bearing no signature of the petitioner—Deposition on oath*—A petition not bearing the petitioner's signature cannot be made the foundation of a charge and conviction under s. 199, as it is not a declaration made and subscribed by the petitioner, or one which a Court of justice is bound or authorized by law to receive as evidence of any fact. But the deposition on oath supporting such a petition, if it is proved to be false, justifies a charge under s. 193. *In the matter of* RAM REWAZ KOOWAR, **7 C.L.R. 536.**

(86)—*Penal Code*, ss 193, 403—*Removal of property under false assumption—Claim of title.*—Where a person, after making an opening in the wall of his own house, in order to create the appearance of burglary by strangers, broke open a box containing jewels, and carried them off, believing himself to be entitled thereto, though there was some dispute about them, *held*, that he could not be convicted of criminal misappropriation, nor of fabricating false evidence, as it did not appear that any charge had been laid by the accused against any one in respect of the removal of the contents of the box. THEWA RAM v. EMPRESS, **10 C.L.R. 187.**

(87)—*Penal Code*, ss. 107, 218—*Abetment of framing incorrect record by public servant.*—Where the accused made certain false abstracts and read them over to another, a public servant, charged with the preparation of a certain record, and thereby an incorrect record was prepared, *held*, that, although the accused could not be held to have committed the offence described in s. 218, I.P.C., he was guilty of abetment of such offence and not the less so, because the person charged with the preparation of the record had no guilty knowledge or intention in the matter. QUEEN v. BRIJ MOHAN LAL, **7 N.W.P. 134.**

(88)—*Penal Code*, ss. 201, 218—*Suppression by police officer of a report of an offence and substitution of another report.*—Where a police officer in charge of a *thana* substituted for a true report of two dacoities, a false report of the commission of a totally different offence to which the complainant's signature was fraudulently obtained, *held*, that he was guilty of offences under ss. 204, 218, I.P.C. QUEEN-EMPRESS v. MUHAMMAD SHAH KHAN, **20 A. 307 = A.W.N. 1898, 52.**

(89)—*Crim. Pro. Code* (1882), s. 477—*Offence of giving false evidence committed before District and Sessions Judge in his capacity as Civil Court—His competency to try the case—Penal Code*, ss. 191, 193.—On the death of an employee in the Telegraph Department, a person claiming as his sole heir, wrote a letter to the Telegraph authorities demanding the payment of money due to the deceased in the hands of the Telegraph authorities. This letter was sent to the District Judge for verification and orders. One of the witnesses for the claimant deposed on oath verifying the claimant's claim. The Judge being of opinion that the evidence was false, tried and convicted him, for giving false evidence, in his capacity as Sessions Judge. *Held* that, as the reference to the Judge for verification, and the subsequent action in regard thereto did not constitute a judicial proceeding, and as there was no authority for administering an oath to the accused, his conviction under s. 193 was bad. *Held*, further, that the Sessions Judge had no jurisdiction to try the case under s. 477, Crim. Pro Code, as the alleged perjury was committed before him, as a Civil Court, and not as a Court of Sessions. EMPRESS v. CHAITRAM, **6 A. 103 = A.W.N. 1883, 227.** [*R.*. 14 A. 354.]

(90)—*Crim. Pro. Code* (1882), ss. 161, 164, 364—*Applicability of ss. 191 and 193, I.P.C., to proceedings under s. 161—Mode of recording statements under s. 161—Attestation.*—Where a witness makes statement to a police officer investigating a case, he is bound under s. 161, Crim. Pro. Code, to answer truly all the questions relating to the case put to him by such officer. S. 193, I.P.C., applies to answers so given, because he is, within the meaning of s. 191, I.P.C., legally bound by an express provision of law to speak the truth to the officer. Ss. 164 and 364 do not apply to an examination under s. 161, Crim. Pro. Code. The test as to whether a case comes within paragraph 2 of s. 161 of the Code is—was a question put to the person by the police officer, and what was stated by such person in answer to that question. It is not necessary that the police officer should, at the completion of each sentence by the person whom he is examining, stop him and ask a fresh question. There is nothing illegal in police officers obtaining the signatures of witnesses to a statement under s. 161, but there is nothing to compel them to sign them. QUEEN-EMPRESS v. BHAGWANTIA, **15 A. 11 = 12 A. W.N. 1892, 141.**

(91)—*Crim. Pro. Code*, ss. 195, 337, 339—*Evidence of accused illegally pardoned—Subsequent retraction—False evidence—Penal Code*, ss. 193, 457.—If the case against the accused

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is not of the kind contemplated in s. 337, Crim. Pro. Code, it is not competent to the Magistrate making the preliminary enquiry to tender a pardon to one of the accused, or to examine him as a witness. If the accused subsequently retracts the statement made by him, he cannot be prosecuted under s. 193, I.P.C., for giving false evidence, if there is nothing to prove that the subsequent evidence is by itself false. But if the pardon has been legally tendered, proper sanction will be necessary for the prosecution on each branch of the alternative charges. QUEEN-EMPRESS v. DALA JIVA, **10 B. 190 = Rat. Un. Cr. C. 224.** [*R.*, 16 B. 661, 23 B. 213, 12 P.R. 1902, Cr. = 100 P.L.R. 1902, 52 P.L.R. 1902.]

(92)—*Civ. Pro. Code, s. 258—Fraudulent execution of satisfied decree—Satisfaction not recorded—Penal Code, ss.* 191, 193, 199, 210, 406 —*Execution application containing false averments.*—The words "any Court" in the last paragraph of s. 258 of the Code of Civil Procedure, 1882, have no application to a Criminal Court investigating a charge under s. 210, I.P.C. It is not the intention of the Legislature, by enacting s. 258, Civ. Pro. Code, to bar any criminal remedy which an injured judgment-debtor may have against a fraudulent decree-holder, whether by a prosecution under ss. 193, 210, 406, or any other section of the Penal Code. A decree holder is bound, by s. 235, Civ. Pro. Code, to make a declaration, in his verified application for execution of the decree, as to any adjustment made after the decree, that is, any matter not done through the Court, as well as any agreement through the Court. Intentional omission to state in the application any such adjustment is an offence punishable under s. 193, I.P.C., and not under s. 199, I P.C [*Appl.*, 11 B. 599 ; *R* , 11 B. 6, U.B R 1897-1901, 278]. It is doubtful whether s. 199, I.P.C., applies to an execution application containing false averments, inasmuch as s. 193 already provides for such averments. Nor is there, apparently, any express provision of law which binds or authorizes the Court to receive a verified application as "evidence of any fact" although, for the purposes of ss. 191, 193, a false averment in such application is regarded as false evidence. QUEEN-EMPRESS v. BAPUJI DAYARAM, **10 B. 288.** (2 M. 216, *F*). [*Appl.*, 11 B. 599 ; *R.*, 11 B. 6, 35 B. 139 = 12 Bom. L.R. 977 = 8 Ind. Cas. 615, 16 C.L.J. 174, 16 C.W.N. 923 = 13 Ind. Cas. 63, 11 Cr.L J. 90 = 5 Ind. Cas. 257 = 1 P R. 1910, Cr. = 161 P.L R. 1910 = 3 P.W.R. 1910, Cr.]

(93)—*Crim. Pro. Code* (1882), *ss.* 161, 288—*Evidence before Magistrate not having jurisdiction—Powers of Police officer.*—There is no provision in the Crim. Pro. Code, empowering a Police officer to require a witness to go to a Magistrate not having jurisdiction over the offence, to have his statement taken under s. 164. Such a statement cannot be used as evidence at the trial, nor, if false, be treated as false evidence in a judicial proceeding.

False Evidence—*continued.*

QUEEN-EMPRESS v. NANA RAJU. **Rat. Un. Cr. C. 468 = Cr. Rg. 26 of 1889.** (7 B.H.C. 56, 11 B. 72, *R.*)

(94)—*Penal Code, ss.* 193, 196—*Crim. Pro. Code*, s. 233—*False evidence by several persons —Trial.*—Where several persons are charged with giving false evidence in the same proceeding, each of them should be separately tried. EMPRESS OF INDIA v. ANANT RAM, **4 A. 293 = A.W N. 1882, 37.** [*F*, 13 Cr.L J. 23 = 13 Ind. Cas. 215 = 5 S.L.R. 129; *R.*, 10 C. 405.]

(95)—*False evidence—Separate trials.*—In all cases of giving false evidence, where more than one person is implicated, separate charges should be drawn up and separate trials held. EMPRESS v. CHAND KHAN, **A.W.N. 1881, 83.**

(96)—*False evidence—Separate charges and trials.*—Where more persons than one are charged under s. 193, for giving false evidence, each act of giving false evidence being a separate offence, a separate charge must be necessarily framed against each prisoner and a separate trial must be held on each charge. HIGH COURT PROCEEDINGS, 15TH MARCH, 1867. **1 Weir 161 = 2 Weir 271 = 3 M H C. App. 32.** [*F.*, L B R. 1872—1892, 129, 2 Weir 304].

(97)—*Manner in which cases of false evidence should be tried—Evidence Act, s* 91—*Certified copy of deposition alone admissible—Crim. Pro. Code* (1898), *s.* 223.—Where the false evidence is alleged to have been given in a deposition in a case in which the law requires the evidence to be taken down in writing, as, for instance, in trials regulated for this purpose by s. 356 or 357, Crim. Pro. Code, a certified copy of the deposition must be placed on the record as evidence. Oral evidence of the substance of a deposition is excluded by s. 91 of the Evidence Act. But the mere production of a certified copy is not sufficient to show that the accused is the person who made the statement. On this point there must be the oral evidence of some one who heard the deposition given. Evidence as to the falsity of some statement in the deposition must then be taken. After the close of the case for the prosecution, the accused must be examined under s. 342, Crim. Pro. Code, and must be asked whether he gave the evidence which he is said to have given. If the Court considers that a *prima facie* case is made out, the charge should then be framed ; and in the charge should be set out in direct narration the actual words alleged to constitute the false statement and not a paraphrase. CROWN v. MI SHWE KE, **1 L. B R. 268.** (17 W.R. Cr 32, *F.*)

(98)—*Prosecution for giving false evidence—Courts entitled to give sanction—Crim Pro. Code* (1882), s. 468.—The only Court that could give sanction to any criminal proceeding under s. 468 of the Crim. Pro. Code is either the Court before which the alleged offence took place or the Court to which such Court is subordinate. JUGGUT CHUNDER MOZUMDAR v. KASI CHUNDER MOZUMDAR, **6 C, 440 = 7 C. L.R. 330** [*D.*, 8 C. 570.]

False Evidence—*continued.*

(99) –*Crim. Pro. Code* (1898), *s.* 197—*Inquiry before granting sanction to prosecute under s.* 197—*Offence of giving false evidence committed in such enquiry* —There is no provision in the Crim. Pro. Code or the Indian Penal Code indicating how the Government, or some officer empowered in that behalf by the Government, is to inform itself whether or not to grant sanction. In the absence of any provision of law authorising the officer conducting such enquiry to hold a judicial enquiry, such enquiry is not a judicial enquiry and there is no authority in him to administer an oath, the enquiry being merely a departmental enquiry. Therefore, a person who gives false evidence is not liable to be punished under s. 193, Penal Code. QUEEN-EMPRESS *v.* VENKATARAMANNA, **23 M 223 = 1 Weir 152.** [*Appr.*, 13 Cr. L J 209 = 14 Ind. Cas. 305 = 22 M.L.J. 419 = 11 M.L.T. 367 = 1912 M.W.N. 499; *R.*, 12 Cr.L.J. 323 = 10 Ind. Cas. 619 = 21 M.L.J. 795 = 10 M.L.T. 47 = 1911 M.W.N. 9.]

(100)—*Penal Code, s.* 193—*Judicial proceeding—Sanction to prosecute—Crim. Pro Code* (1898), *ss.* 200, 254 *and* 537—*Right to cross-examine after the evidence of the prosecution—Evidence Act,* 1872, s. 80.—The accused were convicted under s. 193, Indian Penal Code, for giving false evidence before Commissioners appointed under Act XXXVII of 1850. *Held*, that inasmuch as the sentences passed were within the limit provided by the second part of s. 193, Indian Penal Code, it was immaterial to consider whether the enquiry by the Commissioners was a stage of a judicial proceeding. *Held*, also, that the Commissioners were not *functi offi io* when they granted sanction to prosecute. *Held, also*, that the failure of the Magistrate to examine under s. 200, Crim. Pro. Code, the complainant, who was a Government Advocate, did not prejudice the petitioners and was covered by s. 537 of the Crim. Pro. Code. *Held, also*, that the trying Magistrate acted in accordance with s 254, Crim. Pro. Code, in charging the accused at an early stage of the proceedings, which had the effect of preventing the re-call of witnesses for the prosecution for cross-examination ; the accused had no further right to cross examine the witnesses for the prosecution after the completion of the evidence for the prosecution. *Held*, also, that s. 80, Evidence Act, 1872, was applicable to the depositions of the accused persons made before the Commissioners. UTTAM CHAND v. EMPRESS, **P L R. 1900, 63, Cr.**

(101)—*Penal Code, ss.* 181 *and* 193—*Offence under s.* 193—*Conviction under s* 181.—A conviction under s. 181 is good, though the offence falls under s. 193, Penal Code. HIGH COURT PROCEEDINGS, 4TH NOVEMBER, 1868, **4 M H C. App. 18.**

(102)—*Penal Code, s.* 193—*Conviction based on conflicting statements— Procedure.*— Although where a person makes on solemn affirmation or on oath, in the course of a judicial proceeding, two statements which are palpably inconsistent, it is not essential to the validity of the conviction to show which of them is true, yet, it is desirable in such cases, with a view to the due estimation of the gravity of the offence, that the Court should have before it some evidence as to the object with which the offence has been committed, that is, in what respect the alleged false statement bore on the matter under enquiry. HIGH COURT PROCEEDINGS, 23RD SEP. 1880, No. 1810, **1 Weir 165.**

(103) — *Statements made before Revenue officers—Witness speaking falsely, whether liable to be prosecuted—Indian Oaths Act, s.* 4—*Lower Burma Land and Revenue Act, s.* 57 (*c*). —By s. 4 of the Indian Oaths Act, 1873, all persons having by law authority to receive evidence are authorised to administer oaths and affirmations in discharge of the duties, or in exercise of the powers, imposed or conferred on them by law. A Revenue Officer empowered under s. 57, cl. (*c*) of the Land and Revenue Act, being a person having by law authority to receive evidence, has, therefore, also authority to administer oaths and affirmations, and that authority is conferred by the Oaths Act. Any person who volunteers or is required to make a statement before a Revenue Officer empowered under s. 57, cl. (*c*) of the Land and Revenue Act, when acting in the discharge of a duty or in the exercise of a power imposed or conferred by law, is a witness, and, in making such a statement, he is giving evidence. Any person so examined is bound by the express provisions of the law to state the truth on the subject on which he is examined ; and this obligation is not affected by the omission of the person so examined to take an oath or make an affirmation. When holding an enquiry, a Revenue Officer cannot be said to be acting in discharge of a duty imposed, or in exercise of a power conferred, by the law, unless he is required or authorized by some specific provision of the law, or, by necessary implication, from some specific provision of the law, to hold an enquiry. KING-EMPEROR v. PAKIRI, **2 L.B.R. 272.**

(104)—*Proof that accused knew statement to be false—Penal Code, s.* 193.—To support a charge of giving false evidence under s. 193, it must be shown that the accused intentionally made a particular statement false to his own knowledge. QUEEN v. MAHARAJ MISSER, **7 B L.R. Ap. 66 = 16 W R. Cr. 47.**

(105)—*Judicial proceeding, statement made in—Penal Code, s.* 193—*Form of charge.*—It is essential, in order to sustain a charge under s. 193 of the Penal Code, that it should be proved that there was a judicial proceeding, and that the false statement alleged to have been made in the course of that proceeding was actually made. QUEEN v. FATIK BISWAS, **1 B.L R. A Cr. 13 = 10 W.R. Cr 37.**

(106)—*Crim. Pro. Code* (1872), *ss* 473, 471 —*Jurisdiction of Magistrate—Giving false evidence.*—A witness charged with having given false evidence in a criminal proceeding before a Magistrate of the first class was tried and

False Evidence—*continued.*

convicted of that charge by that Magistrate, and the conviction was confirmed on appeal by the Sessions Judge. *Held* that the jurisdiction of the Magistrate was not barred by the operation of s. 473, Act X of 1872, the giving of a false evidence in the presence of a Court not being an offence committed in contempt of the authority of the Court within the meaning of that section. The Magistrate's jurisdiction in such a case was, however, held barred by s. 471 of the Code, the Magistrate being bound under that section either to commit or to send the case for enquiry to another Magistrate. *In re* SUFATOOLLAH, 22 **W.R. Cr. 49.**

(107)—*Proof of deposition alleged to be false to be given.*—In a case of false evidence, the prosecution must prove that the deposition alleged to contain the false statement was made before it is shown that it is false. QUEEN v. BHAKOAS TUTUM, **7 W.R. Cr. 13.**

(108)—*Requisites for a legal conviction for giving false evidence—Examination of accused as directed by law—Attestation of record by Magistrate—When abettor is liable to be punished as principal — Circumstances constituting abetment to be first made out.*—Before incriminating a person upon his own statement under examination, it is necessary to see that such a statement has been deliberately made and recorded, that, after being recorded, it has been shown or read to the accused, so that he might be assured that his words have been correctly taken down, and that the examination has been attested by the signature of the Magistrate following a certificate to be given under his hand. It is only an examination as directed by law, not any irregular paper substituted by a Magistrate for the examination in proper form, that is admissible in evidence at the trial. In cases where an abettor is to be punished as the principal, it is necessary, first, to make out the circumstances which constitute the abetment, so that, "if absent," he would have been liable to be punished as an abettor, and then to show that he was also present when the offence was committed. QUEEN v. MUSSAMMAT NIRUNI, **7 W R Cr. 49**; QUEEN v. MUNGUL DASS, **23 W.R.Cr. 28.**

(109)—*Requisites for conviction of giving false evidence—Relying for conviction on mere medical theories against facts positively proved improper—Criminal fact to be ascertained before fixing the criminal*—In trying a prisoner charged with giving false evidence, it is improper to rely on the mere theories of medical men or skilled witnesses of any sort against facts positively proved, as the evidence of medical men or other skilled witness, however eminent, is ordinarily a mere matter of opinion. The true rule is that no man can be convicted of giving false evidence except on proof of facts which, if accepted as true, show not merely that it is incredible but that it is impossible that the statements of the party accused made on oath can be true. QUEEN v. AHMED ALLY, **11 W. R. Cr. 25.**

False Evidence—*continued.*

(110)—*Provisions of s. 191, Penal Code. very general—Criminal intention to be established—Superintendent of Police requesting a Magistrate to issue a warrant in a suit to him by the Magistrate—Sufficiency of sanction - Object of sanction required by s. 169, Crim. Pro. Code.*—The words of s. 191, Penal Code, are very general, and do not contain any limitation that the false statement made shall have any bearing upon the matter in issue. It is sufficient to bring a case within that section, if the false evidence is intentionally given, that is to say, if the person making the statement makes it advisedly, knowing it to be false, and with the intention of deceiving the Court, and of leading it to be supposed that that which he states is true. Where a Magistrate had himself considered the case forwarded to him by the Deputy Magistrate before he passed it to the Superintendent of Police and the Superintendent of Police had requested the Magistrate to issue a warrant, *held* that the issue of a warrant is a sufficient sanction under s. 169 on the part of the Magistrate. The object of the sanction required by s. 169, Code of Criminal Procedure, is to ensure that the prosecution should be instituted after due consideration on the part of a Court to which such Court is subordinate. QUEEN v. MAHOMED HOSSAIN, **16 W.R. Cr. 37.**

(111)—*Statement untrue to the prisoner's knowledge and made upon oath though, immaterial to the case—Perjury.*—By the Penal law of the country, a statement untrue to the prisoner's knowledge, made upon oath in the course of a judicial proceeding, amounts to perjury, notwithstanding the fact that the statement itself is immaterial to the matter before the Court. QUEEN v. SHIB PROSAD GIRI, **19 W R Cr. 69.**

(112)—*Offence under the Penal Code not to be treated as professional misconduct—Proper Court to direct prosecution for giving false evidence—Crim. Pro. Code (1861), s. 169—Specific charge.*—S. 169, Crim.Pro.Code, which gives a Judge, not sitting in appeal, any original jurisdiction does not empower him to entertain a charge for giving false evidence before another Court. The only Court which can direct a prosecution for giving false evidence is the Court before which the false evidence was given. In a prosecution under the Legal Practitioner's Act, it is against law and justice to take evidence after the expiration of the time allowed by the Act to a vakil to prepare his defence and in his absence. A prosecution for giving false evidence must be on some specific charge of making some particular and specific false statements, each of which must be proved by some direct and distinct evidence. ASMEDH KOONWAR v. TAYLOR, and KHORSHED ALI v. W. TAYLER, **W.R. 1864, 14.**

(113)—*Enquiry to trace out the writer of an anonymous letter containing charge of murder without reference to its truth or otherwise not a stage of judicial proceeding.*—Where an Assistant Magistrate made an enquiry for the purpose

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of tracing out the writer of an anonymous letter addressed to him charging certain persons with murder, but without reference to the truth or otherwise of the charge of murder. *Held* that the enquiry regarding it is not, in any sense of the term a stage of a judicial proceeding which might terminate in a judgment and in which the giving of false evidence is punishable under s. 193, Penal Code. QUEEN v. BYKUNT NATH BANERJEE, **5 W.R.Cr. 72.**

(114)—*Evidence upon oath without jurisdiction not forming the subject of prosecution for.*—A plaintiff in a Munsif's Court petitioned the Judge complaining that the Munsif had unreasonably refused to examine his witnesses and had dismissed his suit. The Judge having found the charge, after examining the petitioner upon solemn affirmation, not proved, ordered criminal proceedings to be instituted against the petitioner for giving false evidence. *Held* that he had no power to examine the petitioner upon oath in such a case and that the oath made and the evidence given *coram non judice* could not form the subject of a prosecution under s. 193, Penal Code. QUEEN v. CHOTA JADUB CHUNDER BISWAS, **W.R. 1864, Cr. 15.**

(115)—*False evidence not given in Court of justice but made to a police officer making investigation under s. 119, Crim. Pro. Code—Abetment of offence of giving false evidence, essentials of—Trial by jury—Power of High Court to go into facts—S. 380, Penal Code, scope of.*—It is not necessary under s. 194, Penal Code, that the false evidence which is given should be evidence given in a Court. A police officer making an investigation, under s. 119, Crim. Pro. Code, being authorized to examine orally any person supposed to be acquainted with the facts and circumstances of the case, and such person being bound to answer all questions put to him by such officer, a false statement made to him would amount to a complete offence of giving false evidence as defined by s. 391, taking into consideration the provisions of s. 118 of Crim. Pro. Code. In order to convict a person of abetting the commission of an offence, it is not enough to prove that he has taken part in those steps of the transaction which are innocent, but, in some way or other, it is absolutely necessary to connect him with those steps of the transaction which are criminal. Further, there can be no offence of the abetment of giving false evidence, unless it is proved that the abettors not only intended that those statements should be made, but intended that those statements should be made falsely. In a trial by jury, the High Court has no power whatever to go into the facts of the case in order to see whether or not the conviction was right, that standing entirely upon the verdict of the jury. The Court has only to consider the facts, in order to see whether the Judge has done his duty in laying the case before the jury for their consideration. A charge under s. 330, Penal Code, can be made, even if the supposed offence has not been committed. The offence which that section intended to describe is that of inducing a person by hurt to make a statement, or a confession, having reference to an offence or misconduct; and whether that offence or misconduct has been committed is wholly immaterial. QUEEN v. NIM CHAND MOOKERJEE, **20 W.R. Cr. 41.**

(116)—*Statement made in judicial proceeding before Magistrate—Accused to be committed to Sessions—Magistrate not to convict him under s. 181, Penal Code.*—Where a person made a false statement in a stage of judicial proceeding before a Magistrate, he should not be convicted under s. 181, Penal Code, but should be committed to the Sessions under s. 193, Penal Code. QUEEN v. NUSSUROODDEEN SHAZWAL, **11 W.R. Cr. 24.**

(117)—*False statement made in a proceeding not judicial—Prosecution for giving false evidence sustainable.*—A person may be convicted of the offence of giving false evidence even if the case in which the false evidence was given was not a judicial one, such as a case pending before the Collector acting in his fiscal capacity under Reg. XIX of 1814. But to support a charge, it is essential to show that the false statement was one made under the sanction of the law whether upon oath, or on a declaration which the law allows to be substituted for an oath in matters not judicial. *In the case of* AUDHEEN ROY, **14 W.R. Cr. 24.**

(118)—*Making false return of service of summons—Offence punishable under s. 193, Penal Code.*—Intention is an essential ingredient in the offence contemplated by s. 218, Penal Code. The offence of making a false return of service of summons being an offence punishable under s. 193 and consequently cognizable by the Court of Session alone the conviction under s. 181 is wrong. QUEEN v. SHAMA CHURN ROY, **8 W.R. Cr. 27.**

(119)—*False statement made before Registrar—Criminal prosecution under Registration Act (XX of 1866).*—A Sub-Registrar is competent for any purpose contemplated by the Act to examine any person, and any statement made by such person before any officer in any proceedings or enquiries under the Act, if intentionally false, renders such person liable to a criminal prosecution. QUEEN v. JUGGUT CHUNDER DUTT, **6 W.R. Cr. 81.**

(120)—*Making false statement in document not requiring verification, not an offence under s. 193—Prosecution to point out exact words and exact offences—Document tendered in evidence in a Civil Court to be proved in a Criminal Court before admission.*—A Judge should not merely give a general sanction to a prosecution for giving false evidence and for false verification without pointing out the exact words upon which the prosecution is based. He should point out the exact offences which he thinks the Magistrate should take notice of and-

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investigate. The verification of the application filed in the Civil Court, in which it was stated that the applicant did not sign an alleged deed of compromise, does not subject him to punishment for giving false evidence. Such an application falls, not within s. 120 of Act VIII of 1859, but under s. 209 of the Act which does not require that such applications shall be verified. QUEEN v. KARTICK CHUNDER HOLDAR, **9 W.R. Cr. 58.**

(121)—*Putting forward a person knowing him to be some one else—Abetment of false evidence.*—In this case, one C falsely represented himself to be U and the writer of a document signed by U. Another person T, knowing that C was not U and had not written that document, adduced C as U and as the writer of that document. *Held* that the offence of T was that of abetting the offence of C and ought to have been convicted on a charge of abetting the giving of the false evidence. QUEEN v. CHUNDI CHURN NAUTH, **8 W R. Cr. 5.**

(122)—*Framing incorrect record—Public servant making false entry—Penal Code,* s. 218.—Where a Police Superintendent called for a report from a constable, on the information that a theft had been committed and not reported owing to the constable's negligence, and the constable produced a false report to the effect that no theft had been committed and no information given to him, *held* he was not guilty under s. 218 of the Penal Code. GOVERNMENT v. ABDUL HUQ, **3 Agra Cr. 1.**

(123)—*Verification of statement in suit for rent—Act X of* 1859, *s.* 37.—The plaintiff brought a suit for rent claimed to be due for three years; he failed to prove his claim, and the suit was dismissed for want of evidence. He afterwards sued to recover rent for one of the same years, and recovered the amount. The Judge, on appeal, reversed the decree, and made an order remitting the case to the Deputy Collector to enquire, under Act X of 1859, s. 37, whether the plaintiff had committed perjury in the first suit, the plaint in which was verified by his agent. S. 37 of the Act requires that the statement of claim shall be verified by the plaintiff or his agent, and enacts that, if the statement shall contain any averment, which the person making the verification shall know or believe to be false, such person shall be subject to punishment, according to the law for the time being in force for the punishment of giving or fabricating false evidence. *Held* that there was no foundation for the order, the averment having been made by the agent, and not by the plaintiff; and besides, there was no evidence that it was untrue, there having been no finding in the first suit that the rent was not due. TARA PERSAD ROY CHOWDHURY v. GOPAL DASS DUTT, **Marsh 72 = W.R.F.B. 24 = 1 Ind. Jur. O.S. 79 = 1 Hay 235.**

(124)—*Fabrication of false evidence—Penal Code, ss.* 193 *and* 120—*Illegal concealment to fabricate evidence.*—The term "fabrication" in s. 193 of the Penal Code refers to the fabrication of false documentary evidence to be used in a suit, so that, to convict under this section, it is essential to aver and prove that the fabricated documents were intended for that purpose. The illegal concealment, by act or omission, contemplated by s. 120 of the Code, has reference to the existence of a design on the part of third persons to fabricate evidence. QUEEN v. RAJCOOMAR BANERJEE, **1 Ind. Jur. O.S. 105.**

(125)—*Subornation of perjury—Penal Code, s.* 196.—The provision of the Penal Code (s. 196) against using false evidence is not ordinarily intended to apply to subornation of perjury. To establish an offence under s. 196, it must be shown that the accused made some use of the false evidence after it was in existence. QUEEN v. SUFFURUDEE, **1 Ind. Jur. O.S. 122.**

(126)—*Statement unintentionally causing conviction for murder—Penal Code, ss.* 193, 194—*Power of Sessions Judge.*—A Sessions Judge has no power to commit a man for having given false evidence before the Magistrate, but he can commit him for having given false evidence in his own Court. In the trial of a prisoner for murder, a witness stated on oath before the Sessions Court that another had committed the murder, whereas, before the Magistrate, he had stated, as was the fact, that the prisoner had committed the murder. *Held* that such witness was guilty under s. 193, I.P.C., and not under s. 194 of the Penal Code, as he did not know that he would cause a conviction for murder. QUEEN v. HARDYAL, **3 B.L.R.A. Cr. 35.**

(127)—*Statement in application for new trial—Penal Code, ss.* 191, 192—*Verification of a document as a plaint.*—A made an application for a new trial under s. 21 of Act XI of 1865. He filed a memorandum of his grounds verified as a plaint, and therein knowingly made a false statement. *Held* (Glover, J., *dissenting*) that he had not thereby committed an offence under s. 191 or s. 192 of the Penal Code. *In re* HARAN MANDAL, **2 B.L.R.A. Cr. 1 = 10 W.R. Cr. 31.**

(128)—*Fabricating false evidence—Intention essential ingredient in offence.*—Intention is an essential ingredient in the offence contemplated by s. 218, Penal Code. QUEEN v. SHAMA CHURN ROY, **8 W.R. Cr. 27.**

(129)—*Fabricating false evidence—False entry in Chowkidaree attendance—Book—Intention too remote.*—A *Chowkidar*, charged with the preparation of a *chowkidaree* attendance book, made a false entry therein with intent to injure the Sub-Inspector. The *Chowkidar* was charged of an offence under s. 218. *Held* that the intention of the *Chowkidar* in making the incorrect entry being too remote, he cannot be charged under s. 218, Penal Code. QUEEN v. JUNGLE LALL, **19 W.R. Cr. 40.**

(130)—*Charge to show particular matter in respect of which accused is put upon his trial*—

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Mere fact of contradiction insufficient for a conviction under s. 193—*Circumstances and intention of contradictory statement to be considered.*—Where a person was put on his trial for giving false evidence, the charge should show on the face of it the particular matter in respect of which the charge is made, and no more of the deposition should be referred to than was necessary in order to show the particular contradictions or false statements in respect to which the offence of giving false evidence was charged. The mere fact that a person has made a statement which contradicts a previous statement is not itself necessarily sufficient to bring him within s. 193, Penal Code. The circumstances under, and the intention with, which the particular statement relied on by the prosecution is made, must, in each case, be considered before it can be held that the offence has been committed. QUEEN v. SOONDER MOHOOREE, **9 W.R. Cr. 25**; QUEEN v. DENONATH BUJJUR, **9 W.R. Cr. 52.**

(131)—*Legality of conviction.*—The prisoner, who, as a witness in a former case, had made one statement before the Magistrate and a contrary one before the Sessions Judge, was tried and convicted of having either given false evidence before the Judge or given false evidence before the Magistrate. *Held* (Norman and Campbell, JJ., *doubting*), the conviction was right. *Held*, also, (Campbell, J., *dissenting*) the evidence taken before the Judge was admissible on the charge of giving false evidence before the Magistrate. QUEEN v. MUSST. ZAMIRAN, **B.L.R. Sup. Vol. 521 = 6 W.R. Cr. 65.**

(132)—*Witness retracting statements before the Sessions Court*—Locus penitentiæ *for witness*—(Per *Seton Karr and Steer, JJ.*)—*Held*, that there ought to be a *locus penitentiæ* for witnesses who have deposed falsely for retracting their false statements. *Jackson, J*, (*dissenting*). It is eminently unsafe that a witness, deposing on facts of vital importance, should be in any degree encouraged to depose falsely by the contemplation of his *locus penitentiæ* at the trial. QUEEN v. GULLIE MALLICK, **W. R. 1864, Cr. 10.**

(133)—*Proof of charge of giving false evidence*—*Uncorroborated evidence of single witness insufficient.*—In a case of giving false evidence, the strictest and most accurate proof is necessary, and the testimony of a single witness unsupported by corroborative evidence is insufficient to convict a person charged with giving false evidence. QUEEN v. MOHINA CHUNDER CHUCKERBUTTY, **5 W.R. Cr. 77.** (5 W.R. Cr. 23, *F.*)

(134)—*Perjury in its nature essentially personal*—*Specific charge to be made out against the accused*—*When grouped, the Sessions Judge to find the particular charge against each*—*Conviction on the bare testimony of one witness illegal.*—Perjury is in its nature essentially personal, dependent on the actual words uttered, and the motives which dictated the utterance. The accused person is entitled to have the specific charge made against him tried quite independently of a like charge against another person, and disembarrassed of the prejudice which cannot fail to be caused in his own case by the mere fact of its being united with another or others for the purpose of trial. Where charges made against different persons are grouped together for the purpose of trial, the Sessions Judge must find judicially whether all, or, if not all, which of the particular charges of perjury is made out against each prisoner. QUEEN v. KHOAB LALL, **9 W.R. Cr. 66.**

(135)—*Conviction on the bare testimony of single witness legal when falsity of the statement is not in question.*—The evidence of one witness in cases of perjury is sufficient to establish the *factum* of the statement which is charged as being false. The measure of punishment is a matter entirely in the discretion of the Court. QUEEN v. ISSEN CHUNDER GHOSE PATRI, **14 W R. Cr. 53.** (5 W.R. Cr. 23, *Expl.*)

(136)—*Testimony of single witness*—*Comparison of signatures one kind of corroboration.*—Comparison of signatures is one kind of corroboration sufficient to justify a conviction on the bare testimony of a single witness in a case of false evidence. QUEEN v. BAKHOREE CHOWBEY, **5 W.R. Cr. 28.**

(137)—*Proof of charge*—*Uncorroborated evidence of single witness*—*Penal Code* (*Act* XLV *of* 1860), *s.* 193.—A person cannot be convicted in the mofussil of giving false evidence upon the uncorroborated evidence of a single witness. QUEEN v. LALCHAND KOWRAH, **B L R Sup. Vol 417 = 1 Ind. Jur. N.S. 83 = 5 W R. Cr. 23,** *See also* QUEEN v. MOHINA CHUNDER CHUCKERBUTTY, **5 W.R. Cr. 77.**

(138)—*Sanction to prosecute*—*False verification of written statement.*—A person, who verifies, in a form which substantially conforms to the requirements of s. 52, Civ. Pro. Code, 1882, a written statement, which contains a statement which he does not know or believe to be true comes within the definition of s. 191, I.P.C., either as a person who is legally bound by an express provision of the law to state the truth, or as a person bound by law to make a declaration that the facts stated are true to his knowledge. But the Chief Court cancelled the sanction for the prosecution of the accused, doubting whether he could be rightly convicted upon an informal attestation which was capable of being construed as a mere certificate that the writing correctly represented his answer to the suit. LAKHU v. EMPRESS, **27 P.R. 1894, Cr.** (6 A. 626, *R.*)

(139)—*Sanction to prosecute*—*Power of Court to which a case has been remanded*—*S.* 643, *Civ. Pro. Code*, 1882.—The powers conferred by s. 643, Civ. Pro. Code, 1882, cannot be exercised by the Court to which a case has been remanded. THAKAR DAS v. EMPRESS, **30 P.R. 1888, Cr.**

(140)—*Making true entries corresponding to a forged document.*—A *patwari* making entries

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corresponding to a document, which is known to him to be forged, cannot be convicted of an offence under s. 193, I P.C., as the entries are true entries, although the original document may be forged, and therefore false. RAM CHAND v. EMPRESS, **26 P.R. 1890, Cr.**

(141)—*Document containing false documents.*—Where the lessees made and signed a *kabuliyat* with the intention of causing it to be believed that an agreement to let, therein recited, had been made by the agent of the land-owner and with her assent, *held*, that the act of the accused did not amount to fabricating false evidence within the meaning of s. 193, I.P.C., nor was the document a false document. JOWAHIR SINGH v. EMPRESS, **16 P.R. 1894, Cr.**

(142)—*Record prepared under Civ. Pro. Code, admissibility of when not read over to witness.*—When the record prepared under s. 182, Civ. Pro. Code, is proved or admitted to be genuine, it is not liable to be excluded as evidence, merely because it was not duly read over to the witness in the civil suit. KAHN SINGH v. EMPRESS, **25 P.R. 1890, Cr.**

(143)—*Defective record of proceedings—Admissibility—Proof* aliunde—*Evidence Act, s.* 91.—Where, in a case of giving false evidence, the record of the Court in which the false statement was made was defective in that there was no signature of the Magistrate at the foot of the deposition of one of the witnesses charged with giving false evidence, and there was nothing to show that the deposition had been read over to the witnesses, as required by s. 360, Crim. Pro. Code, 1882, *held*, that the record, as such, was primary evidence and its value was not destroyed by the above defects, and that proof *aliunde* could be given to show that the evidence was duly taken and was read over to the witnesses, as such evidence was not secondary evidence within the meaning of s. 91. EMPRESS v. FATTA, **54 P.R 1887, Cr.** (21 P.R. 1881, Cr., *R.*)

(144)—*Penal Code, s.* 194—*Gist of the offences.*—The intention or knowledge required by s. 194, I.P.C., cannot be held to exist when the proceedings in which the evidence is given is one in which such a conviction is not legally possible. *Quære*—Whether a person giving false evidence before a Magistrate, holding a preliminary enquiry in a case of murder, could be punished under s. 194, I.P.C., although he may be punishable under s. 193, I.P.C. EMPRESS v. MUHAMMAD, **32 P R. 1886, Cr.**

(145)—*Fabrication of false evidence by accused in a criminal case.*—The fabrication of false evidence by an accused to be used in his defence in a criminal case is an offence punishable under s. 193, Penal Code. EMPRESS v. JIWAN SINGH, **10 P.R. 1880, Cr.**

(146)—*Jurisdiction.*—The offence of intentionally giving false evidence (s. 193, Penal Code), not being triable exclusively by the Sessions Court, is not one in which the Sessions Judge can commit. QUEEN v. UNNATH BUNDHOO BANERJEE, **21 W.R. Cr. 37.**

(147)—*Proceedings held without jurisdiction—Penal Code, s.* 193.—A Court, having no jurisdiction to entertain a particular suit, has no jurisdiction to administer an oath or affirmation to the defendant. A defendant under such circumstances is not, therefore, punishable for giving false evidence. NARINJAN DAS v. PANDIT RAM KISHEN, **32 P.R. 1879, Cr.**

(148)—*Civil Court sending witness without enquiry to a Magistrate for being prosecuted for giving false evidence—Conviction by Magistrate sitting as Court of Sessions—Crim. Pro. Code* (1861), *s.* 173—*Act* VIII *of* 1869, *s.* 445-*A.*—Where a Civil Court sent a witness, whom he considered to have deposed falsely, to a Magistrate to be dealt with according to law, and the Magistrate sitting as a Court of Sessions convicted the accused, *held* that the conviction should be quashed, as the provisions of s. 173, Crim. Pro. Code, 1861, and that the provisions of s. 445-A, Act VIII of 1869, had not been complied with. BOOTA v. CROWN, **11 P.R. 1870, Cr.**

(149)—*Enquiry by Magistrate not authorised under s.* 273, *Crim. Pro. Code*, 1861.—A false statement made by a witness in an enquiry by a Subordinate Magistrate, who had not been authorized, under s. 273, Crim. Pro. Code, 1861, to make the enquiry, was held not to be punishable under s. 193, I.P.C. KHUSHI KHAN v. CROWN, **24 P.R. 1870, Cr.**

(150)—*Acquittal by letting false evidence—Second trial under s.* 196, *I.P.C.*—A person, who has obtained an acquittal by letting in false evidence, is liable again to be prosecuted under s. 196, I.P.C. USHGUR ALI v. CROWN, **35 P.R. 1870, Cr.**

(151)—*Charge—Penal Code, s.* 193.—A charge under s. 193 should specify the proceedings in which the alleged false evidence was given, and should contain the exact words alleged to be false as definitely and specifically as possible. MEWA SING v. CROWN, **36 P R. 1869, Cr.**

(152)—*Penal Code, ss.* 193, 116, 511—*Attempt to abet commission of offence of intentionally giving false evidence.*—Sanction to prosecute under s. 193, I.P.C., is not required when the offence is not committed in relation to a particular proceeding in any particular Court. In a matter relating to a private personal quarrel, it is hardly necessary to take into consideration the duties of the parties as public officers (under s. 23 of the Police Act). If the actual abetment of the offence is not committed, the case falls under s. 116, I.P.C. If the abetment itself is an offence, an attempt to commit abetment is also an offence. NGA PO CHIT v. QUEEN-EMPRESS, **U.B.R. 1892–1896, Vol I, 191.** (10 B H.C. 497, 8 A. 303, 14 A. 38, *R.*)

(153)—*Penal Code, s.* 193—*Intentional giving of false evidence.*—In the case of a conviction

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under the above section, it is necessary that there should be some direct evidence to corroborate the fact that the accused intentionally gave false evidence in the case referred to. The sanction given for a prosecution under the above section should be expressed in a plain and precise form. MA KIN v. QUEEN-EMPRESS, **U.B.R. 1892—1896, Vol. I, 187.** (11 B.H.C. 237, *R.*).

(154)—*False evidence to Police.*—If giving false evidence to the Police makes a man liable to be punished for perjury under s. 193 of the I.P.C. See CRIMINAL REVISION CASE, No. 906 OF 1892, **U.B.R, 1892—1896, Vol. I, 195.**

(155)—*Penal Code, s.* 193 –*False statement made to Forest officer.*—A false statement made to a Forest officer, who was not empowered to hold an investigation or take any evidence in any matter at all, and whose functions are purely ministerial would not be punishable under s. 193, REG. v. RAMAJI RAV JIV BAJI RAV, **12 B H.C. 1.**

(156)—*Crim. Pro. Code,* 1872, *ss.* 435, 436, 471, 472, 473—*Contempt of Court—False evidence—Jurisdiction.*—Every attempt to pervert the proceedings of a Court to an improper end is a contempt of its authority, and giving false evidence is such an attempt. The offence, therefore, if committed before a Magistrate, cannot be tried by him. REG. v. NAVRANBEG DULABEG, **10 B.H.C. 73.** [*F.*, 1 B. 311, 339.]

(157)—*False evidence in judicial proceeding —Latter annulled—Effect.*—The accused was convicted of having given false evidence in the trial of Vinayak Divakar (See 8 B.H.C. O.C. 32). The conviction of Vinayak Divakar was annulled by the High Court. *Held* that this conviction should also be annulled. REG. v. RAVJI TAJU, **8 B H.C. Cr. 37.**

(158)—*Penal Code, s.* 193—*Conviction under s.* 181—*Legality.*—When the facts proved constitute giving false evidence in a judicial proceeding a conviction by a Full Power Magistrate under s. 181 is illegal. *In re* NUTHOO KUMAL **8 B.H C. Cr. 22 Note.** [*F.*, 8 B.H.C. Cr. 21.]

(159)—*Penal Code, ss.* 193, 416—*Witness deposing in another's name.*—Where a person deposes in a stage of judicial proceeding falsely representing that he is another person, he is guilty of an offence under s. 193, I.P.C., but not guilty of the offence of false personation under s. 416, I P.C. REG. v, PREMA BHIKA, **1 B.H.C. 89, Cr.**

(160) — *False statement—Crim. Pro. Code* (1882), *s.* 161.—A false statement in answer to a general opening question recorded under s. 161, Crim. Pro. Code, makes the person making the statement, liable to be punished under s. 191, I.P.C. QUEEN EMPRESS v. ABDUR RAHMAN, 7 P R. 1896, Cr.

See ABETMENT, 20 W.R. Cr. 41.

See ACT IX OF 1860, s. 19, 5 M.H.C. 326.

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See ACT X OF 1873, ss. 4, 5, 14, 16 M 421 = 1 Weir 175, 19 M. 375 = 2 Weir 680 = 6 M.L.J. 195.

False statement before Registrar—Irregularities in proceedings—*See* ACT III OF 1877, ss. 72 and 73, 10 C. 604.

See ACT III OF 1877, s. 82, 18 W.R. Cr. 15 = 5 B.L.R. Ap 89, 20 C. 719.

See ACT XVIII OF 1879, 6 M. 252 = 1 Weir 116 = 1 Weir 156 = 1 Weir 785 = 7 Ind. Jur. 247.

See BEN. ACT VIII OF 1885, s. 95, 20 C. 724.

Fabricating false evidence—*See* ATTEMPT, 4 N.W.P. 133.

See CHARGE—GENERAL, 1 W.R. Crl. Letters. 9, 39 P.R. 1888, Cr.

See CHARGE—FORM OF CHARGE, 5 B.H.C. Cr. 55, 9 W.R. Cr. 14.

See CHARGE TO JURY—MISDIRECTION, 2 W.R. Cr. 60, 7 W.R. Cr. 69.

See CONFESSION—RETRACTED CONFESSIONS, 11 B 702, F.B.

See CONVICTION, 4 C.L.R. 338.

See CRIM. PRO. CODE, 1898, ss. 4, 195, 487, 20 M. 383 = 2 Weir 613.

See CRIM. PRO. CODE, 1898, ss. 144, 435 and 476, 19 M. 18 = 2 Weir 591 = 2 Weir 94 = 5 M. L.J. 249.

Contradictory statement before a qualified Magistrate in the preliminary enquiry—Alternative charge—*See* CRIM. PRO. CODE, 1898, s. 164, 14 Bom. L R. 753 = 16 Ind. Cas. 517 = 13 Cr.L J. 709 = 1 Bom. Cr. C. 167.

See CRIM. PRO. CODE, 1898, ss. 195, 476, 487, 14 A. 354 = A.W.N. 1882, 32, 3 Bom. L.R. 185.

See CRIM. PRO. CODE, 1898, ss. 214, 477, 487, 1 B. 311.

See CRIM. PRO. CODE, 1898, ss. 233, 236, 2 Weir 299, 2 Weir 300.

Two persons accused of giving—Same case and same point—Joint trial—Illegality—*See* CRIM. PRO. CODE, 1898, s. 236, 5 S L R. 129 = 13 Ind. Cas. 215 = 13 Cr. L J. 23.

See CRIM. PRO. CODE, 1898, s. 236, 60 P.L. R. 1903.

See CRIM. PRO, CODE, 1898, ss. 255 and 342, 3 L B R. 208 = 4 Cr. L J. 471.

See CRIM. PRO. CODE, 1898, s. 282, 19 M. 375 = 2 Weir 680 = 6 M L J. 195.

See CRIM. PRO. CODE, 1898, ss. 337 and 339, 8 Bom. L R, 740 = 4 Cr. L.J. 346 = 30 B. 611.

See CRIM. PRO. CODE, 1898, s. 476, 3 L.B. R. 204 = 4 Cr. L J. 469.

See CRIM. PRO. CODE, 1898, ss. 476, 477, 5 C.W.N. 630.

See CRIM. PRO. CODE, 1898, ss. 481, 482, 195, 476, 1 A. 625, F.B.

See CRIM. PRO CODE, 1898, s. 487, 3 M. 254.

See CRIM. PRO. CODE, 1898, ss. 487, para 1, 476, 22 W.R, Cr. 49.

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See DEFAMATION, L.B.R. 1893—1900, 206.

See DEPOSITION, L B R. 1893—1900, 21.

See EVIDENCE—GENERAL, 9 W.R. Cr. 58.

See FALSE CHARGE, L.B.R. 1893—1900, 443.

See FORGERY, 4 L.B.R. 45=6 Cr. L.J. 283, 8 A. 653.

See JOINT TRIAL, 4 A. 293=A.W.N. 1882, 37, A W.N. 1882, 44, 64, 160, 4 Bom. L.R. 53.

See OATH, 11 B.H.C. 11.

See SENTENCE—CUMULATIVE AND SEPARATE SENTENCES, 7 W.R. Cr. 59.

See SENTENCE—IMPRISONMENT—GENERAL, 8 W.R. Cr. 18, A.W.N 1889, 206.

See SENTENCE—POWERS OF APPELLATE COURT—MITIGATION, 8 W R. Cr. 7.

See SESSIONS JUDGE, JURISDICTION OF, 3 B.L R.A. Cr. 35, 8 W R. Cr. 30.

See WITNESS — MISCELLANEOUS CASES, 4 M. 227=2 Weir 584.

False Impression.

Statements, true but, creating — whether fraudulent.—*See* PENAL CODE, ss. 415, 418, 5 S L.R. 95=12 Ind. Cas. 641=12 Cr. L.J. 553.

False Imprisonment.

Suit for damages—Police investigation and arrest—Maintainability of suit.—Where the defendant, who got badly beaten, told the police that the plaintiff and others had beaten him, and the police, after an investigation, arrested the plaintiff and others who were all eventually acquitted by the Sessions Court, *held* that no suit for damages for false imprisonment lay against the defendants. BALBHADDAR PANDE v BASDEO PANDE, A.W.N. 1906, 263=3 A L J 650 (26 M. 362, *F.*)

False Inducement.

Debt really due—Payment made in the expectation of bond securing the debt being returned—Return of another and a false bond—Money paid available for other existing debt—False pretence—Fraud and deceit—Damage or loss, remote, if contemplated—Conduct of parties—*See* CHEATING—GENERAL, 2 C.L.J. 524=3 Cr. L.J. 160.

False Information.

See FALSE CHARGE.

See PENAL CODE, ss. 182, 211.

(1)—*Penal Code, s.* 182—*False information to the police.*—S. 182 of the Code must be read as a whole, and, taken as a whole, it applies to those cases in which the police are induced, upon the informations supplied to them, to do or omit to do something which might affect some third person and which they would not have done if they had known the true state of things. Where a person falsely informs the police that he was robbed, without mentioning any specific person on whom he has suspicion, such conduct, although extremely wrong, does not come within the meaning of the section, or

False Information—*continued.*

does not amount to anything more than a hoax for which no punishment is provided in the Code. *In the matter of the petition of* GOLAM AHMED KAZI, 14 C 314. [*Diss*, 13 A. 351=A.W.N. 1891, 109, 13 B. 506, 1 Weir 118; *Commented on*, Rat. Un. Cr. C. 564.]

(2)—*Penal Code, s.* 197—*False notice of transfer of survey numbers.*—A person signed a notice of transfer of survey numbers, in the character of his father who was dead; and the declaration to this notice was signed by the accused, who confirmed the assumed character. *Held*, that the accused could not be convicted of giving false information to a public servant. QUEEN-EMPRESS v. MULHARJI, Rat. Un. Cr. C. 182.

(3)—*Penal Code, s.* 182—*Gist of the offence.*—For a conviction under the section, it must be proved positively that the accused gave the information by the production of the written complaint as far as possible and that he knew or believed it to be false. The accused is entitled to an acquittal on showing that he had reasonable grounds for believing the information to be true, and he is not bound to show that the information was in fact true. FATEH KHAN v. EMPRESS, 35 P.R. 1890, Cr.

(4)—*Penal Code, s.* 182—*What constitutes offence under*—To constitute an offence under s. 182, I P.C., there must be positive knowledge or belief that the information given was false. It is not sufficient to prove that the accused had reason to believe it to be false, or that he did not believe it to be true. HINGHAN KHAN v. EMPRESS 32 P.R. 1884, Cr.

(5)—*False statement in petition of appeal—Penal Code, s.* 182—An appellant making a false statement in his petition of appeal was held not to be liable to be punished under s. 182, I P.C., although the object was to induce the Court to send for the record of the case, and although the Court did in fact send for the record of the case, as it could not be said that the Court was induced to do what it ought not to have done. EMPRESS v. SUNT LAL, 41 P.R. 1881, Cr. [34 P R. 1879, Cr., *R.*]

(6)—*Penal Code, s.* 201—*Denial of knowledge of offence, in which accused had taken part.*—Where the accused denied all knowledge of an offence in which he really took part, he could not be convicted under s. 201, I P.C., for giving false information respecting an offence. FAKIR-UD-DIN v. CROWN, 4 P.R. 1877, Cr.

(7)—*Police falsely informed of complainant being in possession of stolen property—Penal Code, ss* 182, 211.—Where the accused, falsely and with intent to injure, informed the police that the complainant had stolen property in the house, and the police, thereupon, searched the house, and found the information to be false, *held*, that the accused was guilty of an offence under s. 211, I.P.C., and not under s 182, I.P.C. MUTHRA v ROORA, 16 P.R. 1870, Cr. (F.B.), [*R.*, 14 P.R. 1882.]

False Information—*concluded.*

(8)—*Penal Code, s.* 177—*Memorandum of appeal.*—To make a false representation in a memorandum of appeal is not an offence under s. 177, I.P.C., as such a memorandum is not required by law to be in writing. GHANAYA v. EMPRESS, **17 P.R. 1879, Cr.**

(9)—*Penal Code, s.* 182.—Where the accused presented a plaint and requested the Judge to hear the case in his own Court, and not to transfer it to the Tahsildar for disposal, alleging that the defendant would be favoured if the case was so transferred, *held*, that the act of the accused did not amount to an offence punishable under s. 182, I.P.C. EMPRESS v. GOKAL, **34 P.R. 1879, Cr.** [*R.*, 41 P.R. 1881, Cr.]

See ACT I OF 1894, ss. 9 and 10, 27 C. 985 =5 C.W.N. 131.

Contradictory statements to Police and to Magistrate—Conviction in the alternative for, false evidence—*See* FALSE EVIDENCE, 1 L.B.R. 101.

See PENAL CODE, s. 177, 13 C.W.N. 191= 5 M.L.T. 93.

See PENAL CODE, ss. 177, 182, Rat. Un. Cr. C. 76=Cr. Rg. 10-7-1873.

See PROSECUTION, 27 C. 985=5 C.W.N. 131.

—to police officer—*See* SANCTION TO PROSECUTE — AUTHORITIES COMPETENT TO GRANT SANCTION, ETC., 2 Weir 156.

False Measure.

See PENAL CODE, ss. 264 to 267.

See WEIGHTS AND MEASURES.

False Name.

Purchase of stamp paper under—*See* PENAL CODE, s. 177, Rat. Un. Cr. C. 210=Cr. Rg. 19-2-1885.

False Name and Address.

Cheating—Giving—to avoid prosecution — *See* CHEATING—FALSE PERSONATION, Rat. Un. Cr. Cas. 635=Cr. Rg. 10 of 1893.

False Personation.

See CHEATING.

See CHEATING—FALSE PERSONATION.

(1)—*Penal Code, s.* 205—*Offence under the section, what constitutes*—An offence under s. 205 is committed even though the individual personated consents to the personation. Any fraudulent gift or benefit to the offender is not a necessary element of the offence. *In re* ANDI SERVAI, 1 Weir 182=**1 M.H.C. 450.** [*R.*, 5 Bom. L.R. 138.]

(2)—*Penal Code, s.* 205—*Offence under the section, what constitutes.*—To constitute the offence of false personation under s. 205, it is not enough to show the assumption of a fictitious name. It must also appear that the assumed name was used as a means of falsely representing some other individual. It is not an uncommon thing for men to pass under names not their own for the purpose of disguise, in some instances from blameless and in other

False Personation—*continued.*

instances indifferent or bad motives, "incog," as the disguise is often termed in the former, and "with" or under an "alias" in the latter instances. But whatever the motive, the use of an assumed name without more is not a criminal offence. It only becomes a crime when connected by proof with some other act or piece of conduct; and the gist of the offence of false personation under s. 205, is the feigning to be another known person. There are sections of the Penal Code, *viz.*, ss. 140, 170, 171 and 415, under which the false assumption of appearance or character may be an offence, though no individual is meant to be represented, or only an imaginary person. CRIMINAL PETITION NO. 224 OF 1867, **1 Weir 182=4 M.H.C. 18.**

(3)—*Cheating by personation and inducing delivery of property—Penal Code, s.* 420.—A person, who going to an opium shop with another man's ticket, and explicitly or by implication representing himself to be that person, induces the shop-keeper to deliver to him a certain quantity of opium, commits the offence of cheating by personation, and where opium is actually delivered in consequence of the cheating, he should be convicted under s. 420, Penal Code. CROWN v. PO LU, **1 L.B.R. 356.** [*R.*, 3 Bur. L.T. 11=11 Cr. L.J. 686 =8 Ind. Cas. 596.]

(4)—*Personation before Registrar—Registration Act* (XX *of* 1866), *ss.* 93 *and* 94—*Penal Code, s.* 419.—A vendor proceeded in company with three persons to Dacca to register her deed of sale. Falling ill on the way, the three companions went to the Registrar's Office; one of them there personated the vendor, and got registry of the deed. She was convicted of cheating by false personation, and the other two of abetting that offence. *Held*, on revision, that, as there was no intention apparent on the part of the accused to injure or defraud any one, the convictions should have been under ss. 93 and 94 of Act XX of 1866, and not under s. 419 of the Penal Code. QUEEN v. LUTHI BEWA, **2 B.L.R.A. Cr. 25=11 W.R. Cr. 24.**

(5)—*Penal Code, s.* 205—*Personating imaginary person.*—Under s. 205 of the Penal Code, it is criminal to personate an imaginary person. QUEEN v. BITTOO KAHAR, **1 Ind. Jur. O.S. 123.**

(6)—*Assumption of name and character of the person personated, necessary—Intention of falsely personating to be sufficiently established in cases of.*—It is necessary, to a conviction for false personation under s. 205, Penal Code, that the accused should have assumed the name and character of the person whom he personates. Where the accused merely presented a true petition signed by, and proceeding from, another person, assigning a very good and true reason for doing so, and the moment he was called on by the only legal authority, the Court, whose duty it was to entertain the petition, to say if he was or was not the person, he at once admitted he was not, and explained

False Personation—*concluded.*

why he had presented a petition bearing that person's name and emanating from him. *Held*, that there was no intention to falsely personate such person. QUEEN v. NARAIN ACHARJ, 8 W.R. Cr. 80.

See ACT XX OF 1866, ss. 93, 94, 11 W.R. Cr. 24=2 B.L.R. A. Cr. 25.

See ACT III OF 1877, s. 82 (*c*), 5 Bom. L.R. 138.

See EXTORTION, 10 A. 58=A.W.N. 1887, 274.

See PENAL CODE, s. 170, 9 Bom. L.R. 222 =5 Cr.L.J. 211.

See REVISION—QUESTION OF FACT, 9 Bom. L.R. 706=6 Cr.L.J. 70.

See SANCTION TO PROSECUTE—CONDITIONS REQUISITE FOR GRANT OF SANCTION, ETC., 4 M.L.J. 189.

False Petition.

Writing false anonymous petition to Collector —*See* FALSE CHARGE, 1 Weir 121.

See FALSE EVIDENCE, 7 C.L.R. 536.

False Plea.

Pleader setting up a, of alibi—Professional misconduct—*See* LEGAL PRACTITIONERS — PLEADER, 20 M.L.J. 498.

False Pretence.

By recruitors of emigrants—Jurisdiction—Place of trial—*See* ACT XIII OF 1864, s. 71, 4 M.H.C. App. 4.

See CHEATING—GENERAL, 2 C.L.J. 524 =3 Cr.L.J. 160.

Promise to do something in future whether amounts to—*See* PENAL CODE, s. 420, 269 P. L.R. 1914.

False Receipt.

Penal Code. ss. 463 *and* 471—*Forgery and using a forged document—Dishonest or fraudulent intention, necessity of proving—False receipt—Preparation or use, if an offence.*—Where the accused, a Tahsildar of an estate, prepared a false receipt acknowledging on the part of his employer the receipt of certain papers, and it was proved that some of those papers were in the office of the estate but as to the rest, the prosecution failed to prove, that they were not also in the office of the estate. *Held*, that the accused could not be convicted of an offence under s. 471, I.P.C., as the prosecution had failed to prove any dishonest or fraudulent intention, on the part of the accused, in making use of the receipt. The preparation of a false receipt acknowledging on the part of a certain person the receipt of certain documents, after having made over those documents to that person, does not amount to an offence under s. 463, I.P.C., nor does the use of such a receipt constitute an offence under s. 471, I.P.C. RAM PROSAD MAITY v. EMPEROR, 12 C.W. N. 1113=8 C.L.J. 317=8 Cr. L.J. 418.

False Record.

Sanction to prosecute—Village Magistrate fabricating record of criminal case—*See* SANCTION TO PROSECUTE—CONDITIONS REQUISITE FOR GRANT OF SANCTION, ETC., 4 M. L.T. 473=32 M. 255=9 Cr. L.J. 89=3 Ind. Cas. 387.

False Representation.

See FALSE PERSONATION.

Of a girl belonging to a lower caste as of a higher caste and inducing one to contract marriage with her—*See* PENAL CODE, ss. 372, 373, 2 A. 694, F.B.

False Return.

Making, of service of summons—*See* FALSE EVIDENCE, 8 W.R. Cr. 27.

False Scales.

See WEIGHTS AND MEASURES, Rat.Un. Cr. C. 514=Cr. Rg. 36 of 1890.

False Statement.

See FALSE CHARGE.
See FALSE EVIDENCE.
See FALSE INFORMATION.
See PENAL CODE, SS. 191—200.
See PERJURY.

(1)—*Contradictory statements in the same deposition.* — Where contradictory statements are made in the course of a single deposition at one and the same time, it will be improper to hold such contradiction to be an offence, simply by reason of the fact that there is a contradiction. *In re* CHENNAMMA, 2 Weir 169.

(2)—*Crim. Pro.Code*, s. 239—*False statement, charge of, against several persons.*—When several persons are charged with making false statements, they should be charged and tried separately. *In re* PONAGANTI MUSALYYA, 2 Weir 304.

(3)—*Registration Act*, 1871, *s.* 80—*False statement.*—As to what amounts to making a false statement—*See* CROWN v. ISHURDASS, 17 P.R 1871, Cr.

See ACT III OF 1877, ss. 34 (*b*) and 82 (*a*), 1 Weir 884.

False statement in an enquiry before Deputy Collector—*See* ACT I OF 1879, s. 51, 5 A. 17.

In balance-sheet before winding up of a Company—*See* ACT VI OF 1882, s 215, 16 A. 88=A.W.N. 1894, 23.

Sale-deed with—of consideration—*See* PENAL CODE, s. 423, 10 P.R 1902, Cr.=75 P.L.R. 1902.

False statement as to consideration—*See* PENAL CODE, s. 423, 25 A. 31=A.W.N. 1902, 173.

False Verification.

(1)—*Penal Code*—*S.* 177—*Income-tax petition —False verification.*—A false verification in an objection petition to the assessment of income-tax is an offence punishable under s. 177. EMPEROR v. RUP SINGH, 44 P R. 1905=187 P.L.R. 1905=3 Cr.L J. 128. (24 M. 121; *R.* 27 C. 820; *D.*)[*R.* 22 Ind. Cas. 146=15 Cr. L.J. 2.]

False Verification—*concluded.*

Of plaint—*See* PENAL CODE, ss. 193, 209, Rat. Un. Cr. C. 25=Cr. Rg 23-9-1869.

See SANCTION TO PROSECUTE—AUTHORITIES COMPETENT TO GRANT—SANCTION, ETC. A.W N. 1884, 57.

Falsification.

Of public document—*See* PENAL CODE, s. 218, Rat. Un. Cr. C. 201.

Falsification of Accounts.

See CRIMINAL MISAPPROPRIATION, 6 Bom. L.R. 94.

See PENAL CODE, s. 477-A, 6 Bom. L.R. 553.

Family.

Cattle not members of—*See* BOM. ACT VI of 1873, s. 53 (1), Rat. Un. Cr. C. 412=Cr. Rg. 78 of 1888.

Fatal Accidents Act.

See ACT XIII of 1855.

Father.

"Person aggrieved," meaning of—Person competent to institute and carry on proceeding—Father of a lunatic, whose wife has been married a second time, if an aggrieved person in the legal sense—*See* CRIM. PRO. CODE, 1898, s. 198, 3 C.L.J. 38=3 Cr. L J. 187.

Fees.

Immoveable property, dispute relating to—Fees paid by pilgrims for performing Sradh ceremony at Gaya are not profits of immoveable property—*See* DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 3 C.L.J. 137=3 Cr. L J. 214.

Fees Cess, in lieu of Village Fees Act.

See MAD. ACT IV OF 1864.

Fees—Court Fees Act.

See ACT VII OF 1870.

Fees—Out ports Landing and Shipping Fees Act.

See MAD. ACT III OF 1885.

Fees—Presidency Magistrates' Court Fees Act

See ACT IV OF 1877.

Female.

Statement not inconsistent with innocence of accused—Statements of accused if admissible against male accused—*See* EVIDENCE ACT, 1872, ss. 10, 30. 14 Cr. L.J. 586=21 Ind. Cas. 378=18 C.L.J. 590.

Female Infanticide Prevention Act.

See ACT VIII OF 1870.

Ferries Act.

See BOM. ACT XXXV OF 1850.

See BOM. ACT II OF 1868.

See BUR. ACT II OF 1873.

See BUR. ACT II OF 1898.

Ferries, amending Bengal Regulation VI of 1819.

See BEN. ACT I OF 1866.

Ferries, Northern India, Act.

See ACT XVII OF 1878.

Ferry.

See FERRIES ACT.

(1)—*North India Ferries Act* XVII *of* 1878 *and Act* III *of* 1886, *s.* 13—*Notification by Government under s.* 4—*Prohibited limits for private ferries Construction.*—S. 13 of the Ferries Act XVII of 1878 lays down that a private ferry should not ply for hire within two miles of the limits of a public ferry. But a notification issued by the Local Government under s. 4 of the Act, in laying down the limits of public ferries, gave very wide limits to some and narrow limits to others. Side by side with these limits, the prohibited areas for private ferries in regard to the limits of each public ferry were also given and such areas were, in the case of public ferries with very wide limits, those limits only, while in the case of other ferries, it was the statutory distance of two miles. On a charge against a private ferryman for plying in contravention of the Act into a space within two miles of the limits of a public ferry with very wide limits as above, *held* the statutory prohibition of two miles did not, under the Notification above referred to, apply to the case of public ferries with wide limits in whose case the Notification restricted the prohibited area. EMPEROR v. BABAN, A.W N. 1905, 262 =3 Cr. L.J. 50.

(2)—*Suit to re-open a ferry—Bengal Act* I *of* 1866, s. 2.—Where a suit was brought to re-open a ferry which had formerly belonged to the Government and which had been included in a settlement which the plaintiff had obtained of a certain estate from the Government, but another public ferry had since been opened under the direction of a Magistrate within two miles of the place where the plaintiff now sought to re-open his own ferry. *Held* that the suit was not maintainable as being against the provisions of s. 2, Act I of 1866. DEWAN RAM JEWUN SINGH v. THE COLLECTOR AND MAGISTRATE OF SHAHABAD, 15 W R 132.

(3)—*Management of — Bengal Reg.* VI *of* 1819, s. 13, *cl.* 2 —Cl. 2, s. 13 of Reg VI of 1819, only applies where there has been an accident. Where the Magistrate thinks that a ferry is improperly kept and is in a dangerous condition, he should proceed under s. 4. QUEEN v. DEEYANUTOLLAH, 7 W.R. Cr. 32.

(4)—*Conveyance of goods or passengers by ferry.*—Isolated act of conveying goods or passengers by ferry is not punishable under Ferries Act. QUEEN-EMPRESS v. NGA CHAN THA, U B R. 1897—1901, Vol. I, 194.

See ACT XVII OF 1878, s. 2, A.W.N. 1891, 135.

See ACT XVII OF 1878, ss 13 and 26, A.W. N. 1905, 262=3 Cr. L.J. 50.

Ferry—*concluded.*

See BEN. ACT III OF 1884, ss. 155 and 156, 27 C. 317=4 C W.N. 348.

Servant levying toll without master's knowledge—Liability of master—*See* CRIM. PRO. CODE. 1898, ss. 233, 234, 1912 M.W.N. 69=13 Ind. Cas. 780=13 Cr L.J. 124.

See CRIMINAL TRESPASS, 1 A. 527.

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 3 C.W.N. 148, 26 C. 168=3 C.W N. 49.

See PENAL CODE, s. 304-A, 16 A. 472=A.W.N. 1894, 182.

Fighting.

See COCK FIGHTING.

Final Order.

See SECURITY TO KEEP THE PEACE—FINAL ORDER—ORDER LIMITED BY REQUISITION.

Conditional order. vague and indefinite—Final order, scope of—*See* CRIM. PRO. CODE, 1898, ss. 133, 137, 140, 11 C.L.J 114.

Finding.

See ALTERNATIVE FINDING.

(1)—*When High Court can alter lower Court's finding.*—The High Court is empowered to alter a finding of the Court below and to convict the accused for an offence which the facts established by the prosecution properly constitute. EMPRESS v. RAMDIN, 13 C P L.R. 125

(2)—*Crim. Pro. Code, s. 289—Finding of "not proven."*—There is no legal warrant for a finding of "not proven." In such cases, the Judge should enter a judgment of acquittal before discharging the prisoner. *In re* KORADA GUMMANNA, 2 Weir 381.

See CRIM. PRO. CODE, 1898, s. 289, S C. 274, Oudh.

Power of appellate Court to alter—*See* CRIM. PRO. CODE, 1898, s. 423 (*b*) (2), 34 M. 545=8 M L.T. 313=7 Ind. Cas. 861=11 Cr. L.J. 534.

See JUDGMENT. 6 M.H C. App. 47.

See SESSIONS JUDGE, JURISDICTION OF, Colm. Dig. Cr. 29 of 1876.

Finding of Fact.

Revision—*See* PENAL CODE, s. 498, 36 P.W.R. 1913, Cr.=319 P.L.R. 1913=21 Ind. Cas. 467=14 Cr. L.J. 595.

Fine.

See SENTENCE.

Fines by Magistrate's Act.

See ACT II OF 1839.

Finger Impressions.

See EVIDENCE.

See EVIDENCE ACT, 1872, s. 45.

See EXPERT.

(1)—*Crim. Pro. Code, s. 511—Modes of proving previous conviction—Proof of identity of*

Finger Impressions—*concluded.*

accused by finger-impressions—Their evidentiary value—Limitations of expert evidence — Evidence Act, ss. 45. 74 and 78.- The manner. in which a previous conviction may be proved, is not limited to the method laid down in s. 511, Crim. Pro. Code. Any relevant evidence, upon which a Court can properly base a finding, that the accused before it was. on some previous occasion, convicted for an offence, will do, as well as the methods indicated in s 511. The papillary ridges on the bulls of the fingers and thumbs, by means of which the finger impressions are made, while proved to be almost beyond change from birth to death, are never wholly repeated in the case of the fingers of any other person, and they, therefore, furnish a surer test of identity, than any other comparable bodily feature. Where two prints, made on different occasions, resemble one another in the *minutæ* and contain no points of disagreement, an irresistible conclusion arises that they were made by the same finger. The evidence of identification is thus both positive and negative, and confirmation from other source is superfluous. Under s. 45. Evidence Act, as amended by Act V of 1899, expert evidence may be given on finger-impressions; while s. 73 has been applied to them with necessary modifications, so as to permit of comparison being made for arriving at a finding on the basis of their decipherment. An expert may give his opinion on the point on which he is called upon to give his evidence. But he cannot go on and assert his mere opinion or belief, as if it were a *fact* within his knowledge. In this respect, an expert witness is in a different position from a direct witness of fact. The value of *ordinary or non expert* oral evidence mainly rests on the *credibility* of the witness—his inclination and capacity, for telling the truth: the value of *expert* evidence rests on the *skill* of the witness—the extent of his competency for forming a reliable opinion. A document called "a finger impression slip" without authoritative signature or certificate of any kind, showing it to be an authorised record of police acts, cannot be regarded as a public document, within the meaning of s. 74, Evidence Act. Even if it is assumed that it is such a public document, it is nevertheless necessary under s. 78 (1) of the Evidence Act to prove it. The mere production of it does not prove it. And for evidential purposes, such a document is no better than a blank paper with the accused's finger-impressions upon it. EMPEROR v SAHDEO, 3 N L R 1=5 Cr.L.J. 220. [*R.*, 9 Cr.L J. 56=4 N.L.R. 163.]

Finger Print Bureau.

Proof of previous conviction—Identification of accused—Certificate of officer in charge of—Admissibility of—*See* EVIDENCE-EXPERT EVIDENCE, 4 L.B.R. 125=7 Cr. L.J. 406.

Fire.

Negligent conduct with respect to fire—Evidence—*See* PENAL CODE, s. 285, L. B. R. 1872—1892, 134.

Fire-arms.

Unserviceable—Possession of, without license —*See* ACT XI OF 1878, ss. 4, 19, 6 M. 60, F.B. =1 Weir 657.

Fire Brigade, Jute Warehouse Act.

See BEN. ACT II OF 1872.

Fire-works.

Manufacture or possession of—Rocket—*See* ACT XI OF 1878, ss. 4, 5 and 9, 5 M. 159=1 Weir 655.

See ACT XI OF 1878, s. 19 (*a*), 1 Weir 655=1 Weir 656=1 Weir 756.

First Class Magistrate.

See MAGISTRATE, JURISDICTION OF.

See CRIM. PRO. CODE, 1898, ss. 10, 12, 32 M. 303.

See SANCTION TO PROSECUTE—AUTHORITIES COMPETENT TO GRANT SANCTION, ETC, Rat. Un. Cr. C. 511=Cr. Rg. 35 of 1890.

First Information.

When should be recorded—*See* CRIM. PRO. CODE, 1898, s. 154, 7 C W.N. 345.

Nature and use of—*See* CRIM. PRO. CODE, 1898, s. 154, 11 C.W.N. 554=6 Cr. L J. 86.

Object of—How to be recorded—What is—First information drawn up by Police officer after commencement of investigation and settled by attorney if legal—*See* CRIM. PRO. CODE, 1898, ss. 154, 167, 172, 13 Cr. L.J. 65=16 C.W.N. 145=13 Ind. Cas. 721.

Whether substantive evidence—*See* CRIM. PRO. CODE, 1898, ss. 154, 374, 17 C.W.N. 1213.

First Information Report.

See CHARGE TO JURY—MISDIRECTION, 7 C.L.J. 599=12 C.W.N. 774=35 C. 531=8 Cr. L.J. 6.

First Offender.

See CRIM PRO CODE, 1898, s. 562.

See RELEASE ON PROBATION OF GOOD CONDUCT.

See SECURITY FOR GOOD BEHAVIOUR, 4 L.B.R. 12=6 Cr. L.J. 123.

First Report.

(1)—*First Report—No mention of offender therein—Subsequent assertion of his having been seen not reliable—Value of track evidence.*—Where the first report makes no mention of the offender on the ground that the complainant when questioned, named nobody as his assailant, and there is no assertion therein that any fugitive had been seen, the complainant's subsequent statement that he had identified the accused at the time of the attack and the evidence of his neighbours that they saw him running with the instrument of crime in his hands cannot justly be relied upon. *Held* also that track evidence of a flimsy nature should not be believed without sufficient corroboration. RONKI v. CROWN, **10 P W R 1915, Cr =91 P.L.R. 1915=16 Cr. L.J. 222=27 Ind Cas. 846.**

First Report—*concluded.*

(2)—*First Report—Dacoity—Subsequent evidence of identification of dacoits—Corroboration.*—*Held*, that, where in the first report only two dacoits are alleged to have been recognised at the time of committing the dacoity, subsequent evidence that they were all identified cannot be relied upon, unless there is a strong corroboration to support it, as, for instance, recent possession of stolen property. NUR KHAN v. CROWN, **8 P.W R. 1915, Cr.=93 P L.R. 1915 =16 Cr. L.J. 204=27 Ind. Cas. 764.**

Doubt—Revision—Concurrent finding, setting aside of—*See* CRIM. PRO. CODE, 1898, s. 439, 5 P.W R. 1913, Cr=14 Cr. L J. 320=19 Ind. Cas. 1008=152 P.L.R. 1913.

See PENAL CODE, ss. 147, 304, 35 P.W.R. 1913, Cr=318 P.L.R. 1913=21 Ind. Cas. 593=14 Cr. L.J. 593.

Value of—Admission of its certified copy in revision—Punishment—*See* PENAL CODE, s. 498, 29 P.W.R. 1911, Cr=214 P.L.R. 1911=12 Cr. L J. 500=12 Ind. Cas. 220.

Fiscal Enactments.

Construction of—*See* STATUTES, CONSTRUCTION OF, 11 M. 253=11 Ind. Jur. 369.

Fish.

Fish in a pond—Whether can be subject of theft—*See* PENAL CODE, s. 378, 1914 M.W.N. 368=22 Ind. Cas. 429=15 Cr. L.J. 77.

Fish — Open and unenclosed water — Whether subject of theft—*See* PENAL CODE, s. 378, 5 S.L.R. 122=13 Ind. Cas. 214=13 Cr. L J. 22.

Theft—Irrigation tank—Removal of—Facts of each case to be looked into—*See* PENAL CODE, s. 379, 13 Cr. L.J. 38=13 Ind. Cas. 278 =1912 M.W.N. 42=22 M.L.J. 184=11 M.L. T. 23=36 M. 472.

Selling, on or near a public road—*See* PUBLIC NUISANCE, L B.R. 1872—1892, 94.

In a tank used for storage of water—*See* THEFT—THINGS IN RESPECT OF WHICH THE OFFENCE OF THEFT CANNOT BE COMMITTED, 1 Weir 384.

In ordinary open irrigation tanks — *See* THEFT—THINGS IN RESPECT OF WHICH THE OFFENCE OF THEFT CANNOT BE COMMITTED, 1 Weir 384.

Taking, from a navigable river—*See* THEFT —THINGS WHICH MAY BE THE SUBJECT OF THEFT, 19 W.R. Cr. 47.

Fisheries Act.

See ACT IV OF 1897.

See BUR. ACT VII OF 1875.

Fisheries (Private) Protection Act.

See BEN. ACT II OF 1889.

Fishery.

See BUR. ACT VII OF 1875, s. 2, L.B.R. 1893—1900, 202.

Fishery – *concluded.*

Jurisdiction of Magistrate in case of dispute as to joint possession—*See* CRIM. PRO. CODE, 1898, s. 145, 11 C.L.J. 412=6 Ind. Cas. 544=11 Cr. L J. 370.

See CRIM. PRO. CODE, 1898, s. 147, 23 C. 55.

Continuing exercise of right of — After prohibition—*See* CRIMINAL TRESPASS, 9 B. L.R. App. 19=18 W.R. Cr. 25.

Attempting to fish in a tank over which the owner has no right of fishery—*See* CRIMINAL TRESPASS, 1 Weir 519.

See CRIMINAL TRESPASS, 2 C. 354.

Fishing in a public tank—*See* CRIMINAL TRESPASS, 1 Weir 520.

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 23 C. 557, 13 C. 179, 12 C. 539.

See MISCHIEF, 28 A. 204=A.W.N. 1905, 255=2 A.L J. 826, 15 C. 383, 8 B.H.C. Cr. 63, 3 B.L R.A. Cr. 17=12 W.R. Cr. 1.

See PENAL CODE, s. 379, 14 C.W.N. 408=5 Ind. Cas. 794.

See RIOTING, 26 C. 574.

Removal of fish from an ordinary open irrigation tank—*See* THEFT—THINGS IN RESPECT OF WHICH THE OFFENCE OF THEFT CANNOT BE COMMITTED, 24 M. 81=1 Weir 385.

See THEFT — THINGS IN RESPECT OF WHICH THE OFFENCE OF THEFT CANNOT BE COMMITTED, 15 C. 390, Note, 15 C. 392, 402, 5 M. 390=1 Weir 385.

See THEFT—THINGS WHICH MAY BE THE SUBJECT OF THEFT, 10 B. 193.

Fishing.

See BEN. ACT II OF 1889, s. 3, 6 C.W.N. 118.

Flint.

Possession of, or steel—*See* ACT VII OF 1878, s. 25 (c), 4 Bom.L.R. 935.

Flogging.

Summary power of—*See* ACT XXIX OF 1861, Art. 85, 11 P.R. 1863, Cr.

Fœtus.

Concealment of birth of, seven months old—*See* PENAL CODE, s. 318, 1 Weir 334.

See PENAL CODE, s. 318, 1 Weir 333.

Footpath.

Enclosing a — *See* CRIMINAL TRESPASS, 1 Weir 514=6 M.H.C. App. 26.

Foreclosure Decree.

Symbolical possession in execution of a, not effective against a lessee who was not a party to the mortgage suit—Actual possession to be considered in s. 145 Crim. Pro. Code—*See* DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 4 C.L.J. 562=4 Cr. L.J. 503.

Foreign Court, Jurisdiction of.

See CONFESSION—CONFESSIONS TO MAGISTRATES—ADMISSIBILITY, 12 A. 595=A.W. N. 1890, 199.

Confessions made before a Court outside British India—*See* CRIM. PRO. CODE, 1898, s. 164, 2 Weir 125.

Authentication of foreign records — Hearsay evidence admitted by, if admissible—Copy of document proved in, if admissible. *See* HABEAS CORPUS, 15 C.W N. 1053=14 C.L J. 375=12 Cr. L J. 505=39 C. 164=12 Ind. Cas. 273.

Foreigners Act.

See ACT III OF 1864.

Foreign Jurisdiction and Extradition Act.

See ACT XI OF 1872.

See ACT XXI OF 1879.

Foreign Offenders (Fugitive) Act.

See ACT VII OF 1854.

Foreign Recruiting Act.

See ACT IV OF 1874.

Foreign State.

Instigation in—to commit murder in British territory—*See* JURISDICTION OF CRIMINAL COURTS—GENERAL, 10 B.H C. 356.

British subject associating with foreign subjects in, for the purpose of habitually committing theft—*See* PENAL CODE, s. 401, 33 P.R. 1866, Cr.

Foreign States, Offences in, Act.

See ACT I OF 1849.

Foreign Territory.

Case where work was to be performed in—*See* ACT XIII OF 1859, 10 M. 21=1 Weir 671.

Offence continued and completed in British India though initiated in—Abetment—*See* PENAL CODE, ss. 4, 34, 107, 14 Bom.L.R. 147=14 Ind. Cas. 970=13 Cr.L.J. 426=1 Bom. Cr. C. 88=36 B. 524.

Foreign Territory, Offences committed In.

See CRIM. PRO. CODE, 1898, s. 188.

See NATIVE STATE.

(1)—*Offence committed in Native State — Jurisdiction* —A British Magistrate has no jurisdiction to try a person who is a resident of a Native State, for an offence committed in that State. QUEEN-EMPRESS v. RANCHHOD DAYA, 2 Bom. L R. 337.

(2)—*Offence committed outside British India —Mohurbhunj—Jurisdiction of High Court.*—The High Court cannot interfere, either in appeal or revision, with a sentence, passed by the Superintendent of Tributory mehals, with respect to offences committed in Mohurbhunj, situated out of British India. EMPEROR v. HURRO KOLE, 9 C. 288. (7 C. 523, 8 C. 985, *R.*)

(3)—*Offences committed in foreign states—Jurisdiction.*—Persons committing the offence of theft in a foreign territory and bringing the

Foreign Territory, Offences committed in—*cld.*

property so stolen into British territory cannot be convicted in the British Courts for theft, because the *forum delicti* does not lie in British territory; they cannot be convicted of receiving stolen property, for they cannot be both thieves and receivers, nor can they be convicted of retaining stolen property, because the law to be applied in the British Courts is the Penal Code, and to establish the offence of retaining stolen property, it is necessary first to show that the property was stolen, according to the law of the *forum*, the Penal Code, which has no operation in foreign territory, and against the provisions of which, therefore no offence could have been committed. But the offence of mischief is an independent offence having no necessary relation back to the original criminal act committed in a foreign country. If after the taking of the property, the accused persons entered British territory, they might then commit mischief in respect of it. HIGH COURT PROCEEDINGS, 22ND FEB. 1879, No. 302, 2 Weir 143.

(4)—*Crim Pro. Code* (1898), s 188—*Offence committed outside British India.*—Where an offence is committed outside British India, a commitment made without the Political Agent's certificate, as required by s. 188, is *ultra vires* and all proceedings taken by the Judge on such commitment are wholly void. *In re* SESSIONS JUDGE OF SOUTH ARCOT, 2 Weir 148.

(5)—*Offence committed in—Trial by British Court illegal. Crim. Pro. Code* (1882), *s.* 67.—An accused, who is not a British subject, committed an offence of theft in a Native State and carried the stolen property into British territory, where the British Police pursued and captured him and was tried by British Court and convicted: *held* that the conviction was illegal and that s. 67, Crim. Pro. Code, 1882, did not apply. POLICE v MUSSAMMUT THANI, Colm. Dig Cr. 94 of 1877.

See CHARGE—AMENDMENT OF CHARGE, Rat. Un. Cr. C. 33.

See CRIM. PRO CODE, 1898, ss. 170, 188, 8 Bom. L.R. 513=4 Cr. L.J. 54.

See ENTICING AWAY MARRIED WOMAN, 21 P.L R. 1902, F.B.

See JURISDICTION OF CRIMINAL COURTS—GENERAL 2 A. 218, F.B., 9 A 523= A.W.N. 1887, 131, 19 B. 105, 6 C. 307=7 C L J. 411, 5 M 23=1 Weir 1, 13 M. 423=2 Weir 147, 6 M.H.C. App. 3.

See PENAL CODE, ss. 1, 2, 75, 1 Weir 40.

See PENAL CODE, ss. 392, 411, A.W N. 1906, 52=3 A.L.J. 146=3 Cr. L.J. 217=28 A. 372.

Person sentenced in—Sentence by a Magistrate in British India—*See* SENTENCE—GENERAL, 20 M. 444=2 Weir 452.

See THEFT—MISCELLANEOUS, 10 B. 186.

See WRONGFUL CONFINEMENT, 19 B. 72.

Forest.

Attachment of a—Whether an elephant in the, can also be attached—*See* CRIM. PRO. CODE, 1898, ss. 145, 19 2 M.W.N. 540=14 Ind. Cas. 318=13 Cr. L J. 222.

Cutting bark from trees in Government Forest—*See* THEFT THINGS IN RESPECT OF WHICH THE OFFENCE OF THEFT CANNOT BE COMMITTED, 1 Weir 411.

Forest Act.

See ACT VII OF 1865.

See ACT VII OF 1878.

See BUR. ACT XIX OF 1881.

See MAD. ACT V OF 1882.

Forest Guard.

Allowing cutting and removal of trees without Government permission—*See* THEFT—MISCELLANEOUS, Rat. Un. Cr. C. 928=Cr. Rg. 36 of 1897.

Forest Officer, Jurisdiction of.

Sub-Assistant Conservator of Forests—Seizure and detention of timber—Want of a valid pass—*See* ACT VII OF 1878, ss. 52, 73, 15 B. 229.

Whether a public servant—*See* ACT VII OF 1878, s. 172, 10 B. 124.

False statements made to—*See* FALSE EVIDENCE, 12 B.H.C. 1.

Forest Regulation.

See REG. VII OF 1891.

See BUR. REG. V OF 1898.

See PUN. REG II OF 1879.

Forfeiture.

See ABSCONDING OFFENDER.

See CONFISCATION.

See CRIM PRO. CODE, 1898, s. 514.

See PENAL CODE, ss. 61-62.

See SENTENCE.

Of press—*See* ACT VII OF 1903, s. 3, 12 Bom. L.R. 120.

Surety bond to produce accused before Sessions Court—Proceeding for, if may be taken by a Magistrate — Delegation of powers—Validity—*See* CRIM PRO. CODE, 1898, ss. 514 516, 14 C.W.N. 259=2 Ind. Cas. 113=10 C.L. J. 248.

See CRIM. PRO. CODE. 1898, ss. 514, 529, 531, 16 Bom. L.R 84=2 Bom. Cr. C. 183=15 Cr.L.J. 295=23 Ind. Cas. 503.

Seizure of articles in accused's house—Falsity of case—Order directing articles to be forfeited to Government—Validity.—*See* CRIM. PRO. CODE, 1898, ss 523, 517, 203, 24 M L.J. 1, =18 Ind. Cas. 171=14 Cr.L.J. 27=1913 M.W. N. 851=14 M.L.T. 431.

Of security bond on conviction of principal—*See* SECURITY FOR GOOD BEHAVIOUR, 21 A. 86=A.W.N. 1898, 162.

See SECURITY TO KEEP THE PEACE—FORFEITURE OF SECURITY, 1 C.L.R. 134.

Forfeiture Act.

See ACT XXV OF 1857.

Forfeiture of Bond.

(1)—*Bond, forfeiture of—Notice to appear on a certain day—Proceedings taken on the following day.*—Where a person is ordered to be present on a certain day before a Magistrate to show cause why his bond should not be forfeited and he fails to be present on that day, the proceedings taken by the Magistrate on the subsequent day are not thereby alone vitiated. QUEEN-EMPRESS v. NIHAL CHAND DAHYABHAI, 2 Bom L.R. 589.

(2)—*Crim. Pro. Code, Act X of 1882, s. 514—Forfeiture of bond—Conditions—Evidence of breach of peace by others.*—A bond for security to keep the peace cannot be declared to be forfeited for a breach of the peace committed by the servants of the obligor. The record of a case to which the obligor was not a party but only his servants were, and which was not tried by the Magistrate who had called for the bond, is no evidence against the obligor regarding his liability to forfeiture, in the absence of any thing to show that he was privy to the acts of his servants. *In the matter of the petition of* BALKARAN RAI, A.W.N. 1891, 183.

Forfeiture of Property.

See ABSCONDING OFFENDER.

See CONFISCATION.

See CRIM. PRO. CODE, 1898, s. 514.

See PENAL CODE, ss. 61, 62.

See SENTENCE.

(1)—*Crim Pro. Code* (1861), s. 44—*Power to seize property.*—A Magistrate has no power to seize the property of a person convicted of theft, unless he has been sentenced to pay a fine. HIGH COURT PROCEEDINGS, 16TH JANUARY 1869, 4 M.H.C. App. 28.

(2)—*Penal Code, s. 61—Forfeiture of property.*—The Court set aside a sentence of forfeiture of property passed against the accused with the remark that the act of the accused was entirely his own arising out of his own bad conduct. His behaviour and act would probably be disapproved of and discouraged by his heirs and relatives, and under such circumstances it would be a hardship to deprive the family of their right of inheritance to his property, and no good effect would be produced by the forfeiture. TURAB v. CROWN, P.L R. 1900, 35, Cr.=23 P R. 1900, Cr.

(3)—*Ben. Reg. XI of 1796—Forfeiture against some members of joint Hindu family.*—Under Reg. XI of 1796, the Governor General in Council could pronounce an order of confiscation in cases of persons charged with offences of a criminal nature, who should abscond or conceal themselves so as not to be found upon process issued against them. After the issuing of the attachment by the Court and the subsequent declaration of forfeiture, everything previous to the attachment must be presumed to have been regularly and legally done, unless such presumptions were rebutted by sufficient evidence. Where a forfeiture under Reg. XI of 1796 was declared against three or four brothers constituting a joint undivided Hindu family, *held*, that the forfeiture did not enure for the benefit of the fourth brother, nor did it affect the rights of the fourth brother, who was entitled to his fourth share in all the ancestral property of the family, and that the widow of the ancestor was also entitled to maintenance. MUSST. GOLAB KOONWAR v COLLECTOR OF BENARES, 7 W R P.C 47=4 M.I.A. 246=1 Suth. 186=1 Sar. 348.

(4)—*Attachment against forfeited property—Act XXV of 1857—Priority to Government.*—Judgment-creditors having *bona fide* attachments upon property at the time that the property of their debtors became forfeited to the Government under Act XXV of 1857 are entitled to priority to the Government. OODIT DAS v. GOVERNMENT, Marsh 259=2 Hay 117.

(5)—*Right of decree-holder.*—A decree-holder is not entitled to have his decree satisfied by sale of the judgment-debtor's properties which have been confiscated by the Government for rebellion, unless he can show that they were attached in execution of his decree before confiscation. An attachment cannot be presumed to have existed or continued from the fact that there was a proclamation of sale before confiscation. RADHA BIBEE v. GOVERNMENT, 2 Hay 562.

(6)—*Withholding of payment of annuity—Act IX of 1859, s. 18.*—The plaintiff joined with the rebels and took a leading part with them. A reward was set upon him as a rebel leader, and after a time he was captured. No formal proceedings were taken under ss. 2 and 7 of Act XXV of 1857 for adjudicating his property (which consisted of little more than an annuity) to be forfeited. The property charged with the annuity was in the hands of the Collector as the manager under the Court of Wards. The annuity was withheld, and was no longer regarded as a charge on the estate, but was treated as merged. *Held* that the mere withdrawal of the payment of annuity by those who had the management of the estate, which was charged with the payment, would be an illegal act in no way affecting the plaintiff's right; but as the withholding of the payment was under the authority and direction of the official who was authorized to make attachment of rebels' property, it was with reference to the nature of the property equivalent to an attachment of seizure, and could not be questioned except under the provisions of s. 18 of Act IX of 1859, notwithstanding there had been no adjudication of forfeiture. CHUNDA v. ROOP SINGH, 3 Agra 281.

(7)—*Forfeiture of share in joint Hindu family property—Mitakshara Law—Act XXV of 1857, s. 3.*—B. S., the father of the plaintiff and in possession of immoveable property subject to the Mitakshara law inherited from his ancestor, was, on the 10th December, 1857,

Forfeiture of Property—*continued.*

after proceedings taken under Act XXV of 1857, declared to be a rebel, and it was ordered that all his property should be confiscated to the Government. On the 10th April, 1858, B. S. was arrested, and being tried and convicted under a charge of rebellion was sentenced to death. The sentence was carried out on the 21st April, and an order was made on that day for the confiscation of his property. In a suit instituted by the plaintiff to recover the property, *held* that B.S. had such an interest in it as made it the subject of forfeiture under s. 3, Act XXV of 1857, and the plaintiff, therefore, did not, on the death of B S. become entitled to his estate. THAKOOR KAPILNAUTH SAHAIDEO v. GOVERNMENT, **13 B.L.R. 445 = 22 W.R. 17, Cr.**

(8) – *Charges on forfeited property—Debts and liabilities.*—General debts and liabilities are not charges against property forfeited upon a conviction for felony. HURRY DOSS BANERJEE v. HOGG, **1 Ind. Jur. O.S. 86.**

(9)—*Seizure and attachment of property of rebel — Suit to establish right to property seized and attached to be brought within one year—" Seizure," meaning of—Act* XXV *of* 1857 —*Act* IX *of* 1859.—There is nothing, either in Act XXV of 1857 or Act IX of 1859, which renders it incumbent on the party aggrieved to bring a suit at all. If he does bring a suit, it must be brought within one year of the attachment or seizure complained of. By seizure is meant such a taking possession of the property forfeited as is referred to in s. 7 of Act XXV of 1867, *i.e.*, an actual transfer of possession from the former proprietors to the Collector or vendee. Procedure in regard to seizure and attachment of property under Act XXV of 1857 and the law in regard to the adjudication of claims clearly laid down. BYJNATH SINGH v. E.R. SOLANO, **14 W.R. 114.**

(10)—*Confiscation — Absconding offender— Ben. Reg.* XI *of* 1796, *Sale under—Construction of Regulation.*—Regulation XI of 1796, being a highly penal statute, should be construed strictly. As it makes no express provision for the case of joint proprietors of land, or persons jointly holding a sudder farm of land, in the absence of clear words indicating such an intention, it cannot be assumed that the legislature intended to authorize the confiscation of the property of any person other than the delinquent. A sale under Reg. XI of 1796 does not extinguish under-tenures or incumbrances created by the delinquent or those through whom he claims. JUGGOMOHUN BUKSHEE v. ROY MOTHOORANATH CHOWDHRY, **7 W. R. P C. 18 = 11 M.I.A 223 = 1 Suth. 673 = 2 Sar. 246.**

(11)—*Retrospective effect of forfeiture after conviction—Attachment in execution—Act* XI *of* 1857, *s* 1—*Penal Code, s.* 121.—In execution of a decree against the defendant, the plaintiff, on 17th July, 1871, attached certain property in Calcutta belonging to the defendant. On 26th July, 1871, the defendant was convicted, under s. 1 of Act XI of 1857 and also under s. 121 of the Penal Code, of abetting the waging of war against the Queen, and sentenced to transportation for life and the forfeiture of all his property. The offence for which he was convicted was committed in September 1861. *Held* that the forfeiture took effect from the date of the commission of the offence, and, therefore, any attachment subsequently made was invalid. GANESHLAL v. AMIR KHAN, **8 B.L.R. 83 = 17 W.R. 80, Cr.**

(12)—*Forfeiture of land subject to rent—Act* XXV *of* 1857—*Right to arrears of rent due at time of forfeiture.*—Where land forfeited to Government by a conviction of the owner of an offence within Act XXV of 1857 is subject to the payment of rent, the person entitled to the rent is not entitled to recover the arrears due at the time of the forfeiture, either from the heirs of the owner or from the Government; but the Government is liable for the rent which may subsequently accrue. NEELMONEY SINGH DEO v. CHUTTERDHUN SINGH, **Marsh 308 = 2 Hay 226.**

(13)—*Queen's Proclamation, Effect of—Conviction for rebellion—Act* XI *of* 1857, *s* 1—*Remission of punishment*—Where N and M were convicted of rebellion under Act XI of 1857 s. 1, and sentenced, the former to be transported for life and to have all his property confiscated, and the latter to have all his property confiscated, the sentence of confiscation was held to be absolute, and not to depend upon the amount of punishment, and the fact of the punishment being remitted by the Governor-General does not restore the property. The Government having left the property of the convicts in the hands of the Administrator-General as administrator to the estate of the convicts' father whence it was derived, in whose hands it was allowed to accumulate pending a separate litigation in respect of that estate, while it asserted its right by virtue of the confiscation to the other property of the convicts, the title to which was undisputed, it was held that the Government had sufficiently declared and acted upon its intention to enforce the confiscation. The Queen's Proclamation of amnesty (November 1858), coming after the conviction and confiscation, had not the effect of re-vesting in the convicts the property confiscated. *Held*, also, that the property in question, being Government paper, was liable to confiscation; and lastly that N's widow was not entitled to maintenance out of the property confiscated by the State. GUNGA BAEE v. HOGG, **2 Ind. Jur. N.S. 124.**

(14)—*Confiscation by Independent Chief—Cognizance by English Courts—Proof of confiscation.*—Where the Chief of an Independent State, exercising the sovereign power of that state within its territories, confiscates property within those territories, the confiscation must be respected by English Courts of Justice. The fact of such confiscation, if disputed, must be ascertained by the Court in the same

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manner as are all other facts which are in issue between parties. SHOAY ATT v. SHOAY DOANG, **14 W.R. 218.**

(15)—*Order of forfeiture to be reserved for offences of the most atrocious kind or committed under aggravated circumstances.*—The Sessions Judge who convicted and sentenced a Zemindar to transportation for wrongfully keeping in confinement a kidnapped person, ordered, under s. 62, Penal Code, that the rents and profits of the estate of the prisoner should be forfeited to the Government during the period of his transportation. *Held* that this was a punishment of which the infliction should be reserved for offences of the most atrocious kind or for offences committed under the most aggravated circumstances. QUEEN v. MAHOMED AKHIR, **12 W. R. Cr. 17.**

(16)—*Offences for which forfeiture may be enforced—Penal Code, s.* 62.—S. 62, Penal Code, which provides for forfeitures, limits them to cases when the parties shall have been transported or sentenced to imprisonment for at least seven years. QUEEN v. KRIPAMOYEE CHASSANEE, **8 W.R. Cr. 35.**

(17)—*Procedure in forfeiture—Crim. Pro. Code* (1861), *ss.* 131 *and* 132 *to be followed.*—The procedure prescribed in ss. 131 and 132 of the Crim Pro. Code, 1861, must be adopted before an order for the confiscation of property is made. BEHARY SHAHA v. NUBBY KHAN, **9 W.R. Cr. 13.**

(18)—*Order of forfeiture substantially legal—Error in procedure not material to the case—Order not to be disturbed.*—An order of forfeiture made under s. 184, Crim. Pro. Code, if substantially legal, cannot be disturbed for a mere error in procedure. BAIJOO BAUL v. GUGAN MISSER; QUEEN v. GUGAN MISSER, **8 W.R. Cr. 61.**

(19)—*Penal Code, s.* 62.—In passing a sentence of forfeiture of property, regard must be had to the means and position of the accused. If the accused possesses the property not worth the name, a sentence of forfeiture will only cause annoyance to the accused's family and to the Government officials without any corresponding benefit. JIVAN v. EMPEROR, **21 P.R. 1903, Cr. = 132 P.L.R. 1903.**

See ACT XXV OF 1857, ss. 2, 7, 3 Agra 281.

See ACT XXV OF 1857, ss. 3, 9, 2 W.R. 17 = 13 B L.R. 445

See ACT X OF 1859, 2 Agra 321.

See CRIM PRO. CODE, 1898, s. 121, 2 Weir 57.

See CRIM. PRO. CODE, 1898, s. 545, Rat. Un. Cr. C. 146 = Cr. Rg. 10 6-1880.

Forfeiture of Security.

See SECURITY TO KEEP THE PEACE—FORFEITURE OF SECURITY.

Forged Documents.

Obtaining decrees by means of—Neither cheating nor extortion—Applicability of s. 110 (*d*) of the Crim. Pro. Code, to such cases—

Forged Documents—*concluded.*

Joint trial—*See* CRIM. PRO. CODE, 1898, s. 110 (*d*), 21 P.R. 1914, Cr.

Using eleven, in three sets in three suits on different occasions—*See* JOINDER OF CHARGES—WHEN LEGAL, 20 C. 413.

Forgery.

See CRIM. PRO. CODE, 1898, ss. 195, 476.

See FALSE DOCUMENT.

See PENAL CODE, ss. 463 to 471.

See SANCTION TO PROSECUTE.

(1)—*Penal Code, s.* 465—*Forgery—Definition—"Fraudulently."*—One P, the wife of A, left her husband's house. A put in a petition at the Police Station asking that a search might be made for the missing woman, and he also employed a pleader, one Ali Zohad, to assist him in discovering the whereabouts of P. Ali Hasan, the son of Ali Zohad, and a clerk employed in the office of District Superintendent of Police, forged two orders purporting to be orders of the District Superintendent of Police, the first intimating that the woman P was with one S the wife of Ghisu, weaver, and that the Sub-Inspector should be directed to hand her over to the petitioner A, and the second directing the Sub-Inspector of Kydganj to hand the woman over to the petitioner. *Held*, that, in fabricating these two documents, Ali Hasan had acted fraudulently and had committed the offence punishable under s. 465 of the Indian Penal Code. EMPEROR v. ALI HASAN, **A.W.N. 1906, 48 = 3 A L J 149 = 3 Cr. L J. 249 = 28 A. 358.** (15 A. 210, 25 C. 512, 28 M. 90, *R.*)

(2)—*Penal Code, s.* 464—*False document—What is a*—In order that a document should be a false document within the meaning of s. 464, Penal Code, it must appear that it was made with the intention of inducing the belief that such document was made by or by the authority of one who did not make it or give such authority. QUEEN-EMPRESS v. KUNJU NAIR, **12 M. 114 = 1 Weir 539.** [*F.*, Rat. Un. Cr. 595.]

(3)—*Penal Code, ss.* 474, 116—*False document—Dishonest and fraudulent intention.*—Where a document purporting to be executed by one M. regarding certain properties, was made in the presence of the accused appellants, and the documents were recovered from their possession, and the accused were convicted, it was contended in appeal that the properties comprised in the document belonged to the accused by virtue of certain other documents, which had been executed in M's name *benamee* for the accused, that the document was therefore intended to confirm their title to property which already belonged to them, and there was therefore no dishonest or fraudulent intention. *Held*, that the document was clearly fraudulent and a forgery, inasmuch as the intention of the accused was to confirm their alleged title to the property, and enable them to deal with it, the detriment of any person dealing with them

Forgery—*continued.*

in regard to the property. *In re* SOMASUNDRAM PILLAI, 6 M L.T. 266=3 Ind. Cas. 736 =10 Cr. L.J. 367.

(4)—*Penal Code, s. 463—Forgery, essentials of.*—The definition of the offence of forgery in s. 463, Penal Code, declares the offence to be completed when any false document or false part of a document is made with certain specified intents. The questions are, "(1) Is the document false? (2) Was it made by the accused? (3) Was it made with intent to defraud?" If all these questions are answered in the affirmative, the accused is guilty. It is not necessary to a trial or conviction of forgery that there should have been an uttering, or putting off, of the forged instrument. HIGH COURT PROCEEDINGS, 7TH APRIL 1866, 1 Weir 538.

(5)—*Penal Code, ss. 465, 467 — Forgery — Proof—Similarity of hand writing.*—Where it is sought to convict a clerk employed in an office of forgery, upon the supposed similarity between his handwriting and that of some fragmentary piece of writing upon which the charge is based, the prosecution should make an attempt to show that the accused is the only man in the office who could have written the forged documents. SRIKANT v KING-EMPEROR, 2 A.L.J. 444=2 Cr. L J. 353.

(6)—*Penal Code, s. 464—Forgery of the name of fictitious person—Intention to defraud, proof of.*—In order to sustain a charge of forgery, it is wholly immaterial whether the name forged is that of a fictitious person or of a real person. It is as much a forgery in the one case as in the other, provided that the fictitious name is assumed for the purpose of fraud. An intention to defraud is an essential ingredient of the offence of forgery, but it is sufficient to show that there was an intention to defraud generally. Whether there was any intention to defraud or not is a question of fact to be determined with reference to the special circumstances of each case. QUEEN EMPRESS v. PERA RAJU, 13 M. 27=1 Weir 545.

(7)—*Penal Code, s. 465—Intention to cause injury or damage—False document.*—In a case falling under the above section, there must be proof of an intention to cause injury as defined in s. 44, I.P.C., or an intention to cause damage, in addition to the fact that the document was a false one. To constitute a false document, it must be proved that it was made "fraudulently or dishonestly." QUEEN-EMPRESS v. NGA PO KAN, U.B.R. 1892—1896, Vol. I, 286.

(8)—*Penal Code, s. 464—When false description would make document a forgery*—It would be going too far to hold that, whenever the executant of a document attaches a false description to his name, he comes within the purview of s. 464, I.P.C. But a false description may make a document a forgery, when it is found that the accused, by giving such a false description, intended to make out or wanted it to be believed that it was not he that was executing the document, but a fictitious person. RAMAN v. ADAIKALAMMAL, 4 M L T. 463=32 M. 90=9 Cr. L.J. 85=1 Ind Cas. 751=19 M.L.J. 78.

(9)—*Alteration of official report to screen one's negligence.*—When the accused altered an office report, with a view to screen his own negligence in having lost a portion of a record, the alteration purporting to throw upon another officer the responsibility for the missing document, *held*, that he was not guilty of forgery. QUEEN v. LAL GUMUL, 2 N W P. 11. [*Not F.*, 11 Cr.L.J. 185=4 Ind. Cas. 1089=U.B.R. 1909, Penal Code, 29; *F.*, 5 A. 221.]

(10)—*Penal Code, s. 465—Writing a document on a paper bearing a stamp of later date.* - The mere fact that a document was written on a paper which bore a small embossed stamp with a figure denoting a later date would not be conclusive evidence that the paper was not made at an earlier date, and would not be sufficient to support a charge of forgery. *In re* SESHA CHARLU, 1 Weir 540.

(11)—*Penal Code, s. 466—Forgery of Marriage Register.*—Forging a document purporting to be a Register of Marriage, falls under s. 466, although the Register is a private one, and is not kept by a public servant, as such. *In re* BACHA MIAH, 1 Weir 541.

(12)—*Penal Code, s. 467—Valuable security—What constitutes forgery.*—A document which purports to be one whereby the tenants acknowledge themselves liable to pay enhanced rent, is, on the face of it, a valuable security within the meaning of s. 467, I.P.C. It must not be assumed that in order to constitute forgery, it is necessary that the instrument which is fabricated should be perfectly valid for the purpose for which it was intended. EMPRESS v. NASIRUDDIN, A.W.N. 1883, 59.

(13)—*Forgery what constitutes.*—To constitute the offence of forgery, as defined in s. 463, it will not be enough to prove that the accused knew that, by making the false document, he might injure the complainant, but it must also be proved that such was his intention. FEDA HOSSEIN v EMPRESS, 10 C.L.R. 184.

(14)—*Penal Code, s. 467—Unregistered sale-deed—Valuable security—Forgery.* An unregistered sale-deed is a valuable security within the meaning of s. 467 of the Penal Code, and the forgery of such a deed is punishable under that section. QUEEN EMPRESS v. GOVIND RAMAPPA. Rat. Un. Cr. C. 467=Cr. Rg. 25 of 1889. (7 M.H C. App. 26, *R.*)

(15)—*Penal Code, ss. 464, 467, 474—Forgery of valuable security.*—To justify a conviction under s. 467, the accused should be shown to have made a false document; it is an essential ingredient for the making of a false document that it should be made dishonestly or fraudulently and with one of the intents set out in s. 463. The prosecution must give some evidence from which the dishonesty of the transaction and some or one of the intents set

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out in s. 463, can be legitimately inferred. KAILAS CHANDRA DAS v. CROWN, **6 C W N. 382.** [*Not F.*, 10 Cr. L.J. 367=3 Ind. Cas. 736=6 M.L.T. 266]

(16)—*Absence of dishonest or fraudulent intention.*—A person who, without any dishonest or fraudulent intention, signs for another expressing that the signature was by his pen, although the latter could sign for himself, does not thereby commit the offence of forgery. *In re* DOYA RAM, **2 J G. 11.**

(17)—*Penal Code, ss.* 23, 463 *to* 471—*Forgery—Using forged document.*—It is not an essential ingredient of the offence of forgery or using as genuine a forged document, as defined in ss. 463 to 471, that there should be an intention to deprive another of property. QUEEN-EMPRESS v. ABBAS ALI, **25 C. 512=1 C.W.N. 255, F B.**

(18) — *Using forged document—"Fraudulently," meaning of—Penal Code, ss.* 463 *and* 471.—Deprivation of property, actual or intended, is not a necessary ingredient in the offence of fraudulently using, as genuine, a document which the accused knew or had reason to believe to be false. QUEEN-EMPRESS v. ABBAS ALI, **L B R 1893—1900, 437.** (19 C. 380, *Diss.*; 15 A. 210, *F.*)

(19)—*Penal Code, s.* 474—*Charge under, what is necessary to support a—Possession of forged title deeds, no evidence of guilt.*—To support a charge under s. 474, I.P.C., it is necessary for the prosecution to prove (1) that the documents are forged: (2) that the accused knew them to be forged, (3) that he intended that they should be fraudulently or dishonestly used as genuine and (4) that each of the documents is in the description given in s. 466 or 467, I.P.C. The mere fact that the purchaser of an estate is in possession of title-deeds, some of which are shown to be forgeries is no evidence of his guilt. *In re* BALWANT, **Cr. Rg 25 of 1895.**

(20)—*Penal Code, ss.* 192, 196, 464, 470 *and* 471—*Correction of a mistake in a registered sale deed*—Where the vendee of a plot of land altered the number by which the land was described in the registered sale-deed thereby giving the correct number of the land (the land being identifiable even without the proper number as the deed described the four boundaries of the property sold), and used the deed so altered as evidence in a civil suit, *held* that the alteration could not be called 'forgery' within the meaning of s. 463, nor could the sale-deed after the alteration be designated "a forged document," as contemplated by s. 470, the most important element of the offence, *viz.*, wrongful loss or wrongful gain or the intent to defraud being totally wanting in the case; nor could it be held that in producing the sale deed in the Civil Courts, the accused had fraudulently or dishonestly used as genuine a document which they knew to be a "forged document" within the contemplation of the law. [*R.*, 5 A. 221; *D.*, 11 M. 411=1 Weir 549.] The correction of a mistake in a document cannot be taken to be "a false entry" or "false statement." *Held*, that the accused could not be convicted under s. 196 EMPRESS OF INDIA v. FATEH, **5 A. 217=A W N 1882, 227.**

(21)—*Penal Code, ss.* 24, 25, 471—*Fraudulently using a forged document as genuine—Use of forged receipts in place of lost genuine ones.*—Upon the application of the creditor of a Police Constable, the District Superintendent of Police ordered a deduction of Rs. 2 in the pay of the constable, until the debt was satisfied. The constable produced before his Police Inspector to whom the order had been forwarded a receipt for the whole amount due from him, *viz*, Rs. 18. But it was found that the receipt was given for Rs. 8 only and that the accused had changed the figure 8 into the figures 18, but the amount of the sum paid was stated to be in words Rs. 8 only. *Held*, he could not be convicted under s. 471, I P C, as the real intent in so altering the receipt was to induce his superior to refrain from doing the illegal act of stopping the payment of a portion of his salary without a proper attachment by a Civil Court, and as it could not be held that he contemplated setting up the altered receipt to defeat his creditor's claim QUEEN-EMPRESS v. SYED HUSAIN, **7 A 403=A.W.N. 1885, 84.** [*R.*, U.B.R 1892-1896, 279]

(22)—*Using forged receipts for payment of rent.*—Where the accused was found to have used four forged receipts for the payment of rent fabricated in lieu of genuine receipts which had been lost, *held*, that the accused had not acted dishonestly or fraudulently, and that he was not, therefore guilty of an offence under s. 471. QUEEN EMPRESS v. SHEO DAYAL, **7 A. 459=A.W N. 1885, 85.** [*Diss.*, 5 C.W.N. 897]

(23)—*Penal Code, ss.* 24, 25, 465—*False entry for concealing previous criminal breach of trust.*—Where a clerk, who had committed criminal breach of trust, made false entries in the challan book in order to conceal such offence, the falsification of the challan book does not constitute the offence of forgery. EMPRESS OF INDIA v. JIWANAND, **5 A 221=A W N 1882, 235.** [*Diss.*, 37 B. 166=2 Bom. Cr. C. 115=15 Bom. L.R. 708=14 Cr L J 518=20 Ind. Cas. 998, 35 C. 450; *Not F.*, 11 Cr. L.J. 185=4 Ind Cas. 1089=11 A L J. 185=U.B R. 1907—1909, Penal 29; *R.*, 22 C. 313, 35 C. 450=12 C.W N. 581=7 Cr.L J. 378, 8 P L.R. 1904, U.B R. 1892—1896, 279; *D.*, 11 M. 411=1 Weir 549.]

(24)—*Penal Code, ss.* 218 *and* 465—*Forgery for purpose of concealing previous fraud—Public servant furnishing false reports*—A sum of Rs. 500 payable to a particular person through the Civil Court had been fraudulently withdrawn from the treasury by means of forged cheques, and these payments were duly entered by the Treasury Accountant on the right hand page for "details of repayment" of the Revenue Deposit Register. After the withdrawal, but

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before the discovery of such withdrawal, the representative of the payee applied for payment. The accused, the Treasury Accountant, sent to false reports that the money was in deposit, and that it was about to be transferred to the Civil Court. After the sending of the first report, the Treasury Officer ordered the transfer of the amount to the Civil Court, and a cheque was drawn. The signature of the cheque by the Treasury officer was delayed. Meanwhile, the accused altered the cheque in such a manner as to relate to a deposit, made subsequently to the credit of another person. The accused was tried and convicted of forgery of the cheque and of an offence under s. 218, I.P.C. *Held*, that, as regards the charge under s. 465, the accused did not intend to cause wrongful loss to the second payee by delaying the payment, but merely to conceal his previous fraudulent withdrawal of the first payee's amount, and that the accused had not committed an offence under s. 465, as he could not be said to have acted dishonestly or fraudulently within the meaning of ss. 24, 25, I.P.C. [*R.*, 15 A. 210; *Diss.*, 22 C. 313, 35 C. 450=12 C.W.N. 581=7 Cr. L.J. 378.] The accused while making the two false reports, assumed to make them in due course, as part of his duty, and held out the reports as reports which were made by the proper officer. Therefore the accused should be presumed to have made these reports because it was his business to do so as a public servant within the meaning of s. 218 I.P.C. QUEEN EMPRESS v. GIRDHARI LAL, **8 A 653=A W.N. 1886, 264.** [*R.*, 19 A. 305, 37 B. 666=14 Cr.L.J. 518=15 Bom. L.R. 708=20 Ind. Cas. 998=2 Bom. Cr. C. 115.]

(25)—*Falsification of office records.*— The falsification of office records made in order to conceal previous acts of fraud or negligence, does not amount to forgery, as no one would be defrauded or injured thereby. QUEEN v. JAGESHUR PERSHAD **6 N.W.P. 56.** [*N F*, 11 Cr. L J. 185=4 Ind. Cas. 1089=U.B.R. 1909. Penal Code 29=11 A.L J. 185; *F.*, 5 A. 221.]

(26)—*Penal Code, ss 25, 463 and 464—Making a false document to conceal a previous fraudulent act—Forgery Fraudulently, meaning of.*—It is not necessary for the purpose of constituting the offence of forgery, that the false document should be made with the intention of committing a fraud or dishonesty in future. If the intention with which a false document is made be to conceal a fraudulent or dishonest act which has been previously committed, the intention cannot be any other than an intention to commit fraud, and therefore the making of such false document amounts to forgery. [*R.*, 8 P.L.R. 1901.] The word "fraudulently" in s. 464 does not mean the same thing as "dishonestly." It must be taken to mean, as in s. 25 of the Code "with intent to ... " LOLIT MOHAN SARKAR v. QUEEN-EMPRESS, **22 C. 313** (5 A. 221, 8 A. 653, *Diss.*; ... Note, 11 M. 411, *F.*) [*F.*, 37 B. 666= ... Cas. 998=14 Cr.L.J. 518=15 Bom.L.R.

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708=2 Bom. Cr. C. 115, 35 C. 450=12 C.W.N. 581=7 Cr.L.J. 378, 11 Cr. L.J. 185=4 Ind. Cas. 1089=U.B.R. 1909, 4th Qr. Penal Code 29; *R.*, 21 A. 113=A.W.N. 1898, 197, 28 M. 90=1 Weir 538-A, 5 C W.N. 897, L.B.R. 1893-1900. 266; *D.*, 36 C. 955=10 C.L.J. 581=14 C.W.N. 82=4 Ind. Cas. 416.]

(27)—*Crim. Pro. Code* (1882), s. 195—*Forgery before Sub Registrar—Registration Act—Sanction—Court.*—A Sub-Registrar acting under the Registration Act is not a Judge and is, therefore, not a Court. The proceedings held before him are not judicial proceedings. His sanction is not therefore necessary for a prosecution for forgery in respect of a forged document presented for registration in his office. QUEEN-EMPRESS v. TULJA, **12 B. 36** (10 M. 154, *Diss.*) [*Diss.*, 15 M. 138 F.B., *F.*, 14 Bom L.R. 970=1 Bom. Cr.C. 214=13 Cr. L J. 845=17 Ind. Cas. 717, 36 M. 387=13 Ind Cas. 275=22 M L.J. 141=10 M.L T. 563=1912 M. W. N. 3; *R.*, 12 M. 201, 13 Cr. L J. 503=15 Ind. Cas. 652=23 M.L.J. 50=1912 M W.N. 473, 16 Bom. L R, 446 10 Cr. L.J. 395=3 Ind. Cas. 886=3 S.L.R. 66.]

(28)—*Government officer falsifying public record to conceal previous negligence.*—Where a Government officer falsified a public record for the purpose of concealing a previous act of negligence, which did not amount to fraud, *held*, that he was not guilty of the offence of forgery. EMPRESS v. SHANKAR, **4 B. 657.** [*N.F.*, 11 Cr. L J 185=4 Ind. Cas. 1089=U.B. R. 1909. 4th Qr. Penal Code, 29; *R.*, Rat. Un. Cr. C. 595.]

(29)—*Penal Code, ss. 463, 464, 470, 471, 23, 24, 25 and 29—"Claim" scope of the word—False certificate of attendance in the first year course of law lectures for the purpose of attending the second year course.*—The word "claim" in s. 463, is not limited to a claim to property. A written certificate is "property" within the meaning of s. 463, I.P. C. It is not necessary, to constitute forgery under s. 463 that the "property" with which it is intended that the false document shall cause a person to part, should be in existence at the time when the false document was made. [*R.*, 25 C. 512=1 C.W.N. 255, F B.=L.B.R. 1893—1900. 437, 1 Weir 538-A=28 M. 90, 19 B. 717, Rat. Un. Cr. C. 761, 21 B 517.] Where, for the purpose of attending the second year law class of a College, the accused produced a false certificate from the Principal of another College to the effect that he had attended the required number of lectures of the first year law class, and thereby joined the second year course in the former College without paying the fees for the first year course and, after attending the second year course, got a consolidated certificate for the two years by presenting again the false certificate to the Principal, for the purpose of enabling him to become a candidate for the Calcutta Pleadership examination, *held*, that the certificate was a "false document" within the meaning of s. 463, that he had committed forgery, and that he, on both occasions when he presented the

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false certificate, had committed an offence under s. 471, I.P.C. QUEEN EMPRESS v. SOSHI BHUSHAN, **15 A. 210 = A.W N. 1893, 96.** (19 C. 380, *Diss.*; 12 M. 151, 13 B. 506, *Appr.*) [*R.*, 21 A. 113 = A.W N. 1898, 197, 28 A. 358 = 3 A.L.J. 149 = A.W.N. 1906, 48 = 3 Cr. L.J. 249, 19 B. 717, 21 B. 517, 22 B. 768, 25 C. 512 = 1 C.W.N 255 = L.B.R 1893–1900 437, 28 M. 90 = 1 Weir 538-A, 9 Cr. L.J. 15 = 4 L B.R, 315, 11 Cr. L J. 686 = 8 Ind. Cas. 596 = 3 Bur. L.T. 11, 2 P.R 1895, Cr., 1 P.R. 1907, Cr. = 32 P L.R. 1907, Rat. Un. Cr. C. 761.]

(30)—*Penal Code, s.* 463—*Forgery, when the offence of, is committed—Substitution of one page for another in the service roll.*—Where there is an intent to deceive and by means of the deceit to obtain an advantage, there is fraud, and if a document is fabricated with such intent, it is forgery. Where in the character and service roll of the accused, a constable, which was in his custody, a certain page was substituted for some other page containing remarks unfavourably to the accused, the intention being to deceive the superior officers of the accused, and by means of such deception to secure his advancement in the service, and thus to gain an advantage for him at the sacrifice of others, *held*, that the entry amounted to a forgery, but, as it was not shown that the forgery was committed by the accused himself, that he was rightly convicted of the abetment of the offence. QUEEN EMPRESS v. MUHAMMAD SAEED KHAN, **21 A. 113 = A.W N. 1898, 197.** (15 A. 210, 13 B. 515, 22 C. 313, *R.*) [*R.*, 28 M. 90, 12 C.L J. 277 = 14 C.W.N. 1076, 9 Cr. L.J. 15 = 4 L.B R 315, 11 Cr. L.J. 505 = 7 Ind. Cas. 623, 75 P.L R. 1902 = 10 P.R. 1902, Cr.; 32 P.L R. 1907 = 1 P.R 1907, Cr.]

(31)—*Penal Code, ss.* 466, 471—*Separate sentences for forgery and for using forged documents as genuine, validity of.*—S. 471, which provides for punishment for using a forged document as genuine, is directed against some person other than a person proved to be the actual forger. The section is useful as an alternative charge when it is not certain whether the accused person is himself the forger of the document or has merely used it as genuine. But, a forger cannot be punished both for forging a document and for using it as genuine. QUEEN-EMPRESS v. UMRAO, **23 A. 84 = A.W. N. 1900, 205.**

(32)—*Forgery committed for the purpose of defending oneself.*—The fabrication of a false document, or the use of such document by an accused person for the sole purpose of defending himself, does not fall within the range of the sections dealing with forgery. EMPEROR v MAHABIR SINGH, **25 A. 31 = A.W.N. 1902, 173.**

(33)—*Ss.* 466 *and* 471—*Using as genuine a forged document—Copies of a forged original.*—Where a person, knowing or having reason to believe that the entries in certain village *khasras* were forged, took copies of those *khasras* and used them as evidence in his favour in a civil suit, it was *held* that he might be properly convicted of fraudulently or dishonestly using as genuine the *khasras*, which he knew, or had reason to belive, to be forged, and punished under s. 471 read with s. 466 EMPEROR v. MULAI SINGH, **A.W N. 1906, 71 = 3 A L J. 190 = 3 Cr. L J 255 = 28 A 402.** [*R.*, 15 Cr. L.J 344 = 23 Ind. Cas. 696 = 139 P.L.R. 1914 = 1 P.R. 1914, Cr.]

(34)—*Penal Code, ss.* 464, 471—*Using a forged document—False certificate of age.*—The accused, in order to induce a Collector to give him an appointment, made use of a certificate in which his age had been recorded as 23 years, but which had been altered so as to state it as only 20 years. The Counsel for the accused argued that there was no dishonesty within the meaning of s. 24, I.P.C., inasmuch as the accused, if he had got the employment at all, would have got only his wages for work done. *Held*, in annulling the acquittal, that, if however the alteration was made fraudulently, that will suffice for the purpose of s. 464, I.P.C., as shown by ill. (*k*), which shows that the mere fabrication of a false certificate of character raises the presumption of fraud. With regard to the operation of s. 471, ill. (*k*). to s. 464 is equally applicable to the one section as to the other. QUEEN-EMPRESS v. VITTAL NARAYAN, **13 B. 515, Note.** [*F.*, L.B.R. 1893-1900, 266.]

(35)—*Penal Code, ss.* 468 *and* 471—*Production of a forged certificate for procuring an employment in the Railway Department.*—An accused person produced a certificate purporting to be signed by the Traffic Manager, Great Indian Peninsular Railway, for procuring an employment in the office of the District Traffic Superintendent, Oudh and Rohilkhand Railway, and the officer, entertaining some doubt as to the genuineness of the certificate, retained it to be sent to Bombay for verification and asked him to put in a written application, which he did attaching another different certificate. In the application, reference was made to this certificate and not to the one first produced, which was a forgery; *held* that, looking at what the accused did and what his intention was at the time when he produced the forged certificate, he used that document within the meaning of s. 471, I.P.C, and was properly convicted under that section. *In re* AMIN CHAND, **5 O C. 232.**

(36)—*Penal Code, s.* 468—*Forging of firm's name by partner.*—A person is guilty of the offence of forgery if he forges a document in the name of the firm of which he is a partner, since the fraud is not against himself alone, but is against the other partners EMPEROR v. LALLOO GHELLA, **6 Bom. L R. 553 = 1 Cr. L. J. 757.**

(37)—*Penal Code, s.* 463—*Forgery—Sending incorrect copy of diary to superior officer—Proof.*—A person cannot be convicted of forgery in sending an incorrect copy of his diary to a superior officer, in that it did not contain some

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words interpolated in the original and subsequently struck through with the pen, unless it was proved that the interpolations were in the original and not struck through when the copy was made. REG. v. SHIDDUNGOWDA, **Rat. Un. Cr. C. 12.**

(38)—*Crim. Pro. Code* (1872), s. 469—*Penal Code ss* 463, 466—*Forgery of public registers —Sanction.*—An offence under s. 466 of the Penal Code of having forged a Register kept by a public servant which was given in evidence, falls within the terms of s. 463 of the Penal Code; and a complaint of such offence cannot be entertained without the sanction of the Court in which the document was given in evidence, as required by s. 469 of the Crim. Pro. Code. POONA MAGISTRATE'S LETTER NO. 1431, **Rat. Un. Cr. Cas. 83.**'

(39)—*Penal Code, s.* 466—*Forgery — True copy of false entry in public register.*—A person who is bound to prepare and give a true copy cannot be convicted of forgery, merely because the original entry in the death register of which he prepared a true copy, was a false one to his knowledge or belief, so long as it is not proved that he had anything to do with the original entry. QUEEN-EMPRESS v. MARIGAWDA, **Rat. Un. Cr. C. 583 = Cr. Rg 42 of 1891.**

(40)—*Forgery—Character of proof.*—In a prosecution for forgery, it is not enough to show that the genuineness of the document is improbable, but it should be proved for a certainty that it is forged. QUEEN-EMPRESS v. BAYAJI NATHA, **Rat. Un. Cr. C. 917.**

(41)—*Alteration of date of document to bring it within time for registration—Offence committed.*—The alteration of the date of a document, for the purpose of bringing it within time for being registered, in the absence of anything to show that it was done "dishonestly or fraudulently" within the meaning of cl. 2, s. 464 of the Penal Code, would not amount to the offence of forgery, but to that of fabricating false evidence under s. 192. EMPRESS v. MIR EKRAR ALI, **6 C. 482.** [*R.*, U.B.R. 1892—1896, Vol. I, 279.]

(42)—*Fraudulent use of forged document—Intention, nature of, to support conviction*—The use of a forged document for the purpose of supporting one's title to property is clearly fraudulent, even in the absence of any necessity for such a use [*R*, 5 C.W.N 897, 32 P. L.R. 1907 = 1 P R 1907, Cr.; *D.*, U.B.R. 1892—1896, Vol. 1, 279] A general intention to defraud without the intention of causing wrongful gain to one person or wrongful loss to another, would, if proved, be sufficient to support a conviction *In the matter of* DHUNUM KAZEE; EMPRESS v DHUNUM KAZEE, **9 C. 53 = 11 C L R. 169.** [*R.*, 13 B. 506, 5 C.W.N. 897.]

(43)—Sannad *conferring title of dignity—No valuable security—Using such (forged) document as genuine—"Intent to defraud."*—A sannad conferring a title of dignity on a person is not a

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valuable security within the meaning of the Penal Code; and a person found guilty of using such a document, knowing it not to be genuine, does not intend to cause "wrongful gain" or "wrongful loss" to any one, his intention not constituting "an intention to defraud," so that a conviction under ss. 461 and 471 of the Penal Code under the circumstances would not be tenable JAN MAHOMED v. QUEEN EMPRESS, **10 C. 581 = 5 Shome L R 158.** [*F* Rat Un. Cr. C. 627; *R.*, 15 A. 210, 19 C. 380, U.B.R. 1892—1896, Vol. I, p. 279; *D.*, 22 B. 763.]

(44)—*Penal Code, s.* 464—*Fabrication of endorsements on application, and letter—Forgery to screen another forgery—Intention*—Where an applicant for a post was found to have fabricated a favourable endorsement on his application as if it had been made by the Sub-Divisional Officer and another letter purporting to be from the Collector to the Sub Divisional Officer appointing him for the vacant post, *held* he was rightly convicted of an offence under s. 464, Penal Code, with respect to such acts. But where the Sub-Divisional Officer posted a letter to the Collector to ascertain if he really appointed the accused and the accused wrote a letter to the Post Master, purporting to be written by the Sub-Divisional Officer, asking him to stop the despatch of that letter, *held*, he could not be convicted of forgery with respect to it, as it could not be said that he falsely made it either dishonestly or fraudulently within the meaning of s. 464; for, the intention with which the accused made the false document was evidently to screen himself from detection of the fraud which he had already committed. ABDUL HAMID v. THE EMPRESS, **13 C. 349.** [*F.*, 22 B 768, L B.R. 1893—1900, 266; *R.*, 35 C. 450 = 12 C W.N. 581 = 7 Cr. L.J. 378; *D.*, Rat Un. Cr. C. 627.]

(45)—*Penal Code, s.* 466—*Making a false document to deceive Court of justice—Intention of the accused.*—A person making a false document, at the request of another for the purpose, and with the intention, that such document should be used for deceiving a Court of justice, is guilty of forgery, although the person who engages him to commit the forgery has no intention to use the document for that purpose, but intends only to trap the accused. HARADHAN MAITI v QUEEN-EMPRESS **14 C. 513.** [*D.*, U.B.R. 1892—1896, Vol. 1, 279].

(46)—*Penal Code ss.* 415, 471, 24 *and* 25—*Using a forged certificate for obtaining permission to appear for examination—Cheating.*—A private student applying for permission to appear for Entrance Examination of the Calcutta University sent with his application a certificate, as required by the rules of the University purporting to be signed by the Headmaster of a Government High School, which the accused knew to be forged. The Registrar sent the receipt granting permission to present himself at the examination. The accused actually did present himself at the examination being permitted to do so by the Registrar. But the

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Registrar had discovered and was aware that the signature was not genuine, prior to the sending of the receipt. *Held*, that the primary intention of the accused was, by falsely inducing the Registrar to believe that the certificate was signed by the Headmaster of a Government School under public management, to be permitted to sit for the Entrance Examination, and that such intention could not be held to be fraudulent or dishonest within the meaning of ss. 24 and 25 of the Code and that, therefore, the accused was not guilty of an offence under s.471 of the Code, nor was he guilty of cheating. QUEEN-EMPRESS v. HARADHAN, **19 C. 380.** [*Overruled*, 25 C. 512=1 C.W.N. 255=L.B.R. 1893—1900, 437; *Diss.*, 15 A. 210=A.W.N. 1893, 96, 28 M 90=1 Weir 538-A; *F.*, Rat Un. Cr. C. 627; *R.*, 2 P.R. 1898, Cr., U.B.R, 1892—1896, Vol. I, 279; *D.*, 22 B. 768.]

(47)—*Penal Code*, ss. 467,109, 114—*Abetment of forgery — Valuable security — Unregistered document.*—A person taking an active part in the preparation of a document, but no part in the forgery of the name of the executant, does not commit forgery, but simply abets the offence. An unregistered document, in respect of which forgery has been committed, although it may not be a valuable security until registration is completed, is, nevertheless, one which "purports" to be a valuable security within the meaning of s. 467 of the Code. KASHI NATH NAEK v. QUEEN-EMPRESS, **25 C. 207=1 C.W.N. 681.** (12 M. 148, *Appr.*)

(48)—*Penal Code*, s. 471—*Forgery--Dishonestly and fraudulently using as genuine a forged document—Filing document, but not tendering it in evidence—User.*—Appeal against a conviction under s. 471, I.P.C., for fraudulently or dishonestly using as genuine, documents, which the accused knew or had reasons to believe to be forged. The case against the accused was that he used two rent receipts, which he must have known to be forged, in a proceeding, which was instituted as one under s. 144, Crim Pro. Code, and was subsequently altered into one under s. 145 What happened was that he, with another party to the case, produced the receipts in question, and they were entered in a list, which was filed with the statement made on behalf of the third party. They were at once denounced as forgeries and were never tendered in evidence. There was no attempt made to assert their genuine character, after they had once been impugned, and none to use them as evidence. *Held* that this did not, on the facts before the Court, constitute any user within the meaning of s. 471, I.P.C. AMBIKA PRASAD SINGH v. EMPEROR, **35 C. 820=8 Cr.L.J. 398.** [*Diss.*, 13 Cr. L J. 6=13 Ind. Cas. 99 ; *R.*, 14 Cr. L J 667=21 Ind. Cas. 907=25 P.R. 1913, Cr.; *D.*, 39 C 463=15 C.L.J. 509=16 C.W.N. 623=13 Cr.L.J. 201=14 Ind. Cas. 201 ; *Expl.*, 13 Cr L J. 19=13 Ind. Cas. 211=(1911) 2 M. W.N. 526, 13 Cr. L.J. 449=15 Ind. Cas. 81.]

(49)—*Penal Code*, ss. 465, 471, 477-A—*Forgery—Falsification of accounts—Fraudulent intent necessary—Crim. Pro. Code*, s. 360—*Necessity for reading over depositions in the presence of the accused or his pleader—Practice.*—Where the first accused, a Postmaster, misappropriated the sale-proceeds of 4 sacks of waste paper forms without crediting the same in the account books, and subsequently, on an enquiry being set on foot, he and the second accused, the treasurer, prepared new account books, with a view to showing that the sum which had been misappropriated was in fact received on a particular date, whereas the proper account books did not show that the sum was paid ; *held*, that, for offences under ss. 465, 471 and 477-A, there has to be an intent to commit fraud. *Held*, also, that, as the entry was a statement of the true position of affairs, and not made to conceal liability and present an untrue state of affairs, the intent to defraud had not been made out. The real purpose was not to defraud, but to remove evidences of a crime. S. 360, Crim. Pro Code, is mandatory and not merely directory. Depositions of witnesses should be read over to them, in the presence of the accused or his pleader as required by s. 360. A custom to the contrary cannot alter the plain words of the Act. JYOTISH CHANDRA MUKERJEE v. EMPEROR, **36 C. 955=14 C.W.N. 82=4 Ind. Cas. 416=10 Cr.L. J. 581.** (22 C. 313, 35 C. 450, *D.*) [*R.*, 18 C. W.N. 1242, 13 Cr. L.J. 569=15 Ind Cas. 985= U.B.R. 1912, 1st Qr. 123.]

(50 & 51)—*Fraudulently and dishonestly using a forged receipt does not amount to forgery—Penal Code*, s. 471—*Stay of trial in such cases.*—Fraudulently and dishonestly using a forged receipt as an acquittance for money does not amount to forgery, although under s. 471, Penal Code, it renders the offender liable to the punishment for that offence. When cases of this nature are sent by Civil Courts to the criminal authorities for investigation, the latter must proceed with them. **1 W.R. Cr. Letters, 10.**

(52)—*Attempt to commit and abetment of forgery—Making draft of intended false document to be used by another.*—Where an accused person conspired with another person to prepare a document, purporting to be a valuable security which he knew would be a false document, and must have known was to be used for purposes of fraud, and he prepared to that end a draft which he was about to copy on a stamp of sufficiently early date procured for that purpose and, in order to complete the instrument, he applied to a person to supply the Telugu date corresponding with an English date which it was intended the forgery should bear, *held*, that the facts as proved would support a conviction for an abetment by conspiracy to commit the offence of forgery, the acts done being done to facilitate the commission of the offence, but would not support a conviction for an attempt to commit forgery. REG. v. PADALA VENKATASAMY, **3 M. 4=1 Weir 543.** [*R.*, Rat. Un. Cr. C. 470.]

(53)—*Penal Code*, s. 471—*Debtor forging release to screen himself from liability to pay the debt—Fabrication of receipt for concealing embezzlement made by Postmaster.*—A debtor,

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who forges a release to screen himself from liability to pay the debt, cannot be said not to be guilty of forgery, because he intended by the forgery to cover a dishonest purpose. [*F.*, 1 Weir 554.] Where a Postmaster embezzled the amount of a money-order, and at the same time fabricated a false receipt which purported to be marked by the payee of the money-order, *held*, that the accused was guilty of forgery under s. 471, Penal Code. QUEE-EMPRESS v. SABAPATI, **11 M. 411 = 1 Weir. 549.** (5 A. 217, 221, *R.*) [*F.*, 37 B. 666 = 2 Bom. Cr. Cas. 115 = 15 Bom. L.R. 708 = 14 Cr. L.J. 518 = 20 Ind. Cas. 998, 22 C. 313, 4 Ind. Cas. 1089 = U.B R. 1909, Penal Code, 29 = 11 Cr.L.J. 185, 1 Weir 554 ; *R.*, 8 P.L.R. 1904.]

(54)—*Penal Code, ss.* 465, 471—*Forgery—Forged document used as genuine—Certificate for admission for University Examination.*—A private candidate, who was required to produce certificate, as to his good character and as to his having completed the 20th year, from the Headmaster of a recognised school, with his application for admission to the Matriculation Examination, concocted a certificate, forging therein his Headmaster's signature. *Held* by the Full Bench (*Subrahmania Aiyar andDavies, JJ., dissenting*) that the candidate was guilty of forgery. *Per Sir Arnold White, C.J.*—A document, false in fact, when concocted to commit fraud, though the other elements of intent referred to in s. 463, are wanting, completes the offence of forgery. Wrongful loss to the University and wrongful gain to the accused are not necessary, under s. 24, Penal Code. A false document made to support a claim or title, such as the one to be admitted to an examination, is one made to support a 'claim' within the meaning of s. 463 of the Penal Code. *Per Benson, J.*—The act amounted to fraud, when the accused intended to get a benefit to himself by means of the deceit and of the injury which must result to the University and thereby to the public. *Per Subrahmania Aiyar, J.*—The document was not made fraudulently under ss. 463 and 464. The deception must, in order to be indictable, have involved loss or risk of loss to an individual or to the public. The mere fact that an advantage has been secured by the accused is not enough. *Per Davies, J.*—Under s. 464, it had not been proved that the accused had either of the intents specified in s. 464, to make it a false document. Mere intention to deceive does not show an intention to defraud or to cause wrongful gain or wrongful loss. The object of the accused was to appear for the examination—not a thing of value, if he failed ; if he passed, he gets a diploma, not on account of the false document he made, but on the strength of his own merits. KOTAMARAJU VENKATARAYUDU v. EMPEROR, **28 M. 90, F B. = 1 Weir 538-A.** [*F.*, 28 A. 358 = A.W.N. 1906, 48 = 3 Cr. L.J. 249 = 3 A.L.J. 149 ; *R.*, 1 P.R. 1907, Cr. = 32 P.L.R. 1907.]

(54-*a*)—*Penal Code, s.* 466—*Scope of section —False certificate.*—S. 466 is not intended to apply to cases of persons, whose duty it is to make entries in a public book, and who knowingly make a false entry, but to cases where a certificate or other document is forged by some unauthorized person with a view to make it appear that it was duly issued by a public officer. The former case is provided for by s. 192. *In the matter of* JUGGUN LALL, **7 C. L.R. 356.**

(55)—*Fabricated entry in Government service book—False document—Fraudulent intention—Penal Code, ss.* 463, 464, 466 *and* 25.—The document, the fraudulent use of which was abetted by the appellant was an entry fabricated in a Government "service book," to which the forged signature of a public servant had been also added, the purport of the entry being that the appellant had resigned the service of the Government from illness, whereas he was dismissed on conviction of a criminal offence. The object with which that entry was fabricated, and the use to which it was put by the appellant, or by his brother in pursuance of the conspiracy in which the appellant had joined was to deceive the Deputy Commissioner, and to induce the Deputy Commissioner to bestow upon the appellant an appointment under the Government, which would not have been bestowed if the facts had not been falsely stated in this fabricated entry. *Held* that such intention and use were fraudulent within the meaning of s. 25, Penal Code, and that the appellant was rightly convicted under ss. 463, 464, 466, I.P.C. NGA PE v. QUEEN-EMPRESS, **L.B.R. 1893—1900, 266.** (13 C. 349, 22 C. 313, 13 B. 506, 13 B. 515, *F.*)

(56)—*Penal Code, ss.* 192 *and* 464—*Son's signing father's signature under father's authority—Fabricating false evidence—False document—Intention.*—Where a petition presented to a Deputy Commissioner purported to be signed by two persons, but was presented by one of them, and when the Commissioner asked where the other signatory was, the son of that person appeared and said that he was the signatory's son and had signed his father's name, *held* that the son had not committed the offence of fabricating false evidence on the grounds, (1) that the petition did not contain any false statement and (2) that there was no intention that it should appear in evidence in any proceeding. Nor was the petition a false document within the meaning of s. 464, I.P.C., inasmuch as the accused did not write his father's name fraudulently or dishonestly, but with his father's authority. Hence the act did not amount to forgery. KING-EMPEROR v. PO SHIN, **4 L.B.R 45 = 6 Cr. L.J. 283.**

(57)—*Requisites for offence—Penal Code, s.* 29—*False document.*—To constitute the offence of forgery, the simple making of a false document is sufficient. It is not necessary that the document should be published or made in the name of a really existing person. QUEEN v. SHIFAIT ALI, **2 B L.R. A. Cr. 12 = 10 W.R. Cr. 61.**

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(58)—*Deed of divorce, a valuable security—Using a forged deed of divorce, offence under s. 471, Penal Code.*—A deed of divorce is a "valuable security" within the meaning of s. 30 of the Penal Code. The presenting of a forged document of such a nature for registration and obtaining its registration would be "using" within s. 471 of that Code. QUEEN v. AZIMOODDEEN, **11 W.R. Cr. 15.**

(59)—*Forgery of copy of document—Penal Code, s. 463.*—The forgery of the copy of a document for the purpose of the same being used in evidence comes within the definition of forgery as contained in s. 463 of the Penal Code. ESSAN CHUNDER DUTT v. PRANNATH CHOWDHRY, **W.R. F.B. 71=Marsh 270=2 Hay 236.**

(60)—*False entries in account book—Penal Code, s. 464.*—The prisoner made certain entries in his ledger, which consisted of rough loose sheets, showing that certain sums of money had been repaid to the prosecutor, which, in fact, had not been repaid. *Held*, that the prisoner was guilty of forgery under s. 464 of the Penal Code. ANONYMOUS, **1 Ind. Jur. N.S. 46.**

(61)—*Penal Code*, s. 465.—Clear proof is required in a case of forgery. It should be clearly shown upon whom the fraud was committed. To constitute fraud, there must be some right against which it is directed, or something which can be injured. There must be a possibility of some person being not only deceived but injured by the forgery. An attempt made to evade illegal exaction cannot ordinarily amount to dishonesty or fraud. The fabrication of a document to support a complaint already made or to escape the consequences of having made it does not necessarily amount to forgery. Taking a false document does not consist in writing it without doing anything towards its execution. LIM HOE v. QUEEN-EMPRESS, **U.B.R. 1892—1896, Vol. I, 279.** (6 C. 482, 9 C. 53, 10 C. 584, 14 C. 513, 19 C. 380, 5 A. 221, 553. 7 A. 403, *R.*) [*Expl.*, 11 Cr. L. J. 185=4 Ind. Cas. 1089=U.B.R. 1907—1909, Penal Code, 29.]

(62)—*Using forged document—Production of copy of document—Evidence given before Civil Court when inadmissible in evidence—Improper admission of evidence when a ground for revival of conviction.*—A person may be convicted of using a genuine document which he knew to be forged, though he, in the first instance, produced only a copy of a copy of it. Where a Civil Court authorizing a criminal prosecution in cases of offences against public justice, instead of availing itself of the powers given in s. 173 of Act II of 1855, to complete the investigation itself and to commit the parties for trial before the Court of Session, simply refers the proceedings, and leaves it to the Magistrate to commit or not as he thinks proper, the depositions taken before the Civil Court are not admissible in evidence, as depositions taken before the Magistrate are in certain cases under s. 369, Crim. Pro. Code. But by s. 57, Act II of 1855, the improper admission of such evidence is not of itself a ground for the reversal of the Sessions Judge's sentence, when, independently of that evidence, there is sufficient evidence to justify the decision. QUEEN v. NUJUM ALI, **6 W.R. Cr. 41.**

(63)—*Attempting to use fabricated evidence—Knowledge of forgery—Intention to use fabricated evidence.*—Where the accused produced as evidence an account book, one page of which had been fraudulently abstracted and another substituted for it, and took considerable pains to conceal the alteration, *held* that the accused was not guilty of the offence of attempting to use as genuine fabricated evidence, unless he knew of the forgery, and intended to use the forged evidence for the purpose of affecting the decision on the point at issue when the book was tendered, namely, whether or no it contained any entry of a certain money transaction. QUEEN v. MUDDOO SOODAN SHAW, **7 W.R. Cr. 23.**

(64)—*Making a false document—That accused himself made the document to be proved—Intention, proof of.*—In order to convict a person for forgery under the Penal Code, it must be proved that the accused himself made a part of the document, with the intention of causing it to be believed that such part of a document was made by the authority of a person, by whose authority he knew that it was made. QUEEN v. RAMGOPAL DHUR, **10 W.R. Cr. 7.**

(65)—*Unauthorized use of name as agent—Giving* vakalatnamah *in name of decree-holders without their authority.*—The signing of a *vakalatnamah* in the name of his fellow decree-holders without their authority to do so, and delivering it to a vakeel with instructions to file a petition stating that the debt had been satisfied, and praying that the case may be struck off the file, is forgery within the meaning of s. 463 of the Penal Code. QUEEN v. GYANEE RAM, **6 W.R. Cr. 78.**

(66)—*Antedating a document, abetment of—Penal Code, ss. 463 and 464.*—The accused who appealed to the Commissioner from the order of an Assessor under Act XXI of 1867, applied for a copy of the order of the Assessor, to enable him to file the appeal. On being asked to file the proper stamp paper, the accused did so, but after the period allowed for appeal had elapsed. On appeal, he averred that he filed the stamp paper before time and fraudulently obtained a certificate to that effect, which was antedated. *Held*, that he was guilty of having abetted the commission of the forgery of a document within s. 463 and s. 464, Penal Code. QUEEN v. SOOKMOY GHOSE, **10 W.R. Cr. 23.**

(67)—*Making a false document—Proof of deception—Penal Code, s. 464.*—Before convicting a person for the offence of making a false document under s. 464, Penal Code, it must be shown that some sort of deception was practised by him so as to prevent a person from

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knowing the nature of the document. QUEEN v. NUJEEBUTOLLAH, **9 W.R. Cr. 20.**

(68)—*Ignorance of contents of documents—False endorsements—Proof of deception—Penal Code, s.* 464.—Before the accused, a mohurrir in a Registry office, charged with making false endorsements on the backs of three documents which were admittedly signed by the District Registrar, could be convicted of forgery within the meaning of part 3 of s. 464, Penal Code, it must be shown that the Registrar was, in consequence of the deception practised upon him by the accused, led to believe that the deeds had been duly copied into the books and signed the endorsement on that understanding. A mohurrir, a part of whose duty was, under Bengal Act IX of 1862, to receive the fees paid by parties bringing deeds for registry, is a public servant. QUEEN v. DWARKANATH GHOSE, **20 W.R. Cr. 49.**

(69)—*Misrepresentation in document by false description—Nature of the offence—Cheating not a Sessions case—Order of commitment bad in form if offence not specified.*—A misrepresentation by a false description of one's position in life is distinctly provided for under the head of cheating. Consequently, a document purporting to have been signed by a person as *putwaree* at a time when he was not a *putwaree* is not a forgery within s. 464, Penal Code. A trial for the offence of cheating is not a Sessions case within the meaning of s. 296, Crim. Pro. Code, 1872, having regard to the first portion of the definition of "Sessions case" in s. 4 of the Code of 1872, which must be understood as if the word "only" followed the words "triable by a Court of Session." An order of commitment by a Sessions Judge under s. 296 of the Code of Criminal Procedure, 1872, must specify on the face of the proceedings the offence for which the parties are to be committed for trial to the Sessions. JOY KURUN SINGH v. MAN PATUCK, **21 W.R. Cr. 41.**

(70)—*Document with illegible seal and signature—Using forged document—Penal Code, ss.* 466 *and* 471.—A person may be convicted for the offence of using as genuine a forged document purporting to be made by a public servant in his official capacity, even when the seal and the signature thereon are illegible. QUEEN v. PROSUNNO BOSE, **5 W.R. Cr. 96.**

(71)—*Alteration of collectorate* chellan *after being presented to the Collector—Penal Code, s.* 467.—Any fraudulent alteration of a Collectorate *chellan* after it has been presented to the Collector, compared in his office and marked, signed and registered by the Collector's officers appointed for that purpose, is a forgery of a document described in s. 467, Penal Code. QUEEN v. HURISH CHUNDER BOSE, **W.R. 1864, Cr. 22.**

(71-a)—*Penal Code, ss.* 467, 471—*Forgery of copy of document.*—Where the accused was convicted under s. 467, of having forged a document purporting to give authority for the delivery of moveable property, and under s. 471, of having used as genuine a forged document, the document alleged to have been forged being only a copy of an order given by the *Mamlatdar*, *held* that the conviction either under s. 467, or s. 471, was not sustainable as the document, being only a copy and unauthenticated, would not, if genuine, be a document which would give authority to deliver moveable property. The conviction was annulled, leaving it to the Magistrate, if so advised, to put the accused on his trial on some other charge. REG. v. NARO GOPAL, **5 B.H.C. Cr. 56.**

(72)—*Falsification of document with intent to deceive—Penal Code, s* 468.—*Held* that where a person's object was to deceive his employer by falsifying account-books which were in his custody, such deception being likely to cause damage to his employer, he was rightly convicted under s. 468, Penal Code, of forgery with intent to cheat, instead of under s. 465, Penal Code, of simple forgery. QUEEN v. BANESSUR BISWAS, **18 W.R. Cr. 46.**

(73)—*Fraudulent using of document—Penal Code, s* 471.—There must be a fraudulent and dishonest using of a document as genuine before a conviction can be had under s. 471, Penal Code. QUEEN v. JAHA BUX, **8 W.R.Cr. 81.**

(74)—*Using document knowing it to be forged—Penal Code, s* 471.—To support a conviction for an offence under s. 471 of the Penal Code, there must be the using of a document by a person who knows, or has reason to believe, that it is forged. QUEEN v. BHOLAY PRAMANICK, **17 W.R.Cr. 32.**

(75)—*False alteration of a police diary—Penal Code, s.* 471.—The false alteration of a police diary by a Head Constable amounts to the forgery of a document made by a public servant in his official capacity. QUEEN v. RUGHOO BARRICK, **11 W.R.Cr. 44.**

(76)—*Possession of counterfeit seals and forged documents—Absence of satisfactory explanation—Inference of intention to commit forgery reasonable—Penal Code, ss.* 472 *and* 473.—Where an accused person, found in possession of counterfeit seals and forged documents, was unable to give satisfactory information as to how he became possessed of them, *held* that it might be reasonably inferred that the accused kept them with an intention to use them fraudulently. QUEEN v. KISTO SOONDER DEB, **2 W. R Cr. 5.**

(77)—*Several seals of different descriptions found in the possession of the accused—Complete and separate offence committed in respect of each seal.*—Where several seals of different descriptions were found to be in the possession of the accused with intent to commit forgery, *held* that, under s. 473 of the Penal Code, there was a complete and separate offence committed in respect of every seal found, and that the prisoners could be legally convicted of a separate offence in regard to each seal, unless it appeared that several such seals were in their possession

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for the purpose of committing one particular forgery. QUEEN v. GOLUCK CHUNDER, **13 W.R Cr. 16.**

(78)—*Conviction under s.* 466 *read with s.* 109, *I.P C.—Subsequent conviction under s.* 471—*Validity* —A conviction, under s. 471, Penal Code, of a person convicted in respect of the same document under s. 466 read with s. 109, Penal Code, is not sustainable. MOKAND LAL v. EMPEROR, **26 P.R. 1901, Cr.** (23 A. 84, *R.*) [*F.*, 14 Cr. L.J. 183=19 Ind. Cas. 183=52 P.L.R. 1913=4 P.R. 1913, Cr.]

(79)—*Finding of forged document — Penal Code, s.* 471 — *Sanction — Crim. Pro. Code* (1882), *ss.* 195, 476.—It is competent to a Court to proceed under s. 476, Crim. Pro. Code, against a party who has filed a document, which appears to the Court to be forged, in the suit pending before it, whether such document has been actually put in evidence or not. JAMAL KHAN v. EMPRESS, **12 P.R. 1897, Cr.** (15 M. 224, *Not Appl.*)

(80)—*Tampering with public register—Penal Code, s.* 466.—Tampering with a public register either by a public servant or by a private person so as to amount to forgery is an offence punishable under s. 466, I.P.C. MUL SINGH v. EMPRESS, **13 P.R. 1895, Cr.**

(81)—*Penal Code, ss.* 464, 468—*Fraudulent entry in an account book.*—The complainant, to whom a certain amount was due from the accused's minor nephew, being illiterate, had that amount entered in his account-book by another person. Subsequently, the accused asked for the account-book and wrote in it an antedated entry bearing his own signature that he had paid the amount due to the complainant from his minor nephew. *Held*, that the accused was not guilty of the offence of forgery. JAWALA RAM v. EMPRESS, **12 P.R. 1895, Cr.**

(82)—*Alteration in a document in order to support a claim that is otherwise just—Penal Code, ss.* 25, 464, 471.—The deliberate tampering with a document to support a claim in a Court, however just that claim may be, is a fraud both upon the Court and the opposite party and no less a fraud though done to counteract another fraud GOBINDA v. EMPRESS, **6 P. R. 1895, Cr.**

(83)—*False certificate for purposes of employment in Government service—Penal Code, ss.* 25, 474.—The making of a false certificate with intent to procure an employment in Government service is fraudulent within the meaning of s. 25, I.P.C., and the certificate is a forged document intended to be used fraudulently within the meaning of s. 474, I.P C. ABDUL RAZAK v. QUEEN-EMPRESS, **2 P.R 1895, Cr.** (19 C. 380, 15 A. 210, *R*) [*R.*, 11 Cr. L J. 505=7 Ind. Cas. 629.]

(84)—*Fraudulently using a forged document—Penal Code, s.* 471.—Although a false document used in a case was not necessary for the purpose of the suit, *yet*, the person using it was held to be guilty of an offence under s. 471, I.P.C. DAYA RAM v. EMPRESS, **16 P.R. 1885, Cr.**

Forgery—*continued.*

(85)—*False valuable securities, execution of —Penal Code, ss.* 463, 465.—Though a genuine valuable security may be withheld from the person entitled to it by an act of fraud, the act of executing false valuable securities to render inoperative such genuine valuable securities is no less a forgery. In such cases, fraud is committed for the purpose of counteracting fraud, and the person making the false document cannot make use of such defence to a charge of forgery. FAKIR MUHAMMAD v. EMPRESS, **4 P.R. 1885, Cr.** [*R.*, 6 P.R. 1895, Cr.]

(86)—*Alteration of a date in a bond—Penal Code, ss.* 464, 465, 467.—The alteration of a date in a bond is an alteration in a material part thereof, within the meaning of s. 464, I.P.C., although the alteration is not made for the purpose of saving limitation. RAM NARAIN v. EMPRESS, **14 P.R 1881, Cr.**

(87)—*False document prepared for concealing a previous offence—Penal Code, s.* 468.—Where the accused falsely or incorrectly read out to an Octroi Inspector the contents of an invoice so as to make the value appear to be less than it actually was, and afterwards altered the invoice so as to make it correspond with what he had dictated to the darogha, *held*, that, as the alteration was made after the offence of cheating was complete, and for the purpose of saving himself or concealing the offence of cheating, the accused was not liable to be punished for forgery under s. 468, I.P.C. HURMUKH RAI v. CROWN, **15 P.R. 1876, Cr.**

Abetment of — *See* ABETMENT, A.W.N. 1887, 195.

Presentation of forged document for registration — Sanction of Sub-Registrar whether necessary—*See* ACT III OF 1877, ss. 34, 35, 41, 12 M. 201.

See ACT III OF 1877, s. 82, 11 M. 500.

Order directing prosecution for—*See* APPEAL —CASES WHERE APPEAL DOES NOT LIE, 5 W:R. Mis. 18.

Using false document—Abetment of forgery —*See* CHARGE—GENERAL, 6 W R. Cr 20.

See CHARGE—GENERAL, 1 W.R. Cr. Letters 9.

See CHARGE TO JURY—MISDIRECTION, S C.L.R. 542.

Admission to University Examinations on false personation, and signing answer papers in another's name—*See* CHEATING—GENERAL, 12 M. 151=1 Weir 480=1 Weir 541=13 Ind. Jur. 53.

See CHEATING—GENERAL, 1 P.R. 1907, Cr.=32 P.L.R. 1907.

Complaint of—of document—Pending civil suit—*See* COMPLAINT — INSTITUTION OF COMPLAINT—PRELIMINARIES, 2 Weir 260=2 Weir 551.

Forgery—*concluded.*

See CRIM. PRO. CODE, 1898, ss. 179, 222, 235 to 239, 531, 537, 18 P.W.R. 1908, Cr.= 8 Cr. L.J. 75.

See CRIM. PRO. CODE, 1898, s. 192, 2 N.W.P. 21.

See CRIMINAL PROCEEDINGS, 16 B. 729, 18 B. 581.

Proof of possession of other completed or inchoate forged documents— Admissibility— Evidence of execution of similar documents— *See* EVIDENCE ACT, 1872, ss. 11, 43, 153, 11 B.H.C. 90.

See FALSE EVIDENCE, 5 A. 553.

Joinder of the offences of, and criminal misappropriation committed in one transaction with like offences committed in another—*See* JOINDER OF CHARGES—MISJOINDER OF CHARGES, 2 L.B.R. 10.

Joinder of charges of dacoity, using a forged document as genuine and cheating—*See* JOINDER OF CHARGES—WHEN LEGAL, 11 C. W. N. 715=5 Cr. L.J. 484.

See JURISDICTION OF CIVIL COURTS, 7 W. R. 482.

See OFFENCE BEFORE PENAL CODE CAME INTO OPERATION, 5 W.R. Cr. 43.

Interpolation of the name of a person as an attesting witness if—False document, ingredients of—Material part of document if altered —*See* PENAL CODE, ss. 24, 25, 464, 471, 14 C.W.N. 1076=12 C.L J. 277.

See PENAL CODE, ss. 109, 417, 457, 468, 471 and 511, 30 C. 822=7 C.W.N. 639.

Application to University for duplicate certificate by person not entitled—Committed in order to secure that object—*See* PENAL CODE, ss. 417, 468, and 511, 25 M. 726=1 Weir 481= 12 M.L.J. 68.

See RES JUDICATA, 5 W.R. Cr. 50.

Habitual forger—Crim. Pro. Code, 1898, s. 110—*See* SECURITY FOR GOOD BEHAVIOUR, 28 P.R. 1900, Cr.

See SENTENCE—GENERAL, 1 P.R. 1866, Cr.

See TRANSFER OF CRIMINAL CASES — TRANSFER BY HIGH COURT, 5 M.H.C. 212.

Forgery, Bengal.

See BEN. ACT I OF 1848.

Form of Charge.

See CHARGE—FORM OF CHARGE.

Forty-five Degrees Rule.

See BEN. ACT III OF 1899, ss. 449 (1), 451, 574, 13 C.W.N. 74=9 Cr. L J. 302.

Fowl.

Stealing and killing a fowl—Separate sentence—*See* THEFT—MISCELLANEOUS, 5 Bom. L.R. 460.

Fraud.

(1)—*Fraud defined.*—By fraud is meant an intention to deceive; whether it be from an

Fraud—*concluded.*

expectation of advantage to the party himself, or from ill-will towards the other, is immaterial. QUEEN-EMPRESS v. VITHAL NARAYAN, **13 B. 515, Note.** [*R.*, 37 B. 666=2 Bom. Cr. C. 115=15 Bom. L.R. 708=14 Cr. L.J. 518=20 Ind. Cas. 998, 28 M. 90=1 Weir 538-A, 9 Cr. L.J. 15=4 L.B.R. 315.]

(2)—*Fraud—Creditor obtaining assignment of unattached property to defraud other creditors.* —A creditor commits no fraud who anticipates other creditors and obtains a discharge of his debt by the assignment of any property which has not already been attached by another creditor. REG v. APPA MALLYA, **Rat. Un. Cr.C. 110.**

See ACT XIII OF 1859, s. 1, 11 A. 262= A.W.N. 1889, 85.

See CHEATING—GENERAL, 2 C.L J. 524=3 Cr. L.J. 160.

See PENAL CODE, ss. 24, 471, 5 C.W.N. 897.

Complainant induced to deliver property on the representation that payment would be made the same day— Deceit— *See* PENAL CODE, s. 415, 12 Cr. L J, 84=9 Ind. Cas. 458.

See PENAL CODE, ss. 417, 468, 511, 25 M. 726=1 Weir 481=12 M.L.J. 68.

Meaning of the term "fraud"—*See* PENAL CODE, ss. 463, 467, 15 Bom. L.R. 708=2 Bom. Cr. C. 115=14 Cr. L.J 518=20 Ind. Cas. 998 =37 B. 666.

See PENAL CODE, s. 466, 8 P.L.R. 1904.

See PENAL CODE, s. 477-A, 1 Weir 554.

Frauds, Cotton Act.

See BOM. ACT IX OF 1863.

See BOM. ACT VII OF 1878.

Frauds, Cotton Regulation.

See BOM. REG. III OF 1829.

Fraudulent Admixture.

See PENAL CODE, s. 420, 14 Bom. L.R. 137 =1 Bom. Cr. C. 78=14 Ind. Cas. 669= 13 Cr. L.J. 285.

Fraudulent Intention.

See CHEATING—FALSE PERSONATION, 4 L.B.R. 315, F.B.=9 Cr. L.J. 15.

Meaning of—*See* FORGERY, 22 C. 313.

See PENAL CODE, ss. 265, 266, U B.R. 1908, 3rd Qr., Penal Code, 17=9 Cr. L.J. 415.

See PENAL CODE, s. 415, 32 C. 775=9 C.W. N. 807=2 Cr. L.J. 368=1 C.L.J. 469.

French Police Officer.

Confession before—Inadmissibility of—*See* EVIDENCE ACT, 1872, ss. 25, 26, 11 M.L.T. 407=15 Ind. Cas. 800=13 Cr. L.J. 528.

Fresh Complaint.

See CRIM. PRO. CODE, 1898, s. 203.

See DISMISSAL OF COMPLAINT.

(1)—*Crim. Pro. Code, ss. 259, 253, 203—Discharge of accused—Jurisdiction to re-entertain*

Fresh Complaint—*concluded.*

fresh complaint.—A Magistrate, who has discharged an accused person under s. 259, can re-entertain a fresh complaint on the same facts. No distinction could be drawn between an order under s. 203 and an order made under s. 253 or s. 259. *In re* RUDRA GOUD, **4 M.L.T. 140 =8 Cr. L.J. 208=18 M.L J. 561.**

Fresh Enquiry.

See DISCHARGE OF ACCUSED, 5 M.H.C. App. 31.

Fresh Evidence.

See REVIEW, Rat. Un. Cr C. 458=Cr. Rg. 13 of 1889.

Fresh Trial.

(1)—*Crim. Pro. Code* (1898), ss. 348, 350.—The trial of a case transferred to the District Magistrate should be commenced *de novo*. The mere acquiescence of the accused will not cure the irregularity. Criminal proceedings substantially bad in themselves will not be cured by any waiver or consent on the part of the prisoner. EMPEROR v. KASIM, **15 C.P.L.R. Cr. 66.**

See ACT I OF 1849, s. 9, 5 M.H.C. App. 13.

See ACT X OF 1875, s. 147, 1 C. 356.

See CRIM. PRO. CODE, 1898, ss. 203, 350, 7 C.P.L.R. Cr. 36.

Conviction in absence of charge—New trial, power of appellate Court to order—*See* CRIM. PRO. CODE, 1898, ss. 232, 423, 28 C. 63=5 C. W.N. 819.

See CRIM. PRO. CODE, 1898, ss. 256 and 526, 7 C.L.J. 240=7 Cr. L.J. 313.

See CRIM. PRO. CODE, 1898, ss. 346, 532, 12 C.W.N. 136.

See CRIM. PRO. CODE, 1898, s. 349, Rat. Un. Cr. C. 130.

See CRIM. PRO. CODE, 1898, s. 350, 13 C.W. N. 550.

Withdrawal of case partly tried from one Magistrate to another—*See* CRIM. PRO. CODE, 1898, ss. 528 and 537, 6 O.C. 192.

Evidence—Witnesses produced by accused in defence—Evidence not believed—Accused convicted—Witnesses tried for perjury acquitted—Conviction of accused set aside for irregularity—*See* EVIDENCE—GENERAL, 41 P.L.R. 1914 =17 P.W.R. 1914, Cr.=15 Cr. L.J. 62=22 Ind. Cas. 334.

See EVIDENCE—GENERAL, 3 B.L.R. A. Cr. 20=12 W.R. Cr. 3.

See PENAL CODE, s. 372, 1 Weir 364.

Friend.

Transfer—Complainant related to a—of the Magistrate—Increasing of bail during trial.—*See* CRIM. PRO. CODE, 1898, s. 526, 4 P.W.R. 1912, Cr.=66 P.L.R. 1912=15 Ind. Cas. 314= 13 Cr. L.J. 474.

Frontier Crimes Regulation, Punjab.

See PUN. REG. IV OF 1887.

See PUN. REG. III OF 1901.

See APPEAL — GENERAL, 19 P.R. 1910, Cr.=103 P.L.R. 1910=6 Ind. Cas. 959=11 Cr. L.J. 426.

Frontier Regulation, Punjab.

See PUN. REG. I OF 1872.

Frontier Regulation Amendment Regulation, Punjab.

See PUN. REG. IV OF 1873.

Frontier Tracts, Assam.

See REG. II OF 1880.

Fugitive.

If must be within local jurisdiction of enquiring Magistrate—Refusal of opportunity of defence to fugitive if vitiates enquiry and affects jurisdiction—*See* HABEAS CORPUS. 15 C.W. N. 1053=14 C.L J. 375=12 Cr. L.J. 505=39 C. 164=12 Ind. Cas. 273.

Fugitive Foreign Offenders Act.

See ACT VII OF 1854.

Full Bench.

(1)—*Crim. Pro Code* (1872), ss. 288, 297—*Opinions of Division Court on a preliminary question of jurisdiction—Jurisdiction of Full Bench.*—Where, a Division Bench of the High Court ordered a Magistrate, who refused to try a case on the ground of want of jurisdiction, to make the enquiry, holding that he had jurisdiction, and the case came before the Full Bench, for the confirmation of the sentence of death passed on the accused by the Sessions Judge, to whom the case was committed by the Magistrate, *held*, per *Stuart, C.J., Spankie and Oldfield, JJ.*, that the Full Bench was not precluded, by the order of the Division Bench, from considering whether the conviction was by a Court of competent jurisdiction, in determining whether such sentence should be confirmed. EMPRESS OF INDIA v. SARMUKH SINGH, **2 A. 218, F.B.**

(2)—*Appointment of Full Bench—Reasons.*—The fact that the majority of a Full Bench, which finally decides a point of difficulty, are numerically fewer than the Judges who have previously decided the point the other way, is no reason for appointing another Full Bench. *Per Garth, C. J.* EMPRESS v. KESHUB MOHAJAN, **8 C. 985=11 C L.R. 241.** [*R.*, 9 C. 288, 16 C. 667.]

Full Owner.

See CRIM. PRO. CODE, 1898, ss. 87, 88, 19 P.W.R. 1908, F.B., Cr.=15 P.R. 1908, Cr.=8 Cr. L.J. 89.

Funds, Local Act.

See MAD. ACT IV OF 1871.

Furlough.

See MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION, 2 C. 117.

Further Enquiry.

See CRIM. PRO. CODE, 1898, ss. 203, 435, 437, 439.

See REVISION.

(1)—*Crim. Pro. Code* (1882), s. 437—"*Further enquiry*," *nature of, under.*—S. 437 contemplates a further enquiry, *i.e.*, an enquiry upon further materials or further evidence, not a re-hearing of the matter upon the same evidence, which was before the Magistrate, who held the first enquiry. DARSUN LAL v. JUMUK LALL, **12 C. 522.** [*Diss.*, 9 A. 52=6 A.W.N. 281, F.B.]

(2)—*Crim. Pro. Code* (1882), *s.* 437—"*Further enquiry*," *meaning of the expression.*—The term "further enquiry" means, in its primary significance, an enquiry in addition to that which has already been held, not the retaking of the same evidence, which would be a fresh enquiry or re-trial, but the taking of additional evidence. In s. 437, the term is used in its ordinary meaning. QUEEN-EMPRESS v. AMIR KHAN, **8 M. 336=2 Weir 557.** [*F.*, 12 C. 522 ; *Overruled*, 14 M. 334=2 Weir 557.]

(3)—*What is further enquiry.*—The expression "further enquiry," signifies as well a fresh consideration of the effect of evidence already recorded as a supplemental inquiry upon fresh evidence. EMPRESS v. BALASINNATHAMBI, **14 M. 334=1 M.L.J. 343=2 Weir 557, F.B.=2 Weir 324.**

(4)—*Crim. Pro. Code* (1882), *ss.* 436 *and* 437—"*Further enquiry*," *meaning of—Power of Sessions Judge and District Magistrate to order further inquiry.*—The term "further enquiry" means an enquiry before the Magistrate preliminary to trial, which regularly results in a charge or a discharge, and does not include trial. The term "further enquiry" and "fresh enquiry" are used as meaning the same thing. But, further enquiry includes not merely the taking of the evidence, but the consideration of that evidence and the conclusion to charge or discharge of the accused. Therefore, after an enquiry by a subordinate Magistrate and discharge of the accused, a Sessions Judge or the Magistrate, as the case may be, has jurisdiction, under s. 437 of Crim. Pro. Code, to order a re-hearing, upon the same materials which were before the subordinate Magistrate, *i.e.*, when no further evidence is forthcoming. This wide jurisdiction to set aside an order of discharge cannot be properly exercised without having and assigning solid and sufficient reasons for doing so. [*F.*, 5 C.P.L.R. 20, 2 Weir 557=14 M. 334, 14 P R. 1891, Cr., 1 L.B.R. 9, 32 P.L.R. 1901, 2 Bom. L R. 586, 2 P.R. 1901, Cr., 3 L.B.R. 97, F.B. ; *R.*, 63 P.R. 1887 Cr., 13 B. 376, 14 P.R. 1891, Cr., 6 C.P.L R. 11, Cr. L.B.R. 1893—1900, 169, P.L.R. 1900, 31 Cr., 14 C.P.L.R. 161 ; *D.*, 2 C.L.J. 622.] In a case triable only by the Sessions Court, to which s. 436 applies, if the Sessions Judge or District Magistrate is satisfied that, on the evidence, there is clear case for a committal, and that there is no reason for desiring a further consideration by the Magistrate, it would be, ordinarily, his duty to direct a committal under s. 436 and not to order a further enquiry under s. 437. In a case not triable only by the Court of Sessions, it would, ordinarily, be his duty, under the above circumstances, to refer the case to the High Court, which can make a suitable order, and not to direct further enquiry by a Magistrate. HARI DASS SANYAL v. SARITULLA, **15 C. 608, F.B.** [*Diss.*, 3 L.B.R. 97, F.B., 32 M. 220=19 M.L.J. 157=3 M.L.T. 233=9 Cr. L.J. 192=1 Ind. Cas. 228 ; *R.*, 1 L. B.R. 9, 100, 311, 8 Cr. L.J. 51=12 C.W.N. 822=8 C.L.J. 73, 14 Cr. L J. 230=9 N.L.R. 42=19 Ind. Cas. 326.]

Further Enquiry—*continued.*

(5)—*Further enquiry—Meaning of.*—Further enquiry, under s. 437, Crim. Pro. Code, 1898, does not in all cases mean a taking of additional evidence, but may be a rehearing and reconsideration of the evidence already taken. DULLA v. EMPRESS, **2 P.R. 1901, Cr.=32 P.L.R. 1901.** (15 C. 608, F.B., 8 P.R 1900, *Appl.*; 15 C. 608, F.B. *Cons.*) [*F.*, 38 P.L.R. 1910=8 P.R. 1909=3 Ind. Cas. 580=17 P.W R. 1909=10 Cr. L.J. 314, 101 P.L.R 1902; *R.*, 24 P.W.R 1911 Cr.=10 P.R. 1911, 12 Cr.L.J. 364=11 Ind. Cas 132, 205 P.L.R. 1911 ; *D.*; 10 P.R. 1903, Cr.]

(6)—*Crim. Pro. Code* (1882), *ss.* 252, 253 *and* 437—*Order for further enquiry, effect of.*—The effect of an order for further enquiry under s. 437 is to set aside a previous order of discharge and leave the enquiry before the Magistrate open, as it was before the order, to further evidence under s. 252 and to decision under s. 253 and subsequent sections of Ch. XXI of the Code of 1882. Where, after discharge of an accused person of the charge of rioting, the Sessions Judge ordered further enquiry, *held* that the Magistrate, on the offence of rioting not being proved, was competent to try the accused for the minor offence of assault. QUEEN-EMPRESS v PAPADU, **7 M. 454=2 Weir 551.** [*F.*, 4 L.B.R. 42 ; *R.*, 8 M. 336, 3 Bom. L.R. 675.]

(7)—*Crim. Pro. Code* (1882), *s.* 437—*Further enquiry, when could be ordered and by whom to be made.*—S. 437 of the Crim. Pro. Code contemplates that the Court of Sessions shall simply direct the Magistrate of the District, either himself or by one of his subordinates, to make further enquiry. When further enquiry is into the effect of the evidence already on the record or the testimony of the witnesses already examined, it will usually be desirable that the fresh consideration of the complaint should be entrusted to a different Magistrate from the one who has already formed an opinion on the case. When the further enquiry involves the taking and weighing of additional evidence, the function will generally be best performed by the same Magistrate who made the previous enquiry ; though peculiar and prejudiced views, or even the possibility of them, may make it more desirable to bring a fresh mind to bear on the facts. The power of ordering further enquiry

Further Enquiry—*continued.*

should be used sparingly and with great circumspection. QUEEN-EMPRESS v. BALKRISHNIA, **Rat. Un. Cr. C. 328 = Cr. Rg. 19 of 1887.**

(8)—*Power to order further enquiry—Practice.*—The power to order further enquiry should be exercised sparingly and with great caution, and only in those cases where further evidence is forthcoming on the part of the prosecutor; it is undesirable to use such powers with the view that another Magistrate should hear and decide the matter on the same evidence. MANNA v. EMPEROR, **24 P.R. 1903, Cr. = 20 P.L R. 1904 = 1 Cr. L.J. 96.** (21 A. 107, 16 B. 661, *R.*; 27 C. 662, *Diss.*) [*Overruled*, 30 P.W.R. 1911 = 6 P.R. 1911 = 10 Ind. Cas. 178 = 12 Cr.L.J. 232 = 153 P.L.R. 1911.]

(9)—*Further enquiry—Practice.*—*Held*, that a case may be sent to the lower Court for further enquiry under s. 437, Crim. Pro. Code, even though there may be no further evidence which can be produced on behalf of the prosecution. GANGA SINGH v. TAHEL SINGH, **P.L.R. 1900, Cr. 33.**

(10)—*Crim. Pro. Code* (1882), *ss.* 403 *and* 437—*Further enquiry, by whom to be made—Charges of theft and mischief—Acquittal on the latter charge—Order for further enquiry—Validity.*—The further enquiry allowed under s. 437 should ordinarily be conducted by the Magistrate who first enquired into the case. Where a person, charged with theft and mischief in respect of the boughs or loppings cut from a tree, which was claimed by the complainant, was tried by the Magistrate on a charge of mischief and acquitted under s. 245, on the ground that the accused had title to the tree as against the complainant, and the District Magistrate on an application from the complainant directed further enquiry to be made by another Magistrate, which order was interpreted by the Sessions Judge, on a reference being made, as an order for further enquiry into the charge of theft only, *held*, that the District Magistrate's order was not a proper one and a new trial on a charge of theft was not maintainable, inasmuch as the finding in the trial for mischief, that the accused proved a good title to the tree as against the complainant, would also be a bar to the conviction of the accused for theft on the complaint laid by the complainant. QUEEN-EMPRESS v. ERRAMREDDI, **8 M. 296 = 2 Weir 554 = 2 Weir 458 = 9 Ind. Jur. 461.** [*F.*, 36 M. 308 = 24 M.L.J. 463 = 13 M.L.T. 360 = 14 Cr. L.J. 214 = 19 Ind. Cas. 310; *R.*, 31 M. 133 = 18 M.L.J. 57 = 3 M L.T. 230, 32 M. 220 = 9 Cr. L.J 192 = 19 M.L J 157 = 5 M.L.T. 233, 1 Bom. L R. 15, 12 Cr. L.J. 224 = 10 Ind. Cas. 168 = 5 S.L.R. 16; *Comm.*, 10 B. 131.]

(11)—*Crim. Pro. Code* (1882), *s.* 437—"*Further enquiry*" *by whom to be made—Order on insufficient grounds—When the District Magistrate could order for further enquiry.*—The "further enquiry" should ordinarily be held by the Magistrate who made the original enquiry, inasmuch as the section does not contemplate that the evidence already taken should be re-taken. Although an order for further enquiry is issued on insufficient grounds, if it has been duly carried out and futher evidence has been forthcoming, the proceedings, including the order, should be upheld. A District Magistrate has no power, under s. 437, to direct the re-opening of proceedings, merely because, in his judgment, a Subordinate Magistrate has not rightly appreciated the credit due to the witnesses. He should direct a "further enquiry" only where he is satisfied that such an enquiry is possible, that is to say, that further evidence is forthcoming either because the witnesses already examined have not been fully examined or because there are other witnesses who might have been examined. QUEEN-EMPRESS v. AMIR KHAN, **8 M. 336 = 2 Weir 557.** [*R.*, 10 B. 131, 5 C.P.L.R. 20, 31 M. 133 = 3 M.L.T. 230 = 18 M.L.J. 57; *Overruled*, 14 M. 334 = 2 Weir 557, 32 M. 220 = 19 M.L.J. 157 = 5 M.L.T. 233 = 9 Cr. L.J. 192.]

(12)—*Crim. Pro. Code* (1882), *s.* 438—*Order for further enquiry by Sessions Judge—Examination of monthly criminal returns of Magistrate.*—A Sessions Judge has no power to order further enquiry in a case where he has sent for the records, on examining the monthly criminal returns of the Magistrate. QUEEN-EMPRESS v. VALAV, **Rat. Un. Cr. C. 407 = Cr. Rg. 71 of 1888.**

(13)—*Crim. Pro. Code* (1882), *ss.* 350, 437—*Conviction upon the same evidence on which accused was discharged previously—Validity.*—Where, in a further enquiry by the District Magistrate in a case where the Deputy Magistrate discharged the accused, the former convicted the accused person practically upon evidence which was not recorded in the course of the "further enquiry" before himself, but upon evidence which was recorded by the Deputy Magistrate, *held*, that the conviction based substantially upon such evidence was improper, as, upon such evidence, the Deputy Magistrate had discharged him, rejecting the evidence. QUEEN-EMPRESS v. HASNU, **6 A. 367 = A.W.N. 1884, 130.** [*R.*, 8 M 336; *Commented on*, 10 B. 131; *Overruled*, 9 A. 52 = 6 A. W.N. 281, F.B.]

(14)—*Crim. Pro. Code* (1882), *s.* 437—*Omission to consider necessary evidence—Effect of further enquiry.*—The accused, an Abkari Inspector, in order to prevent a witness being tutored, told his peon, according to his own admission in the case in which the witness had deposed, to bring the witness to his office tent, and detained him there during the night. On the following morning, he sent him in charge of the peon to the Court, where he gave a deposition and was allowed to go. The Magistrate, without taking the admission of the accused in the previous case into consideration, discharged the accused on his plea that the complainant had voluntarily gone to his tent to have his statements reduced to writing, that he consented to stop there during the night, and that, of his own accord, he went with the peon to the Magistrate's Court on the following morning,

Further Enquiry—*continued.*

On an application by the complainant to the Sessions Judge for further enquiry, on the ground that the Magistrate had not taken into consideration the accused's statement in the previous case, the Judge refused to order further enquiry as the accused acted without malice. *Held* by the High Court, in revision, that the further enquiry should be ordered, as the accused made certain admissions in the previous case, the effect of which had not been considered in dealing with the present complaint, the deposition in that case being given under circumstances which would permit its admission as evidence against the accused. *Held*, further, that malice was not an ingredient of the offence of wrongful confinement. In the further enquiry ordered under s. 437, the accused may meet the case for prosecution by producing rebutting evidence. The Magistrate may also take evidence which he has omitted to take. DHANIA v. F. L. CLIFFORD, **13 B. 376.**

(15)—*Crim. Pro. Code* (1898), ss. 435 *and* 437—*Accused discharged by the Sub-Magistrate —Jurisdiction of Sessions Judge to direct a further enquiry on the ground of misappreciation of evidence.*—Where the accused who were charged with theft were discharged by the Sub-Magistrate, but the Sessions Judge held that, on the evidence, the accused persons should not have been discharged, set aside the order of discharge and directed a further enquiry. *Held*, that, reading ss. 435 and 437 together, the Sessions Judge had jurisdiction to direct a further inquiry, if he considered the order of discharge incorrect, illegal, or improper, or on the ground of misappreciation of evidence, if, in his opinion, misappreciation of evidence has led to the passing of an incorrect or improper order of discharge. No restrictions are placed by the sections upon the grounds on which a Sessions Judge may order further inquiry. VENKATA SUBBA REDDI v. AYYALU REDDI, **5 M.L.T. 356 = 32 M. 214 = 3 Ind. Cas. 488 = 10 Cr. L.J. 299.**

(16)—*Crim. Pro. Code* (1898), ss. 435 *and* 439 *Revisional powers of District Magistrates —Further enquiry on the ground of incorrect appreciation of evidence.*—Where an accused, charged of having framed a false record, was discharged by the Deputy Magistrate, but the District Magistrate on revision set aside the order on the ground that the Deputy Magistrate did not correctly appreciate the evidence, and ordered a further enquiry, *held*, that the District Magistrate had jurisdiction to pass the order. GOPALA KRISHNA AIYAR v. EMPEROR, **6 M.L.T. 157 = 3 Ind. Cas. 28 = 10 Cr. L.J. 218.**

(17)—*Crim. Pro. Code* (1898), ss. 157, 159, 476—*Police report after investigation that an offence has been committed—Further enquiry of Magistrate—Order for prosecution of witnesses examined in the Magistrate's enquiry—Penal Code*, s. 193.—Where a Deputy Magistrate held a magisterial enquiry into a case, after the Police had made an investigation at the direction of the District Magistrate, and subsequently ordered the prosecution for perjury of the witnesses examined before him, *held*, that the enquiry held by the Deputy Magistrate was without legal sanction, and that the orders for prosecution were consequently without jurisdiction. ABDUL RAHMAN v. KING EMPEROR, **6 A.L.J. 963 = 32 A. 30 = 3 Ind. Cas. 952 = 10 Cr. L.J. 424.** [*R.*, 8 A.L.J. 674 = 11 Ind. Cas. 141.]

(18)—*Case referred to second class Magistrate by District Magistrate—Power of Sub-Divisional Magistrate to withdraw case— Further enquiry—Crim. Pro. Code* (1882), s. 437.—A Sub-Divisional Magistrate cannot properly withdraw a case specifically referred to by his superior, the District Magistrate, nor can the latter properly insist on repeated furhter enquiries without fresh evidence. QUEEN-EMPRESS v. SANTARAM, **Rat. Un. Cr. C. 315 = Cr. Rg. 1 of 1887.**

(19)—*Power of District Magistrate to order further enquiry—"Accused" and "discharged," meaning of—Crim. Pro. Code* (1898), ss. 437, 119.—The terms of s. 437 of the Code are sufficiently wide to enable a District Magistrate to order a further enquiry into the case of a person discharged under s. 119 of the Code, and there is no sufficient ground for holding that they apply, in the case of a discharge, only to a discharge from the charge of an offence. An accused person is a person over whom a criminal Court is exercising jurisdiction. EBRAHIM v. KING-EMPEROR, **2 L.B.R. 80.** (4 C.L.R. 452, 16 B. 661, 23 C. 493, 21 A. 107, 24 A. 148, 24 C. 395, *R.*)

(20)—*Crim. Pro. Code* (1898), s. 437—*District Magistrate ordering further enquiry—Direction to record evidence and to return the record to the District Magistrate—Legality of the order.*—A District Magistrate, revising a case under s. 437 of the Crim. Pro. Code, has no power to direct the trying Magistrate to simply take down the evidence, and return the records to him. A prosecution lawfully revived must be dealt with in accordance with law, in the same way in which a prosecution originally instituted is dealt with. KING-EMPEROR v. HEIN KWAING, **4 L.B.R. 42 = 6 Cr. L.J. 279.** (7 M. 454, *F.*)

(21)—*Crim. Pro. Code* (*Act* V *of* 1898), ss. 253 (2) *and* 437—*Discharge of accused by District Magistrate without giving complainant opportunity to substantiate charge—Further enquiry by Sessions Judge.*—The accused were chalanned for the offence of mischief by fire under s. 436, Penal Code, to the District Magistrate, who, without calling upon the complainant or his witnesses or the accused to appear, and only on reading the chalan, passed an order discharging the accused under s. 253(2), Crim. Pro. Code. The complainant was not informed of the order of discharge till after a very long time. On his being informed, he made an application for revision to the Sessions

Further Enquiry—*continued.*

Judge, which was dismissed on the ground that, after so long a delay, it would be inexpedient to re-open the case. *Held*, that the orders of the District Magistrate and the Sessions Judge were contrary to law. MUHAMMAD BAKSH v. IMAM DIN, **68 P.L.R. 1902.** [*R.*, 107 P.L.R. 1911=11 P.W.R. 1910=5 Ind. Cas. 991=11 Cr. L.J. 347.]

(22)—*I.P.C.*, s. 379, *Crim. Pro. Code* (1898), s. 437—*Discharge by Magistrate in a case of theft—Further enquiry by Sessions Judge—Revision.*—Where a Magistrate, in a case under s. 379, Indian Penal Code, after recording all the evidence, discharged the accused, and the Sessions Judge ordered further enquiry under s. 437, Crim. Pro. Code, the Chief Court, on revision, set aside the order of the Sessions Judge with the observation that the accused was tried fully and carefully, and, for all practical purposes, acquitted. He was technically "discharged," but the enquiry was complete. DAD v. EMPRESS, **P.L.R. 1900, 31, Cr.**

(23)—*Crim. Pro. Code* (1898), s. 437—"*Further enquiry,*" *power of District Magistrate to direct—' Re-trial'*—All that a District Magistrate can do under s. 437, of the Code, is to order a 'further enquiry' and not a 're-trial.' The use of the word 're-trial' may probably prejudice the accused with a subordinate Court. KHUDA BAKSH v. EMPEROR OF INDIA, **11 P.L.R. 1905=2 Cr. L.J. 128.**

(24)—*Crim. Pro. Code* (1898), s. 437—*Discharge by District Magistrate empowered under s. 30—Power of Sessions Judge to order further enquiry.*—Where a District Magistrate empowered under s. 30, Crim. Pro. Code, discharged an accused person, the Sessions Judge was held to be competent to order a further enquiry. JALLOO v. EMPEROR, **15 P.R. 1904, Cr.=131 P.L.R. 1904.**

(25)—*Crim. Pro. Code* (1898), s. 437—*Jurisdiction of District Magistrate to make further enquiry into the case of an accused discharged by him—Committal to Sessions Court—Sessions Judge's order discharging the accused and holding the District Magistrate's order to be illegal—Validity.*—When a District Magistrate has dismissed a complaint against an accused person under s. 203, Crim Pro. Code, or has passed an order of discharge, he is empowered by s. 437 to direct a further enquiry into the case when, in the interests of justice, it is necessary to do so. Where the District Magistrate directed further enquiry into the case of the accused after he had discharged him, and the accused was committed to the Court of Session and the Sessions Judge, holding that the order of the District Magistrate was *ultra vires*, discharged the accused, *held*, that the order of the Sessions Judge was not justified under the provisions of s. 215 of the Crim. Pro. Code, and the District Magistrate was competent to order a further enquiry. EMPEROR v. MUNSHI, **50 P.L.R. 1902=9 P.R. 1902, Cr.**

(26)—*Crim. Pro. Code (Act V of 1898)*, ss. 119 *and 437—Order of discharge under s. 119—*

Further Enquiry—*continued.*

District Magistrate's order for further inquiry under s. 437—Applicability of s. 437—Jurisdiction—Meaning of "discharge."—Where, a Sub-Divisional Magistrate after hearing the defence, discharged the accused under s. 119, Crim. Pro. Code, and the District Magistrate acting under s. 437, ordered further inquiry. *Held*, (1) that the District Magistrate had no jurisdiction to make the order. (2) That when an accused person by evidence adduced on his behalf satisfies the Magistrate trying him that he ought not to be convicted, the Code does not contemplate a further inquiry by order of a superior Magistrate. (3) That the word 'discharged' in s. 437 is equivalent to 'discharged' within the meaning of ss. 209, 253 and 259 of the Code of Criminal Procedure and the term 'discharged' as used in s. 119 is merely a permission to depart. VELU TAYLAMMAL v. B. CHIDAMBARAVELU PILLAI, **11 Cr. L.J. 162=4 Ind. Cas. 1057=6 M.L.T. 133=33 M. 85=20 M.L.J. 137.**

(27)—*Crim. Pro. Code* (1882), s. 437—*District Magistrate—Further enquiry—Jurisdiction.*—It is competent to a District Magistrate, under s. 437 of the Crim. Pro. Code, to order further enquiry in a case, though he may have declined to do so on a previous occasion in the same matter. QUEEN-EMPRESS v. KRISHNAJI, **Rat Un. Cr. C. 522=Cr.Rg. 48 of 1890.**

(28)—*Crim. Pro. Code* (1882), ss. 435, 437—*Power of District Magistrate to direct further enquiry in a case of acquittal by a first-class Magistrate.*—A first-class Magistrate is not "inferior" to a District Magistrate, within the meaning of s. 435, Crim. Pro. Code; and hence the latter is not competent to call for the record of a case from the former or to direct further enquiry to be held when the former has discharged an accused person. JHINGURI v. BACHU, **7 A. 134=A.W.N. 1884, 286.**

(29)—*Crim. Pro. Code* (1898), s. 437—*Improper discharge of accused—Power of District Magistrate to order further enquiry—Further enquiry, meaning of.*—In cases of improper discharge by inferior Courts, the power of the District Magistrate is co-extensive with the power of the High Court. He should not refer the case to the High Court, merely because he doubts the legality of the order of discharge. The expression "further enquiry" in the above section of the Code does not imply that additional evidence must be forthcoming. EMPEROR v. DEBIDAS, **14 C.P.L.R. 161.** (15 C. 608, 10 B. 131, 9 A. 52, 14 M. 334, *R.*)

(30)—*Further enquiry, power of District Magistrate, to direct—Crim. Pro Code* (1882), s. 437.—A District Magistrate is not competent to direct, under s. 437 of the Crim. Pro. Code, a further enquiry to be made by a subordinate Magistrate, into a matter finally disposed of by an order discharging the accused, by a first-class Magistrate. NOBIN KRISTO MOOKERJEE v. RUSSICK LALL LAHA, **10 C. 268.** [*Diss.*, 8 M. 18, F.B.=2 Weir 540, 9 B. 100; *F.*, 7 A.

Further Enquiry—*continued.*

134 = A.W.N. 1884, 286, 10 C. 551; *R.*, 36 M. 275 = 12 M.L.T. 439 = 1912 M.W.N. 1154 = 23 M.L.J. 499 = 17 Ind. Cas. 65 = 13 Cr.L.J. 753; *D.*, 12 C. 473.]

(31)—*Crim. Pro. Code* (1898), s. 437—*Further enquiry in case of discharge of accused person on the ground of matter in dispute being of a civil nature.*—The District Magistrate is not authorized to order further enquiry under s. 437, in a case where the lower Court has found that the essence of the matter was in reality one to be fought out in a Civil Court. QUEEN-EMPRESS v. VITHU, **1 Bom. L.R. 852.**

(32)—*Crim. Pro. Code* (1898), *ss.* 202, 203 *and* 437—*Dismissal of complaint — Further inquiry ordered without notice to accused—Notice to accused, if necessary.*—The Magistrate before whom a complaint was laid, after issuing notice to the accused, dismissed it under s. 203 of the Code of Criminal Procedure. The District Magistrate, however, ordered further enquiry, but issued no notice to the accused to show cause. The case was made over to another Magistrate for further enquiry. *Held*, that no notice was necessary, the proceedings having reached no further stage than they did. It is impossible to lay down a general rule that in every case the Magistrate exercises a wrong discretion, if he orders further enquiry without notice being sent to the accused. The safer and more convenient course is to send such notice. MUHAMMAD MUTAQI v. KING-EMPEROR, **5 A.L.J. 74 = A.W.N. 1908, 45 = 7 Cr. L.J. 157.** [*F.*, 11 O.C. 261; *R.*, 12 Cr. L.J. 46 = 9 Ind. Cas. 277.]

(33)—*S.* 437, *Crim. Pro. Code—Procedure under.*—S. 437, Crim. Pro. Code, 1898, does not require the issue of notice to the person discharged as a condition precedent to further enquiry. KING-EMPEROR v. PANDURANG, **3 Bom L.R. 703.** [*R.*, 6 Bom. L.R. 856.]

(34)—*Notice to accused—Discretion.*—The Crim. Pro. Code does not expressly require that notice to an accused person is necessary before an order under s. 437 can be passed; but as a matter of discretion, it is proper that such notice should be given, especially, where further enquiry directed is for the purpose of reconsidering the evidence already given. *In re* RANGO TIMAJI, **5 Bom. L.R. 877.**

(35)—*Notice to accused.*—Notice should be given to the accused before passing an order for further enquiry under s. 437, Crim. Pro. Code, 1882. JAIJAI RAM v. SUPHAL SINGH, **2 C.W.N. 196.** (15 C. 608, *F.*)

(36) — *Necessity for notice.*—Although no notice to an accused person is necessary before ordering a further inquiry, under s. 437, Crim. Pro. Code, 1882, yet a Court would not be exercising a proper discretion, if it does not give the accused an opportunity, by service of a notice, to show cause against such an order being made. *In the matter of* AMIN KARIADAR, **3 C.W.N. 249.** [*F.*, 13 C.P.L.R. 189.]

Further Enquiry—*continued.*

(37)—*Notice to accused.*—The power conferred by s. 437, Crim. Pro. Code, 1898, to direct a further enquiry should be used sparingly and with great caution. Though it is not illegal to make an order under the section without notice to the accused, it is always desirable that notice should be given. JOY GOPAL BANERJEE v. EMPEROR, **11 C.W.N. 173 = 5 Cr.L.J. 16.** [*R.*, 31 M. 133 = 3 M.L.T. 230 = 18 M.L.J. 57.]

(38)—*Notice to accused.*—Before passing an order for further enquiry under s. 437, Crim. Pro. Code, 1898, it is ordinarily proper, though not legally necessary, that the accused should be called upon to show cause why such order should not be made. DULLA v. EMPRESS, **2 P.R 1901, Cr = 32 P.L.R. 1901.** (15 C. 608, F.B., 8 P.R., 1900, *Appl.*; 15 C. 608, F.B., *Cons.* [*F.*, 38 P.L.R. 1910 = 8 P.R. 1909 = 3 Ind Cas. 580 = 17 P.W.R. 1909 = 10 Cr. L.J. 314, 101 P.L.R. 1902; *R.*, 24 P.W.R. 1911, Cr. = 10 P.R. 1911, 12 Cr. L.J. 364 = 11 Ind. Cas. 132, 205 P.L.R 1911; *D.*, 10 P R. 1903, Cr.]

(39)—*Crim. Pro. Code* (1898), *s.* 437—*Order of District Magistrate, directing further enquiry without notice to accused—Order giving no reasons—Effect of.*—*Held*, that, though it is not, as a matter of law, obligatory on the District Magistrate to issue a notice upon the accused before directing a further enquiry under s. 437, Crim. Pro. Code, such notice should, ordinarily, in the exercise of a wise discretion, be issued, before any order prejudicial to him is passed. *Held*, also, that, though it is not desirable that the District Magistrate should make a detailed examination of the evidence or give elaborate reasons for ordering a further enquiry, yet it is desirable that he should give sufficient reasons to show that the order is a proper one. SANWAL BHERU v. DIPCHAND, **3 S.L.R. 7, Cr = 9 Cr. L J. 446 = 1 Ind. Cas. 938.**

(40)—*Crim. Pro. Code, s.* 437—*Power of Sessions Judge in revision—Further enquiry—Reasons for ordering further enquiry.*—A case came before a Township Magistrate. He discharged the accused, after recording the evidence and examining the accused, under s. 209 of the Crim. Pro. Code. On a petition by complainant to the Sessions Judge, he directed the District Magistrate, by himself or by a special power Magistrate subordinate to him to hold further enquiry. The accused was convicted by a senior Magistrate. On his appeal, it was contended for the accused that the Sessions Judge's order was bad, because it directed the further enquiry to be made by a Magistrate other than the one, who discharged the accused, and because the Sessions Judge did not give reasons. *Held*, that the Sessions Judge's order was a legal and proper one and the words "I have translated and considered the whole of the evidence on the record, and the conclusion to which I have come is that there must be further inquiry" contained ample reasons for the order TUN WIN v. KING-EMPEROR, **4 L.B.R. 233 = 7 Cr. L.J. 493.**

(41)—*Crim. Pro. Code* (1898), *ss.* 202, 203, 437 *and* 439—*Notice—Dismissal of complaint—*

Further Enquiry—*continued.*

Order of further enquiry without notice to the accused.—Held, that no notice to the accused person is necessary where the Court of revision acting under s. 437, Crim. Pro. Code, 1898, directs further enquiry to be made into any complaint which has been dismissed under s. 203 or sub-s. 3 of s. 204 of the said Code. CHANAN SINGH v. CROWN, **11 P.W.R. 1908, Cr.=7 Cr. L.J. 347.**

(42)—*Improper discharge of accused—Reference to High Court—Notice to accused not absolutely necessary—Crim. Pro. Code* (1898), s. 437.—In cases of improper discharge, when there is really no *further enquiry* that can be properly directed, the proper course is to refer the matter to the High Court. In cases in which *further enquiry* of any kind can be ordered a reference to the High Court would be unnecessary. The service of a notice to show cause is not absolutely necessary in point of law, but it is a general principle that an order to the prejudice of an accused person shall not be made without his having an opportunity of contesting it, and a Magistrate, who neglects to give such notice or opportunity, does not exercise a proper discretion. CROWN v. NGA PO KA, **1 L.B.R. 100** (1 L.B.R. 9, *Com. on*) [*Overruled by* 3 L.B.R. 97.]

(43)—*Crim. Pro. Code* (1898), ss. 203, 437—*Order for further enquiry without notice to the accused—Construction of order for further enquiry.*—No order should be passed against an accused person without his getting an opportunity of being heard; On a rule issued only upon the District Magistrate to show cause why further enquiry should not be directed into a complaint against the accused, which had been dismissed under s. 203, the accused is entitled to be heard. [*Diss.*, 5 A.L.J. 74=A.W.N 1908, 45=7 Cr. L.J. 157.] Where, on the dismissal of the complaints of two rival parties under s. 203, Crim. Pro. Code, the Sessions Judge, on the application of both parties under s. 437, Crim. Pro. Code, ordered that further enquiry should be held in both the cases and directed that, if one of them be found false, the other case should be tried, *held* that the Sessions Judge's order contemplated that the cases should be decided after a regular trial, and not dealt with under s. 203, Crim. Pro. Code. BRIJ KISHORE GHOSE v. GOPAL RAI, **11 C.W.N. 316=5 Cr.L.J. 112.**

(44)—*Crim.Pro. Code* (1898), s. 437—*Further enquiry, after discharge of accused person—Notice to the accused person, whether necessary—Reasons for the order for further enquiry.*—As a matter of law, it is not obligatory on a District Magistrate to serve a notice on the accused person, before ordering a re-trial under s. 437, Crim Pro. Code, 1898, but, according to the general principles of criminal jurisdiction, no order prejudicially affecting the accused person should be passed without giving him an opportunity of being heard. It is not ordinarily desirable that a District Magistrate, in ordering a further enquiry, under s. 437 of the Code, should make a detailed examination of the

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evidence and give elaborate reasons because that might prejudice the trial afterwards; but it is desirable that he should give enough in the shape of reasons to show that his order is proper. WAHED ALI v. EMPEROR, **32 C. 1090=3 Cr. L.J. 120=3 C.L J 43.** [*R.*, 8 C.L.J. 73=12 C.W.N. 822=8 Cr. L.J. 51, 9 Cr. L.J. 446=3 S.L.R. 7, 1 Ind. Cas. 938.]

(45)—*Crim. Pro. Code* (1898), s. 437—*Order of discharge—Powers of Sessions Judge to order further enquiry—Proper grounds for—Interference by High Court.*—Where an order by a Magistrate is an order of discharge in substance, though not in form, it is open to a Sessions Judge, upon a motion being made to him by the complainant, to make an order for further enquiry. Where the order of the Sessions Judge for further enquiry does not state any proper grounds, it is liable to be set aside by the High Court. NAGENDRA NATH SEN v. MR. KORB, **8 C.W.N. 456=1 Cr.L.J. 355.** [*Rel. on*, 17 C.W.N. 451=14 Cr. L.J. 123=18 Ind. Cas. 683; *R.*, 17 C.L.J. 608; *D.*, 7 Cr L.J. 493=4 L.B.R. 233.]

(46)—*Crim. Pro. Code* (1898), s. 437—*Further enquiry—Grounds for ordering—Perusal of evidence—Statement of reasons.*—It is the duty of the Judge, before directing a further enquiry against a person who has been discharged, to peruse the evidence and state the grounds which induce him to make the order, ABINASH CHANDRA MITRA v. EMPEROR, **13 C.W.N. 76=9 Cr. L.J. 303=1 Ind. Cas. 415.**

(47)—*Crim. Pro. Code* (1882), s. 437—*Order for further enquiry—Notice, omission to give—Effect — Order refusing further enquiry—Power of successor to direct further enquiry.*—The omission to give notice to the accused, before ordering a further enquiry is fatal to the validity of the order. [*R.*, U B.R. 1897—1900, 100, Cr.] Where a District Magistrate has refused to direct a further enquiry, it is not competent to a successor in office, in the face of his predecessor's order, to direct a further enquiry. In such a case, the Sessions Judge is the proper officer to do so RATTO SINGH v. KARI SINGH, **4 C W N. 100.** (15 C. 608, *R.*) [*F.*, 12 Cr. L.J. 615=12 Ind. Cas. 991=44 P.W.R. 1911, Cr.]

(48)—*Crim. Pro. Code* (1898), s. 437—*Order for further enquiry by Sessions Judge without giving notice to the accused—Validity—Omission to give notice, effect of—Revision by High Court.*—An order for the further enquiry by a Sessions Judge made on the application by the complainant without giving notice to the accused so as to give him an opportunity of showing cause why an order to his prejudice should not be made, is an improper order, although it may not be an illegal order. It is clearly competent to the High Court to revise such an order. It cannot be laid down, as a general proposition, that the omission to give notice has in itself rendered an order under the section bad. But in a case which presented no difficulty in connection with giving notice and in

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which there was no reason why the general rule should not be followed, the High Court will set aside the order, if made without notice. ALAGIRISAMY NAIDU v. BALAKRISHNASAMY MUDALIAR, **26 M. 41 = 2 Weir 564.** [*R.*, 2 Weir 692, 11 Cr. L J. 533 = 7 Ind. Cas. 856 = 8 M.L.T. 222.]

(49)—*Crim. Pro. Code* (1898), *ss.* 202, 203, 437 *and* 439—*Dismissal of complaint by Presidency Magistrate — Power of High Court to direct further enquiry — Charter Act, s.* 15.—The powers of the High Court, under s. 203, to interfere with orders of a Presidency Magistrate are limited. Where a Presidency Magistrate dismisses a complaint under s. 203, the High Court cannot direct a further enquiry under s. 437, nor can they interfere under s. 439, although the order of the Magistrate, dismissing the complaint, might not be quite proper. They can only act under s. 15 of the Charter Act, but the question of propriety or impropriety of the order does not strictly come within the authority vested by s. 15 of the Charter Act DEBI BUX SHROFF v. JUTMAL DUNGARWAL, **33 C. 1282 = 5 Cr. L.J. 83.** [*Diss.*, 36 C. 994 = 11 C. L.J. 50 = 13 C.W.N. 1221 = 10 Cr. L.J. 385 = 3 Ind. Cas. 861 ; *F.*, 6 C.L.J. 705 ; *R.*, 7 Cr.L.J. 499 = 12 C.W.N 678, 14 Cr. L.J. 529 = 14 M. L.T. 200 = 21 Ind. Cas. 129 = 1914 M.W.N. 728 14 Cr. L.J. 633 = 21 Ind. Cas. 681 = 25 M.L.J. 510.]

(50)—*Crim. Pro. Code* (1898), *ss.* 435, 439—*Presidency Magistrate—Discharge, order of—Interference in revision, by High Court.*—The High Court has power under s. 439 of the Code to order a further inquiry in a case, in which a Presidency Magistrate has discharged an accused person. MALIK PRATAB SINGH v. KHAN MAHOMED, **36 C. 994 = 13 C.W.N. 1221 = 3 Ind. Cas. 861 = 10 Cr.L.J. 385.** (15 C. 608, 26 C. 746, 28 C. 652, 27 B. 84, *F.*; 7 C.W N. 521, 1 A. 10, 26 C. 74, *R.*; 27 C. 126, 6 C.L.J. 705, 33 C. 1282, *Disc. and Diss.*)

(51)—*Crim. Pro. Code* (1872), *ss.* 147, 298 —*Dismissal of complaint—Further enquiry.*—When a complaint is dismissed under s. 147 of Crim. Pro. Code, it is competent to the District Magistrate, under s. 298, to order further enquiry and refer the case to the same or some other Magistrate subordinate to him under s. 147. RATNAGIRI DISTRICT MAGISTRATE'S LETTER NO. 3988, **Rat. Un. Cr. C. 89.**

(52)—*Crim. Pro. Code* (1898), *ss.* 203 *and* 437 —*Dismissal of complaint under s.* 203—*Order for further enquiry—Service of notice, whether necessary.*—It is not necessary that a notice should be issued before an order can be properly passed under s. 437 directing further enquiry into a matter which has terminated in a summary order of dismissal of complaint under s. 203, in the absence of any person except the complainant. Where, on a complaint made against certain persons, the Magistrate proceeded against only one of them and convicted him under s. 404, and subsequently the complainant appeared before the Magistrate and asked that process might issue against the others which

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was refused by the Magistrate, *held* that the order was to all intents and purposes an order under s. 203, and the Sessions Judge was, therefore, competent to consider under s. 437 and no notice was necessary to the parties before the Sessions Judge could act. GIRISH CHUNDRA GHOSE v. EMPEROR, **29 C. 457 = 6 C.W.N. 638.** (15 C. 608, *discussed.*) [*F.*, 11 O.C. 261; *R.*, 9 Ind. Cas. 277 = 12 Cr. L.J. 46.]

(53)—*Crim. Pro. Code, ss.* 253 *and* 437—*Discharge of accused after full enquiry—Powers of appellate Court to direct further enquiry.*—An accused person discharged after full enquiry by a competent Court is entitled to the benefit of that discharge, unless some further evidence is disclosed. The law allows a further enquiry, only when there has not been a full enquiry and where further evidence is disclosed. Where a Deputy Magistrate discharged the accused under s. 253, after full enquiry, *held* that the Sessions Judge would not be competent to order a further enquiry, on the ground that the evidence recorded was sufficient for the conviction of the accused, unless some further evidence was disclosed. JEEBUN KISTO ROY v. SHIB CHUNDER DAS, **110 C. 1027.** [*Diss.*, 9 A. 52 = A.W.N. 1886, 281, 10 B. 131; *F.*, 12 C. 522, 8 M. 336 ; *R.*, L.B.R. 1893-1900 169, P.L.R. 1900, p. 31.]

(54)—*Crim. Pro. Code* (1882), *s.* 437—*Further enquiry—Power of Sessions Judge to interfere with order passed by District Magistrate.*—Both the District Magistrate and the Session Judge are competent, under s. 437, to order a further enquiry, but when a further enquiry has been refused by one of these officers, it should not be ordered by the other; if the Sessons Judge is of opinion that the order of the District Magistrate was wrong, it is open to him to refer the matter to the High Court, but he has no jurisdiction himself to review an order made by the District Magistrate under the section. DARBARI MANDAR v. JAGOO LAL, **22 C. 573.** [*R.*, 4 O.C. 119; *D.*, 17 M.L.J. 153 = 2 M.L.T. 24 = 5 Cr. L.J. 132.]

(55)—*Crim. Pro. Code* (1898), *ss.* 253, 367, 369, 403 *and* 437—*Discharge of accused person in warrant case—Power of Magistrate to reissue warrant upon accused in respect of same offence—Order for further enquiry, whether necessary—Held* by the Full Bench (*Ghose, J, dissenting*).—A Magistrate in a warrant case, having passed an order of discharge, is competent to take fresh proceedings and issue process against the accused in respect of the same offence without an order for further enquiry under s. 437. Per *Ghose, J.*—The Legislature intended that an order of discharge, when once made by a Magistrate, can only be altered and the prosecution revived, by an order of a superior Court. But, in the present case, the order of discharge was no bar to the revival of the same complaint as it did not amount to a judgment within the meaning of ss. 367 or 369, there having been no judicial investigation

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by the Magistrate into the merits of the complaint. MIR AHWAD HOSSEIN v. MAHOMED ASKARI, 29 C. 726=6 C.W.N. 633, F.B. (28 C. 652, *F.*) [*Diss*, 28 M. 255=2 Weir 247-A; *F.*, 38 C. 828=13 Cr. L.J. 120=13 Ind. Cas. 776, 40 C. 71=16 C.W.N. 983=13 Cr. L.J. 488 =15 Ind. Cas. 488, 28 M. 310=2 Weir 325-A, 29 M. 126=16 M.L.J. 79=1 M.L.T. 31, 2 Ind. Cas. 247=5 N.L.R. 76, 1 N.L.R. 18, 11 Ind. Cas. 132=10 P.R. 1911, Cr., 205 P.L.R. 1911, 9 Cr. L.J. 553; *R.*, 29 A. 7=3 A.L.J. 562=A.W. N. 1906, 245, 35 A. 78=10 A.L.J. 531=14 Cr. L.J. 2=18 Ind. Cas. 146, 9 Bom. L.R. 250, 2 L.B.R. 27, 6 O.C. 262, U.B.R. 1904, 2nd Qr., Cr. P.C., 19, U.B.R. 1906, 2nd. Qr., Cr. P.C., 49.]

(56)—*Crim. Pro. Code* (1898), *s.* 437—*Further enquiry—Power of Magistrate to direct further enquiry into offences forming component parts of an offence of which accused was acquitted.*—Where the petitioner was charged with being a member of an unlawful assembly with the common object of assaulting the complainant and with having assaulted the complainant in prosecution of that common object, and, after trial professedly under s. 147, I.P.C., was acquitted, *held*, that he cannot be re-tried for an offence under s. 323, I.P.C., until the order of acquittal had been set aside; nor could an order for further enquiry in regard to an offence under s. 342, I.P.C., be made inasmuch as the whole occurrence had already formed the subject of a trial which had resulted in an acquittal. JALIRAM ALOAM GANBURAH v. RAJ KUMAR, 5 C.W.N. 72.

(57)—*Crim. Pro. Code* (1898), *ss.* 202, 203, 422—*Order for further enquiry, refusal of, by the High Court—Subsequent order by the Sessions Judge on fresh materials—Propriety of.*—A refusal by the High Court to order for further enquiry is no bar to the Sessions Judge's order for further enquiry, if fresh evidence has been brought to light and the order of the Sessions Judge is made upon materials totally different from that which were before the High Court. BEPIN BEHARI DE v. NENDI HARIANI, 7 C.W.N. 80.

(58)—*Crim. Pro. Code* (1882), *ss.* 436, *and* 437—*Further enquiry—Power of District Magistrate to suggest a committal to Sessions.*—Under s. 437, Crim. Pro. Code, the District Magistrate has power to make further enquiry himself or to direct the Sub-Magistrate to make further enquiry, but, if he chooses the latter course he has no legal authority to fetter the Sub-Magistrate in the exercise of his judicial discretion and to suggest a committal to the Sessions. QUEEN-EMPRESS v. MUNISAMI, 15 M. 39=2 Weir 542=2 Weir 288. [*R.*, 31 M. 133=7 Cr. L.J. 267=18 M.L.J. 57=3 M L.T. 230]

(59)—*Crim. Pro. Code* (1898), *s.* 437—*Person called upon to furnish security under s.* 107, *and discharged under s.* 119 *if an accused person—Order for further enquiry.*—A person discharged under s. 119, Crim. Pro. Code, is an accused person within the meaning of s. 437, Crim. Pro. Code. Therefore, an order for further

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enquiry can be made in the case of a person called upon to furnish security, and discharged by the Magistrate under s. 119, Crim. Pro. Code. CHETU v. GOKHA SINGH, 33 P.R. 1905, Cr.=149 P.L.R. 1905. (20 C. 720, 24 C. 395, *D.*) [*Overruled*, 30 P.W.R. 1911=6 P.R. 1911=10 Ind. Cas. 178=12 Cr. L.J. 232, 153 P.L.R. 1911.]

(60)—*Ibid.*—The person proceeded against under Ch. VIII, Crim. Pro. Code, is not an accused person within the meaning of s. 437. Therefore, s. 437 does not authorise an order for further enquiry to be made in a case under s. 107, Crim. Pro Code, in which the person proceeded against has been discharged under s. 119. MUHAMMAD KHAN v. EMPEROR, 42 P.R. 1905, Cr.=2 Cr. L.J. 697=131 P.L.R. 1905. (21 A. 107, *Not F.*; 27 C. 662, *F.*; 24 C. 395, 20 C. 729, *R.*) [*F.*, 30 P.W.R. 1911, Cr.=6 P.R. 1911=10 Ind. Cas. 178=12 Cr. L.J. 232; 154 P.L.R. 1914; *Appr.*, 5 P.R. 1914, Cr., 153 P.L.R. 1911; *R.*, 36 A 147=12 A.L.J. 167=15 Cr. L.J. 39=22 Ind. Cas. 183.]

(61)—*Practice and procedure of Chief Court in admitting applications for—Crim. Pro. Code, s.* 437—*Concurrent powers of Sessions Judge and District Magistrate under.*—The power conferred by s. 437 of the Crim. Pro. Code to order further enquiry into the case of an accused person who has been discharged is exercised by the Sessions Judge and District Magistrate concurrently with the Chief Court. The general rule of practice is that the Chief Court will not interfere, when there are other remedies available, until those remedies have been exhausted. When there is really no further enquiry that can properly be directed, but when what was sought was a re-consideration of the evidence on the record, the proper course was for the Sessions Judge or Magistrate to refer the matter to the High Court. In such a case the proper course for a person aggrieved is to bring his application directly to the Chief Court. Where further enquiry is desired, the Court will not ordinarily admit applications for the exercise of the power conferred by that section, unless the applicant has, in the first instance, moved the Sessions Judge or District Magistrate. U THAUNG v. PO AUNG, 2 L.B.R. 306=1 Cr. L.J. 1025. (2 L.B. R. 165, I.L.B.R. 100, 311, *R.*)

(62)—*Crim. Pro. Code* (1872), *ss.* 521, 528—*Penal Code, s.* 188.—Where a Magistrate, who had made an order under s. 521, Crim. Pro. Code, 1872, subsequently directed further enquiry to be made, it was held that he must be considered to have abandoned his proceedings under s. 528, and that he should have proceeded under s. 528 instead of fining the party charged under s. 188 of the Penal Code. QUEEN *v.* BROJENDRO LALL, 21 W. R. Cr. 36.

(63)—*Crim. Pro Code—Ss.* 212, 237 (2), 437—*Committing Magistrate, powers of—Discharge—Further enquiry—Medical evidence—Expert, opinion of.*—A Magistrate, holding enquiry into a case triable exclusively by a Court of Sessions, is entitled, at any rate to some extent,

Further Enquiry—*continued.*

to weigh the evidence produced before him, and to pronounce as to its credibility and to discharge the accused if he is of opinion that there is no credible evidence to establish a *prima facie* case against him. The accused was discharged by the District Magistrate. He could only be found guilty, if the medical evidence of the Assistant Surgeon examined by the Magistrate were held incredible. On revision in the Chief Court, notice was issued to the accused to show cause why further enquiry should not be ordered in the case. This was done by the Judge after discussing the case with the Civil Surgeon of Lahore, but no record was made of the opinion given by the Civil Surgeon. At the hearing the accused tendered written opinions of a large number of the leading medical men practising in the Punjab supporting the Assistant Surgeon's opinion. *Held*, that the opinion were not admissible, nor was anything which the Civil Surgeon may have stated. As there were no reasons to suppose that the Assistant Surgeon was corrupted and the injuries described by him were not correct, the rule was discharged. MIR ABDULLHA v. THE CROWN, **215 P.L.R. 1910, Cr.=8 Ind. Cas. 1044=11 Cr L.J. 751** (10 P.R. 1909=24 P.L.R. 1909, *F*; 27 B. 84, 14 P.R. 1908=107 P.L.R. 1908, *R.*)

(64)—*Crim. Pro. Code*, s. 437—"*Further inquiry*"—*Practice.*—Where the nature of the case is such that Courts are liable to take different views of the evidence and of the probabilities, the case is not one which calls for any further enquiry under s. 437 of Crim. Pro. Code. CHANDAN v. KALLU, **8 A.L.J. 45=12 Cr. L J. 45=9 Ind. Cas. 274** (9 A. 52, *R.*)

See ACT VII OF 1878, s. 25, P.L.R. 1900, p. 50, Cr.=19 P.R. 1900, Cr.

See BOM. ACT IV OF 1887, ss. 6, 7 and 11, 1 S.L.R. 67, Cr.=8 Cr. L.J. 185.

See COMMITMENT TO SESSIONS COURT, 4 M.H.C. App. 30, 13 C. 121.

See COMPLAINT — DISMISSAL OF COMPLAINT, 4 C.W.N. 242, 11 O.C. 261.

See CRIM. PRO. CODE, 1898, ss. 4, 145, 437, 20 C. 729.

See CRIM. PRO. CODE, 1898, ss. 110, 118, 437, 20 P.L.R. 1904.

See CRIM. PRO. CODE, 1898, ss. 209, 436, 24 M. 136=2 Weir 544.

See CRIM. PRO. CODE, 1898, s. 428, 5 A. 217.

Order for—Trial by whom to be held—*See* CRIM. PRO. CODE, 1898, s. 476, 1 C.L.J. 630=2 Cr. L.J. 656.

See CRIM. PRO. CODE, 1898, ss. 556, 437, 5 S.L.R. 137=13 Ind. Cas. 222=13 Cr. L.J. 30.

See DISCHARGE OF ACCUSED, 10 P.R. 1911, F.B., Cr.=24 P.W.R. 1911, Cr.=12 Cr. L.J. 364=11 Ind. Cas. 132=205 P.L.R. 1911.

Discharge of accused — Further enquiry, whether includes, charge and trial — *See* FALSE EVIDENCE, 1 L.B.R. 101.

Further Enquiry—*concluded.*

See HIGH COURT, JURISDICTION OF — REVISIONAL POWERS OF HIGH COURT, 26 C. 746=3 C.W.N. 598.

See HIGH COURT, 'SUPERINTENDENCE AND POWERS OF, 5 M.L.T. 233, F.B.=9 Cr. L.J. 192=19 M L.J. 157=32 M. 220=1 Ind. Cas. 228.

See MAGISTRATE, JURISDICTION OF — GENERAL JURISDICTION, L.B.R. 1893–1900, 169.

See MAGISTRATE, JURISDICTION OF — TRANSFER OF CASES — REFERENCE TO OTHER MAGISTRATES, ETC., 10 C. 551.

Power of District Magistrate to order — *See* MAGISTRATE, JURISDICTION OF—TRANSFER OF CASES, ETC., 18 C. 75.

See NOTICE, 6 A. 367=A.W.N. 1884, 130.

See NUISANCE UNDER CRIM. PRO. CODE, 24 C. 395=1 C.W.N. 217.

See PENAL CODE, ss. 500, 506, 13 Cr. L.J. 488=15 Ind. Cas. 488.

See SANCTION TO PROSECUTE—NOTICE OF SANCTION, 12 C.W.N. 822=8 C.L.J. 73=8 Cr. L.J. 51.

See SECURITY FOR GOOD BEHAVIOUR, 33 C. 8=3 Cr. L.J. 243, 21 A. 107=A.W.N. 1898, 185, 27 C. 662.

See SECURITY PROCEEDINGS, A.W.N. 1900, 206.

See SESSIONS JUDGE, JURISDICTION OF, 3 N.W.P. 90.

Gambling.

See ACT III OF 1867.

See BEN. ACT II OF 1867.

See BETTING.

See COCK FIGHTING.

See GAMBLING ACTS.

See GAMING.

(1)—*Gaming defined.*—Gaming or gambling is defined by Wharton in his Law Lexicon as the "art or practice of playing and following up any game, particularly those of chance." A game is defined by Johnson as "sport of any kind—a single match at play—a solemn contest;" and by the Imperial Dictionary "to game" is defined—"to use cards, dice, billiards, or other instruments, according to certain rules with a view to win money or other things waged upon the issue of the contest." Thus both lexicographers make a contest an essential element, and an active participation of certain persons is also necessary. A bet cannot, for the purposes of the Criminal Law be treated as a game. Under the Indian law, mere betting is not punishable. QUEEN-EMPRESS v. NAROTTAMDAS MOTIRAM, **13 B. 681.** [*Doubted*, 31 C. 542=8 C.W.N. 458.]

(2)—*Penal Code*, s. 294-*A*—*Gambling whether prohibited in mofussil*—*Money lent for gambling, whether recoverable.*— Except by s. 294-A, which refers to lotteries, gambling is not prohibited by law in the mofussil of this Presidency. Money given for the purpose of

Gambling—*continued.*

gambling is, therefore, recoverable. SUBBARAYA v. DEVANDRA, **7 M. 301.** [*R.*, 9 C.P. L.R. 17, L.B.R. 1893—1900, 60; *D.*, U.B.R. 1897—1901, 322.]

(3)—*Penal Code, ss.* 141 *and* 143—*Assembly for the purpose of gambling.*—Persons assembling for the purpose of gambling are not members of an unlawful assembly. HIGH COURT PROCEEDINGS, 2ND NOVEMBER 1880, NO. 2196, **1 Weir 53.**

(4)—*Cards playing in private house.*—Playing cards in a private house is not an offence punishable by law. QUEEN-EMPRESS v NGA SHWE PYAW, **L.B.R. 1872—1892, 57.** MUN SEIN v. QUEEN-EMPRESS, **L.B.R. 1872—1892, 59.**

(5)—*Allowing gambling in one's house and lending money to gamble, if offence.*—It is not *per se* an offence for any man to allow gambling to be carried on in his house, whether openly or secretly, or even to lend money to people to gamble in his house. QUEEN-EMPRESS v. NGA YA PO, **U.B.R. 1897—1901, Vol. I, 224.**

(6)—*Gambling Act* (IV *of* 1887), *ss.* 4, 5, 6, 7—*Presumption under s.* 7—*Evidence Act, ss.* 11 *and* 54.—*Held by Chandavarkar* and *Aston, JJ.* (*Jacob. J., dissenting*), that the presumption created by s. 7 of Bombay Act, IV of 1887, can be applied to cases falling under s. 5 as well as to those falling under s. 4 of the Act. Where a long interval elapses between the issue of a warrant under s. 6 and its execution, the applicability of s. 7 of the Act is not by that alone taken away. *Held by Jacob, J., dissenting.* — The presumption created by s. 7 is sufficient for the purposes of s. 7. It is also sufficient for the purposes of s. 4 (*a*) so far as regards the fact that the house, etc., is so used, but it is not alone sufficient for the purpose of showing that the house was so kept or used by any specific person. Per *Chandavarkar* and *Aston, JJ.* (*Jacob. J., dissenting*) :—In a trial for the offence of keeping a common gaming house under s. 4, evidence that the accused had been previously convicted of the same offence is admissible to show guilty knowledge or intention. Per *Jacob, J., dissenting* ;—In a trial for an offence under s. 4 (*a*) the evidence that the accused was previously convicted of a similar offence cannot be let in either under s. 54 or under s. 11 of the Evidence Act. EMPEROR v. ALLOOMIYA HUSAN, **28 B. 129 = 5 Bom. L.R. 805.**

(7)—*Lottery tickets, instruments of gaming Act* III *of* 1867, *ss.* 1 *and* 4.—Lottery tickets, by reference to which it is to be decided whether the holder or purchaser wins the whole, or any part, of any stakes, are instruments of gaming within the first and fourth sections of Act III of 1867, and they are instruments of gaming of a nature similar to cards. ANONYMOUS, **12 W.R. Cr. 34.**

Gambling—*continued.*

(7-*a*)—*Coins, not instruments of.*—Coins are not instruments of gambling. KING-EMPEROR v. NGA THE DAW, **2 L.B.R. 60.** [*R.*, 14 Cr. L.J. 413 = 20 Ind. Cas. 237.]

(8)—*Gambling Act* III *of* 1867, *s.* 6—*Finding of cowries in a house—Common gaming house.*—The mere finding of cowries in a house would not raise the presumption that the house was used as a common gaming house ; but evidence that cowries were used in a particular house as a means whereby to carry on gaming would bring the house within s. 6 of the Act. It entirely depends upon the use to which cowries are put. If they are used for the purposes of gaming, as they frequently are in this country, they are, when they are shown to be so used, as much instruments of gaming as dice. QUEEN-EMPRESS v. BALA MISRA, **A.W.N. 1897, 117 = 19 A. 311.**

(9)—*Gambling Act* III *of* 1867, *s.* 3—*Owner of house also a gambler—Effect.*—The fact that the owner of a house is also one of the gamblers is no reason why he should not be regarded as keeping a "common gambling house" within the meaning of s. 3 of Act III of 1867. EMPEROR v. SUKHANAND, **A.W.N. 1905, 106, Note = 27 A. 568, Note.** [*R.*, 27 A. 567 = A.W.N. 1905, 106.]

(10)—*Gambling Act* III *of* 1867, *ss.* 3, 6—*Search-warrant— Misdescription of house — Effect.*—A search warrant issued under Act III of 1867 described the house by its correct number, but as being in a wrong *mohalla* adjoining the one in which it was really situated. There was evidence that the house searched was the house about which information had been received. *Held*, that the misdescription did not vitiate the warrant so as to prevent the presumption referred to in s. 6 of the Act being applied to the case. EMPEROR v. JHUNNI, **A.W.N. 1905, 105 = 2 Cr. L.J. 243.**

(11)—*Gambling Act,* III *of* 1867, *s.* 13—*Gambling*—Chabutra *of private house—Public place.*—The *chabutra* of a private house is not a public street, place, or thoroughfare. EMPRESS v. KALANDAR KHAN, **A.W.N. 1887, 75.**

(12)—*Application of Gambling Act—Seizure of money found on person of gambler.*—The Gambling Act of 1867 does not draw a distinction between moneys found on the person of the gambler and those found in the gaming house. MAHADEVA v. KING-EMPEROR, **7 A.L.J. 404 = 11 Cr. L.J. 373 = 6 Ind. Cas. 586.**

(13)—*Gambling Act* III *of* 1867, *s.* 13—*Public place—Meaning.*—Gambling in a part of a grove distant from the foot-path passing through it and commonly used as a public way, is not gambling in a public place within the meaning of s. 13 of Act III of 1867. EMPEROR v. AJUDHIA PRASAD, **A.W.N. 1904, 92.**

(14)—*All gambling not illegal—Burma Gambling Act, s.* 17.—The fact that all gambling is not illegal must not be lost sight of in proceedings under s. 17, Burma Gambling Act, under

Gambling—*concluded.*

which the essential condition is that the accused earns his livelihood wholly or in part by unlawful gambling. NGA SHWE YWE v. CROWN, **1 L B R. 71.** (23 C. 621, *F.*).

(15)—*Gambling case—Jurisdiction.*—Under Judicial Commissioner's Circular 86 of 1859, a Tahseeldar (Sub-Magistrate) is competent to try cases of gambling. CROWN v. RAMRUTTUN, **94 P.R. 1866, Cr.**

(16)—*Private gambling — Nuisance — Penal Code, s.* 290.—Case where the conviction under s. 290, I.P.C., of an accused person, who was found gambling at night in another's house by that other's master, as for committing a nuisance, was set aside on the ground that gambling privately in a house was no offence. CROWN v. DUSTOOR KHAN, **16 P.R 1867, Cr.**

See BOM. ACT IV OF 1887, ss. 2, 14, 7 Bom. L.R. 333=29 B. 386=2 Cr. L.J. 252.

In a Zayat—Zayat is a "place to which the Public have access"—*See* BUR. ACT I OF 1899, s. 10, U.B.R. 1897—1901, Vol. I, 215.

In arrack shop—*See* MAD. ACT I OF 1886. s. 64, 1 Weir 647.

Gaming materials found on premises—Presumption—*See* MAD. ACT III OF 1888, ss. 43, 46, 47, 15 Cr. L.J. 408=23 Ind. Cas. 1008.

See CRIM PRO. CODE, 1898, s. 109, L.B.R. 1872—1892, 246.

See PENAL CODE, ss. 109, 290, 14 M. 364=1 Weir 241.

In a place where the Gambling Act is not in force—*See* PENAL CODE, ss. 268, 290, 7 C.W.N. 710.

Non-liability of Manager of a shrine freely open to public where thieves resort—Previous convictions of—and of offences not relating to property—*See* SECURITY FOR GOOD BEHAVIOUR, 37 P.W.R. 1910, Cr.=8 Ind. Cas. 249=11 Cr. L.J. 603.

Gambling Acts.

See ACT III OF 1867.

See BEN. ACT II OF 1867.

See BOM. ACT III OF 1866.

See BOM. ACT I OF 1890.

See BUR. ACT XVI OF 1884.

See BUR. ACT I OF 1899.

Gambling House.

What is—*See* BOM. ACT III OF 1866, s. 14, 7 B.H.C. Cr. 74.

Gambling, Prevention of, Act.

See BOM. ACT IV OF 1887.

Game.

See GAMBLING.

See GAMING.

Of chance, of skill— Ring game— Chief element, skill—*See* BEN. ACT II OF 1867, ss. 3, 10, 6 C.L.J. 708=6 Cr.L.J. 721.

Game—*concluded.*

See BOM. ACT IV OF 1887, 4 Bom. L.R. 297.

See BUR. ACT I OF 1899, s. 3, U.B.R. 1892—1896, Vol. I, 112.

Gaming.

See BETTING.

See COCK-FIGHTING.

See COIN.

See GAMBLING.

See GAME.

See WAGER.

(1)—"*Gaming*" *in Bombay Act* I *of* 1890, *includes wagering*—Gaming, by the provisions of Bombay Act, I of 1890, includes wagering QUEEN-EMPRESS v. KANJI BHIMJI, **17 B. 184.**

(2)—*Distinction between gaming and betting.*—The difference between gaming and betting depends on the nature of the event on which the bet is made. If the event is brought about solely for the purpose of being betted about, betting on it is gaming, otherwise it is not. The popular and not the scientific or the historical meaning of the terms is to be considered. HARI SINGH v. JADU NANDAN SINGH, **31 C. 542=8 C.W.N. 458=1 Cr.L.J. 349.**

(3)—*Crim. Pro. Code* (*Act* V *of* 1898), *ss.* 435, 439—*Revision—Gaming in one room—Adjacent room found to contain articles of gaming—Conviction of persons sitting in the latter room—Legality.*—Where certain persons were actually gaming in a room, and certain others were sitting in another room, the things found wherein showed that it was part of the gaming house, and where the persons sitting in the latter room were convicted, *held*, that the conviction was right and ought not to be interfered with in revision. *In re* NARAINA BHATTA, *In re* P. SHRINIVASA RAW, **7 M L.T. 189=5 Ind. Cas 934=11 Cr.L J. 334.**

See ACT III OF 1867, s. 6, 19 A. 311=A.W.N. 1897, 117.

"Cowries" whether instruments of—*See* ACT III OF 1867, s. 6, 18 A. 23.

See BEN. ACT IV OF 1866, ss. 46 and 72, 4 C.L.J. 92=4 Cr L.J. 71.

Instruments of—Coins and cowries—*See* BEN. ACT II OF 1867, ss. 1 and 6, 5 C.W.N. 503.

Gaming House.

See MAD. ACT III OF 1889, ss. 3, 6 and 7, 18 M. 46=1 Weir 919.

Ganja.

Growing ganja without permit—*See* BOM. ACT V OF 1878, s. 43, Rat. Un. Cr. C. 190=Cr. Rg. 26-4-1883.

Committing crime under the influence of—Criminality—*See* PENAL CODE, ss. 84, 85, 7 N.L.R. 185.

Ganjam and Vizagapatam Act.

See MAD. ACT XXIV OF 1839.

Garden.

A "private garden" is not a public place. QUEEN-EMPRESS v. NGA CHET KYI, **L.B. R. 1872—1892. 333.**

Garo Hills.

Assam—Garo Hills—Reg. III *of* 1884—*High Court—Jurisdiction—Laskars—Tribal Chiefs —Compensation for affront—Fine.*—In the Garo Hills, petty Magistrates known as Laskars have jurisdiction to grant compensation for any kind of affront committed in connection with any petty complaint Calling it fine makes no difference. The High Court has no jurisdiction to deal with the matter. DARSING NAKMA v. EMPEROR, **9 Ind. Cas 114=12 Cr. L.J. 10 =13 C.L.J 444.**

Garo Hills Act.

See ACT XXII OF 1869.

Gas Companies Act.

See BOM. ACT V OF 1863.

Gaya.

Immoveable property, dispute relating to—Fees paid by pilgrims for performing *Sradh* ceremony at, are not profits of immoveable property—*See* DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 3 C.L.J. 137=3 Cr. L.J. 214.

Gazette.

Proclaimed offender—Publication in Criminal Intelligence Gazette, whether sufficient notice—*See* PENAL CODE, s. 216, 15 Cr. L.J. 349=23 Ind. Cas. 701.

Gazetteer.

Extract from—Admissibility in evidence—*See* CRIM. PRO. CODE, 1898, s. 110, 16 C.L J. 467=18 Ind. Cas. 149=14 Cr. L.J. 5=17 C.W. N. 238.

General Clauses Act.

See ACT I OF 1868.

See ACT I OF 1887.

See ACT X OF 1897.

See BEN. ACT I OF 1899.

See BOM. ACT III OF 1886.

See BOM. ACT I OF 1904.

General Exceptions.

See BURDEN OF PROOF, Rat. Un. Cr. C. 820=Cr Rg. 66 of 1895.

See PENAL CODE, s. 300, Ex. 1, 14 C.P. L.R. 188.

General Repute.

See EVIDENCE.

See EVIDENCE—GENERAL REPUTE.

See EVIDENCE ACT, 1872, ss. 52—55.

Evidence of general repute in security proceedings—*See* CRIM PRO. CODE, 1898, ss. 107 and 117, 25 A. 273=A.W.N. 1903, 36.

See CRIM. PRO. CODE, 1898, s. 110, 1 A.L. J. 611.

General Repute—*concluded.*

See CRIM. PRO. CODE, 1898, ss. 110, 117, A.W.N. 1904, 140.

What is—*See* CRIM. PRO. CODE, 1898, s. 117 (3), A.W.N. 1903, 181.

General Stamps Act.

See ACT XVIII OF 1869.

Ghosha Women.

See PARDANASHIN WOMEN.

Gift.

See BONA FIDES.

(1)—*Gift, how effected—Burmese gift.*—A gift may be effected without signing. Burmese method of executing instruments without signature must be recognised. QUEEN-EMPRESS v. MI NAN THA, **U.B.R. 1892—1896, Vol. I, 303.**

Transfer of liquor by way of—*See* MAD. ACT I OF 1886, s. 55 (*h*), 1 Weir 645.

Girl.

Soliciting a girl for sexual intercourse—*See* PENAL CODE, s. 373, 7 N.W.P. 295.

See PENAL CODE, s. 373, 23 M. 159=1 Weir 381.

Gold Mohurs.

See ACT XIX OF 1872, 5 N.W.P. 187.

Good Behaviour.

See SECURITY FOR GOOD BEHAVIOUR.

Good Conduct.

See RELEASE ON PROBATION OF GOOD CONDUCT.

Good Faith.

See BONA FIDES.

(1)—*When can an act be said to be done in good faith.*—Nothing can be said to have been done in good faith which is done without due care and attention. PUBLIC PROSECUTOR v. RAJAMMAL, **1911 2 M.W.N. 479=10 M L.T. 501=12 Cr. L.J. 566.**

Onus probandi—See ACT XVIII OF 1862, s. 27, 4 W.R. Cr. 22.

See DEFAMATION, 3 Bom. L.R. 188.

See PENAL CODE, ss. 24, 378, 4 Bom. L.R. 936.

See PENAL CODE, ss. 52, 191 and 193, 12 A. L.J. 550=36 A. 362=15 Cr. L.J. 579=25 Ind. Cas. 331.

See PENAL CODE, ss. 499, Ex. (9), 500, 8 Ind. Cas. 220.

Goods.

See LOST GOODS.

Currency notes if—*See* ACT IX OF 1872, ss. 76, 108, 3 C. 379=1 C.L R. 339.

Goods Clerk.

A—is a public servant—*See* PENAL CODE, s. 21, 9 P.R. 1898, Cr.

Gorait.

See PUBLIC SERVANT, 26 A. 542=A.W.N. 1904, 104.

Government.

See LOCAL GOVERNMENT.

(1)—*Wrongful dismissal of public servant, suit against Government for—Contract of service—Public servant—Payment of monthly wages.*—A suit for wrongful dismissal by one of its servants will lie against the Government. In a suit by a subordinate officer in the Public Works Department for wrongful dismissal against the Government, in which it was admitted that there was no time of service fixed, and in which the plaintiff put in a memorandum of agreement between himself and the Government, stipulating that he should give six months' notice of his intention to leave the service of the Government, *held* that the hiring was indefinite; and that, although the plaintiff had bound himself to give six months' notice prior to leaving their service, there was no corresponding obligation on the Government to give notice before dismissing him. The Government, however, would not be allowed to exercise this power capriciously, or to the damage of the servant. An indefinite hiring in India does not mean a hiring for a year. The mere payment of wages monthly is not enough to show that a hiring is a monthly hiring. HUGHES v. SECRETARY OF STATE FOR INDIA IN COUNCIL, **7 B.L.R. 688.**

Powers of, under the Arms Act—*See* ACT XI OF 1878, ss. 4 and 27, L.B.R. 1893-1900, 416.

Established by law in British India includes Local Government—*See* ACT I OF 1910, ss. 4 (1) (c), 17, 19, 210 P.L.R. 1914=36 P.W.R. 1914, Cr.=15 Cr. L.J. 490=24 Ind. Cas. 578 =27 P.R. 1914, Cr., F.B.

Whether exempted from paying the tax—*See* MAD ACT I OF 1884, ss. 338 and 341, 25 M. 457=12 M.L.J. 208=1 Weir 800.

Local Government illegally constituted—Authority of, to grant sanction for prosecution—Objection if may be taken by accused—Exercise of power by *de facto* Government if may be collaterally attacked — *See* CONSPIRACY, 16 C.W.N. 1105=16 Ind. Cas. 257.

Appeal to Government's recognised fairness—Whether contempt of Court—*See* CONTEMPT OF COURT, 14 Cr. L.J. 321=20 Ind. Cas. 81= 17 C.W.N. 1253=18 C.L.J. 452, S.B.

Refusal by officer to give name of informant —*See* EVIDENCE ACT, 1872, ss. 124, 125, 2 Bom. L.R 329.

Questions of ownership between Government and private persons—*See* JURISDICTION OF CIVIL COURTS, 28 M. 304=2 Cr. L.J. 754.

Powers of—*See* JURISDICTION OF CRIMINAL COURTS—GENERAL, 7 C. 523=9 C.L. R. 93.

See PENAL CODE, s. 124-A, 22 B. 152, F.B., 19 C. 35, 20 A. 55, F.B.=A.W.N. 1898, 1.

Labourers employed by—*See* PUBLIC SERVANT, 7 M. 18=1 Weir 27.

Government—*concluded.*

Judicial officer, suits against—Suit against—for acts of Magistrate—*See* RIGHT OF SUIT, 2 Agra 81, Cr.

See SANCTION TO PROSECUTE—WHO MAY APPLY FOR SANCTION, 2 Weir 193.

Taxing provisions of statute—Right of—to claim exemption when not named in the statute—*See* STATUTE, CONSTRUCTION OF, 25 M. 457=12 M.L.J. 208=1 Weir 800.

Government Channels.

Water in, subject of possession and theft—*See* PENAL CODE, s. 378, 1912 M.W.N. 119= 13 Ind. Cas. 819=13 Cr. L.J. 131.

Government Currency Note.

See CRIM. PRO. CODE, 1898, ss. 517, 520, 1 C.L.R. 339=3 C. 379.

Government Forests Act.

See ACT VII OF 1865.

Government Land.

Cultivating, without permission—*See* CRIMINAL TRESPASS, 1 Weir 512.

Encroachment upon—*See* CRIMINAL TRESPASS, 1 Weir 521.

Government Officer.

Refusal to allow cart on hire to—*See* PENAL CODE, s. 186, 9 B.H.C. 165.

Government Pleader.

See PUBLIC PROSECUTOR.

(1)—*Duty of Government Pleader conducting prosecution--Discrepancies of witnesses.*—It is the duty of the Government Pleader or other officer who conducts a prosecution before the Court of Session to point out to the Court any glaring discrepancy between the evidence given by a witness before the Court of Session and that previously recorded by the committing officer. QUEEN v. GUNSHA MOONDA, **20 W.R. Cr. 38.**

(2)—*Access of, to the decisions in criminal cases.*—All Zillah Judges and Judicial Commissioners should allow the Government Pleaders, in their several districts, to have access to their decisions in all criminal cases in which medical evidence is taken. CRIMINAL CIRCULAR ORDER NO. 10 OF 1869, **12 W.R.Cr. Cir.7.**

Complaint by, without personal knowledge—*See* COMPLAINT—INSTITUTION OF COMPLAINT—PRELIMINARIES, 11 C.W.N. 170= 5 Cr. L.J. 13.

See SANCTION TO PROSECUTE—WHO MAY APPLY FOR SANCTION, A.W.N. 1908, 209=8 Cr. L.J. 157.

Government Prosecutor.

See PUBLIC PROSECUTOR.

See PUBLIC SERVANT, 3 C. 497.

Government Service.

False certificate for purposes of employment in—Penal Code, ss. 25, 474—*See* FORGERY, 2 P.R. 1895, Cr.

Government Stamp.

See COUNTERFEITING GOVERNMENT STAMP.

Governor-General in Council.

Power to appoint Acting Judge of High Court—*See* ST. 24 AND 25 VIC., ss. 7 and 16, 16 A. 136, F.B. = A.W.N. 1894, 39.

Grain.

Maintenance, payment of, in grain — *See* MAINTENANCE, 2 Weir 626.

Grant.

See CROWN GRANTS.

Grave and Sudden Provocation.

See CULPABLE HOMICIDE.

See CULPABLE HOMICIDE NOT AMOUNTING TO MURDER.

See MURDER.

Death caused under—Culpable homicide not amounting to murder—Burden of proof of—Evidence Act, s. 105—*Crim. Pro. Code* (1882), s. 287.—The burden of proving the existence of circumstances bringing the case of the accused with certain exceptions is thrown upon the accused. This fact does not prevent a statement of an accused person tendered by the prosecution and "read as evidence" under s 287, Crim. Pro. Code, from being taken into consideration by the Court which decides whether this burden is discharged. In dealing with a confession, the proper course is to take into consideration the statement as a whole. Though an accused may have exceeded the right of self-defence in intentionally killing another person, the act may be culpable homicide not amounting to murder, if he is deprived of the power of self-control through grave and sudden provocation. AUNG MYAT *alias* AUNG YA v. QUEEN-EMPRESS, **L.B.R. 1893—1900, 207.**

Graves.

Disturbing graves for purposes of cultivation—Digging out tombs—*See* MISCHIEF, 1 Weir 496.

Grievous Hurt.

See CULPABLE HOMICIDE.

See HURT.

See MURDER.

See PENAL CODE, ss. 320—326.

(1)—*Gist of the offence.*—To establish an offence under s. 325, I.P.C., it is necessary to prove that the grievous hurt was caused by the accused and was caused voluntarily. HAJI v. EMPRESS, **21 P.R. 1889, Cr.**

(2)—*Proof of offence—Opinion of Medical Officer not evidence—Penal Code, s.* 320—*Crim. Pro. Code* (1861), *ss.* 368 *and* 370.—Before a person can be convicted of causing grievous hurt under s. 325 of the Penal Code, it must be proved that hurt, described in s. 320 of the Penal Code as grievous hurt, has been caused. The letter of a Medical Officer expressing an opinion is not evidence under ss. 368 and 370, Crim. Pro. Code. QUEEN v. KAMINEE DOSSEE, **12 W.R. Cr. 25.**

(3)—*Requisites for offence—Sessions trials—Comment on conduct of Police officers.*—To make out the offence of voluntarily causing grievous hurt under s. 325, Penal Code, there must be some specific hurt, voluntarily inflicted, and coming within some of the eight kinds enumerated in s. 320. For the purposes of a judgment in Sessions trials, the testimony or conduct of Police officers concerned should be scrutinized and commented on in the same degree as those of other material witnesses, and not further. QUEEN v. BUDRI ROY, **23 W.R.Cr. 65.**

(4)—*Joint attack by several persons resulting in serious injury—Assault—Sessions Judge not authorized in interference with cases triable by subordinate Courts.*— When the result of a joint attack by several persons on one party is fracture of the arm of the party assaulted, the offence committed is grievous hurt, and not assault; and as the attack was made in furtherance of a common object, all are equally guilty of the same offence. A Sessions Judge has no authority to interfere and direct a commitment in the case of a conviction for assault under s. 352, or of hurt under s. 323 of the Penal Code, both of them being offences triable by the subordinate Court. QUEEN v. RAM TOHUL SINGH, **5 W.R.Cr. 12.**

(5)—*Want of intention, likelihood, or knowledge that injury is likely to cause death—Nature of offence.*—When there is neither intention, knowledge, nor likelihood that the injury inflicted in an assault will or can cause death, the offence is not culpable homicide not amounting to murder, but "voluntarily causing" grievous hurt. QUEEN v. MEGHA MEEAH *alias* JUCKON MEEAH, **2 W.R. Cr. 39.**

(6)—*Grievous hurt in commission of lurking house-trespass—Penal Code, ss.* 324, 457 *and* 460.—A prisoner, who, at the time of committing lurking house-trespass by night, voluntarily attempts to cause grievous hurt to the owner of the house, who tries to capture him, is punishable under s. 460, and not under ss. 457 and 324 of the Penal Code. QUEEN v. LUKHUN DOSS, **2 W.R. Cr. 52.**

(7)—*Robbery attended with death—Want of intention to cause death—Conviction for grievous hurt in committing robbery proper.*—Where, in a case of robbery attended with death, there was no intention to cause death or such bodily injury as was likely to cause death, the proper conviction would be for voluntarily causing grievous hurt in committing robbery and not for voluntarily causing hurt in committing robbery. QUEEN v. CHOKAR HUREE, **6 W.R. Cr. 16.**

(8)—*Beating a man found committing theft—Effect of, original assault to be considered.*—In this case, the deceased was caught in the act of theft and was being beaten and cuffed by all

Grievous Hurt—*continued.*

the prisoners, when one of the witnesses for the prosecution threatened to call the *chaukidar* on which they released their captive. Two days after, he was found drowned. *Held*, that there was no evidence to support a charge of grievous hurt. All suppositions or presumptions consequent on a man's body being found drowned must be put aside and the nature of the original assault alone considered. QUEEN v. NONKOO DAS, **2 W.R. Cr. 48.**

(9)—*Grievous hurt on grave and sudden provocation—Intention immaterial—Penal Code, s.* 335.—The word "voluntary" being omitted in s. 335, Penal Code, causing grievous hurt on grave and sudden provocation is punishable under s. 335, Penal Code, without any intention or knowledge of the likelihood of causing such hurt. QUEEN v. UMBICA TANTINEE, **4 W.R. Cr. 21**; QUEEN v. BHADOO PORAMANICK, **4 W.R. Cr. 23.**

(10)—*Serious disability for 20 days.*—A disability for 20 days constitutes grievous hurt. QUEEN v. BISHNOORAM SURMA, **1 W.R. Cr. 9.**

(11)—*Penal Code, s.* 326—*Grievous hurt with an instrument for cutting—Compoundable offence.*—A person cutting his wife's nose and ears with a razor and her *gut* with a pair of scissors, is guilty of the offence of voluntarily causing grievous hurt with an instrument of cutting and the offence is not, therefore, compoundable. EMPEROR v. GANGU, **19 P. R. 1902, Cr.**

(12)—*Penal Code, ss.* 394, 397—*Commission of grievous hurt in course of robbery.*—S. 394 provides for punishment for voluntarily causing hurt of either description in committing or attempting to commit robbery. S. 397 is merely a rider to s. 394 in cases in which hurt committed is grievous hurt. CROWN v. MOHRA, **16 P.R. 1901, Cr.** (21 A. 263, *F.*)

(13)—*Penal Code, s.* 397—"*Causing grievous hurt" in the section, meaning of.*—It is sufficient to constitute "causing grievous hurt" under s. 397, if hurt, amounting to grievous hurt, was caused by an act, in itself an offence, done in furtherance of an intention to rob and at the time of committing robbery. It is immaterial whether the hurt which he intended to cause or knew himself to be likely to cause was or was not grievous hurt. HARNAMAN v. EMPEROR, **6 P.R. 1901, Cr. = 79 P.L.R. 1901.**

(14)—*Penal Code, ss.* 309, 325—*Accused emasculating himself—Grievous hurt not committed.*—The conviction of an accused person, who emasculated himself, under s. 309, Penal Code, was held to be illegal, and that he could not be convicted of causing grievous hurt to himself under s. 325, I.P.C. CROWN v. MADHO SINGH, **22 P.R. 1878, Cr.**

(15)—*Causing grievous hurt during house-breaking—Penal Code, ss.* 459, 460.—To support a conviction under s. 459 or under s. 460, the hurt or grievous hurt must be caused during the time that the house-breaking is being committed. IMAMUDDIN v. CROWN, **17 P.R. 1876, Cr.** [*Appr.*, 2 P.R. 1882, Cr.]

Grievous Hurt—*continued.*

(16)—*Punishment—Accused being a man of bad character.*—The mere fact that the accused, who has been convicted of grievous hurt, is a man of bad character would not justify an enhanced punishment. GOLAM HYDER v. CROWN, **49 P.R. 1873, Cr.**

(17)—*Penal Code, ss.* 299, 300, 304-A, 325—*Death caused by hurt, without any of the intentions specified in ss.* 299, 300.—Where the accused gave a blow to the deceased which caused his death, without any intention to kill, or to inflict bodily injury likely to cause death, or with the knowledge that death must be the probable result, he was neither guilty of murder nor of an offence under s. 304-A, but was merely guilty of voluntarily causing grievous hurt. EMPRESS OF INDIA v. IDU BEG, **3 A. 776 = A.W.N. 1881, 132 = 6 Ind. Jur. 264.** [*R.*, 4 A.W.N. 289, U.B.R. 1892—1896, 215, 1 L.B.R. 233.]

(18)—*Penal Code, ss.* 302, 304, 325, 328 *and* 329—*Administration of* dhatura *for the purpose of facilitating robbery—Death of person to whom* dhatura *is so administered—Offence not murder, but only causing grievous hurt.*—Where, for the purpose of facilitating robbery, *dhatura* was administered by two persons to certain travellers, in consequence of which one of the travellers died and others were made seriously ill, it was *held* that, in respect of the traveller who died, the offence committed was that punishable under s. 325 of the Code, *viz.*, grievous hurt; and in respect of the travellers who did not die, the offence committed was that defined by s. 328 of the Code. EMPEROR v. BHAGWAN DIN, **A.W.N. 1908, 243 = 30 A. 568 = 8 Cr. L.J. 383 = 4 M.L.T. 402.** (20 A. 143, *N F.*)

(19)—*Penal Code, s.* 338 — *Operation for cataract—Failure of operation—Negligence* — When an accused, in good faith, performed an operation upon a woman, with her consent, for cataract, according to the recognized method of Indian eye-surgery, the result of which was that she lost her eyesight, *held*, that he was not guilty of an offence, under s. 338 of the Indian Penal Code. SURAJ BALI v. EMPEROR, **5 A.L.J. 155 = A.W.N. (1908) 91 = 7 Cr. L.J. 306.**

(20)—*Penal Code, ss.* 110, 149, 300—*Intention of some members of unlawful assembly—Common object.*—The common object of an unlawful assembly being to beat a person, two of the member struck him with dangerous weapons and two others only with their hands. There being no proof that the latter two knew of the use by the former of the dangerous weapons or of their murderous intention; *held*, that s. 110 of the Penal Code applied and that they could be convicted only of grievous hurt. REG v. CHUNDERSUNGJEE, **Rat. Un. Cr. C. 14.**

(21)—*Penal Code, s.* 390—*Theft—Hurt committed in escaping — Robbery.*—Where hurt caused is committed not for one of the purposes specified in s. 390, I.P.C., but to avoid capture when surprised, the theft is not converted into

Grievous Hurt—*continued.*

robbery. The charge and conviction should be for theft and hurt or grievous hurt. REG. v. KALIO KERIO, **Rat. Un. Cr. C. 65 = Cr. Rg. 27-6-1872.**

(22)—*Penal Code, ss.* 149 *and* 325—*Acquittal for the offence of rioting—Conviction for abetment of grievous hurt, when maintainable.*—When accused persons are acquitted of rioting, they cannot be properly convicted of grievous hurt, under s. 325, by the application of s. 149 of the Penal Code, when it is not found that those persons, or any one of them were members of an unlawful assembly, in prosecution of the common object of which grievous hurt was caused by any other member of the same assembly, or that the offence was such as each member of that assembly knew to be likely to be committed in the prosecution of that object. ABHI MISSER v. LACHMI NARAIN, **27 C. 566 = 4 C.W.N. 546.** [*R.*, 34 M. 545 = 11 Cr. L.J. 534 = 7 Ind. Cas. 861 = 8 M.L.T. 313 = 1911 1 M.W.N. 474.]

(23)—*Penal Code, s.* 326—*Grievous hurt—Essence of offence—Jury—Verdict of "guilty but not voluntarily," meaning of—S.* 338, *conviction under—Causing grievous hurt by rash and negligent act—Crim Pro. Code, ss.* 237 *and* 238.—To constitute an offence under s. 326 of the Penal Code, the act must have been done "voluntarily." That is the very essence of the offence. When an accused person was charged with committing offences under ss. 304 and 326 of the Penal Code and tried before a jury, and the latter found him not guilty under s. 304, but returned a verdict of "guilty but not voluntarily" under s. 326, and the Judge, without asking the jury to explain the verdict, discharged them and then convicted and sentenced the accused under s. 338 of the Penal Code; *held*, that the verdict on the charge under s. 326 was in effect verdict of "not guilty" and the accused was entitled to an acquittal. EMPEROR v. KHUDI RAM DASS, **12 C.W.N. 530 = 7 Cr. L.J. 362.**

(24)—*Conviction for grievous hurt to specify under which of the categories specified in s.* 320, *I.P.C., the conviction is made.*—Where the conviction is for causing grievous hurt, the record must show under which of the categories of "grievous hurt," specified in s. 320, Penal Code, the offence falls. **1 W.R. Cr. Letters, 5.**

(25)—*Penal Code, ss.* 34, 392, 394, 395 *and* 397—*No evidence whether accused actually committed grievous hurt.*—The punishment provided by s. 397 can be inflicted only on the person actually causing grievous hurt, and not on a person who might be liable for grievous hurt committed by another only in virtue of s. 34, Penal Code. S. 397 does not create a substantive offence, and a Court, therefore, should not frame a charge under that section, but under s. 392 read with s. 397, or s. 395 read with s. 397, as the case may be. BHAGWANT v. QUEEN-EMPRESS, **3 O.C. 263.** (A.W.N. 1899, 186, *F.*; and A.W.N. 1899, 76, *Not F.*)

Grievous Hurt—*continued.*

(26)—*Penal Code, s.* 320, *cl.* (8)—*Injured person under medical treatment for* 20 *days—Juvenile offender, fine alone inappropriate for.*—In order that hurt may be grievous hurt under s. 320, cl. (8) of the Penal Code, it is necessary that it should endanger life, or cause the sufferer to be, for 20 days, in severe bodily pain or unable to follow his ordinary pursuits. The mere fact that an injured person is under medical treatment for twenty days does not necessarily show that he has suffered grievous hurt. A fine is not a suitable punishment in the case of juvenile offenders. CROWN v. YA BAW, **1 L.B.R. 221.**

(27)—*Offence of, if compoundable.*—The offence of voluntarily causing grievous hurt cannot legally be compounded. REG. v. RAHIMAT, **1 B. 147.** [*R.*, 13 Cr. L.J. 721 = 16 Ind. Cas. 753 = 6 S.L.R. 76.]

(28)—*Grievous hurt—Jurisdiction.*—An accused person charged with the offence of grievous hurt should be committed for trial to the Sessions Court. REG v. ANTA DADOBA, **1 B.H.C. 101.**

(29)—*Crim. Pro. Code,* 1898, *s.* 239—*Same transaction—Misjoinder of charges.*—Some unknown persons killed N. Some time after three of the four accused came and tried to carry off N's body. On W S. trying to prevent the accused they caused him grievous hurt. The Magistrate committed all the four accused upon a charge of murder. The Sessions Judge, however, added the charge of grievous hurt against all; but ultimately acquitted one of them of both the charges, and convicted the remaining three of grievous hurt only: *Held*—That as the murder may have been committed by one set of men with one object and the attempt to carry off the body may have been committed by another set of men with a different object, the offences of murder and grievous hurt did not form part of the same transaction; and that the trial was bad for misjoinder of charges. A new trial under s. 325, I.P.C., was ordered. NAWAB SINGH v. EMPEROR, **4 Cr. L.J. 285 = 10 P.R. 1906, Cr. = 117 P.L.R. 1907.**

See ABETMENT, 7 W.R. Cr. 61.

See ASSAULT, 4 L.B.R. 271.

See COMPOUNDING OFFENCE, A.W.N. 1884, 13.

Compromise—Assault resulting in intentional—*See* COMPOUNDING OFFENCE, 6 N. W.P. 302.

See CONVICTION, Rat. Un. Cr. C. 413 = Cr. Rg. 79 of 1888.

See CRIM. PRO. CODE, 1898, ss. 170, 188, 8 Bom. L.R. 513 = 4 Cr. L.J. 54.

See DACOITY, 3 O.C. 263.

See MAGISTRATE, JURISDICTION OF—COMMITMENT TO SESSIONS COURT, Rat. Un. Cr. C. 476 = Cr. Rg. 36 of 1889.

See PENAL CODE, s. 38, A.W.N. 1882, 23.

Grievous Hurt—*concluded.*

Murder—Hanging a human body believing the person to be dead and thereby causing death, if murder—Intention to kill—*See* PENAL CODE, ss. 300, 325, 18 C.W.N. 1279=15 Cr.L.J. 709=26 Ind. Cas. 157.

See PENAL CODE, ss. 459, 460, 8 A. 649=A.W.N 1896, 253.

See PLEA, 11 W.R. Cr. 6.

See RASH AND NEGLIGENT ACT, CAUSING DEATH BY, 34 P.R. 1887, Cr.

See RIOTING, 3 N.W.P. 174.

See ROBBERY, 6 W.R. Cr. 85.

See SENTENCE—GENERAL, 8 W.R. Cr. 3.

Rioting with deadly weapon—*See* SENTENCE—CUMULATIVE AND SEPARATE SENTENCES, 7 W.R. Cr 60.

Rioting and causing—Penal Code, ss. 71, 147, 325—*See* SENTENCE — CUMULATIVE AND SEPARATE SENTENCES, 8 P.R. 1895, Cr.

House-trespass and—*See* SENTENCE--CUMULATIVE AND SEPARATE SENTENCES, 2 W.R. Cr. 29.

See SENTENCE—CUMULATIVE AND SEPARATE SENTENCES, 7 A. 414=A.W.N. 1885, 105, 16 C. 725, 9 A. 645=A.W.N. 1887, 149, 7 A 757, F.B., 7 A. 29, 6 A. 121, 8 C.W.N. 344.

See SENTENCE — IMPRISONMENT — GENERAL, 2 W.R. Cr. 32.

Growing Crops.

See CRIM. PRO. CODE, 1898, s. 386, 2 Weir 444.

Guarantee.

See COMPOUNDING OFFENCE, 11 B. 566.

Guardian.

See KIDNAPPING.

Girl of sixteen, whether can legally consent to leave guardian's protection—*See* ACT IX OF 1861, 5 B.L.R. O. Cr. 418.

Complaint by *de facto*—*See* PENAL CODE, s. 363; 12 Cr. L.J. 239=10 Ind. Cas. 281.

Dedication of minor girl to temple—Offence—*See* PENAL CODE, s. 372, 6 B.H.C. Cr. 60.

Transferring a minor to another as concubine—*See* PENAL CODE, s. 372, 1 Weir 373.

Guardians and Wards Act.

See ACT VIII OF 1890.

Guardianship.

See KIDNAPPING.

Compromise by lawful guardian—*See* COMPROMISE, 2 Weir 630.

And custody of child—*See* MAINTENANCE, 4 C. 374.

Of illegitimate child—*See* PENAL CODE, . 361, 8 C. 971.

Guilty Intention.

See INTENTION.

See PENAL CODE, ss. 28 and 231, 239, 4 A. L.J. 776=A.W.N. 1907, 289=3 M.L.T. 56=30 A. 93.

Guilty Intention—*concluded.*

Possession of stolen currency notes—Presumption—*See* STOLEN PROPERTY, 1912 M.W.N. 362=11 M.L.T. 186=15 Ind. Cas 315=13 Cr. L.J. 475.

Guilty Knowledge.

See GUILTY INTENTION.

See INTENTION.

Gun-barrel.

In good order is a fire-arm—*See* ACT XI OF 1878, ss. 4, 14, 3 N.L.R. 53=5 Cr.L.J. 435.

Possession of—and nipple—*See* ACT XI OF 1878, ss. 4, 19 (*f*), 7 M. 70=1 Weir 658.

Gunpowder.

Manufacturing and selling, without license—Imprisonment in default of payment of fine—*See* ACT XXXI OF 1860, ss. 5, 44, 5 M.H.C. App. 23.

See ACT XI OF 1878, s. 19 (*a*), 1 Weir 656=1 Weir 756.

Habeas Corpus, Writ of.

See CRIM. PRO. CODE, 1898, s. 491.

(1)—*Power of High Court to issue writ into the mofussil*—Habeas Corpus *Act*, 31 *Car*. II, *cl*. 2—*Reg*. III *of* 1818—*Warrant of arrest of Governor-General in Council.*—On an application to the High Court to issue a writ of *habeas corpus* to the Superintendent (a European British Subject) of the Alipore Jail, *held* that the Supreme Court had power to issue writs of *habeas corpus* to persons in the mofussil, and that the same power is continued to the High Court. As the person against whom the writ was applied for had acted under the written order of the Governor-General in Council, the Court would not direct the writ to issue. *In the matter of* AMEER KHAN, **6 B.L.R. 392.** [*R*., 36 M. 72=23 M.L.J. 393=1912 M.W.N. 1012=16 Ind. Cas. 755=13 Cr. L J. 723=13 M.L.T. 367, 39 C. 164=15 C.W.N. 1053=14 C.L J. 375=12 Cr. L.J. 505.]

(2)—Habeas Corpus, *power of the High Court to issue writs of—Grounds on which it may be issued—Crim. Pro. Code* (*Act* V *of* 1898), *s*. 491—Habeas Corpus, *right to, if may be taken away by Indian Legislature — Exclusion of right if must be express or by necessary implication—The Extradition Act* (33 *and* 34 *Vict*, *c* 52) *how far applicable to India—Ss*. 3, 11, 14, 15—*Indian Extradition Act* (XV *of* 1903), *ss*. 3 *and* 4, *sub-s*. (1), *if excludes jurisdiction of High Court in* Habeas Corpus—*Jurisdiction of Magistrate—Arrest under illegal warrant if vitiates trial otherwise regular—Local jurisdiction of enquiring Magistrate, fugitive if must be within—High Court if may review evidence before Magistrate*—Prima facie *case, if sufficient—Opportunity of defence to fugitive, refusal of, if vitiates enquiry and affects jurisdiction — Extradition warrant issued after enquiry by Government if bar to High Court's entertaining application—Evidence Act, ss*. 2, 78, 86—*Foreign records, authentication of — Hearsay evidence admitted by foreign Court if admissible*

Habeas Corpus, Writ of—*continued.*

—*Copy of document proved in foreign Court if admissible.*—The jurisdiction of the High Court to give directions in the nature of *Habeas Corpus* under s. 491 of the Crim. Pro. Code, is not excluded by the issue by the Government of India of warrant under s. 3, sub-s. 8 of the Extradition Act. The Government can only issue a warrant by virtue of the provisions of the Legislature authorising it, and if those provisions have not been carried out, the warrant and the custody thereunder may be found to be illegal under s. 491, Crim. Pro. Code, though with the extradition proceedings themselves the High Court cannot, except as allowed by the Act, directly interfere. *Quœre*—Whether a supreme right like that to a *Habeas Corpus* can be taken away or limited by the Indian Legislature. *Held*—That, if it can be so taken away, it must be clearly shown that it has been expressly taken away. *Per Mookerjee, J.*—The burden lies heavily on those who assert it to show that it has been taken away by such implication as is absolutely necessary for the interpretation of the Statute (L.R. 3 P.C. 282 at p. 289, 1870, *R.*) But the High Court in such a proceeding would not weigh the evidence before the Magistrate. Where the Magistrate has jurisdiction, it is sufficient that there is some evidence on which the Magistrate may reasonably act (87 L.T. 332, 334, 71 L.J.K.B. 935, 1902, *F.*) *Per Curiam.*—The Evidence Act does not contain the whole law of evidence applicable to British India. Where therefore the records of a German Court were not authenticated in accordance with the Indian Evidence Act, but in the manner prescribed by the English Extradition Act which is applicable in this country, the records were admissible under it. *Quœre* :—Whether hearsay evidence admitted in evidence in the proceedings in Germany is admissible in extradition proceedings in India. When the original Bill which the prisoner was alleged to have obtained by cheating was put in and proved by witnesses at the enquiry in the German Court :—*Held* that a copy of the document sent as part of the authenticated depositions and papers was admissible in evidence. There may be cases where the production of the original may be necessary for an enquiry in India. Where a warrant under s. 4 of the Indian Extradition Act had been issued by a Magistrate when the fugitive was outside the local limits of the jurisdiction of the Magistrate. *Held* (*Per Mookerjee, J.*)—That the warrant was at its inception without jurisdiction. *Per Curiam.*—Irregularity in the original arrest was immaterial, provided that the proceedings of the Court when it enquired into his case were right. (15 Cox. C.C. 189, 9 Q.B.D. 701, 1882, *F.*) S. 3 of the Act gives the Government authority to empower any Magistrate to enquire into a case, provided that he is one who has jurisdiction to enquire into a crime of the nature of that for which extradition is sought and does not require that the fugitive must be within the local jurisdiction of such Magistrate. The person against whom extradition proceedings are taken must under the Act be given a reasonable

opportunity of adducing evidence in his defence. Where an application of such a person for adjournment, to allow him to adduce evidence to be brought down from Europe, was rejected without assigning any reason, and it was found that the time between the arrest of the fugitive and the date of his trial was not sufficient to enable him to obtain evidence from Europe: *Held*, that proper opportunity for defence as provided by the Act had not been given by the Court, and the enquiry was not therefore according to law and the irregularity went to the jurisdiction of the Court : *Held*, further, that an extradition warrant issued on such proceeding was invalid and did not justify detention under it. *In the matter of* RUDDOLPH STALLMANN, **15 C.W.N. 1053 = 14 C L J. 375 = 12 Cr. L.J. 505 = 39 C. 164 = 12 Ind. Cas 273.** [*R.*, 36 M. 72 = 13 Cr. L.J. 723 = 16 Ind. Cas. 755 = 23 M.L.J. 393 = 13 M L.T. 367 = 1912 M.W.N. 1012, 13 Cr. L.J. 275 = 14 Ind. Cas. 659 = 1912 M.W.N. 476.]

(3)—*Mahomedan law—Husband and wife—Custody of, wife.*—On an application for a writ of *habeas corpus* to bring before the Court M, a female infant, who was alleged to be in the unlawful custody of S. a Mahomedan, it was stated that M's father was a Jew by birth, who had embraced the Mahomedan faith many years ago, but had since returned to the Jewish persuasion ; that her mother was a Mahomedan woman ; that she was detained by S, on the allegation that she was married to him, but that the alleged marriage was invalid by reason of the want of consent of her father ; and that she was of the age of about nine years, and had not attained puberty : and a writ was thereupon granted. The return stated that M, being then about ten years of age, was married with the consent of her mother to S ; that, after the marriage, M and her mother had lived with S, until her mother, at the instigation of the father, had left the house of S, taking M with her ; that S had thereupon instituted a charge against the father and mother for enticing away and detaining M, on which the Police Magistrate considered the marriage proved, and ordered her to be delivered into the custody of S. The High Court refused to consider the custody illegal, and ordered the writ to be quashed, as the mother's consent was sufficient under the circumstances. *In the matter of* MAHIN BIBI, **13 B.L.R. 160.** (5 B.L.R. 557, *Dist.*)

(4)—*Affidavit to controvert return—Amendment of return—Custody of minor—56 Geo. III c. 100.*—The return to the writ of *habeas corpus* must be taken to be true, and cannot be controverted by affidavit. In England, 56 Geo. III, c. 10, s. 4, allows affidavits to be used to controvert the return in criminal matters, but that statute does not apply to this country. The return to a writ of *habeas corpus* can, however, be amended. A girl under sixteen years of age has not such a discretion as enables her, by giving her consent, to protect any one from the criminal consequences of inducing her to leave the protection of a lawful guardian ;(but

Habeas Corpus, Writ of—*continued.*

where the return to writ of *habeas corpus* stated that the girl was above the age of sixteen (though her mother stated her to be of the age of thirteen years and nine months), the Court held that she was of years of discretion to choose for herself under whose protection she would remain. QUEEN v. VAUGHAN, **5 B.L.R. 418.** (5 B.L.R. 557, *contra*).

(5)—*Custody of minor wife—St.* 56, *Geo.* III, *c.* 100.—*Held* that the return to a writ of *habeas corpus* was not necessarily conclusive and did not preclude enquiry into the truth of the matters alleged therein, although 56 Geo. III, c. 100, did not apply to this country. Where a husband applied that his wife, 11 years old, might be delivered over into his custody, the Court, for the reason that she had not attained the age of puberty and that her dower had not been paid, refused to order her to be taken from the custody of her mother. *In the matter of* KHATIJA BIBI, **5 B.L.R. 557.**

(6)—*Return to writ—Custody of prisoner in jail—Return by Sheriff.*—The Sheriff need not specify in his return on a *habeas corpus* that the prisoner has been continuously in his custody, and a prisoner who has not been transferred by the Sheriff to the custody of the jailor by a separate warrant, and is brought upon the writs by the Sheriff, is to be considered as in the custody of the Sheriff. SPEYER v. TANSSEN, **Bourke O.C. 28.**

(7)—*Accused becoming insane during criminal trial—Detention in lunatic asylum after regaining sanity.*—An accused person, having become insane during his trial, was placed in a lunatic asylum and was detained there after becoming sane. *Held* that such detention was not illegal, and he was not entitled to his discharge, but should be made over to the authorities for continuation of his trial. *In re* HENRY SAMUEL ELDRED, **1 Hyde, 173.**

(8)—*Reg.* III *of* 1818.—Assuming the power of the Judge of a High Court to issue a writ of *habeas corpus*, and assuming the right of appeal against an order refusing such writ, where it appeared that the prisoner was in custody under a warrant in the form prescribed by Reg. III of 1818, the detention was held to be legal. The detention, to be legal, need only be covered by an actually existing warrant of the Governor-General in Council in the form prescribed, without regard to the lawfulness of the arrest. *In the matter of* AMEER KHAN, **6 B.L.R. 459.** [*R.*, 39 C. 164 = 15 C.W.N. 1053 = 14 C.L.J. 375 = 12 Cr. L.J. 505 = 12 Ind. Cas. 273.]

(9)—*Crim. Pro. Code, s.* 491—*Bombay High Court Rules, r.* 794 — *Court—Discretion — Mahomedan Law—Custody of male children up to seven years—Mother entitled to custody.*—Under Mahomedan Law, the mother is, during the subsistence of marriage, entitled to the guardianship or custody of male children up to the age of seven years. This right of hers survives even separation or divorce. The underlying principle of every writ of *habeas corpus*

Habeas Corpus, Writ of—*continued.*

(and proceedings under s. 491 of the Crim. Pro. Code of 1898) is to ensure the protection and well-being of the person brought before the Court under that writ. The real interest and well-being of the person ought to be not only the determining but the sole consideration. S. 491 of the Crim. Pro. Code leaves it entirely to the discretion of the Court, whether it should or should not direct the person brought before it to be dealt with according to law: whereas r. 794 of the Bombay High Court Rules in dealing with a person so brought before it, deprives the Court of all further discretion, and commands that, in the absence of cause being shown against the rule, which is a very different thing from allowing the Court to exercise its discretion even where technically the cause is inadequate, it shall pass an order that the person or persons improperly detained shall be delivered to the person entitled to their custody. ZARABIBI v. ABDUL REZZAK NAKSHBANDI, **12 Bom. L.R. 891 = 8 Ind. Cas. 619 = 11 Cr. L.J. 687.**

(10)—*Crim. Pro. Code, s.* 491—*Illegal or improper detention—Powers of father over his daughters—Right to sustain prosecution under s.* 361, *I.P.C.*—*Power of Court under s.* 491 (2), *Crim. Pro. Code.*—This was an application under s. 491, Crim. Pro. Code, in the nature of a writ of *habeas corpus*, by a father, M, against his brother N, for the custody of his two daughters in their 14th and 12th years respectively. M became a sanyasi and relinquished his rights as head of the family to N in 1901. In 1906 he became Brahmo and again lived with his wife and children till the wife's death in 1910. His sons were all along living with his brother N who educated them. The object of the petitioner in obtaining the writ was to prevent the marriage of his daughters before they completed their sixteenth year; there was no question of morality or corruption. *Held* that the petitioner is quite free to keep his daughters unmarried till their sixteenth year or even after that age, even though he may put his daughters not only to great inconvenience but to danger of ex-communication. The fact that he has become a Brahmo does not affect the matter. He will not thereby lose any rights he had before. *Held*, also that, if a man *bona fide* goes through the necessary ceremony, renounces his family ties, lives a Sanyasi life honestly believing he is a Sanyasi, he is not any the less a Sanyasi on account of the invalidity of his initiation. *Held*, therefore, that, as he had previously become a Sanyasi, he was not in 1906, when he became a Brahmo, the guardian in Hindu law of the children. The fact that M was the *de facto* guardian of the children from 1906 till his wife's death would be sufficient to sustain a prosecution under s. 361, I.P.C., and as against strangers would entitle him to an order for restoration to his custody under s. 491, Crim. Pro. Code. *Held*, also, that s. 491 (1) (*b*), Crim. Pro. Code, does not apply, as the children have not been illegally or improperly detained. Where a man has lost his rights when he became a Sanyasi, it is not open to him to

Habeas Corpus, Writ of—*concluded.*

resume them. The ordinary rule of Hindu law is that rights once vested are not divested, and he does not regain his status in his natural family which he has renounced. MUTHUSAMY SASTRY v. NARAYANA SASTRY, **8 M.L.T. 300 = 8 Ind Cas. 393 = 21 M.L.J. 195 = (1911) 1 M.W.N. 36.**

See ACT III OF 1864, ss. 3, 4. 18 B. 636.

See ACT VIII OF 1890, 16 B. 307.

Refusal to issue writ of—*See* APPEAL—CASES WHERE APPEAL LIES, 29 C. 286 = 6 C.W.N. 254, F.B.

See LETTERS PATENT—LETTERS PATENT, BOMBAY, 1865, cl. 15, 14 B. 555.

Habitual Forger.

Crim. Pro. Code, 1898, s. 110—*See* SECURITY FOR GOOD BEHAVIOUR, 28 P.R. 1900, Cr.

Habitual Offender.

See CRIM. PRO. CODE, 1898, ss. 106-122.

See EVIDENCE.

See SECURITY FOR GOOD BEHAVIOUR.

See SECURITY PROCEEDINGS.

See SECURITY TO KEEP THE PEACE.

(1)—*Crim. Pro. Code, ss.* 110 *and* 118—*Order under s.* 118, *when can be made.*—In an enquiry whether the defendant is a habitual offender, evidence of acts of misconduct committed by him years ago is admissible in evidence as indicating the formation of the habit, but such evidence, unless supplemented by evidence of misconduct committed within a year or so before the institution of the proceeding under s. 110, cannot justify the making of an order under s. 118. When the person against whom proceedings under s. 110 are instituted, is a well known citizen of the city, his fellow-citizens, though not living in his immediate neighbourhood, are competent witnesses to prove his general repute. WAHID ALI KHAN v. EMPEROR, **11 C.W.N. 789 = 6 Cr. L.J. 1.**

(2)—*Evidence of general repute — Special police diaries, right to inspect—Statements as to character in official documents—Statements made to police during investigation—Crim Pro. Code* (1898), *s.* 110.—In a security for good behaviour case, one of the police officers examined for the prosecution deposed that almost all the accused had been suspected and named in a number of theft and burglary cases and offered in evidence an extract from the special diaries containing a list of those cases. *Held*, that the fact that the police officers, while investigating some cases, were told that the accused were suspected of having committed or had committed the offence under investigation, could not be proved by the special diaries, and, if they were relevant, could only be proved by the police officers themselves to whom the information was given; the accused, therefore, had no right of cross-examining the police witnesses after inspecting the special diaries, the list submitted by the police officer and all

Habitual Offender—*continued.*

reference to it in the evidence must be excluded from consideration. The words "*evidence of general repute*" mean, with reference to a man's character, evidence as to his general character founded on the general opinion of the neighbourhood in which he lives. Evidence as to his general disposition based on the opinion of the particular witness—such opinion being the result of the witness's personal experience and observation, will also be evidence as to his character. But the evidence need not show that such general opinion is based on the personal knowledge of the man by his neighbours generally, nor does it show that such general opinion has been publicly expressed by his neighbours. Again, the evidence of the police officers as to the character of the accused, who do not speak from personal experience and observation or depose as to what the neighbours of the accused generally thought of the accused, but give evidence as to what some of their neighbours said of them or as to what was said of them in official papers was not admissible. DUNIA SINGH v. KING-EMPEROR, **5 O C. 203.** [*R.*, 12 Ind. Cas. 518 = 12 Cr. L.J. 542.]

(3)—*Who is a.*—A person can scarcely be called an habitual thief, where there is only one previous conviction against him. In this case, the accused was found guilty of stealing two bullocks from underneath the house of the complainant and sentenced to seven years' rigorous imprisonment. *Held* that the sentence was out of all proportion to the character of the offence committed. *Held*, further, that, as there was only one previous conviction charged against the accused, he could not be treated as an habitual offender. NGA LU GYI v. QUEEN-EMPRESS, **L B R. 1872—1892, 291.**

(4)—*Solitary confinement ordinarily reserved for—Punishment, assessment of.*—Ordinarily, solitary confinement should be reserved for habitual offenders and for the punishment of offenders who have acted in a cruel and brutal manner. In assessing the punishment in any particular case, the Court should consider what is the heaviest sentence provided by the Legislature for the punishment of the gravest offence of the kind and the punishment awarded in the case under trial should be in proportion to the gravity of the offence as shown by the special circumstances of the case. QUEEN-EMPRESS v. NGA PO SAING, **L.B.R. 1893—1900 364.**

(5)—*Crim. Pro. Code, Act X of* 1872, *s.* 315—*Previous conviction—Habitual offender.*—The fact that a person convicted of an offence under s. 411 of the Penal Code, had been previously convicted of an offence under s. 457 of the Code does not render him a habitual offender, and he need not necessarily be dealt with under s. 315 of the Crim. Pro. Code. EMPRESS v. GIRDHARI, **A.W.N. 1882, 215.**

(6)—*Old offender—Presumption of criminal habit.*—Where an old convict for theft was again found prowling about at night with intent to

Habitual Offender—*concluded.*

steal, and seemed to be again, under the circumstances of the case, guilty of stealing, he was held to have created against himself a presumption of criminal habit in the sense of s. 315, Crim. Pro. Code, 1872, which, if unrebutted, would justify a Magistrate in applying ordinarily the rule of that section. EMPRESS v. BUDHA, **A.W.N. 1881, 153.** [*R.*, A.W.N. 1882, 215.]

(7)—*Crim. Pro. Code, s. 565—No previous conviction—Order to notify residence—Legality.*—Where there is no previous conviction, an order directing the accused to notify his residence is illegal and must be set aside. KOTTAPARAMBIL KUNHAMMAD v. EMPEROR, **8 M.L.T. 352 = 8 Ind Cas. 300 = 11 Cr.L.J. 636 = 1910 M.W.N. 567.**

(8)—*Crim. Pro. Code, s. 565—Penal Code, s. 75—Whipping Act (IV of 1909)—Sentence of whipping—Order for notifying address of previously convicted offender.*—The order contemplated by s. 565 of the Crim. Pro. Code, can only be passed where the convict is sentenced either to transportation or imprisonment. The section does not extend to cases where the Court, instead of passing that sentence, passes a sentence of whipping. EMPEROR v. FULJI DITYA, **12 Bom. L.R. 901 = 8 Ind. Cas. 623 = 11 Cr. L.J. 691.**

See CRIM. PRO. CODE, 1898, s. 348, Rat. Un. Cr. C. 143.

Duty of Magistrate in security proceedings—Crim. Pro Code, 1898, ss. 110 and 117—Procedure—*See* MAGISTRATE, DUTY OF, 2 L.B.R. 166.

Proof—*See* PENAL CODE, s. 401, Rat. Un. Cr. C. 418.

See SENTENCE—SENTENCE AFTER PREVIOUS CONVICTION, 27 P.L.R. 1904.

Hackney Carriage.

Refusal of driver to ply for hire—Liability of driver and owner—*See* ACT XIV OF 1879, ss. 6, 7, 15 Cr. L.J. 552 = 24 Ind. Cas. 960.

See BOM. ACT VI OF 1863, s. 6, 4 Bom. L.R. 768.

See CANTONMENT CODE, 1899, ss. 22, 282, 22 P L.R. 1907.

Hackney Carriage Act.

See ACT XIV OF 1879.

Handcuffs.

If necessary to be used for arrest—*See* ARREST, 1 L.B.R. 173.

Abuse of—*See* PENAL CODE, s. 224, 1 L.B.R. 173.

Hand-drawn Lorry.

See BOM. ACT VI OF 1863, s. 1, 15 Bom. L.R. 66 = 14 Cr.L.J. 78 = 18 Ind. Cas. 414 = 2 Bom. Cr. C. 22 = 37 B. 374.

Handwriting.

See EVIDENCE—EXPERT EVIDENCE.

See EXPERTS.

Handwriting—*concluded.*

Proof of—*See* APPROVER, 12 Cr. L.J. 537 = 12 Ind. Cas. 513.

See EVIDENCE—GENERAL, 1 B.L.R. A.Cr. 13 = 10 W.R. Cr. 37.

Proof of—*See* EVIDENCE ACT, 1872, s. 73, Rat. Un. Cr. C. 452.

Similarity of—*See* FORGERY, 2 A.L.J. 444 = 2 Cr. L.J. 353.

Testimony of a witness before the committing Magistrate — Expert testimony — Conviction thereon—*See* SEARCH LIST, 1912 M.W.N. 125 = 11 M.L.T. 93 = 22 M.L.J. 270 = 14 Ind. Cas. 418 = 13 Cr.L J. 226 = 36 M. 159.

Handwriting, Comparison of.

Proof of the standard of comparison of—*See* CONSPIRACY, 16 C.W.N. 1105 = 16 Ind. Cas. 257.

Comparison of—Interpretation of 'purports' in s. 73, Evidence Act—*See* EVIDENCE ACT, 1872, s. 73, 14 Bom. L.R. 310 = 15 Ind. Cas. 649 = 13 Cr.L.J. 505 = 1 Bom. Cr. C. 119.

Comparison of—Expert evidence — Admissibility—*See* PENAL CODE, s. 124-A, 16 C.W.N. 812 = 39 C. 606 = 13 Cr.L.J. 289 = 14 Ind. Cas. 753.

Hanging.

Murder—Grievous hurt—A human body believing the person to be dead and thereby causing death, if murder—Intention to kill—*See* PENAL CODE, ss. 300, 325, 13 C.W.N. 1279 = 15 Cr. L.J. 709 = 26 Ind. Cas. 157.

Hansard's Reports.

See LIBEL, 14 C.W.N. 713 = 37 C.760 = 6 Ind. Cas. 81.

Harbouring Offenders.

See PENAL CODE, ss. 141, 150 and 157, 29 C. 214 = 6 C.W.N. 143.

See PENAL CODE, s. 216, 11 C.L.J. 109.

See SENTENCE, POWERS OF APPELLATE COURT—ENHANCEMENT, 53 P.L.R. 1905 = 2 Cr. L.J. 232.

Harbours, Madras, Boats in Act.

See MAD. ACT, IX OF 1846.

Hat.

See HAUT.

Haut.

See ACT I OF 1877, s. 42, 5 C. 7 = 4 C.L.R. 309, F. B.

Holding *hat* on one's own property if unlawful—Whether injunction may issue not to hold *hat*—Duty of Magistrate in case of establishing rival *hat*—*See* CRIM. PRO. CODE, 1898, s. 144, 13 Cr. L.J. 511 = 15 Ind. Cas. 655.

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 11 C.W.N. 79 = 4 Cr. L.J. 433.

See NUISANCE UNDER CRIM. PRO. CODE, 4 C.L.R. 410.

Haut—*concluded.*

Elements of the offence under Crim. Pro. Code, s. 144—Disobedience of order—Holding,—close to an old one on the same day—*See* PENAL CODE, s. 188, 4 C.W.N. 226.

See PENAL CODE, s. 188, 31 C. 990=8 C. W.N. 781.

See RIOTING, 11 C.W.N. 28=4 Cr. L.J. 406.

Havalat.

Whether a prison—*See* ACT XXVI OF 1870, s. 3, 2 A. 301.

Hazara Forest.

See PUN. REG. II OF 1879.

Headman.

Village headmen, if proper witnesses for search—*See* BUR. ACT I OF 1899, ss. 6, 7, 14 Bur. L.R. 81=4 L.B.R. 213=7 Cr. L.J. 479.

See CRIM. PRO. CODE, 1898, s. 103, U.B.R. 1908, 2nd Qr., Gambling, 1.

Head Constable.

See CONSTABLES.

See POLICE.

See ACT XII OF 1896, ss. 44 (2), 48 and 57, A.W.N. 1908, 157=5 A.L.J. 444=30 A. 377=8 Cr. L.J. 5.

Search of accused's house by—under orders from the sub-Inspector—Assault by accused on the Head constable—*See* PENAL CODE, s. 353, 8 Ind. Cas. 881=9 M.L.T. 168=11 Cr. L.J. 727.

Head of the House.

(1)—*Nuisance outside a house--Liability of the head.*—It is a general principle that the head of the house is responsible for all nuisances which emanate from his house. QUEEN-EMPRESS v. NARAYAN, **Rat. Un. Cr C 338=Cr. Rg. 29 of 1887.**

Heads of Villages, Punishment of by, petty thefts—Police.

See MAD. REG. IV OF 1821.

Hearing.

(1)—*Alteration of date of hearing.*—Where the date fixed for the hearing of a criminal case is accelerated and the accused's pleader, after being informed of the same, asked that the case may be taken on some other day, *held*, that the Magistrate should not conclude the trial and pronounce judgment without waiting until the date desired by the accused's pleader or the date originally fixed. KARAM DIN v. EMPRESS, **14 P.R. 1898, Cr.**

Hearsay Evidence.

See EVIDENCE.

See EVIDENCE—HEARSAY-EVIDENCE.

See EVIDENCE ACT, 1872, ss. 32, 33, 60.

See CRIM. PRO. CODE, 1898, s. 106, ch. VIII, 6 Bom. L.R. 34.

Hereditary Officers, Bombay Act.

See BOM. ACT XI OF 1843.

Hereditary Offices Act.

See BOM. ACT III OF 1874.

High Court.

See APPLICATION TO HIGH COURT.

See JUDGE OF HIGH COURT.

See REFERENCE TO HIGH COURT.

See RULES OF THE HIGH COURT.

See ST. 24 & 25 VIC. C. 104.

See SUPERINTENDENCE OF HIGH COURT.

See TRANSFER OF CRIMINAL CASES — TRANSFER BY HIGH COURT.

High Court (Division Bench).

(1)--*Reference to High Court after former reference in same case.*—Where an order passed by an Assistant Magistrate in a case of breach of the peace under s. 530 of the Code of Criminal Procedure was submitted to High Court by the Sessions Judge, for being set aside on certain grounds stated, the want of jurisdiction in the Assistant Magistrate not being one of the grounds, a Division Bench, before whom that reference came, declined to interfere with the order, but another Division Bench, before whom the matter was subsequently brought on motion, *held* that they could enter into the question of the want of jurisdiction, and that, as the effect of the Assistant Magistrate's order was to prejudice one of the parties, the order, admittedly made without jurisdiction, should be set aside. RUN BAHADOOR SINGH v. HUR DOYAL SINGH, **21 W.R. Cr. 32.**

High Court Judge.

Power of Governor-General in Council or Governor in Council or Lieutenant-Governor to appoint an acting—*See* ST. 24 AND 25 VIC. C. 104, ss. 7, 16, 16 A. 136, F.B.=A.W.N. 1894, 39.

High Court's Act.

See ST. 24 and 25, VIC. CH. 104.

High Court, Jurisdiction of.

1.—GENERAL.

2.—AS A COURT OF REFERENCE.

3.—REVISIONAL POWERS OF HIGH COURT.

See CRIM. PRO. CODE, 1898, ss. 435, 439.

See HIGH COURT, SUPERINTENDENCE AND POWERS OF.

See LETTERS PATENT.

See REFERENCE TO HIGH COURT.

See REVIEW.

See REVISION.

See ST 24 AND 25, VIC. C. 104.

See TRANSFER OF CRIMINAL CASES—TRANSFER BY HIGH COURT.

——1.—General.

(1)—*Charter Act (24 and 25 Vic., c. 104), s. 15—Jurisdiction of High Courts, subject to the Indian Legislature—Crim. Pro. Code (1898), s. 435—Effect of the section on High Court's jurisdiction.*—Although the local legislature

***High Court, Jurisdiction of*—continued.**

——1.—General—*continued.*

has power to overrule a statutory power conferred on the High Court, yet this was not the object *and* result of the legislation expressed in s. 435 of the Code of 1898. HURBULLUBH NARAIN SINGH v. LUCHMESWAR PROSAD SINGH, **26 C. 188=3 C.W.N. 49.**

(2)—*Jurisdiction of High Court Criminal Bench to question validity of order, when remedy available from Civil Court.*—It is not desirable that a Criminal Bench of the High Court should consider the propriety or legality of an order, even if it has jurisdiction to do so, when a remedy can be easily obtained from a Civil Court. LOKENATH SHAH CHOWDHRY v. NEDU BISWAS, **29 C. 382=6 C.W.N. 469.**

(3)—*Power of the Supreme Council—Jurisdiction of the High Court.*—The power of the supreme legislative authority of India to remove any place or territory from the jurisdiction of the High Court is expressly authorised and contemplated by the Statutes and Letters Patent, which affect the constitution and jurisdiction of the High Court. SOONDERJEE NANJEE v. MAYLON, **26 C. 874=3 C.W.N. 564.**

(4)—*High Court—Jurisdiction — Practice—Rule granted on one only of several grounds —Fresh rule on other ground, if may be issued.* —The High Court has no jurisdiction to grant a fresh rule, when, upon a previous occasion, the whole matter was before the Court and a rule was granted on one only of the several grounds; or, in other words, when a Rule is issued by the High Court on one or more selected grounds, no further application can be granted on the remaining grounds not so selected. NARAIN SINGH v. JHAGROO SAHU, **12 Cr. L.J. 407=11 Ind. Cas. 591=38 C. 933 =15 C.L.J. 325.** (6 C.W.N. 340, 10 C.L.J. 80, *D.*)

(5)—*Crim. Pro. Code*, 1882, *s.* 424—*Power of expunging objectionable portions from a judgment.*—The High Court has no power to direct a subordinate Court to expunge or otherwise deal with certain passages in its judgment. *In re* A. VENKATA SUBBA RAO, **2 Weir 534.**

(6)—*High Court—Contempt of Court—Practice.*—The power of the High Court to imprison for contempt of Court for disobedience of an injunction, is irrespective of the Codes. BALWANT RAO v. RAMCHANDRA, **Rat. Un. Cr. C. 614.**

(7)—*Power of attaching for contempt.*—The High Courts in India possess the power of enforcing obedience to their orders by an attachment for contempt. NAVIVAHOO v. NAROTAMDAS CANDAS, **7 B. 5.**

(8)—*Stat.* 6 *and* 7 *Vic., c.* 94—*Stat.* 28 *and* 29 *Vic., c.* 116—*Stat.* 29 *and* 30 *Vic., c.* 87 —*Order in Council of 9th August* 1866—*Person accused of having committed murder at Zanzibar —Case sent for trial to Bombay—Jurisdiction of Bombay High Court.*—The High Court of Bombay can try a prisoner charged with having committed murder at Zanzibar, and sent by the British Consul there, to Bombay. EMPRESS v. DOSSAJI GULAM HUSEIN, **3 B. 334.**

(9)—*Commission for examination of witnesses outside jurisdiction.*—The High Court has no power to issue a commission outside its jurisdiction. EMPRESS v. S. MOORGA CHETTY, **5 B. 338.**

(10)—*Judicial Superintendent of Railways in H. H. the Nizam's Dominions—Power to commit to High Court of Bombay—Letters Patent,* 1865 (*Bombay*), *cl.* 24 — *European British subjects in Native States.*—Per *Sargent, C. J.*—The Crim. Pro. Code applies to the Court of the Judicial Superintendent of Railways in His Highness the Nizam's Dominions held at Secunderabad. That Court is subordinate to the High Court of Bombay in all criminal matters relating to European British subjects, and the High Court must deal with such cases as if they were cases arising in British India. *Per Bayley, J.*—The Judicial Superintendent of Railways has power to commit prisoners for trial to the High Court of Bombay, and that Court has jurisdiction to try them. The Resident at Hyderabad is the authority which exercises superintending power over that Court, and it is only with regard to European British subjects which may be brought before the Judicial Superintendent that the High Court has any power at all, except where native prisoners may be committed for trial under s. 214. A prisoner committed by that Court could not, under cl. 24, Letters Patent, be tried on charges preferred by the Advocate-General under that clause. [*R.*, 5 Bom. L.R. 868.] It is the intention of the Legislature that European British subjects, although resident within the territories of Native States should be subject to the same law in every respect as a European British subject residing in the mofussal of any of the Presidencies in India. QUEEN-EMPRESS v. A. MORTON, **9 B. 288, F.B.**

(11)—*High Court, powers of—Pending civil suit—Criminal prosecution during such pendency—Stay of Criminal proceedings.*—The defendant in a civil suit ought not to be allowed to prejudice the trial of such suit, by launching and proceeding with a criminal prosecution, on the same facts against the plaintiffs and their witnesses, pending the trial of such suit, and the High Court in the exercise of its powers of superintendence has the power to direct the proceedings to be stayed, pending the trial of the civil suit. ANNA AYYAR v. EMPEROR, **30 M. 226=6 Cr. L J. 131.** (3 M. 400, 18 B. 581, 23 C. 610, *D.*) [*R.*, 15 C.W.N. 565=9 Ind. Cas. 577=12 Cr. L.J. 101.]

(12)—*Powers of High Court to stay criminal proceedings in Subordinate Courts.* — Where criminal proceedings have been instituted by a District Judge against the parties or their witnesses in course of a civil suit, the High

High Court, Jurisdiction of—continued.

——1.—General—*continued.*

Court has no power to stay those proceedings until the decision of the Judge in the civil suit has been heard upon appeal. *In the matter of* MUTTY LALL GHOSE, **6 C. 308.**

(13)—*Illegal commitment — Power of High Court.*—The High Court can quash an illegal commitment at any stage of a criminal proceeding. EMPRESS v. SHIBO BEHARA, **6 C. 584 = 8 C.L R. 265.**

(14)—*Division Bench of the High Court dealing with civil business—Jurisdiction to take cognisance of an order under s.* 643, *Civ. Pro. Code* (1882), *and s.* 476, *Crim. Pro. Code* (1882).—A Division Bench of the High Court dealing with a civil business of a group has jurisdiction to deal with an order under s. 643 of the Code made by a Civil Court in that group. Such Bench may also take cognisance of an order under s. 476, Crim. Pro. Code, if such case has been transferred to the Bench by an order of Chief Justice. MAHOMED BHAKKU v. QUEEN-EMPRESS, **23 C. 532.** [*R.*, 40 C. 477 = 17 C. L.J. 245 = 17 C.W.N. 647 = 14 Cr. L.J. 197 = 19 Ind. Cas. 197, 41 C. 446 = 15 Cr. L J. 49.]

(15)—*Crim. Pro. Code, Act* X *of* 1872, *ss.* 518, 520—*Order by Magistrate without jurisdiction.*—The High Court will set aside an order passed under s. 518 of the Crim. Pro. Code by a Magistrate under circumstances which render it one passed without jurisdiction. EMPRESS v. ABDUL RAHIM, **A.W.N. 1882, 140.**

(16)—*Crim. Pro. Code. Act* X *of* 1882, *s.* 423—*Altering conviction.*—The High Court has got power, under s. 423 of the Crim. Pro. Code, to alter a conviction under s. 474 of the Penal Code to one under s. 193 if the accused person would not be prejudiced by such alteration. QUEEN-EMPRESS v. AMRIT, **A.W.N. 1890, 86.**

(17)—*Crim. Pro Code* (1882), *s.* 438—*Appeal by only two out of three accused—Conviction set aside—High Court's powers to direct release of person not appealing.*—The accused was tried with two others before a first class Magistrate for an offence under s. 325. I.P.C., and was convicted and sentenced. The other two accused appealed, and it was found that it was by an accident merely that the name of the third was omitted from the petition of appeal. The appellate Court considered the evidence for the prosecution, so untrustworthy that the appeals of the other two were allowed and the sentences and convictions against them quashed. Under such circumstances, the Sessions Judge referred the case of the third accused to the High Court with a recommendation that he also should be acquitted. *Held* that it was competent to the High Court to acquit and order the release of the third accused. QUEEN-EMPRESS v. RATAN SINGH, **A.W.N. 1893, 51.**

(18)—*Crim. Pro. Code, Act* X *of* 1882, *s.* 439—*District Magistrate—Instruction to subordinates — Procession.*—The High Court has no jurisdiction to interfere with an instruction issued by a District Magistrate to his subordinates respecting the route of a procession. *In the matter of the petition of* BHAGELU, **A.W.N. 1891, 178.**

(19)—*Punjab Chief Court—Jurisdiction of the Chief Court—Convict incompetent to appeal from the order of a District Magistrate in the Punjab acting under special powers given by the Local Government—Local Government's statement—Native Indian subject committing an offence in a Native State—Penal Code, ss* 3 *and* 4.—*Held*, that—The Chief Court, Punjab, has no jurisdiction to entertain and hear an appeal from the order of a District Magistrate in the Punjab, specially appointed by the Local Government to try criminal cases in a Native State outside British India. The Chief Court has also no power to question the validity of such an appointment, but is bound to accept as conclusive the statement of the Local Government with regard to the capacity in which that officer has acted. *Obiter.*—Native Indian subjects of His Majesty committing offences in a Native State are amenable to the jurisdiction of the Courts of that State. All that ss. 3 and 4 of the Indian Penal Code provide is, that such a subject is also liable to be prosecuted in British India for any offence committed under this Code, in a foreign territory (if not already tried there). BISHEN DAS v. CROWN, **20 P.W.R. 1910, Cr. = 14 P.R. 1910, Cr. = 11 Cr. L J. 390 = 45 P.L.R. 1910 = 6 Ind. Cas. 640.**

(20)—*Conviction by Superintendent of Cachar—Appeal—Jurisdiction of High Court.*—The High Court has no jurisdiction to hear an appeal from a conviction and sentence by the Superintendent of Cachar in his capacity as Magistrate of the District. QUEEN v. RADHA-KISSEN SEIN, **W.R. 1864, Cr. 18.**

(21)—*Act* XIII *of* 1857, *s.* 26—*Opium—Penalty—Power of High Court.*—The distribution of a penalty adjudged by the Magistrate under s. 26, is no part of his judgment, and, therefore, not a matter over which the High Court can exercise control under s. 404, Crim. Pro. Code, 1861. QUEEN v. RAMDYAL SINGH, **8 B.L.R. Ap. 7 = 16 W.R. Cr. 65.**

(22)—*Acquittal—Revision.*—The High Court cannot, as a Court of revision, under s. 297, deal with a case of acquittal as one of simple discharge and interfere with it. REG. v. DORABJI BALABHAI, **11 B.H.C.A.C.J. 117.**

(23)—*Crim. Pro. Code* (1898), *ss.* 144, 435—*Order under s.* 144 *when to be made—Interference by High Court after expiry of order.*—Before making an order under s. 144, Crim. Pro. Code, a Magistrate should hold an enquiry and determine which party has the legal right contended for by both the parties and then protect the party he finds entitled to the exercise of that right. Where the period for which an order under s. 144 is to be in force has expired, the High Court will not interfere

High Court, Jurisdiction of—continued.

——1.—**General**—*continued.*

with the order. QUEEN-EMPRESS v. KAZI FAJLODDIN, **Rat. Un. Cr. C 967 = Cr. Rg 22 of 1898.** (5 C. 132, *R.*)

See ACQUITTAL, 8 C. 895.

See ACT I OF 1859, s. 83 (5), 4 M.H.C. App. 23.

See ACT XIII OF 1859, s. 2, 35 C. 1036, note = 9 Cr. L.J. 188.

Jurisdiction of High Court to transfer cases from Agent to Governor in Agency Tracts of Ganjam and Vizagapatam—*See* ACT XIV OF 1874, 14 M. 121 = 2 Weir 7.

See ACT X OF 1875, s. 14, 9 C. 397.

High Court's power to order refund of fine on quashing a conviction—*See* ACT X OF 1875, s. 147, 1 C. 354.

High Court's power to issue mandamus to commit case to it—*See* ACT X OF 1875, s. 147, 2 C. 278.

See ACT V OF 1876, s. 8, Rat. Un. Cr. C. 494.

See ACT XVIII OF 1879, s. 36, A.W.N. 1908, 279 = 6 A.L.J. 22 = 31 A. 59 = 9 Cr. L.J. 59 = 1 Ind. Cas. 143.

To transfer case in case of European British subjects—*See* ACT XXI OF 1879, s. 8, 9 B. 333.

Powers of High Court—*See* ACT XXI OF 1879, s. 14, 15 C.W.N. 735 = 12 Cr. L J. 346 = 10 Ind. Cas. 946 = 38 C. 550, note.

Detention in Reformatory School in lieu of sentence of imprisonment—Jurisdiction of High Court to alter or set aside the sentence —*See* ACT VIII OF 1897, ss. 1 and 16, 28 C. 423 = 5 C.W N. 211.

Power to deal with an order of detention in a Reformatory passed without authority—*See* ACT VIII OF 1897, s. 8, 16 L.B.R. 1893—1900, 493.

To interfere with a Magistrate's order for detention in a Reformatory in lieu of imprisonment—*See* ACT VIII OF 1897, s. 16, 1 L.B.R. 63.

See ACT VIII OF 1897, s. 16, 1 L.B.R. 42.

S. 15, High Court's Act—*See* ACT XV OF 1903, ss. 3, 4, 15 C.W.N. 737 = 38 C. 547 = 10 Ind. Cas. 618 = 12 Cr. L.J. 322.

See ACT XV OF 1903, ss. 7 and 15, 7 Bom. L.R. 463 = 2 Cr. L.J. 439.

See ACT XIV OF 1908, 13 C.W.N. 605.

See BEN. ACT IV OF 1876, s. 117, 11 C. 275.

See BEN. ACT III OF 1899, s. 449, 3 C.L.J. 90 = 33 C. 287 = 10 C.W.N. 182 = 3 Cr L.J. 211.

See BOM. ACT XI OF 1846, Rat. Un. Cr. C. 939.

See BOM. ACT IV OF 1890, s. 43, Rat. Un. Cr. C. 540 = Cr. Rg. 13 of 1891.

See APPEAL—APPEAL FROM ACQUITTAL, 26 M. 1 = 2 Weir 521, 17 C.P.L.R. 75.

See APPEAL — CASES WHERE APPEAL DOES NOT LIE, 11 B.H.C. A.C.J. 117.

See BAIL, 24 M. 161 = 2 Weir 657.

See BRIBERY, 15 M. 63 = 2 Weir 794.

Jurisdiction of, over proceedings of Divisional Officers under the Income-tax Act—*See* CERTIORARI—WRIT OF, 1912 M.W.N. 1012 = 23 M.L.J. 393 = 16 Ind. Cas. 755 = 13 Cr. L.J. 723.

See CERTIORARI, WRIT OF, 10 B.H.C. 102.

See COMMITMENT TO SESSIONS COURT, 26 M. 139 = 2 Weir 197 = 2 Weir 577, 30 M. 224 = 16 M.L.J. 529 = 5 Cr. L.J. 100, 2 L.B.R. 209, 4 C.W.N. cxvi, 16 M.L.J. 525 = 5 Cr. L.J. 99.

See COMPENSATION — GENERAL, 4 Ind. Cas. 399.

See COMPLAINT—PROCEDURE ON RECEIPT OF COMPLAINTS, 4 C.W.N. 825.

High Court's power to reverse an order, reviving a complaint after discharge—*See* COMPLAINT—WITHDRAWAL AND REVIVAL OF COMPLAINTS, 1 C.W.N. 49.

See COMPLAINT — WITHDRAWAL AND REVIVAL OF COMPLAINTS, 24 C. 528 = 1 C. W.N. 370.

Power of High Court to commit for contempt of mofussil Magistrate—*See* CONTEMPT OF COURT, 14 Cr. L.J. 321 = 20 Ind. Cas. 81, S.B. = 17 C.W.N. 1253 = 18 C.L.J. 452, S.B.

See CONTEMPT OF COURT, 10 C. 109 = 10 I.A. 171, P.C.

Remission of penalty under recognizance bond—*See* CRIM. PRO. CODE, 1898, s. 106, 8 C.L.R. 72.

High Court when can stay proceedings under s. 110, Crim, Pro. Code—*See* CRIM. PRO. CODE, 1898, s. 110 = 16 C.L.J. 467 = 18 Ind. Cas. 149 = 14 Cr.L.J. 5 = 17 C.W.N. 238.

See CRIM. PRO. CODE, 1898, ss. 112 and 122, 3 S.L.R. 168, Cr.

Temporary orders in urgent cases of nuisance—Permanent injunction—Interference of High Court—*See* CRIM. PRO. CODE, 1898, s. 144, 1914 M.W.N. 169 = 15 Cr.L.J. 145 = 22 Ind. Cas. 721.

See CRIM. PRO. CODE, 1898, s. 145, 30 C. 508 = 7 C.W.N. 404.

Order regarding management of property attached, under s.146—*See* CRIM. PRO. CODE, 1898, ss 145, 146, 435, 29 C. 382 = 6 C.W.N. 469.

Power of, to transfer case pending in Court not subject to its jurisdiction — Power to stay proceeding to enable accused to bring civil action—*See* CRIM. PRO. CODE, 1898, s. 185, 17 C.W.N. 761 = 20 Ind. Cas. 222 = 14 Cr. L.J. 398.

See CRIM. PRO. CODE, 1898, s. 186, 2 Weir 146 = 1 Weir 789.

***High Court, Jurisdiction of*—continued.**

——**1.—General**—*continued.*

Bench of Chief Court, Burma, whether a superior Court as regards a single Judge of that Court—*See* CRIM. PRO. CODE, 1898, s. 195 (6), 12 Cr.L.J. 469=11 Ind. Cas. 1005=6 L.B.R. 25.

See CRIM. PRO. CODE, 1898, ss. 202, 203, 437, 439, 33 C. 1282=5 Cr.L.J. 83.

See CRIM. PRO. CODE, 1898, ss. 202, 203, 441, 5 M.L.T. 79=2 Ind. Cas. 618.

See CRIM. PRO. CODE, 1898, ss. 202, 204, 242, 244 and 439, 1 P.W.R. 1908; Cr.=4 P.R. 1908, Cr.=86 P.L.R. 1908=7 Cr. L.J. 202.

See CRIM. PRO. CODE, 1898, ss. 208 and 347, 12 C.W.N. 1014=8 Cr. L.J. 221=36 C. 48 =1 Ind. Cas. 469.

Order of commitment — High Court's power to set it aside—*See* CRIM. PRO. CODE, 1898, s. 215, 2 Weir 262.

See CRIM. PRO. CODE, 1898, s. 215, 16 M. L.J. 525=5 Cr. L J. 99, 9 Cr. L.J. 250=1 S. L.R. 6, Cr.

See CRIM. PRO. CODE, 1898, ss. 215, 436, 439, 16 M.L J. 529=30 M. 224=5 Cr.L.J. 100.

See CRIM. PRO. CODE, 1898, ss. 215, 436 and 526, 27 M. 54=2 Weir 227=2 Weir 578=2 Weir 263.

See CRIM. PRO. CODE, 1898, ss. 271 (2), 342 (1), 439, 494, 5 M.L T. 216.

Jurisdiction of High Court to send prisoner to jail outside Presidency towns—*See* CRIM. PRO. CODE, 1898, s. 307, 29 C. 286=6 C.W. N. 254.

See CRIM. PRO. CODE, 1898, s. 307, 2 Weir 388=2 Weir 390.

Order of discharge by High Court Sessions if any bar to fresh proceedings—*See* CRIM. PRO. CODE, 1898, ss. 332, 403, 437, 16 C.W.N. 983 =15 Ind. Cas. 488=13 Cr. L.J. 488.

Power of review in criminal cases—*See* CRIM. PRO. CODE, 1898, ss. 369, 253, 38 C. 828.

Appeal against conviction— High Court's power to alter the finding and enhance sentence—*See* CRIM. PRO. CODE, 1898, ss. 403, 423 (*b*), 439 (4), 37 M. 119=22 Ind. Cas. 756= 15 Cr. L.J. 180.

See CRIM. PRO. CODE, 1898, ss. 418, 423, 2 C.W.N. 49.

See CRIM. PRO. CODE, 1898, s. 423, cl. (*a*), 2 Weir 476=7 M H.C. 339.

Power of High Court to order a re-trial before a new jury—*See* CRIM. PRO. CODE, 1898, s. 423 (2), 2 Weir 384=2 Weir 493.

High Court—Power of interference with order for restoration of property by lower Courts—*See* CRIM. PRO. CODE, ss. 423, cl. (*d*) 517, 520, 15 Cr. L.J. 184=22 Ind. Cas. 760= 18 C.W.N. 959.

See CRIM. PRO. CODE, 1898, ss. 426, 439, 440, 1 C.L.R. 83.

***High Court, Jurisdiction of*—continued.**

——**1.—General**—*continued.*

See CRIM. PRO. CODE, 1898, s. 432, 9 Cr. L J. 248=1 S.L.R. 4, Cr.

See CRIM. PRO. CODE, 1898, s. 434, 8 B. 200.

See CRIM. PRO. CODE, 1898, s. 476, 163 P.L. R. 1905=3 Cr. L.J. 73.

Power to transfer cases from file of Presidency Magistrates—*See* CRIM. PRO. CODE, 1898, s. 526, (1911) 2 M.W.N. 50=11 Ind. Cas. 795 =12 Cr. L.J. 451=10 M.L.T. 518.

See CRIM. PRO. CODE, 1898, s. 550, 14 P.W. R. 1909, Cr.

See CRIM. PRO. CODE, 1898, s. 552, 16 C. 487.

Verdict of jury—High Court if should discuss weight of evidence—*See* DACOITY, 15 C.W.N. 434=10 Ind. Cas. 684=12 Cr. L.J. 193.

See DACOITY. 5 M.L.T. 100=32 M. 179=9 Cr. L.J. 567=2 Ind. Cas. 307.

See DEAF AND DUMB PERSON, 27 C. 368= 4 C.W.N. 421.

See DEFAMATION, 3 P.W.R. 1909, Cr.=9 Cr. L.J. 154=1 Ind. Cas. 99.

See DISCHARGE OF ACCUSED, 5 A. 161, 6 C.L.J. 705=6 Cr. L.J. 400.

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 6 A.L.J. 113=31 A. 150=9 Cr. L J. 382=1 Ind. Cas. 762, 24 B. 527 =2 Bom. L.R. 84, 27 C. 892=4 C.W.N. 613, 13 C.W.N. 125=4 Ind. Cas. 354, 34 C. 840 =6 Cr. L.J. 452.

Sessions case—Records before committing Magistrate—High Court's power to look into such records—*See* EVIDENCE—GENERAL, 10 M.L.T. 82=12 Ind. Cas. 223=12 Cr. L.J. 503.

See EVIDENCE—GENERAL, 10 B.H.C. 497.

See FOREIGN TERRITORY—OFFENCES COMMITTED IN, 9 C. 288.

Powers of laskars — Jurisdiction of, over them—*See* GARO HILLS, 9 Ind. Cas. 114=12 Cr. L.J. 10=13 C.L.J. 444.

When judgment of High Court could be altered—*See* JUDGMENT, 21 A. 177=A.W.N. 1899, 15.

See JURY, 2 A L.J. 475=2 Cr. L.J. 357, 23 B. 696=1 Bom. L.R. 114.

Control of Indian Legislature over High Courts—*See* LEGISLATURE, POWERS OF, 3 C. 63=1 C.L.R. 161, F.B.

See LEGISLATURE, POWERS OF, 26 C. 874 =3 C W.N. 564.

See LETTERS PATENT—LETTERS PATENT, 1865—BOMBAY, cl. 25, 2 B. 61.

See MAGISTRATE, JURISDICTION OF — GENERAL JURISDICTION, 12 C.W.N. 604= 7 Cr. L.J. 400.

See MANDAMUS, 2 Weir 22=2 Weir 248= 1 M.H.C. 66.

See NATIVE STATE, 7 B.H.C. O.C.J. 172.

See NUISANCE UNDER CRIM. PRO. CODE, 4 C.L.R. 410, 8 C.L.R. 399.

High Court, Jurisdiction of—continued.

——1.—General—*concluded.*

See PRACTICE AND PROCEDURE, 8 C. 560 = 10 C.L.R. 369.

See RESTORATION OF PROPERTY, 4 L.B.R. 14 = 6 Cr L.J. 126.

See SANCTION TO PROSECUTE—AUTHORITIES COMPETENT TO GRANT SANCTION, ETC., 13 M. 144, 5 C.L.J. 222 = 5 Cr. L.J. 188, A.W.N. 1908, 273 = 5 A.L.J. 749 = 31 A. 38 = 9 Cr. L.J. 39 = 1 Ind. Cas. 569. 22 C. 487, 13 C.W.N. 1038 = 37 C. 13, 7 P.W.R. 1908 = 103 P.L.R. 1908 = 5 P.R. 1908, Cr. = 7 Cr. L.J. 281, F.B.

Practice of Calcutta High Court in sanction cases — Sanction at first granted on verbal application—Effect—Subsequent written application for sanction — Jurisdiction to order sanction thereon—Application to revoke sanction granted by Judge on the original side of the High Court must be made to an appellate Bench —S. 195, Crim. Pro. Code—*See* SANCTION TO PROSECUTE—GRANT OF FRESH SANCTION, 40 C. 423 = 21 Ind. Cas 172 = 14 Cr. L.J. 572.

See SANCTION TO PROSECUTE—REVOCATION OF SANCTION, 10 C.W.N. 1026 = 4 Cr. L.J. 168.

See SANCTION TO PROSECUTE—WHO MAY APPLY FOR SANCTION, 9 C.P.L.R. Cr. 27.

See SECURITY FOR GOOD BEHAVIOUR, 14 C.W.N. 49 = 37 C. 91 = 5 Ind. Cas. 29.

See SENTENCE—POWERS OF APPELLATE COURT, 4 M.H.C. App. 36.

See SESSIONS JUDGE, JURISDICTION OF, 5 C.W.N. 411, 2 W.R. Cr. 44.

See ST. 39 AND 40, GEO. III, CH. 79, 8 M. 24.

See ST. 28 AND 29 VIC., C. 15, 5 Bom. L.R. 869.

See TRANSFER OF CRIMINAL CASES—MISCELLANEOUS CASES, 8 C. 63.

See VERDICT OF JURY, 14 C. 164, 4 M.L.T. 483, 2 C.L.R. 518.

See ZANZIBAR ORDER IN COUNCIL, 3 B. 334.

——2.—As a Court of Reference.

See HIGH COURT, JURISDICTION OF—GENERAL.

See REFERENCE TO HIGH COURT.

(1)—*High Court—Reference under s. 286, Crim. Pro. Code*, 1872.—The High Court, as a Court of reference, can only deal with cases in which a sentence of death has been passed. QUEEN v. AMAN AND NUND KISHORE, **5 N. W.P. 130.**

(2)—*Crim Pro. Code* (1872), *ss.* 297, 307—*High Court—Weight to be attached to evidence.*—In a reference under s. 307 of the Crim. Pro. Code, the High Court is bound to accept the opinions of the Judge and the jury where they agree. It is not open to it to believe the evidence

High Court, Jurisdiction of—continued.

——2.—As a Court of Reference—*concluded.*

which they have both disbelieved. QUEEN-EMPRESS v. SOMA DALJI, **Rat. Un. Cr. C. 924 = Cr. Rg. 29 of 1897.**

(3)—*Crim. Pro. Code* (1882), *ss.* 238 *and* 307—*Reference to High Court — High Court's power to convict a person for a minor offence not charged.*—It is competent to the High Court, in dealing with a case under s. 307 of the Crim. Pro. Code, to convict the accused under s. 365 of the Penal Code, although he was not charged with any such offence, but was charged with offences punishable under ss. 366 and 376, Penal Code, QUEEN-EMPRESS v. SITANATH MANDAL, **22 C. 1006.**

(4)—*Crim. Pro. Code* (1872), *ss.* 295, 296—*Reference by District Magistrate against acquittal by Sessions Judge.*—Where prisoners convicted by a Bench of Magistrates are acquitted on appeal by the Sessions Judge, it is not competent for the District Magistrate to transmit the proceedings, under ss. 296, 297, Crim. Pro. Code, to the High Court, to have the order of acquittal by the Sessions Judge set aside. The High Court, as a Court of revision, will not interfere in any case of acquittal, the law having given to Government the right of appeal in such cases. *In the matter of* A. DAVID, **6 C.L. R. 245.**

——3.—Revisional Powers of High Court.

See CRIM. PRO. CODE, 1898, ss. 435, 439.

See HIGH COURT, JURISDICTION OF—GENERAL.

See REVISION.

(1)—*Superintendence, High Court's power of —S. 15 of the Charter Act—Interfering with order of Presidency Magistrate—Crim. Pro. Code (Act V of 1898), s. 203, order under—Dismissal of complaint—Rule issued by High Court—Magistrate's duty to show cause.*—Independently of the Code of Criminal Procedure, the High Court has jurisdiction, under s. 15 of the Charter Act, to interfere with the order of a Presidency Magistrate, dismissing a complaint under s. 203, Crim. Pro. Code, and direct a further enquiry. There is no form of judicial injustice which the High Court, if need be, cannot reach, under the Charter Act. S. 15 of the Charter Act should be interpreted in an extended sense so as to give the High Court power of superintendence, that is to say, powers of revision over proceedings of the subordinate Courts. LEKHRAJ RAM v. DEBI PERSHAD, **12 C.W N. 678 = 7 Cr. L.J. 499.** (6 C.L.J. 705, *Doubted.*) [*R.*, 14 Cr. L.J. 529 = 21 Ind.Cas. 129 = 14 M.L.T. 200 = 1913 M.W.N. 728.]

(2)—*Pending case—Interference by High Court.*—It is only in very exceptional instances that the High Court should, as a Court of Revision, interfere with the action of a Subordinate Court in respect of any pending case, and especially when such a case has reached the stage where a charge has been drawn, and only the defence of the accused remains to be

High Court, Jurisdiction of—continued.

——3.—Revisional Powers of High Court —*continued.*

heard. Generally, it is inadvisable to interfere in a pending case, unless there is some manifest and patent injustice apparent upon the face of the proceedings and calling for prompt redress. JAGAT CHANDRA MOZUMDAR v. QUEEN-EMPRESS, 26 C. 786=3 C.W.N. 191. [*F.*, 13 C.L.J. 43, 8 Ind. Cas. 1161=33 P R. 1910, Cr.=57 P.L.R. 1911; *Disappr.*, 24 Ind. Cas. 954=18 C.W.N. 921=15 Cr. L. J. 546; *R.*, 37 C. 250=10 C.L.J. 564=11 Cr L.J. 37=14 C.W.N. 330=4 Ind. Cas. 710, 38 C. 68=11 Cr. L.J. 525=7 Ind. Cas. 747, 11 Cr. L.J. 489=7 Ind. Cas. 461=U.B.R. 1910, 1st Qr. 2, Cr., 14 Cr. L J. 290=19 Ind. Cas. 946=9 N.L R 65, U.B.R. 1904, 1st Qr., Cr. P.C., p. 4.]

(3)—*Power of High Court to interfere at any stage of the case.*—The High Court has the power to interfere at any stage of the case, and when it is brought to its notice that a person has been subjected for over two months to the harassment of an illegal prosecution, it is bound to interfere. CHANDI PERSHAD v. ABDUR RAHMAN, 22 C. 131. [*F.*, 20 B. 543, 3 L.B.R. 109, 11 Cr. L J. 388=6 Ind. Cas. 626=18 P. W.R. 1910, Cr, 50 P.W.R. 1910, Cr.; *R.*, 25 C. 233, 38 C. 68=7 Ind. Cas. 747=11 Cr. L.J. 525=13 C.L.J. 43, 33 P.R. 1910, Cr.=57 P.L R. 1911=8 Ind. Cas. 1161=12 Cr. L.J. 50, 130 P. L R. 1901; *D.*, 10 C.W.N. 322, 11 Cr. L.J. 387=6 Ind. Cas. 624=17 P.W R. 1910, Cr]

(4)—*Crim. Pro. Code* (1861), s. 404—*Magistrate acting without jurisdiction—Power to set aside proceedings.*—The High Court alone can set aside, under s. 404, the finding of a Subordinate Magistrate, who has tried a case without jurisdiction and acquitted the accused. HIGH COURT PROCEEDINGS, 26TH JULY 1869, **4 M.H C. App. 60.**

(5)—*Crim. Pro. Code* (1898), s. 476—*Prosecution directed by Subordinate Civil Court—Powers of High Court.*—Where a Subordinate Civil Court orders the prosecution of a person, the High Court has no powers of criminal revision, but it has power to interfere under s. 622, Civ. Pro. Code, 1882, when the necessary conditions exist. DURGA PRASAD v. KING-EMPEROR, **1 A.L.J. 481=A.W.N. 1904, 170=1 Cr. L.J. 706.**

(6)—*Criminal proceedings ordered by Civil Court, power of High Court to stay—S.* 15, *Charter Act, scope of—Ss.* 28 *and* 29, *Letters Patent—S.* 476, *Crim. Pro. Code.*—The power of general superintendence given by s. 15 is not limited by any other provisions of law, and it includes the power to point out to the subordinate Courts, the inexpediency of trying a case when it is likely to interfere with the due course of justice. The power of superintendence and transfer implies the power to send for the records in any case in the lower Courts, which must necessarily stay further proceedings in that case. Therefore, the High Court has the power to stay proceedings (ordered by a Civil Court) in Criminal Courts till the appeal from that Court is disposed. The fact that the Court may not have the power to set aside the order under s. 476, Crim. Pro. Code, is in itself no reason for holding the other way. *In re* JOGIAH, **4 M.L.T. 186=31 M. 510=8 Cr.L.J. 390.**

(7)—*Crim. Pro. Code* (1898), ss. 146 *and* 435—*Revisional powers of High Court.*—The High Court has no power to interfere in revision with an order passed under s. 146, but it will have jurisdiction if the Magistrate has exceeded the powers given him by the section though, ostensibly, he acts under it. *In re* SANGANBASAWA ROM BASAPPA, **7 Bom. L.R. 18=2 Cr L J. 28.**

(8)—*Interference by High Court, in cases where no appeal lies.*—The High Court is bound to interfere, even though no appeal lies, if it is clear on the face of the proceedings that the Magistrate approached the case from an entirely wrong point of view. QUEEN-EMPRESS v. E.M. SLATER, **15 B. 351.** [*F.*, 19 B. 340]

(9)—*Order of Her Majesty's Consul at Muscat—High Court's revisional jurisdiction—Crim. Pro. Code* (1898), s. 435.—The High Court of Bombay has no criminal revisional jurisdiction over the proceedings of Her Majesty's Consul within the dominions of the Sultan of Muscat. *In re* RATTANSEE PURSHOTTEM, **24 B. 471=1 Bom.L.R. 840.**

(10)—*Crim. Pro. Code* (X *of* 1872), s. 518=*S.* 145 *of the present Code—* 24 *and* 25 *Vic., c.* 104, *s.* 15—*Interference by High Court—Nature of order under s* 518, *Crim. Pro. Code,* 1872.—The High Court could not interfere, under the Charter Act, with orders properly passed by Magistrates under s. 518 of the Crim. Pro. Code of 1872=s. 145 of the present Code. [*R.*, 5 C. 7, F.B., 19 C, 127; *Expl.*, 1 C.L.R. 58.] *Obiter.*—An order under s. 518 of the old Code (=s. 145 of the present Code) is not a judicial proceeding, however much it may infringe upon the undoubted legal rights of parties. *In the matter of the petition of,* CHUNDER NATH SEN, **2 C. 293. F.B.** [*R.*, 8 C. 580=11 C.L.R. 414].

(11)—*High Court's extraordinary criminal jurisdiction—Revisional powers.*—The High Court, in the exercise of its powers of extraordinary jurisdiction conferred by cl. 15 of the Charter, cannot, in criminal matters, interfere, unless all other remedies provided by law have been exhausted. EMPRESS v. RAJCOOMAR SINGH, **3 C. 573=1 C.L.R 352.**

(12)—*Revisional powers of High Court—Notice to accused by District Magistrate.*—The High Court is competent, in the exercise of its revisional jurisdiction, to question not only the *legality* but the *propriety* of any finding, sentence or order; and it is quite open to it to deal with the question whether a District Magistrate, in exercising the power under s. 437

High Court, Jurisdiction of—continued.

——3.—**Revisional Powers of High Court** —*continued.*

of the Crim. Pro. Code, exercises a proper discretion in proceeding to make an order for further enquiry without giving notice to the accused, and allowing him an opportunity of being heard. *Semble.*—As a matter of strict law the accused was not entitled to be heard by the District Magistrate, before the order for further enquiry was made. NOBIN KRISTO MOOKERJEE v. RUSSIEK LALL LAHA, **10 C. 268.**

(13)—*Conviction by Jury—High Court's power of interference.*—The High Court can interfere with a conviction of an accused by a Jury, only if it finds a defect in the charge, or in some other portion of the procedure. The question of sentence, however, is entirely in its hands. SABIR v. QUEEN-EMPRESS, **22 C. 276.**

(14)—*High Court's powers of revision—Further enquiry—Crim. Pro. Code* (1898), *ss.* 423, 435, 439—*Letters Patent,* 1865, *cl.* 28.—Both under ss. 435 and 439 read with s. 423, Crim. Pro. Code, 1898, and under cl. 28 of the Letters Patent, the High Court has the power to revise the proceedings of Magistrates subject to the appellate jurisdiction of the High Court (such as Presidency Magistrates, and to direct a further enquiry into a complaint. W. B. COLVILLE v. KRISTO KISHORE BOSE, **26 C. 746=3 C.W.N** 598. [*Diss*, 27 C. 126; *F.*, 36 C. 994=11 C. L.J. 50=10 Cr. L.J. 385=13 C.W. N. 1221=3 Ind. Cas. 861; *R.*, 27 B. 84; *Cons.*, 14 Cr. L.J. 529=21 Ind. Cas. 129=14 M.L.T. 200=1913 M.W.N. 728; *D.*, 34 A. 487=10 A. L.J. 45=13 Cr. L.J. 479=15 Ind. Cas. 319.]

(15)—*Crim. Pro. Code* (1898), *ss.* 433, 439—*Powers of High Court to deal with accused persons not appealing.*—The High Court has power, under s. 439, to deal with the case of accused persons not appealing against their conviction, while considering and trying the appeal preferred by the other accused; cl. (5) of s. 439 does not in any way affect the jurisdiction vested in the High Court to deal with their case. BROJA RAKHAL MOZUMDAR v. EMPRESS, **5 C.W.N. 330.**

(16)—*Crim. Pro. Code* (1898), *ss.* 439 *and* 476—*Order of Munsiff directing prosecution—Interference by Criminal Bench, High Court—Civ. Pro. Code* (1882), *s.* 622.—A Criminal Bench of the High Court has no authority to interfere, under s. 439, Crim. Pro. Code, with the proceedings of a Munsiff taken under s.476, Crim. Pro. Code, In such cases, a Civil Bench of the High Court should, under s. 622, Civ. Pro. Code, be moved for the purpose of hearing the application. KALI PROSAD CHATTERJEE v. BHUBAN MOHINI DASI, **8 C.W.N. 73=1 Cr. L.J. 21.** (26 M. 98 and 139, *F.*) [*F.*, 4 L.B.R. 138 =7 Cr. L.J. 416; *R.*, 26 A. 249=A.W.N. 1904, 15, 32 C. 367=9 C.W.N. 364=2 Cr. L.J. 110, 37 C. 714=14 C.W.N. 806=11 Cr. L.J. 357= 6 Ind. Cas. 473, 40 C. 477=17 C.L.J. 245= 17 C.W.N. 647=19 Ind. Cas 197=14 Cr. L.J. 197, 1 C.L.J. 161, 3 L.B.R. 234, 5 P.R. 1908, Cr.=7 P.W.R. 1908, Cr.=103 P.L.R. 1908.]

High Court, Jurisdiction of—continued.

——3.—**Revisional Powers of High Court** —*continued.*

(17)—*Orders passed by a Magistrate—Executive orders and acts—Revision by High Court.*—A Magistrate passed certain orders depriving one person of, and giving another, possession of immoveable and moveable properties but not in accordance with any provision of law. The High Court in revision set aside the orders. AKHILESHWAR SINGH ROY v. EMPEROR, **10 C.W.N. 246=3 Cr.L.J. 199.**

(18)—*Crim. Pro. Code* (1898), *ss.* 145, 146—*Proceedings instituted on a Police report—High Court, powers of.*—The High Court may interfere in a proceeding instituted by a Magistrate under s. 145, when the Police report on which the proceeding is based states in the vaguest terms that each of the parties claims a certain right, and that, inasmuch as both the parties are men of substance, there might be a breach of the peace. MAHARAJA SURJA KANTA ACHARJA BAHADUR v. MAHARAJA JAGADINDRA NATH ROY BAHADUR, **11 C.W.N. 198=5 Cr. L.J. 32.**

(19)—*Judge's notes of evidence and proceedings—Right of accused—Revisional powers of High Court.*—An accused person is not entitled to a copy of the record of the evidence and proceedings in the case, merely on the ground of an alleged probable hardship. The High Court can call for and examine the record of any case tried by a Court of Sessions, when there is a reasonable *prima facie* ground as respects either the irregularity of the proceeding, or the illegality or impropriety of the sentence or order passed. QUEEN v. SUBBAYYA GAUNDAN, **1 M.H.C. 138.**

(20)—*High Court's power to order re-trial.*—The High Court, which has a power, which a District Magistrate does not possess, *viz.*, to order a re-trial, is not warranted in so doing merely because the Magistrate who has discharged an accused person in a case was competent to try and finally determine, but arrived at a conclusion, different from that at which the High Court would have arrived as to the credit due to the witnesses. QUEEN-EMPRESS v. AMIR KHAN, **8 M. 336=2 Weir 557.** [*R.*, 31 M. 133=18 M.L.J. 57=3 M.L.T. 230.]

(21)—*High Court's power, to order re-trial, for a graver offence by competent Magistrate—Crim. Pro. Code* (1872), *s.* 299 (=*s.* 417 *of the Code of* 1898)—*Crim. Pro. Code* (1882), *s.* 439.—Where the evidence discloses an offence of a graver character beyond the jurisdiction of a subordinate tribunal, the High Court may quash the conviction and sentence for the minor offence and direct a trial before a tribunal having jurisdiction for the graver. Whether it will do so or not is a question, not of law, but of expediency, on the facts of the particular case. HIGH COURT PROCEEDINGS, 1ST MAY 1872, No. 845, **2 Weir 569=7 M.H.C. App. 5.**

High Court, Jurisdiction of—continued.

——3.—**Revisional Powers of High Court** —*continued.*

(22)—*Retrial or quashing conviction—Practice.*—Where an offence, in its ordinary form, is within the jurisdiction of a tribunal, the jurisdiction is not necessarily ousted because the evidence discloses an element constituting the offence in a specific and graver form. In such cases it is a question, not of law, but of expediency, on the facts of the particular case, whether the High Court will interfere or not to quash the conviction. *In re* KESAVALU, **2 Weir 569.**

(23)—*Defective investigation by Magistrates —Crim.Pro. Code* (1872), *s.* 297 (=*s.* 439 *of the Code of* 1898).—A defective investigation by a Magistrate constitutes a material error and will justify the High Court in setting aside the conviction. *In re* REDDI RAMAIYA, **2 Weir 570.**

(24)—*Reference—Revision—Powers — Crim. Pro. Code, s.* 439 (5).—*Per Aston, J.*—It is a well established rule of this Court that, in exercising the powers of revision, it interferes on questions of fact, only in very exceptional circumstances. The jurisdiction of the High Court, to interfere on questions of fact, has often been affirmed; and that, in very exceptional cases, this power should be exercised is obvious: such as, where there has been a conviction of a clearly innocent person, and, but for the powers given to the High Court, to interfere as a Court of revision, the only remedy would be by petition to the Government, to exercise its powers of prerogative. EMPEROR v. NANDEYAPPA GOWDA SIDDAN GOWDA, **8 Bom. L.R. 851=4 Cr.L.J. 446=1 M L.T. 444.**

(25)—*Order of detention in a Reformatory improperly passed—Power of High Court to interfere—Reformatory Schools Act, s.* 16.—A High Court has power to interfere in appeal or revision, when an order of detention in a reformatory is opposed to the rules framed by the Local Government under the Act. If an order for detention in a Reformatory School is not properly passed, that is, if it does not conform to the rules made by the Local Government, the High Court is not debarred by s. 16 of the Act from altering or reversing such order. CROWN v. DAWOOD SAIB, **1 L.B R. 68.** (21 A. 391, 27 C. 133, *F.*; L.B.R. 1893—1900, 441, 25 C. 333, *Diss.*).

(26)—*Power of High Court to set aside an order of District Magistrate merely because case is one fit for reference.*—The High Court will not set aside an order made by a District Magistrate, merely on the ground that the most proper course would have been to refer the case to the High Court, if it cannot be shown that the order made by the District Magistrate was not a fit and proper one for the High Court to make. PO WIN v. CROWN, **1 L.B.R. 311.** (15 C. 608, *F.*).

(27)—*Powers of—Revision of interlocutory orders.*—It is competent for a High Court to exercise its powers of revision at any stage of a criminal case. In this case, the Chief Court of Rangoon treated a regular criminal appeal as an application for revision of an interlocutory order. PO WA v. KING-EMPEROR, **3 L.B.R. 109=3 Cr. L.J 23.**

High Court, Jurisdiction of—concluded.

——3.—**Revisional Powers of High Court** —*concluded.*

Power of High Court to interfere in a pending case—*See* ACT VI OF 1882, s. 74, 35 P.W.R. 1910, Cr.=8 Ind. Cas. 190.

Power of, to question legality of forfeiture under Press Act—*See* ACT I OF 1910, ss. 4, 12, 17, 19, 22, 14 Cr. L.J. 497=20 Ind. Cas. 977 =18 C.W.N. 1.

Charter Act, s. 15—Power of revision—Evasion of s. 144, Crim. Pro. Code—*See* CRIM. PRO. CODE, 1898, s. 144, 25 M.L.J. 370=14 Cr. L.J. 589=21 Ind. Cas. 381.

Revisional powers of the—Powers under the Charter Act—*See* CRIM. PRO. CODE, 1898, ss. 145, 435, 438, 12 M.L.T. 439=1912 M.W.N. 1154=23 M.L.J. 499=17 Ind. Cas. 65=13 Cr. L.J. 753=36 M. 275.

S. 185, Crim. Pro. Code—High Court if can interfere merely on the ground of convenience —*See* CRIM. PRO. CODE, 1898, s. 185, 17 C.W. N. 1207.

Revision—High Court—Order of Subordinate Courts granting sanction under s. 195, Crim. Pro. Code—Discretion of such Courts—Interference—Not to be claimed as matter of right —Grounds of interference—Third appeal to High Court in sanction cases when allowable —*See* CRIM. PRO. CODE, 1898, ss. 195, 476, 26 M.L.J. 486=23 Ind. Cas. 479=15 Cr L J. 271.

Case triable exclusively by a Court of Sessions —Duty of committing Magistrate—Order of discharge passed by a Presidency Magistrate—High Court's powers in revision—*See* CRIM. PRO. CODE, 1898, ss. 208, 209, 210, 435, 439, 14 M.L.T. 200=21 Ind. Cas. 129=14 Cr. L.J. 529.

Small Cause Court directing prosecution of a person under s. 476, Crim. Pro. Code—Powers of High Court acting as a Criminal Court in revision—*See* CRIM. PRO. CODE, 1898, ss. 476, 435, 17 O.C. 25=15 Cr. L.J. 217=22 Ind. Cas. 1001.

Findings of fact—Interference of, in revision—*See* PENAL CODE, s. 211, 16 C.L.J. 453=17 Ind. Cas. 993=13 Cr. L.J. 897=17 C.W.N. 379.

High Court Rules.

See RULES OF HIGH COURT.

(1)—*Rules of the High Court, Appellate Side, Ch. V, r. 5—Power of Full Bench to send case back to referring Bench for final disposal.* —The language of r. 5 of Ch. V of the Rules of the High Court, Appellate Side, relating to references to the Full Bench in criminal matters is sufficiently wide to enable the Full Bench to send a case back, with an expression of opinion upon the point of law raised, to the Bench which

High Court Rules—*concluded.*

referred it for final disposal. *In the matter of* ABDUR RAHMAN AND KERAMAT, 27 C. 839 = 4 C.W.N. 656, F.B. [*F*, 28 C. 1011.] NEMAI CHATTO RAJ v. EMPRESS, 4 C.W.N. 645 = 27 C. 1041.

Ch. XV, r. 25—General Civil Courts Rules, 1911. Ch. XXI, r. 37—Professional misconduct —*See* ACT XVIII OF 1879, s. 13, 13 Cr. L.J. 795 = 17 Ind. Cas. 539, F.B.

Judicial Commissioner's Court rules—Ch. XV, r. 3—Revision—Sixty days—*See* REVISION—DELAY, 5 S L.R. 265 = 15 Ind. Cas. 803 = 13 Cr. L.J. 531.

High Court Rulings.

(1)—*Duty of subordinate Court.*—Judges of subordinate Courts are bound to accept the law as laid down by the High Court. It is at all times improper for a subordinate tribunal to lay down the Law to a Superior Court. SUNDARAM CHETTY v. QUEEN, 6 M. 203, F.B. = 2 Weir 77.

High Courts' Criminal Procedure Code Amendment.

See ACT XIII OF 1865.

High Court, Superintendence and Powers of.

See HIGH COURT, JURISDICTION OF.

See REFERENCE TO HIGH COURT.

See REVISION.

(1)—*Interference by High Court, after expiry of order—Crim. Pro Code* (1898), *s.* 144. —Where the period for which an order under s. 144, Crim. Pro. Code, is to be in force has expired, the High Court will not interfere with the order. QUEEN-EMPRESS v. KAZI FAZLODDIN, Rat. Un. Cr. C. 967 = Cr. Rg. 22 of 1898.

(2)—*High Court—Powers of interference.*—In a case where no appeal lay to it, the High Court, in the exercise of its extraordinary powers, reversed a conviction for cheating which was confirmed on appeal by the Sessions Judge. REG. v. HARGOVANDAS, 9 B.H.C. 448. [*R.*, 15 C.P.L.R. 97.]

(3)—*Crim. Pro. Code* (1898), *ss.* 435 *to* 439—*Revision, powers of, under ss.* 435 *to* 439, *of High Court, Sessions Judge and District Magistrate, if same—Evidence, misappreciation of, whether a ground for interference—Further enquiry, power to order.*—The accused were charged for an offence under s. 223, I.P.C., but were discharged by the Sub-Magistrate on the ground that the prosecution failed to establish the offence. The District Magistrate, sent for the records under s. 435, and directed a further enquiry by *another* Magistrate, on the ground that the reasons given by the Magistrate for discrediting the prosecution witnesses were not convincing. *Held* on appeal, by (*Wallis* and *Munro, JJ.*, *Sankaran Nair, J.*, *dissenting*) that, the powers of interference of the High Court and the Sessions Judge or District Magistrate are co-extensive under s. 437 and are not limited. There is nothing in s. 437 to suggest that misappreciation of evidence in the lower Court is not a ground of interference, but s. 436 shows that it is a ground of interference. That, in a case where the District Magistrate or the Sessions Judge considers that a Magistrate is wrong in discharging an accused and that a *prima facie* case is made out, the District Magistrate or the Sessions Judge cannot, in the exercise of the power to order further enquiry under s. 437, himself frame the charge or try the accused Under the latter part of the section, the District Magistrate may make the further enquiry himself and frame the charge in the course of it. That, in a case of difference of opinion owing to mere appreciation of evidence, the Sessions Judge or District Magistrate is not bound to refer the case to the High Court, but would be justified in ordering a re-consideration of the same evidence. *Wallis, J.*—A subordinate Magistrate unsatisfactorily dealing with a case would be a good ground for ordering further enquiry by another Magistrate. When the legislature is not satisfied that the general revisional jurisdiction established by it is sufficient to deal with a particular class of cases and creates a special revisional jurisdiction in such cases, it seems to be in accordance with the intention of the legislature that the special jurisdiction should be exhausted before the general jurisdiction is resorted to. *Sankaran Nair, J.*—Recognising the distinction between revision and appeal, neither the High Court nor a District Magistrate, could interfere with an order of discharge on account of mere misappreciation of evidence. *In re* NARAYANASAWMY NAIDU, 5 M.L.T. 233, F B. = 9 Cr. L. J. 192 = 19 M.L J. 157 = 32 M. 220 = 1 Ind. Cas. 228.

(4)—*Crim. Pro. Code* (*Act* X *of* 1872), *ss.* 263 *and* 457 = *ss* 307 *and* 238 (*Act* V *of* 1898)—*Jury's verdict of acquittal—Powers of High Court on reference.*—On a reference, under s. 263 of the Crim. Pro. Code of 1872, the High Court can convict a prisoner of any offence, which the Jury could have convicted him of, upon the charge framed and placed before them, under s. 457 of the Crim. Pro. Code of 1872. EMPRESS v. HARAI MIRDHA, 3 C. 189. [*Appr.*, 22 C. 1006; *R.*, 11 Cr. L J. 630 = 8 Ind. Cas. 373 = 13 O. C. 295.]

(5)—*Crim. Pro. Code* (1882), *s.* 439—*Charter Act, s.* 15—*Orders made by inferior criminal Courts—Powers of High Court—Ultra vires order of Magistrate under s.* 144, *Crim. Pro. Code.*—Under s. 439 of the Code, the High Court has the general power of revision of all orders made by inferior criminal Courts which come before it in any way whatsoever; under cl. 15 of the Charter Act it has a general power of superintendence, and, under that power, it can send for any record which it may desire to see. If, upon the face of the record, it finds that an illegality has been committed, and that an order has been made wdich the Magistrate has no jurisdiction to make, it can

High Court, Superintendence and Powers of —continued.

set aside the order. The High Court has power to interfere, under the Charter Act, if the proceeding of a Magistrate is *ultra vires* and could not be made under s. 144, Crim. Pro. Code. ANANDA CHANDRA BHUTTACHARJEE v. CARR STEPHEN, **19 C. 127.**

Revision of order of acquittal — *See* ACQUITTAL, L B.R. 1893—1900, 126.

See ACT X OF 1875, ss. 115 and 147, 12 B. H.C.A.C. 217.

See ACT V OF 1876, s. 8, 14 B. 381.

See ACT IV OF 1877, s. 168, 7 C. 447.

Revision by High Court of an order of a subordinate tribunal under s. 58, Forests Act VII of 1878—*See* ACT VII OF 1878, s. 58, 4 A. 417.

See ACT XVIII OF 1879, ss. 13, 14, 27 C. 1023=4 C.W.N. 389.

See ACT XVIII OF 1879, s. 36, 21 A. 181= A.W.N. 1899, 15.

Unprofessional conduct of practitioner — Opportunity to defend himself—*See* ACT XVIII OF 1879, s. 40, 15 C. 152, P.C. = 14 I.A. 154.

See ACT III OF 1884, s. 8 (6), 9 A. 420=A. W.N. 1887, 39.

See ACT VIII OF 1897, ss. 4, 8, 16, 20 A. 158 = A.W.N. 1897, 230.

See ACT VIII OF 1897, ss. 8, 11, 16 and 31, 27 C. 133.

See ACT VIII OF 1897, s. 16, 21 A. 391, F. B.=A.W.N. 1899, 138.

See BOM. ACT VI OF 1863, ss. 22 and 25, 2 S.L.R. 20, Cr.=10 Cr. L.J. 233.

See BOM. ACT VII OF 1867, s. 16, Rat. Un. Cr. C. 478=Cr. Rg. 41 of 89.

See BOM. ACT VIII OF 1867, ss. 6 and 14, 10 Bom. L.R. 630=8 Cr. L.J. 141.

See BUR. ACT III OF 1889, ss. 9 and 20, cl. 2, L.B.R. 1893—1900, 147.

See BAIL, Rat. Un. Cr. C. 892.

In cases of orders requiring security for good behaviour—*See* CRIM. PRO. CODE, 1898, ss. 118, 123, 406, 439, 2 O.C. 307.

High Court's power of revision of Magistrate's order under s. 144, Crim. Pro. Code—*See* CRIM. PRO. CODE, 1898, ss. 144 and 435 (3), 4 Bom. L.R. 582.

Revision of orders in disputes as to immoveable property—*See* CRIM. PRO. CODE, 1898, ss. 145 and 434 (3), 25 A. 537=A.W.N. 1903, 102.

High Court's power of interference with order under s. 146, Crim. Pro. Code—*See* CRIM. PRO. CODE, 1898, ss. 146 and 435, 7 Bom. L. R. 18=2 Cr. L.J. 28.

In cases of disputes of civil nature—*See* CRIM PRO. CODE, 1898, s. 147, 29 M. 97=15 M.L.J. 394=3 Cr. L.J. 31.

High Court, Superintendence and Powers of —concluded.

See CRIM. PRO. CODE, 1898, s. 148 (3), 9 C.W.N. 887=1 C.L.J. 331=2 Cr. L.J. 408.

Application for sanction to prosecute — Rejection by Magistrate—Independent application to Sessions Judge— Procedure, validity of—*See* CRIM PRO. CODE, 1898, s. 195, 25 A. 126=A.W.N. 1902, 197.

Powers of High Court to act under s. 562 on appeal—*See* CRIM. PRO. CODE, 1898, ss. 423 (*d*) and 562, 24 A. 306=A.W.N. 1902, 69.

Appeal preferred by Government from acquittal—Revision--*See* CRIM. PRO. CODE, 1898, ss. 435, 438, 439, 24 A. 346=A.W.N. 1902, 89.

In acquittals—*See* CRIM. PRO. CODE, 1898, s. 439, 27 A. 359=A.W.N. 1904, 278, S.C. 191, Oudh.

High Court's power of revision—*See* CRIM. PRO. CODE, 1898, ss. 439, 476, 23 A. 249= A.W.N. 1901, 59.

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 2 C.L.J. 241=2 Cr. L.J. 618=33 C. 68, F.B.=9 C.W.N. 1046.

See FURTHER ENQUIRY, 13 C.W.N. 1221= 36 C. 994=3 Ind. Cas. 861=10 Cr. L.J. 385.

See RESTORATION OF PROPERTY, 27 A. 415 =A.W.N. 1905, 19=2 A.L.J. 64=2 Cr. L.J. 24, 13 C.W.N. 77=36 C. 44=1 Ind. Cas. 202.

See REVIEW, 19 C. 127.

See SANCTION TO PROSECUTE—AUTHORITIES COMPETENT TO GRANT SANCTION, ETC., 26 A. 1=A.W.N. 1903, 171, 3 A. 508, 6 O.C. 216, 27 A. 292=1 A.L.J. 597=A.W.N. 1904, 231.

See SANCTION TO PROSECUTE— CONDITIONS REQUISITE FOR GRANT OF SANCTION, ETC., 27 M. 223=2 Weir 208=14 M.L.J. 74.

See SANCTION TO PROSECUTE—NATURE AND FORM OF SANCTION, 5 A.L.J. 247=A.W. N. 1908, 102=30 A. 243=3 M.L.T. 377=7 Cr. L.J 389.

See SANCTION TO PROSECUTE—REVOCATION OF SANCTION, 1 A.L.J. 186.

See SECURITY FOR GOOD BEHAVIOUR, 2 C. 384=1 C.L.R. 95.

See SECURITY TO KEEP THE PEACE— FORFEITURE OF SECURITY, 3 C. 757=2 C. L.R. 408.

See VERDICT OF JURY, 3 C. 623=2 C.L.R. 204, 9 C. 53=11 C.L.R. 169.

High Seas.

See OFFENCES ON BOARD BRITISH SHIPS ON HIGH SEAS.

High Seas, Offences committed in.

(1)—*Merchant Shipping Act*, 1854 (17 *and* 18 *Vic.*, c. 104), *s.* 267—*Merchant Shipping Act*, 1855 (18 *and* 19 *Vic.*, c. 91), *s.* 21—*Colonial Courts Jurisdiction Act*, 1874 (37 *and* 38 *Vic.* c. 27)—*Offence committed by British Seamen on a British ship on the high seas—Procedure.* —The trial of a British seaman for an offence committed on British ship on the high seas

High Seas, Offences committed in—*continued.*

must be conducted under the Code of Criminal Procedure, though the offence charged must be an offence under the English law. QUEEN-EMPRESS v. GUNNING, **21 C. 782** [*R.*, 5 L. B.R. 221 = 10 Ind. Cas. 705 = 12 Cr. L.J. 198 = 4 Bur. L.T. 58.]

(2)—*Offence committed in British ship during voyage on the high seas—Penal Code—Crim. Pro. Code.*—A Presidency Magistrate has authority to convict a person of an offence under the Indian Penal Code, committed in a British ship during her voyage on the high seas. The charge should be framed with reference to the Indian Penal Code, and in case of conviction the punishment should be awarded under that Code. KING-EMPEROR v. CHIEF OFFICER OF S. S. "MUSHTARI," **25 B. 636 = 3 Bom. L.R. 253.** [*Diss.*, 39 C. 487 = 13 Cr. L.J. 246 = 16 C.W.N. 471 = 14 Ind. Cas. 598, 4 Bur L.T. 58 = 10 Ind. Cas. 705 = 5 L.B.R. 221.]

(3)—*High seas — Offence committed within three miles of shore—Substantive Law applicable— Procedure-— Punishment—-Jurisdiction.* —An offence committed on the high seas but within 3 miles from the British Indian shores is one committed within British Indian territories (what may be called maritime territory) and the substantive law applicable is the Penal Code, and the procedure is also that laid down in the Crim. Pro. Code. Though, under Reg. XII of 1827, the District Magistrate had no authority beyond the low water-mark adjoining his district, Stat. 12 and 13 Vict., c. 96 gave to such Magistrates jurisdiction over offences committed on the high seas within the high water-mark as if they had been committed within their local jurisdiction. There might be a doubt as to what punishment the accused are liable to if the description of the offences charged were identical under the Indian and English Law, but the question does not arise in the case of the offence of mischief when it is not shown that the sentence provided in the Penal Code is heavier than what would be inflicted under the English law. *Per West, J.* REG v. KASTIA RAMA, **8 B H.C. Cr. 63.** (1 B. L.R.O. Cr. 1, *R.*) [*R.*, 11 Bom. L.R. 221.]

(4)—*Jurisdiction — High seas—Substantive Law applicable — Procedure — Abetment by accessories — Merchant Shipping Acts—Penal Code—Imperial Statutes—Indian Legislation.* —One Marks was charged with having committed mischief by setting fire to a decked vessel of a burden of over 1,000 tons at a distance of about fifty miles of the Coast of Bombay on a voyage from Bombay to Liverpool. Elmstone and two others, brokers of the vessel, were charged with having abetted the said offence of mischief by conspiring to have her destroyed with intent to defraud an Insurance Company, and, in order to effect their design, bribing Marks to destroy her. Charges were framed both under the Penal Code and under the Imperial Statutes. The question was under what law the principal and the accessories respectively were to be punished. The following

High Seas, Offences committed in—*concluded.*

propositions of law were laid down. (1) The procedure applicable to the case is the one prevailing in the Indian High Courts in the exercise of their Original Criminial Jurisdiction. (2) The substantive law applicable to British-born subjects in such cases is the English Law and not the Penal Code, both in the case of the principal offender and of the abettors. The sentence therefore is to be under English Law. (3) There is no Indian enactment now in force providing for the offences under the circumstances above described, either for the principal offence or for the abetment, since the word "offence" in s. 109 of the Penal Code generally means an offence punishable under the Code and not one punishable under a special or local law. (4) No Imperial enactment has extended the application of the Penal Code in respect of similar offences when committed within British Indian limits to offences committed on the high seas. REG v. ELMSTONE WHITWELL, **7 B.H. C. Cr 89, F.B.** [*R.*, 8 B.H.C. Cr. 63, 2 B. 19, 16 C. 238, 18 B. 636 = 19 B. 105, 11 Bom. L.R 221, 4 Bur. L.T. 58 = 10 Ind. Cas. 705 = 5 L.B. R. 221.]

(5) — *Punishment — Procedure — European British subject—7 Will* IV *and* 1 *Vict.*, *c.* 85, *s.* 2—14 & 15 *Vict.*, *c.* 19, *s.* 5—*Jurisdiction— Act* XIII *of* 1865.—In prosecuting a British subject for an offence committed on board a British ship upon the high seas: *held* (1) (*Phear, J., dubitante*) that he must be charged with an offence under the English law; (2) that the punishment must be according to the English law; (3) that the trial must be according to the procedure of the local Court. Therefore, where a British subject was charged before the High Court with having committed an offence under 7 Will. IV, and 1 Vict., c. 85, s. 2, on board a British ship, upon the high seas, within the admiralty jurisdiction of the Court, and found guilty of an offence under 14 and 15 Vict., c. 19, s. 5; *held* that the conviction was good, and that the prisoner would be rightly punished with rigorous imprisonment, which is defined by s. 53 of the Penal Code to be equivalent to imprisonment with hard labour, and that the trial had been rightly proceeded with under Act XIII of 1865. QUEEN v. THOMPSON, **1 B.L.R. O. Cr. 1.** [*R.*, 7 B.H.C. Cr. 89, F.B., 8 B.H.C. Cr. 63, 10 Ind. Cas. 705 = 5 L.B.R. 221 = 4 Bur.L.T. 58; *D.*, 16 C. 238, 8 B.H.C. C. Cr. 63.]

See CRIM PRO. CODE, 1898, ss. 181 (1 to 3), 182, Rat. Un. Cr. 181 = Cr. Rg. 16—3—1882.

High seas—Murder by a British Indian on a British vessel bound for Calcutta—Jurisdiction of Calcutta High Court—Law applicable —*See* PENAL CODE, s. 4, 16 C.W.N. 471 = 39 C. 487 = 14 Ind. Cas. 598 = 13 Cr. L.J. 246.

Highway

(1)—*Right to conduct a procession.*—A person's right to conduct a procession on the public highway can only be questioned by a Magistrate who, for the preservation of peace, may, if he

Highway—*concluded.*

sees sufficient ground, interdict the procession. SIVAPPACHARI v. MAHALINGA CHETTI, **1 M. H.C. 50.** [*R.*, 2 Weir 77 = 6 M. 203.]

See CRIM. PRO. CODE, 1898, s. 133, 3 C.W. N. 345.

Carrying of corpse on a highway—*See* CRIM. PRO. CODE, 1898, s. 147, 7 M. 49 = 2 Weir 115.

Questions regarding the right to use a—*See* CRIM. PRO. CODE, 1898, s. 147, 6 M.L.J. 193.

See NUISANCE UNDER CRIM. PRO. CODE, 11 C. 8, 20 M. 433 = 1 Weir 233.

See PENAL CODE, ss. 153, 296, 26 M. 554 = 1 Weir 260 = 13 M.L.J. 171.

See PENAL CODE, s. 279, 19 B. 715.

Hill Municipalities Act.

See MAD. ACT II OF 1907.

Hills, Chin Regulation.

See REG. V OF 1896.

Hill Tracts, Chittagong, Act.

See BEN. ACT XXII OF 1860.

Hinduism.

Application for maintenance by Christian wife of a Christian, reverted to—*See* MAINTENANCE, 4 M.H.C. App. 3.

Hindu Law.

1.—ASCETIC.

2.—JOINT FAMILY.

3.—MAINTENANCE.

4.—MARRIAGE.

——**1.—Ascetic.**

(1)—*Resumption of rights by sanyasi—Divesting of vested rights.*—Where a man has lost his rights when he became a sanyasi, it is not open to him to resume them. The ordinary rule of Hindu Law is that rights once vested are not divested, and he does not regain his status in his natural family he has renounced. MUTHUSAMY SASTRY v. NARAYANA SARTRY, **8 M.L.T. 300 = 8 Ind Cas. 393 = 21 M.L.J. 195 = 1911, 1 M.W.N. 36.**

——**2.—Joint Family.**

See ACT XI OF 1878, ss. 19 and 20, A.W.N 1906, 11 = 3 Cr. L.J. 88 = 28 A. 302 = 3 A.L.J. 833.

Right of joint Hindu family to empower one to vote on their behalf—*See* BEN. ACT II OF 1888, ss. 14 and 24, 19 C. 192.

Kurta inducing Collector to pay money due to family on false personation of minor members of joint family—*See* CHEATING, FALSE PERSONATION, 32 C. 775 = 9 C.W.N. 807 = 2 Cr. L.J. 368 = 1 C.L.J. 469.

See CRIMINAL MISAPPROPRIATION, 1 Weir 453.

Attachment of the undivided interest in the joint family of an absconding party—*See* CRIM. PRO. CODE, 1898, ss. 87 and 88, 2 Weir 43.

Hindu Law—continued.

——**2.—Joint Family**—*concluded.*

See CRIM. PRO. CODE, 1898, s. 198, 32 C. 425 = 8 C.W.N. 515.

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 13 M.L.J. 343 = 31 M. 318 = 8 Cr.L J. 205 = 4 M.L.T. 301, 27 C. 261, Note = 4 C.W.N. 421, Note.

Forfeiture against some members of joint Hindu family—*See* FORFEITURE OF PROPERTY, 7 W.R. P.C. 47 = 4 M.I.A. 246

See MAINTENANCE, 13 M. 17 = 2 Weir 620.

See PENAL CODE, ss. 124-A, 131, 37 P.W. R. 1907, Cr.

See PENAL CODE, s. 411, 29 A. 598 = A.W. N. 1907, 187 = 6 Cr.L.J. 23.

See STOLEN PROPERTY, 22 A. 445 = A.W. N. 1900, 169.

See THEFT—THINGS WHICH MAY BE THE SUBJECT OF THEFT, 10 M. 186 = 1 Weir 408.

See THEFT—MISCELLANEOUS, 3 A. 181.

——**3.—Maintenance.**

See MAINTENANCE.

(1)—*Right to maintenance—Justification for wife leaving husband—Unkindness or neglect—Cruelty — Crim Pro. Code,* 1872, *s.* 536.—Under the Hindu Law, mere unkindness or neglect short of cruelty would not be a sufficient justification for a wife to leave her husband's house. Reference being had to the first Code of Criminal Procedure (XXV of 1861) and to the existing Code (X of 1872), s. 536, unless a husband refuses to maintain his wife in his house, or has been guilty of acts of cruelty which would justify her in leaving his protection, she is not entitled to maintenance while living apart from her husband. SITA NATH MOOKERJEE v. SREEMUTTY HAIMABUTTY DABEE, **24 W. R. 377.** [*F.*, 28 C. 751 (762) = 5 C.W.N. 673.]

(2)—*Maintenance, Right to, out of confiscated property.*—A Hindu widow was held not entitled to maintenance out of property belonging to her husband which had become forfeited to the Government on his conviction for rebellion. GUNGA BAEE v. HOGG, **2 Ind. Jur. N. S. 124.**

——**4.—Marriage.**

(1)—*Illegitimacy whether a disqualification for marriage— Hindu Law — Apostacy — Dissolution of marriage.*—There is no authority in the Hindu Law for the position that a degraded person or an apostate is absolved from all civil obligations incurred before degradation or apostacy. So far as the matrimonial bond is concerned, such a view would be contrary to the spirit of the Hindu Law which regards the bond as absolutely indissoluble. Illegitimacy under Hindu Law is no absolute disqualification for marriage, and where one or both the parties to a marriage are illegitimate, the correct view is to regard the marriage as valid, if they are, in point of fact, recognized by their castemen as belonging to the same caste. *In the matter of* RAM KUMARI, **18 C. 264.** (1 Norton's L.C. on H. Law, p. 12, *Diss.*)

Hindu Law—concluded.

——4.—**Marriage**—*concluded.*

Conversion of Hindu wife to Mahomedanism and remarriage with Mahomedan—*See* BIGAMY, 4 B. 330.

Marriage according to Hindu rites of relapsed convert—Subsequent conversion and marriage to Christian—*See* BIGAMY, 10 M. 218=1 Weir 566.

Hindu wife becoming convert to Mahomedanism—Conditions necessary before marrying a Mahomedan a second time—*See* BIGAMY, 18 C. 264.

Second marriage with a Hindu woman by a person relapsing from Christianity to Hinduism—*See* BIGAMY, 1 Weir 561=3 M.H. C. App. 7.

Remarriage of Hindu when Christian wife alive—Whether bigamy—*See* PENAL CODE, s. 494, 33 M. 371=8 Ind. Cas. 572.

Hindus.

Taking forcible possession of cows from Muhammadans—*See* DACOITY, 15 A. 299.

Re-marriage of, when Christian wife alive—Whether bigamy—*See* PENAL CODE, s. 494, 33 M. 371=8 Ind. Cas. 572.

Hindu Widow's Re-marriage Act.

See ACT XV OF 1856.

Hire.

Hiring certain property—Part-payment of hire—Promise to pay balance—Intention to attach the property—Cheating—*See* CHEATING—GENERAL, 3 N.W.P. 16.

Refusal to allow cart on—to Government officer—*See* PENAL CODE, s. 186, 9 B.H.C. 165.

Hire purchase Agreement.

Hire-purchase *agreement — Instalments — Rent—Possession—Sale of article hired—Penal Code, s. 403—Criminal breach of trust.*—In a *hire-purchase* agreement the hirer is under no legal obligation to buy, but has an option either to return the article hired or to become its owner on payment in full, whereas the seller is bound to keep his offer open; it is not a sale within the meaning of s. 78 of the Contract Act, the hirer being merely a bailee. Therefore, where a hirer of a sewing machine without making payments in full sells the machine, he is guilty of a criminal breach of trust. MAUNG MYA GYI v. MG PO SHWE, **15 Cr. L.J. 425 =24 Ind. Cas. 161=7 Bur. L.T. 222.** (8 Ind. Cas. 969=5 L.B.R. 20, *Dis.*; 1894 2 Q.B. 262=63 L.J.Q.B. 577, *F.*)

Hoaxes.

And Criminal Acts, distinguished—*See* OFFENCE, 13 B. 506.

Holiday.

(1)—*Judicial work on holidays not allowed—Duty of Magistrates in cases of disputed possession.*—Magistrate should not take up judicial work on Sundays. In cases of disputed possession, the Magistrate is to look to possession and right. He must declare the party whom he may decide to be in possession and entitled to retain possession and forbid disturbance of his possession. GRIJAMONEE v. ISHUR CHUNDER, **W.R. 1864, Cr. 2.**

Holiday—*concluded.*

(2)—*Trial on Sunday—Fining witnesses for non-attendance—Penal Code, s. 174.*—When a Magistrate, while travelling in his district, tried a case partly at one place and then fixed Sunday at noon for the further trial of the case at another place, and the witnesses came three hours late and, the Magistrate having then gone on, they were subsequently sentenced by him, under s. 174 of the Penal Code, for being intentionally absent, *held*, that the proceeding was irregular. The Magistrate was wrong in fixing Sunday for the trial of the case, and the witnesses might, on the ground that it was a recognized holiday, have refused to attend. QUEEN v. HARGABIND DATTA SIRKAR, **8 B.L.R. Ap. 12.**

(3)—*Criminal proceedings taken on Sunday.*—A Magistrate is not debarred in this country from taking criminal proceedings on Sundays. *In the matter of the petition of* E. D. SINCLAIR, **6 N.W.P. 177.**

(4)—*Village Magistrate holding enquiry on Sunday.*—It is not illegal for a Village Magistrate to hold an enquiry on a Sunday. *In re* MOOPPEN, **1 Weir 921.**

(5)—*Arrest on Sunday.*—Arrest under civil process of a mofussil Court on Sunday is legal in this country. HIGH COURT PROCEEDINGS, 30TH JULY, 1869, **4 M.H.C. App. 62.** D. ABRAHAM v. QUEEN, **1 B.L.R. A. Cr. 17**; GRASEMANN AND CO. v. GARDNER, BROOKE AND CO., **3 W.R. Rec. Ref. 2**; PARAM SHOOK DOSS v. RASHEED OOD DOWLAH BAHADOOR, **7 M.H.C. 285.**

Prosecution commenced six months after granting sanction—Intervention of holidays—*See* SANCTION TO PROSECUTE—EXPIRY OF SANCTION AND LIMITATION, 22 C. 176.

Homicidal Mania.

Proof of—*See* EVIDENCE—ADMISSIBILITY OF EVIDENCE, 1912 M.W.N. 825=14 Cr. L.J. 465=20 Ind. Cas. 721.

Homicide.

See CULPABLE HOMICIDE.

See CULPABLE HOMICIDE NOT AMOUNTING TO MURDER.

Honorary Magistrates.

Settlement of differences of opinion between.—*See* BEN. ACT VIII OF 1912, ss. 3, 8, 19 C.L.J. 92.

See BENCH OF MAGISTRATES, 17 O.C. 142 =15 Cr. L.J 516=24 Ind. Cas. 604.

See CRIM. PRO. CODE, 1898, ss. 1 (2) (*a*), 4 (*p*) and (*s*), 55 (*b*), 109 (*b*), 31 C. 557=7 C.W.N. 661.

Bench of Honorary Magistrates—Chairman's casting vote—Rule 6 of the Government rules, whether *ultra vires*—*See* CRIM. PRO. CODE, 1898, s. 16, cl. (*d*), 3 C.L.J. 492, F.B.=10 C.W.N. 642, F.B.

Honorary Magistrates—*concluded.*

See SANCTION TO PROSECUTE—AUTHORITIES COMPETENT TO GRANT SANCTION, ETC, A.W.N. 1895, 152.

Hookumnamah.

Levying money without authority under cover of a—, not extortion—Nature of the offence—Essentials of extortion—*See* EXTORTION, 4 W.R. Cr. 5.

Horse.

If includes ponies—*See* MAD. ACT III OF 1871, sch. (c), 5 M. 269.

Hostile Witness.

Who is not a—*See* WITNESS—MISCELLANEOUS CASES, 13 C. 53.

House-breaking.

See CRIMINAL TRESPASS.

See PENAL CODE, ss. 445, 446.

(1)—*Penal Code, s. 445—House-breaking, when the offence of, is committed.*—According to s. 445, Penal Code, a person is said to commit house-breaking, if he effects his entrance or departure by using criminal force or committing an assault. Where the accused, having entered a house at night, quitted the house with a bell-metal vessel under his arm after having knocked down a person who stood in the door-way, *held*, that the accused was guilty of house-breaking. *In re* SOLAI *alias* KATTAYAN, **1 Weir 530.**

(2)—*Crim. Pro. Code* (1898), *s. 35—Offences under ss. 457, 380, I P.C.—Joinder of charges.*—When a person is accused of committing house-breaking and theft, he should be charged under s. 457 alone as only one offence is committed. IMPERATRIX v. MAHAVIR, **1 Bom. L.R. 69.**

(3)—*Crim. Pro. Code* (1898). *s. 35—Separate convictions for house-breaking and theft.*—The passing of separate sentences in a case of house-breaking with intent to commit theft and theft is illegal under s. 35, Crim. Pro. Code, 1898. *In re* SUBBADU, **2 Weir 34.**

(4)—*Penal Code, ss. 457, 511, 109—House-breaking by night—Attempt—Abetment—Crim. Pro Code, s. 35.*—Where a person was charged and convicted of attempting as well as abetting the same offence, the High Court set aside the conviction and sentence on one of the counts. EMPEROR v. FATEHKHAN BAHADURKHAN, **8 Bom L.R. 855 = 4 Cr. L J. 450.**

(5)—*Penal Code, s. 451—House-trespass with intent to commit adultery.*—A person making an entry into another's house with the object of having sexual intercourse with the latter's wife, is guilty of the offence of criminal trespass. HIGH COURT PROCEEDINGS, 26TH FEB. 1875, **1 Weir 532 = 8 M.H.C. App. 6.** [*R.*, 2 Weir 308.]

(6)—"*Burglarious entrance*"—If the prisoners effect a "burglarious entrance" the offence would be house-breaking rather than "lurking-house trespass." **1 W.R. Cr. Letters 9.**

House-breaking—*continued.*

(7)—*Attempt to commit house-breaking—Punishment*—The accused, attempting to commit house-breaking by night for the purpose of committing theft and being interrupted by the inmates of the house, killed one of them. *Held* that, in the absence of evidence as to which of the accused caused the death, the accused could not be transported for life under s. 460, I.P.C., as the offence of house-breaking was only attempted. SAIF-U-DIN v. CROWN, **16 P.R. 1874, Cr.**

(8)—*Death caused at the time of, whether murder—Penal Code, ss. 445, 457 and 460.*—Death caused voluntarily at the time of committing the offence of house-breaking by night is not murder, punishable under s. 302, Penal Code, but is an offence punishable under ss. 457 to 460, Penal Code. NGA NI v. QUEEN-EMPRESS, **L B.R. 1893—1900, 267.**

(9)—*Penal Code, s. 445—Gist of the offence.*—To constitute house-breaking, entering into a building is essential; mere entering upon it is not sufficient. FAZLA v. EMPRESS, **9 P.R. 1890, Cr.** [*R.*, 63 P.W.R. 1910, Cr.]

(10)—*Murder committed by one of the house-breakers—Liability of other members.*—Where the two appellants, who formed members of a gang of four persons, attempted to break into a house by night, and in the attempt a person was killed, but it was not proved that the two appellants had any hand in the murder, *held*, that they were not guilty of murder, but were guilty of an offence under s. 460, I.P.C. JOWALA SINGH v. EMPRESS, **12 P.R. 1880, Cr.** [*Expl.*, 12 P.R. 1891, Cr.]

(11)—*House-breakers going out by night to a frontier District—Presumption.*—When a party of house-breakers goes out by night on a house-breaking expedition in a frontier district in the Punjab, *held*, that no presumption arises that there is a tacit understanding that each one shall stand by the others to the extent of causing death. UMAR DIN v. EMPRESS, **12 P.R. 1891, Cr.** (12 P.R. 1880, *R.*)

In order to commit theft—Theft—Separate sentences—*See* ACT VI OF 1864, s. 2, 5 B.H. C. Cr. 83.

See ACT VI OF 1864, s. 3, 3 L.B.R. 112 = 3 Cr. L.J. 348.

See COMPENSATION — GENERAL, 7 W.R. Cr. 12.

See PENAL CODE, ss. 447, 457 and 511, 15 P.R. 1907, Cr.

See PENAL CODE, ss. 459, 460, 8 A. 649 = A.W.N. 1896, 253.

See PRIVATE DEFENCE, RIGHT OF, 1 B.L. R.S.N. 8 = 10 W.R. Cr. 9.

See SENTENCE—COMMUTATION OF SENTENCE, 6 B.L.R. 95 = 15 W.R. Cr. 7.

And theft—*See* SENTENCE—CUMULATIVE AND SEPARATE SENTENCES, 5 W.R.Cr. 49.

For committing theft, and theft charges of —Sentence of imprisonment and whipping—

House-breaking—*concluded.*

Separate sentences—Whipping Act, s. 2—*See* SENTENCE—CUMULATIVE AND SEPARATE SENTENCES, 5 B.H.C. Cr. 83.

Separate sentences for—for committing theft and theft—*See* SENTENCE — CUMULATIVE AND SEPARATE SENTENCES, 9 B.H.C. 172.

See SENTENCE — CUMULATIVE AND SEPARATE SENTENCES, 23 B. 706=1 Bom. L.R. 142, F.B., 10 A. 146=A.W.N. 1888, 5, 8 W.R. Cr. 31.

See THEFT IN A BUILDING, 1 Weir 435.

House-breaking by night.

See HOUSE-BREAKING.

See DACOITY, W.R. 1864, Cr. 39.

And theft—*See* SENTENCE—CUMULATIVE AND SEPARATE SENTENCES, 2 W.R. Cr. 63, W.R. 1864, Cr. 31.

See THEFT—MISCELLANEOUS, 1 W.R. Cr. Letters 2.

House-search.

See ACT XI OF 1878, s. 25, 8 C.L.J. 75.

See BUR. ACT I OF 1899, ss. 6, 7, 4 L.B.R. 134=7 Cr. L.J. 411, 14 Bur. L.R. 81=4 L.B. R. 213=7 Cr. L.J. 479.

Remonstrating against universal—*See* CONTEMPT OF COURT, 14 Cr. L.J. 321=20 Ind. Cas. 81=17 C.W.N. 1253=18 C.L.J. 452, S.B.

See CRIM. PRO. CODE, 1898, ss. 165, cl. 2, 103, 23 M.L.J. 445=1912 M.W.N. 1111=17 Ind. Cas. 75=13 Cr. L.J. 763.

Search of premises—Duty of prosecution to examine persons present at the search—*See* PROSECUTION, 9 C.W.N. 438.

House-tax.

Notice of demand of—Omission to fill up a column in house register—*See* MAD. ACT V OF 1884, ss. 155 and 60, 21 M. 296=1 Weir 135.

Service of notice of demand of—*See* MAD. ACT V OF 1884, s. 163, 21 M. 296=1 Weir 135.

House-trespass.

See CRIMINAL TRESPASS.

See PENAL CODE, ss. 441—462.

(1)—*Penal Code, ss. 442 and 457—Term "buildings" explained.*—The mere surrounding of an open space of ground by a wall or fence of any kind, such as hurdles, could not be deemed to convert the open space into a 'building.' Trespass thereon would not, therefore, be house-trespass under s. 442. *In re* PALANI GOUNDAN, **1 Weir 523.**

(2)—*Penal Code, s. 442 — House-trespass—Criminal intention.*—The essence of the offence of house-trespass is the intent in committing the trespass. The Magistrate must expressly find what the intent was, and must not leave it to inference. *In re* DURGAIYA, **1 Weir 524.** [*Commented on*, 21 M.L.J. 781=10 M.L.T. 118.]

(3)—*Penal Code, s. 442—Attempt to commit house-trespass.*—The removal of a trap-door with the intention of committing house-trespass

House-trespass—*continued.*

amounts to an attempt to commit the offence. QUEEN-EMPRESS v. NARSHI, **Rat. Un. Cr. C. 188.**

(4)—*Penal Code, s. 457—House-trespass by night with intent to commit adultery with complainant's wife—Husband alleging intent of theft.*—Where it was proved to the satisfaction of the Court that the accused entered the complainant's house in order to have sexual intercourse with the complainant's wife, and it was further proved that he did so without the complainant's consent, *held*, that he was properly convicted under s. 457, although the intent alleged by the complainant was not adultery, but theft. QUEEN-EMPRESS v. KANGLA, **23 A. 82=A.W.N. 1900, 208.** (19 A. 74, *R.*) [*D.*, 15 Cr. L J. 351=23 Ind. Cas. 703.]

(5)—*Penal Code, s. 451—House trespass in order to commit adultery—Criminal intention, proof of.*—Where a person enters a house with the object of committing adultery with the wife of the owner of the house, he is guilty of an offence under s. 451, and no complaint by the husband is necessary to charge him for that offence, although a prosecution for the offence of adultery must be instituted by the husband alone. HIGH COURT PROCEEDINGS, 1ST JUNE 1868, NO. 795-A, **1 Weir 531=2 Weir 235.**

(6)—*Penal Code, s. 451—House-trespass with intent to commit adultery.*—Where the accused was convicted, under s. 451, Penal Code, of house-trespass with intent to commit adultery, and there was no evidence as to whether the woman concerned, the complainant's sister, was married and whether her husband was alive or dead, *held*, that the accused could not be convicted of house-trespass with intent to commit adultery, but that he was liable to be convicted for house-trespass, the intention being to insult or annoy the complainant by having sexual intercourse with his sister. *In re* VEDA GURUKKAL, **1 Weir 535.** [*R.*, 19 M. 240=1 Weir 537.]

(7)—*House-trespass with intent to have sexual intercourse with complainant's widowed mother.*—Where the accused entered the complainant's house, in his absence, for the purpose of having sexual intercourse with his mother, a widow, and was found out by the complainant while he remained there, *held*, that the accused did not intend to annoy or insult the complainant. *In re* PAMBA RANGADU, **1 Weir 537.**

(8)—*House-trespass—Adultery.*—In order to the validity of a conviction for house-trespass with intent to commit adultery it is not necessary that the husband shall bring a specific charge of adultery. EMPEROR v. MULLU TELI, **16 C.P.L.R. 182.**

(9)—*Penal Code, s. 451—Intention to commit offence.*—To sustain a conviction under s. 451, it is not necessary that the Court should be in a position to say which specific offence the accused intended to commit. It is sufficient, if the evidence leaves no room for reasonable doubt, that the accused intended to

House trespass—*continued.*

commit an offence. *In re* SAMBAN, **1 Weir 533.** [*Commented on*, 12 Cr L.J. 453=21 M.L.J. 781=10 M.L.T. 118.]

(10)—*Penal Code*, s. 456—*Intent of accused.*—The offence of house trespass is not committed by a person who comes secretly to a house at the invitation of one of its inmates and solely for the purpose of keeping an assignation. PO KIN v. CROWN, **1 L.B.R. 355.** (1 U.B.R. 1897–1901, 354, 19 M. 240, *F.*)

(11)—*Penal Code*, *ss.* 448, 451, 457—*Intention essential under ss.* 451 *and* 457, *but not under s.* 448.—The accused was detected by the complainant in a half undressed condition under the cot of his wife, and the accused had entered with the knowledge of his wife. The accused was charged with house-trespass in order to commit theft. The Magistrate disbelieved the allegation as to theft, but convicted the accused under s. 451, I.P.C., stating that it was not necessary to specify exactly what offence the accused *intended* to commit. *Held*, that, the offence which the accused has the intention of committing is a substantial ingredient of the offences under ss. 451 and 457, I.P.C., and a conviction under those sections cannot be maintained, unless there is an express finding on this point. Under s. 448, it is not necessary to specify precisely the intention, and it is sufficient to show that the intention was criminal. The intention may be inferred from the circumstances. *Held*, further, that, having regard to the conduct of the complainant in fabricating false evidence in support of a false charge of theft, it was within the discretion of the Magistrate to discharge the accused, and decline to enquire into the minor offence which the husband declines to allege. IMPERATOR v. J. P. HENEZIE, **3 S.L.R. 86=3 Ind. Cas. 895=10 Cr. L.J. 410.**

(12)—*Penal Code*, s. 448—*House-trespass—Intention.*—A person who enters into the house of another secretly, in order to carry on an intrigue with a widow in the house, is not guilty of criminal trespass, as his intention was not to commit an offence punishable under the Penal Code, nor to cause insult or annoyance to the inmates of the house. AMBIKA CHARN SARKAR v. EMPEROR, **4 C.L.J. 169=4 Cr.L J. 144** (22 C. 391, *D.*)

(13)—*Penal Code*, s. 457—*Lurking house-trespass by night.*—Where the accused was charged with lurking house-trespass by night in order to commit adultery with a widow, the sister of the complainant, *held*, that he could not be convicted, inasmuch as the brother either connived at the intrigue or did not; in the former case, there could not have been any intent to annoy, while, in the latter, the intention must have been to keep the matter secret from him and by no means to annoy him. *In re* SIVARATRI GURAVAIYA, **1 Weir 536** [*F.*, 19 M. 240=1 Weir 537.]

(14)—*Penal Code*, s. 451—*House-trespass for committing an offence with the connivance of the owner.*—When the owner in charge of a house professes to be an accomplice and invites another to his house to commit an offence, a conviction for house-trespass is bad in law. Where the accused, intending to bribe a judicial officer for the purpose of passing a decision in favour of a party in an original suit went to the officer's house for giving him the bribe, *held*, that he could not be convicted of house-trespass as he went there on the invitation of the officer, although the latter invited him to the house in order that he might be seized with the money and brought to justice. *In re* P. KAMARAJU, **1 Weir 534.** [*R.*, 14 Cr.L.J. 27=18 Ind. Cas. 171=24 M.L.J. 1=1913 M. W.N. 851.]

(15)—*Penal Code*, s. 457—*Entry into compound.*—The words "house" or "building used as human dwelling" in s. 457 of the Penal Code do not include compounds. An entry into a compound with intent to commit theft is punishable only as trespass and attempt to commit house-breaking with the intent above-mentioned. QUEEN-EMPRESS v. RAMA, **Rat. Un. Cr. C. 484.**

(16)—*Penal Code*, s. 448—*Going into Horse-lines without permission — House-trespass.*—The going into a Horse-line with a sowar without the permission of the Commanding officer does not constitute the offence of house-trespass. QUEEN-EMPRESS v. KUSHEE, **Rat. Un. Cr. C. 328=Cr. Rg. 18 of 1887.**

(17)—*Penal Code*, s. 442—*Entry by excommunicated wife into the husband's house for demanding maintenance.*—The law does not recognise the loss of social status arising from excommunication from caste, as of itself depriving a wife of the right to joint enjoyment of her husband's property. Where a wife, who had been excommunicated, and was living separately, but who was not expelled from the house by her husband for any misconduct legally established, entered her husband's house for the purpose of demanding maintenance, *held*, that she could not be regarded as a trespasser, civil or criminal. CRIMINAL REVISION CASE NO. 107 OF 1881, **1 Weir 523.**

(18)—*Entry on invitation.*—A person entering a house in the possession of a woman at her instance with intent to commit adultery with her, is not guilty of house-trespass. POLICE v. YADGAR HUSSEIN, **Colm. Dig. Cr. 58 of 1876.**

(19)—*Penal Code*, s. 451—*Absence of evidence of house-trespass—Conjectural reasons rejected—Opportunity to recall prosecution witnesses for cross-examination necessary.*—Where the complainant suggested that the accused person entered his house with the intention of committing theft, but the Magistrate convicted him under s. 451, Indian Penal Code, finding that he entered therein for the purpose of committing adultery, of which there was no evidence on the record. *Held*, as there was no proof on the record of house-trespass, the accused was wrongly convicted under s. 451, Indian Penal Code. *Held* also, that it is illegal to record hearsay evidence and not to give an

House-trespass—*continued.*

opportunity to an accused person for recalling prosecution witnesses for cross-examination. DAD v. CROWN, **29 P.W.R. 1907, Cr. = 7 Cr. L.J. 230.**

(20)—*Penal Code, s. 457— House-trespass by night with intent to commit theft—Real offence, being an offence under s. 498—Conviction.*— Where, with the intention of hiding the real offence committed by the accused, *viz.*, one under s. 498, I.P.C., the complainant charged the accused of an offence under s. 457, I.P.C., with intent to commit theft, *held*, that the Court should be very chary of convicting the accused for an offence under s. 498, when the prosecution had not alleged an offence of that nature and the accused has had no fair chance of meeting such a charge. MANGAL SINGH v. EMPRESS, **31 P.R. 1901, Cr = 32 P. L.R. 1902.** (41 P.R. 1882, *R.*)

(21)—*Penal Code, s. 457—Lurking house-trespass.*—An offence under s. 457 is ordinarily more serious than one under s. 380 and it is expedient that persons who commit an offence under the former should be correctly convicted and adequately punished. Again, every person aware of the commission of an offence under s. 457, I.P.C., is bound, under s. 44, Crim. Pro. Code, to give information forthwith to the nearest Magistrate or police officer, and it is highly desirable for the sake of the suppression of this dangerous form of crime that such responsibility is enforced. QUEEN-EMPRESS v. NGA SO, **U.B.R. 1892—1896, Vol. I, 273.**

(22)—*Theft of cattle from a cattle-fold or pen.*—Where cattle was stolen out of a cattle-fold or pen with a thorn hedge round it, *held*, that the cattle-fold or pen was not a building and that the accused could not, therefore, be convicted of an offence under s. 457. He was liable to be convicted under s. 379, I.P.C. SUCHA SINGH v EMPRESS, **57 P.R. 1877, Cr.** [*R.*, 7 P.R. 1903, Cr., 28 P.R. 1905, Cr.]

(23)—*Penal Code, ss. 442, 443—Gist of the offence—Lurking house-trespass.*—Where the accused commits trespass into a building used as a dwelling-house, the building being enclosed by four walls and the doorway in them, *held*, that the accused was guilty of house-trespass, although the particular part into which he entered may not have been used as a dwelling, or as a place of custody for property. A person who is found in a position from which it can be inferred at the time of discovery that he is endeavouring to conceal his presence on the premises, may be said to have taken precautions to conceal his trespass from the occupier, within the meaning of s. 443, I.P.C. GHULAM JELAM v. EMPRESS, **16 P.R. 1889, Cr.**

(24)—*Penal Code, s. 451— House-trespass with intent to commit theft, charge of—Conviction for house-trespass with intent to commit adultery—Crim. Pro. Code* (1882), s. 199.—The complainant charged the accused with house-trespass with intent to commit theft. The accused stated that he had gone into the house to have sexual intercourse with the wife of a person other than the complainant. The accused was convicted under s. 451, I.P.C., for house-trespass with intent to commit adultery. *Held* that it was irregular and to the prejudice of the accused to convict him for an offence different from the one charged, without proper opportunities to meet it. Further, in the absence of complaint by the husband, the prosecution was very injudicious, and the conviction and sentence should, therefore, be set aside. EMPRESS v. HARCHARAN LAL, **A.W. N. 1886, 42.**

(25)—*Penal Code, s. 457—Lurking house-trespass.*—A village *chaukidar* on his rounds came near the back of a house, and then saw five men in a knot close up under the wall of the house. These men were engaged in removing some projecting tiles of the eaves or roof of the house. The *chaukidar* seized one of these men, the appellant. There was a struggle between the two and the appellant effected the escape, leaving a *lathi* and a *dhoti* behind. *Held* that the appellant was not guilty of the offence of lurking house-trespass by night, nor would the evidence warrant a finding of guilty on a charge of attempting to commit the offence of lurking house-trespass by night. EMPRESS v. TEJMAN, **A.W.N. 1886, 290.** [*R.*, 15 Cr.L.J. 265 = 23 Ind. Cas. 473 = 66 P.L.R. 1914 = 13 P.W.R. 1914 = 14 P.R. 1914]

(26)—*House-trespass and insult — Separate sentences—Penal Code, ss. 452, 504—Reformatory Schools Act, 1897, s. 31—Security for good behaviour.*—An accused person entered the complainant's house and intimidated and insulted him. He was convicted and fined Rs. 20 under s. 504, Penal Code, and required to furnish security under s. 31, Reformatory Schools Act. *Held* that, though the accused might be tried and convicted of house-trespass and of insult, he could not be punished separately for the two offences under ss. 452 and 504, Penal Code; and that the order under s. 31, Reformatory Schools Act, requiring the accused to furnish security for his good behaviour had the effect of a sentence, and cannot be combined with a sentence under s. 504, Penal Code, in this case. CROWN v ON BU, **1 L.B.R. 279.** (1 L.B.R. 33, *F.*; 23 B. 706, *R.*)

When punishable with whipping—*See* ACT VI OF 1864, s. 10, U.B.R. 1897—1901, Vol. I, 354.

See CHARGE—FORM OF CHARGE, 16 W.R. Cr. 63.

See COMPENSATION—GENERAL, 8 W.R. Cr. 54.

See CRIM. PRO. CODE, 1898, s. 35, 1 L B.R. 279.

See CRIM. PRO. CODE, 1898, s. 106, 7 C.W. N. 25.

See HOUSE-BREAKING, 1 Weir 532 = 8 M. H.C. App. 6.

See RESTORATION OF PROPERTY, 7 C.L.J. 175 = 12 C.W.N. 269.

House-trespass—*concluded.*

See SECURITY TO KEEP THE PEACE—ON CONVICTION, 4 L.B.R. 277, 25 C. 628=3 C. W.N. 18.

And grievous hurt — *See* SENTENCE — CUMULATIVE AND SEPARATE SENTENCES, 2 W.R. Cr. 29.

See THEFT—MISCELLANEOUS, 1 W.R. Cr. Letters 2.

Howrah Offences Act.

See BEN. ACT XXI OF 1857.

Human Body.

See THEFT — THINGS IN RESPECT OF WHICH THE OFFENCE OF THEFT CANNOT BE COMMITTED, 25 A. 129.

Hurt.

See GRIEVOUS HURT.

See MURDER.

See PENAL CODE, ss. 319 to 338.

(1)—*Penal Code*, ss. 321 *and* 322.—Where a person intends to inflict injury upon one person, but actually inflicts injury upon another, his act constitutes the offence of hurt or grievous hurt, within the meaning of s. 321 or 322 of the Penal Code, according to circumstances. EMPRESS v. SAHAE RAE, **3 C 623=2 C L.R. 304.** [*R.*, 14 C.P.L.R. 126.]

(2)—*Penal Code, ss.* 324 *and* 330—*Hurting wife for constraining her to return to his house.*—A husband, causing hurt to his wife in order to constrain her to obey a demand of his to return to his house, will not be guilty of an offence under s. 330, which, apparently, refers to some demand in respect of property. In this case, as the husband slightly cut his wife with an instrument of stabbing or cutting, it was held that he was guilty under s. 324, Penal Code. QUEEN-EMPRESS v. ELLA BOYAN, **11 M. 257 =1 Weir 336.**

(3)—*Penal Code*, s. 324—*Object of the section.*—The object of s. 324 is to make simple hurt more grave and liable to a more severe punishment, where it has the *differentia* of one of the modes of infliction described in the section. It is not necessary that the manner of use of the weapons must be such as is likely to cause death. HIGH COURT PROCEEDINGS, 5TH NOV. 1872, NO. 1848, **1 Weir 535=7 M.H.C. App. 11.**

(4)—*Penal Code*, s. 390—*Robbery—Theft—Causing hurt to effect escape.*—A stole some rice from a house. As he was carrying away the rice, S seized him. He dropped the rice as soon as he was seized and he then stabbed S with a clasp knife. *Held*, A came prepared to cause hurt and to commit robbery if necessary, but as he dropped the rice before he caused hurt to S, it could not be inferred that he caused the hurt for the purpose of carrying away the rice, the words "for that end" in s. 390 meaning for the purpose of carrying away the property. The inference is, that the accused committed the hurt in order to effect his escape. He was

Hurt—*continued.*

convicted of theft and causing hurt. NGA PAING *alias* KYA BYU v. KING-EMPEROR, **4 L.B.R. 147=7 Cr. L.J. 446.**

(5)—*Penal Code, ss.* 160 *and* 324—*Affray—Hurt—Failure to frame charge of offence under* s. 324, *legality of.*—Two persons got drunk and were found to have committed not only an affray, but also voluntarily causing hurt to each other with a *Da* in a public street. The Magistrate framed a charge against both of them only for an offence of affray and not one for voluntarily causing hurt under s. 324 of the Penal Code. *Held*, the offence under s. 324 of the Penal Code being more serious than that of an affray, the Magistrate was wrong in having omitted to frame a charge for the more heinous charge of hurt. KING-EMPEROR v. NGA YWE, **4 L.B. R. 237=7 Cr. L.J. 498.**

(6)—*Penal Code*, ss. 320. 326—*Grievous hurt—Remaining in hospital for twenty days.*—Before a conviction for the offence of grievous hurt can be passed, one of the injuries defined in s. 320 must be strictly proved; and the eighth clause is no exception to the general rule of the law that a penal statute must be construed strictly. The mere fact that an injured person remained in hospital for the space of twenty days is not sufficient proof of the offence of grievous hurt. From that circumstance the inference could not be drawn that the injured person was, during that period, unable to follow his ordinary pursuits. An injured man may be quite capable of following his ordinary pursuits long before the twenty days are over, and yet, for the sake of permanent recovery, or greater ease or comfort, be willing to remain as a convalescent in a hospital, especially if he is fed at the public expense. QUEEN-EMPRESS v. VASTA CHELA, **19 B. 247.** [*F.*, U. B.R. 1897—1901, 96.]

(7)—*Causing hurt—Hurt caused in extorting confession of offence—Penal Code*, s. 330—*Witchcraft.*—To bring a case under s. 330 of the Penal Code, it must be proved that the hurt to the complainant was caused with intent to extort a confession of some offences or misconduct punishable under the Penal Code. That section, therefore, does not apply to a case where the confession extorted had reference to a charge of witchcraft. QUEEN v. BABOO MOONDU, **13 W.R. Cr. 23.**

(8)—*Causing hurt—Blow with umbrella—Penal Code*, ss. 95. 319.—The pain caused by a blow across the chest with an umbrella was held not to be of such a trivial character as to come within the meaning of the Penal Code, s. 95, but to be hurt under s. 319. GOVERNMENT OF BENGAL v. SHEO GHOLAM LALLA, **24 W.R. Cr. 67.**

(9)—*Penal Code*, s. 323—*Gist of the offence.*—The act on which an accused person must be punished under s. 323 is the hurt which he intended to cause or might be reasonably held likely to cause, by the act done, and not an unfortunate and entirely unforeseen result of that

Hurt—*continued.*

act. QUEEN-EMPRESS v. KELLY, **11 P.R. 1897, Cr** [*R.*, 157 P.L.R. 1913=5 P.W.R. N.W.F. P. 1913, Cr.]

(10)—*Penal Code, s.* 304 (*a*)—*Causing death by a rash or negligent act.*—If, in evidence, there is nothing to show that the accused was rash, and death has resulted from the rupture of a greatly enlarged spleen, caused by a slight kick with bare foot, no offence is committed except that of voluntarily causing hurt. QUEEN-EMPRESS v. NGA KYIN, **U.B.R. 1892—1896, Vol. I, 217.**

(11)—*Causing death unintentionally—Penal Code, s.* 323.—The accused in this case with no intention of doing anything more than chastise a disobedient and impertinent child, her daughter, struck her on the head or face and kicked her on the back. The child fell down senseless. The accused thinking the child was dead buried the body. *Held* that the conviction should be under s. 323, Penal Code, of voluntarily causing hurt. QUEEN v. BESHOR BEWA, **18 W.R. Cr. 29.**

(12)—*Hurt caused to extort information of offence—Penal Code, s.* 330—*Commission of offence wholly immaterial.*—A charge may be made under s. 330 of causing hurt for the purpose of extorting information which might lead to the detection of an offence, even if the supposed offence has not been committed. The offence which that section intended to describe is that of inducing a person by hurt to make a statement, or a confession, having reference to an offence or misconduct; and whether that offence or misconduct has been committed is wholly immaterial. QUEEN v. NIM CHAND MOOKERJEE, **20 W.R. Cr. 41.**

(13)—*Chance injury on provocation resulting in death—Penal Code, ss.* 319—322—*Nature of the offence.*—A husband, having been provoked by his wife, gave her a kick on the spleen not knowing that it was a diseased one. The wife died by the rupture of her diseased spleen. He showed by the blow itself and by the subsequent conduct that he had no intention or knowledge that the act was likely to cause hurt endangering human life. He was found guilty of having voluntarily caused grievous hurt and sentenced to five years' rigorous imprisonment. *Held* that the husband was guilty of an offence under ss. 319 and 321, Penal Code, and not of an offence under ss. 320 and 322. An admission by the husband in the presence of several witnesses that he had killed his wife and that she died after receiving the kick was held to be direct evidence against him. QUEEN v. BYSAGOO NOSHYO, **8 W.R. Cr. 29.**

(14)—*Causing death after provocation—Death consequent upon disease of spleen—Nature of the offence.*—The prisoner having received provocation of a most gross character from his wife, threw her down with violence, sat upon her and slapped her. The woman died, and on examination it appeared that there were no external marks of violence on the body, but that there was a certain degree of disease of the spleen and death was caused by the rupture of the spleen. *Held* that, under the circumstances, the prisoner was guilty of causing hurt and not of culpable homicide not amounting to murder. QUEEN v. PUNCHANUN TANTEE, **5 W.R. Cr. 97.**

(15)—*Administering harmful drugs—Nature of the offence.*—*Held* by the majority of the Court (*Seton-Karr, J.*, *dissenting*) that the offence of administering deleterious drugs, when life was not endangered, is punishable under s. 328, Penal Code, and not as for grievous hurt under s. 326. QUEEN v. JOYGOPAL *alias* JUNGLEE, **4 W.R. Cr. 4.**

(16)—*Penal Code, s.* 328—"*Or other thing,*" *meaning of.*—The words, "or other thing," in s. 328 of the Penal Code must be referred to the preceding words and be taken to mean "unwholesome or other thing" and not other thing simply. *In re* JOTEE GHORAEE, **1 W. R. Cr. 7.**

(17)—*Nature of injury constituting hurt—Causing disability for a fortnight.*—Causing a disability for a fortnight is punishable as voluntarily causing hurt. In order to constitute grievous hurt, the disability must be for 20 days. QUEEN v. BISHNOORAM SURMA, **1 W. R. Cr. 9.**

(18)—*Assault and causing hurt—Penal Code, s* 352—*Autrefois acquit.*—A person who is tried and discharged for the offence of assault under s. 312, Penal Code, cannot again, upon the same complaint, be tried for "causing hurt." KAPTAN v. G. M. SMITH, **7 B.L.R. Ap. 25=16 W.R. Cr. 3.**

(19)—*Compounding of offence of "hurt."*—The offence of voluntarily causing grievous hurt cannot legally be compounded. REG. v. RAHIMAT, **1 B. 147.** [*R.*, 13 Cr. L.J. 721=16 Ind. Cas. 753=6 S.L.R. 76.]

See CHARGE—FORM OF CHARGE, 4 M.H.C. App. 5.

See CRIM. PRO. CODE, 1898, ss. 236, 237, 1 L.B.R. 221.

See CULPABLE HOMICIDE, 1 C.L.R. 141, 3 A. 597.

See CULPABLE HOMICIDE NOT AMOUNTING TO MURDER, 2 A. 766, 2 A. 522.

See JOINDER OF CHARGES—MISJOINDER OF CHARGES, 2 A. 139.

Separate sentences for rioting and causing—*See* PENAL CODE, ss. 71, 147, 149, 323, 332, 161 P.L R. 1911=12 Cr. L.J. 236=10 Ind. Cas. 278.

See PENAL CODE, ss. 147, 149, 323, 12 Cr. L.J. 82=9 Ind. Cas. 455.

With lathis—*See* PENAL CODE, ss. 302, 304, 325, A.W.N. 1892, 105.

See PENAL CODE, s. 352, 7 B.L.R. Ap. 25 =16 W.R. Cr. 3.

See PENAL CODE, s. 375, 18 C. 49.

See PENAL CODE, ss. 459, 460, 8 A. 649= A.W.N. 1896, 253.

Hurt—*concluded.*

See RASH AND NEGLIGENT ACT, CAUSING DEATH BY, 34 P.R. 1887, Cr.

Causing hurt in assertion of a right—*See* RIOTING, 26 C. 574.

See ROBBERY, 5 W.R. Cr. 95.

Distinct offences of rioting and hurt—*See* SENTENCE—CUMULATIVE AND SEPARATE SENTENCES, 19 C. 105, 31 P.R. 1894, 17 B. 260, F.B., 16 C. 725.

See SENTENCE—CUMULATIVE AND SEPARATE SENTENCES, 11 C. 349, 16 C. 442.

Husband and Wife.

See ADULTERY.

See BIGAMY.

See BUDDHIST LAW—MARRIAGE.

See COMPLAINT.

See CRIM PRO. CODE, 1898, ss. 198, 199.

See EVIDENCE ACT, 1872, s. 122.

See HINDU LAW—MARRIAGE.

See MAHOMEDAN LAW—MARRIAGE.

See MAINTENANCE.

See MARRIAGE.

(1)—*Order for maintenance against husband—Divorce—Effect upon order—Presidency Magistrate's Act* (IV *of* 1877), s. 234—*Mahomedan Law*—Talake bain—Talak biddat — *Borah Mahomedans.*—An order made under s. 234 of Act IV of 1877 by the Presidency Magistrate directing a Borah Mahomedan husband of the *Imami* sect to pay a sum monthly for the maintenance of his wife belonging to the *Hanafi* sect, does not deprive the husband of his right to divorce his wife, and after such divorce the Magistrate's order can no longer be enforced. *In re* ABDUL ALI ISHMAILJI, 7 B. 180. (8 B. H.C. 95, Cr., *F.* ; 5 C. 558, 19 W.R. Cr 73, *R.*) [*F.*, 14 C. 276; R., 19 A. 50=A.W.N. 1896, 173, 30 B. 537=8 Bom. L.R. 35, 12 M. 63, 11 C.P. L.R. 72 ; *D.*, 15 A. 143.]

(2)—*Right of husband to enjoy the person of his wife—Limitations* —Under no system of law with which Courts have to do in this country whether Hindu or Mahomedan, or that framed under British rule, has it ever been the law that a husband has absolute right to enjoy the person of his wife, without regard into the question of safety to her. QUEEN-EMPRESS v. HURREE MOHUN MYTHEE, **18 C 49.**

(3) — *Evidence — Wife's evidence against husband—Criminal case.*—The evidence of a wife against her husband, in a charge of causing the death of a child, is admissible. REG. v. KADIR *valad* BALU, **7 B H C. Cr. 50.** (6 W.R. Cr. 21, *R.*)

(4)—*Prosecution for adultery — Death of husband—Abatement of prosecution.*—Although it is desirable that a prosecution for adultery should be withdrawn on the death of the husband, it cannot be said that the death has the effect of necessarily putting an end to the prosecution. HIGH COURT PROCEEDINGS, 13TH JULY 1869, NO. 1261, **2 Weir 235=4 M. H.C. App. 55.**

Husband and Wife—*continued.*

(5)—*Right of husband to chastise wife with small cane.*—Husbands have no right whatever to chastise their wives, even with small canes or bamboos. QUEEN-EMPRESS v. NGA NANDA, **L.B.R. 1872—1892, 421.**

(6)—*Penal Code, s.* 400—*Wives and mistresses of dacoits—Liability.*—The mere fact that some women are the wives or mistresses of dacoits does not render them liable also as dacoits. QUEEN-EMPRESS v. YELLI *Kom* YELLA, **Rat. Un. Cr. C. 863=Cr. Rg. 26 of 1896.**

(7)—*Penal Code, ss.* 100, 201—*Attempt to commit rape—Concealing dead body.*—Where the accused, husband and wife, in attempting to protect the latter from attempted rape by the deceased, killed him, held that the right of private defence extended to the causing of death in such a case and that no offence was committed. There can be no offence under s. 201 of the Penal Code in concealing the dead body in the above case, since no offence had been committed. QUEEN-EMPRESS v. RAMZAN SHAKEBHAI, **Rat. Un. Cr. C. 867.**

Adultery—Husband's death—*See* ABATEMENT OF PROSECUTION, 4 M.H.C. App. 55= 2 Weir 235.

Decree ordering wife to return to husband—Enforcing decree under a suit for restitution of conjugal rights against wife—*See* ACT XIV OF 1882, 8 W.R.P.C. 3=11 M.I.A. 551.

See COMPOUNDING OFFENCE, 5 B.H.C. Cr. 27.

Husband and wife only living together—Death of wife—Cause of death not ascertained —Presumption against husband—*See* CONFESSION—GENERAL, 19 P.W.R. 1907, Cr.=6 Cr. L J. 260.

Order under s. 552, Crim. Pro. Code—Application for custody of wife—No allegation of girl's wish in complaint—Order of restoring wife passed without inquiry — Legality—Remedy of complainant— *See* CRIM PRO. CODE, 1898, s. 552, 15 Cr.L.J. 712=26 Ind. Cas. 160.

See CRIMINAL TRESPASS, 4 M. 243.

Grave provocation — Husband seeing wife seduced to adultery—*See* CULPABLE HOMICIDE NOT AMOUNTING TO MURDER, 3 B.L. R A. Cr. 33.

See DEFAMATION, 25 B. 151=2 Bom.L.R. 665, F.B., 14 M. 379=2 Weir 230=1 M.L.J. 242, 6 P.W.R. 1910, Cr.=10 P.R. 1910, Cr.

Wife not pulling on well with husband and mother-in-law—Putting white substance at instance of paramour into food served to husband, mother-in-law and to other persons also to whom she was affectionately disposed—Statement of wife that substance was administered being assured by paramour that it would bring about good feeling of husband and mother-in-law— *See* EVIDENCE ACT, 1872, ss. 10, 30, 14 Cr. L.J. 586=21 Ind. Cas. 378=18 C.L J. 590.

See HOUSE-TRESPASS, 1 Weir 523.

Husband and Wife—*concluded.*

See HURT, 11 M. 257 = 1 Weir 336.

See MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION, U.B.R. 1904, 1st Qr., Crim. Pro. Code, 10.

Wife chaining outer-door of house to prevent execution of warrant against her husband's property—*See* PENAL CODE, s. 186, Rat. Un. Cr. C. 407 = Cr. Rg. 79 of 1888.

See PENAL CODE, ss. 304, 325, 328, 18 C. 49.

Not living together—Search of wife's house—Seizure of stolen articles—Husband not responsible—*See* PENAL CODE, ss. 379, 411, 10 M.L.T. 237.

See PRACTICE AND PROCEDURE, 29 P W. R 1910, Cr.

See SENTENCE—COMMUTATION OF SENTENCE, 60 P.R. 1866, Cr.

Theft of Stridhan property by wife—Theft of husband's property—*See* THEFT—THINGS IN RESPECT OF WHICH THE OFFENCE OF THEFT CANNOT BE COMMITTED, 8 B H.C. Cr. 11.

See THEFT—THINGS IN RESPECT OF WHICH THE OFFENCE OF THEFT CANNOT BE COMMITTED, Rat. Un. Cr. C. 44.

Dishonest removal by wife of husband's property—*See* THEFT—THINGS WHICH MAY BE THE SUBJECT OF THEFT, 17 M. 401 = 1 Weir 409.

Wife a competent witness against husband—When evidence of wife necessary—*See* WITNESS—GENERAL—WHO ARE COMPETENT TO BE WITNESSES, 1 W.R. Cr. Letters, 7.

Husband's Property.

Theft of Stridhan property by wife—Theft of—*See* THEFT—THINGS IN RESPECT OF WHICH THE OFFENCE OF THEFT CANNOT BE COMMITTED, 8 B.H.C. Cr. 11.

Hut.

Erection of—*See* BEN. ACT III OF 1884, ss. 243, 244, 267, 10 C.L.J. 16 = 10 Cr. L.J. 191 = 2 Ind. Cas. 939.

Order to remove—from a certain locality—*See* NUISANCE UNDER CRIM. PRO. CODE, 2 C.W.N. 70.

Hyderabad State.

Jurisdiction to arrest persons along the line of the railway in the—for offence committed in British India—*See* ARREST, 6 P.R. 1897, Cr., P.C. on appeal from, 1 P.R. 1896, Cr.

Hypothetical Case.

Conviction upon a hypothetical state of facts not suggested by the prosecution, how far sustainable—*See* PENAL CODE, ss. 147, 304, read with s. 149, 11 C.L.J. 270 = 5 Ind. Cas. 771.

Identification.

(1)—*Identification made after dark—Evidence of a single witness as to identification—Conviction rarely safe.*—It is rarely safe to convict a man on the evidence of a single witness as to identification, especially when this identification is made after dark and the witness has at first professed to be unable to identify any one. THA HMU v. KING-EMPEROR, **2 L. B.R. 206 = 1 Cr. L.J. 475.**

(2)—*Identification of sweets.*—It is generally impossible to identify sweets. LAL v. CROWN, **35 P.W.R. 1912, Cr. = 194 P.L.R. 1912 = 16 Ind. Cas. 528 = 13 Cr. L J. 720.**

Of stolen property—List of property taken by Sub Inspector, admission of—Misdirection to jury—Retrial—*See* CRIM. PRO. CODE. 1898, s. 167, 13 Cr. L.J. 244 = 14 Ind. Cas. 596.

Of accused—Duty of Court—*See* EVIDENCE—GENERAL, 3 O.C. 72.

Evidence of—Practice—*See* EVIDENCE—GENERAL, U.B.R. 1897—1901, Vol. I, 142.

See EVIDENCE—GENERAL, 27 P R 1868, Cr.

See PARDANASHIN WOMAN, 18 W.R. 230.

Of accused—Tracker—Evidence of—Benefit of doubt—*See* PENAL CODE, s. 395, 71 P.L.R. 1910.

Stolen property—Its defective—Interference in revision—Irrelevancy of a statement of a person not examined in Court—*See* PENAL CODE, s. 411, 22 P.W.R. 1912, Cr. = 15 Ind. Cas. 971 = 13 Cr. L.J. 555.

See STOLEN PROPERTY, L.B.R. 1895—1900, 199.

Identity of Person.

See ESCAPE FROM LAWFUL CUSTODY, A.W.N. 1882, 77.

Idol.

Bull dedicated to—*See* CRIMINAL MISAPPROPRIATION, 11 M. 145 = 1 Weir 498 = 1 Weir 456.

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 4 Bom. L.R. 438.

Custom of bringing an idol once a year underneath a tree for worship—Removal of the tree, if an offence—*See* MISCHIEF, 1 Weir 496.

Dispute regarding trusteeship of a temple—Removal by accused of the, and other articles before execution of decree for possession by Civil Court—*See* PENAL CODE, ss. 295, 379, 1 Weir 430 = 2 Weir 577.

See PENAL CODE, ss. 403 and 429, 11 M. 145 = 1 Weir 498.

Ignorance of Law.

Plea of—*See* ACT VI OF 1882, ss. 48, 50, 164 P.L.R. 1914 = 15 Cr.L J. 300 = 23 Ind. Cas. 508 = 38 P.W.R. 1914, Cr.

See PENAL CODE, s. 79, 1 Weir 40 = 1 Weir 74.

Illegal Arrest.

When acting *bona fide*—Liability of public officer—*See* JUDICIAL OFFICERS, LIABILITY OF, 3 Agra 409.

Illegal Gratification.

See BRIBERY.

See PENAL CODE, ss. 161—163.

(1)—*Penal Code, s.* 161—*Scope of section.*—The plain words of s. 161 exclude the defence that the benefit bargained for was to go to somebody else, and also exclude the notion that an officer is protected if he agrees to let his official acts be swayed by the motive of accepting a gratification to be used professedly for advancing some public, not private, object, such as charity, science or religion. Where a police patel who had removed certain Mahars from the services of the village was present at a meeting of the villagers which was held at the patels' house, and agreed to restore them on their paying a sum of Rs. 300 to repair one of the village temples, *held* that the patel was guilty of an offence under s. 161, I.P.C. IMPERATRIX v. APPAJI, **21 B. 517.**

(2)—*Penal Code, s.* 161—*Illegal gratification.*—The accused, the *Kulkarni* of a village, told the ryots who had been given a grant of *tagav* by government that he had worked for them for eight days and that they must pay him 12 annas each, or he would take notice of it and they would get into trouble. In consequence they paid him the money but not of their free will. *Held*, that the accused had committed an offence under s. 161, I.P.C., as he had made use of his official position and claimed and obtained money as a reward for rendering services which he had not rendered in that position. QUEEN-EMPRESS v. KRISHNAJI GANESH, **Rat. Un. Cr. C. 955.**

(3)—*Penal Code, s.* 161—*Attempt to obtain illegal gratification—Demand of* dusturi *by Civil Court peon for service of summons.*—A Civil Court peon asking a party in a suit to pay him *dusturi*, if he wished him to serve summons on a witness without an identifier, is guilty of the offence of attempting to obtain an illegal gratification within s. 161, Penal Code, the attempt being complete when demand was made, and there being nothing further to be done by the accused to complete his attempt. RATAN MONI DEY v. KING-EMPEROR, **32 C. 292 = 9 C.W.N. 547 = 2 Cr. L J. 204.** (2 A. 253, *F.*; 8 M. 5, *D.*)

(4)—*Penal Code, ss.* 109, 161, 214—*Offering gratification to a public servant for screening him from an offence.*—A person giving a gratification to a public servant in consideration of screening him by not proceeding against him for an offence is not guilty of an offence under ss. 161, 109, I.P.C., but is guilty of an offence under s. 214. MEGRAJ v. EMPRESS, **13 P. R. 1881, Cr.**

(5)—*Receipt of, by a Sheristadar to influence the doing of official acts—Non-commission of act for which bribe was given—Liable notwithstanding.*—The taking of an illegal gratification by a Sheristadar to influence the principal Sudder Ameen in his decisions is sufficient to support a conviction under s. 161, Penal Code, whether the actual influence was exercised or not. The latter part of the explanation

Illegal Gratification—*continued.*

to s. 161 expressly mentions that "a person who receives a gratification as a motive for doing what he does not intend to do or as a reward for what he has not done is equally liable." QUEEN v. KALEECHURN SERISHTADAR, **3 W.R. Cr. 10.**

(6)—*Taking bribe to induce a public servant to forbear to do certain official act—Penal Code, s.* 162—*Person who bribes a good witness against person bribed.*—The evidence of the person who bribes is admissible against the person bribed. A person, who accepts for himself or for some other person, a gratification for inducing, by corrupt or illegal means, a public servant to forbear to do a certain official act, is punishable, not under s. 161, but under s 162 of the Penal Code. QUEEN v. OBHOY CHURN CHUCKERBUTTY, **3 W.R. Cr. 19.**

(7)—*Taking illegal gratification—Proper order on conviction—Order to refund money inadequate.*—On a conviction for taking illegal gratification, a simple order to refund the money taken is quite inadequate to the gravity of the offence. *In re* MUTTY LALL CHUTTOPADHYA, **16 W.R. Cr. 74.**

(8)—*Penal Code, s.* 161—*Illegal gratification*—Where the gratification was given and taken to cause the *chaukidars* "to hold their tongues" respecting their discovery of an amour between the person who offered the bribe, and a widow who had visited him at night, and thereby to save him from the "disgrace" that might attach to a person detected in a clandestine intrigue, *held*, that the *chaukidar* was not liable to be convicted under s. 161, I.P.C. EMPRESS v. ABDUL AZIZ, **A.W.N. 1883, 179.**

(9)—*Penal Code, s.* 161—*Illegal gratification—Bribe given in two instalments.*—Where a Head Constable demanded a bribe of Rs. 150, and the bribe was paid in two instalments, *held* that this was only one transaction and there could be only one conviction. EMPRESS v. TUFAIL HUSAIN, **A W.N. 1888, 184.**

Wrongful confinement—Money paid to obtain release — Receiving — Extortion—*See* ACCOMPLICE—GENERAL, 27 C. 925 = 4 C.W. N. 755.

For furnishing cases—*See* ACT XVIII OF 1879, s. 36, 17 A. 498 = 22 I.A. 193, P.C. = 6 Sar. 635.

See CHARGE—FORM OF CHARGE, 3 W.R. Cr. 69.

Actual thief — Restoration of property — Gratification—Charge—*See* CRIM. PRO. CODE, 1898, s. 233, 12 Cr. L.J. 72 = 9 Ind. Cas. 421.

See EVIDENCE ACT, 1872, ss. 5—14, 6 C. 655 = 8 C.L.R. 197.

See MAGISTRATE, JURISDICTION OF — MISCELLANEOUS, 6 W.R. Cr. 90.

See PENAL CODE, ss. 21, 161, 32 C. 664 = 2 Cr. L.J. 512.

Violation of Forest Rule — Compoundable offence — Offer of money to Forest Officer—No

Illegal Gratification—*concluded.*

offence—*See* PENAL CODE, s. 214, 6 L.B.R. 48=15 Ind. Cas. 990=13 Cr. L.J. 574.

See SANCTION TO PROSECUTE—NATURE AND FORM OF SANCTION, 13 C.W N. 1062.

Illegality.

See CRIM. PRO. CODE, 1898, ss. 529—538.

See IRREGULARITY.

(1)—*Crim. Pro. Code* (1882), *s.* 537—*Rule as to accomplice's evidence — Misdirection.*— The omission on the part of the Judge to tell the jury that it is dangerous to convict on the evidence of an accomplice alone when uncorroborated in material particulars by independent testimony, is an error in law which, if it materially prejudiced the prisoner, justifies the High Court in setting aside the verdict. QUEEN-EMPRESS v. RAMA, **Rat. Un. Cr. C. 466=Cr. Rg. 24 of 1889.**

(2)—"*Illegal*" *and* "*unlawful*" *distinguished.*—The word "illegal" is defined in the Penal Code, but the word "unlawful" is not defined, and there are various sections in the Code where the two words are indiscriminately used. An act however may be lawful though it may be illegal. S CAHOON v. A. MATHEWS, **24 C. 494=1 C.W N. 274.**

(3)—*Waiver of illegality.*—If criminal proceedings are substantially bad, they will not be cured by any waiver or consent of the prisoner. EMPEROR v. KASIM, **15 C.P.L R. 66.** (2 C. 23, *R.*)

Jury, appointment of—Five persons named as jurors—Report by four one being ill—Whether report legal—*See* CRIM. PRO. CODE, 1898, s. 138, 6 Ind. Cas. 777=11 Cr. L.J. 402.

See CRIM. PRO. CODE, 1898, ss. 193, 195, 465, 471, 476, 9 Cr. L.J. 180=1 Ind. Cas. 220.

Two persons accused of giving false evidence—Same case and same point—Joint trial—*See* CRIM. PRO.CODE, 1898, s. 236, 5 S.L.R. 129=13 Ind Cas. 215=13 Cr. L.J. 23.

See CRIM. PRO. CODE, 1898, ss. 237, 238, 13 C.P.L.R. Cr. 167.

See CRIM. PRO. CODE, 1898, ss. 307 and 337, 13 C.W.N. 757=9 C.L.J. 638=36 C. 629=2 Ind. Cas. 497.

Curing of—by consent—*See* CRIM. PRO. CODE, 1898, ss. 346, 349, 350, 537, 91 P L.R. 1905=2 Cr. L.J. 369.

See CRIM. PRO. CODE, 1898, ss. 514, 529, 531, 16 Bom. L R. 84=2 Bom. Cr. C. 183=15 Cr. L.J. 295=23 Ind. Cas. 503.

See JOINDER OF CHARGES—MISJOINDER OF CHARGES, 13 C.W.N. 804=9 Cr. L J. 147=1 Ind. Cas. 69.

See JOINDER OF PARTIES, 3 M L.T. 408=31 M. 276=8 Cr. L.J. 154.

Illegal Marriage.

Use of house for, if abetment—*See* ABETMENT, W.R. 1864, Cr. 13.

Illegal Obstruction.

See PENAL CODE, ss. 224, 225, 1 Weir 211.

Illegal Omission.

(1)—*Crim. Pro. Code* (1882), *s.* 44—*Lambardar's duty to report a burglary.*—Where one of several *lambardars*, to the knowledge of others, directs the village *choukidar* to report a burglary at the Thana and the *choukidar* disobeys the order, it cannot be said that any of them had intentionally failed to give information. SHER SINGH v. EMPRESS, **5 P.R. 1889, Cr.**

(2)—*Crim. Pro. Code* (1882), *s.* 45—*Penal Code, s.* 176—*Duty of* lambardar *to give information of the offence of receiving illegal gratification.*—The *lambardar* of a village is not bound under s. 45 (*c*), Crim. Pro. Code, to give information of the offence of receiving illegal gratification as the offence is not a non bailable offence. Bringing a suspected robber under arrest to the accused's village and releasing him there does not amount to the resorting to or passing through the village of a suspected robber within the meaning of cl. (*b*) of s. 45, Crim. Pro. Code. EMPRESS v. MALIK DAUD, **30 P. R. 1887, Cr.**

(3)—*Accused failing to report design to commit murder—Penal Code, s.* 118—*Act X of* 1872, *s.* 90.—Where an accused was convicted under s. 118, I.P.C., for concealing P's design to commit murder, knowing that he would thereby facilitate the commission of an offence, the Court thinking that it was an illegal omission by the accused not to report the intention to commit murder, *held* that the accused not being a village headman or watchman or owner or occupier of land, or other person bound under s. 90, Crim. Pro. Code, to report the intention to commit a non-liable offence, and no provision of law existing under which the existence of a design on the part of P to commit murder ought to be reported, his omission to report such design was not an illegal omission within the meaning of s. 118, I.P.C., and as the accused had not concealed the existence of P's design by any overt act, his conviction must be set aside. BAHADUR v. EMPRESS, **34 P.R. 1882, Cr.**

(4)—*Penal Code, ss.* 43, 176 — *Zaildar's omission to give information of a riot.*—An omission by a *zaildar* or his *sarbarah* to give informations of a riot in his village is not an illegal omission. SHAH MUHAMMAD v. EMPRESS, **19 P.R. 1886, Cr.** [*R.*, 25 P.R 1894, Cr.]

(5)—*Penal Code, ss.* 176, 202 — *Chowkidar finding a corpse in a stream—Crim. Pro. Code* (1882), *s.* 45.—A *chowkidar's* finding a corpse in a stream is enough to give rise to a suspicion that death has occurred under suspicious circumstances and he is bound to report under s. 45, Crim. Pro. Code, 1882. An omission to do so is punishable under s. 176 and not under s. 202, without anything to show that an offence, which he is bound to report, has been committed. SHER MUHAMMAD v. EMPRESS, **20 P.R. 1887, Cr.**

Illegal Order.

(1)—*Illegal order.*—An order not authorised by law cannot be allowed to stand whether it is for the ends of justice or not. INDERJIT SINGH v. THAKUR SINGH, 2 C.W.N. 290. (1 C.W.N. 650, *F.*)

Acting under, of Government Officer is not acting in execution of his duty as public servant—*See* PENAL CODE, ss. 352, 353, 9 B. 558.

Liability of police officer for carrying out, of his superior—*See* POLICE, L.B R. 1872—1892, 164.

Constable obeying an, of Magistrate—Right of self-defence—*See* PRIVATE DEFENCE, RIGHT OF, 1 Weir 344.

Illegal Seizure.

Of cattle, whether a criminal offence—Compensation—Fine—Imprisonment in default of payment of compensation—*See* ACT I OF 1871, ss. 21, 22, 2 C.L.R. 507.

Illegitimacy.

See ADULTERY.

See BASTARDY PROCEEDINGS.

See CRIM. PRO. CODE, 1898, s. 488.

See ILLEGITIMATE CHILDREN.

See MAINTENANCE.

See PROSTITUTION.

See HINDU LAW—MARRIAGE, 18 C. 264.

Illegitimate Children.

See ADULTERY.

See BASTARDY PROCEEDINGS.

See CRIM. PRO. CODE, 1898, s. 488.

See ILLEGITIMACY.

See MAINTENANCE.

See PROSTITUTION.

Maintenance to — *See* APPEAL — CASES WHERE APPEAL DOES NOT LIE, 2 Ind. Jur. N.S. 88 = 7 W.R. Cr. 10.

Ill health.

Absence of accused on ground of—*See* CRIM. PRO. CODE, 1898, s. 353, 14 Bom. L.R. 236 = 15 Ind. Cas. 96 = 13 Cr.L.J. 464 = 1 Bom. Cr. C. 111.

Illicit Intercourse.

See PENAL CODE, s. 366, L.B.R. 1872—1892, 202.

Illustration.

(1)—*Illustrations, scope and value of.*—Illustrations rank only as cases decided under the section, and ought never to be allowed to control the plain meaning of the section itself. CROWN v. RINO SOBEDAR, 6 S.L.R 76 = 16 Ind. Cas. 753 = 13 Cr.L.J. 721. (1 B. 147, 20 M. 97, 7 C. 132, *D.*)

Immoral Contract.

See PENAL CODE, s. 420, 14 Bom. L.R. 503 = 15 Ind Cas. 793 = 13 Cr. L.J. 521 = 1 Bom. Cr. C. 148.

Immorality.

See MAINTENANCE, 50 P.R. 1866, Cr.

Immoveable Property.

See CRIM. PRO. CODE, 1898, ss. 145—147.

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY.

(1)—*Ownership of.*—Ownership and possession of immoveable property are not so easily separated as ownership and possession of moveable property. KING-EMPEROR v. NAWTARA SINGH, U.B.R. 1904, 1st Qr., Penal Code, 7. (U.B.R. 1897—1901, 137, 139, L.B.R. 1903, 65, *R.*)

Doors whether immoveable property—*See* MAD. ACT V OF 1884, s. 81 (2), 16 M.L.T. 429 = 15 Cr. L.J. 637 = 25 Ind. Cas. 837.

See CRIMINAL BREACH OF TRUST, 23 C. 372.

See CRIMINAL MISAPPROPRIATION, 6 B. H.C. Cr. 33.

See PRIVATE DEFENCE, RIGHT OF, 3 N.L.R. 177 = 7 Cr. L.J. 49.

Title to—*See* TITLE, 2 C.L J. 555 = 10 C.W. N. 82 = 3 Cr. L J. 169.

Impounding Cattle.

See MISCHIEF, Rat Un. Cr. C. 189.

Impounding Document.

See ACT II OF 1899, s. 33, U.B.R. 1892—1896, Vol. I, 313.

See CRIM. PRO. CODE, 1898, s. 104, 1 A. L.J. 607.

Impressions.

See FINGER IMPRESSIONS.

Imprisonment.

See SENTENCE—IMPRISONMENT.

Improvements, Malabar Compensation for Tenants' Act.

See MAD. ACT I OF 1900.

Improvements, Municipal, Act.

See U.P. ACT VI OF 1868.

Improvement of Towns.

See ACT XXVI OF 1850.

See MAD. ACT X OF 1865.

See MAD. ACT III OF 1871.

Inams.

See CONFISCATION, 64 P.R. 1866, Cr.

Inams (Madras).

See MAD. ACT VIII OF 1869.

Incitement.

Meaning of, need not be direct—Liability of newspaper, how to construe—Printing Press, confiscation of—*See* ACT VII OF 1908, 9 C.L. J. 143 = 13 C.W.N. 672 = 36 C. 405 = 9 Cr. L.J. 545 = 2 Ind. Cas. 285.

Incitements to Offences, Newspapers.

See ACT VII OF 1908.

Income.

Tax on "income"—*See* MAD ACT IV OF 1884, ss. 53, 262, 27 M. 547=14 M.L.J. 410.

Income-tax.

See ACT IX OF 1869, s. 25, 14 W.R. Cr. 71.

Objection to assessment of—False statements—Penal Code, s. 193—*See* MAD. ACT III OF 1878, ss. 14 and 15, 1 Weir 782.

Collector—Sanction by the, Collector—Revision by the High Court—*See* CRIM PRO. CODE, 1898, s. 476, 8 Bom. L.R. 477=4 Cr. L.J. 34.

Income-tax officer's proceeding granting sanction to prosecute—High Court refusing to set aside—Appeal to Privy Council—*See* LETTERS PATENT—LETTERS PATENT, 1865, MADRAS, cls. 39, 11, 12, 13, 14 M.L.T. 421=25 M.L.J. 565.

Collector assessing income tax whether Government—Assessing income-tax on the profits of lotteries whether tantamount to authorisation of the lotteries—*See* PENAL CODE, ss. 11, 34, 294-A. 15 Cr. L.J 243=23 Ind. Cas. 195=7 Bur. L.T. 187.

Income-tax Act.

See ACT XXXII OF 1860.

See ACT IX OF 1869.

See ACT XXIII OF 1869.

See ACT II OF 1886.

Income-tax Collector.

Perjury and forgery committed before—Income-tax Collector whether a Court—Sanction to prosecute—*See* CRIM. PRO. CODE, 1898, s. 195, cls. (*b*) and (*c*), 16 Bom. L.R. 446=2 Bom. Cr. C. 199=38 B. 642=15 Cr.L.J. 581=25 Ind. Cas. 333, F.B.

Sanction by the Income-tax Collector—Revision by the High Court—*See* CRIM. PRO. CODE, 1898, s. 476, 8 Bom. L.R. 477=4 Cr. L.J. 34.

If an inferior criminal or civil Court—*See* REVISION—GENERAL PRINCIPLES, 3 S.L.R. 66, Cr.

Inconsistent Statements.

See FALSE EVIDENCE.

See PENAL CODE, s. 193.

See PERJURY.

Credibility of—*See* CONFESSION—GENERAL, 10 B.L.R. 332.

See CONFESSION—GENERAL, 24 W.R Cr. 80.

Incriminating Questions.

Put in cross-examination—*See* EVIDENCE ACT, 1872, s. 132, L.B.R. 1893—1900, 91.

Objection overruled by Court—Witness compelled to answer—Answer not to be proved against him—*See* EVIDENCE ACT, 1872, ss. 132, 148, 6 Ind. Cas. 782=14 C.W.N. 957=11 Cr.L.J. 403=37 C. 878.

See FALSE EVIDENCE, 2 C.L.R. 181.

Indians.

(1)—Indians and Englishmen constitute two separate classes. JASWANT RAI v. KING-EMPEROR, **14 P.W R. 1907. Cr.=5 Cr.L.J. 439=2 M.L.T. 272=10 P.R. 1907, Cr.** (22 B. 139, 142, *F. & R*).

Indictment.

See CHARGE.

(1)—*Crim. Pro. Code*, 1862, *s.* 41—*Omission to state in the charge that property obtained was property of complainant.*—Under s. 41, Act XVIII of 1861, a charge in which there was an omission to state under ss. 415 and 420 of the Penal Code, that the money which it was alleged that the prisoner had, by deceit, fraudulently induced the prosecutor to pay to him, was the property of the prosecutor was held to be defective for uncertainty. The objection to such indictment, in order to be valid, should be taken before the jury was sworn. QUEEN v. WILLANS, **1 Weir 471=1 M.H.C. 31.**

Indigo.

Contract of service to convey, to the vats—*See* CRIMINAL BREACH OF CONTRACT, 6 W. R Cr. 80

Inducement.

See CONFESSION—CONFESSIONS OBTAINED BY INDUCEMENT, THREAT, ETC.

Infanticide (Female) Prevention Act.

See ACT VIII OF 1870.

Infection.

See BOM. ACT III OF 1888, ss. 429, 430, 7 Bom. L. R. 460=2 Cr. L.J. 435.

Infectious Disease.

(1)—*Person suffering from infectious diseases—Power of Magistrates to order removal to hospital.*—In the city of Bombay, the authorities have power to remove persons suffering from infectious diseases to hospital, and in the absence of any such authority, Magistrates in Bengal have no authority to order the removal of such persons to hospital. S. CAHOON v. A. MATHEWS, **24 C. 494=1 C.W.N. 274.**

Inflammable Material.

Bye-law of municipality—Roofs with—*See* BEN. ACT III OF 1864, s. 63, 24 W.R. Cr. 70.

See MAD. ACT IV OF 1884, s 179, 1 Weir 733.

Informant.

Refusal by Government officer to give name of informant—*See* EVIDENCE ACT, 1872, ss. 124, 125, 2 Bom. L.R. 329.

Information.

See FALSE INFORMATION.

See SECURITY TO KEEP THE PEACE—ON CREDIBLE INFORMATION.

See CRIM. PRO. CODE, 1898, s. 161, Rat. Un. Cr. C. 124.

Information of Commission of Offence.

See CRIM. PRO. CODE, 1898, s. 45.

(1)—*Crim. Pro. Code* (1882), s. 45—*Duty of reporting cases of suspicious death.*—Where the police officer to whom the report of a death ought to have been made under s. 45, Crim. Pro. Code, was himself present at the death, the accused could not be convicted for not making the report. QUEEN-EMPRESS v. HARI GOPAL, **Rat. Un. Cr. C. 778 = Cr. Rg. 42 of 1895.**

(2)—*Omission to give information to police regarding offence—S. 90 of the Crim. Pro. Code of 1872 and s. 176 of the Penal Code.*—The provisions of s. 90 of the Crim. Pro. Code of 1872 and s. 176 of the Penal Code are not to be used for purposes of vexation; where there has been information to the police of an offence from one of the parties bound to give such information, it is not reasonable that every other person, who may possibly be bound to give information, should be prosecuted for not having done so. EMPRESS v. SASHI BHUSAN CHUCKRABUTTY, **4 C. 623.** [*F.*, Rat. Un. Cr. C. 778; *Appl.*, 7 M. 436 = 1 Weir 103.]

(3)—*Omission to report offence—Penal Code, ss. 118, 176—Crim. Pro. Code* (1861), *s. 138.*—*Held* that the prisoner could not be punished under s. 118 of the Penal Code, as there was no omission of an act which he was bound to perform which facilitated the commission of an offence; but that he should be convicted under s. 176, Penal Code, as he was bound to report the offence under s. 138, Act XXV of 1861, after he was informed of it. GOVERNMENT v. KESREE, **1 Agra Cr. 37.**

(4)—*Scope and applicability of s. 176, Penal Code—Obligation to give information.*—S. 176 of the Penal Code applies to persons upon whom an obligation is imposed by law to furnish certain information to public servants, and the penalty which the law provides is intended to apply to parties who commit an intentional breach of such obligation. *In re* PHOOL CHAND BROJABASSE, **16 W.R. Cr. 35.** *See, also, In the case of* DINONATH BUROOA, **18 W.R. Cr. 32.**

(5)—*Refusal to join in a dacoity—Presumption—Omission to give information to prevent offence when an offence—Penal Code, s. 176.*—In the absence of any evidence to show that the accused knew that a dacoity would take place, whether he joined it or not, the refusal of the accused to join in a dacoity does not imply a knowledge on his part of the commission of that offence, or render him liable to punishment, under s. 176 of the Penal Code, for intentional omission to give notice or information for the purpose of preventing the commission of an offence. QUEEN v. LAHAI MUNDUL, **7 W.R. Cr. 29.**

(6)—*Conviction of giving false information, knowledge of actual commission to be established—Penal Code, s. 203.*—In order to justify a conviction for giving false information with respect to an offence under s. 203 of the Penal Code, it must be proved, not only that the person charged had reason to believe that an offence had been committed, but that the offence had actually been committed, and that the accused knew, or had reason to believe, that the offence had been actually committed. QUEEN v. JOYNARAIN PATRO, **20 W.R. Cr. 66.**

See ACCOMPLICE — ACCOMPLICE EVIDENCE—NECESSITY FOR CORROBORATION, 21 C 328.

See BOM. ACT III OF 1901, ss. 122 and 161, 1 S.L.R. Cr. 88 = 8 Cr. L.J. 213.

First information, when should be recorded—Admissibility—*See* CRIM. PRO. CODE, 1898, s. 154, 7 C.W.N. 345.

First information, nature and use of—*See* CRIM. PRO. CODE, 1898, s. 154, 11 C.W.N. 554 = 6 Cr. L.J. 86.

Information, meaning of—*See* CRIM. PRO. CODE, 1898, ss. 154, 157 and 250, 14 C.W.N. 326

Information to Magistrate.

Complaint—Initiation of criminal proceedings—Prosecution in confirmity with an *ultra vires* order—*See* CRIM. PRO. CODE, 1898, s. 190, 87 P.L.R. 1910 = 8 Ind. Cas. 247 = 11 Cr. L.J. 602.

Information to Police.

See CRIM. PRO. CODE, 1872, s. 90, 4 C. 603 = 3 C.L.R. 87.

Informer.

(1)—*Accomplice—Informer—Difference—Need for corroboration.*—Persons who have entered into communication with conspirators but who, from original intention or subsequent repentance, disclose the conspiracy to the public authorities, and nevertheless continue in the league so as to ensure the conviction of the conspirators, are informers and not accomplices so as to render it necessary that their evidence should be corroborated by independent evidence. The part they played as informers may however attach some disfavour to them. *In re* SHANKER SHOBAG, **Rat. Un. Cr. C. 428 = Cr. Rg. 91 of 1888.** [*Appr.*, 38 C. 96 = 8 Ind. Cas. 119 = 11 Cr.L.J. 560.]

See ACT III OF 1867, ss. 3, 4, 13 and 16, L. B.R. 1872—1892, 407.

Testimony of, if should be corroborated and when—*See* CONSPIRACY, 16 C.W.N. 1105 = 16 Ind. Cas. 257.

See WITNESS—GENERAL—WHO ARE COMPETENT TO BE WITNESSES, 38 P.R. 1887, Cr.

Injunction.

(1)—*Disobedience of order of injunction by Civil Court—Remedy.*—The proper remedy for disobedience of an order of injunction passed by a Civil Court is to commit the party to jail for contempt. *In the matter of the petition of* CHANDRAKANTA DEY, **6 C. 445 = 7 C.L.R. 350.**

See BEN. ACT III OF 1899, ss. 449, 450, 452, 579, 11 C.W.N. 30 = 4 Cr. L.J. 408 = 34 C. 341.

See MAINTENANCE, 2 M.L.T. 344 = 7 Cr. L. J. 235 = 30 M. 400.

Injury.

Penal Code, s. 503—Criminal intimidation, what constitutes—Conventional punishment by spiritual superior, whether amounts to—*See* CRIMINAL INTIMIDATION, 6 M. 381=1 Weir 595.

Inland Customs.

See PUN. ACT XIV OF 1843.

Inoculation.

(1)—*In areas outside Municipality, whether an offence—Penal Code, s.* 81—*Vaccination Act, s.* 6—*Prohibition of inoculation—Procedure—Crim. Pro. Code* (1898), *s.* 133.—Inoculation is not an offence in itself, though s. 6 of the Vaccination Act prohibits the practice within the areas to which the Act is extended. Being really practised as a remedial measure, s. 81 of the Penal Code will apply. If it is found necessary, in the interests of the public, to prohibit the practice outside the areas referred to in the Vaccination Act, the District Magistrate should draw up a proceeding and after taking the evidence of the civil surgeon on the point, can issue orders to be served personally on the inoculators under s. 133, Crim. Pro. Code, to show cause why the practice of their trade should not be suppressed as being injurious to the health of the community. If sufficient cause is not shown, the order can be made absolute and its violation then becomes punishable under s. 188, Penal Code. QUEEN-EMPRESS v. NGA SAN PU, **L.B.R. 1893—1900, 545.**

Negligent inoculation—*See* PENAL CODE, s. 269, 1 Weir 226.

Inquest.

(1)—*Inquiry by Magistrate into cause of death, not a judicial proceeding—Crim. Pro. Code* (*of* 1872), *ss.* 135, 296=*ss.* 174 *and* 435 (*Code of* 1882)—*Coroner's inquest.*—A Divisional Magistrate's enquiry under s. 135 of the Crim. Pro. Code (of 1872), into the cause of the death of a person under suspicious circumstances is not a judicial proceeding; and where he sent a report of the result of his inquiry to his executive superior—the Magistrate of the district—the High Court could not call for it under s. 296 of the Code. There is no analogy between such an inquiry and a coroner's inquest—*Per Markby, J. In the matter of* TROYLOKHANATH BISWAS, **3 C. 742.** [*F.*, Rat. Un. Cr. C. 843.]

See BOM. ACT VIII OF 1867, s. 11, Rat. Un. Cr. C. 740=Cr. Rg. 8 of 1895.

See CRIM. PRO. CODE, 1898, ss.161, 174, 27 P.R. 1908, Cr.=9 Cr. L.J. 105.

See REVISION — GENERAL PRINCIPLES, Rat. Un. Cr. C. 843.

Inquest Report.

(1)—*Bom. Reg.* XII *of* 1827, *s.* 52—*Bom. Act* VIII *of* 1867—*Inquest Report — Evidence.*—Reg. XII of 1827, s. 52, having been repealed by Bombay Act VIII of 1867, an inquest report is not admissible in evidence. REG. v. BHAI SHANKAR, NARBHERAM, **6 B.H.C. Cr. 75.**

Inquest Report—*concluded.*

See CHEMICAL EXAMINER'S REPORT, 6 B. H.C. Cr. 75.

Inquiry.

See ENQUIRY.

See LOCAL INQUIRY.

See REVENUE INQUIRY.

Insane Offender.

(1)—*Insane offender when liable to punishment—Measure of punishment.*—The Penal Code does not concede that all insane impulses are beyond the power of self-control, but places them under the restraint of the ordinary Criminal Law when the insanity is not so advanced as to render the insane offender incapable of knowing the nature of his act, or that he is doing what is wrong or contrary to law. But even so, though the weakening, through the unsoundness of mind, of capacity for self-control may be no valid plea against a conviction, it does not follow that it may not be properly taken into consideration as affecting the punishment merited. NGA PO THA v. QUEEN-EMPRESS, **L.B R. 1893—1900, 249.** (7 W.R. Cr. 47, *R.*)

Insanity.

See ACCUSED PERSON.

See CRIM. PRO. CODE, 1898, ss. 464—475.

See LUNACY.

See PENAL CODE, ss. 84, 85.

See UNSOUNDNESS OF MIND.

(1)—*Penal Code, s.* 84—*Insanity, plea of.*—Where the accused, a habitual ganja smoker, was charged with the offence of murder, *held*, that he would not be protected by s. 84, I.P.C., unless there was evidence to warrant a finding that the accused's habit had induced a diseased state of mind so as to make him incapable of knowing the nature of his act or its criminality. QUEEN-EMPRESS v. SAKHARAM *valad* RAMJI, **14 B. 564.** (10 B. 512, *D.*) [*F.*, 13 Cr. L.J. 164=13 Ind. Cas. 916=7 N.L.R. 185; *R.*, 20 B. 215, 17 C.P.L.R. 113, Rat. Un. Cr. C. 766, Rat. Un. Cr. C. 818.]

(2)—*Insanity—Proof of.*—Where the evidence of a plea of insanity consisted of a civil surgeon's evidence that the prisoner's intellect was weak and other depositions to the effect that his conduct, of late, had been unusual and that his father was insane, *held* that there were not sufficient proofs that the prisoner, at the time of committing the offence, was incapable of knowing the nature of the act or that he was doing what was wrong and contrary to law. REG. v. JEEVA AMTHA, **Rat. Un. Cr. C. 10.**

(3)—*Sanity, presumption of.*—The law presumes every person at the age of discretion to be sane unless the contrary is proved; and, if a lunatic has lucid intervals, the law presumes the offence of such person to have been committed in a lucid interval, unless it appears to have been committed during derangement. QUEEN-EMPRESS v. BALU, **Rat. Un. Cr. C. 172.**

Insanity—*continued.*

(4)—*Penal Code*, ss. 84, 99—*Unsoundness of mind.*—Partial delusions or the mere existence of mental disease does not necessarily exempt a person from criminal responsibility. The proved unsoundness of mind of the sort described in s. 84 is a complete defence; and mental weakness caused by disease is an extenuating circumstance affecting the sentence. When the absence of any motive, preparation or purpose for a criminal act is admitted, or evidence of mental derangement such as melancholy or excitement, or of very extraordinary conduct has been given, or other index of disease of the brain appears in the case, the Magistrate or Judge ought to use the means pointed out in the various provisions of law, so as to find out as much as possible about the mental state of the accused. QUEEN-EMPRESS v. NEPAL, **Rat. Un. Cr. C. 229.**

(5)—*Crim. Pro. Code* (X *of* 1872), *s.* 426 = *s.* 466 (*Act* V *of* 1898)—*Accused a lunatic.*—As soon as an accused declared to be a lunatic is transmitted to the place of safe custody appointed by the Local Government, the authority of the Criminal Court over him ceases. It can only be revived under the circumstances mentioned in s. 432 = s. 473 of the present Code (Act V of 1898). EMPRESS v. JOY HARI KOR, **2 C. 356.**

(6)—*Penal Code*, ss. 84 *and* 302—*Murder—Criminal responsibility of person suffering from insane delusion—Plea of insanity.*—The criminal responsibility of a person suffering from an insane delusion and committing an offence in consequence thereof depends upon the nature of the delusion; if the man was labouring under a partial delusion only and was not in other respects insane, he must be considered to be in the same situation as to responsibility as if the facts with respect to which the delusion existed were real. The estimate of the guilt of a person suffering from and acting under the influence of a delusion must be made upon the basis of the actual existence of the facts in regard to which the delusion existed; and whether the person was under a misapprehension in regard to the delusion or not, his culpability would be the same. Where the plea of insanity is taken on behalf of an accused person, the question that arises is not whether at the time of the trial the man was of unsound mind, but whether he was so at the time of the commission of the deed, and whether by reason of that unsoundness of mind he was incapable of distinguishing between right and wrong. GHATU PRAMANIK v. KING-EMPEROR, **28 C. 613 = 5 C. W.N. 665.** [*R.*, 14 Cr. L.J. 81 = 18 Ind. Cas. 641 = 15 O.C. 321.]

(7)—*Insane prisoners—Procedure in regard to—Crim. Pro. Code* (1861), *ss.* 225, 226, 393 *and* 394.—S. 226, Crim. Pro. Code, does not positively require the commitment of the accused in cases in which he is of unsound mind at the time of committing the act. In cases which fall under the other general exceptions of the Penal Code, there would be no grounds for committing, because he would be entitled to an acquittal and release. When a person accused is acquitted on the ground of insanity, the jury or Court is to find specially whether he committed the act or not; and if he be found to have committed it, he is to be kept in safe custody (ss. 393, 394, Crim. Pro. Code). A commitment is therefore discretional with the Magistrates in such cases. CRIMINAL CIRCULAR NO. 7 OF 1867, **8 W.R. Cr. Cir. 3.**

(8)—*Penal Code*, s. 84—*Proof of unsoundness of mind.*—The accused stabbed his brother's wife, a child, and killed her. No motive was suggested for his killing the child and he was living with the child affectionately. The prisoner had been sick of fever for six days previous to the occurrence, and had taken little food during that time. During that period, he acted strangely and abused his father and brother. The medical evidence, in the case, proved merely the possibility of a sudden attack of homicidal mania. Before the Village Magistrate, the accused confessed that he had killed the child and answered the questions put to him rationally. *Held*, that there was no positive evidence that the accused was suffering from delirium at the time he committed the murder, or that he was unconscious of the nature of the act he had committed. But the High Court, while confirming the conviction of the accused for murder, directed that, in lieu of the sentence of death, the accused be transported for the term of his natural life, and directed also that the evidence and the judgment be brought to the notice of His Excellency the Governor in Council in order that he might, if he thought fit, reduce the sentence under the special circumstances of the case. QUEEN-EMPRESS v. VENKATASAWMI, **12 M. 459 = 1 Weir 42.** (10 B. 512, *Appr.*) [*F.*, 23 C. 604; *R.*, 14 B. 564, 13 Cr.L.J. 164 = 13 Ind. Cas. 916 = 7 N.L.R. 185, 4 Ind. Cas. 985 = 6 M. L.T. 101 = 94 P.L.R. 1909 = 16 P.W.R. 1909, Cr., 17 C.P.L.R. 113, 15 O.C. 321 = 18 Ind. Cas. 641 = 14 Cr.L.J. 81, Rat. Un. Cr. C. 698.]

(9)—*Penal Code*, s. 84—*Legal and inferential insanity.*—The policy of the law is to exercise control not only on the sane, but, so far as is possible, also the insane. Therefore, it is not every person mentally diseased who, *ipso facto*, is exempted from criminal responsibility. Such exemption is allowed only to the limited extent stated in s. 84, Penal Code, which concisely reproduces the English law as to non-punishable insanity. Legal and inferential insanity discussed and explained. EMPEROR v. KATAY KISAN, **17 C.P.L.R. 113.** [*R.*, 13 Cr. L.J. 164 = 13 Ind. Cas. 916 = 7 N.L.R. 185.]

(10)—*Relevancy of weak control over emotions.*— When an accused, notwithstanding some mental derangement, is held accountable under the criminal law for his actions, because he was capable of knowing the nature of his acts and that what he was doing was wrong and contrary to law, a Court, in determining the legal punishment may properly take into judicial consideration the impaired capacity of control over the emotions and will which forms

Insanity—*continued.*

part of the mental derangement in which other faculties are involved. NGA PO THA v. QUEEN-EMPRESS, **L.B.R. 1893—1900, 249**

(11)—*Crim. Pro. Code, Act* V *of* 1898, *s.* 464—*Sessions case- Insanity of prisoner—Procedure—Penal Code, s.* 84—*Proof of insanity.*—Where a prisoner appears to be of unsound mind, the Magistrate and the Sessions Court should inquire into the fact of unsoundness before calling on him to stand his trial, and adopt the procedure laid down in s. 464 of the Crim. Pro. Code instead of going on with the trial. Where the only facts established were that the accused got angry because his food was not ready and killed his wife and attacked all those who came to assist her, *held* that this was no proof of the state of mind described in s. 84 of the Penal Code. EMPEROR v. NIAZ ALI, **A.W.N. 1905, 2=2 Cr. L.J. 91.**

(12)—*Crim. Pro. Code, Act* X *of* 1872, *s.* 426—*Accused lunatic—Procedure.*—Where a Magistrate finds that the accused under trial is of unsound mind, but, instead of staying the trial and acting under s. 426 of the Crim. Pro. Code, proceeds with it and acquits him under s. 84 of the Penal Code, *held* that the procedure was irregular. EMPRESS v. RATTI, **A.W.N. 1882, 106.**

(13)—*Penal Code, s.* 84—*Plea of insanity—Burden of proof—Evidence Act, s.* 105.—The accused killed his wife and then attempted to commit suicide. Being found to be incapable of understanding the proceedings and of defending himself, he was placed in the lunatic asylum and treated as a lunatic for more than a year and a half. After his discharge, as cured, from the asylum, he was tried for the offences. As regards his state of mind at the time of the commission of the offence, the Court found that he was sane, entirely relying upon the statement of some villagers who merely deposed that they had never known him to be insane. *Held* that, although, in a defence of insanity, the *onus* would lie upon the person alleging it, *i.e.*, the person charged, the accused had placed before the Court *prima facie* evidence, when it was shown that for more than a year and a half, from immediately after the date of the commission of the offences, he had been in a lunatic asylum and treated as a lunatic, and that the opinions of illiterate villagers were evidence of the state of mind of the accused at the time of the commission of the offence. The case was remanded for re-trial on this point. KING-EMPEROR v. SHEODIN, **A.W.N. 1901, 132.** [*R.*, 14 Cr. L.J. 81=18 Ind. Cas. 640=15 O.C. 321.]

(14)—*Death caused by insane person.*—Unsoundness of mind as absolving a man from the consequences of the death caused by him observed upon. QUEEN v. NOBIN CHUNDER BANERJEE, **13 B.L.R. Ap. 20=20 W.R. Cr. 70**

(15)—*Crim. Pro. Code* (1872), *ss.* 425, 232—*Trial of fact of unsoundness of mind.*—Where on the trial of a prisoner by a Sessions Judge, the Judge, entertaining some doubt as to the prisoner's sanity, took the evidence of the Civil Surgeon, and himself decided that the prisoner was of sound mind and capable of making his defence, whereupon the trial proceeded, and the prisoner was convicted, *held* that the conviction must be set aside and a new trial directed, reading ss. 232 and 425 of the Crim. Pro. Code together. The preliminary issue of soundness of mind or otherwise ought to have been tried by the Jury, and not by the Judge personally. QUEEN v. BHEEKOO KALWAR *alias* BHEK SHA, **10 B L.R. Ap. 10=19 W.R. Cr. 15.**

(16)—*Test of unsoundness of mind—Knowledge of wrong doing.*—The test to determine whether a person who has committed an act, which is charged against him as an offence, was of sound mind at the time of its commission, is whether he knew that he was doing wrong. QUEEN v. JUGO MOHUN MALO, **24 W.R. Cr. 5.**

(17)—*Penal Code, s.* 84.—Where, at the time of committing a murder, the accused is, by reason of unsoundness of mind, incapable of knowing that which he was doing was wrong or contrary to law, he cannot be convicted of murder. CROWN v. KHEMA, **8 P.R. 1869, Cr.**

(18)—*Insanity — Proof — Effect.*— Insanity should be proved *aliunde*, and should not be merely inferred from the extreme moral perversion of the Act committed. Mental unsoundness is not a ground for reducing punishment, but is a ground for dealing with the accused in a separate and distinct manner as prescribed by the Crim. Pro. Code. NOTA RAM v. CROWN, **56 P.R. 1866, Cr.**

(19)—*Monomaniac— Sentence* — A sentence cannot be interfered with on the ground of the accused being a monomaniac. NUBI BUKSH v. OOMRA, **109 P.R. 1866, Cr.**

(20)—*Penal Code, s.* 84—*Want of control over one's own conduct.*—S. 84 exempts a man from criminal liability for his act, only when he is prevented, by reason of mental disease, from controlling his own conduct, or from passing a rational judgment on the moral character of the act he meant to do. HAKIK SHAH v. EMPRESS, **42 P.R. 1887, Cr.**

(21)—*In case of insane person Sessions Judge to proceed under ss.* 389 *and* 390, *Crim. Pro. Code, instead of trying him.*—In the case of a person who is insane and unaccountable of his actions and, therefore, incapable of making his defence, the Sessions Judge, instead of trying him in this mental state, should proceed under the provisions of ss. 389 and 390, Crim. Pro. Code QUEEN v. KALAI SHEIKH, **3 W R. Cr 57**; QUEEN v. SHAH MAHOMED, **3 W.R. Cr. 70**; QUEEN v. MOORKHAN CHOWDRY, **1 W R. Cr. 11**; QUEEN v. SHEIKH MUSTAFA, **1 W.R. Cr. 15.**

Insanity—*continued.*

(22)—*Accused insane at the time of the commission of the offence—Procedure to be followed by Magistrate—Accused found insane at trial—Procedure—Sessions Judge not empowered to try without a specific charge—Medical certificate not sufficient evidence—Medical officer to be personally examined.*—Where a Magistrate finds a prisoner, charged with murder, to be sane at the time of the preliminary investigation, although he was insane when he committed the act, the proper procedure for him to follow is to commit the accused for trial at the Sessions. A Session Judge has no power to try a prisoner who had been committed for trial on no specific charge. The procedure to be followed in a case where the prisoner is found to be insance at the time of his trial is that prescribed by ss. 391 and 392, Crim. Pro. Code. A mere certificate given by a medical officer is not sufficient evidence of the prisoner being of unsound mind and incapable of making his defence. The medical officer should be personally examined as to the reasons which induced him to give an opinion on the point. QUEEN v. RAM RUTTON DOSS, **9 W.R. Cr. 23.**

(23)—*Accused insane at the time of trial—Acquittal illegal—Proper procedure.*—A prisoner, who was declared by the Civil Surgeon to be insane at the time he was called on to make his defence, was acquitted by the Deputy Magistrate on the ground that, at the time of committing the offence, he was not aware that he was doing an act contrary to law. *Held*, that the order of acquittal was not according to law, and that the proceedings should have been stayed and the prisoner detained pending the orders of the Government. *In the case of* ROMON AUDHEEKAREE, **10 W.R.Cr. 37.**

(24)—*Procedure on acquittal on the ground of insanity.*—Where a prisoner was convicted by the Sessions Judge, the High Court acquitted him on the ground of insanity under s. 393, Crim. Pro Code, and directed that he should be kept in safe custody until the orders of the Local Government, which the Sessions Judge should apply for, had been obtained regarding him. QUEEN v. PURSORAM DOSS, **7 W.R. Cr. 42.**

(25)—*Sanity of accused doubted—Procedure.*—Where a Court entertains doubts as to the sanity of the accused, the Court should not merely put questions to the accused, but should try the fact of such unsoundness of mind by examining the Civil Surgeon or some other medical officer, and by taking such evidence as might have been procurable from the village at which the accused resides, with the view of ascertaining whether the accused had, at any time, prior to the commission of the crime, exhibited symptoms of insanity. REG. v. S. HIRA PUNJA, **1 B.H.C 33, Cr.**

See ACQUITTAL, 1 W.R. Cr. Cir. 9.

Of accused—Plea of—When valid—*See* ACT X OF 1873, ss. 5, 13, 15 Cr. L.J. 161 = 22 Ind. Cas. 737.

See CONFESSION—CONFESSION TO MAGISTRATES—ADMISSIBILITY, ETC., 3 P.R. 1894, Cr.

Insanity—*concluded.*

See CRIM. PRO. CODE, 1898, s. 272, Rat. Un. Cr. C. 19 = Cr. Rg. 9-8-1869.

See CRIM. PRO. CODE, 1898, ss. 341 and 465, U.B.R. 1892–1896, Vol. I, 38.

Insolvency.

Insolvency—Adjudication order—Effect—No transfer of proceeding to Official Assignee—*See* CRIM. PRO. CODE, 1898, s. 195, 11 M.L.T. 391 = 14 Ind. Cas. 593 = 13 Cr. L.J. 241 = 1912 M.W.N. 536.

Insolvency Act, 1848.

See ST. 11 & 12 VICT., C. 21.

Insolvent.

Unadjudicated insolvent—Receiving property from him—Not receiving stolen property—No offence—*See* PENAL CODE, ss. 410, 499, 8 S. L.R. 55 = 15 Cr. L.J. 675 = 25 Ind. Cas. 1003.

Inspection.

See LOCAL INSPECTION.

(1)—*Inspection of books, the subject-matter of the charge.*—Where a witness produces books which form the subject-matter of the charge against the accused, the accused or his counsel is, at least so far as is necessary for the purposes of the trial, entitled to inspect them. *In the matter of* ABDUL GUFFOOR, **10 C L.R. 54.**

(2)—*Inspection of statements—Direct enquiry.*—Sessions Judges and District Magistrates should inform themselves thoroughy from time to time what business is transacted by their subordinates. Such enquiry is far more effective than the mere inspection of statements. CRIMINAL CIRCULAR NO. 8 of 27th JULY 1871, **16 W.R. Cr. Cir. 2.**

Inspection of Documents.

(1)—*Crim. Pro. Code, ss. 94, 99—Documents produced before Court on search-warrant—Power of Court to order inspection.*—When documents and other things seized upon the premises of an accused person by virtue of a search-warrant issued under s 96 of the Code or brought before Court, the Magistrate would have the power to allow the prosecution the inspection thereof. They stand, when they are brought to the Court, precisely in the same position as documents or things found either upon the person of a prisoner at the time of his arrest or at his house upon a search made by the police, and afterwards forwarded to the Court. But the inspection should be confined to the documents covered by the search-warrant. *In the matter of the petition of* AHMED MAHOMED MAHOMED JACKARIAH AND CO. v. AHMED MAHOMED, **15 C. 109.** (20 Irish L.R. 300, *R.*) [*F.*, 37 M. 112 = 13 Cr.L.J. 493 = 15 Ind. Cas. 493, 5 Bom. L.R. 980; *R.*, 41 C. 261 = 17 C.W.N. 1209 = 14 Cr. L.J. 405 = 20 Ind. Cas 229; 5 Bom. L.R. 978, Rat. Un. Cr. C. 891, 13 Cr. L. J. 693 = 16 Ind. Cas. 501 = 23 M.L.J 32 = 16 C. W.N. 865 = 12 M L.T. 171 = 10 A.L.J. 193 = 1912 M.W.N. 760 = 14 Bom. L.R. 717 = 10 C.L. J. 231.]

Inspection of Documents—*concluded.*

(2)—*Crim. Pro. Code, s. 94—Production of documents—Power of Courts.*—A Magistrate has, under s. 94 of the Code, the power of calling upon any person to produce any document or thing in that person's possession or power, which has any connection with the offence which happens to be under investigation or inquiry. Of course, he cannot call for anything and everything from anybody and everybody. The thing called for must have some relation to, or connection with, the subject-matter of the investigation or inquiry, or throw some light on the proceedings or to supply some link in the chain of evidence. It may be that the thing called for may turn out to be wholly irrelevant to the inquiry; but so long as it is considered to be necessary or desirable for the purposes of the inquiry, the Magistrate has such power. NIZAM OF HYDERABAD v. A. M. JACOB, **19 C. 52.** [*Diss.*, 37 M. 112=13 Cr. L.J. 493=15 Ind. Cas. 493; *R.*, 41 C. 261 =17 C.W.N. 1209=14 Cr. L.J. 405=20 Ind. Cas. 229; 13 Cr. L.J. 764=17 Ind. Cas. 76=16 C.W.N. 1078.]

(3)—*Right of accused to inspect statement of witnesses recorded by a police officer and to obtain copies thereof.*—An accused person on his trial is entitled to call for and inspect the statements of witnesses recorded by a police officer, while making an investigation under s. 161, Crim. Pro. Code, and where the law allows an accused person to inspect documents, the right to obtain copies thereof from the proper officer follows as a corollary. *In the matter of* BOLAKI, **8. C. 189, Oudh.** (16 C. 640, *F.*)

(4)—*Bombay Survey and Settlement Act* I *of* 1865, *s.* 14—*Bombay Act* IV *of* 1868—*Notice to produce evidence—Effect of disobedience.*—The provision in Bombay Act IV of 1868, s. 14, is inapplicable where the notice to produce documents is defective for want of specification of the documents required for inspection. Disobedience of an order to produce documents under cl. 1 of s. 14 of Bombay Act I of 1865 renders the person liable to an adjudication in his absence and does not render him liable to a criminal prosecution. REG. v. MAIKRAM SURAJ RAM, **11 B.H.C. 231.**

See ACCUSED PERSON, 1 Bom L.R. 433.

See CRIM. PRO. CODE, 1898, s. 94, 5 Bom. L. R. 978.

See CRIM. PRO CODE, 1898, ss. 162 and 164, 30 M. 466=17 M.L.J. 471=6 Cr. L.J. 346=3 M.L.T. 14.

See EVIDENCE ACT, 1872, s. 76, 20 M. 189 =2 Weir 763, F.B.=7 M.L.J. 167=2 Weir 120.

Disobeying order for production or—*See* PENAL CODE, ss. 175, 188, 15 P.W.R 1910, Cr.=15 P.R. 1910, Cr.=6 Ind. Cas. 623=11 Cr. L.J. 386=90 P.L.R. 1910.

Inspector's Diary.

Police diaries and reports—*See* EVIDENCE —NON-ADMISSIBILITY OF EVIDENCE, 10 C. L.R. 54.

Instalments.

See HIRE-PURCHASE AGREEMENT, 15 Cr. L.J. 425=24 Ind. Cas. 161=7 Bur. L.T. 222.

Institution of a Criminal Proceeding.

See PENAL CODE, s. 211, 13 Cr. L.J. 303= 14 Ind. Cas. 767=1912 M.W.N. 1125.

Instruments of Gaming.

See GAMBLING.

See GAMING.

(1)—*Act* III *of* 1867—*Fighting birds, bulls, or any other animals.*—Fighting birds, bulls, or any other animals are not "instruments of gaming," and Magistrates cannot order their destruction. QUEEN-EMPRESS v. NGA HMAT GYI, **L.B.R. 1872—1892, 317.**

Lottery-tickets—*See* ACT II OF 1867, ss. 1 and 4, 12 W.R. Cr. 34.

See ACT III OF 1867, s. 6, 6 C.P.L.R. Cr. 17, 3 P.R. 1896, Cr.

See ACT III OF 1867, s. 13, L.B.R. 1872— 1892, 407.

See BOM. ACT III OF 1866, s. 11, Rat. Un. Cr. C. 75=Cr. Rg. 19-6-1873; Rat. Un. Cr. C. 314=Cr. Rg. 72 of 1886.

Insult.

See PENAL CODE, ss. 504, 509.

(1)—*Penal Code, s.* 504—*Criminal insult, what constitutes.*—To constitute an offence under s. 504, I.P.C., it is sufficient if the insult is of a kind calculated to cause the other party to lose his temper and say or do something violent. The public peace can be broken by angry words as well as by deeds. KING-EMPEROR v. CHUNIBHAI, **4 Bom. L R. 78.**

(2)—*Penal Code, s.* 504—*Insulting a person with intention of provoking a breach of peace.*—Where the accused used abusive language against the complainant so as to reduce him to a state of abject terror, *held*, that the accused was guilty under s. 504, inasmuch as the insulting provocation would, under ordinary circumstances, cause a breach of the peace, and that the offender was not protected from the consequences of his act because the person insulted became too terrified to accept the provocation in the manner intended. QUEEN-EMPRESS v. JOGAYYA, **10 M. 353=1 Weir 620.** [*R.*, U. B.R. 1892—1896, 290, Cr., 1 Weir 621, 622.]

(3)—*Penal Code, s.* 504—*What constitutes the offence.*—To constitute an offence under s. 504, Penal Code, an insult known to be likely to provoke and cause a breach of the peace is sufficient. What the law makes punishable under the section is the insulting provocation which, under ordinary circumstances, would cause a breach of the peace to be committed. The mere forbearance of the person insulted from being provoked to commit a breach of the peace is not sufficient to protect the offender. *In re* SOORAPARAZU SINGAYYA, **1 Weir 134= 1 Weir 621.**

See CONTEMPT OF COURT, 15 W.R. Cr. 62.

See PENAL CODE, s. 228, 6 Bom. L.R. 541.

Insult—*concluded.*

To religion — *See* RELIGION, OFFENCES RELATING TO, A.W.N. 1883, 39.

See SECURITY TO KEEP THE PEACE—ON CONVICTION, 1 L.B.R. 262.

Intention.

(1)—*Intention—Natural consequences of an act.*—Although there is no presumption that a person intends what is merely a possible result of his action, or a result which though reasonably certain is not known to him to be so, still, it must be presumed that when a man voluntarily does an act knowing at the time that, in the natural course of events, a certain result will follow, he intends to bring about that result. EMPEROR v. LAKSHMAN RAGHUNATH, **26 B. 558=4 Bom. L.R. 280.** [*R.*, 17 P.R. 1908=32 P.W.R. 1908, Cr.=8 Cr. L.J. 488, 81 P.L R. 1905=13 P.L.R. 1905, Cr =2 Cr. L.J. 83]

(2)—*Intention, inference of.*—Intention, like any other psychological fact, has to be inferred from the act itself. EMPRESS v. KALI PRASANNA KABYABISHARD, **1 C.W.N. 465.**

(3)—*Proof of criminal intention.*—In criminal cases, the presumption of innocence must be displaced by positive evidence. When an act is not *per se* criminal, the specific intent which renders it criminal must be established by cogent evidence. QUEEN-EMPRESS v. RAMANNA, **12 M. 273=1 Weir 375.**

(4)—*Inference of intention.*—The knowledge or intention, with which a particular act is done, is usually to be inferred both from the nature of the act done, and from all other circumstances in the case which throw light upon the motive or the object with which such act was done, and the state of the mind of the accused at the time of committing the act. EMPRESS v. SHEIKH PYAO, **27 P.R. 1883, Cr.**

(5)—*Intention or knowledge inferred from nature and extent of injury—Accused entitled to benefit of doubt.*—The intention or knowledge of the accused can only be inferred from the nature and extent of the injury, and, on this point, the accused is entitled to the benefit of the doubt. KING-EMPEROR v. NGA TOK HLA, **U.B R. 1897—1901, Vol. I, 316.**

(6)—*Intention—Unforeseen result.*—An accused person should be convicted and punished for the hurt which he intended to cause, or might reasonably be held likely to cause by the act done and not for an unforeseen result of that act. MUHAMMAD ALI v. CROWN, **5 P.W.R. 1913, N.W.F P., Cr.=157 P.L R. 1913.**

(7)—*Robbery - Dishonest intention.*—Dishonest intention is the main ingredient in the offence of robbery. HIGH COURT PROCEEDINGS, 28TH OCTOBER, 1870, **5 M.H.C App. 39.**

See ACT XVIII OF 1869, ss. 20, 29, 6 M.H.C. App. 5=1 Weir 900.

Notice of, to build — Commencement of building in anticipation of sanction—Refusal of sanction—Effect—*See* BEN. ACT III OF 1884, ss. 237, 238, 25 C. 419.

Intention—*continued.*

Omission to set out the guilty intention in a charge—*See* CRIM. PRO. CODE, 1898, s. 537, 22 C. 391.

House-breaking by night— Presumption of intention — *See* CRIMINAL TRESPASS, 16 C. 657.

Specification of, in the charge—Proof of intention — *See* CRIMINAL TRESPASS, 22 C. 391.

See CRIMINAL TRESPASS, A.W.N. 1885, 50.

See CULPABLE HOMICIDE NOT AMOUNTING TO MURDER, 4 L B.R. 367=9 Cr. L.J. 364.

See EVIDENCE ACT, 1872, ss. 14, 15, 9 C. L.J. 610=36 C. 573=13 C.W.N. 973=2 Ind. Cas. 601.

See FALSE EVIDENCE, 3 C.W.N. 81, 3 N. W. P. 133.

See FORGERY, 9 C. 53=11 C.L.R. 169, 14 C. 513.

See HOUSE-TRESPASS, 4 C.L.J. 169=4 Cr. L.J. 144.

How to gather—Value of circumstantial evidence—*See* JURY, 12 Cr. L.J. 329=10 Ind. Cas. 929.

See OFFENCE, 24 B. 287=1 Bom. L.R 678.

See PENAL CODE, ss. 24, 25, 8 A. 653= A.W.N. 1886, 264.

When, is a presumption of law or fact—*See* PENAL CODE, ss. 84, 85, 86, 7 N.L.R. 180.

See PENAL CODE, ss. 86 and 300, 4 L.B.R. 306=9 Cr. L.J. 5.

Intention of editor and publisher—Contributions to the paper, admissibility of to know intention—*See* PENAL CODE, s 124-A, 22 B. 112.

See PENAL CODE, s. 124-A, 5 M.L.T. 393= 32 M. 384=9 Cr. L.J. 456=2 Ind. Cas. 33 ; 12 Bom. L.R. 675.

See PENAL CODE, s. 300, cl. IV, 263 P.L.R. 1914=15 Cr. L.J. 610=31 P.R. 1914, Cr =25 Ind. Cas. 522=45 P.W.R. 1914, Cr.

Murder—Grievous hurt—Hanging a human body believing the person to be dead and thereby causing death, if murder — to kill—*See* PENAL CODE, ss. 300, 325, 18 C.W.N. 1279= 15 Cr. L.J. 709=26 Ind. Cas. 157.

Mischief — Motive — Cutting a channel through railway to let out water from fields—*See* PENAL CODE, s. 427, 16 C.W.N. 263=13 Ind. Cas. 826=13 Cr. L.J. 138.

Alternative finding as to intent—Conviction —*See* PENAL CODE, s. 441, 5 P.R. 1886, Cr.

House-trespass—Trespass to establish title—to annoy or intimidate—Inference of intention from acts—*See* PENAL CODE, ss. 441, 457, 9 Ind. Cas. 152=21 M.L J. 161=9 M.L.T. 283= 12 Cr. L.J 30

Entry in order to assert a right in the land is not criminal trespass—to intimidate, etc., must be found—*See* PENAL CODE, s. 447, 1912 M.W.N. 395=15 Ind. Cas. 317=13 Cr. L.J. 477.

Intention—*concluded.*

Intent to commit offence—Nature of—*See* PENAL CODE, s. 448, 10 M.L.T. 118=1911, 2 M.W.N. 71=21 M.L.J. 781=12 Cr.L.J. 453=11 Ind. Cas. 797.

Onus—Defect in charge—Omission to set out intention in charge—Cross-examination of accused—*See* PENAL CODE, ss. 464, 465, 467, 17 C.W.N. 354=18 Ind. Cas. 881=14 Cr. L. J. 129.

Of individual member of unlawful assembly —*See* UNLAWFUL ASSEMBLY, A W.N. 1882, 179.

Intention of Legislature.

See STATUTES, CONSTRUCTION OF, Rat. Un. Cr. C. 658=Cr. Rg. 23 of 1893.

Interlocutory Order.

See CRIM. PRO. CODE, 1898, ss. 423, 435, 439, 70 P.L.R. 1904.

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 11 C.W.N. 79=4 Cr. L.J. 433.

See REVISION—GENERAL PRINCIPLES, 31 P.R. 1890, Cr.

See TRANSFER OF CRIMINAL CASES—MISCELLANEOUS CASES, 8 C. 63.

Interpreter.

(1)—*Interpreter—Sworn interpreter—Necessity for Crim. Pro. Code* (1861), *s.* 198.—There is no provision in s. 198, Crim. Pro. Code, 1861, for making use of a regularly sworn interpreter to interpret his evidence to a party making a statement, except in cases where his services are required by the Court. It is the presiding officer's duty to see that the evidence is clearly and properly interpreted to the party making a statement. QUEEN v. MUDUN MUNDLE, **16 W R. Cr. 71.**

Omission to administer oath to interpreter, effect of—*See* SANCTION TO PROSECUTE—NOTICE OF SANCTION, 9 C.L J. 690=13 C.W. N. 942=10 Cr. L. J. 150=36 C. 808=2 Ind. Cas. 697.

Interrogatory.

See EVIDENCE ACT, 1872, s. 33, 19 B. 749.

Interruption.

To Court—*See* PENAL CODE, s. 228, 6 Bom. L.R. 541.

Intervenor.

(1)—"*Intervenor," right of, to come in—Crim. Pro. Code* (1872), *s.* 536.—There is no provision in the Code for allowing an "intervenor" to come in, in the middle of proceedings under this section. *In the matter of the petition of* KUNUND NARAIN BHOOP, **4 C. 650=3 C.L R. 551.** [*Appr.*, 21 C. 404; *Observed*, 30 C. 155.]

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 3 C.W.N. 329.

Intimidation.

See CRIMINAL INTIMIDATION.

Intoxicating Drugs.

Yeast balls not—etc.—*See* ACT XXII OF 1881, ss. 3 (*b*), 41, L.B.R. 1872—1892, 571.

See PENAL CODE, ss. 84, 302, A.W.N. 1906, 193=3 A.L.J. 463.

Intoxication.

See DRUNKENNESS.

(1)—*Voluntary drunkenness to be taken into account for throwing light on intention.*—In a case of murder committed in a drunken squabble, it was held that voluntary drunkenness, though it did not palliate any offence, might be taken into account as throwing light on the question of intention. QUEEN v. RAM SAHOY BHUR, **W.R. 1864, Cr. 24.**

(2)—*Offences committed under—Palliation of offence.*—Intoxication should not be treated as an aggravation of an offence. Nor is it any excuse for it. QUEEN v. ZULFUKAR KHAN, **8 B.L.R. 21=16 W.R.Cr. 36.** [*R.*, 13 Cr. L J. 167=13 Ind. Cas 919=7 N.L.R. 180.] *See, also,* QUEEN v. AKULPUTTEE GOSSAIN, **5 W.R. Cr. 58**; QUEEN v. BODHEE KHAN, **5 W.R. Cr. 79.**

(2-*a*)—*Intoxication, offence committed under—Palliation of offence.*—Intoxication can be no excuse for a man literally throttling to death another weaker man that man being intoxicated also. QUEEN v. AKULPUTTEE GOSSAIN, **5 W.R. Cr. 58.**

Death caused under provocation—Penal Code, s. 304—*See* CULPABLE HOMICIDE NOT AMOUNTING TO MURDER, 2 L.B.R. 204.

Causing death by an act done while in a state of—*See* CULPABLE HOMICIDE NOT AMOUNTING TO MURDER, 1 Weir 301.

See MURDER, 41 P.R. 1866, Cr.

Effect of, on criminality—*See* PENAL CODE, ss. 84, 85, 86, 7 N.L.R. 180.

See PENAL CODE, ss. 97, 300, 302, 12 Cr L. J. 477=12 Ind. Cas. 85.

Investigating Officer.

Powers of—*See* CRIM. PRO. CODE. 1898, ss. 202, 203, 437, 439, 33 C. 1282=5 Cr. L.J. 83.

Investigation.

See LOCAL INVESTIGATION.

See POLICE INVESTIGATION.

(1)—*Crim. Pro. Code, s.* 556—*Investigation by Magistrate—Trial by same Magistrate—Validity.*—Where a District Magistrate took an active part in the investigation of a case, he was held not to be competent to have it tried himself. KANK SAING v. KING EMPEROR, **14 Bur. L R 335=9 Cr.L.J. 66.**

See CRIM. PRO. CODE, 1898, s. 4, 26 B. 533 =4 Bom. L.R. 271.

In a case under s. 145, whether an enquiry in a Criminal Court—*See* CRIM. PRO. CODE, 1898, ss. 4, cl. (*k*), 145 and 526, 28 C. 709 =5 C.W.N. 749.

See CRIM. PRO. CODE, 1898, s. 161, U.B.R. 1897—1901, Vol. I, 31.

See CRIM. PRO CODE, 1898, s. 437, U.B.R. 1892—1896, Vol. I, 48.

Iron.

Iron includes steel. GANGA NARAIN PAL v. CORPORATION OF CALCUTTA, 10 **C.L.J. 486 = 4 Ind. Cas. 438 = 11 Cr.L.J. 277.**

Irregularity.

See CRIM. PRO. CODE, 1898, ss. 529 to 538.
See ILLEGALITY.

(1)—*Crim. Pro. Code* (1882), *s.* 529—*Scope.* —S. 529 deals with acts done by a Magistrate in no way empowered by law to do those acts; it has no reference to a Magistrate empowered otherwise under the Act to tender pardon, but not possessing jurisdiction over the particular offence. QUEEN-EMPRESS v. CHIDDA, **20 A. 40 = A.W.N. 1897, 173.** [*D.*, 4 C.W.N. 821.]

(2)—*Irregularity in enquiry—Effect on trial.* —An irregularity in the conduct of an enquiry, even though sufficiently serious to induce the High Court to annul a commitment, is not sufficient to justify the annulment of the trial after the commitment had been made and a trial had upon it, unless the irregularity has caused a failure of justice by prejudicing the accused in his defence. QUEEN-EMPRESS v. JAMSHEDJI, **Rat. Un. Cr. C. 177 = Cr. Rg. 31-3-1881.**

(3)—*Crim. Pro. Code* (1882), *s.* 537—*Absconding of accused after evidence taken—Conviction in his absence—Review.*—An accused was present throughout a trial whilst the evidence was taken; but he having thereafter absconded, the Magistrate passed sentence upon him in his absence, and on his re-arrest, re-pronounced his judgment: *Held* that the case might be regarded as falling under s. 537 of the Crim. Pro. Code at least for the purposes of a review not sought by the accused, but that the Magistrate should not have pronounced judgment in the absence of the accused. QUEEN-EMPRESS v. GHOTIRAM, **Rat. Un. Cr. C. 325 = Cr. Rg. 12 of 1887.** [*R.*, 14 Cr.L.J. 287 = 19 Ind. Cas. 719 = U.B.R. 1912, 152.]

(4)—*Case triable with aid of assessors tried by jury*—Where a Sessions Judge tries a charge by a jury instead of with the aid of assessors, the irregularity does not vitiate the trial, which can be treated as one held with the aid of assessors, and the verdict of the jury treated as their opinion as assessors. QUEEN-EMPRESS v. LALBU, **Rat. Un. Cr. C. 961 = Cr. Rg. 18 of 1898.**

(5)—*Irregular procedure in criminal trials—Effect of waiver by the accused.* — Where criminal proceedings are substantially bad in themselves, the defect will not be cured by any waiver or consent of the accused or their pleaders. HOSSAIN BUKSH v. EMPRESS, **6 C. 96 = 6 C.L.R. 521.** (2 C. 23, *R.*)

(6)—*Erroneous order of commitment by Sessions Judge - Cure of defect—Crim. Pro. Code* (*Act X of* 1872), s. 283 – Where, however, a trial under a commitment made by an erroneous order of Sessions Judge has been held and no actual failure of justice has been caused by such error, s. 283 of the Crim. Pro. Code would be a bar to the reversal of the judgment. *In the matter of the petition of* KHAMIR; EMPRESS v. KHAMIR, **7 C. 662 = 10 C.L.R. 8.**

(7)—*Crim. Pro. Code* (1882), *ss.* 87, 537—*Irregularities in the publication of proclamation—Competency of Magistrate enforcing penal consequences of disobedience to resort to the provisions of s.* 537—*Powers of appellate Courts*—A Magistrate enforcing the penal consequences of alleged disobedience to a proclamation under s. 87, Crim. Pro. Code, cannot utilize s. 537 in order to cure any defect in the mode of the publication of the proclamation, although it may be open to the Sessions Judge, on appeal, or to the High Court to consider whether the provisions of s. 537 apply to such defect. QUEEN-EMPRESS v. SUBBARAYAR, **19 M. 3 = 2 Weir 40 = 1 Weir 86**

(8)—*Crim. Pro. Code, s.* 537—*Disobedience to express provision of law as to the mode of a trial.*—A disobedience to an express provision of the law as to the mode of trial cannot be regarded as a mere irregularity and, therefore, it is not curable under s. 537 of the Code. SUBRAHMANYA IYER v. KING-EMPEROR, **25 M. 61 = 11 M.L.J. 233 = 3 Bom. L.R. 540 = 28 I.A. 257 = 5 C.W.N. 866 = 2 Weir 271 = 10 M.L.J. 147 = 2 Weir 712 (P.C.) = 8 Sar. 160.** [*F.*, 17 C.P.L.R. 159.]

(9)—*Crim. Pro. Code* (1898), *ss.* 531, 177, 179, 180, 181, 183—*Offence committed in one district—Trial by a Magistrate in another district, not a material irregularity.*—Where an offence is committed within the jurisdiction of a Sub-Divisional Magistrate in one district, but is tried by a Magistrate in another district, the irregularity of the trial is cured by s. 531 of the Code. This section is not limited to cases, where the offence committed, within the jurisdiction of a Court, is tried by that Court, outside the limits of the local area of its jurisdiction. Ss. 177, 179, 180, 181 and 183 must be read together with s. 531. The intention of s 531 is to provide against the contingency of a finding, sentence or order regularly passed by a Court, in the case of an offence committed outside its local area, being set aside, when no failure of justice has taken place. EMPEROR v. DORASAMI MUDALI, **30 M. 94 = 1 M.L.T. 343 = 4 Cr. L.J. 300.** [*R.* 18 P.W R. 1908, Cr]

(10)—*Waiver of.*—An accused person, submitting himself to the jurisdiction of a Magistrate, should be deemed to have waived any irregularity, touching the manner in which the Magistrate has enforced such accused's appearance before himself. EMPEROR v. NARBAD BEDIYA, **16 C.P.L.R. 9.** (25 C. 20, 10 C. 604, *R.*)

(11)—*Waiver of.*—If criminal proceedings are substantially bad, they will not be cured by any waiver of consent of the prisoner. EMPEROR v. KASIM, **15 C.P.L.R. 66.** (2 C. 23, *R.*)

(12)—*Crim. Pro. Code, s.* 147—*Want of notice—Irregularity.*—In this case it was held, (1) that notice of procedure under s. 147, Crim. Pro. Code, must be given to accused to give

Irregularity—*continued.*

him an opportunity of showing that the right claimed has not been exercised within three months next before the institution of the enquiry; it would be a grave irregularity in the exercise of jurisdiction, if no such notice is given. Accordingly, (2) where no notice under s. 147 was given, it was held to empower the Chief Court to interfere on the revision side with the order. CROWN v. BHANA, **12 P.R. 1909, Cr. = 105 P.L.R. 1909 = 11 P.W.R. 1908, Cr. = 4 Ind. Cas 860 = 11 Cr. L.J. 61.**

(13)—*Irregularities in procedure.*—In this case the Judicial Commissioner drew attention to the irregularity of the Magistrate in taking up the case on the Criminal side, and of the Commissioner in admitting an appeal from an order of discharge; but as the case had occupied so much of the attention of the lower Courts, he would not interfere. MEHR KHAN v. UZMAT KHAN, **7 P.R. 1866, Cr.**

(14)—*Irregularities in procedure.*—Case where the attention of the Subordinate Magistrate drawn to certain irregularities in procedure. QUEEN v. JEEWA, **108 P.R. 1866, Cr.**

(15)— Irregular procedure of Magistrates pointed out. KAMRAN v. GHOZAK, **8 P.R. 1866, Cr.**

(16)—Irregular proceedings quashed by the Sudder Court and a regular retrial ordered. CROWN v MEHR SINGH, **15 P.R 1866, Cr.**

(17)—Irregular proceedings quashed and proper trial by Sessions Court ordered. CROWN v. AHODHA PERSHAD, **16 P.R. 1866, Cr.**

See ACT XXXVI OF 1860, s. 52, 3 B.H.C. Cr. 36, note.

See ACT V OF 1876, s. 22, 15 A. 208 = A.W. N. 1893, 208.

False statement before Registrar — Irregularities in proceedings—Effect with respect to jurisdiction of Criminal Courts—*See* ACT III OF 1877, ss. 72 and 73, 10 C. 604.

See CANTONMENT CODE, 1899, s. 167, cl. (*j*) 3 A.L J. 694 = 4 Cr.L.J. 374 = A.W.N. 1906, 303.

See CHARGE—GENERAL, 15 M.L.J. 224 = 2 Cr.L.J. 381 = 2 Weir 231.

See CHARGE — ADDITION OF CHARGE, 9 Bom. L.R. 148 = 5 Cr.L.J. 164 = 31 B. 218.

See CHARGE TO JURY—MISDIRECTION, 30 M. 44 = 1 M.L.T. 399 = 5 Cr.L.J. 78.

See COMMITMENT TO SESSIONS COURT, 2 S.L.R. 9, Cr. = 10 Cr.L.J. 224.

See COMPENSATION—GENERAL, 2 S.L.R. 14, Cr. = 10 Cr.L.J. 229.

Case irregularly sent by Civil Court—Investigation without complaint—*See* COMPLAINT —INSTITUTION OF COMPLAINT—PRELIMINARIES, 8 W.R. Cr. 9.

See COMPLAINT—PROCEDURE ON RECEIPT OF COMPLAINTS, 5 M.L.T. 1 = 32 M. 3 = 9 Cr. L.J. 108 = 1 Ind. Cas. 22.

See CRIM. PRO. CODE, 1898, ss. 10 (2), 12, 528, 34 C 918 = 6 Cr.L J. 360.

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See CRIM. PRO. CODE, 1898, s. 30, 7 C.W. N. 457.

See CRIM. PRO. CODE, 1898, ss. 88, 89, A.W.N. 1904, 159.

Summons issued under s. 107—Proceedings taken under s. 110—Prejudice to accused—*See* CRIM. PRO. CODE, 1898, ss. 107, 110, 537, 14 Cr.L.J. 65 = 18 Ind. Cas. 401.

Specific Relief Act (I of 1877), s. 42—Claim of private right by plaintiff over land—Claim of public right by defendants—Cause of action —Parties—Persons claiming public right are alone necessary parties—Civ. Pro. Code (Act XIV of 1882), s. 30—Irregularity in not recording formal order—*See* CRIM. PRO CODE, 1898, s. 133, 6 Ind. Cas. 46.

See CRIM. PRO. CODE, 1898, s. 145, 25 A. 537 = A.W.N 1903, 102, 30 C. 155 = 6 C.W.N. 757, F.B., 8 C W.N. 590, 32 C. 287, 33 C. 68 = 9 C.W.N. 1046 = 2 C.L.J. 241 = 2 Cr. L.J. 618, 5 C.W.N. 710, 6 C.W.N. 104, 7 O.C. 334.

Omission of Magistrate to inform accused of his right to be tried by another Court—*See* CRIM. PRO. CODE, 1898, ss. 190, 191, 537, 28 A. 212 = A.W.N. 1905, 258 = 2 A.L J. 745 = 2 Cr. L J. 809.

See CRIM. PRO. CODE, 1898, ss. 195 and 477, S.C. 303, Oudh.

See CRIM. PRO CODE, 1898, ss. 195, 537, 5 O.C. 164.

See CRIM. PRO. CODE, 1898, ss. 202, 203, 441, 5 M.L.T. 79 = 2 Ind. Cas. 618.

Three separate complaints of offences of the same kind—Framing of a single charge setting out one offence in respect of three complaints —if vitiates trial.—*See* CRIM. PRO. CODE, 1898, ss. 233, 234, 535 (1), 537 (*a*), 18 C.W.N. 183.

In charge—Misjoinder of offences and parties —Charge framed, confusing—Prejudice—Retrial by a new Magistrate—*See* CRIM. PRO. CODE, 1898, ss.233, 235, 239, 17 C W.N. 419 = 19 Ind. Cas. 308 = 14 Cr. L.J. 212.

Disobedience to express provision as to mode of trial—*See* CRIM. PRO. CODE, 1898, s. 234, 15 C.P.L.R. Cr. 53.

See CRIM. PRO. CODE, 1898, ss. 276, 279, 326, 7 C.W.N. 188.

See CRIM. PRO. CODE, 1898, ss. 299 (*a*), 302, 303, 439, 537 (*d*), 3 L.B.R. 75 = 3 Cr. L.J. 1.

See CRIM. PRO. CODE, 1898, ss. 307 and 337, 13 C.W.N. 757 = 9 C.L.J. 638 = 36 C. 629 = 2 Ind. Cas. 497.

See CRIM. PRO CODE, 1898, ss. 310 (*a*), 537, 13 C.L.R. 110.

See CRIM. PRO. CODE, 1898, s. 367, 18 M. L.J. 197 = 7 Cr. L.J. 459.

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See DEFAMATION, 3 P.W.R. 1909, Cr. = 9 Cr. L J. 154 = 1 Ind. Cas. 99.

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Evidence—Witnesses produced by accused in defence—Evidence not believed—Accused convicted—Witnesses tried for perjury acquitted—Conviction of accused set aside for—Fresh trial —*See* EVIDENCE—GENERAL, 41 P.L.R. 1914 = 17 P.W.R. 1914, Cr. = 15 Cr. L.J. 62 = 22 Ind. Cas. 334.

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See JOINT TRIAL, A.W.N. 1907, 208 = 6 Cr. L.J. 215, 5 M. 20 = 2 Weir 303.

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Power of Judge—Deciding case on evidence taken by his predecessor—in Criminal case—*See* JUDGE, 21 W.R. Cr. 47.

See JUDGE AND JURY, Rat. Un. Cr. C. 452.

See JUDGMENT, 21 C. 121, 23 C. 502.

Trial by Bench of Magistrates—Some not present throughout the trial—Whether curable —*See* MAGISTRATE, JURISDICTION OF — GENERAL JURISDICTION, 9 M.L.J. 335.

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See PENAL CODE, ss. 372 and 373, 12 M. 273 = 1 Weir 375.

Order to prosecute for offence not committed — Material — Interference in revision —*See* PROSECUTION, 8 A.L.J. 537 = 12 Cr. L.J. 432.

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Presentation of petition of appeal by an appellant in—To officer in charge of—*See* CRIM. PRO. CODE, 1898, ss. 419, 420, 9 M. 258 = 1 Weir 789.

See CRIM. PRO. CODE, 1898, ss. 421, 423, 426, Rat. Un. Cr. C. 22 = Cr. Rg. 14-9-1869.

Escape from—"Return from transportation" —*See* PENAL CODE, ss. 224, 226, 13 Cr. L.J. 54 = 13 Ind. Cas. 390 = 4 Bur. L.T. 261.

Jail Certificate.

Not proof of previous conviction—*See* PREVIOUS CONVICTION, 2 L.B.R. 53.

Jail Code.

Rules in the—Whether they have the force of law—*See* CRIM. PRO. CODE, 1898, ss. 154, 167, 172, 13 Cr. L.J. 65 = 16 C.W.N. 145 = 13 Ind. Cas. 721.

Jail Manual.

Disobedience of rules in—Whether penal—*See* ACT IX OF 1894, s. 54, 7 S.L.R. 49.

Jailor.

See BOM. ACT II OF 1874, s. 30, Rat. Un. Cr. C. 136 = Cr. Rg. 5-8-1878.

Jails Act.

See BOM. ACT II OF 1874.

Jails, Presidency Act.

See ACT XII OF 1867.

Jamadar.

Order appointing an officer as commissioned officer with retrospective effect—*See* ACT XI OF 1878, ss. 14, 15, 27 P.R. 1885, Cr.

Jhingara Marriage.

See BIGAMY, 25 P.R. 1888, Cr.

Joinder of Charges.

1.—GENERAL.
2.—WHEN LEGAL.
3.—MISJOINDER OF CHARGES.

See CRIM. PRO. CODE, 1898, ss. 233—240.

See JOINT TRIAL.

——1.—General.

(1)—*Crim. Pro. Code* (1898), s. 235 (1), '*transaction*' *meaning of the word in—Offences to be tried jointly to constitute one continuous act—Proximity in time not essential.*—The word 'transaction' in s. 235 (1) of the Code suggests not necessarily proximity in time so much as continuity of action and purpose, that is to say, it is not necessary that the act should have been committed, all on the same occasion, but it is sufficient that though separated by a distinct interval of time they are closely connected by continuity of purpose or progressive action towards a single object. So in this case where the prisoner, for the removal of a cart of which he committed theft, broke into the cattle shed of a neighbour of the cart owner, took out two bullocks and drove off the cart to a certain place for selling the same, it was *held*, that the two thefts constituted part of one transaction within the meaning of the said section, and the circumstance of the theft of the bullocks prefaced by house-breaking essential to the perpetration of the entire offence could make no difference. The acts in this case were further connected by the prisoner's admission that he took the bullocks because the removal of the cart would otherwise have been impossible, and the two acts were therefore rightly tried together as unmistakably forming part of a single transaction. EMPEROR v. HARI RAOT, **2 N.L.R. 147=4 Cr. L.J. 420.**

(2)—"*Offences of the same kind,*" *scope of the expression—Crim. Pro. Code, s. 453—Separation of charges and trials*—The words "offences of the same kind" in s. 453 are not to be limited by the explanation to that section, but include such cases as where a man has, within a year, committed two offences of house-breaking. Nor are they limited to offences against the same person. The explanation to s. 453 must be understood as extending and not limiting the meaning of the section—*Per Field, J.* Judges should take care that prisoners are not prejudiced by the joinder of charges, and should be anxious to lend a willing ear to any application for separation of charges and for separate trials upon separate charges.—*Per Norris, J.* MANU MIYA v. EMPRESS, **9 C. 371 =11 C.L.R. 522.** (4 A. 147, *Diss.*) [*Not F.*, 9 Cr. L.J. 277=13 C.W.N. 418=1 Ind. Cas. 335; *F.*, 10 Cr. L.J. 272=3 Ind. Cas. 319=9 C.L.J. 149=13 C.W.N. 507=5 M.L.T. 349; *Appr.*, Rat. Un. Cr. C. 331; *R.*, 15 B. 491.]

Joinder of Charges—continued.

——1.—General—*continued.*

(3)—*Crim. Pro. Code* (1882), *ss.* 247, 253—*Joinder of charges under summons and warrant cases—Nature of the trial—Complainant's default—Proper order.*—Where two charges arising out of the same transaction are made against an accused person, one of which is a summons case, and the other a warrant case, the case should be tried as a warrant case. If, in such a case, the complainant is absent on the day to which the hearing of the case is adjourned, the Magistrate should make an order, under s. 253 of the Code, for discharge and not for acquittal under s. 247. RAJNARAIN KOONWAR v. LALA TAMOLI RAUT, **11 C. 91.** [*F.*, 22 B. 711.]

(4)—*Crim. Pro. Code* (1898), *ss.* 233, 235—*Joinder of charges of a summons case and a warrant case—Procedure.*—Where the accused had committed the offences of mischief and of insult likely to produce breach of peace on two different occasions, charges of both the offences could not be tried together as they did not form parts of one transaction within s. 235, Crim. Pro. Code. Where two charges, one of an offence punishable with imprisonment exceeding six months, and the other of an offence not so punishable, are tried together at one trial, the trial of the two together forms only one case, not two. And as the case relates to an offence punishable with more than six months' imprisonment it is a warrant case. The fact that it relates to some other offence also does not alter its nature and so formal charges should be framed for both offences. KING-EMPEROR v. MAUNG GALE *alias* PAN ZIN, **3 L.B.R. 113=3 Cr.L.J. 350.**

(5)—*Crim. Pro. Code* (1898), *s.* 110, *cl.* (*d*)—*Security for good behaviour—Joinder of charges.*—The law, as to the joinder of charges against a person accused of definite offences, has no application to an enquiry under s. 110, cl. (*d*). WAHID ALI KHAN v. EMPEROR, **11 C.W.N. 789=6 Cr.L J. 1.** (25 M. 61, *R.* and *D.*)

(6)—*Crim. Pro. Code* (1898), *ss.* 233 *to* 239—*Joinder of offences and parties in the preliminary enquiry—Validity of commitment.*—The sections of the Crim. Pro. Code relating to joinder of charges, *viz.*, 233 to 239, refer to the trial of the accused. The ruling of the Privy Council in 25 M. 61 cannot be extended to preliminary enquiries, held by Magistrates committing a case to the Sessions Court, so as to render the commitment itself illegal, because there was misjoinder of offences or of offenders in the preliminary enquiry. *In the matter of* GOVINDU, **26 M. 592=2 Weir 262=2 Weir 297.** (25 M. 61, *Expl.*)

(7)—*Offences committed in one year in three separate transactions.*—There is no provision of the Crim. Pro. Code which says all offences committed within one year in the course of

Joinder of Charges—continued.

——**1.—General**—*continued.*

three separate transactions may be tried at one trial. KASI VISVANATHAN v. EMPEROR, **30 M. 328=17 M.L.J. 141=2 M.L.T. 177=5 Cr.L.J. 341.**

(8)—*Robbery on same night in several different places—Crim Pro. Code* (1872), s. 453—*Separate and distinct offences of same kind.*—Persons committed on three separate and distinct charges for three separate and distinct robberies, committed on the same night in three different houses, must be tried separately on each of the three charges. QUEEN v ITWAREE DOME, **6 W.R.Cr. 83.**

(9)—*Dacoity and receiving stolen property—Distinct offences—Penal Code*, ss. 395, 412.—The practice of dividing the facts which constitute parts of one offence into several minor offences is not legal. So a person convicted of dacoity cannot be convicted also of dishonestly receiving stolen property transferred by commission of dacoity when there is no evidence of the commission of more than one offence. QUEEN v. SHAHABHUT SHEIKH, **13 W.R. Cr. 42.**

(9-*a*)—*Dacoity—Offence committed on different days — One trial — Illegality.*—Where four accused were charged and tried together for two offences of dacoity committed on 30th May and 2nd June 1909, not forming part of the same transaction: *Held* that the trial was bad and that the convictions should be quashed. SHANMOOGA TEVAN, SINNAN THEVAN v. EMPEROR, **7 Ind. Cas. 390=11 Cr. L.J. 477=8 M.L.T. 286.**

(9-*b*)—*Crim. Pro. Code*, s. 233—*Penal Code* (*Act* XLV *of* 1860), s. 411—*Stolen property—Possession of property stolen from several persons at different times—Charge, defect in.*—Unless it appears that articles for the possession of which the accused is charged under s. 411, I.P.C., came in his possession on different occasions, the trial is not irregular on account of the fact that the articles were stolen from several persons at different times when it is not shown that the accused is prejudiced on account of a defect in the charge, the Court of appeal cannot interfere with the conviction. WASAWA SINGH v. KING EMPEROR OF INDIA, **36 P.L.R. 1910=8 Ind. Cas. 229=11 Cr.L.J. 597.** (10 C W N. 520, 11 C.W.N. 1128, 13 C.W.N. 418, 13 C.W.N. 1067, *R.*)

(10)—*Charges for distinct offences—Separate charges and trials—Several offences under one section of Penal Code.*—Where a person is charged with several offences under one section of the Penal Code, the proper procedure is to try the accused under separate charges for each of the several distinct offences under the section. QUEEN v. SOBRAI GOWALLAH, **20 W. R. Cr. 70.**

(11)—*Crim. Pro. Code, Act* V *of* 1898, ss. 233, 234—*Penal Code*, s. 161—*Bribe collected from several persons—Charges.*— Where a bribe was collected by public subscription and paid in a lump sum to the accused, the latter cannot be charged under s. 161 of the Penal Code, merely with the receipt of the whole sum collected, but he must be charged with receipt of not more than three separate items making up the bribe. EMPEROR v NAND LAL, **A.W.N. 1904, 223=1 Cr. L.J. 875.** (25 M. 61, *Appl.*) [*D.*, 12 Cr. L.J. 217=146 P.L. R. 1911=32 P.W.R 1911, Cr.=11 P.R. 1911, Cr.=10 Ind. Cas. 156.]

(12)—*Crim. Pro. Code* (1882), s. 215—*Joinder of charges — Quashing of commitment.*—Three accused were jointly committed to take their trial before the Sessions Court on the following charges, *viz.*, the first accused under s. 457, of seven distinct offences committed within one year, all the three accused under s. 411, I P.C., for dishonest possession of and dealing with stolen property belonging to seven different persons, and under s. 413, I.P.C., for habitually receiving and dealing in stolen property. *Held* that the commitment was bad and must be quashed. EMPRESS v. SHEODIN, **A.W.N. 1883, 39.**

(13)—*Joinder of charges.*—Two charges of robbery committed in respect of different persons and at different times and places, though within the space of one year, should be separately committed and tried. EMPRESS v. DUKHI, **A.W.N. 1883, 107.**

(14)—*Crim. Pro. Code* (1898), ss. 222, 233, 234, 235, 236, 239, 403—*Criminal breach of trust—Indian Penal Code* (*Act* XLV *of* 1860), s. 409—*Trial of accused—Joinder of charges—Previous acquittal—Bar to trail.*—The accused was tried for the offence of criminal breach of trust as a public servant in respect of Rs. 12 odd, and was acquitted of the offence. He was again tried for the same offence in respect of another item of Rs. 19 odd, misappropriated during the same period as that to which the Rs. 12 related, and was convicted. On appeal, the Sessions Judge acquitted the accused on the ground that his previous acquittal was a bar to the second trial:—*Held*, reversing the order of acquittal, that the previous acquittal did not, under the circumstances, operate as a bar to the accused's conviction at the second trial. S. 233, Crim. Pro Code, contains the general rule, namely, that, for every distinct offence of which any person is accused, there shall be a separate charge, and every such charge shall be tried separately. To this rule there are several exceptions, *viz.*, those contained in ss. 234, 235, 236 and 239 of the Code. S. 222, Crim. Pro. Code, is an exception to another general rule that, at a trial for an offence, certain particulars must be given in the charge. Clause 2 of s. 222 modifies that rule as to charges for criminal breach of trust, but does not restrict in any way the scope and object of s. 234 of the Code. EMPEROR v. KASHINATH BAGAJI SALI, **12 Bom. L.R 226=5 Ind. Cas. 970=11 Cr. L.J. 337.**

(15)—*Crim. Pro. Code* (1898), ss. 233, 239, 537.—Irregularities under ss. 233, 239, Crim.

Joinder of Charges—continued.

——1.—General—*concluded.*

Pro. Code, are not curable under s. 537. JANG v. EMPRESS, **5 P.R. 1900**, **Cr. = P.L R. 1900, p. 61.**

See CHARGE—GENERAL, 39 P.R. 1888, Cr., 6 P.R. 1896, Cr., 7 P R. 1901, Cr., 17 P.R. 1903, Cr. = 149 P.L.R. 1903.

See CRIM. PRO. CODE, 1898, s. 222 (2), 7 A. L.J. 897.

——2.—When legal.

(1)—*Crim. Pro. Code* (1872), *s.* 453, *scope of —Distinct offences of the same kind committed during the year.*—S. 453 of the Crim. Pro. Code of 1872 simply places a statutory limit on the number of charges, which may legally form part of a single trial and an accused may be separately charged and tried on the same day for any number of distinct offences of the same kind committed during the year. EMPRESS v. DONONJOY BARAJ, **3 C. 540 = 1 C.L R. 478.**

(2)—*Crim. Pro. Code* (1882), *ss.* 234 *and* 235 —*Embezzlement of public money on three occasions within a year.*—Where a Post Master was charged with criminal breach of trust in regard to three sums of money paid to him within a year by different persons for money orders, *held*, that the joinder of the charges was not illegal, the offences being of the same kind, *viz.*, embezzlement of public money by a public servant, committed within one year and in the same circumstances. QUEEN-EMPRESS v. JUALA PRASAD, **7 A. 174, F.B. = A.W.N. 1884, 321.** [*F.*, 9 C.L.J. 149 = 13 C.W.N. 507 = 5 M.L.T. 349.]

(3)—*Crim. Pro. Code*, ss. 235, 239—*Joinder of charges—Same transaction—Conviction set aside —Procedure.*—Though the members of a police force, who had conspired to maltreat suspected persons in the course of an investigation, could, under certain circumstances, be dealt with under the provisions of ss. 235 and 239, for a series of oppressive acts of which they were guilty in the prosecution of their common object, still, it would be necessary to consider carefully whether the alleged acts were, as a matter of fact, so connected together in one series as to form essentially and strictly the same transaction. If, in any case, either the accused are likely to be bewildered in their defence by having to meet many disconnected charges, or the prospect of a fair trial is likely to be endangered by the production of a mass of evidence directed to many different matters and tending by mere accumulation to induce an undue suspicion against the accused, then, the propriety of combining the charges may well be questioned. Four persons, members of the police force, were charged with ill-treating and wrongfully confining one Hanma, his wife Rakhma and his son-in-law Yellia, during the course of the police investigation, with the object of extorting confessions from them and recovering stolen property. They were committed for trial in two separate cases for the following offences:—(1) All the accused for an

Joinder of Charges—continued.

——2.—When legal—*continued.*

offence under s. 330, I.P.C., committed against Hanma, the charge covering several acts of violence alleged to have been committed against him during his illegal confinement, which formed the subject of the second charge. (2) All the accused with an offence under s. 348 committed against Hanma between the 5th and 18th January, 1889. (3) Accused Nos. 1 and 3 with an offence under s. 348 committed against the deceased Rakhma, wife of Hanma, on the 5th January, 1889. (4) Accused No. 3 with an offence under s. 330 committed against the deceased Rakhma on the 14th January, 1889. (5) All the accused with an offence under s. 330 committed against Yellia in the interval between the 15th and 23rd January, 1889. (6) All the accused with an offence under s. 348 committed against Yellia during the same period. (7) Accused Nos. 1, 2 and 3 with an offence under s. 346 committed against Yellia between 8th February and 9th March, 1889. The Magistrate committed the accused in two separate cases, which were tried together by the Sessions Judge, under ss. 235 and 239, Crim. Pro. Code, on the ground that the same four persons were accused in both the cases and were charged with different offences committed in what was virtually one transaction, namely, a police investigation into an alleged theft. *Held*, that the several acts of violence alleged to have been committed against Hanma during his illegal confinement, forming the subject of the second head of charge, could be rightly regarded as constituting a single transaction. But the act of violence said to have been committed against Rakhma at a different place could not be regarded as a part of that transaction. Nor was the wrongful confinement of Rakhma by the accused Nos. 1 and 3 on the 15th January, a part of the transaction constituted by the hurt, which was caused to her by the accused No. 3 on the previous day. Again, all acts of hurt caused to Yellia during his first period of wrongful confinement would, with the confinement, be part of the same transaction. But the second period of confinement, said to have commenced sometime after the termination of the first, would be a separate transaction. *Held*, also, that by the combination of the two cases, the accused were prejudiced and should be re-tried by the Sessions Judge. Where the High Court held that the accused were prejudiced by misjoinder, the proper course was to set aside the conviction and sentence, and direct their re-trial. QUEEN-EMPRESS v. FAKIRAPA, **13 B. 491.** [*R.*, 16 B. 414, 29 B. 449 = 7 Bom. L.R. 527 = 2 Cr. L.J. 480, 28 C. 104, 31 C. 1053, 25 M. 61 P.C. = 3 Bom. L.R. 540 = 5 C.W.N. 866 = 28 I.A. 257 = 11 M.L.J. 233 = 8 Sar. 160, 33 M 502 = 11 Cr. L.J. 258 = 5 Ind. Cas. 847 = 20 M.L.J. 220 = 7 M.L.T. 299 = 1910 M.W.N. 65, 10 Bom. L.R. 973 = 4 M.L.T. 450 = 9 Cr. L.J. 226, 14 Bur. L.R. 242 = 8 Cr. L. J. 497 = 4 L.B.R. 294, 4 Cr. L.J. 420 = 2 N.L. R. 147, 8 Cr. L J. 191 = 1 S.L.R. 73, 14 Cr. L.J. 116 = 18 Ind. Cas. 676 = 11 A.L.J. 188, 83 P.L. R. 1901, Rat. Un. Cr. C. 659.]

Joinder of Charges—continued.

——2.—**When legal**—*continued.*

(4)—*Penal Code, s. 206—Charge of several fraudulent transfers made on one day—Crim. Pro. Code* (1882), *s.* 235—*Same transaction.*—Where a committing Magistrate framed a general charge under s. 206, I.P.C., against an accused person, of several fraudulent transfers made on one and the same day, and the Sessions Judge limited the prosecution to three or four charges, *held* that the proximity of time combined with the case as to intention and similarity of action and result, brought all the transfers within the words "same transaction" in s. 235. QUEEN-EMPRESS v. VAJIRAM, **16 B. 414.** (15 B. 491, *R.*) [*F.*, 36 C. 573 =9 C.L.J. 610=13 C.W.N. 728=2 Ind. Cas. 601; *R.*, 19 B. 51; 27 B. 135; 33 M. 502=11 Cr.L.J. 258=5 Ind. Cas. 847=20 M.L.J. 220= 7 M.L.T. 299=1910 M.W.N. 65, 11 A.L.J. 188 =14 Cr. L.J. 116=18 Ind. Cas. 676, 10 Bom. L. R. 848=8 Cr. L.J. 281, 4 Cr. L.J. 420=2 N.L.R. 147, 11 Cr. L.J. 428=6 Ind. Cas. 964 =12 P.R. 1913, Cr.=26 P.W.R. 1910, Cr.

(5)—*I.P.C., ss.* 485 *and* 486—*Crim. Pro. Code* (1898), *ss.* 234, 235—*Joinder of charges—Same transaction.*—A person can be tried at one trial for having in his possession stencil plates for the purpose of counterfeiting trade marks (s. 485, I.P.C.), for having sold goods to which a counterfeit trade mark was affixed (s. 486), and for having in his possession such goods (s. 486), since the three offences can be said to arise out of the same transaction. The real and substantial test for determining whether several offences are connected together so as to form the same transaction, depends upon whether they are so related to one another, in point of purpose, or as cause and effect, or as principal and subsidiary acts, as to constitute one continuous action. A mere interval of time between the commission of one offence and another does not, by itself, necessarily import want of continuity, though the length or the interval may be an important element in determining the connection between the two. EMPEROR v. SHERUFALLI, **27 B. 135=4 Bom. L.R. 930.** [*F.*, 4 Cr. L.J. 420=2 N.L.R. 147, 5 Cr. L.J. 484=11 C.W.N. 715; *R.*, 33 M. 502=11 Cr. L.J. 258=20 M.L.J. 220=7 M.L. T. 299=M.W.N. 1910. 65=5 Ind. Cas. 847, 3 Cr. L J. 111=2 C.L J. 218=10 C.W N. 520, 8 Cr. L.J. 191=1 S.L.R. 73, 8 Cr. L.J. 497= 4 L.B.R. 294=14 Bur. L.R. 242, 10 Cr. L.J. 476=13 C.W.N. 1089=4 Ind. Cas. 28.]

(6)—*I.P.C., ss.* 302 *and* 395—*Crim. Pro. Code, s.* 235—*Joinder of charges—Acts forming part of the same transaction.*—The accused formed into a gang for committing dacoity and proceeded to a village for that purpose. When they reached the place, it was day light; they, therefore, concealed themselves in a secluded *nala* during the daytime. While they were so concealed, a woman came down from the *nala* for collecting some vegetables. Fearing detection, the gang fell on her and stoned her to death. After concealing her body, the accused proceeded to the place of the destination and committed a dacoity. The accused were committed for trial under s. 396, I.P.C. At the trial, the Judge altered the charge to two separate charges under s. 302 as against some of the accused, and under s. 395 as against all, and tried both the charges jointly, holding that the offences formed part of the same transaction. *Held* that the procedure adopted was right, for, it was clearly in order to the committal of the theft constituting an ingredient of the dacoity that the murder took place, and the offences under ss. 302 and 395, I.P.C., therefore formed part of one series of acts so connected together as to form the same transaction. EMPEROR v. PUNYA NAIKA, **4 Bom. L.R. 789.**

(7)—*Crim. Pro. Code* (1898), *ss.* 222, 239—*Several acts of breach of trust committed within the year—Joinder of charges — Joint trial—Same transaction.*—S. 222 of the Code clearly admits of the trial of any number of acts of breach of trust, committed within the year, as amounting only to one offence. It does not require any particular formulation of the accusation, but only enacts that it is sufficient to show the aggregate offence without specifying the details. It dispenses with the necessity of amplification; it does not prohibit enumeration of the particular items in the charge. It suffices, for the purpose of justifying a joint trial, that the accusation alleges offences committed by each accused to have been committed in the same transaction, within the meaning of s. 239 of the Code. It is not necessary that the charge should contain the statement as to the transaction being one and the same. It is the tenor of the accusation and not the wording of the charge that must be considered as the test. In s. 239 of the Code, a series of acts separated by intervals of time are not excluded, provided that the object of those jointly tried has, throughout, been directed to one and the same objective. If the accused started together for the same goal, this suffices to justify the joint trial, even if, incidentally, one of those jointly tried has done an act, for which the other may not be responsible. The foundation for the procedure in the section is the association of persons concurring, from start to finish, to attain the same end. EMPEROR v. DATTO HANMANT SHAHAPURKAR, **30 B. 49=7 Bom. L.R. 633=2 Cr.L.J. 578.** [*F.*, 1 Bom. Cr. 216= 14 Bom. L.R. 972=13 Cr. L J. 833=17 Ind. Cas. 705; *R.*, 33 M. 502=11 Cr. L J. 258=5 Ind. Cas. 847=20 M.L.J. 220=7 M.L.T. 299= 1910 M.W.N. 65, 4 Cr. L.J. 285=10 P.R. 1906, Cr.=117 P.L.R. 1907, 8 Cr. L.J. 75=18 P. W.R. 1908, 4 Cr. L.J. 420=2 N.L.R. 173, 11 Cr. L.J. 293=6 Ind. Cas 242=7 M.L.T. 367, 12 Cr. L J. 269=10 Ind. Cas. 349=10 M.L.T. 23=1911 2 M.W.N. 189, 1 S.L.R. 73; *D.*, 4 Bur.L T. 263=13 Cr.L.J. 59=13 Ind. Cas. 395, 17 M.L J. 141=30 M. 328=2 M.L.T. 177=5 Cr. L.J. 341.

(8)—*Crim. Pro. Code* (1882), *s.* 235 (1)—*House breaking by night to commit theft and theft*

Joinder of Charges—continued.

—— 2.—**When legal**—*continued.*

—*Separate sentences—Penal Code, ss.* 71, 380, 457.—An accused can, under s. 235 (1), Crim. Pro. Code, legally be tried at one trial for the offences of house-breaking by night to commit theft, and of theft, and separately be convicted for each of the offences. Inasmuch as, though nothing contained in s. 235 affects s. 71, I.P.C., still when the accused commits distinct offences which, when combined, are not punishable under any single section of the Penal Code, s. 71 does not apply to the case. QUEEN-EMPRESS v. KASHINATH, **Rat. Un. Cr. C. 228 = Cr. Rg. 6 of 1886.**

(9)—*Joint trial—Person charged with theft and with receiving the stolen property—I.P.C.*, ss. 380 *and* 411.—The trial of a person on a charge of theft jointly with the charge of having dishonestly received the property stolen is not illegal. *In the matter of* A. DAVID, **6 C. L.R. 245.** [*F.*, 6 Bom. L.R. 517; *D.*, 1 C W N. 35; *R.*, Rat. Un. Cr. C. 915, 2 L.B. R. 19, Cr.]

(10)—*Theft — Dishonestly receiving stolen property—Same transaction.*—The offence of dishonestly receiving stolen property from a person, who has stolen that property, cannot be regarded as an offence committed in the same transaction as the theft itself, unless it be in a case where, simultaneously with the offence of theft, the offence of receiving stolen property is committed. BISHNU BANWAR v. EMPRESS, **1 C.W.N. 35.** (6 C.L.R. 245, *D.*) [*Dis.*, 6 Bom. L.R. 517; *F.*, 3 P.R. 1905, Cr.; *R.*, 29 B. 449 = 7 Bom. L.R. 527, 33 C. 1256 = 10 C.W. N. 912 = 3 C.L.J. 412 = 3 Cr. L.J. 391, 15 C.L. J. 517 = 16 C.W.N. 1105 = 13 Cr. L.J. 609 = 16 Ind. Cas. 257, 14 Bur. L.R. 38 = 6 Cr. L.J. 28 = U.B.R. 1905, Cr.P C. 5, 2 L.B.R. 19.]

(11)—*Joint trial of accused—Joinder of theft and of receiving or disposing of stolen property —Appreciable interval of time between two acts, otherwise connected together, immaterial—Crim. Pro. Code* (1898), *s.* 239. — The trial of an accused charged with the offence of theft together with another accused charged with dishonestly receiving or disposing of stolen property, is perfectly legal, if the two offences committed form part of the same transaction within the meaning of s. 239, Crim. Pro. Code. As proximity of time between two acts does not necessarily constitute them parts of the same transaction, so an appreciable interval of time between two acts, otherwise connected together, does not prevent them from continuing to be parts of the same series of connected events. NGA TA PU v. KING-EMPEROR, **2 L.B R. 19.** (Rat. Un. Cr. C. 449, 6 C.L.R. 245, *F.*; 1 C.W. N. 35, *Diss.*) [*R.*, 13 Cr. L.J. 485 = 15 Ind. Cas. 485 = 5 Bur. L.T. 101, 13 Cr. L.J. 59 = 13 Ind. Cas. 395 = 4 Bur. L.T. 263, 4 L.B.R. 294 = 14 Bur. L.R. 242 = 8 Cr. L.J. 497, U.B.R. 1907, Cr. P C., 5, 14 Bur. L.R. 38.]

(12)—*Crim. Pro. Code* (1882), *s.* 234—*Using eleven forged documents in three sets in three suits on different occasions.*—The accused was charged, under s. 471 of the Penal Code, for using, as genuine, eleven forged rent receipts. These receipts were put in by him in three sets in three suits pending against him, on different occasions. The receipt in each set was put in each suit simultaneously, together with a written statement in the particular case. Three charges were framed against him in respect of each set of receipts. He was convicted and sentenced on these three charges. It was contended, on appeal that a separate charge should have been made for each one of the documents and that, consequently, the trial should be set aside as contrary to law, inasmuch as it was really a trial of eleven offences of using forged receipts. *Held*, that, as the "usings" charged were merely the putting of each set of documents in each suit simultaneously, together with the written statement in each case, and, as there was nothing to show that any of them was used at any other time, there was no valid ground for questioning the correctness of the conviction. QUEEN-EMPRESS v. RAGHU NATH DAS, **20 C. 413.**

(13) *Crim. Pro. Code* (1898), *ss.* 222, *sub-s.* 2 *and* 234—*Charge of embezzlement in one year—Three counts included in one charge.*—Where a person was put upon his trial for embezzlement of three sums in one year and one charge was drawn up, in which all the three sums and the persons from whom he collected them were specified, but he was not charged with three offences under s. 409, Penal Code, but with one offence and was convicted of one offence and sentenced to one term of imprisonment: *Held*, that the charge was not illegal as it was in accordance with ss. 234 and 222, sub-s. 2 of the Crim. Pro. Code. SAT NARAIN TEWARI v. EMPEROR, **10 C.W.N. 51 = 32 C. 1085 = 3 Cr. L.J. 138.**

(14)—*Crim. Pro. Code* (1898), *ss.* 234, 235, 480, 482 *and* 537 — *Misjoinder of charges — "Drawing up of proceedings on the same day that the offence is committed"—Penal Code, ss.* 178 *and* 179—*Refusing to take oath—Refusing to answer questions.*—Where, at the same trial, an accused person is charged with two offences under s. 178, I.P.C., and two offences under s. 179 of the Code, *held*, the case was not governed by s. 234 of the Crim. Pro. Code and there was no misjoinder. Moreover, the facts having all been admitted and the sentence passed being practically for only one of the offences, the accused was not prejudiced, and the irregularity, if any, was cured by s. 537 of the Crim. Pro. Code. S. 482 does not require the Magistrate to draw up proceedings on the same day that the offence is committed. The section need not be read along with s. 480 of the Crim. Pro. Code. *Quære*—Whether a person, who has once committed an offence under s. 178 of the Penal Code, can be held to have committed a further offence under s. 179 of the Penal Code, when he

Joinder of Charges—continued.

——**2.—When legal**—*continued.*

refuses to answer the questions put to him. BIPIN CHANDRA PAL v. EMPEROR, **35 C. 161 =7 C.L.J. 63=7 Cr. L.J. 95.** (25 M. 61, *D.*) [*R.*, 10 Bom. L.R. 973=9 Cr. L.J. 226=4 M. L.T. 450.]

(15)—*Crim. Pro. Code* (1898), *s.* 235—*Joinder of charges of dacoity, forgery, using a forged document as genuine, and cheating.*—The trial of the accused on seven charges, three of dacoity, two of forgery, one of using as genuine a forged document, and one of cheating by personation, would be perfectly regular, if the offences with which the accused was charged all formed one transaction. EMPEROR v. SRI NARAIN PRASAD, **11 C.W.N. 715=5 Cr. L J. 484.** (30 C. 822, 2 Cr. L.J. 34, *D.*; 27 B. 135, *R. & F.*) [*R.*, 4 Ind. Cas. 28=13 C.W.N. 1089=10 Cr. L.J. 476.]

(16)—*Crim. Pro. Code* (1898), *ss.* 222, 234—*Joinder in one trial of two charges of criminal breach of trust and another for a gross sum made up of three distinct items.*—On a charge of criminal breach of trust or dishonest misappropriation of money it is sufficient, under s. 222, to specify the gross sum, in respect of which the offence has been committed, without specifying the particular items of which the gross sum is composed, and the charge so framed shall be deemed to be a charge of one offence, within the meaning of s. 234. So where an accused is tried on charges of criminal breach of trust in respect of two cheques, and also on another charge in respect of a gross sum made up of three distinct items, which might have been, but were not, specified, the trial is, in fact, not on five distinct charges but is only for three offences, and is, therefore, legal under s. 234. S. 222 is not intended to apply only to cases where there is a general deficiency in an account and the prosecution is unable to specify the particular items of the deficiency, but it applies also to cases, where the items might have been, but are not, specified. THOMAS v. EMPEROR, **29 M. 558=5 Cr. L.J. 133.** (25 M. 61, *D.*) [*F.*, 33 A. 36=7 A.L J. 897=11 Cr. L.J. 442=7 Ind. Cas. 186.]

(17)—*Crim. Pro. Code* (1898), *ss.* 237 *and* 239—*Joinder of charges—Charge of theft or, in the alternative, of receiving stolen property.*—Although there is authority for holding that several persons accused under s. 411, Penal Code, of receiving stolen property at different places and times cannot be legally tried together, yet persons accused of having jointly committed theft could legally and properly be tried together, and, if tried on that charge, they might, under s. 237, Crim. Pro. Code, be convicted of the offence of receiving stolen property if the evidence showed that the facts proved led to the inference that that offence, rather than theft, was committed. So, where all the accused were charged with the offence of theft jointly, or, in the alternative, with the offence of receiving stolen property and were tried together, *held*, that the trial was not illegal. *In re* KUPPAN AMBALAM, **17 M.L.J. 219=5 Cr. L.J. 479.**

Joinder of Charges—continued.

——**2.—When legal**—*concluded.*

(18)—*Crim. Pro. Code* (1898), *s.* 239—*Joinder of charges—I.P.C., ss.* 385 *and* 500—*Defamation and attempt to put in fear of injury for committing extortion—Acts forming same transaction.*—A person, against whom a complaint has been filed under ss. 500 and 211, I.P.C., wrote a letter to the complainant asking him to do what he would ask the complainant to do, and that he would say a lot of things against the complainant in Court if he did not do so. The complainant refusing to yield to his threat, the accused, in his statement, made a large number of defamatory statements. The accused was charged a second time for defamation as regards those new imputations and was convicted at the same trial on three charges of defamation, and, on a fourth charge, of attempting to put the complainant in fear of injury in order to commit extortion under s. 385, I.P.C. *Held*, that the threat to make the charges if not squared, and the making of the charges subsequently, were one series of acts so connected together as to form the same transaction, and that it was legal to convict at the same trial on both charges under ss. 500 and 385, I.P.C. KING EMPEROR v. HARCHARAN SINGH, **18 P.R. 1904, Cr. = 120 P.L.R. 1904=1 Cr. L J. 974.** (25 M. 61 P.C., 16 P.R. 1902, Cr., 17 P.R. 1903, Cr., *R.*) [*R.*, 57 P.L.R 1911=8 Ind. Cas. 1161=33 P.R. 1910.]

(19)—*Crim. Pro. Code* (1898), *ss.* 233, 239—*Misjoinder of parties and charges—Objection raised for the first time on revision—Penal Code, s.* 384—*Extortion — Sentence.*—The accused, an officiating *kanungo* and a compounder, were jointly tried and convicted under s. 384, Penal Code, for extorting money from certain persons in villages infected with plague and sentenced to two years' rigorous imprisonment. The convictions and sentences were upheld on appeal. In the Chief Court, it was contended that the trial was illegal for misjoinder of parties and charges and that the sentences were severe. *Held*, that, as the objection to the irregularity in the trial was not raised at an early stage of the case, and it was not shown that the accused were prejudiced thereby in any way, it was too late to press the objection which was of a formal nature, the Court holding that there was no such misjoinder as to invalidate the trial. The sentences were reduced to six months' rigorous imprisonment, including one month in solitary confinement. DILBAGH SINGH v. EMPEROR OF INDIA, **132 P.L R 1902.**

(20)—*Joint trial—Offences under ss.* 379 *and* 215, *Penal Code—Crim. Pro. Code* (1898), *s.* 239.—The joinder of charges must be justified by s. 239 of the Crim. Pro. Code, which authorizes the joint trial of persons accused of the same offence or of different offences committed in the same transaction. The joinder of charges and separate convictions under ss. 379 and 215, I.P.C., are legal and proper. KING-EMPEROR v. NGA TO, **2 L B.R. 23.** (1 L.B.R. 203, *Diss.*; 2 L.B.R. 19, *F.*) [*F.*, 14 Bur. L.R. 242=4 L B.R. 294; *R.*, 7 Cr. L.J. 464=14 Bur. L.R. 67=4 L.B.R. 199.]

Joinder of Charges—continued.

——3.—**Misjoinder of Charges.**

(1)—*Crim. Pro. Code* (1898), *ss.* 233, 235—*Distinct offences—Magistrate trying a case and forming an opinion—Re-trial by another Magistrate.*—The joint trial of a person for three distinct offences of forging certain cheques, of cheating and of falsification of account books, in respect of three distinct forgeries, is bad for misjoinder of charges. BHAGWATI DIAL v. KING-EMPEROR, 2 **P.R. 1905, Cr.** =**44 P.L.R. 1905**=**2 Cr.L.J. 34.** (25 M. 61 P.C., *R.*) [*R.*, 9 Cr. L.J. 226=10 Bom. L.R. 973=4 M.L.T. 450.]

(2)—*Trial for eight separate and distinct offences — Irregularity — Re-trial.*—Where the accused were charged with eight separate and distinct offences and tried at one trial for the same, *held*, that the trial was illegal. When the Magistrate, who tried a case, has already formed an opinion on the evidence on the record and has expressed the same, and the cases are sent back for re-trial, it is only fair to the accused that they should be tried by a different Magistrate who has formed no opinion. UMED SINGH v. KING-EMPEROR, **7 A.L.J. 19**=**11 Cr.L.J. 51**=**5 Ind. Cas. 178.** (25 M. 61, P.C.,*F.*)

(3)—*Evidence, misreception of—Crim. Pro. Code* (*Act* V *of* 1898), *ss.* 233, 234, 236, 239, 537—*Statement of accused as to place of concealment—Independent discovery by police—Statement as to conduct—Evidence Act* (I *of* 1872), *s.* 27—*I.P.C.*, *ss.* 395, 411 *and* 412.—There is no misjoinder of charges where some of the accused charged under s. 395, Penal Code, were also charged under ss. 411 and 412 of the Code, on the strength of an incident which was part of the evidence against them on the charge under s. 395. A statement made by the accused to the police officer, after the discovery was made, as to the place where the stolen property was concealed, is admissible in evidence under s. 27 of the Evidence Act ; but the reception of the statement as to the pointing out by the accused of the place of concealment, though not illegal, is improper. JANKI v. EMPEROR, **11 C.L.J. 182**=**11 Cr. L.J. 244**=**5 Ind. Cas. 769.** [*R.*, 13 Cr. L.J. 609=16 C.W.N. 1105=15 C.L.J. 517=16 Ind. Cas. 257.]

(4)—*Crim. Pro. Code* (1898), *ss.* 233, 239—*Joint trial—Receiving stolen property by different accused at different times from different persons.*—Accused No. 1 received stolen property from certain thieves. Subsequently, accused No. 1 delivered to accused No. 2 a portion of such property in satisfaction of a debt which he owed to the latter. With accused No. 3 was found a further portion of the property identified as stolen, but there was nothing to show when he received it and from whom. The three accused were, under these circumstances, tried at one trial on charges of receiving stolen property, knowing it to be stolen. *Held*, by *Batty* and *Russel*, *JJ.*, (*Aston*, *J.*, *dissenting*), that the three offences against the three accused were distinct offences which could not be regarded as offences committed in the same transaction

Joinder of Charges—continued.

—— 3.—**Misjoinder of Charges**—*continued.*

within the meaning of s. 239, and that the trial of the three accused together was thus in contravention of the provisions of s. 233 of the Code and therefore illegal. EMPEROR v. JETHALAL, **29 B. 449**=**7 Bom. L.R. 527**=**2 Cr. L.J. 480.** [*F.*, 11 Cr. L J. 30=4 Ind. Cas. 700=6 M.L.T. 17; *R.*, 10 Bom. L.R. 973=9 Cr. L.J. 226=4 M.L.T. 450, 1 S.L.R. 73 Cr.; *D.*, 4 Bur. L.T. 263=13 Cr. L.J. 59=13 Ind. Cas. 395, 5 Cr. L.J. 479=17 M.L.J. 219.]

(4·*a*)—*Receiving stolen property from different persons on several dates—Abetment—Crim. Pro. Code* (1898), *ss.* 233, 235—*Misjoinder of charges.*—Where the accused were charged, in one Court, with having dishonestly received or retained articles stolen from different persons on different dates, and in another Court with having aided and abetted one another in the commission of that offence, and were convicted at a single trial, *held*, that, in the absence of evidence that the acts of receiving or retaining were so connected together as to form one transaction, the charges framed and the single trial held with respect thereto were illegal. *Held*, also, that the mere fact that all the articles were being dishonestly retained on the day when they were discovered with the accused would not constitute a single offence or establish that several offences were committed in one and the same transaction. The accused could only be tried for three of such offences committed within one year. RAM SARUP BENIA v. EMPEROR, **9 C.W.N. 1027**=**2 Cr. L.J. 847.**

(4·*b*)—*Theft and receiving stolen property, joinder of the charges of, when illegal.*—Out of five persons accused in this case, four were charged with theft, and the fifth with receiving the property stolen. They were jointly tried at one and the same trial. The receiving of the stolen property was not simultaneous with the theft. *Held*, that the offences of stealing and of the receipt of the stolen property were not part of the same transaction and the joint trial was illegal. KING-EMPEROR v. SUNDER SINGH, **3 P.R. 1905, Cr.**=**21 P.L R. 1905**=**2 Cr. L.J. 37.** (5 P.R. 1900 Cr., *F.*; 1 C.W.N. 35, *R.*) [*R.*, P.W.R. 1906, Cr., 3; 113 P.L.R. 1906.]

(4·*c*)—*Crim. Pro. Code* (*Act* V *of* 1898), *s.* 239—*Misjoinder of charges—Joint trial of several accused persons — Illegality—Theft—Receiving stolen property.*—When a person charged with receiving stolen property knowing it to be stolen, was tried with another person who was found to be in possession of property alleged to have been stolen at a different time and the former was convicted and the latter acquitted—*Held*, upon appeal against the order of conviction, that the joint trial was illegal and, notwithstanding the acquittal of the other accused, the whole proceedings must be held invalid. BHAGAT SINGH v. CROWN, **101 P.L.R. 1904**=**1 Cr.L.J. 971.** (25 M. 61, P.C., *F.*)

(4·*d*)—*Crim. Pro. Code* (1898), *s.* 233—*Offences of theft and escaping from lawful*

Joinder of Charges—continued.

——3.—**Misjoinder of Charges**—*continued.*

custody.--The trial of the two charges, *viz.*, theft and escape from lawful custody at one trial is contrary to s. 233. The theft and the escape are not so connected as to form one transaction and none of the sections mentioned in s. 233 will cover the joinder. KING-EMPEROR v. PO HLA, **3 L.B.R. 221=4 Cr.L.J. 389.** (1 L. B.R. 361, *R.*)

(5)—*Crim. Pro. Code* (1898), *s.* 235—*Acts not forming one series of transaction—Penal Code, ss.* 307, 406.—In a conviction under s. 307, I.P.C., a charge under s. 406 was also joined. *Held*, that the two acts did not form one series of transaction within the meaning of s. 235, Crim. Pro. Code, and that the two charges ought not to have been joined. NITHURI v. KING-EMPEROR, **6 A.L.J. 697=3 Ind. Cas. 466=10 Cr.L.J. 291.**

(6)—*Crim. Pro. Code, s.* 237—*Joinder of charges—Penal Code, ss.* 471, 468, 477-*A.*—A person cannot be tried at one trial for offences under ss. 471, 468 and 477-A, I.P.C.; such a trial is not merely irregular but illegal. EMPEROR v. LALLUBHAI, **4 Bom. L.R. 440.** [*R.*, 10 Bom. L.R. 973=9 Cr. L.J. 226=4 M.L.T. 450.]

(7)—*Crim. Pro. Code* (1898), *ss.* 235 *and* 239 —*Joint trial of several persons charged with distinct offences of cheating.*—The joint trial of several persons for distinct offences of cheating is opposed to ss. 235, 239, Crim. Pro. Code and it is an illegality which cannot be cured by s. 537. KHUSHALA v. EMPEROR, **16 P. R. 1902, Cr.** (25 M. 61, P.C., *R.*) [*R.*, P.W.R. 1906, 30; *D.*, 18 P R. 1904, Cr.]

(8)—*Crim. Pro. Code* (1898), *ss.* 233 *and* 239 —*Illegality on account of misjoinder not curable by s.* 537, *Crim. Pro. Code* (1898).—S. 537 does not cure illegalities under ss. 233 and 239 of the Crim. Pro. Code, 1898. JANG v. EMPRESS, **5 P.R , 1900, Cr.**

(9)—*Crim. Pro. Code* (1898), *ss.* 234, 235, 537—*Joinder of charges—Irregularity—Penal Code, s.* 477-*A.*—The joinder of charges contrary to the provisions of the Code of Criminal Procedure is not merely an irregularity which can be remedied under s. 537 Hence, where the accused was charged with having altered and mutilated certain accounts between the years 1907 and 1909, *held*, that the charge was bad, inasmuch as he could have been tried at one trial, only for three separate offences committed within the space of twelve months from first to last. SALIMULLAH KHAN v. KING-EMPEROR, **6 A.L.J. 977=32 A. 57=4 Ind. Cas. 808=11 Cr. L.J. 83.**

(10)—*Crim. Pro. Code* (1898), *ss.* 234 *and* 235 —*Misjoinder of charges—Illegality.*—An accused person was charged with and tried for, first, three separate acts of criminal misappropriation committed within a year, and secondly, two separate offences of forgery with intent to conceal two of such acts of criminal misappropriation. *Held* that this was an illegality not covered by the provisions of s. 537 of the Code of Criminal Procedure. EMPEROR v. MATA PRASAD, **A.W.N. 1908, 152=5 A.L.J. 400=30 A. 351=8 Cr.L.J. 4.**

(11)—*Crim. Pro. Code* (1898), *ss.* 233, 234, 235, 236, 239—*Misjoinder of charges—Irregularity—Fresh trial—Counts charging continued acts of criminal breach of trust and forgery—Penal Code, ss.* 408 *and* 467.—The accused was charged and tried at one and the same trial for three offences under s. 408, Penal Code, and three offences of forgery under s. 467 of the Code, and was convicted and sentenced in respect of all the six offences. *Held* that the trial of any person in respect of six offences at one and the same trial, although they may have been committed within the space of 12 months, contravened the rule laid down in s. 233, even when read with s. 234, Crim. Pro. Code, and as cl. (1), s. 235, and s. 234 of the Code must be mutually exclusive, to hold that s. 234 covered all the offences committed in the course of three similar but separate transactions, when the number of offences was more than three, would be straining the language of the section beyond all bounds. The trial, therefore, of any person in respect of six offences, three of embezzlement and three of forgery, was an irregularity sufficient to make a re-trial necessary. SHEO SARAN LAL v. KING-EMPEROR, **7 A.L J. 225=32 A. 219=11 Cr. L.J. 285=5 Ind. Cas. 896.**

(12)—*Criminal breach of trust and falsification of accounts — Crim. Pro. Code* (1898), *s.* 234—*Misjoinder of charges—Irregularity, if curable.*—The accused was charged at one trial with criminal breach of trust with respect to seventeen sums of money, and also with falsifying account books of Government regarding several items. *Held* that the trial involved misjoinder of charges in contravention of the provisions of s. 234, and that it was an irregularity which could not be amended. EMPEROR v. NATHALAL, **4 Bom. L.R. 433.** [*R.*, 6 Bom. L.R. 725, 30 M. 328=5 Cr.L J. 341=2 M.L. J. 177=17 M.L.J. 141, 10 Bom. L.R. 973=9 Cr.L.J. 226=4 M.L.T. 450; *Expl.*, 1 Bom. Cr. Cas. 115=14 Bom. L R. 306=13 Cr.L J. 501 =15 Ind. Cas. 645.]

(13)—*Crim. Pro. Code* (1898), *ss.* 233, 537—*Joinder of charges—Penal Code, ss.* 380, 414—*Illegality vitiating trial.*—The joinder of a charge under s. 414, I.P.C., with a charge under s. 380, I.P.C., is opposed to the provisions of s. 233, Crim. Pro. Code, and constitutes not merely an irregularity which might be cured under s. 537, but is an illegality which vitiates the trial. EMPEROR v. WASSANJI, 6 Bom. **L.R. 725=1 Cr.L.J. 834.** [*R.*, 10 Bom. L.R. 973=9 Cr.L.J. 226=5 M.L.T. 450.]

(14)—*Penal Code, ss.* 147, 323—*Rioting and causing hurt — Separate sentences.*—Rioting and causing hurt in the course of rioting are distinct offences and are, therefore, separately punishable. EMPRESS OF INDIA v. RAM ADHIM, **2 A. 139.** [*R.*, 6 C. 718=8 C.L.R. 390, 7 A. 29.]

Joinder of Charges—continued.

——3.—**Misjoinder of Charges**—*continued.*

(15)—*Crim Pro. Code* (1872), *s.* 314—*Conviction for several offences—Term of imprisonment.* —S. 314 limiting the Magistrate's powers of punishment for several offences to twice the amount which he is, by his ordinary jurisdiction, competent to inflict, applies to "one trial" for more offences than one. In a case, where there is not one indictment containing different counts on the same facts, but separate and distinct cases in regard to the facts themselves, the evidence and the procedure, *held*, that the trials constituted separate trials, notwithstanding the fact, the judgments in the several cases were delivered on one and the same day, and the Magistrate's power of punishment was not limited to twice the amount, which he was, by his ordinary jurisdiction, competent to inflict. *In the matter of* DAULATAI, **3 A. 305, F.B.**

(16)—*Crim. Pro. Code* (1872), *ss.* 452, 453—*Offences of the same kind committed against different persons.*—The combination of three offences of the same kind, for the purposes of one trial, can only be, where they have been committed in respect of one and the same person, and not against different prosecutors, within the period of twelve months as provided by the Crim. Pro. Code. EMPRESS OF INDIA v. MURARI, **4 A. 147 = A.W.N. 1881, 156.** [*F.*, 3 A.W.N. 107 ; *R.*, 28 C. 104 ; *D.*, 7 A. 174 = 4 A.W.N. 321 ; *Diss.*, Rat. Un. Cr. C. 331, 9 C. 371, 9 C.L.J. 149 = 13 C.W.N. 507 = 5 M.L.T. 349.]

(17)—*Penal Code, ss.* 167 *and* 466, *offences under—Crim. Pro. Code* (1872), *s.* 453.—Offences under ss. 167 and 466 of the Penal Code are not of the same kind within the meaning of s. 453 of the Crim. Pro. Code, so that charges under the sections ought not to be tried together. EMPRESS v. SREENATH KUR ; *In the matter of* SREENATH KUR, **8 C. 450 = 10 C.L.R. 421.**

(18)—*Committal on two separate charges—Trial as for one offence—Separate trials—Crim. Pro. Code* (1872), *s.* 454.—Though persons charged with rioting and causing grievous hurt may be tried as for one offence under s. 454 of the Crim. Pro. Code, it is not illegal to have separate trials. AMERUDDIN v. FARID SARKAR, **8 C. 481 = 4 Shome L.R. 282.**

(19)—*Crim. Pro. Code* (1872), *s* 453—*Penal Code, ss.* 411 *and* 413—*Offences of different kinds.*—The offence of receiving or retaining stolen property, punishable under s. 411, and of habitually receiving or dealing in such property, punishable under s. 413, I.P.C., are not offences of the same kind within the meaning of s. 453, Crim. Pro. Code. *In the matter of the petition of* UTTON KOONDOO; EMPRESS v. UTTON KOONDOO, **8 C. 634 = 10 C L R. 466.**

(20)—*Crim. Pro. Code* (1882), *ss.* 234, 537.—*Trial of a person for more than three offences—Legality of the trial.*—It is clear from the terms of s. 234, that a man can only be tried for three separate offences of the same kind at the same trial, and, therefore, if a man were tried for four specific offences at one trial, it would not be merely an irregularity, which could be cured by s. 537, but a defect in the trial, which would render the whole trial inoperative, unless it were cured by some subsequent proceeding by striking out some portion of the charge. But as to the propriety or legality of such a proceeding, the Court refrained from expressing any opinion. Under the circumstances of the case, the Court held that it was not proved that the prisoner was tried for more than three offences in one trial. *In the matter of* LUCHMI NARAIN, **14 C. 128**. [*Overruled*, 27 C. 839 = 4 C.W.N. 656 ; *Diss.*, 21 A. 127 ; *R.*, 25 M. 61, P.C. = 2 Weir 271 = 11 M.L.J. 233 = 3 Bom. L. R. 540 = 28 I.A. 257 = 5 C.W.N. 866, 10 M.L J. 147, 83 P.L.R. 1901].

(21)—*Crim. Pro. Code* (1882), *ss.* 233, 234 *and* 537—*Joinder of distinct charges, legality of.*—A joint trial of a charge against five men of having committed a riot on a certain day and another charge against four of them of having committed criminal trespass on a subsequent day is illegal within the terms of s. 233 of the Code, and does not come within the terms of s. 234. *In the matter of the petition of* CHANDI SINGH ; QUEEN-EMPRESS v. CHANDI SINGH, **14 C. 395.** [*R.*, 29 B. 449 = 7 Bom. L.R. 527, Rat. Un. Cr. C. 401, 13 Cr. L.J. 609 = 16 Ind. Cas. 257 = 15 C.L.J. 517 = 16 C.W.N. 1105 ; *Expl.*, 28 C. 104.]

(22)—*Crim. Pro. Code* (1898), *ss.* 233, 234 *and* 537—*Joinder of charges—Offences not committed within one year, trial of—Proceedings, whether can be cured by s.* 537.—S. 537 can be applied to cases in which the trial has been held on charges joined together contrary to s. 234 of the Code. The failure to try the charges separately is an error, omission, or irregularity in the proceedings before or during the trial, which, unless there has been a failure of justice, is cured by s. 537. *In the matter of* ABDUR RAHMAN and KERAMAT, **27 C. 839 = 4 C.W.N. 656.** [*Overruled*, 25 M. 61, P.C. = 3 Bom. L.R. 540 = 5 C W.N. 866 = 11 M.L.J. 233 = 28 I.A. 257 ; *Diss.*, 26 A. 195 = 29 B. 449 = 7 Bom. L.R. 527, 14 Bur. L.R. 38 = 6 Cr. L.J. 28 = U.B.R. 1907, Cr. p. 5 ; *F.*, 28 C. 7, 28 C. 1011 ; *R.*, 15 C.L.J. 517 = 13 Cr. L. J. 609 = 16 C.W.N. 1105 = 16 Ind. Cas. 257.]

(23)—*Crim. Pro. Code* (1898), *ss.* 237, 239—*Separate offences by separate persons at different times.*—The trial of two separate and distinct offences, committed by separate sets of persons at different times, at one and the same trial, is illegal. EMPEROR v. ESUA SHEIKH, **1 C.L.J. 475 = 2 Cr.L.J. 393.** (25 M. 61, P.C., *F.*)

(24)—*Crim. Pro. Code, ss.* 233, 537—*Misjoinder—Attempts to cheat, on different dates—Defect, if cured—Several charges, if necessary.* —A joinder of two offences, committed on two different dates one following the other, in one charge, is an illegality, which vitiates the trial

Joinder of Charges—continued.

——3.—Misjoinder of Charges—*continued.*

and cannot be cured by s. 537 of the Code. Where an accused person attempts to cheat a whole body of villagers and speaks to them in a body and not to each individual villager for the purpose, he may be tried on one charge for each attempt to get money from them. JOHAN SABARNA v. KING-EMPEROR, **2 C.L.J. 618 = 10 C.W.N. 520 = 3 Cr.L.J. 111.** (25 M. 61, P. C. *F.*; 27 B. 135, *D.*) [*R.*, 6 C.L.J. 757 = 6 Cr. L J. 442, 64 P.W.R. 1910, Cr.]

(25)—*Crim. Pro. Code* (1898), ss. 233, 234, 235, 537—*Joinder of charge of abetment of criminal breach of trust and an alternative charge.*—Where a person was charged with abetment of criminal breach of trust and for offences under ss. 419 and 330, I.P.C., in respect of a document which was quite unconnected with the acts of criminal breach of trust, *held*, that the joint trial was improper, and the accused was prejudiced by reason of the confession of the principal offender having been used and treated as a substantial part of the evidence on the latter charges. NIKUNJA BEHARI ROY v. QUEEN-EMPRESS, **5 C.W.N. 294.**

(26 & 27)—*Crim. Pro. Code*, ss. 234, 239—*Joinder of charges—Several accused persons, if can be jointly tried for distinct offences of the same kind, committed within twelve months—General Clauses Act* (X of 1897), s. 13.—S. 234 of the Code does not apply where several persons are jointly accused. When, therefore, several accused persons were jointly charged with having, on two separate dates, within the space of 12 months, committed two offences of the same kind, not forming parts of the same transaction, *held*, that the joinder was illegal. Conviction and sentence obtained at the joint trial were set aside and re-trial by another Magistrate directed. BUDHAI SHEIKH v. TARAH SHEIKH, **10 C.W.N. 32 = 33 C. 292 = 3 Cr. L.J. 126.** [*R.*, 10 Bom. L.R. 973 = 9 Cr. L. J. 226 = 4 M.L.T. 450, 6 C.L.J. 757 = 6 Cr. L. J. 442 = 11 C.W.N. 54.]

(28)—*Crim Pro. Code* (1898), s. 233—*Extortion, acts of, trial for—Joinder in one charge of distinct offences forming part of same transaction—Illegality.*—The joinder in one charge of two distinct offences, though arising out of the same transaction, is an illegality fatal to the trial. GUL MAHOMED SIRCAR v. CHEHARU MANDAL, **10 C.W.N. 53 = 3 Cr. L.J. 141.** (5 C. W.N. 866 = 25 M. 61, *F.*) [*R.*, 6 C.L.J. 757 = 6 Cr. L. J. 44, 13 C.W.N 1067; *D.*, 11 C.W.N. 54 = 4 Cr. L. J. 415.]

(29)—*Crim. Pro. Code* (1898), ss. 233, 537—*Charge—One charge for three different offences, if legal—Error in form.*—Where, under an arrangement made with the concurrence of their pleaders, the accused were jointly tried for three offences committed against three different persons on the same date and forming part of the same transaction, and there was framed one charge against them, instead of three, and it ran thus: "That you on or about the 3rd July committed theft of paddy from the fields of A, B and C and thereby committed an offence punishable under s. 379 of the Indian Penal Code and within my cognizance." *Held*—that although strictly speaking three separate charges should have been drawn up in identical terms for the three offences under s. 379, I.P.C., yet as in the one charge framed the three offences had been kept separate and were distinguished by the letters A, B and C, the error in framing one charge, was an error in form rather than in substance, and, as such, did not amount to an illegality but was an irregularity which would be cured by the provisions of s. 537, Crim. Pro. Code, unless it was shown that the accused had been prejudiced or that a failure of justice had been occasioned in consequence thereof. MOHARUDDI MALITA v. JADU NATH MANDUL, **11 C.W.N. 54 = 4 Cr.L. J. 415.** (10 C.W.N. 53, 10 C.W.N. 32, *D.*)

(30)—*Charges, misjoinder of — Crim. Pro. Code* (*Act* V *of* 1898), *ss.* 234 *and* 239—*Penal Code* (*Act* XLV *of* 1860), *ss.* 225 *and* 379, *charges under—Joinder—Illegality.*—Where one of the accused, caught in the act of committing theft, was rescued by others while being taken to the *thana* by the complainant, and some of the rescuers snatched away some clothes from the person of the complainant, and the Magistrate tried all the accused jointly, two of them on charges under ss. 225 and 379, I.P.C., two on a charge under s. 379, I.P.C., and the remaining two on a charge under s. 225, I.P.C. *Held*, that the trial was illegal, being vitiated by misjoinder of charges. Two separate trials were directed, one in respect of the original theft and the other in respect of the rescuing and the theft committed in the course of the rescuing. TILUKDHARI MAHTON v. EMPEROR, **13 C.W. N. 804 = 9 Cr.L.J. 147 = 1 Ind. Cas. 69.**

(31)—*Charges—Misjoinder—Crim. Pro. Code* (*Act* V *of* 1898), *ss.* 233, 235—*Transaction, whether one—Penal Code* (*Act* XLV *of* 1860), *ss.* 408 *and* 420.—The petitioner, a *jamadar* in the service of a firm, was entrusted with two cheques for encashment on the 20th September and told to pay thereout the freight and take delivery of certain goods from the Railway Company. He cashed the cheques on the 21st idem, and, on the 22nd, when asked by the firm, denied having done so. On the 26th idem he induced, under promise of immediate payment, a clerk of the Railway to give him the delivery of the goods, and then without making payment he absconded. He was charged with the offences of criminal misappropriation and cheating under ss. 408 and 420, I.P.C., and was tried for the offences in one trial. *Held*, that the offence under s. 408, I.P.C., was committed against the firm and was complete before the petitioner cheated the Railway Company, and therefore the two offences could not be tried together as they were not committed in one transaction. PARMESHWAR LAL v. EMPEROR, **13 C.W.N. 1089 = 4 Ind. Cas. 28 = 10 Cr.L.J. 476.** [*D.*, 38 C. 453 = 15 C.W.N. 463 = 12 Cr.L.J. 106 = 9 Ind. Cas. 618.]

Joinder of Charges—continued.

——3.—**Misjoinder of charges**—*continued.*

(32)—*Charges—Misjoinder—Crim. Pro. Code* (*Act* V *of* 1898), *ss.* 233 *and* 239—*Transaction, same, what is—Occurrences not forming the same transaction.*—Where the accused, more than five in number, after having obstructed certain Civil Court peons in the execution of a decree, held a consultation, and then, at the instance of two of them, all of them, with the exception of one or two, proceeded to the kutchery of the decree-holder in order to beat his son and tahsildar, and brought out the tahsildar whom they took to the house of the judgment-debtor, where they had obstructed the Civil Court peon, and violently assaulted him there: *Held*, that the two occurrences, one of obstructing the execution of the decree and the other of assaulting the tahsildar, did not form one transaction, and the accused could not be tried on charges arising out of both the occurrences at one trial. The second occurrence was clearly the result of an afterthought, and there was then no further intention to obstruct the execution of the decree in the course of which the incident of the first occurrence took place, and it cannot be said that there was any continuity in the ideas or methods of the rioters. The fact that all the accused did not take part in the second occurrence and that the common object in respect of it was different from that in respect of the first occurrence shows that the two occurrences did not form parts of the same transaction. LASKARI v. KING-EMPEROR, **13 C.W.N. 1113 = 4 Ind. Cas. 1 = 10 Cr. L.J. 452.** (7 B. 134, *D.*)

(33)—*I.P.C.*, *ss.* 372, 373—*Crim. Pro. Code* (1882), *ss.* 234 *and* 537—*Misjoinder of charges —Irregularity.*—Where a woman, a member of the dancing-girl caste, who obtained from another woman, a minor girl, who was employed by her for the purpose of prostitution, while still a minor, and who subsequently took in adoption another girl of the same caste, was charged and tried together with the parents of the second girl on charges relating to both the girls, *held*, that, although the Magistrate was in error in trying the two charges together, the irregularity had not occasioned a failure of justice. QUEEN-EMPRESS v. RAMANNA, **12 M. 273 = 1 Weir 375.** [*R.*, 27 C. 839.]

(34)—*Crim. Pro. Code* (1898), *ss.* 234 *and* 537 —*Misjoinder of charges—Illegality—Irregularity—Power of appellate Court to remedy the misjoinder* —The joinder, at one trial, of more charges than three, for offences of the same kind and extending over a period longer than a year contravenes s. 234 of the Code of Criminal Procedure and is an illegality not curable under s. 537. Such an illegality cannot be amended by arranging afterwards what might or might not have been properly submitted to the jury, and, thereupon, support the conviction or appropriate the finding of guilty to so much of it as was legal. To allow such a course would leave to the Court the functions of the jury, and the accused would never have been really tried at all upon the charge afterwards arranged by the Court. SUBRAHMANYA IYER v. KING-EMPEROR, **25 M. 61 = 11 M.L.J. 233 = 3 Bom. L.R. 540 = 28 I A. 257 = 5 C.W.N. 866 = 2 Weir 271 = 10 M L.J. 147 = 2 Weir 712, P. C. = 8 Sar. 160.** [*F.*, 11 A.L.J. 188, 7 A.L.J. 225 = 32 A. 49 = 11 Cr. L.J. 285 = 5 Ind. Cas 896, 11 Cr. L.J. 131 = 4 Ind. Cas. 993 = 20 P.W.R. 1909, Cr., 6 A.L.J. 977 = 32 A. 57 = 11 Cr. L.J. 53 = 4 Ind. Cas. 808, 7 A.L.J. 19 = 11 Cr. L.J. 51 = 5 Ind. Cas. 178, 5 Bur. L. T. 101 = 13 Cr. L J. 485 = 15 Ind. Cas. 485, 13 Cr. L.J. 23 = 13 Ind. Cas. 215, 40 C. 318 = 14 Cr. L.J. 428 = 20 Ind. Cas. 412, 15 Cr. L J. 420 = 24 Ind. Cas. 156, 1 L.B R. 361, 15 C.P.L.R. 53, 16 P.R. 1902, Cr., 2 Weir 296 = 26 M. 125, 4 Bom. L.R. 440, 4 Bom. L.R. 433, 4 Bom. L.R. 53, 6 C.W.N. 486 = 29 C. 385, 8 C.W.N. 180, 4 P.L.R. 1905, 101 P.L R. 1904, 6 Bom. L.R. 725, 2 Cr. L J. 393 = 1 C.L J. 475, 2 C.L J. 618 = 3 Cr. L J. 111 = 10 C.W.N. 520, 28 M. 437 = 15 M.L.J. 236, 11 C.W.N. 472 = 5 Cr. L.J. 197 = 5 C.L.J. 231, 3 P.R. Cr. 1907 = 5 Cr. L.J. 493 = 47 P L.R. 1907, 6 C.L.J. 757 = 6 Cr. L.J. 442, 17 M.L J. 141 = 2 M.L.T. 177 = 5 Cr. L.J. 341 = 30 M. 328; *Appl.*, A.W.N. 1904, 223, 7 M L.T. 127; *R.*, 30 A 351 = A.W. N. 1908, 152 = 5 A L.J. 400 = 6 A.L.J. 977, 10 Bom. L.R. 801 = 8 Cr. L.J. 272 = 33 B. 77, 38 C. 453 = 15 C.W.N. 463 = 12 Cr. L.J. 106 = 9 Ind. Cas. 618, 40 C. 846 = 14 Cr. L.J. 449 = 17 C.W.N. 827 = 20 Ind. Cas. 609, 41 C. 722 = 15 Cr. L.J. 163 = 18 C.W.N. 1152 = 22 Ind. Cas. 729, 19 C.L.J. 633 = 15 Cr. L.J. 472 = 24 Ind. Cas. 352, 41 C 66 = 15 Cr. L.J. 224 = 18 C.W.N. 183 = 22 Ind. Cas. 1008, 11 A.L.J. 188, 14 Cr. L.J. 111 = 18 Ind. Cas 676, 14 Cr. L J. 390 = 20 Ind. Cas. 214 = 9 N.L.R 88, 13 Cr. L.J. 753 = 17 Ind. Cas. 65, 12 M.L T. 439 = 23 M.L.J. 499 = 1912 M.W.N. 1154, 13 Cr. L.J. 21 = 13 Ind. Cas. 213 = 13 Cr. L J. 609 = 15 C.L.J. 517 = 16 Ind. Cas. 257, 11 Cr. L.J. 340 = 5 Ind. Cas. 981 = 5 L.B.R 149, 8 Cr.L.J. 281 = 10 Bom.L.R. 848, 8 Cr. L.J. 497 = 4 L.B R. 294 = 14 Bur. L. R. 242, 9 Cr. L.J. 15 = 4 L.B.R. 315 = 9 Cr. L J. 147 = 13 C.W.N. 804 = 9 Cr. L.J. 226 = 10 Bom. L.R. 973 = 4 M.L.T. 450, 10 Cr. L.J.484 = 4 Ind. Cas. 57 = 9 C.L J. 291 = 13 C.W.N. 552, 11 Cr. L.J. 442 = 7 Ind. Cas. 186 = 7 A.L.J. 897 = 33 A. 36, 16 C.W.N. 1105 = 16 Ind. Cas. 257, 1 Ind. Cas. 641, 17 C.W.N. 479 = 19 Ind. Cas. 315, 14 Cr.L.J. 563 = 7 L.B.R. 68, 31 M. 276 = 3 M.L.T. 408, 35 M. 397 = 1912, M.W N. 549 = 12 M.L.T. 1 = 13 Cr. L.J. 352 = 14 Ind. Cas. 896, 36 M. M. 275 = 12 M.L.T. 439 = 1912, M.W.N 1154 = 23 M.L.J. 499 = 17 Ind. Cas. 65 = 13 Cr. L.J. 753, 20 M.L.J. 423, 22 M.L.J. 490 = 1912, M. W.N. 207, 1911, 2 M.W.N. 536, 9 N.L.R. 88, 12 Cr. L.J. 605 = 12 Ind. Cas. 981 = 20 P.R. 1914, Cr. = 97 P.L.R. 1914 = 22 Ind. Cas. 748 = 15 Cr. L.J. 172 = 25 P.W.R. 1914, 1 S.L.R. 73, 13 Cr. L.J. 59 = 13 Ind. Cas. 395 = 4 Bur. L.T. 263, 3 P.R. 1903, Cr., 17 P R. 1903, Cr. = 149 P.L.R. 1903, 33 C. 68 = 9 C.W.N. 1046 = 2 C.L. J. 241, U.B.R. 1904, 1st Qr., Crim. Pro. Code, 2, 2 P.R. 1905, Cr. = 44 P.L.R. 1905 = 2 Cr. L.J. 34, 18 P.R. 1904, Cr. = 120 P.L.R. 1904, 14 P.

Joinder of Charges—continued.

—— 3.—Misjoinder of Charges—*continued.*

R. 1905, Cr. = 64 P.L.R. 1905, 9 C.W.N. 898 = 1 C.L.J. 616, 9 C.W N. 909, 9 C.W.N. 974, 3 L.B.R. 52. F.B., 9 C.W.N. 1065 = 2 C.L.J. 259 = 33 C. 352, 2 N.L.R. 147 = 4 Cr. L.J. 420, 1 M.L.T. 409 = 5 Cr. L J. 94 = 29 M. 569, 3 L.B. R. 280 = 5 Cr. L.J. 417, 16 P.W.R. 1907 Cr. = 6 Cr. L.J. 137, 11 C.W.N. 1128 = 6 Cr. L.J. 321, U.B.R. 1907, 1st Qr., Crim. Pro. Code, 5 = 6 Cr. L.J. 28 = 14 Bur. L.R. 38, 4 N.L.R. 71 = 8 Cr. L.J. 11; *Expl.*, 26 M. 592 = 2 Weir 298; *D.*, 26 B. 533, 5 O.C. 313, 24 A. 254 = 22 A.W. N. 4, A.W.N. 1905, 258 = 28 A. 212 = 2 A.L.J. 745 = 2 Cr. L.J. 809, 32 C. 1085 = 10 C.W.N. 51, 29 M. 558 = 5 Cr. L.J. 133, 5 P.R. 1906 = 4 Cr. L.J. 75 = 116 P.L.R. 1907, 11 C.W.N. 789 = 6 Cr. L.J. 1, 9 Bom. L.R. 789 = 6 Cr. L.J. 164 = 2 M.L.T. 414 = 32 B. 111, 7 C.L J. 63 = 35 C. 161 = 7 Cr. L.J. 95, 18 P.W.R. 1908, Cr.]

(35)—*I.P.C.*, *ss.* 109, 458, 477 *and* 477*A*—*Crim. Pro. Code* (1898), *ss.* 233 *and* 235—*Misjoinder of charges—Same transaction.*—A person was convicted on three charges, namely, (1) of abetting the falsification of an account book, (2) of fraudulently destroying and secreting other documents (3) and of abetting criminal breach of trust. No objection was taken to the joinder of charges before the Sessions Judge by whom the accused was convicted. The only sense in which the alleged falsification of the account book and the alleged fraudulent destruction and secretion of documents could be said to be connected together was the fact of the accused being left in the charge of the account book and of the documents giving him an opportunity of defrauding the complainant by falsifying the account book and destroying the document. It was not suggested that the account book was falsified in order to conceal the fact that documents had been destroyed or documents had been destroyed in order to prevent a particular falsification from being detected. *Held*, that the offences charged did not constitute one series of act so connected together as to form the same transaction, and that the misjoinder of charges could not be treated as an irregularity curable under s. 537. KRISHNASAMI PILLAI v. EMPEROR, **26 M. 125 = 2 Weir 295** (25 M 61, *F.*) [*R.*, 33 M. 502 = 7 M.L.T. 299 = 20 M.L J. 220 = 5 Ind. Cas. 847 = (1910), M.W.N. 65 = 11 Cr. L.J. 258.]

(36)—*Crim. Pro. Code* (1898), *s.* 235—*Kidnapping a child, and assaulting the child's mother on a subsequent day whether amounts to "same transaction."*—A person was charged at one trial with kidnapping, wrongful confinement and assault and was convicted. The case against him was, that he kidnapped and wrongfully confined a boy and that, on the boy's mother, a day or two afterwards, coming to his house and asking that the boy should be allowed to return to her, he assaulted her. *Held*, that the charge of assault ought to have been brought and tried separately, as it could not be said that the assault on the mother was one of a series of acts so connected together as to form the same transaction. CHEKUTTY v. EMPEROR, **26 M 454 = 2 Weir 296.** [*R.*, 14 Cr. L.J. 93 = 18 Ind. Cas. 653 = 15 O.C. 351, 11 Cr. L. J. 293 = 7 M.L.T. 367 = 6 Ind. Cas. 242, 1 S L. R. 73.]

(36-*a*)—*Misjoinder of charges—Kidnapping and murder—Distinct offences—Penal Code*, *ss.* 366, 302—*Crim. Pro. Code* (1898), *ss.* 233, 235 (1).—Mere proximity in time between two acts does not necessarily constitute them parts of the same transaction. Where, therefore, the offences of kidnapping and of murder did not constitute a series of acts forming the same transaction, but were two distinct offences not falling within the scope of s. 235, sub-s. (1)—*held* that s. 233 of the Code applied, that the charges of kidnapping and murder should have been tried separately, and that the effect of the misjoinder of charges was to make the trial altogether illegal. SAU DAIK v. CROWN, **1 L. B.R. 361.** (25 M. 61, P.C., *F.*)

(37)—*Of charges—Whether all the accused should have acted together to make their acts form part of single transaction.*—Where it was contended that the trial is bad for misjoinder of charges, as the acts done by the accused did not form part of the same transaction, *held* that it is not necessary that all the accused should have acted together from start to finish, to make their acts parts of one single transaction. *In re* MADASAWMY CHETTY, **10 M L.T. 23 = 10 Ind. Cas. 349 = 2 M.W.N. 189 = 12 Cr. L J. 268.** (33 M. 502, 30 B. 49, *R.*)

(38)—*Crim Pro. Code* (1898), *ss.* 227, 233, 234, 537—*Charge of more than three offences at one trial—Striking out offences so as to reduce them to three.*—Where a person is charged with, and tried for, four offences committed in the same year, it is not open to a Magistrate, purporting to act under s. 227, to strike out one of the charges, and convict the accused on the remaining three. The words of s. 227 may be wide enough to warrant a Court in altering a charge, by striking out one of the charges, at any time before judgment; but the section does not seem to warrant the striking out of a charge, for the purposes of curing an illegality which had already been committed. Disobedience to an express provision as to a mode of trial cannot be regarded as a mere irregularity, within the meaning of s. 537. MANAVALA CHETTY v. EMPEROR, **29 M. 569 = 1 M.L.T. 409 = 5 Cr. L. J. 94 = 17 M L J. 219.**

(39)—*Crim. Pro. Code* (1898), *ss.* 117(4), 537—*Security to keep the peace—Joinder of charges—Joint enquiry against two rival factions, bad.*—Where the members of two rival factions were proceeded against, and bound over to keep the peace, in one enquiry, *held*, that the holding of a joint enquiry was bad, and the defect cannot be cured by s. 537, Crim. Pro. Code. Persons belonging to contending factions are not "associated together in the matter under enquiry" within the meaning of s. 117 (4),

Joinder of Charges—continued.

——**3.—Misjoinder of Charges**—*continued.*

Crim. Pro. Code. GANPAT v. EMPEROR, **5 N L.R. 65 = 9 Cr. L.J. 560 = 2 Ind. Cas. 240.** (11 C.W.N. 472 = 31 M. 276, *F.*)

(40 & 41)—*Crim Pro. Code* (1898), *ss.* 233 *and* 239—*Charge of the offence of murder against one person—Distinct offence of grievous hurt against another—Whether joinder of the charges and single trial legal.*—On the commitment of four persons on a charge of murder, the Sessions Judge framed another charge against them of causing grievous hurt to one W, on the facts that, sometime after the alleged murder, three of the accused tried to carry off the body of the victim, and, when W tried to prevent them, they caused him grievous hurt. After joint trial for both the offences, the Judge acquitted them of murder, convicting three of them for causing grievous hurt. The question for decision on appeal was whether the trial was not bad for misjoinder of charges. *Held*, since the murder might have been committed by one set of men, with one object, and the attempt to carry off the body might have been made and the grievous hurt caused therein, by another set of men with a different object, the murder and grievous hurt were not such offences as must have been committed in the same transaction within the meaning of s. 239 of the Code, so as to be charged and tried together at one trial. NAWAB SINGH v. CROWN, **10 P. R. 1906, Cr. = 4 Cr.L.J 285 = 117 P.L.R. 1907.** (30 B. 49. *R.*)

(42)—*Joinder of six charges, one under s.* 201, *I.P.C., and two under s.* 193, *I.P.C., relating to the report and evidence about the death of one person, and one under s* 201, *I.P.C., and two under s.* 193, *I.P.C., relating to the report and evidence about the death of another person—Whether such trial is invalidated.*—In a case under appeal it was held by the Full Bench that the trial was invalidated by the joinder of six charges, one under s. 201, I.P.C., and two under s. 193, I.P.C., relating to a report and evidence about the death of one person, and one under s. 201, I.P.C., and two under s. 193, I.P.C., relating to a report and evidence about the death of another person. S. P. CHATTERJEE v. KING-EMPEROR, **14 Bur. L.R. 242, F.B. = 4 L.B.R. 294 = 8 Cr. L J. 497.**

(43 to 46)—*Joinder of the offences of forgery and criminal misappropriation committed in one transaction with like offences committed in another—Misjoinder, effect of—Crim.Pro. Code, ss.* 233 *and* 537 —If every possible combination of two charges is covered by some section of the Code, the joinder is legal; if not, it is illegal. A joinder of charges not authorized by the Crim. Pro. Code, renders the trial illegal, and such error is not curable under s. 537. The joinder at one trial of charges of forgery and of criminal misappropriation committed in the course of one transaction with another forgery or another criminal misappropriation committed in the course of another transaction is illegal, because, there is no section of the Crim. Pro. Code, under which the forgery in the one case could be joined with the misappropriation in the other case. The general rule as to the trial of offences is stated in s. 233. NGA LUN MAUNG v. KING-EMPEROR, **2 L B. R. 10.** (14 A. 502, *R.*; 25 M. 61, *F.*) [*R.*, 8 Cr. L J. 497 = 4 L.B.R. 294 = 14 Bur. L.R. 242, 9 Cr. L.J. 226 = 10 Bom. L.R. 973 = 4 M. L.T. 450.]

(47)—*Crim. Pro. Code* (1898), *s.* 239—*Joint trial of accused for giving false evidence in one case, illegality of—'Same transaction' meaning of.*—The accused were convicted at one trial, of giving false evidence in a case of dacoity, on the ground that the accused had conspired to give such false evidence. They were, however, neither charged with, nor convicted of, so conspiring. *Held*, the joinder of charges was illegal, since the words 'the same transaction' in s. 239 of the Code, cannot embrace the examination of all the witnesses throughout a trial, but could apply only to the examination of each witness as such separately. KING-EMPEROR v. SHWE SO, **3 L.B.R. 231 = 4 Cr.L J. 489.** (1 L.B.R. 268, 26 M. 592, *R.*)

(48)—*Security proceedings—Charge of being thieves by habit—Crim. Pro. Code, ss.* 107, 108, 110 *and* 117 (4).—Where four men were charged with being thieves by habit, for being bound down for good behaviour under s. 110, Crim. Pro. Code, it was *held* that it was an error to try them all together. The question whether a person is by habit a thief or not is personal to himself and forms a matter separate by itself. S. 117 (4), Crim. Pro. Code, refers to such cases as where several persons are charged with being concerned in a wrongful act that may occasion a breach of the peace (s. 107, Crim. Pro Code), or in an act regarding the dissemination of seditious matter (s. 180, Crim. Pro. Code), not to proceedings under s. 110. KING-EMPEROR v. PO TWE, **4 L.B.R. 46 = 6 Cr.L.J. 284.**

(49)—*Penal Code, ss.* 457, 380, *charges under —Crim Pro. Code* (1898), *s.* 537.—The joinder of the two charges under ss. 457 and 380, I.P.C., is illegal. Such misjoinder could not be cured by s. 537, Crim. Pro. Code. KING-EMPEROR v. ASGAR ALI, **U.B.R. 1904, 1st Qr. Crim. Pro. 2 = 1 Cr.L.J. 537.** (U.B.R. 1892—1896, 33, 25 M. 61, *R.*) [*Ref.*, U.B.R. 1907, Cr. P. C. 5, 14 Bur. L. R. 38.]

(50)—*Crim. Pro. Code* (1898), *s.* 237 —*Charge of criminal breach of trust—Conviction for cheating, whether sustainable.*—The accused was charged with criminal breach of trust under s. 406, I.P.C., in respect of an amount deposited with him, by complainant as security for the due discharge of his duties as accused's travelling agent. The Magistrate found that accused misappropriated the security money, and convicted him both under ss. 406 and 420, I.P.C. *Held*, that the conviction for the offence of cheating, to which the accused was not called on to plead and for which the defence evidence would have been different, was illegal. *In re* SUBRAMANYA AIYAR, **9 Cr. L. J. 406 = 1 Ind. Cas. 867.**

Joinder of Charges—concluded.

——3.—**Misjoinder of Charges**—*concluded.*

(51)—*Charges, misjoinder of—Joint trial—Objection, taken for the first time in the High Court, whether can be allowed.*—An objection as to misjoinder of charges, although not taken in either of the lower Courts, can for the first time be taken in the High Court, and such an objection being a fatal one, there must be a proper re-trial of the accused. SHYAMBAR KOYAL v. KING-EMPEROR, **19 C.L.J. 633=15 Cr. L.J. 472=24 Ind. Cas. 352.** (25 M. 61, *F.*)

See ACT III OF 1867, ss. 3 and 4, 5 P.W.R. 1910, Cr.

See ADULTERY, Rat. Un. Cr. C. 4.

See APPEAL—APPEAL TO PRIVY COUNCIL. 10 Bom. L.R. 973=33 B 221=4 M.L.T. 450=9 Cr. L.J. 226.

See CHEATING—FALSE PERSONATION, 4 L.B.R. 315=9 Cr. L.J. 15, F.B.

See COMMITMENT TO SESSIONS COURT, Rat. Un. Cr. C. 915=Cr. Rg. 20 of 1897.

See CRIM. PRO. CODE, 1898, s. 192, 2 N. W.P. 21.

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 4 C.W.N. 748.

See ESCAPE FROM LAWFUL CUSTODY, 11 M. 441=1 Weir 210=2 Weir 304.

See HOUSE-BREAKING, 1 Bom. L.R. 69.

See PENAL CODE, ss. 125-A, 153-A, 10 Bom. L.R. 848=8 Cr. L.J. 281.

See PENAL CODE, s. 419, 149 P.L.R. 1903=17 P.R. 1903, Cr.

See SANCTION TO PROSECUTE—NATURE AND FORM OF SANCTION, 13 C.W.N. 1062.

Joint trial of persons called upon to furnish security to keep the peace—*See* SECURITY TO KEEP THE PEACE—EVIDENCE AND PROCEDURE, 9 A. 452=A.W N. 1887, 111.

See UNLAWFUL ASSEMBLY, 6 M.L.T. 17=11 Cr. L.J. 30=4 Ind. Cas. 700.

See WAIVER, 3 M.L.T. 407=18 M.L J. 330=8 Cr. L.J. 152.

Joinder of Parties.

See CRIM. PRO. CODE, 1898, ss. 145 to 147, ss. 233—239.

See JOINDER OF CHARGES.

See JOINT TRIAL.

(1)—*Crim. Pro. Code* (1882), s. 145—*Persons in possession of land under dispute made parties—Right to give evidence in support of their claims.*—Where persons who, though not actually involved in a dispute under s. 145 of the Code, are made parties to the proceedings, they have a right to adduce evidence in support of their claim, and to have such evidence considered by the Court. QUEEN-EMPRESS v. GOVIND CHANDRA DAS, **20 C. 520.**

(2)—*Crim. Pro. Code* (1898), s. 117 (4)—*Joinder of persons in conflict with one another—Legality.*—Where the parties have been in conflict with one another, they cannot be said

Joinder of Parties—*concluded.*

to have been associated together in the matter under enquiry within the meaning of s. 117 (4) and the joinder of such persons is an illegality. *In re* GANAPATHI BHATTA, **3 M.L.T. 408=31 M. 276=8 Cr. L J. 154.**

Joint Assault.

See ASSAULT, 14 W.R. 419.

Joint Commitment.

See COMMITMENT TO SESSIONS COURT, A.W.N. 1900, 206.

Joint Conviction.

Using a house found unfit for human habitation—Joint penalty imposed on several accused if legal—*See* BEN. ACT III OF 1899, ss. 444, (2), 574, 14 C.W.N. 911=6 Ind. Cas. 874=11 Cr. L J. 412.

Joint Family.

See HINDU LAW—JOINT FAMILY.

Joint Magistrate.

Committal by Joint Magistrate — *See* MAGISTRATE, JURISDICTION OF—COMMITMENT TO SESSIONS COURT, 2 N.W.P. 132.

See NUISANCE UNDER CRIM. PRO. CODE, 15 W.R. 36, Cr.

See REFERENCE TO HIGH COURT, 14 W.R. Cr. 25.

Joint Opinion.

Of assessors — Mere irregularity — *See* SESSIONS TRIAL, 41 P.R. 1887, Cr.

Joint Owners.

Dispute between tenants of—*See* CRIM. PRO. CODE, 1898, s. 145, 8 Ind. Cas. 453=3 Bur. L. T. 74.

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 2 C.L R. 62.

Joint property—Theft by—*See* THEFT—THINGS WHICH MAY BE THE SUBJECT OF THEFT, A.W.N. 1881, 115.

Joint Penalty.

Using a house found unfit for human habitation—Imposed on several accused if legal—*See* BEN. ACT III OF 1899, ss. 444 (2), 574, 14 C. W.N. 911=6 Ind. Cas. 874=11 Cr L J. 412.

Joint Possession.

Jurisdiction of Magistrate in case of dispute as to—*See* CRIM. PRO. CODE 1898, s. 145, 11 C.L.J. 412=6 Ind. Cas. 544=11 Cr. L.J. 370.

Conversion of, into separate possession—*See* THEFT—THINGS WHICH MAY BE THE SUBJECT OF THEFT, 1 Weir 408.

Joint Property.

Theft by joint owner—*See* THEFT—THINGS WHICH MAY BE THE SUBJECT OF THEFT, A. W.N. 1881, 115.

Joint Sessions Judge.

See SESSIONS JUDGE, JURISDICTION OF.

Power of—*See* CRIM. PRO. CODE, 1898, s. 435, 25 W.R. Cr. 21.

Joint Trial.

See ACCOMPLICE.

See ACCUSED PERSON.

See APPROVER.

See CRIM. PRO. CODE, 1898, ss. 233—240.

See JOINDER OF CHARGES.

See JOINDER OF PARTIES.

(1)—*Crim. Pro. Code* (1898), *ss.* 233, 234 *and* 537—*Joint trial of two persons charged with distinct offences—I.P.C.*, *ss.* 290 *and* 291—*Irregularity, if curable.*—Two persons accused of different offences committed in different transactions should be tried separately, though, of course, one trial may be commenced immediately after the other, and the judgments in the two cases, may be delivered one after the other. A joinder in one charge of two distinct offences committed on one and the same date is an illegality which vitiates the trial, and is not covered by s. 537. TILAKDHARI DAS v. EMPEROR, **6 C.L.J 757 = 6 Cr. L.J. 442.** (2 C. L.J. 618, 10 C.W.N. 53, *F.*; 25 M. 61 = 28 I.A. 257, *R.*) [*R.*, 4 Ind. Cas. 28 = 10 Cr. L.J. 476 = 13 C.W.N. 1089.]

(2)—*Joint trial, when legal.*—Two persons cannot be tried together unless their association in the same offences was made out. CROWN v. CHINI, **21 P.R. 1914, Cr. = 16 Cr. L. J. 136 = 27 Ind. Cas. 200.**

(3)—*Penal Code*, *ss.* 290, 291—*Joint trial of fourteen persons—Irregularity.*—Where a Magistrate tried 14 persons together and convicted some under s. 290, and the remainder under s. 291, Penal Code, *held*, that the Magistrate in trying the persons accused of distinct offences together had committed an irregularity calculated to prejudice the accused persons and the conviction should, therefore, be set aside. PULISANKI REDDI v. QUEEN, **5 M. 20 = 2 Weir 303.** [*R.*, 10 M.L.J. 147, 2 Weir 271 = 25 M. 61, P.C., 3 L.B.R. 52.]

(4)—*Joint trial for several offences—Illegality.*—*Held*, that a joint trial for several offences in contravention of the provisions of s. 233, Crim. Pro. Code, is illegal, and that the illegality is not cured by s. 537 of the Code. JANG v. EMPRESS, **P.L.R. 1900, 61, Cr.**

(5)—*Joint trial— Illegality—Irregularity.*—Every infringement of the rule contained in s. 233, not provided for in the remaining sections of Ch. XXIII, Crim. Pro. Code, is not an illegality which necessitates the trial being set aside, but may be an irregularity which can be cured by s. 537, if it did not prejudice the accused or occasion a failure of justice. There is no distinction, as regards the gravity of the infringement of s. 233, between (i) the joint trial of distinct offences of a different kind ; (ii) the joint trial of more than three offences of the same kind ; and (iii) a joint trial which combines these two infringements of the rules contained in these sections. The same considerations arise in each of these cases and the question, whether s. 537 saves the trial, must be decided on the same lines in each case. The accused were charged at one trial with having

Joint Trial—*continued.*

committed three dacoities on the 25th December, 1899, and M, one of the accused, was also charged with having murdered a person while rescuing a prisoner from custody, with having taken part in a dacoity after the murder, with rescuing the prisoner and stealing property. The charges were kept separate and the opinions of the assessors were separately recorded on the charges which affected M. only and those which affected all the accused *Held*, that the accused were not prejudiced by the procedure adopted, and the irregularity was cured by s. 537, Crim. Pro. Code. MAMUN v. EMPRESS OF INDIA, **83 P.L.R. 1901 = 7 P R. 1901, Cr.** (11 M. 441, 14 C. 128, 395, 15 B. 491, 14 A. 502, 20 C. 537, 5 P.R. 1900, Cr., *R.*)

(6)—*Crim. Pro. Code, s.* 537—*Irregularity.*—Where two separate offences, which should have been tried separately, were, as a matter of fact, tried together, it was held that this did not amount to more than an irregularity, which, as it did not appear that the accused were in any way prejudiced, was covered by s. 537 of the Code of Criminal Procedure. EMPEROR v. RAM SINGHA, **A.W.N. 1907, 208 = 6 Cr. L.J. 215.** (14 A. 502, *F.*)

(7)—*Crim. Pro. Code, ss.* 233, 239—*Joint trial of several persons for distinct offences—Penal Code, ss.* 411 *and* 458.—Two accused were charged by police under s. 458 of the Penal Code and, having been tried jointly, the Magistrate convicted one of them, under s. 411, and the other, under s. 458 of the Penal Code. *Held*, that the joint trial being illegal, the convictions must be set aside ; that, when the Magistrate found that s. 458 was not applicable to one of the accused, he should have tried the two accused separately. JAGGA v. CROWN, **165 P.L.R. 1905 = 51 P.R. 1905, Cr. = 3 Cr. L.J. 76.**

(8)—*Crim. Pro. Code* (1882), *s.* 234—*Joint trial for four offences—Two offences of the same kind committed against different persons.*—Where the accused was tried, in contravention of s. 234, Crim. Pro. Code, for four offences instead of three and convicted of all of them, the conviction and sentence for the fourth offence were reversed as illegal. QUEEN-EMPRESS v. ALMEIDA, **Rat. Un. Cr. C. 212 = Cr. Rg. 26—2—1885.**

(9)—*Joint trial for two offences of the same kind.*—A person charged with two offences of the same kind within the definition of the second paragraph of s. 234 of the Crim. Pro. Code, can be tried for both the offences at one trial, although the offences are committed against different persons. QUEEN-EMPRESS v. DHONDI, **Rat. Un. Cr. C. 331 = Cr. Rg. 21 of 1887.** [*F.*, 9 C.L.J. 149 = 13 C.W.N. 507 = 10 Cr.L.J. 272 = 3 Ind. Cas. 319 = 5 M.L.T. 349.]

(10)—*Crim. Pro. Code* (1898), *ss.* 233 *and* 234—*Trial—Several offences—Same accused—One trial, if legal.*—When a person commits offences of a similar nature against a series of persons, he may, at one and the same trial, be tried for

Joint Trial—*continued.*

any three of them committed within twelve months. SRI BHAGWAN SINGH v. KING-EMPEROR, **9 C.L.J. 149 = 13 C W.N. 507 = 5 M. L.T. 349 = 3 Ind. Cas. 319.** (11 C.W.N. 1128, *D.*; 9 C. 371, 7 A. 174, Rat. Un. Cr. C. 331, 4 A. 147, *F.*)

(11)—*Crim. Pro. Code* (1898), ss. 233, 234—*Joint trial—Two offences of receiving property stolen from different persons at different times.*—One trial, for having been found in possession of stolen properties belonging to two different persons and stolen at different times is illegal. ALI MAHOMED v. EMPEROR, **13 C. W.N. 418 = 9 Cr.L.J. 277 = 1 Ind. Cas. 335.** (9 C. 371, *Not F.*; 11 C.W. N. 1128, *F.*; 25 M. 61 = 5 C.W.N. 866, P.C., *R.*) [*R.*, 11 Cr. L.J. 597 = 8 Ind. Cas. 229 = 36 P.L.R. 1910 = 64 P.W.R. 1910, Cr]

(12)—*Crim. Pro Code* (1898), *ss.* 233 *and* 239—*Distinct offences—Defamatory resolutions—Transmission of resolution to a newspaper—Concert.*—Where accused Nos. 1 to 3, who were charged with passing and publishing resolutions defamatory of the complainant, were tried jointly with the fourth accused, who was charged with transmitting the resolutions to a newspaper: *Held*, that, in the absence of a concert between all the accused, their joint trial was illegal, as the offences committed by accused Nos. 1 to 3 and the offence committed by the 4th accused were not committed in the same transaction within the meaning of s. 239, Crim. Pro. Code. *In re* GOVINDOSS CHATHOOR BHOOJADOSS; PURUSHOTHAM MALJI v. EMPEROR, **11 Cr. L J. 135 = 5 Ind. Cas. 436 = 7 M.L.T. 127.**

(13)—*Crim. Pro. Code* (1898), *ss.* 233 *and* 235—*Charges under ss.* 302 *and* 201, *Penal Code.*—Charges under ss. 302 and 201, Penal Code, cannot be combined. *In re* SAVARA SANKADU, **2 Weir 301.**

(14)—*Crim. Pro. Code* (1898), *s.* 239—*Joint trial of several accused—Validity—Irregularity in trial—Conviction set aside—Duty of Court to order re-trial—Delegation of duty to deliver judgment.*—The joint trial of several accused renders the trial invalid, except in the cases falling under s. 239 of the Code. The authorities responsible for carrying out the prosecution of offenders should not be compelled by the Court to revive a prosecution, which they may not consider it expedient to revive, or to carry it out in a particular way. In appeal or revision the superior Court is concerned with what has taken place, and it is required to adjudicate thereupon. Having done so, it is only in exceptional cases, where it can be justified in giving orders for the future proceedings of the Crown, and the executive duty of repeating the prosecution where the first trial breaks down. The delivery of judgment in an original criminal trial is an essential act entrusted to the tribunal holding the trial, and cannot legally be delegated by such tribunal to any other tribunal. EMPEROR v. BALWANT SINGH, **4 N.L.R. 71 = 8 Cr.L J. 11.** [*R.*, 14 Cr.L.J. 230 = 9 N.L.R. 42 = 19 Ind. Cas. 326.]

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(15)—*Crim. Pro. Code* (1898), *ss.* 235, 239—*Opium Act* (I *of* 1878), *s.* 9—*Opium, possession of—Joint trial—Same transaction.*—C, who held a license for sale of opium, allowed C.B. who did not hold license, to sell opium. The accused were jointly tried and convicted of an offence under s. 9 of the Opium Act. It was contended that the trial, being held in contravention of ss. 235 and 239 of the Code, was illegal. *Held*, that the transaction, in respect of which the accused were convicted being the same, their joint trial was not illegal. CROWN v. CHHAIL BIHARI, **113 P.L.R. 1906 = 4 Cr. L.J. 178.**

(16)—*Crim. Pro. Code*, *ss.* 235 *and* 239—*Joinder of parties, charges and trials—Meaning of expression* "*same transaction*"—*Object of giving wide powers to trying Courts regarding joinder of charges and defendants—Prejudice to accused.*—By ss. 452 to 458 of Act X of 1872, which are reproduced with slight modifications in the present Code as ss. 233 to 239, the Legislature considerably widened the powers of the Court as regards joinder of charges and joinder of defendants. The object was clearly to avoid the necessity of the same witnesses giving the same evidence two or three times over in different trials, and to join in one trial those offences with regard to which the evidence would overlap. The expression "same transaction," used in ss. 235 to 239 is an expression, which, from its very nature, is incapable of exact definition, and must have been advisedly used, because it had this quality. The area of facts covered by the expression "same transaction" varies with the circumstances of each case. The illustrations to the section, however, make the intention of the Legislature sufficiently clear. Those criminal acts, which are by English and Indian law regarded as subsidiary to an offence are included in the same transaction as the offence. Instances of such acts are in the case of theft, the disposing of the stolen property, and handing it over to a receiver; and in case of murder, the concealment of the body. If a series of acts are so connected together by proximity of time, community of criminal intent, continuity of action and purpose and such subsidiary acts as would make the co-accused *particeps criminis* or an accessory after the fact, or by the relation of cause and effect, as to constitute, in the opinion of the Court, one transaction, then the accused may be charged with and tried at one trial for every offence committed in such series of acts. If more persons than one are accused of different offences committed in a series of acts so connected, they may be tried together. Whether or not the series of acts be so closely connected as to form the same transaction necessarily rests with the Court to decide. The limits are wide, but no joinder of charges or trials should be permitted which will result in bewildering any of the accused in his defence, or in causing undue prejudice against him. Three accused persons were tried on a charge under s. 302, I.P.C., of murder and the third accused was also tried on a further charge, under s. 201, I.P.C., with having caused evidence of the said murder to disappear by

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disposing of the corpses of the deceased persons with the intention of screening the said accused from legal punishment. It was held that their joint trial was not illegal and that they were not prejudiced by it. The history of the law as to joinder of charges and of trials traced. A murderer cannot be charged under s 201 with causing evidence to disappear by concealing the corpse. CROWN v. GULAM *wd.* SARANG, **1 S.L.R. 73=8 Cr. L. J. 191.** [*F*, 11 Cr. L. J. 731=8 Ind. Cas. 936=4 S.L.R. 174.]

(17)—*Crim. Pro. Code* (1898), *s.* 235—*Acts forming part of the same transaction—Offences of theft, intimidation and being members of unlawful assembly committed on one day, and intimidation and unlawful assembly committed on the following day—One trial—Legality.*—Where the accused committed theft of sheep and, on being remonstrated by the owner, threatened him with force, drove him into his house and confined him there till late at night, and on the next morning went again to his house and renewed the threat and intimidation:—*Held*, that the above acts formed part of the same transaction within the meaning of s 235, and need not be tried separately. PEDDA VENCATA REDDY v. EMPEROR, **9 Cr. L. J. 367=1 Ind Cas. 682.**

(18)—*Crim. Pro Code, s.* 239—*Joint trial for two different offences—One offence committed by all the accused, the other by some—Penal Code* (*Act* XLV *of* 1860), *s.* 411—*Stolen property—Possession—Accused pointing out where property was concealed, effect of.*—Where it appeared that the three accused, in the presence of *mashirs* went into a patch of jungle and brought out a box containing aniline dyes, and the accused Nos. 2 and 3 on another occasion took out of some *lai* bushes, a tin of coal tar, and all the accused were jointly tried and convicted under s. 411 of the Penal Code, the allegation being that both the box and the tin had been stolen from a train. *Held*, (1) that the joint trial of the accused was illegal; (2) that the mere fact that the accused apparently knew where the stolen property was concealed did not establish that they were in possession of stolen property. EMPEROR v. UMAR *walad* SIDIK, **11 Cr. L J. 4=4 Ind. Cas. 481=3 S.L.R. 136.**

(19)—*Crim. Pro. Code* (1898), *ss.* 233, 234, 239. 537—*False evidence by two persons—Joint trial.*—Where two persons are severally charged with giving false evidence in their depositions at a trial in a Sessions Court, their offences are distinct and they must be tried separately under the provisions of s 233, Crim. Pro. Code. KING-EMPEROR v. KRISHNA RAO, **4 Bom. L. R. 53** [*F.*, 13 Cr. L.J. 23=13 Ind. Cas. 215=5 S L.R. 179; *R*. 10 Bom. L R. 973=9 Cr. L.J. 226=4 M L. T. 450: *D.*, 13 Cr. L J. 833=14 Bom. L R. 972=1 Bom. Cr. C. 216=17 Ind. Cas. 705.]

(20)—*Penal Code, ss.* 193, 467—*Two accused—Joint trial of the accused for offence under s.* 119—*Validity.*—Where two persons were tried together and convicted under ss. 467, 193 of the Penal Code, *held* that, under the second head, each of the accused should have been tried separately and not jointly. REG. v. JEEVAJEE ABAJEE, **Rat. Un. Cr. C. 31=Cr. Rg. 7-4-1870.**

(21)—*Joint trial of two persons under s.* 193, *Penal Code, not proper.*—In the case of an offence under s. 193, I.P.C., two persons cannot be tried jointly, but ought to be charged and tried separately. *In the matter of* GOVINDU, **26 M. 592=2 Weir 262=2 Weir 297.** [*R*, 4 Cr. L.J. 489=3 L.B.R. 231.]

(22)—*Penal Code, ss.* 193, 196—*False evidence—Several accused—Joint trial.*—Where one of the accused used forged receipts in evidence in a Revenue case and three others gave evidence in support of the receipts, *held* that a joint trial of all the accused, the first for an offence under s. 196 and the others for offences under s. 193 of the Penal Code, was illegal. EMPRESS v. ANANT RAM, **A.W.N. 1882, 37=4 A. 293.** [*F.*, A.W.N. 1882, 44.]

(23)—*Penal Code, s.* 193—*Separate trial.*—Where several persons are accused of offences under s. 193 of the Penal Code, each should be tried separately and allowed to have the evidence of the others taken on his behalf. EMPRESS v. CHANGU, **A.W N. 1882, 124.**

(24)—*False evidence—Separate trial.*—Persons accused of having given false evidence in respect of the same matter cannot be jointly committed for trial. EMPRESS v. LALAK SINGH, **A.W.N. 1882, 160.**

(25)—*Penal Code, s.* 193—*False evidence—Joint trial of two accused.*—Where two persons are charged with giving false evidence, separate charges should be framed and separate enquiries held. EMPRESS v. RAHMAT KHAN, **A.W.N. 1882, 44.**

(26)—*Penal Code, ss.* 193, 199—*Joint trial—Land Revenue Act,* XIX *of* 1873, *Ch.* V—*Judicial proceedings.*—The joint trial of several persons for giving false evidence is irregular, It is questionable whether a proceeding under Ch. V of the Land Revenue Act is a judicial proceeding. EMPRESS v. DIN DAYAL, **A.W. N. 1885, 29.**

(27)—*Joint trial—False verification of written statement.*—A charge against several persons of having all together verified a written statement as true while they knew it to be false, can be tried jointly against all, unlike charges of having given false depositions. EMPRESS v. MEHRBAN SINGH, **A.W.N. 1884, 52.**

(28)—*False evidence—Conspiracy—Joint trial.*—Persons accused of having given false evidence cannot be jointly tried Though their common object may be to involve a person in a criminal case, yet, the false evidence cannot ordinarily be regarded as an abetment of the offence of another. EMPRESS v. PIARI LAL, **A.W.N. 1882, 64.**

(29)—*Crim Pro. Code* (1882), *s.* 239—*Charges involving conspiracy between the accused—Joint trial.*—Where the charges involve conspiracy

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between the accused, they should be tried jointly. QUEEN-EMPRESS v. MOSS, **16 A. 88 = A. W.N. 1894, 23.**

(30)—*Crim. Pro. Code* (1882), s. 234—*Distinct offences—Joint trial.*—*Held* that the joint trial of an accused for offences under ss. 471 and 193, I.P.C., was illegal and must be quashed. EMPRESS v. HARNAM, **A.W.N. 1883, 183.**

(31)—*I.P.C.*, ss. 188, 419—*Epidemic Diseases Act*, 1897, s. 3—*Distinct offences—Joint trial, legality of* —Four persons were tried together at one trial. The acts, for which two of them were convicted were entirely distinct from those, for which the other two were convicted. Two out of the four were in result convicted and sentenced for disobeying a lawful order of a public servant under s. 188, Penal Code, read with s. 3 of the Epidemic Diseases Act, while the remaining two were convicted of attempting to cheat by personation under s. 419 of the Penal Code. *Held*, that the trial was illegal and the conviction should be set aside. KING-EMPEROR v. MADHUB CHANDRA RAJ, **3 L.B. R. 214 = 4 Cr. L.J. 479.**

(32 & 33)- *Crim Pro. Code* (1898), *ss.* 233, 234 --*Scope—Joint trial of several distinct complaints against the same accused—Effect of failure to take objection.*—S. 234 refers to acts done by the same individual or same set of individuals as against the same complainant or complainants so connected with each other that they may in law be taken to be one person. Where three persons laid three separate complaints against the accused alleging that they committed rioting and individually caused hurt to each of the complainants, and threw away and spoilt their foreign salt and other articles, *held*, that the joint trial of the accused on three separate complaints was illegal, and the illegality could not be cured by the fact that no objection was taken to the procedure adopted, either in the Court of first instance or in the appellate Court. NANDA KUMAR SIRKAR v. EMPEROR, **11 C.W.N. 1128 = 6 Cr. L J 321.** [*F.*, 9 Cr. L.J. 277 = 13 C W.N 418 = 1 Ind. Cas 335 ; *R* , 11 Cr. L J 597 = 8 Ind. Cas. 229 = 36 P L.R. 1910, 64 P.W.R. 1910, Cr.; *D.*, 10 Cr. L.J. 272 = 3 Ind. Cas. 319 = 5 M.L.T. 319 = 9 C.L J. 149 = 13 C.W.N. 507.]

(34)—*I.P.C.*, ss. 328, 380, 401 *and* 411—*Charges under—Crim. Pro. Code* (1882), *ss.* 234, 235 –*Joint trial—Validity—Practice.*—Where the Sessions Judge tried at one trial all the accused on a charge under s 401 of the Penal Code, three sets of the accused on three different heads of charges under ss. 328 and 380 and one of the accused on a charge under s. 411, *held* that the joint trial of all the accused on all the heads of charges was opposed to s. 234 of the Crim. Pro. Code, and though it was therefore unnecessary for the Judge to try the accused on the separate heads of charges under ss. 328, 380 and 411 of the Penal Code, it was permissible to record evidence under those heads in order to prove the charge under s. 401. *Held* also that as the accused were not prejudiced by the trial on all the charges, the conviction need not be set aside. QUEEN-EMPRESS v. JIVA JETHA, **Rat. Un. Cr. C. 509 = Cr. Rg. 27 of 1890.**

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(35)—*Security to keep peace — Crim. Pro. Code* (1882), ss 107, 112—*Joint trial of two opposing parties—Duty of prosecution where proceedings are taken against many persons.*—Where there are two contending parties opposed to each other and inclined to commit a breach of the peace, it is irregular for a Magistrate to take steps against both the parties jointly and to try both the parties in one and the same proceeding. But such joint trial is not, *ipso facto*, null and void, but only where the accused has been prejudiced thereby. It is essential, before any proceeding under s. 107 can succeed, for the prosecution to establish what each individual person implicated has done to furnish a basis for the apprehension that he would commit a breach of the peace. What is evidence against one cannot be treated as evidence against all others, without discriminating between the cases of the various persons implicated. QUEEN-EMPRESS v. ABDUL KADIR, **9 A. 452 = A.W.N. 1887, 111.** [*F.*, 8 C.W.N. 180.]

(36)—*Two opposing parties to proceeding under s. 107, Crim. Pro. Code, trial of* —Two opposing parties to a proceeding under s. 107, Crim. Pro. Code, 1898, cannot be proceeded against and bound over in one proceeding. KAMAL NARAIN CHOWDHRY v. EMPEROR, **5 C L J. 231 = 5 Cr. L J 197 = 11 C.W.N 472.** [*F.*, 31 M 276 = 3 M L T. 408, 9 Cr. L.J. 560 = 2 Ind. Cas. 240 = 5 N.L.R. 65.]

(37)—*Simultaneous trial of the opposing parties in a riot on distinct and separate charges before the same jury—Irregularity of procedure.*—On separate committals of the opposing parties in a riot, the Sessions Judge judicially mixed up the two trials before the same jury letting in the two cases one after the other, putting the prisoners in the two cases on their defence in the same order and summed up in both simultaneously after hearing addresses of the counsel for the accused in both and the reply of the Government Pleader. On the jury returning a verdict in respect of all the accused, *held*, that the trials ought to have been kept quite distinct and separate and that the procedure adopted by the Sessions Judge was clearly against law and retrials were ordered. HOSSAIN BUKSH v. EMPRESS, **6 C. 96 = 6 C.L.R. 521.** (B.L.R. Sup. Vol. 750 = 8 W.R 47, Cr, *D.*) [*R.*, L.B.R. 1872—1892, 275, 9 A. 452, 1 C.W.N. 426, 8 C.W N. 344 ; *D* , 20 C. 537.]

(38)—*Rioting—Opposing parties—Joint trial.*—Persons composing both parties to a riot with deadly weapons cannot be jointly tried for rioting. Each party should be tried separately. EMPRESS v. PULANDHAR, **A.W.N. 1882, 160.**

(39)—*Crim. Pro. Code*, s. 239—*Same transaction, what amounts to—Disposal and receipt of stolen property—I.P.C.*, ss. 411 *and* 414.—Where a stolen article is criminally disposed

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of by one person (s. 414, I.P.C.) and at the same time and place dishonestly received by another (s. 411, I.P.C.), the two offences form part of the same transaction, and the two persons can be tried jointly at the same time. EMPEROR v. KESHAV KRISHNA, **6 Bom. L.R. 361=1 Cr. L.J. 330.** [*F.*, 29 B. 449=7 Bom. L.R. 527.]

(40)—*Crim. Pro. Code, s.* 239—*Joint trial of offences under ss.* 409 *and* 411, *I.P.C.*—A person who commits criminal breach of trust can be tried jointly with the person who receives the property obtained by the breach of trust. The offence of receiving stolen property is committed where the receiver knows or has reason to believe it to be stolen property. In other words, his knowledge or belief that the property comes through the tainted channel of theft or criminal breach of trust, which is an essential ingredient of the offence, connects him with the transaction of theft or criminal breach of trust, so as to make him a *particeps criminis*, and that connection is sufficient to constitute the offences of one transaction, whether the two acts take place simultaneously or not. EMPEROR v. BALABHAI HARGOVIND, **6 Bom. L.R. 517=1 Cr. L.J. 584.** [*R.*, 8 Cr. L.J. 191=1 S L.R. 73, Cr.; *D.*, 29 B. 449=4 Bom. L.R. 527.]

(41)—*Crim. Pro. Code* (1882), *ss.* 109, 239—*Separate trials.*—It is not legal to carry on a joint trial of two persons who are required to show cause why they should not execute bonds under s. 109 of the Crim. Pro. Code. QUEEN-EMPRESS v. BAQU, **Rat. Un Cr. C. 556.** (9 A. 452, *F.*)

(42)—*Crim Pro. Code* (1882), *ss.* 117, 118—*Separate enquiry for each accused.*—Where several persons are arraigned to show cause under ss. 117 and 118, each must be separately tried. QUEEN-EMPRESS v. GAIBA, **Rat. Un. Cr. C. 585=Cr. Rg. 46 of 1891.** (Rat. Un. Cr. Cas. 556, *R*)

(43)—*Penal Code, ss.* 240 *and* 243—*Separate conviction*—*Distinct offences*—*Joint trial of two persons, one for an offence under s.* 240, *the other under s.* 243, *Penal Code*—*Crim. Pro. Code* (1898), *ss.* 235, 239 *and* 403.—C gave the accused 50 counterfeit rupees to pass for him in Calcutta. While in Calcutta, the accused's trunk was broken open and the counterfeit coins were stolen. The accused then gave information to the police which led to the discovery of 64 other counterfeit rupees in the house of C. C was separately tried and convicted under s. 243, Penal Code, for being in possession of counterfeit coins. The accused and C were also tried jointly, the former under s. 243, the latter under s. 240 with reference to the Rs. 50 be made over to the accused to pass off in Calcutta. It was contended on appeal that C could not be tried for an offence under s. 240 after he had been convicted of the possession of base coin under s. 243 and that therefore his confession as co-accused was improperly used against the accused and that the joint trial was bad. *Held*, regarding the first contention, that the delivery of the base coin with a view to its being charged for good money was a distinct offence from that for which C was previously convicted. *Held*, also, that the joint trial was permissible by s. 239 read with the first clause of s 235, Crim. Pro. Code. EMPEROR v. PRASANNA KUMAR DAS, **31 C. 1007=8 C.W.N. 717=1 Cr. L.J. 714.**

(44)—*Crim. Pro. Code, ss.* 235 *and* 239—*Joint trial*—*Persons charged with offences committed on different occasions and dates and unconnected with one another*—*New trial by different Magistrate.*—Where two persons H and S, who were both concerned in an offence, committed on a certain date, were jointly tried for that offence, as also for another offence committed by S only on a previous date (the latter offence being complete in itself), and H was convicted, *held*, on appeal by H, that the joint trial was bad. The conviction of H was set aside and a new trial by a different Magistrate was ordered. HIRA LAL THAKUR v. EMPEROR, **31 C. 1053=8 C.W.N. 715=1 Cr. L.J. 713.** [*F*, 11 Cr. L.J. 30=4 Ind. Cas. 700=6 M.L T. 17.]

(45)—*Crim. Pro. Code* (1898), *ss.* 233, 239 *and* 537—*I.P.C., s.* 411—*Separate retainers by separate persons at different places*—*Joint trial*—*Illegality and not mere irregularity.*—*Per Harington and Stephen, JJ.*, (*Brett, J. contra*).—Separate retainers by separate persons, of separate articles, at different places, although the articles may have been the proceeds of one dacoity, cannot be said to be in the course of the same transaction. Persons charged with such retention cannot be tried jointly. S. 537 of the Crim. Pro. Code does not apply to such a case. ABDUL MAJID v. EMPEROR, **33 C. 1256=3 C.L.J. 412=10 C W.N. 912=3 Cr.L. J. 391.** (25 M. 61=5 C.W.N. 866, *F.*; 5 C.L.R. 574, 1 C.W.N. 35, *R.*). [*R.*, 9 Cr.L.J. 226=10 Bom. L.R. 973=4 M.L.T. 450, 11 Cr.L.J. 244=5 Ind. Cas. 769=11 C.L.J. 182, 17 M.L.J. 219=5 Cr.L.J. 479, 1 S.L.R. 73.]

(46)—*I.P.C., s.* 211—*Two persons preferring false charge*—*Joint trial*—*Misjoinder of parties.*—Where two persons preferred a false charge of stealing goat, the mere fact that one of them made the statement on one day and the other on the succeeding day would not make the joint trial of the two persons under s. 211, Penal Code, bad for misjoinder of parties. MALLAPPA REDDI v. EMPEROR, **27 M. 127=1 Weir 192.**

(47)—*Crim. Pro. Code* (1898), *ss.* 222, 233, 234, 235—*Charge alleging three offences under s.* 409, *Penal Code, and three distinct offences under s.* 477 (*a*), *Penal Code*—*Offence committed in one year in three separate transactions.*—Under s. 233 of the Code, a person cannot be tried and convicted at one trial on a charge which alleges three distinct acts of criminal breach of trust under s. 409, Penal Code, and three different acts of falsification of accounts under s. 477 (*a*), Penal Code. S. 234 does not cover the case because the offences of falsification of accounts are not of the same kind as the

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offences of criminal breach of trust, and s. 235 does not cover it because the falsification of accounts, connected with one act of criminal breach of trust cannot be said to form part of the same transaction with the other criminal breaches of trust. A conviction on such a charge is not only irregular but illegal, and the trial is vitiated thereby. There is no provision of the Crim. Pro. Code which says all offences committed within one year in the course of three separate transactions may be tried at one trial. KASI VISVANATHAN v. EMPEROR, **30 M. 328 = 17 M.L.J. 141 = 2 M.L.T. 177 = 5 Cr. L.J. 341.** (4 Bom. L.R. 433, *R.*) [*F.*, 41 C. 722 = 15 Cr.L.J. 153 = 18 C.W.N. 1152 = 22 Ind. Cas. 729; *R.*, 13 C.L.J. 21, 13 Ind. Cas. 213 = 1911 2 M.W.N. 536, 14 Cr.L.J. 428 = 40 C. 318 = 20 Ind. Cas. 412, 13 Cr.L.J. 501 = 15 Ind. Cas. 645 = 14 Bom. L.R. 306.]

(48)—*Crim. Pro. Code* (1898), *ss.* 239, 439 *and* 537—*Joint trial of both parties in a riot, whether merely irregular or altogether illegal and void—Interference by Chief Court on revision entirely discretionary.*—Where two parties are arrayed against each other in a riot, it cannot be said that the offence of rioting was committed by both the parties in the same transaction, within s. 239 of the Code, so as to justify a joint trial of the persons on both the sides. The offence of rioting committed by each side forms a separate transaction and s. 239 will, therefore, be entirely inapplicable. Though, in the light of the Privy Council judgment in *Subramania Iyer* v. *King Emperor*, 25 M. 61, it must be held that a trial which is not warranted by the provisions of the Crim. Pro. Code is altogether illegal and void and not merely irregular, within the purview of s. 537, yet it would be entirely inconsistent with the letter and scope of s. 439 to hold that, in every case of illegal trial the Chief Court is necessarily obliged to interfere without due regard to the circumstances of the particular case. The illegality of a trial is no doubt *prima facie* good and strong ground for exercise of revisional jurisdiction, but it is not imperative on the Court to take such action in every case, however small and scant may be the necessity or reason for adopting such course so as to interfere with the conviction in every such case, especially where no prejudice is shown to have been caused by such illegality. ALA DYA v. KING-EMPEROR, **5 P. R. 1906, Cr. = 116 P.L.R. 1907 = 4 Cr. L.J. 75.** (15 P.R 1882, Cr., 20 C. 537, 25 M. 61, P.C., *R.*)

(49)—*Crim. Pro. Code* (1898), *ss.* 233, 251, 252 *and* 256—*Separate trial for distinct offence—Evidence for prosecution—"Trial" when commences.*—Where seven persons were sent up by the police, charged with theft in a building or dishonest receipt and disposal of stolen property, the Magistrate took evidence against all the seven, discharged two of them and, having come to the conclusion that the disposal of the property by the appellant and the remaining accused did not form one transaction, he determined to frame separate charges and to try the appellant separately from the other accused, but without re-hearing the evidence for the prosecution separately, although portions of the evidence, which were relevant against the remaining accused, had no connection with the case of the appellant. *Held*, that the word "trial" includes the taking of evidence in support of the prosecution, as also the whole of the subsequent procedure laid down in Ch. XXI of the Code for the trial of warrant cases, and that the appellant should be re-tried *de novo*. The words "claims to be tried" in s. 256, no doubt, give colour to the argument that no trial commences until after the accused refuses to plead, or does not plead, or claims to be tried, but the words do not really raise any doubt that a trial under Chap. XXI commences when the accused appears or is brought before a Magistrate under s. 252. PAW THA v. KING-EMPEROR, **3 L.B.R. 280 = 5 Cr. L J. 417.** (25 M. 61, *R.*)

(50)—*Crim. Pro. Code* (1898), *s.* 233—*Upper Burma Criminal Justice Regulation, sch.* XV.—Where the accused was tried and convicted at one trial of the offence of causing hurt and of abetment of theft at a different place on the same day, it was held that the joint trial of the offences was an illegality which was not curable either by the Criminal Justice Regulation or any other provisions of law. KING-EMPEROR v. NGA TOK GYI, **U.B.R. 1904, 2nd Qr., Penal Code, 9 = 1 Cr. L. J. 872.** [*R.*, U.B.R. 1907, Cr. P.C., 5.]

(51)—*Joint trial of several persons for one transaction—One of them found to have committed offence of more aggravated character triable by Court of Sessions—Committal of all accused to Sessions.*—Where several persons are jointly charged in respect of one transaction, but it appears from the facts implicating the whole of them that one has committed an offence of a more aggravated character than the rest, which either must or should be tried by a Court of Session, the Magistrate investigating the case should, for purposes of convenience, send up the whole of the accused for trial. EMPRESS v. KHIALI, **A.W N. 1881, 64.**

(52)—*Crim. Pro. Code* (1872), *s.* 453—*Joint trial for more than three offences—Waiver.*—The accused was committed for trial before the Court of Sessions on four charges of criminal breach of trust between July 1879 and 1880, but no objection was taken by the accused either before the Magistrate or the Court of Session to the effect that he could not be charged and tried at the same time for more than three offences with reference to s. 453, Crim. Pro. Code, 1872. *Held* that the objection having been taken for the first time in the High Court without showing that the accused had been prejudiced thereby, the conviction could not be set aside on that ground. EMPRESS v. FAIZ ILAHI, **A W.N. 1881, 68.**

(53)—*Penal Code, ss.* 395, 401—*Distinct offences—Separate trials.*—Where in a trial, twenty-five persons were charged, under s. 401 of the Penal Code, with belonging to a gang of

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dacoits, some of them also with a dacoity committed on one date, and some others with a dacoity committed on another day, *held* that the three charges should be inquired into in separate trials. EMPRESS v. LEKHA, **A.W.N. 1882, 178.**

(54)—*Several dacoities—Separate trials.*—Where the accused were jointly committed for trial for six dacoities committed between two dates, *held* that a separate commitment should have been made for each dacoity. EMPRESS v. DALLA, **A.W.N. 1882, 180.**

(55)—*Joint trial of three separate dacoities.*—Where three separate dacoities were committed at different places and on three different sets of travellers, but the accused were tried jointly for all the three offences, *held* that the procedure was illegal and that separate trials should be held. EMPRESS v. SERHA, **A.W.N. 1883, 12.**

(56)—*Crim. Pro. Code* (*Act* X *of* 1872), s. 458—*House-breaking by night with intent to commit theft—Joint trial.*— Where A and B were charged with having committed house-breaking by night with intent to commit theft, and C with having received some stolen article on a certain day and D with having received some other stolen articles on another day, *held* that the three offences should not be tried together, but separately. EMPRESS v. DAYA RAM, **A.W.N. 1882, 215.** [*R.*, A.W.N. 1883, 158.]

(57)—*Joint trial of offences under ss.* 457, 411, *I.P.C.* — Where two persons charged under s. 457, I.P.C., with house-breaking by night and a third person under s. 411, I.P.C., with receiving part of the stolen property, were jointly committed for trial before the Court of Sessions, *held* that, as the offences were distinct offences, the commitment should be annulled. EMPRESS v. JURAWAN, **A.W.N. 1883, 158.**

(58)—*Crim. Pro. Code* (1882), *s.* 234—*Offences under ss.* 401, 411—*Distinct offences.*—*Held* that the offences under ss. 411 and 401, I.P.C., could not be tried together. EMPRESS v. BHIKARI, **A.W.N. 1883, 179.**

(59)—*Penal Code, s.* 174—*Non-obedience to summons—Joint trial of several persons.*—It is illegal to conjointly try in one trial several persons accused of distinct substantive offences of contempt of Court. It is obvious that this procedure may have been very prejudicial to the cases of the persons thus improperly tried, for, they would be precluded from calling each other, as witnesses in support of their various and distinct pleas of not guilty. EMPRESS v. DEBIDIAL, **A.W.N. 1883, 25.**

(60)—*Joinder of trial—Duty of Magistrates and Judges.*—In this case, some ten persons were jointly tried and convicted under ss. 147, 325, I.P.C., by the Sessions Judge. In appeal the High Court made the following observations. "If Magistrates think fit to commit and Judges to try ten or a dozen persons at the same time and in a single proceeding, the best they can be expected to do is very clearly and explicitly to distinguish between the cases of the several prisoners and to point out how the evidence, affects them individually. The evidence should not be treated *en bloc.*" EMPRESS v. GAYADIN, **A.W.N. 1883, 145.**

(61)—*Crim. Pro. Code* (1898), *s.* 235—*Several offences committed on several times covering a period of nearly two years—Bad for multifariousness—'Same transaction,' meaning of—Scope, of s.* 235.—Six accused were charged as Directors of the Circars Provident Fund, Bapatla, with having committed breaches of trust in respect of three sums of money alleged to belong to the company on several times covering a period of nearly two years. The fourth and sixth accused were also charged with having falsified certain accounts by making false entries therein on 20th and 25th April, 1905, and these two and the first accused with having falsified another document on 24th June 1905. The sixth accused was further charged with having cheated two persons, one on the 6th March 1905, and another on the 29th March 1905, and the fourth accused with having cheated a third person on the 17th June 1905. Those among the six accused persons, who were not charged with the substantive offences of falsification of accounts and cheating, were charged with having abetted the commission of these offences; *held* (1) *prima facie*, the trial is open to objection on the ground of multifariousness; it violates the express injunctions of the legislature prohibiting the trial of several offences covering a period of more than one year at one trial, and the trial together of a number of offences which are not of the same kind within the meaning of the Code. The acquittal of the accused on some of the charges, which the prosecution failed to prove, cannot make valid the trial which was illegal *ab initio.* S. 235, Crim. Pro. Code, 1898, allows of a number of offences, even if exceeding three and extending over a period of more than twelve months, being tried at one trial, if they are committed "in one series of acts so connected as to form the same transaction." Community of purpose or design and continuity of action are essential elements of the connection necessary to link together different acts into one and the same transaction. *In re* CHORAGUDI VENKATADHRI, **7 M.L.T. 299 = 20 M.L.J. 220 = 5 Ind. Cas. 847 = 11 Cr. L.J. 58 = 33 M. 502.**

(62)—*Crim. Pro. Code* (1898), *ss.* 235 *and* 239—"*Same transaction*" *what is—Permitting cattle to trespass—Impounding of cattle—Subsequent rioting in rescuing cattle—Offences committed in the same transaction.*—Certain parties were charged and tried for permitting cattle to trespass, and the same parties with others were charged and tried together for rioting in rescuing the cattle after they had been impounded at another time and in another place. But it was not found that the parties, when they permitted the cattle to trespass, intended that, if the cattle were impounded,

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they would rescue them. *Held*, the acts of permitting cattle to trespass and the rescuing of cattle are not so connected together as to form the same transaction (s. 235), and the "different offences" were not committed in the same transaction (s. 239) and that the accused ought not therefore to be tried together either under s. 235 or s. 239. *In re* MUSLAPPA, **7 M. L.T. 367 = 6 Ind. Cas. 242 = 11 Cr. L J 293.**

See ACT III OF 1867, ss. 3, 4, 5, 6, 10, 9 N. L.R. 68 = 14 Cr. L.J. 293 = 19 Ind. Cas 949

See ACT XVIII OF 1879. 6 M. 252 = 1 Weir 116 = 1 Weir 156 = 1 Weir 785 = 7 Ind. Jur. 247.

See MAD. ACT V OF 1884, s. 162-B., 13 Cr. L.J. 240 = 14 Ind. Cas. 432.

See CHARGE—GENERAL, 39 P.R. 1888, Cr.

See CHARGE—FORM OF CHARGE, 5 B.H.C. Cr. 55.

See COMMITMENT TO SESSIONS COURT, A. W.N. 1900, 206.

See CONFESSION—CONFESSIONS BY CO-ACCUSED—ADMISSIBILITY, 15 B. 66, 29 P.R. 1901, Cr.

See CONSPIRACY, 16 A. 88 = A.W.N. 1894, 23.

Power of High Court—Parties in ryot on opposite side—*See* CRIMINAL PROCEEDINGS, B.L.R. Sup. Vol. 750 = 8 W.R. Cr. 47.

Security case—Case of each person to be separately considered—*See* CRIM. PRO. CODE, 1898, ss. 107, 110, 9 M L.T. 271 = 12 Cr. L.J. 104 = 9 Ind. Cas. 594 = 1911, 1 M.W.N. 235.

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Of several matters of dispute—*See* CRIM. PRO. CODE, 1898, s. 145, 5 C.W.N. 710.

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See CRIM. PRO. CODE, 1898, ss. 408, 413, 4 L.B R. 354 = 9 Cr. L.J. 356.

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See CRIM. PRO. CODE, 1898, s. 562, 2 Bom. L.R. 112.

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 9 Cr. L J. 265 = 1 S L. R. 25, Cr., 15 C. 31.

See ESCAPE FROM LAWFUL CUSTODY, 11 M. 441 = 1 Weir 210 = 2 Weir 301.

Recording evidence in—*See* EVIDENCE—GENERAL, 10 C.P.L.R. Cr. 23.

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See FALSE EVIDENCE, 10 C. 405, 4 A. 293.

See JUDGMENT, 12 C.W.N. 134 = 6 Cr. L.J. 427 = 35 C. 138.

See PARDON, 3 M.L.T. 407 = 31 M. 272 = 8 Cr. L J. 153, 5 A.L.J. 691 = A.W.N. 1908, 259.

See PENAL CODE, ss. 34, 141, 142, 147, 149, 11 Cr. L J. 30 = 4 Ind. Cas. 700 = 6 M L.T. 17.

See PENAL CODE, ss. 147, 323, 325, A.W.N. 1881, 28.

In riot cases, opposite parties to be separately tried—*See* PENAL CODE, s. 148, S.C. 75, Oudh.

See PENAL CODE, s. 193, 5 A. 17.

See PENAL CODE, s. 373, 11 C.P.L.R. Cr. 6.

See PENAL CODE, ss. 379, 411, 1914 M.W. N. 352 = 23 Ind. Cas. 208 = 15 Cr. L.J. 256.

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See RIOTING, A.W.N. 1881, 28.

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See ASSISTANT SESSIONS JUDGE.

See JUDGE AND JURY.

(1)—*Judges, duty of, in the administration of justice.*—The duty of a Judge is to administer justice according to law; he is not entitled to put terms on the Crown or on any suitor, requiring conformity to his own extra-judicial views. What is legal is a matter competent to a Judge to ascertain. But the question whether the Crown is morally justified in calling a witness or prosecuting a criminal is not usually one for a Court of law. A Judge may fairly mediate an accommodation, but not put terms on pronouncing sentence or giving judgment. A Judge may not use language which tends to stop the approach of persons aggrieved or which may cause scandal, or which tends to show that he is influenced by either fear or favour. He must not interpose personal views on matters moral or political, and so forth, lest the suitor or the subject, generally, should have reason to suppose that this rule is judgment, and lead to the passing of orders contrary to the law of the land and the delay of common right. To the law of the land every Judge is strictly bound to conform, and the Judges of the inferior Courts are bound to act upon the interpretations of the High Court which is the Highest tribunal. QUEEN-EMPRESS v. RAMCHANDAR SAWAIRAM, **Rat. Un. Cr. C. 786 = Cr. Rg. 48 of 1895.**

(2)—*Competency of interested Magistrate to act as Judge.*—A Magistrate ought not to act as Judge in a case in which he has a distinct and substantial interest. Though a Magistrate, having such interest, may initiate proceedings where it is his duty to do so, he ought not to act judicially where it is not necessary for him to do so and where he is a witness for the prosecution. QUEEN v. BHOLANATH SEN, **2 C. 23.**

(2 a)—*Personal interest of Judge.*—It is not proper for Judges to try cases in which they have any personal interest. CALCUTTA STEAM TUG CO. v. HOSSEIN IBRAHIM *bin* JOHUR, **Bourke O.C 273.** QUEEN v. BOIDONATH SINGH, **3 W.R. Cr. 29.**

(3)—*Statement of Judge, value of.*—The statement of a Judge who presides at a trial, whether it be in a criminal or civil case, is, as to what has taken place at the trial, conclusive. Neither the affidavits of bystanders, nor of jurors, nor the notes of counsel, nor of shorthand writers, are admissible to controvert the notes or statement of the Judge. REG v. PESTANJI DINSHA, **10 B.H C. 75.**

(4)—*Magistrate being witness—Legality of conviction.*—A Magistrate cannot, in a case in which he is the sole Judge of law and fact, be a competent witness—*Per Curiam.* [*Appl.*, 20 C. 857; *R.*, 17 B. 299.] The trial and conviction by a Magistrate of an accused in a case, wherein he (the Magistrate) is himself a witness, is illegal—*Per Markby, J.* The conviction may be upheld, if there is evidence other than

Judge—*continued.*

that of the Magistrate to support it—*Prinsep, J.* EMPRESS v. DONNELLY, **2 C. 405.** [*F.*, 21 P.L.R. 1904; *Appl.*, 20 C. 857; *R.*, 17 B. 299, 21 C. 920.]

(5)—*Judge giving evidence in the case—Practice.*—When a Judge is the sole Judge both of law and fact, he cannot give evidence before himself, and the accused are entitled to have nothing stated against them in the judgment, which was not stated on oath in their presence and which they had no opportunity of testing by cross-examination and of rebutting. QUEEN-EMPRESS v. MANICKEM, **19 M. 263 = 2 Weir 725 = 6 M.L.J 143.**

(6)—*Importation into case by Judge of his own knowledge of facts, impropriety of*—A Judge is entitled to make use of his knowledge of the character of a witness in order to decide whether to give credit to his evidence or not. But, on the other hand, a Judge or Magistrate cannot, without giving evidence, import into a case his own knowledge of particular facts. MAUNG YON v. QUEEN-EMPRESS, **L.B.R. 1893–1900, 445.** (14 B. 572, 7 M.I.A. 203, 15 I.A. 91, 7 W. R. 190, 11 M.I.A. 221, 22 W.R. 9, 25 W.R. 121, 3 I.A. 286, 20 C. 866, *F.*)

(7)—*Incapacity of Judge to give evidence.*—*Held*, that a District Magistrate ought not to have given evidence in a case which he intended to decide himself. NGA SHWE KYE v. QUEEN-EMPRESS, **L B.R. 1893—1900, 72.** (2 C. 414, 416, *R.*)

(8)—*Dying declaration recorded in absence of accused—Examination of Magistrate who recorded it—Practice.*—The Chief Court, following 29 P.R of 1887, Cr., directed the Sessions Judge to examine the Magistrate who recorded the statement of the deceased as to the circumstances under which it was made. HASHIM v. EMPRESS, **P.L R. 1900 p. 69, Cr** (29 P.R. 1887, Cr., *F.*)

(9)—*Competent witness in trial of case instituted by himself.*—A Judge is a competent witness and can give evidence in a case being tried before himself, even though he laid the complaint acting as a public officer, provided that he has no personal or pecuniary interest in the subject of the charge, and he is not precluded thereby from dealing judicially with the evidence of which his own forms a part. QUEEN v. MUKTA SING, **4 B.L.R. A. Cr. 15 = 13 W.R. Cr. 60.**

(10)—*Beng. Act III of 1864—Qualifications and disqualifications—Interest in case—Municipal cases — Magistrate also vice-chairman of Municipality.*—A Joint Magistrate though a vice-chairman of a Municipal Committee, is competent to impose fines under Bengal Act III of 1864, on charges being brought and proved before him. He should make a record of his proceedings before passing a sentence. ANONYMOUS, **3 W R. Cr. 33.**

(11 & 12)—*Power of Judge—Deciding case on evidence taken by his predecessor—Irregularity in criminal case.*—Where several prisoners

Judge—*continued.*

were tried by a Sessions Court consisting of a Judge and assessors, the latter convicted them, which finding was recorded by the Judge. The Judge, however, postponed giving judgment and left the district without recording his finding or his judgment, and the Judge's successor, after considering the evidence which had been taken before his predecessor, convicted and passed sentence on the prisoners. *Held* that the conviction was not valid and the trial had not been completed. The High Court accordingly set aside the conviction and ordered the re-trial of the prisoners upon the charges upon which they were committed for trial. QUEEN v. GOPI NOSHYO, 21 **W.R. Cr.** 47. TARADA BALADU v. QUEEN, 3 **M.** 112=5 **Ind. Jur.** 308=2 **Weir** 430. QUEEN v. RUGHOONATH DASS, 23 **W.R, Cr.** 59.

(13)—*Power of Judge — Pronouncing judgment out of Court — Irregularity in criminal case.*—In this case the Magistrate conducted and closed the trial in the established Court-house, but could not by reason of illness pronounce judgment which he did at his private house. *Held* that the Judge was not competent to quash the sentence on this ground and to order a new trial by the Magistrate, his power being limited to refer the case for the consideration of the High Court under s. 434, Crim. Pro. Code, 1861. GOVERNMENT v. HOLASEE SINGH, 1 **Agra Cr.** 17.

(14)—*View by assessors of scene of offence—Power of Judge to delegate to assessors examination of witnesses.*—Where the assessors desire to view the scene of the alleged offence, it is the duty of the officer conducting the jury or assessors to the spot not to suffer any other person to speak to or hold any communication with any of the jury or assessors, who, when the view is finished, are to be immediately conducted back to the Court and the Judge could not delegate his own function of examining witnesses on the spot to the assessors. QUEEN v. CHUTTERDHAREE SING, 5 **W.R. Cr.** 59.

(15)—*Opinion of assessor —Personal knowledge.*—It is not proper for a Sessions Judge to import into his judgment the opinion of an assessor derived from personal knowledge and unsupported by the evidence on the record. QUEEN v. RAM CHURN KURMOKAR, 24 **W.R. Cr.** 28.

(16)—*Duty of Judge—Private knowledge or information.*—It is not proper for a Judge to import his own private knowledge or opinion into a case, but he must simply decide the issues before him on the evidence before him. MEHEROONISSA v. BHASHAYE MERDHA, 2 **W.R. Act X**, 29. REG. v. VYANKATRAV SHRINIVAS, 7 **B.H.C. Cr.** 50. LALLA MEWA LALL v. SREE MAHATO, 25 **W.R.** 152.

See EVIDENCE ACT, 1872, s. 151, 3 M.H.C. 372.

Judge's notes of evidence and proceedings —Right of accused—*See* HIGH COURT, JURISDICTION OF — REVISIONAL POWERS OF HIGH COURT, 1 M.H.C. 138.

Judge—*concluded.*

See SANCTION TO PROSECUTE—CONDITIONS REQUISITE FOR GRANT OF SANCTION, ETC., 9 M. 439=2 Weir 213, 6 M.L.T. 128.

Not to go beyond letter of Act—*See* STATUTES, CONSTRUCTION OF, 29 M. 558=5 Cr. L.J. 133.

See WITNESS—MISCELLANEOUS CASES, 2 P.W.R. 1910, Cr.

Judge and Jury.

See ASSESSORS.

See CHARGE TO JURY.

See JUDGE.

See JURY

See VERDICT OF JURY.

(1)—*Crim. Pro. Code* (1898), ss. 298, 299—*Functions of Judge and Jury—Question of law.* —The jury are not entitled to resort to a commentary on the law during their consultation about the verdict. The different duties of the Judge and the Jury are made clear in ss. 298 and 299, Crim. Pro. Code, the Jury should take the law from the Judge. EMPEROR v. BHARMIA, 6 **Bom. L.R.** 258=1 **Cr. L.J.** 265.

(2)—*Crim. Pro. Code* (1882), s. 298—*Judge and Jury—Proof of documents—Evidence Act, s. 73—Comparison of hand writing—Revision by High Court.*—In a trial by jury, where the Judge allowed certain documents to go upon the record, which were not proved under the requirements of s. 73 of the Evidence Act, for the purpose of comparison with the disputed handwriting, *held*, that there was no such irregularity of procedure as to warrant an interference in revision. Whether the documents were proved or not, it was for the jury to decide. QUEEN-EMPRESS v. LALSING, **Rat. Un. Cr. C.** 452.

(3)—*Crim. Pro. Code* (1882), s. 269—*Trial by Jury—Two charges, one triable by Jury and the other by assessors—Duty of Judge.*—Where a Sessions Judge tries with jurors an accused on two charges, one of which was triable by jury and the other by assessors, *held* that he should first record the opinion of the jury as assessors regarding the latter charge and not refer the whole case to the High Court when he disagrees with the jury. QUEEN EMPRESS v. DEVU, **Rat. Un. Cr. C.** 600=**Cr. Rg.** 19 **of 1892.**

(4)—*Crim. Pro. Code* (1882), s. 298—*Evidence Act*, s. 24—*Retracted confession—Admissibility.* — Where a retracted confession of an accused is tendered in evidence at the trial of a case tried by a jury, it is the duty of the Judge to determine the question of its admissibility under s. 298, Crim. Pro. Code, and s. 24, Evidence Act. QUEEN-EMPRESS v. BALAPPA, **Rat. Un. Cr. C.** 730=**Cr. Rg.** 58 **of 1894.**

(5)—*Sessions Judge authorised to ask jury the grounds for their verdict.*—The law does not prevent a Sessions Judge from asking a jury regarding the grounds of their verdict and such a course is desirable in the interests of justice. *In re* MUKHUN KUMAR, 1 **J.G.** 6.

Judge and Jury—*continued.*

(6)—"*Court,*" *Meaning of— Evidence Act, s.* 30.—The word "Court" in s. 30 of the Evidence Act, means and includes, in a trial by jury, both Judge and Jury. EMPRESS v. ASHOOTOSH CHUCKERBUTTY, **4 C. 483=3 C. L R. 270, F.B.**=1 Shome L.R. Cr. 79. [*F.*, Rat. Un. Cr. C. 452.]

(7)—*Crim. Pro. Code* (1898), *ss.* 300, 301 *and* 303—*Trial by jury—Delivery of verdict of guilty—Jury being prevented to give out what they had to say, after delivery of verdict of guilty, impropriety of.*—Where, after the delivery of a verdict of guilty, the jury want to say something more, it is undesirable to stop the jury at such a stage of the proceedings, for it may so happen that before the verdict is recorded, the foreman of the jury may make some observation in respect of that verdict, which may show the presiding judicial officer that the jury have not properly understood the case. It would then be the duty of the Sessions Judge not to record the verdict, but to recharge the jury so as to lay the case properly before them. NARAYAN CHANGA v. EMPEROR, **30 C. 485.**

(8)—*Crim. Pro. Code* (1898), *ss.* 297 *and* 288 —*Evidence Act, ss.* 27, 30—*Statement by co-accused how far evidence against the accused—Statement before investigating officer, evidentiary value of—Direction to Jury.*—It is the duty of the Judge, not of the jury, to decide the point, whether an accused person, while making a confession, was or was not in police custody, as it is a matter which is necessary to be proved in order to enable the confession to be admitted in evidence [Crim. Pro. Code, s. 298, cl. (*b*)] ; and his omission to state to the jury his finding on the point is not a misdirection and could not prejudice the accused. Where an accused person makes a confession, the most that could be taken into consideration on such statement against a co-accused would be, under ss. 27 and 30 of the Evidence Act, so much of the information as was the immediate cause of the discovery of some relevant fact against him. Where a witness makes a statement to a police officer or to an *investigating* Magistrate, it is no evidence against the accused, even if the statement before the *investigating* Magistrate be made in the presence of the accused ; for s. 288 of the Crim. Pro. Code. does not apply to the case, as it is not one made before a *committing* Magistrate holding an enquiry under Ch. XVIII of the Code. A direction by the Judge to the Jury that such statement is strong evidence against the accused is clearly a serious misdirection. *In re* SANKAPPA RAI, **18 M.L.J. 66=31 M. 127=3 M.L.T. 270=7 Cr. L J. 325.**

(9)—*Crim. Pro. Code* (1882), *s.* 432 (2)—*Direction to reconsider the verdict, when can be made.*—Where the jury appear to be confused and to have failed to understand the remarks of the Judge, he is not acting improperly in telling them to reconsider their verdict. *In re* VEERAPPAN, **2 Weir 514.**

See CONFESSION—GENERAL, 11 Bom. L.R. 332=2 Ind. Cas. 517.

Judge and Jury—*concluded.*

See CONFESSION—CONFESSIONS BY CO-ACCUSED—ADMISSIBILITY, I J.G. 77.

See CRIM. PRO. CODE. 1898, ss. 269(3), 309, 537, 26 M. 598=2 Weir 333.

See CRIM. PRO. CODE, 1898, ss. 300 to 303, 306, 307, 2 B. 526, Note.

See CRIM. PRO. CODE, 1898, ss. 423 (2), 367, 2 Weir 499.

Province of—*See* DEFAMATION, Rat. Un. Cr. C. 140

Difference between—Reference when to be made to High Court — *See* EVIDENCE — GENERAL, 14 Cr. L J. 660=21 Ind. Cas. 900.

See PRACTICE AND PROCEDURE, 1 W.R. Cr. Letters, 9.

See REFERENCE TO HIGH COURT, 29 C. 128=6 C.W.N. 253.

Ground for passing lighter sentence—Difference between opinions of—*See* SENTENCE—GENERAL, 3 W. R. Cr. 29.

Judge of High Court.

(1)—*Crim. Pro. Code* (1882), *ss.* 333, 555—*Retirement of Judge after part trial—New Judge appointed—Objections to proceed with the case—*Nolle prosequi.—Where, in a Sessions case in the High Court, after evidence had been partly gone into, the Judge retired from the case under s. 555, and the Chief Justice appointed, under cl. 13 of the Charter, another Judge, and the counsel for the accused objected that the prosecution should not proceed with the trial from the point where it had been left, and that the jury empannelled before the former Judge had still the seisin of the case, *held*, that the only way to get rid of the many difficulties arising in the case is that the Advocate-General should enter into a *nolle prosequi* under s. 332, Crim. Pro. Code. EMPRESS v. KHAGENDRA NATH BANNERJEE, **2 C.W.N. 481.** [*R.*, 3 L.B.R. 75.]

Power of Governor-General in Council or Governor in Council or Lieutenant-Governor to appoint an acting—*See* ST. 24 & 25 VIC. C. 104, 16 A. 136, F.B.=A.W.N. 1894, 39.

Judge's Opinion.

Witness, conduct of—Practice—*See* WITNESS—MISCELLANEOUS CASES, A.W.N. 1900, 149.

Judgment.

See ALTERATION OF JUDGMENT.

See CRIM. PRO. CODE, 1898, ss. 367, 369.

See REVISION—JUDGMENTS, DEFECTS IN.

(1)—*Conviction by Court of limited jurisdiction—Contents of judgment.*—Every conviction by a Court of limited jurisdiction ought to contain a statement of its legal justification within itself. QUEEN-EMPRESS v. KANA, **Rat. Un. Cr. C. 310=Cr. Rg. 62 of 1886.**

(2)—*Judgment, form of*—A judgment, under s. 367, Crim. Pro. Code, 1882, should state sufficient particulars to enable a Court of appeal to know what are the findings and how

Judgment—*continued.*

they have been arrived at. QUEEN-EMPRESS v. DHURMYA, **Rat. Un. Cr. C. 833 = Cr. Rg. 76 of 1895.**

(3)—*Crim. Pro. Code* (1882), *ss.* 367, 464—*Judgment, form and nature of.*—A judgment, in a criminal case, should not be one in the nature of a stereotyped judgment which might answer any case. But where a judgment, though not a long and elaborate one, affords a clear indication that the Judge has duly considered the evidence, the judgment is a proper one. KASIMUDDI v. QUEEN EMPRESS, **1 C. W.N. 169.** (15 B. 11, 22 C. 241, *Disc. & D.*)

(3-*a*)—*Judgment—Final findings of fact—Conclusions inconsistent—Judgment bad in law.*—A Judge, in upholding a conviction of rioting on appeal, came to several conclusions which were quite inconsistent with his final findings of fact that the accused were guilty and that there was no reason to interfere with the sentence, which was passed by the Court below, on an acceptance of the whole case for the prosecution: *Held*, that the judgment was bad in law and must be vacated. AMBICA MISSIR v. EMPEROR, **13 Cr. L J. 595 = 16 Ind. Cas. 163.**

(4)—*Crim. Pro. Code* (1882), *ss.* 367, 424—*Judgment not in accordance with—Validity.*—The following judgment on appeal by a Sessions Judge,—"it is urged that the evidence is quite untrustworthy, and that the decision should be reversed. The depositions have been gone through and commented upon at great length. The Court finds no ground of interference. The appeal is dismissed," was held not to be in accordance with the provisions of ss. 367 and 424 of the Code; and the appeal was, therefore, directed to be re-heard. KAMRUDDIN DAI v. SONATUN MANDAL, **11 C. 449.** [*F.*, 15 B. 11, 13 C. 110, 22 C. 241, 8 A.W.N. 280; *R.*, 19 A. 506, 8 N L.R. 84 = 15 Ind. Cas. 975 = 13 Cr. L. J. 559; *D. & Expl.*, 20 C. 353.]

(5)—*Crim. Pro. Code, ss.* 367, 424—*Judgment to be in accordance with these sections.*—The judgment of a District Magistrate, on appeal, in the following terms "I see no reason to distrust the finding of the lower Court. The sentence passed appears however harsh. I reduce the term of imprisonment to 15 days. The fine and term of imprisonment in default will stand," was held not to be a judgment in accordance with ss. 367 and 424 of the Code. *In the matter of the petition of* RAMDAS MAGHI, **13 C. 110.** [*R.*, 19 A. 506. 15 B. 11, 20 C. 353, 22 C. 241, 8 A.W.N. 280, 8 N.L.R. 84 = 15 Ind. Cas. 975 = 13 Cr. L.J. 559.]

(6)—*Judgment not to be brief—Compliance with provisions of s.* 367, *Crim. Pro. Code.*—A judgment should not be too brief. It should comply with the provisions of s. 367, Crim. Pro. Code, so as to render it easy to summarily dismiss an appeal from a perusal of the judgment alone. NOA NOYIN BAJU v. QUEEN-EMPRESS, **L.B.R. 1893—1900, 626.**

Judgment—*continued.*

(6-*a*)—*Judgment — Contents — Irrelevant matter—Fair and legitimate comment—Language of judgments—Sober and temperate—High Court—Power to expunge irrelevant matter.*—A Judge should not admit irrelevant matter into the record. A judgment should confine itself to a consideration of the issues before the Court together with fair and legitimate comment on any errors or irregularities that may be disclosed in the course of the trial. The language of a judgment should be temperate and sober and not satirical. The High Court has power to order that irrelevant matter in the judgment of a lower Court should be expunged. EMPEROR v. THOMAS PELLAKO. **13 Cr. L.J. 259 = 14 Ind. Cas. 643 = 5 Bur. L. T. 20.**

(6-*b*)—*Judgment—Language—Temptation to pillory or pour ridicule should be restrained—Humourous judgment not necessarily a bad one.*—The immunity which Judges and Magistrates enjoy in writing judgments carries with it the duty of circumspection. Any temptations to pillory or pour ridicule on strangers should be restrained and comments on the conduct of parties and witnesses should not go beyond what is really necessary for the elucidation of the case. A humourous judgment is not necessarily a bad judgment. But its value does not depend on the quality of its humour. Facetious comments, which do not contribute to the disposal of the case and which are calculated to wound the feelings of persons who are not parties to the proceedings, should not find place in a judgment. MA KYA v. KIN LAT GYE, **12 Cr. L J. 464 = 11 Ind. Cas. 1000.**

(7)—*Crim. Pro. Code, s.* 429—*Form of original and appellate judgment.*—To say simply that a charge is proved by the evidence of witnesses does not satisfy the requirements of s. 429 of the Crim. Pro. Code. Though it is not necessary for an appellate Court, in confirming a conviction by the lower Court, to set forth its reasons in full, yet it is desirable that it should do so when the circumstances of the case necessarily required special notice. REG v. MOROBA BHASKARJI, **8 B H.C. Cr. 101.**

(8)—*Judgment of appellate Courts, form and contents of—Crim. Pro. Code* (1882), *ss.* 367, 424.—Where, on an appeal from a conviction by a Magistrate having the powers conferred by s. 34, Crim. Pro Code, and sentence of four years' rigorous imprisonment, the Sessions Judge dismissed the appeal in the following judgment:—"I have perused the record and see no cause for interference with the finding of the District Magistrate. As regards the sentence it is not excessive, but having regard to the great age of the appellant, I will reduce it to three years' rigorous imprisonment, with three months' solitary confinement," *held*, that the judgment had complied with the provisions of ss. 367 and 424, Crim. Pro. Code. QUEEN-EMPRESS v. PANDEH BHAT, **19 A. 506 F.B = A.W N. 1897, 142.** [*Appr.*, 10 Cr. L J 268; *R.*, 12 A L.J. 850 = 15 Cr. L J. 512 = 24 Ind. Cas. 600; *D.*, 13 Cr. L.J. 559 = 15 Ind. Cas. 975 = 8 N.L.R. 84.]

Judgment—*continued.*

(9)—*Crim. Pro. Code, ss.*367, 424—*Judgment in appeal to be in accordance with law.*—A judgment of a Criminal Court dismissing an appeal without duly considering the evidence in the case, is not a judgment in accordance with ss 367, 424 of the Crim. Pro. Code. The following judgment was recorded by a District Magistrate, in dealing with an appeal "The affray was a faction-fight between members of the two parties into which the society of Dhunshi seems to be split up. There is no good ground for doubting the justice of the Magistrate's findings that the two appellants took part in the affray, and that the party to which they belonged were the aggressors. The appeal is dismissed, and the conviction and sentence are confirmed." This was *held* not to be a judgment in accordance with the provisions of ss. 367 and 424, Crim. Pro. Code. *In re* SHIVAPPA *bin* SHIDLINGAPPA, **15 B. 11.** (13 C. 110. *F.*) [*F.*, Rat. Un. Cr. C. 772; *R.*, 20 C. 353, 6 C.P.L R 24, Cr . 13 Cr. L.J. 559 = 15 Ind. Cas. 975 = 7 S.L R. 84, Rat. Un. Cr. C. 776, Rat. Un. Cr. C. 826, Rat. Un. Cr. C. 844 ; *D.*, 1 C W.N. 169.]

(10)—*Crim. Pro. Code*, 1882, s. 367—*Appellate judgment, form and contents of.*—It cannot be held that, merely because the form of a judgment does not exactly comply with all the requirements of s. 367 of the Code, 1882, it is not a valid judgment. The omission in the judgment must be substantial, in order to invalidate the judgment. Where a Sessions Judge, on appeal, delivered the following judgment :—"The appellants have been convicted of breaking into Hari's house at night, dragging Hari's wife to the fields and dishonouring her, though they did not have intercourse with her. I have read through the evidence, and I think that the Deputy Magistrate was quite right to believe the evidence. The sentence of one year's imprisonment and Rs 50 is not heavy. I dismiss the appeal." *Held*, that, as the judgment of the Sessions Judge showed that he had appreciated the points which the prosecution had to establish, and that he had clearly in view the point for determination, *viz* , the credibility of the evidence of the witnesses for the prosecution and had expressed an opinion on that point, and as there was nothing to show that any other point was raised at the hearing of the appeal or submitted to him for determination, there was no sufficient reason for the High Court to interfere as a Court of revision. ROHIMUDDI v. QUEEN EMPRESS, **20 C. 353.** (11 C. 449, 13 C. 110, *R & Commented on.*) [*R.*, 13 Cr.L.J. 559 = 15 Ind. Cas. 975 = 8 N.L. R 84.]

(11)—*Appellate judgment — Form of.*—A judgment of a criminal appellate Court was in the following form :—" After reading the evidence and hearing the counsel for the appellants and the Government Pleader I am convinced that the Deputy Magistrate has decided the case rightly. The appeal is dismissed " *Held*, that the judgment was not in accordance with the provisions of ss. 367 and 424 of the Code. GIRISH MYTE v. QUEEN-EMPRESS, **23 C. 420.** [*R.*, 19 A. 506, 13 Cr. L.J. 559 = 15 Ind. Cas. 975 = 8 N.L.R. 84.]

(12)—*Judgment of the appellate Court—What it should contain—Judgment of the first Court, whether may be read as supplementing judgment of the appellate Court—Joint trial of several accused.*—The judgment of an appellate Court dealing with the case of several accused who were convicted in a joint trial must show on the face of it that the case of each accused has been taken into consideration, and should state reasons as far as may be necessary to show that the appellate Court has devoted judicial attention to the case of each accused. An appellate judgment must be quite independent and stand by itself. It ought not to be read in connection with or as supplementary to the judgment of the Court of first instance. JAMAIT MULLICK v. EMPEROR, **35 C. 138 = 12 C.W.N. 134 = 6 Cr. L.J. 427** [*R.*, 11 Cr. L.J. 23 = 14 C.W.N. 49 = 5 Ind. Cas. 29, 11 Cr. L.J. 331 = 5 Ind. Cas 923 = 7 M L.T. 182, 13 Cr. L.J. 471 = 15 Ind. Cas. 311 = U B R. 1911, 4th Qr., 105, 13 Cr. L J. 559 = 15 Ind. Cas. 975 = 8 N.L.R. 84.]

(13)—*Crim. Pro. Code, ss.* 367, 421—*Judgments of appellate Courts — Reasons for decisions.*—An appellate Court, in rejecting an appeal under s. 421 of the Code, is not obliged to give a judgment containing the particulars enumerated in s. 367 of the Code nor to give reasons for its decisions. RASH BEHARI DAS v. BAL GOPAL SINGH, **21 C. 92** [*F.*, 20 B. 540, 2 Weir 473 = 24 M. 534, 9 C.W.N. 623, U. B.R. 1906, 2nd Qr., Cr. P.C. p. 49 = 4 Cr.L.J. 284 ; *R.*, 15 Cr.L.J. 512 = 12 A.L J. 850 = 24 Ind. Cas. 600.]

(14)—*Crim. Pro. Code* (*Act* X *of* 1882), ss. 367, 424—*Judgment in appeal.*—Where a District Magistrate dismissed a criminal appeal in the following terms :—" Read proceedings. I see no reason for interfering with the decision or sentence, " *held* that this was not a judgment within the meaning of the Crim. Pro. Code. EMPRESS v. SAMESHAR, **A.W.N. 1888, 280.** (11 C. 449, 13 C. 110, 6 A.W.N. 177, 289, *R.*) [*R.*, 19 A. 506 = A.W N. 1897, 142.]

(15)—*Crim. Pro. Code* (*Act* X *of* 1882), s. 195 —*Appeal from order—Judgment of appellate Court.*—Where a Sessions Judge disposed of an application to revoke the sanction granted by a Magistrate, in the words " I decline to interfere on revision," *held* that this order did not fulfil the requirements of the law and that the Judge should have stated his reasons. *In the matter of the petition of* ZAFARYAB ALI, **A.W.N. 1892, 60.**

(16)—*Appellate Court—Local enquiry—Judgment.*—Where an appellate Judge makes a local enquiry which probably influenced his decision, the nature of such enquiry and its result must be set forth in his judgment *In the matter of the petition of* KALA, **A W.N. 1896, 73.**

Judgment—*continued.*

(17)—*Crim. Pro. Code* (1882), *ss.* 367 *and* 424—*Form and contents of judgment—Defective judgment of an appellate Court.*—A judgment of a criminal appellate Court was in the following terms:—" After hearing the arguments of the pleaders for the appellants and examining the record, I am of opinion that the lower Court had ample grounds for convicting the accused of rioting. I do not consider the sentence too severe." *Held* that the judgment was not one in accordance with ss. 367 and 424 of the Code as it did not contain the point or points for determination nor an explicit statement of the reasons for the decision on such point or points, and that the appeal should, therefore, be re-heard. FARKAN v. SOMSHER MAHOMED, **22 C. 241.** (11 C. 449, 13 C. 110, *F.*) [*R.*, 19 A. 506, F.B., 15 Ind. Cas. 975 = 8 N.L.R. 84 = 13 Cr.L.J. 559; *D.*, 1 C.W.N. 169.]

(18)—*Defective judgment of appellate Court—Crim. Pro. Code* (1882), *ss.* 367 *and* 424 —An appellate Court's judgment ran as follows:—
" I have gone through the case, but see no grounds to interfere. The witnesses for the defence would not support the accused, and after the evidence of two was taken, the rest were withdrawn by the barrister for the accused." *Held* that the judgment did not comply with the requisites of ss. 367 and 424, Crim. Pro. Code, 1882. HAKIM SINGH v. EMPRESS, **31 P.R. 1884, Cr.** [*R.*, 13 Cr.L.J. 559 = 15 Ind. Cas. 975 = 8 N.L.R. 84.]

(19)—*Crim. Pro. Code* (1882), *ss.* 267, 427—*Defective appellate judgment.*—Where the case against each of the appellants was, in several respects, distinct and different, *held*, that the Judge should have placed something on the record to show that he had considered them separately. EMPRESS v. BHUJPAL, **A.W.N. 1886, 289.** [*R.*, A.W.N. 1888, 280, 19 A. 506 = A.W.N. 1897, 142.]

(20)—*Judgment of appellate Court, defect in—Power of Chief Court in revision—Crim. Pro. Code* (1872), *s.* 464 —*Per Boulnois and Lindsay, JJ.*, (*Campbell, J., dissenting*).—The Chief Court is competent on the revision side, to set aside a defective judgment of an appellate Court and return the case to the appellate Court. But the order of the Magistrate who tried the case in the first instance cannot be disturbed except for the reasons given in s. 283, Crim. Pro. Code, 1872. *Per Campbell, J*:—The Chief Court cannot set aside a defective judgment, but, assuming that it has power, it could also set aside the judgment appealed from and pass such orders as it thought fit. UTAM v. CROWN, **6 P.R. 1875, Cr.**

(21)—*Crim. Pro. Code* (1898), *s.* 367—*Judgment of appellate Court, deficiency in—Duty of Sessions Judge.*—It is the duty of the Sessions Judge disposing of an appeal to record a judgment according to law. Any deficiency in that judgment could not be made up for, by a reference to the judgment of the Magistrate. It is his duty to go into the evidence and try the appeal in a proper manner. BHOLANATH MULLICK v. EMPEROR, **7 C W N. 30.**

(22)—*Crim. Pro. Code* (1898), *s.* 367—*Meagre judgment in appeal—Power of High Court.*—Where the judgment of a District Magistrate acquitting, on appeal, an accused person, was so meagre that it was impossible to form an opinion as to the merits of the case or to say whether there had been a miscarriage of justice or not, the High Court, on the application of the complainant, set aside the order of acquittal, and directed the appeal to be re-heard. RUPA MANDAL v. KESHAB MANDAL, **5 C.L.J. 452 = 5 Cr. L J. 349.**

(23)—*Crim. Pro. Code*, *ss.* 366, 367—*Sentence passed before completion of judgment—Validity—Defect whether curable.*—Where a Magistrate was writing the judgment, while the arguments were going on and passed sentence on the accused before the judgment had been completed, *held*, that the judgment so pronounced was not one in accordance with ss. 366 and 367 of the Code. *Per Prinsep and Trevelyan, JJ.* [*D.*, 23 C. 502.] *Held*, that the irregularity mentioned above was one contemplated by s. 537 of the Code, and that, as it had not occasioned any failure of justice, no re-trial was necessary. Per *Prinsep and O'Kineally, JJ.* (*Trevelyan, J., dissenting*) *Per Trevelyan, J.*:—The case was more than a case of a mere " error, omission or irregularity in the judgment or proceedings," as there was no judgment in accordance with the law. The case ought, therefore, to be re-tried. DAMU SENAPATI v. SRIDHAR RAJWAR, **21 C. 121.**

(24)—*Crim. Pro. Code* (1882), *ss.* 366, 367 *and* 537—*Sentence pronounced before judgment was ready—Irregularity whether covered by s.* 537—Where a Magistrate, after consideration of the arguments addressed to him in a case tried by him, reserved judgment, and pronounced sentence, apparently after full consideration, on the day to which the case has been adjourned, though he had not written the judgment, *held*, that the omission of the Magistrate to record a judgment before pronouncing the sentence was an omission or irregularity which would be covered by the provisions of s. 537, and would not render the trial nugatory. TILAK CHANDRA SARKAR v. BAISAGOMOFF, **23 C. 502.** (14 A. 242, 21 C. 121, *Disc.*) [*R.*, 1 Bom. Cr. C. 55 = 13 Bom. L.R. 635 = 11 Ind. Cas. 993 = 12 Cr. L.J. 457.]

(25)—*Crim. Pro. Code* (1898), *s.* 421—*Rejection of appeal—Judgment.*—In rejecting an appeal under s. 421, Crim. Pro. Code, the appellate Court is not bound to write a judgment. QUEEN-EMPRESS v. WARUBAI, **20 B. 540.** [*F.*, 2 Weir 473 = 25 M. 534; *R.*, U.B.R. 1906, 2nd Qr., Crim. Pro. Code, 49 = 4 Cr. L.J. 284].

(26)—*Crim. Pro. Code* (1882), *s.* 421—*Summarily rejecting an appeal—Recording of reasons.*—When a Court acts under the first paragraph of s. 421, Crim. Pro. Code, and rejects an appeal summarily, it is admissible for the

Judgment—*continued.*

Court to state shortly in its order the reason or reasons which influenced it in coming to the conclusion that there is no sufficient ground for interfering in the case. QUEEN-EMPRESS v NANNHU, **17 A 241, F.B.=A W N. 1895, 68.** [*F.*, 25 M. 534=2 Weir 473, U.B.R. 1906, II Q., Crim. Pro. Code, 49=4 Cr. L.J. 284; *R.*, 19 A 506, 3 A.L.J. 693=A.W.N. 1906, 303=4 Cr. L J. 373, 12 A.L.J. 850=15 Cr. L.J. 512=24 Ind. Cas. 600]

(27)—*Crim. Pro. Code* (1872), ss. 227, 464—*Reasons for convictions, statement of—Summary trial.*—Generally speaking, the judgment of a Magistrate must, under s. 464, Crim. Pro. Code, contain the finding and the reasons for the finding, whatever the nature of the finding may be. The first part of s. 227 discharges a Magistrate, in the case of summary trial, from the necessity of recording the reasons for his finding in general, but cl. (*h*) requires him to enter a brief statement of those reasons in the case of a conviction. *In the matter of* DOWLAT SINGH, **6 C.L R. 273.**

(28)—*Crim Pro. Code* (1882), ss. 367, 424—*Appellate judgment— Magistrate — Clerk.*—A Magistrate should always write his judgment himself and cannot get it written by a clerk. QUEEN-EMPRESS v. LAKSHMIBAI, **Rat. Un. Cr. C. 545=Cr. Rg. 19 of 1891.**

(29)—*Crim. Pro. Code* (1898), s. 263 (*h*)—*Summary trial—Statement of reasons for conviction.*—Under s. 263 (*h*), a Magistrate in recording his reasons for the conviction, should state them so that the High Court on revision may judge whether there were sufficient materials before him to support the conviction. Where a Magistrate's "brief statement of the reasons for the conviction" was simply,—"the witnesses called by the complainant support the complainant; the witnesses (for the accused) do not say that the accused has not committed the offence;" *held*, that it was not a sufficient compliance with the provisions of s. 263 (*h*). QUEEN EMPRESS v. SHIDGAUDA, **18 B. 97.** [*F.*, Rat. Un. Cr. C. 778, 1 L.B.R. 95, 1 L.B.R 203, 3 L.B.R. 3=2 Cr. L.J. 375; *R.*, 21 A. 189, 2 S.L.R 3, Cr.]

(30)—*Summary trial—Procedure.*—The proceedings of a Magistrate in a summary trial must show the reason for convicting the accused, so that the High Court, on revision, may judge, whether there are sufficient materials in support of the conviction. LALIT MOHAN SAHA v. CHUNDER MOHAN ROY, **3 C W.N. 281.**

(31)—*Crim. Pro. Code* (1882), s. 263—*Summary trial—Form of judgment.*—In a case of dishonestly receiving stolen property which had been summarily tried, the Magistrate recorded:—"There seems no doubt whatever of the truth of the case for prosecution." *Held*, that this did not satisfy the requirements of s. 263, Crim Pro. Code, *viz.*, that in case of conviction the Magistrate must give a brief statement of his reasons therefor. EMPRESS v. GIRWAR DIAL, **A W.N 1883, 114** [*R.*, 21 A. 189, A.W.N. 1885, 213, A.W N. 18-6, 181, 14 Cr. L.J. 594=16 O.C. 357=21 Ind. Cas. 466.]

Judgment—*continued.*

(32)—*Note to a judgment, propriety of.*—It is a most unwarrantable proceeding on the part of the Judge to add a note to his judgment, by which he tries to throw doubts on the conclusion at which he had arrived on the evidence. *Per Stuart, C.J.* EMPRESS OF INDIA v. CHATTER SINGH, **2 A. 33.**

(33)—*Crim Pro. Code* (1872), ss. 275, 276, 464—*Copy of judgment.*—To comply with the provisions of s. 275 of the Crim. Pro. Code, it is enough to file along with the appeal a copy in the prisoner's own language given to him under s. 464 as amended by Act XI of 1874. A person desiring to get a copy of the judgment in the language of the Court, may do so as a proceeding under s 276 of the Code (s. 25 of Act XI of 1874). SURAT SESSIONS JUDGE'S LETTER, NO. 1120, **Rat. Un. Cr. C. 82.**

(34)—*Hearing of case by one Magistrate—Judgment by successor — Validity.*—A Magistrate, after having heard all the evidence in a case, cannot postpone it for judgment by his successor-in-office, on the same materials; but must pass the judgment himself. QUEEN-EMPRESS v. BHIKAIJI, **Rat. Un. Cr. C. 124.**

(35)—*Hearing of case by one Magistrate—Judgment by successor—Validity.*—If before a finding is recorded, the presiding officer of a Court is removed, his successor cannot pass a judgment upon a consideration of the evidence recorded by him HIGH COURT PROCEEDINGS, 7TH APRIL 1869, **4 M H C. App 42.**

(36)—*Judgment passed on evidence recorded by predecessor.*—A Sessions Judge is not competent, even with the consent of the accused, to pass a judgment on evidence wholly recorded by his predecessor. BUTA SINGH v. EMPRESS, **1 P R. 1890, Cr.** (3 M. 112, 23 W.R. Cr., 59, *F.*)

(37)—*Conviction on evidence recorded by a predecessor—Right of accused to have the witnesses recalled*—Where there has been a demand by the accused to re-hear evidence under the proviso to s. 350, Crim. Pro. Code, 1898, a refusal by the Magistrate to do so amounts to disobedience of an express provision as to the mode of trial, which is not mere irregularity curable by s. 537, Crim. Pro. Code. But a mere omission to enquire from the accused whether he wished to exercise the right reserved by proviso (*a*) to s. 350, is curable by s. 537. AMIR KHAN v. EMPEROR, **3 P.R. 1903, Cr.** (6 P.R. 1884, 25 M. 61, 25 C. 863, *R.*) [*F.*, 14 Cr. L J. 175=19 Ind. Cas. 175=U.B.R. 1912, 151.]

(38)—*Death of Magistrate hearing—Conviction by successor—Omission to inform the accused of the right to re-hear witnesses not a fatal defect.*—Where a Magistrate, who heard a case and wrote notes of his judgment and of the punishment to be awarded, died before recording judgment, and his successor convicted the accused and sentenced them to the punishment proposed by his predecessor without informing them of their right under the proviso, *held*, that, as the accused were not prejudiced by the

Judgment—*continued.*

omission, the irregularity was cured by s. 537, Crim. Pro. Code. KESRA RAM v. EMPRESS, **6 P.R. 1884, Cr.** [*Agreed*, 3 P.R. 1903, Cr.; *R.*, 14 P.R. 1903, Cr.]

(39)—*Crim. Pro. Code* (1882), s. 367—*Signature to judgment, when to be appended.*—The signature to a judgment should be appended at the time of pronouncing it in open Court. QUEEN-EMPRESS v. GANPAT, **Rat. Un. Cr. C. 429.**

(40)—*Crim. Pro. Code* (1882), *ss.* 369, 537—*Addition to judgment after signature.*—It would depend upon the circumstances of each case whether an alteration made in the judgment after it had been signed was something more than an irregularity. But the mere fact of an addition being made to a judgment where such addition does not materially prejudice the accused and has not occasioned a failure of justice, does not vitiate the judgment and justify an order for a re-trial. QUEEN-EMPRESS v. HUSEN UD-DIN, **A.W.N. 1898, 11.**

(41)—*Crim. Pro. Code* (1872), *s.* 464—*Alteration not allowed after judgment has been signed.*—When a judgment has been signed by a Magistrate, it cannot be altered by him according to s. 464 of the Crim. Pro Code. But on finding that he has passed an illegal sentence, a Magistrate may, if the prisoner is suffering prejudice, direct the jailor to suspend execution and merely keep the prisoner in detention, which should, in no case, be allowed to exceed the term of imprisonment awarded, while the case is referred to the High Court. QUEEN-EMPRESS v. TUKARAM, **Rat. Un. Cr. C 137=Cr. Rg. 29 8 1878.**

(42)—*Judgment of High Court, when could be altered.*—A judgment of High Court is not complete until it is sealed. Till then it may be altered by the Judge concerned without the necessity of having recourse to any formal procedure by way of review of judgment. QUEEN-EMPRESS v. LALIT TIWARI, **21 A 177=A.W.N. 1899, 15.** [*F.*, 27 A. 92=A.W.N. 1904, 195; *Rel.*, 38 C. 848=13 Cr. L J. 120=13 Ind. Cas. 776; *D.*, 10 C.L.J. 80=3 Ind. Cas. 393.]

(43)—*Crim. Pro Code* (1882), s 257—*Judgment of Sessions Court, how to be treated by subordinate Magistrates.*—A Magistrate being subordinate to a Sessions Court must treat its judgments with respect and be guided by them on such matters of procedure as arise on s. 257 of the Crim. Pro. Code. QUEEN EMPRESS v. CHANBASAPA MADIAPA, **Rat. Un. Cr. C. 854=Cr. Rg. 20 of 1896.**

(44)—*Crim. Pro. Code* (1882), *s.* 370—*Interpretation of the section.*—The meaning of s. 370 is that, where the offence is sufficiently grave to involve a fine of Rs. 200 or imprisonment as the substantive sentence, the Magistrate is bound to record his reasons so as to enable the party to bring the matter up to the High Court. But in petty cases which can be met by a fine of a few rupees, the decision ought to be recorded shortly. MOTEERAM v. BELASEE RAM, **14 C. 174.**

Judgment—*continued.*

(45)—*Magistrate embodying in his judgment matters not proved by evidence.*—A Magistrate had, in his judgment, described matters, which came under his own observation. In doing so, he had embodied in his judgment matters which, if relevant, should have been deposed by him on oath in the witness box. *Held*, that the accused were entitled to have nothing stated against them in the judgment which was not stated on oath in their presence, and which they had no opportunity of testing by cross-examination; *held* also, that the Magistrate could not give evidence before himself, inasmuch as he was the sole judge both of law and fact. GIRISH CHUNDER GHOSE v. QUEEN-EMPRESS, 20 C. 857 [*F.*, 19 M. 263=6 M.L.J. 143=2 Weir 725.]

(46)—*Crim. Pro. Code* (1898), *ss* 366, 367—*Delivery of judgment some days after conviction and sentence of prisoner, effect of.*—Where the judgment in a criminal case was written and delivered some days after the prisoners were convicted and sentenced, *held*, that it was a violation of the provisions of ss. 366, 367, Crim. Pro. Code, and amounted to a defect which vitiated the conviction and sentence. BANDANU ATCHAYYA v. EMPEROR, **27 M. 237=2 Weir 240=2 Weir 440.** (14 A. 242, *Appr.*) [*R.*, 1 Bom. Cr. Cas. 55=13 Bom. L.R. 635=12 Cr. L.J. 457=11 Ind. Cas 993.]

(47)—*Sessions Judge's interference with Magistrate's orders—Record of reasons.*—Sessions Judges ought to record their grounds for confirming, reversing, or modifying sentences or orders of Magistrates in cases of appeal. HIGH COURT PROCEEDINGS, 10TH DEC. 1869, **5 M H.C. App. 12.**

(48)—*Findings—Heads of charge—Offences committed in one continuous transaction—Sentence.*—To enter up findings on every head of charge is not only not illegal, but is the most convenient course. Where the acts constituting an offence are founded on one single continuous transaction, sentence should only be passed for the principal offence. HIGH COURT PROCEEDINGS, 20TH DEC. 1871, **6 M H.C. App 47.**

(49)—*Delay in delivering—Crim. Pro. Code* (1872), *s.* 461.—Delay in pronouncing judgment is not only unjust to the accused in that it prevents him from appealing at once against his sentence, but also opposed to the principles of law. EMPRESS v. BALDEO, **5 C.P L R. Cr. 24.**

(50)—*Criminal case—Judgment in one case based on evidence in another—Legality.*—Where a Sessions Judge tried charges of rioting by two parties, one after the other, but obtained the opinion of the assessors and delivered judgment in both cases together, basing the judgment in one case on evidence taken in the other, *held* that the procedure was irregular and that there should be a re-trial. EMPRESS v. ZAUWAR HUSAIN, **A W.N. 1883, 28.** [*R.*, 9 A. 609.]

(51)—*Criminal case—Judgment based on statements, not evidence.*—Where a Judge,

Judgment—*continued.*

during the trial and in the earlier part of his judgment, had expressed the opinion that the accused had committed adultery and then changed his opinion on the basis of a horoscope produced after the trial by the father of the girl representing her age to be 13 and held that the accused had committed rape, *held* that the procedure was extremely irregular. EMPRESS v. INDAR SINGH, **A.W.N. 1885, 31.**

(52)—*Judgment following verdict of jury—Judgment of acquittal.*—A judgment passed by a Sessions Judge following the verdict of the jury, acquitting the accused, is a judgment of acquittal for purposes of an appeal by the Government. EMPRESS OF INDIA v. JUDOONATH GANGOOLY, 2 C. 273. [*F.*, 15 Cr. L.J. 236=26 M.L.J. 160=23 Ind. Cas. 188; *D.*, 13 Cr. L.J. 457=15 Ind. Cas. 89=U.B.R. 1911 1, 100.]

(53)—*Crim. Pro. Code (Act X of 1882), ss. 366, 367, 537—Order of acquittal — Sessions case—Form.*—An order of acquittal in a Sessions Court must be in the form of a judgment, and the order must be to set the prisoner at liberty. Otherwise the order of acquittal is not operative. A defect in this particular is not cured by s. 537 of the Crim. Pro. Code. EMPRESS v. ABDUL MAJID KHAN, **A.W.N. 1892, 157.**

(54)—*Judgment pronounced after transfer to another district.*—Certain accused were tried and convicted, but no judgment was pronounced nor was any future date fixed for it. The Judge who tried the case was subsequently transferred and then he wrote the judgment sentencing two of the accused to death and one to transportation for life. On a reference to the High Court for confirmation of the death sentence and an appeal from the third accused, *held*, that the judgment, finding and sentence were pronounced and passed without jurisdiction. EMPRESS v. SHARIF, **20 P.R. 1879, Cr.**

(55)—*Comments on conduct and evidence of police officers—Sessions Judges.*—In a judgment in a Sessions trial, the evidence and conduct of police officers concerned should be scrutinised and commented on in the same degree as those of other material witnesses, and no further. QUEEN v. BUDRI ROY, **23 W.R. Cr. 65.** [*R.*, Rat. Un. Cr. C. 786.]

(56)—*Criminal cases—Record sent to appellate Court—Crim. Pro. Code (1882), s. 367, para 5, proviso—Record of heads of charge—Judgment in trial by jury.*—In trials by jury "heads" of the Judge's "charge" are to include such statement on the part of the Sessions Judge as will enable the appellate Court to decide whether the evidence has been properly laid before the jury, or whether there has been any misdirection in the charge. QUEEN v. KASIM SHAIKH, **23 W.R. Cr. 32.**

(57)—*Criminal cases—Necessity of findings on each charge—Criminal Court—Sessions Judge.*—A Sessions Judge should record his findings, whether of conviction or acquittal, on all the charges under which the prisoners are committed for trial. QUEEN v. MAHOMED ALI, **13 W.R. Cr. 30.**

Judgment—*continued.*

Exclusion of time in obtaining copy of—*See* ACT XV OF 1877, s. 12, 10 C. 642.

Appeal by persons in jail—Time taken in obtaining copies of—*See* ACT XV OF 1877, s. 12, sch. II, art. 154, 9 M. 258=1 Weir 789.

Magistrate dictating judgment to clerk, not in accordance with law—*See* BEN. ACT III OF 1899, ss. 325, 574, 4 C.L.J. 411=4 Cr. L.J. 394.

See APPEAL—GENERAL, Rat. Un. Cr. C. 826=Cr. Rg. 69 of 1895, 5 Bom. L.R. 704.

See APPEAL — CASES WHERE APPEAL LIES, 29 C. 286=6 C.W.N. 254, F.B., 27 M. 510=1 Weir 787=14 M.L.J. 394.

See ASSESSORS, 6 B.H.C. Cr. 55.

See COURT FEES, Rat. Un. Cr. C. 364=Cr. Rg. 9 of 1888.

Validity of—Written by a Magistrate after his transfer—*See* CRIM. PRO. CODE, 1898, s. 12, 15 C.P.L.R. Cr. 15.

Liability to whipping—Grounds of liability to be stated both in charge and judgment—*See* CRIM. PRO. CODE, 1898, s. 221, 5 M. 158.

In the alternative—*See* CRIM. PRO. CODE, 1898, ss. 236, 237, 7 N.W.P. 137.

See CRIM. PRO. CODE, 1898, ss. 362, 370, 31 C. 983=8 C.W.N. 839.

Necessity for written judgment before pronouncing decision—*See* CRIM. PRO. CODE, 1898, ss. 366, 367, 14 A. 242=A.W.N. 1892, 83.

Loss of judgment and other material records—Conviction and sentence—Validity—Inherent power of Court to replace lost records—*See* CRIM. PRO. CODE, 1898, ss. 366, 537, 14 M.L.T. 317=25 M.L.J. 445=1913 M.W.N. 862=21 Ind. Cas. 467=14 Cr. L.J. 595.

See CRIM. PRO. CODE, 1898, s. 421, 32 C. 178.

Judgment — What it should contain—No legal decision in appeal—Remand—*See* CRIM. PRO. CODE, 1898, s. 423, 8 N.L.R. 84=15 Ind. Cas. 975=13 Cr. L.J. 559.

See CRIM. PRO. CODE, 1898, s. 435, 80 P.L.R. 1904.

At variance with directions given by law—Defect not cured—*See* CRIM. PRO. CODE, 1898, s. 537, 10 A.L.J. 435=13 Cr. L.J. 859=17 Ind. Cas. 795.

See CRIM. PRO. CODE, 1898, s. 537, 2 Weir 711.

See CRIMINAL TRESPASS, 7 C.L.J. 238=7 Cr. L.J. 312.

See DISCHARGE OF ACCUSED, 31 M. 543=5 M.L.T. 184=9 Cr. L.J. 80.

See EVIDENCE—GENERAL, 23 C. 610.

Power of expunging objectionable portions from a judgment—*See* HIGH COURT, JURISDICTION OF—GENERAL, 2 Weir 534.

See JOINT TRIAL, 4 N.L.R. 71=8 Cr. L.J. 11.

See LEGAL PRACTITIONERS— PLEADER, 6 Bom. L.R. 540.

Judgment—*concluded.*

Order refusing bail—Judgment — Appeal, whether lies from order of a single Judge of the High Court to a Division Bench—*See* LETTERS PATENT—LETTERS PATENT, 1865—MADRAS, cl. 15, 4 Ind. Cas. 871=19 M.L.J. 478.

See MURDER, 2 Ind. Cas. 622=8 P.W.R. 1909, Cr.

Magistrate writing judgment after pronouncing sentence— Legality—*See* PENAL CODE, ss. 186, 353, 13 Bom. L.R. 635=11 Ind. Cas. 993=12 Cr. L.J. 457.

Omission to specify offence in—*See* PENAL CODE, s. 225, 5 L.B.R. 21=2 Ind. Cas. 619.

Repugnancy in—Conviction if can be set aside on such ground—Tendency of modern legislation—*See* PENAL CODE, ss. 399, 402, 18 C.W.N. 498=41 C. 350=15 Cr. L.J. 385=23 Ind. Cas. 985.

Criminal cases—Copies of—Copies of judgments for prisoners—*See* PRACTICE AND PROCEDURE, 9 W.R. Cr. 19.

Duty of appellate Court to write judgment —*See* PRACTICE AND PROCEDURE, 2 Weir 473.

See REVIEW, 7 A. 672.

See SUMMARY TRIAL, 6 M. 396=2 Weir 328 =8 Ind. Jur. 35, 2 S.L.R. Cr. 3=10 Cr. L.J. 216, A.W.N. 1886, 181, Rat. Un. Cr. C. 725= Cr. Rg. 50 of 1894.

Judgment-debtor.

Arrest of—going to Court—*See* ARREST, 3 W.R. Cr. 53.

Arrest of—, allowed to go by decree-holder and process-server—*See* PENAL CODE, s. 224, 7 Ind. Cas. 392=11 Cr. L.J. 477=8 M.L.T. 286.

Judicial Commissioner.

(1)—*Power of—False evidence—Crim. Pro. Code (Act XXV of* 1861), s. 172.—A Judicial Commissioner cannot, under s. 172 of the Code of Criminal Procedure, 1861, commit a witness for a false deposition given before the Assistant Commissioner. QUEEN v. MATI KHOWA, 3 **B.L.R. A. Cr. 36=12 W.R. Cr. 31.** (*R.*, 12 W. R. Cr. 69.)

Judicial Commissioner of Mysore.

(1)—*European British subjects—Jurisdiction of Judicial Commissioner of Mysore—Justice of the peace.* — The Judicial Commissioner of Mysore has no jurisdiction, either as a High Court or as a Sessions Court, over European British subjects, being Christians, when the commitment to his Court is made by a justice of the peace. WARD v. QUEEN, **5 M. 33=1 Weir 7.**

Judicial Determination.

(1)—"*Judicial determination,*" *meaning of.*— "Judicial determination" of a complaint does not necessarily mean the trial of the persons against whom the complaint is made, but the final disposal of the matter of the complaint by the officer holding the enquiry, upon evidence produced before him. *In re* SAHIRAM AGARWALLA *and* JIBUN KAMAR, **5 C.W.N. 254.**

Judicial Enquiry.

(1)—*Enquiry by District Magistrate into a crime alleged to be about to be committed—Enquiry, even if official, certainly not judicial—Result and value of the enquiry—Statement by a boy, value of.*—When the Magistrate of a District received information which he apparently believed and which, if true, showed that a grave crime was being or was about to be committed, which, if successful, would result in a great wrong in respect to properties in his district, and when the said Magistrate caused some enquiries to be made and took such steps as seemed to him necessary, in the emergency, for the prevention of the crime: *Held*, that those enquiries, if they could be called official in any sense, were certainly not judicial. The enquiries were secret, no notice was given to anybody, on behalf of the person principally interested, and there was nobody to check the mode in which the alleged statements were elicited, nobody to test the statements by cross-examination, nobody to watch the accuracy with which they were recorded, and, consequently, no weight can properly be given to the proceedings at, or the result of, such enquiries. When reliance is sought to be placed upon an alleged statement made by a boy, it must be proved that the language used was his own and not put in his mouth by the person conducting the examination, as nothing could be easier than to extract by the latter process almost any statement from a frightened child, who suddenly finds himself alone in the custody of strangers, and some of them officials. CHANDRASANG HIMAT SANG v. MOHANSANG HAMIR SANG, **1 M.L.T. 301=4 Cr. L.J. 334=4 C.L.J. 181=8 Bom. L. R. 705=30 B. 523=33 I A. 198, P.C.**

See COURT, 12 B. 36.

See CRIM. PRO. CODE, 1898, ss. 200 and 202, 11 C.W.N. 170=5 Cr. L.J. 13.

Judicial Notice.

(1)—*Justice of the Peace—Case sent up to High Court.*—Where R, has tried a case and sent it up to the High Court, but it did not appear whether he had done so in his capacity of Magistrate or Justice of the Peace, *held* the High Court was bound to take judicial notice that R, was a Justice of the Peace for Bengal. QUEEN v. NABADWIP CHANDRA GOSWAMI, **1 B.L.R. O.Cr. 15=15 W.R. Cr. 71**, note. [*R.*, 16 W.R. Cr. 21, 17 W.R. Cr. 35, 19 A. 390, F.B., 15 W.R. Cr. 69; *D.*, 13 W.R. Cr. 40.]

Signature of Jailer—*See* ACT XV OF 1869, ss. 15, 16, 4 B.L.R. O.C. 51.

Police papers—*See* EVIDENCE—GENERAL, 8 W.R. Cr. 35.

See EVIDENCE ACT, 1872, s. 57, 22 B. 54.

Judicial Officers.

Powers of Executive or Judicial officers from what source derived—*See* MAGISTRATE, JURISDICTION OF—GENERAL, 17 O.C. 263=15 Cr. L.J. 668=25 Ind. Cas. 996.

Judicial Officers, Liability of.

See ACT XVIII OF 1850.

(1)—*Liability of Municipal Commissioner sitting as Magistrate under Ben. Act III of* 1864.—A Municipal Commissioner invested with the powers of a Magistrate under Bengal Act III of 1864 is protected by Act XVIII of 1850 in respect of every act done by him in such capacity judicially. SHAHAZADA HALMOOZZUMAH v CHAIRMAN AND VICE CHAIRMAN OF THE MUNICIPAL COMMISSIONERS AT HOOGHLY, **13 W.R. 340.**

(2)—*Judicial Act—Right of suit—Liability of Magistrate—Ben. Act VI of* 1868, *sch. K.*—The removal by a Magistrate of an obstruction in the exercise of the powers conferred upon him by sch. K, cl. 1, of Bengal Act VI of 1868 is not a judicial act; and the Magistrate is, therefore, not protected by Act XVIII of 1850 from a suit in the Civil Court to try the question of the right of the person against whom the order was made to create the obstruction and for damages. CHUNDER NARAIN SINGH v. BRIJO BULLUB GOOYEE, **14 B.L.R. 254 = 21 W.R. 391.**

(3)—*Protection while exercising judicial functions—St.* 21, *Geo. III*, c. 70, *s.* 24—*Trespass, action of.*—The St. 21, Geo. III, c. 70, s. 24 protecting Provincial Magistrates in India from actions for any wrong or injury done by them in the exercise of their judicial offices, does not confer unlimited protection, but places them on the same footing as that of English Courts of a similar jurisdiction, and only gives them an exemption from liability when acting *bona fide* in cases in which they have mistakenly acted without jurisdiction. Trespass will not lie against a Judge for acting judicially, but without jurisdiction, unless he knew, or had the means of knowing, of the defect of jurisdiction, and it lies upon the plaintiff in every such case to prove that fact. JOHN CALDER v. ROBERT CRAIGIE HALKET, **2 M.I.A. 293 = 3 Moo. P.C. 28 = 4 State. Tr. N.S. 481 = Morton 396 = 1 Sar. 191** [*F.*, 12 A. 115; *D.*, 9 C. 341, P.C.; *R.*, 2 M.H C. 396, 6 M.H.C. 423.]

(4)—*Order made by Political Agent in his executive capacity.*—In a suit brought in the High Court, Bombay, by the Hindu inhabitants of Mahalingpore, a village in the territories of the Chief of Modhool, against the Political Agent at the Court of Modhool, for damages for injury done to them by certain orders made by him which affected their caste, the plaint stated that the defendant, at the time the orders were made, exercised exclusive civil jurisdiction throughout the territories of the Chief of Modhool, and that the Court of the defendant was a Court subject to the superintendence of the High Court at Bombay; and that the orders complained of were made by him as Political Agent and in his executive capacity. *Held* that there was no cause of action, whether the acts were done by the defendant as Political Agent or in his judicial and magisterial capacity. INHABITANTS OF MAHALINGPORE v. ANDERSON, **7 B.L R. 452, Note.**

Judicial Officers, Liability of—*concluded.*

(5)—*Illegal arrest when acting* bona fide—*Liability of public officer.*—Where the defendant, the commanding officer of a regiment, had unlawfully caused the plaintiff, a contractor, to be arrested and kept in confinement on the reasonable suspicion of fraud entertained against him, believing himself to be lawfully possessed of the authority to do so, and did not act in malice or conscious violation of the law, nor for the furtherance of any unlawful purpose, but failed to establish the fraud imputed, *held* that the plaintiff was, under the circumstances, entitled to substantial damages. COLONEL R. PATTON v. HUREE RAM, **3 Agra 409.**

See CRIM. PRO. CODE, 1898, ss 202, 204, 242, 244 and 439, 1 P.W.R 1908, Cr. = 4 P.R. 1908, Cr. = 86 P.L.R. 1908 = 7 Cr. L.J. 202.

Exemption of judicial officers from giving evidence—*See* EVIDENCE ACT, 1872, s. 121, 2 Weir 777 = 6 M.H.C. App. 42.

Suits against—Suit against Government for acts of Magistrate.—*See* RIGHT OF SUIT, 2 Agra 81, Cr.

Judicial Officers' Protection Act.

See ACT XVIII OF 1850.

Judicial Procedure.

(1)—*Object of.*—The end and use of judicial procedure being to apply the law correctly to a correct presentment of facts, and it being impossible for right to be vindicated, or for the proper relief to be obtained, in a Court of justice, without a fair hearing being given to both sides, it is not easy to exaggerate the importance of those provisions which, intelligently enforced, secure that the defence shall know what has to be met and shall have proper opportunity for so doing. NGA PAN E. v. QUEEN-EMPRESS, **L.B.R. 1893-1900, 258.**

Judicial Proceedings.

(1)—*Manner of proof of judicial proceedings.*—Where the charge is a false deposition in a judicial proceeding, the deposition and the proceeding, being written records, should be proved by production of such records and not by parol evidence. REG v. RAVJI TAJU, **8 B.H.C. Cr. 37.**

(2)—*Crim. Pro. Code* (*Act XXV of* 1861), ss. 318, 404—*Judicial proceeding—Procedure.*—A proceeding under s. 318 of the Crim. Pro. Code, is a judicial proceeding within the meaning of s. 404. The Magistrate, in such a proceeding, has to enquire who is in actual possession, not who is entitled to legal possession. BAPUJI JAGJIVAN v. MAGISTRATE OF KHEDA, **4 B.H C.A.C.J. 153.**

(3)—*Crim. Pro Code* (1872), *Ch. XLI—Proceedings under the chapter, nature of.*—Proceedings under Ch. XLI of the Code of 1872 (Ch. XXXVI of the Code of 1898) are judicial in their nature, and must not be conducted as if they were merely ministerial matters. The notes of evidence, therefore, must not be inadequate and vague, and the order recorded must be based on distinct findings of fact. LARAITI v. RAM DIAL, **5 A. 224 = A.W.N. 1882, 240.** [*R.*, 23 B. 50.]

Judicial Proceedings—*continued.*

(4)—*Crim. Pro. Code* (*Act* XXV *of* 1861), *Ch.* XX—*Magistrate's order—Judicial proceeding.* — A Magistrate's order made under Ch. XX of the Crim. Pro. Code is a judicial proceeding. REG. v. GANPATPRASAD, **Rat. Un. Cr. C. 59, F.B.** (4 B.H.C. Cr. 120, *overruled.*)

(5)—*Crim. Pro. Code* (1872), *ss.* 518, 519, 527 —*Order under s.* 518, *by a first class Magistrate —Power of District Magistrate to refer to High Court* —An order passed by a first class Magistrate under s. 518 of Crim. Pro. Code being, under s. 520 of the Code, not a judicial proceeding, the District Magistrate cannot refer it to the High Court, but he is at liberty to deal with it in his executive capacity. The mere fact that the District Magistrate has to exercise his discretion carefully and make due enquiry does not make the function in any way judicial. REFERENCE No. 62 OF 1877. **Rat. Un. Cr. C. 129.**

(6)—*Crim. Pro. Code*, ss. 476, 195—*Delivery of possession—Obstruction—Jurisdiction of executing Court to make order under s.* 476 *of the Crim. Pro. Code—Enforcement of process of Court—Offence committed—Crim. Pro. Code*, *s.* 195.—An execution proceeding is a judicial proceeding within the meaning of s. 476 of the Crim. Pro. Code, and consequently the Court, while engaged in such a proceeding, is competent to make an order under that section, if the fact is brought to his notice that offences have been committed while the process of the Court was attempted to be enforced. KHONDKAR ABDUL BASIR v. PANCHKOWRI, **12 C.L. J. 618 = 8 Ind. Cas 1106 = 12 Cr. L.J. 21.**

Proceedings under s. 8, Act V of 1876, if judicial proceedings—*See* ACT V OF 1876, s. 8, 14 B. 381, Rat. Un. Cr. C. 494.

Enquiry under Legal Practitioners' Act if a—*See* ACT XVIII OF 1879, 6 M. 252 = 1 Weir 116 = 1 Weir 156 = 1 Weir 785 = 7 Ind. Jur. 247.

See ACT II OF 1886, s. 25, 44 P.R. 1905, Cr. = 187 P.L.R. 1905 = 3 Cr. L.J. 128.

See CANTONMENT CODE, 1899, s. 283, 9 P.R. 1909, Cr.

See CONTEMPT OF COURT, 16 P.R. 1897, Cr.

Execution proceedings whether—*See* CRIM. PRO. CODE, 1898, ss. 4 (*m*), 195, 476, 10 N.L. R. 177.

See CRIM. PRO. CODE, 1898, ss. 4, 476, 28 A. 89 = A.W.N. 1905, 195 = 2 A.L.J. 717 = 2 Cr. L.J. 454.

See CRIM. PRO. CODE, 1898, ss. 96, 105, 165, 13 C.W.N. 458 = 9 C.L.J. 298 = 36 C. 433 = 5 M.L.T. 367.

See CRIM. PRO. CODE, 1898, ss. 144, 435 and 476, 19 M. 18 = 2 Weir 591 = 2 Weir 94 = 5 M. L.J. 219.

See CRIM. PRO. CODE, 1898, s. 161, U.B.R. 1897—1901, Vol. I, 31.

Enquiry by Registrar of the Presidency Small Cause Court as to proper service of summons if Judicial proceedings — Sanction to prosecute for false personation in service of summons.—*See* CRIM. PRO. CODE, 1898, s. 195, 18 C.W.N. 1323.

Judicial Proceedings—*concluded.*

See CRIM. PRO. CODE, 1898, s. 195, 9 C.W. N. 127.

Sanction to prosecute — Complaint to a District Registrar—Enquiry held departmentally—*See* CRIM. PRO. CODE, 1898, ss. 195, 476, 11 C.L.J. 121 = 5 Ind. Cas. 721.

See CRIM. PRO. CODE, 1898, ss. 195, 476, 10 A.L.J. 174 = 34 A. 602 = 16 Ind. Cas. 525 = 13 Cr. L.J. 717, 32 C. 367 = 9 C.W.N. 364 = 1 C.L.J. 161.

See CRIM. PRO. CODE, 1898, ss. 426, 439 (1 to 4), 440, 523, 2 A. 276.

See CRIM. PRO. CODE, 1898, ss. 435, 476, 15 M.L.J. 489 = 3 Cr. L.J. 118 = 2 Weir 601.

See CRIM. PRO. CODE, 1898, s. 476, 34 C. 42 = 11 C.W.N. 125 = 4 Cr. L.J. 460, 9 C.W.N. 1030 = 2 Cr. L.J. 851, 10 Ind. Cas. 622 = 7 N. L.R. 65 = 12 Cr. L.J. 326.

See CRIM. PRO. CODE, 1898, ss. 476, 192, 202, 13 C.W.N. 122 = 36 C. 72 = 1 Ind. Cas. 203.

See CRIM. PRO. CODE, 1898, ss. 476, 435, 15 M.L J. 489 = 3 Cr. L.J. 118 = 2 Weir 601.

Departmental enquiry — *See* CRIM. PRO. CODE, 1898, ss. 476, 435, 439, 29 M. 100 = 3 Cr. L.J. 376.

See CRIM PRO. CODE, 1898, s. 487, 16 C. 121, 16 C. 766, F.B.

Defamatory statement by witnesses in—*See* DEFAMATION, 14 P.R. 1893, Cr.

See FALSE EVIDENCE, 14 C.W N. 132 = 5 Ind. Cas. 62 = 37 C. 52, 4 N.W.P. 6, 2 M.H.C. 43, 1 B.L.R.A. Cr. 13 = 10 W.R. Cr. 37, P.L. R. 1900, p. 63, Cr.

See INQUEST, 3 C. 742.

See JOINT TRIAL, A.W.N. 1885, 29.

See MAINTENANCE, L.B.R. 1893—1900, 662.

See PENAL CODE, s. 193, 80 P.L.R. 1910.

When come to an end—*See* PENAL CODE, s. 228, 1 Weir 214.

Liability of a party or witness for making defamatory statement in—Revision—*See* PENAL CODE, ss. 499, 500, 7 P.W.R. 1911, Cr. = 10 Ind. Cas. 682 = 12 Cr. L.J. 193.

See PERJURY, 29 M. 89 = 3 Cr. L.J. 370.

See REVISION—GENERAL PRINCIPLES, A. W.N. 1882, 229.

See SANCTION TO PROSECUTE—CONDITIONS REQUISITE FOR GRANT OF SANCTION, ETC., 2 C.L.J. 619 = 10 C.W.N. 222 = 3 Cr. L.J. 112, 27 C. 452 = 4 C.W.N. 594, 13 O.C. 198.

See SECURITY FOR GOOD BEHAVIOUR, 10 P.R. 1899, Cr.

Judicial Records.

See CRIM. PRO. CODE, 1898, ss. 421, 435, Rat. Un. Cr. C. 128.

Judicial Superintendent of Railways.

See HIGH COURT, JURISDICTION OF—GENERAL, 9 B. 288, F.B.

Julkar.

See FISHERY.

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 12 C. 539, 13 C. 179, 6 C.W.N. 161.

See SECURITY TO KEEP THE PEACE-GENERAL, 6 C.L.J. 697 = 6 Cr. L.J. 398 = 35 C. 117 = 12 C.W.N. 487.

Jurisdiction.

See DISTRICT JUDGE, JURISDICTION OF.

See MAGISTRATE, JURISDICTION OF.

See SANCTION TO PROSECUTE — AUTHORITIES COMPETENT TO GRANT SANCTION, ETC.

See SECURITY TO KEEP THE PEACE—PERSONS WHO MAY BE REQUIRED TO GIVE SECURITY AND PERSONS OUTSIDE JURISDICTION.

See STATUTES, CONSTRUCTION OF, 8 M. 24.

Jurisdiction of British Courts.

(1)—*Crim. Pro. Code* (1872), s. 67—*Dacoity committed in Native State—Retention of property in British territory — Jurisdiction of British Courts.*—Where the accused formed part of a gang which committed dacoity in Velanpor in Baroda territory, but a portion of the stolen property was found concealed by the accused in British territory, *held*, that a conviction for dacoity by a British Court could not be sustained, as that was a substantive offence completed as soon as perpetrated, although, had that place been in British territory, the subsequent acts in process of taking away the property might, in the legal sense, as they would have the same legal character, have coalesced with the first and principal one so as to give jurisdiction under s. 67. *Held*, further, that the accused could be properly convicted of retaining stolen property known to have been obtained by dacoity, the retaining having taken place in British territory. REG. v. LAKHYA GOVIND, **1 B. 50.** [*R.*, 5 B. 338, 6 C. 307, 18 C.W.N. 1178.]

See JURISDICTION OF CRIMINAL COURTS—GENERAL, 19 B. 741.

Jurisdiction of Civil Courts.

(1)—*Enquiry into public right* per se—*Crim. Pro. Code* (1861), *ss* 318 *and* 319.—A Civil Court has no jurisdiction to enquire into a public right *per se.* As ancillary to an enquiry, whether a person has been injured in his private capacity, it may enter upon such an inquiry, but not abstractedly and otherwise than collaterally to a suit arising out of a private injury. PEAREE LALL v. MR. E. G. ROOKE, **12 W.R. 199 = 3 B.L.R.A.C. 305.** [*Appr.*, 15 C. 460, F.B., 7 B.L.R. 184, 1 A. 249; *D.*, 14 W.R. 163, 6 C. 291, 12 W.R. 275, 14 C. 60.] *See also* E. G. ROOKE v. PEAREE LALL COAL COMPANY, **11 W.R. 434 = 3 B.L.R. App. 43.**

Jurisdiction of Civil Courts—*continued.*

(2)—*S.* 308, *Crim. Pro. Code, scope of—Control over joint family house—Magistrate, jurisdiction of.*—S. 308, Crim. Pro. Code, refers to nuisances in a thoroughfare or public place, and has nothing to do with the interior of private houses, and, therefore, does not bar the jurisdiction of the Civil Courts in a suit brought to set aside an order of a Deputy Magistrate restricting some of the owners and occupiers of a house from the free use of their own portion of joint property. ESHAN CHUNDER BANERJEE v. NUND COOMAR BANERJEE, **8 W.R. 239.** (2 W.R. Mis. 30, *F.*).

(3)—*Order by Magistrate under s.* 521 *of the Crim. Pro. Code,* 1872—*Competency of Civil Court to set aside.*—A Civil Court is incompetent to set aside an order by a Magistrate, under s. 521 of the Crim. Pro. Code, 1872, declaring a right of way over property, on the ground of its having been made without jurisdiction. MUTTY RAM SAHOO v. MOTI LALL ROY, **6 C. 291 = 7 C.L.R. 433.** [*R.*, 15 Cr. L. J. 259 = 7 Bur. L.T. 23 = 23 Ind. Cas. 467.]

(4)—*Magistrate's order under s.* 308, *Crim. Pro. Code,* 1861—*Opening of road—Jurisdiction of Civil Courts to interfere with order.*—A Civil Court is not competent to declare a road, which has been opened by the order of a Magistrate, to be no public thoroughfare, and to direct that it be closed by the assistance of the officers of the Court. E.G. ROOKE. v. PEAREE LALL COAL COMPANY, **11 W.R. 434 = 3 B.L. R. Ap. 43.**

(5)—*Opening of road—Jurisdiction of Civil Courts.*—The Civil Courts have jurisdiction to set aside an order by a Deputy Magistrate to open a road over lands. KADER MAHOMED v. MAHOMED SAFER, **1 W.R. 277.** (S.D.A. 1853, 929 and S.D.A. 1858, 48, *R.*)

(6)—*Suit for closing a new road and opening old one.*—In a suit for closing a new road opened by the defendant through the land of the plaintiff, and for opening an old road which had been closed by the defendants, *held*, *per* Markby, J., that the question of opening and closing a public road belonged to the Criminal Court. The Civil Court had no jurisdiction to entertain the suit. HIRA CHAND BANERJEE v. SHAMA CHARAN CHATTERJEE, **3 B.L.R. A.C. 351 = 12 W.R. 275.** [*Appr.*, 7 B.L R. 184; *F.*, 1 A. 249; *R.*, 2 B. 370.]

(7)—*Order of Magistrate interfering with private paths—Civil suit.*—When a Magistrate interferes with private paths, his acts, being beyond the scope of his jurisdiction, may be set aside by a civil suit. SHAM DOSS v. BHOLA DOSS, **1 W.R. 324.** [*R.*, 6 C. 291, 15 C. 460, F.B., 6 W.R. 30; *D.*, 7 W.R. 95.]

(8)—*Order for removing an encroachment not dealt with as local nuisance—Crim. Pro. Code* (1861), *Chs.* XX, XXII—*Penal Code, s.* 431.—A regular suit lies to the Civil Court from the proceedings of a Magistrate ordering the removal of an encroachment not treated as a local nuisance. S. 431, Penal Code, gives the Magistrate no authority whatever to order the

Jurisdiction of Civil Courts—*continued.*

removal of encroachments. The Magistrate could only legally proceed under Ch. XX, or Ch. XXII, Crim. Pro. Code. Any decision under the latter is expressly subject to a regular suit. ANUND CHUNDER CHATTERJEE v. ROKHO TARUN CHATTERJEE, **2 W.R. 287.**

(9)—*Magistrate's order encroaching on party's land—Jurisdiction of Civil Courts—Crim. Pro. Code* (1861), *s.* 308.—A plaintiff is not precluded, from suing for a declaration of his civil rights to land encroached upon by a road being widened in consequence of a Magistrate's order, on the ground that such order might have been reversed on the criminal side of the High Court. AZEEZOOLLAH GUZEE v. BUNK BEHAREE ROY, **7 W.R. 47.**

(10)—*Owner's right to keep up shed—Magistrate ordering removal—Crim. Pro. Code* (1861), *s.* 308—*Civil suit.*—No suit would lie in a Civil Court to establish the owner's right to keep up a shed, for the removal of which a Magistrate made an order under s. 308, Crim. Pro. Code, 1861. BAKAS RAM SAHOO v. CHUMMUN RAM, **7 W.R. 11.**

(11)—*Magistrate's order declaring a road public—Crim. Pro. Code* (1861), s. 308—*Appeal.*—The Civil Courts have jurisdiction to entertain a suit which, if successful, has, in fact, the direct effect of setting aside and rendering inoperative the order of a Magistrate declaring a road to be a public one, and directing the obstruction of bamboo-posts to be removed. S. 308, Crim. Pro. Code, 1861, does not provide specifically for any appeal. RAM SHODOY GHOSE v. JUTTADAREE HOLDAR, **7 W.R. 95.** (S.D.A. 1853, 929, S.D.A. 1855, 267, S.D.A. 1858, 938, 1 W.R. 324, 2 W.R. 287, Marsh, 1861, 214 = 2 Hay 86, *R.*)

(12)—*Crim. Pro. Code* (1861), ss. 308, 310, 311—*Removal of obstruction from public thoroughfare—Jurisdiction of Civil Courts.*—A Magistrate considering there was an unlawful obstruction or nuisance on a public thoroughfare by the buildings of the plaintiffs, made an order under s. 308, Crim. Pro. Code, 1861. The plaintiffs, dissatisfied with the order, availed themselves of the power given to them by s. 310, and applied to have it tried by a jury whether the order of the Magistrate was a right and proper one. A jury was appointed, and their findings were that the order was reasonable and proper. *Held* that the plaintiffs were not at liberty to bring a suit in a civil court to have the question tried again, and in fact to have the order of the Magistrate under s. 308, and the findings of the jury reversed, and the whole matter reopened. MEECHOO CHUNDER SIRCAR v. J.H. REVENSHAW, **19 W.R. 345 = 11 B L.R. 9.**

(13)—*Province of Civil Courts—Questions of ownership between Government and private persons.*—It is the province of the Civil Courts to decide questions of ownership of land between Government and private persons just as much as between two private persons. If Government officers take summary possession of a man's land, otherwise than under the Land

Jurisdiction of Civil Courts—*continued.*

Acquisition Act or other legal authority, his rights are no more affected by such illegal action than they would be by the illegal seizure of his land by a private person. In such a case, the Revenue officers are mere trespassers and there is nothing illegal in the owner taking possession of his property. ALAGARASAMI TEVAN v. EMPEROR, **28 M. 304 = 2 Cr. L.J. 754.**

(14)—*Jurisdiction of Civil Court—Suit for declaration that defendant is not lawful wife of plaintiff—Effect of order under s.* 488, *Crim. Pro. Code*, 1898.—When an order has been passed under s 488, Crim. Pro. Code, awarding maintenance to a wife against the plaintiff as her husband, *held*, that a Civil Court has no jurisdiction to pass a decree that the wife is not entitled to receive maintenance; but it is competent to decide whether she was or was not the lawful wife of the plaintiff. WARYAM SINGH v. MUSSAMMAT PREMON, **158 P.L.R. 1901 = 50 P.R. 1901, Cr.**

(15)—*Magistrate's order under s.* 308, *Crim. Pro. Code* 1861, *relating to nuisance—Suit to cancel order.*—A Civil Court is incompetent to set aside an order duly made by a Magistrate under Ch. XX, s. 308, Crim. Pro. Code, 1861, relating to nuisances, or to restrain him from carrying such order into effect UJALAMAYI DASI v. CHANDRA KUMAR NEOGI, **4 B.L.R. F.B. 24 = 12 W.R. F.B. 18.** [*Appr.*, 15 C. 460, F.B]

(16)—*Act* XXIII *of* 1861, *ss.* 16, 19—*Power of Civil Court to send case to Magistrate for trial of perjury and forgery.*—Under ss. 16 and 19, Act XXIII of 1861, Civil Courts had power to refer to Magistrates, or to make commitments to the Sessions, in cases of perjury or forgery, only when they had come to some conclusion in respect of the guilt of the party concerned, or the truth or otherwise of the document or evidence. *In re* HURRONATH ROY, **7 W.R. 482.**

(17)—*Act* XXV *of* 1861, *s.* 318—*Magistrate's award—Civil Courts—Jurisdiction.*—A Civil Court cannot set aside the order of a Magistrate giving possession. The order is by its terms good to retain the party, in whose favour it is passed, in possession, until the opposite party has established his right thereto by a Civil Court. KALEE NARAIN BOSE v. ANUND MOYEE GOOPTA, **21 W.R. 79.**

(18)—*Civil Court—Jurisdiction—Dispossession under color of Law—Ejectment Suit.*—A Civil Court has jurisdiction to entertain a suit for ejectment on the allegation that the defendants have dispossessed the plaintiff of private property under color of an order of a Magistrate. DEB CHUNDER DOSS v. JOY CHUNDER PAL, **22 W.R. 461.**

(19)—*Jurisdiction—Suit to get rid of an order of Magistrate declaring a river to be a thoroughfare—Exclusive possession.*—A suit does not lie in a Civil Court to get rid of the effect of an order passed by a Deputy Magistrate under s. 320 of the Crim. Pro. Code, and to have it

Jurisdiction of Civil Courts—*continued.*

declared that the plaintiffs are entitled with others to use the water of the river, by raising bunds or dams in the bed of the stream, as heretofore. The only way in which the order could be got rid of is by proving in a Civil Court that they are entitled to exclusive possession of the right of water claimed. RAM KRISTO SIRCAR v. SHEIK KALOO, **18 W.R. 284.**

(20)—*Crim.Pro. Code* (1898), s. 145—*Failure of one party to file a written statement—Competency of Magistrate to decide in favour of the party filing the statement.*—In a case under s. 145, a Magistrate cannot, on the failure of one party to file a written statement, summarily pass an order declaring possession with the party who has done so, without taking evidence in proof of such statement. The High Court set aside such order of the Magistrate and directed that the case must be tried in accordance with law. KEFATULLAH v. FERUZUDDIN MIAH, **5 C.W.N. 71.** [*D.*, 30 C. 112.]

(21)—*Determination of rights by competent Court—Duty of Magistrate—Proper course for Magistrate—Crim. Pro. Code* (1872), *s.* 491.—When the rights of parties have been determined by a competent Court, the dispute is at an end, and it is the duty of the Magistracy to maintain the rights of the successful party; and the defeated party will not be allowed to invoke the aid of the Magistrate and the police to neutralise the effect of the decree of a competent Civil Court. The proper course for a Magistrate to pursue, if the defeated party does any act that may probably occasion a breach of the peace, is to take action under s. 491 of the Crim. Pro. Code and require from such person security to keep the peace.—*Per Field, J. In the matter of* GOBIND CHUNDER MOITRA v. ABDUL SYED, **6 C. 835 = 8 C.L.R. 217.** [*F.*, Rat. Un. Cr C. 462; *D.*, 33 C. 33 = 2 C.L.J. 271 = 10 C.W.N. 257 = 2 Cr. L.J. 670.]

See U.P. ACT I OF 1900, s. 183, 6 A.L.J. 458 = 31 A. 371 = 1 Ind. Cas. 896.

Appeal from Civil Courts directing prosecution for forgery — *See* APPEAL—CASES WHERE APPEAL DOES NOT LIE, 5 W.R. Mis. 18.

See CRIM. PRO. CODE, 1898, s. 144, 1 N.W. P. 197, 6 N.W.P. 104.

See CRIM. PRO. CODE, 1898, ss. 478, 195, 18 B. 581.

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 7 C.L.R. 516, 2 Ind. Cas. 266.

Crim. Pro. Code (1872), s. 536—Order of Criminal Court for maintenance—to cancel—Decision of Civil Court regarding matters disentitling wife to maintenance, effect of—*See* MAINTENANCE, 2 Weir 614.

Order for separate maintenance by a Magistrate—Specific Relief Act, s. 42—Decree of Civil Court—Duty of Magistrate—*See* MAINTENANCE, 2 Weir 615.

Jurisdiction of Civil Courts—*concluded.*

To set aside Magistrate's order for maintenance—*See* MAINTENANCE, 18 A. 29 = A.W. N. 1895, 147.

See MAINTENANCE, 2 M.L.T. 344 = 7 Cr. L. J. 235 = 30 M. 400.

See SANCTION TO PROSECUTE—AUTHORITIES COMPETENT TO GRANT SANCTION, ETC., 6 M.H.C. 191, 1 L.B.R. 47.

Jurisdiction of Civil and Criminal Courts.

Ses JURISDICTION OF CIVIL COURTS.

See JURISDICTION OF CRIMINAL COURTS.

See MAGISTRATE, JURISDICTION OF.

(1)—*Crim. Pro. Code* (1898), s. 476—*Power of Munsiff to direct the trial of person for an offence under s.* 500, *I.P.C.—Procedure when Munsiff wants to show cause.*—A Munsiff, as a judicial officer, cannot direct under s. 476, Crim. Pro. Code, a trial of the person who had committed an offence under s. 500, I.P.C., and ask the Magistrate to deal with his order directing the trial as a complaint. If a Munsiff desired to show cause against a rule issued by the High Court, he should appear by Counsel. He is not an officer as the District Magistrate is with reference to the case. JOGENDRA NARAYAN MAJUMDAR CHOWDHRY v. SYAMA CHARAN UKIL, **6 C.L.J. 713 = 6 Cr. L J. 405.**

(2)—*Order for disposal of property by Criminal Court—Pledge of goods received* bona fide *from person in possession—Contract Act, s.* 178.—Where certain jewels were given to the accused to sell, but she did not sell them and her niece pawned them, and the police seized the jewels from the pawnee and returned them to the owner, under orders of the Magistrate, who convicted the accused of criminal breach of trust, *held* that the question of the validity of the pledge and the question, whether the circumstances were such as to raise a reasonable presumption that the pawner was acting improperly, ought to be left to a Civil Court, and the possession of the jewels ought not to be transferred in consequence of the police having seized them. The owner having given the jewels to be disposed of for money, he is not entitled to the assistance of a Criminal Court in recovering them from a person to whom they were so disposed of. STEPHEN AVIET v. KING-EMPEROR, **4 L.B.R 25 = 6 Cr. L J. 135.** (27 M. 424, 12 B.L.R. 42, *R.*) [*R.*, 4 Bur. L.T. 170 = 12 Cr. L.J. 467 = 11 Ind. Cas. 1003; *D.*, 3 Bur. L.T. 111 = 12 Cr. L.J. 88 = 8 Ind. Cas. 1204.]

Jurisdiction of Criminal Courts.

1.—GENERAL.

2.—JURISDICTION OVER EUROPEANS.

3.—JURISDICTION OVER NATIVES.

See COMMITMENT TO SESSIONS COURT.

See CRIM. PRO. CODE, 1898, ss. 177—188.

See MAGISTRATE, JURISDICTION OF.

See SESSIONS JUDGE, JURISDICTION OF.

***Jurisdiction of Criminal Courts*—ctd.**

——1.—General.

(1)—*Practice—Jurisdiction—Magistrate must decide question of jurisdiction himself—Opinion of District Magistrate.*—A Magistrate who was seized of a case, having felt a doubt as to his jurisdiction to try it sought for the opinion of the District Magistrate on the point; and on receiving it, directed the trial to proceed before him. *Held*, that the Magistrate was not justified in seeking the opinion of the District Magistrate in the way he did; and that it was for him alone to finish the inquiry, to complete his record by the reception of all evidence of relevant facts, including the facts which bore upon the question of law arising on those facts. EMPEROR v. ABDUL RAHIMAN MOMIN, **14 Bom. L. R. 891 = 1 Bom. Cr. C. 187 = 17 Ind. Cas. 530 = 13 Cr. L.J. 786 = 37 B. 144.**

(2)—*Jurisdiction—Magistrate's power to try case after having made over charge of his duties to his successor.*—A Magistrate has no jurisdiction to try a case after having made over charge of his duties to his successor. HIRA LAL v. EMPEROR, **14 Cr. L J. 239 = 19 Ind. Cas. 335.**

(3)—*The Foreign Jurisdiction and Extradition Act*, XI *of* 1872, *ss.* 3, 9—*Offence committed by Native Indian British subject in Cyprus—Jurisdiction of British Courts.—Held by the Full Bench* (*Stuart, C.J., dissenting*).—Cyprus is a "Native State" in reference to Native Indian subjects of Her Majesty within the meaning of Act XI of 1872. Such a person, a soldier in Her Majesty's Indian Army, while serving with his regiment in Cyprus, committed murder, and was charged with that offence at Agra, after his return with the regiment. *Held*, that the Criminal Courts of Agra had jurisdiction to try the case. *Per Stuart, C.J., contra.*—Cyprus is not a foreign or a "Native State" according to the true intent and meaning of Act XI of 1872. EMPRESS OF INDIA v. SARMUKH SINGH, **2 A. 218, F.B.** [*R.*, 24 B. 287 = 1 Bom. L.R. 678.]

(4)—*Crim. Pro. Code* (1882), *s.* 188—*Offence committed outside British India—Political Agent's certificate, necessity for.*—A charge of kidnapping committed in Nepal cannot be enquired into in British India without the Political Agent's certificate, as required by s. 188, Crim Pro. Code, 1882. QUEEN-EMPRESS v. RAM SUNDAR, **19 A. 109 = A.W.N. 1896, 191.**

(5)—*Absence of certificate required by s.* 188, *Crim. Pro. Code* (1882), *s.* 537.—Where objection to the want of a certificate as required by s. 188, Crim. Pro. Code, 1882, was taken at a late stage of the appeal, and was not taken at the trial, *held* that the absence of the certificate was not a fatal defect, but only an irregularity cured by s. 537; if it had not prejudiced the accused in his defence. SHAHMIR KHAN v. EMPRESS, **35 P.R. 1888, Cr.**

(6)—*Offences committed in foreign territories — Jurisdiction of British Courts— Political agents' certificate.*—A British Court can deal with an offence committed by a Native Indian subject of Her Majesty in a foreign territory for which there is a Political Agent, on obtaining a certificate from the Political Agent. But British Indian Courts have no jurisdiction to try a foreigner for offences committed and completed outside the British territory. IBRAHIM v. EMPRESS, **7 P R. 1894, Cr.**

***Jurisdiction of Criminal Courts*—ctd.**

——1.—General—*continued*.

(7)—*Native Indian subject of Her Majesty —Offence committed outside British India — Want of Political Agent's certificate—Crim Pro. Code* (1898), *s.* 188.—Where a Magistrate enquired into an offence committed by a Native Indian subject of Her Majesty outside British India without the Political Agent's certificate as required by s. 188, Crim. Pro. Code, 1898, and committed the accused for trial, but the defect arising from the want of certificate was noticed by the Sessions Judge, and objection taken by him, *held*, that the commitment was bad and should be quashed. QUEEN-EMPRESS v. MASTANA, **11 P.R. 1899, Cr.**

(8)—*Crim Pro. Code* (1882), *ss.* 182 *and* 532 —*Trial by British Courts of offences committed in foreign territory without certificate of the Political Agent.*—Where a District Magistrate, who was himself the Political Agent of a foreign territory, initiated criminal proceedings against a Native Indian subject of Her Majesty, in a British Court, for an offence committed in the foreign territory without the certificate mentioned in s. 188, *held*, that the certificate was a preliminary requisite to the enquiry and any subsequent production of the certificate signed by the District Magistrate would not validate the trial, nor could the defect be cured by s 532, Crim Pro. Code. QUEEN-EMPRESS v. KATHAPERUMAL, **13 M. 423 = 2 Weir 147.** [*R.*, 24 B. 287, 1 Bom. L.R. 678, 14 Cr. L.J. 298 = 6 S.L.R. 260 = 19 Ind. Cas. 954, 4 P.R. 1902, Cr. = 21 P.L.R. 1202, F.B., 2 Weir 148; *D.*, 15 Cr. L.J. 207 = 22 Ind. Cas. 991 = 26 M. L.J. 235.]

(9)—*Crim. Pro. Code* (*Act* X *of* 1882), *s.* 188 —*Penal Code, s.* 411—*Offence outside British territory — Certificate of political agent.*—A Magistrate in a British District has no jurisdiction to enquire into an offence of receiving stolen property committed in foreign territory, without a certificate from the Political Agent. EMPRESS v. CHAN, **A.W.N. 1884, 85.**

(10)—*Offence committed outside British India —Jurisdiction.*—The British Criminal Courts have no jurisdiction, under ss. 181, 188 of the Crim. Pro. Code, 1882, to try a case of escape from lawful custody committed beyond the limits of British India (Mysore State) in the absence of a certificate from the Political Agent. QUEEN-EMPRESS v. JUZE *bin* FRANCIS SOUZA, **Rat. Un. Cr. C. 870 = Cr. Rg. 42 of 1896.**

(11)—*Theft in British India and receiving stolen property outside British India.*—Where property stolen in British India is received by

Jurisdiction of Criminal Courts—ctd.

——**1.—General**—*continued.*

foreigners outside British India, British Courts have jurisdiction over the offence of receiving stolen property. CROWN v. DEVA, **29 P.R. 1867, Cr.**

(12)—*Dishonest retention in British India of property stolen beyond it.*—A person, who steals property out of British India and brings it into it, though he cannot be tried for the offence of theft, can be convicted of dishonestly retaining stolen property. EMPRESS v SUNKER GOPE, **6 C. 307=7 C.L R. 411.** (1 B. 50, *R.*) [*Not F.*, 5 B. 338.]

(13)—*Property stolen in one district found in another's possession in a different district—Jurisdiction over the thief.*—Where property stolen in one district is found in the possession of another person in another district, the thief can be legally tried in the latter district as the latter's possession is the constructive possession of the thief. CROWN v. DULLOO, **4 P.R. 1871, Cr.**

(14)—*Foreigner found in foreign territory in possession of property stolen in British India.*—A foreigner found in possession in foreign territory of stolen property could not be convicted under s. 411, Penal Code, unless it was shown that he was one of the thieves or had possession of property in British India. HAZARMIR v. EMPRESS, **16 P.R. 1880, Cr.** [*R.*, 7 P.R. 1894, Cr.]

(15)—*Crim. Pro. Code* (1882), s. 180—*Dishonest receipt in foreign territory of property stolen in British India.*—Where the accused persons, who were not proved to be British subjects, were found in possession, in a Native State, of property the subject of dacoity in British India, and they were not shown to have participated in the dacoity, nor was there any evidence that they had dishonestly or otherwise received or retained in British India any stolen property, *held*, that the British Courts had no jurisdiction over them. QUEEN-EMPRESS v. KIRPAL SINGH, **9 A. 523=A.W.N. 1887, 131.** [*R.*, 126 P.L R. 1902.]

(16)—*Property stolen in one place and received at another.*—In order to make it legal to punish at Patna a prisoner committed in Calcutta on a charge of receiving stolen property, it must be shown that the property was stolen at Patna. QUEEN v. GHUSOO KHAN, **5 W.R. Cr. 49.**

(17)—*Foreigner conveying property stolen in foreign territory into British India.*—A foreigner who, after stealing the property in a foreign territory, conveys it into British India, is not amenable to the jurisdiction of British Courts. EMPRESS v. HAKIM, **5 P R. 1881, Cr.** [*F.*, 4 P.R. 1883 ; *R.*, 30 P.R. 1894, Cr.]

(18)—*Foreigner conveying property stolen in foreign territory into British India.*—British Courts have no jurisdiction to try a person, not being a British subject, for being in possession of stolen property, when the theft itself was committed in a foreign state. ALU v. EMPRESS, **4 P.R. 1883, Cr.** (5 P.R. 1881, Cr., *R.*) [*R.*, 30 P.R. 1894, Cr.]

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——**1.—General**—*continued.*

(19)—*Retention by foreigner in British India of property stolen in foreign territory.*—It is no defence by the accused, a foreign subject charged with a dishonest retention in British India of property stolen elsewhere, that he himself stole the property, and that he was not liable to be tried, convicted or punished by the British Court for the theft. JAFFIR ALI v. EMPRESS, **30 P.R. 1894, Cr.** (5 B. 338, 5 P.R. 1881, Cr., 4 P.R. 1883, Cr., *R.*)

(20)—*Offence committed in Foreign States—Jurisdiction of British Courts.*—When a person, resident in Mysore, a foreign territory, commits an offence there, British Courts have no jurisdiction to try the offence. HIGH COURT PROCEEDINGS, 21ST NOVEMBER 1870, **6 M. H.C. App. 3.**

(21)—*Crim. Pro. Code* (1872), s. 67—*Offences committed outside British India—Jurisdiction of British Courts—Extradition Act* (XI *of* 1872), s. 9.—The Court trying an offender must, as a general rule, have jurisdiction over the place of the delict. But *ill. (f)* to s. 67, Crim. Pro. Code, treats a theft completed in one district as continuing in three others to which the stolen property is carried. The Magistrates of either of these districts have jurisdiction to try the case. This rule is applicable only to the scope of the relative jurisdictions of Courts in British India and cannot be applied to an offence not committed within the jurisdiction of either of them, but committed in a foreign territory. In such a case the general rule applies. This general rule is often modified by statutes. Where the prisoner is a British subject, jurisdiction may be given by an observance of the proviso to s. 9 of the Extradition Act. REG. v. ADIVIGADU, **1 M. 171.** [*Overruled*, 15 Cr.L. J. 207=26 M L.J. 235=22 Ind. Cas. 991 ; *R.*, 6 C. 307.]

(22)—*Foreigner committing offence in British India without being personally present there.*—British Courts have no jurisdiction over a foreigner for acts which may be regarded as committed by him within British territory, unless, at the time of committing such acts, he was personally within British territory, as neither s. 65 or nor s. 67, Crim. Pro. Code, 1872, confers any jurisdiction, when but for those sections no British Court would have jurisdiction. TAJ MUHAMMAD v. EMPRESS, **35 P R. 1880, Cr.** (20 P.R. 1878, *Cited and F.*) [*R.*, 1 P.R. 1885, Cr.]

(23)—*Offences committed by foreigner outside British India.*—An offence committed by a foreigner outside British India, which, if committed within those limits by a subject of Her Majesty, would render such subject punishable by the British Indian Courts, is not liable to be dealt with by a Criminal Court under the Code of Criminal Procedure or punishable under the Penal Code. RODA v. EMPRESS, **30 P.R. 1889, Cr.** [*R.*, 36 B. 524=14 Bom. L.R. 147=14 Ind. Cas. 970=13 Cr.L.J. 426, 9 P.R. 1893, 7 P.R. 1894, 1 P.R. 1901.]

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——**1.—General**—*continued.*

(24)—*Crim. Pro. Code* (*Act* XXV *of* 1861), *s.* 31—*Jurisdiction to try foreigner.*—A Magistrate has no jurisdiction to try the subject of a foreign State for the offence of receiving stolen property when the offence was not committed within British territory. REG. v. BECHAR MAVA, **4 B.H.C. 38, Cr.**

(25)—*Crim. Pro. Code* (1872), *s.* 66—*Instigation in foreign state to commit murder in British territory.*—Where a foreign subject resident in foreign territory instigated the commission of the offence of murder in British territory, which was in consequence committed therein, *held*, that the instigator was not amenable to the jurisdiction of British Courts. REG. v. PIRTAI, **10 B H C. 356.** [*R.*, 12 B. 507, 36 B. 524 = 14 Bom. L.R. 147 = 13 Cr.L.J. 426 = 14 Ind. Cas. 970, 121 P.L.R. 1901 = 1 P.R. 1901, Cr.].

(26)—*Acts done partly within and partly without British territories—Offence under Penal Code.*—A subject of the British Government can be tried by the Courts of this country for acts done by him, whether wholly within or wholly without, or partly within and partly without, British India, provided they amount to an offence under the Penal Code. QUEEN v. MOULVIE AHMUDOOLLAH, **2 W R. Cr. 60.**

(27)—*Crim. Pro. Code* (1872), *ss.* 67 *and* 70—*Offences committed outside British India—Applicability of the Code.*—S. 67, Crim. Pro. Code, applies only to the trial of offences committed in British India. The words "journey or voyage" do not include a voyage on the high seas, or in foreign territory, but are confined in their meaning to a journey or voyage within the territories of British India. S. 70 as well as s. 67, has relation only to a trial of an offence committed in British India, in which the only defect is that some Court in British India, other than the Court which actually tried the charge, had local jurisdiction over the offence. BAPU DALDI v. QUEEN, **5 M. 23 = 1 Weir 1.** [*R.*, 30 M. 94 = 1 M.L.T. 345, 9 P.L.R. 1902.]

(28)—*Escape of convict—Magistrate of the District within which he escaped to try him.*—A convict escaping from custody must be tried for that offence in the district within which he escaped; the Magistrate of another district has no jurisdiction to try him for the offence. REG v. DOSSA SERA, **1 B H C 139.**

(29)—*Penal Code* (*Act* XLV *of* 1860), *s.* 325—*Offence committed at a place within British India—Subsequent transfer of territory to an independent native state—Jurisdiction.*—Where an accused, who had been convicted of an offence committed in British India, appealed against his conviction to the Sessions Judge, but subsequently the place where the offence was committed was constituted an independent native state, *held* that, inasmuch as the offence was committed in British India, the appeal was presented to the proper Court and the Sessions Judge had jurisdiction to hear the appeal. MAHABIR v. KING-EMPEROR, **8 A.L.J. 630 = 11 Ind. Cas 585 = 33 A. 578 = 12 Cr. L. J. 401.** [*F.*, 34 A. 118 = 9 A.L.J. 51 = 13 Cr. L J. 169 = 13 Ind. Cas. 921, 8 A.L J. 705 = 12 Cr. L. J. 470 = 11 Ind. Cas. 1006; *R.*, 34 A. 451 = 9 A. L.J. 696 = 13 Cr. L.J. 575 = 15 Ind. Cas. 991.]

(30)—*Transfer of territory—Order of the appellate Court directing re-trial—Passed after Benares State was formed—Whether valid.*—The Sessions Judge of Mirzapur heard an appeal from the decision of the Deputy Superintendent of the Family Domains of the Maharaja of Benares, on the 31st March, 1911, and delivered judgment on the 3rd April directing re-trial on another charge. The Benares State came into existence on the 13th April, 1911. The Sessions Judge made a reference to the High Court on a subsequent date recommending that his order of the 3rd April, 1911, be set aside as passed without jurisdiction and the conviction and sentence of the Magistrate restored. *Held*, that the order passed by the Sessions Judge on the 3rd April, was a valid order and passed with jurisdiction KING-EMPEROR v. SAHEB DIN, **8 A.L.J. 705 = 11 Ind. Cas. 1006 = 12 Cr. L J. 470.**

(31)—*Penal Code, ss.* 109, 115, 148, 302—*Abetment in British India of offence committed outside British India—Crim. Pro. Code* (1882), *s.* 188.—Where a British subject abets in British India an offence committed outside British India, he is not charged with an offence punishable under the Penal Code, and cannot, therefore, be tried by British Courts. S. 188, Crim. Pro. Code, does not apply to such a case. QUEEN-EMPRESS v. GANPATRAO RAMCHANDRA, **19 B. 105.** [*R.*, 22 B. 54; *D.*, 24 B. 287 = 1 Bom. L.R. 678.]

(32)—*Crim. Pro. Code* (1882), *s.* 179—*Loss to employers doing business at one place arising out of an agent's acts at another place—Jurisdiction.*—Where the agent of a company at Cawnpore, who was sent to Lower Bengal on business, parted with goods of his employers in Lower Bengal and did not remit their price to his employers at Cawnpore, and failed to account for the goods or their value, *held*, that the case was covered by the provisions of s. 179, that the consequence of the accused having made away with, for his own purposes, goods of his employers, in Lower Bengal, or the price of them, was a loss of those goods that ensued to his employers in Cawnpore, and that, therefore, the Magistrate at Cawnpore, had jurisdiction to try the case. QUEEN-EMPRESS v. O'BRIEN, **19 A. 111 = A.W.N. 1896, 191.** [*F.*, 32 A. 397 = 7 A.L J. 319 = 11 Cr. L.J. 372 = 6 Ind. Cas. 563, 35 A. 29 = 10 A.L.J. 431 = 13 Cr. L.J. 856 = 17 Ind. Cas. 792, 15 Cr. L.J. 207 = 22 Ind. Cas. 991 = 26 M.L J. 235; *R.*, 5 Ind. Cas. 830 = 11 Cr. L.J. 253 = 7 P. R. 1910 = 7 P.W.R. 1910 = 172 P.L.R 1910, 8 Ind. Cas. 595 = 3 Bur. L. T. 10, 67 P.L.R 1901, 18 P.W.R. 1908, Cr. = 8 Cr. L.J. 175; *D.*, 34 A. 487 = 10 A.L.J. 45 = 13 Cr. L.J. 479 = 15 Ind. Cas. 319, 5 A.L.J. 333 = A.W.N. 1908, 115 = 7 Cr. L.J. 394.]

***Jurisdiction of Criminal Courts*—ctd.**

——1.—General—*continued.*

(33)—*Son born of an alien in British India —33 Vic., Ch.* 14 (*Naturalisation Act of* 1870).—A son born in British India, of an alien, is a British subject of His Majesty, though the father lived in British India without becoming a naturalised British subject. FAZAL ALI v. EMPRESS, **9 P.R. 1893, Cr.**

(34)—*British-born subject—Penal Code, s.* 426 *—Jurisdiction—Justice of the Peace.*—A British-born subject charged with the offence of mischief under s. 426 of the Penal Code cannot be tried by a District Magistrate who is also a Justice of the Peace, but must be committed for trial before the High Court. REG v. WELLS, **7 B.H C. Cr. 1.**

(35)—*British subject choosing to reside outside British India not freed from allegiance thereby —Liable to be tried as a British subject* —A subject of Her Majesty, by choosing to reside beyond the limits of British India for ten or twelve years, does not divest himself of his allegiance to Her Majesty or of his liability to be tried as a British subject in the Courts of British India. *In the matter of* RAM PHUL SINGH, **2 J. G. 7.**

(36)—*Native Indian subject.*—The term "Native Indian subject of Her Majesty" means only a Native subject *de jure* and not *de facto*; a person who occasionally resides in British India does not thereby become *de jure* a subject, amenable to the jurisdiction of a British Indian Court for an offence committed by him in a foreign territory. FAKIR v. EMPRESS, **1 P.R. 1885, Cr.** (35P.R. 1880, Cr.,37 P.R. 1881, Cr.,*R.*)

(37)—*Native Indian subject.*—Where the accused, who were the subjects of a foreign state, were arrested in that state, for being in possession of stolen property, *held*, that they could not be tried in British India for an offence under s. 413, Penal Code. SAMANDA v. EMPRESS, **22 P.R. 1888, Cr.**

(38)—*Native Indian subjects.*—The mere fact that a man owns some lands in British territory and resides occasionally in British India, would not constitute him a British Indian subject. FAKIR v. EMPRESS, **22 P R. 1883, Cr.**, *on appeal*, **1 P.R. 1885, Cr.**

(39)—*Jurisdiction of the Resident at Aden over offences triable by a Court of Session committed at Perim.*—The Court of the Political Resident at Aden has no jurisdiction over the island of Perim, and the Political Resident at Aden is not a Judge of the Court of the Session for that island. Where a person was charged with having committed murder at Perim, and was committed by a Magistrate at Perim for trial in the Court of the Political Resident at Aden, and he was convicted and sentenced to death, *held* that the conviction should be set aside and that the prisoner retried before a Court of competent jurisdiction. QUEEN-EMPRESS v. PRIVATE MANGAL TEKCHAND, **10 B. 263.**

(40)—*Appeal from order of Political Resident.*—The prisoner was charged with having committed murder in the island of Perim. He was committed by the Magistrate at Perim to be tried before the Political Resident at Aden. He was found guilty and sentenced to death. He then appealed to the High Court of Bombay. By the Aden Act II of 1864, s.29, it was provided that "no appeal shall lie from an order or sentence passed by the Resident in any criminal case. The High Court, however, admitted the appeal, being doubtful as to whether the above provision applied to cases arising in the island of Perim. QUEEN-EMPRESS v. MANGAL TEKCHAND, **10 B. 258.** [*R.*, Rat. Un. Cr. C. 825, 96 P.L.R. 1901.]

(41)—*Greek residents of Zanzibar—Jurisdiction of British Courts.*—On a consideration of Her Majesty's orders in Council, the chief being that of 1884, passed under the Foreign Jurisdiction Acts, 1843 to 1878, the Greek residents at Zanzibar, having been placed under British protection, are liable to British criminal law in force in Zanzibar. QUEEN-EMPRESS v. REGO MONTOPOULO, **19 B. 741.** [*R.*, 22 B. 54.]

(42)—*Africa orders in Council,* 1889, 1892, 1893—*Jurisdiction of British Consul of Uganda to try German subjects for aiding King Unyoro to wage war against the King of Uganda—Sphere of influence.*—The accused, who were admittedly German subjects, were convicted under cls. 48, 50, Africa Orders in Council, 1889, of taking part in operations of war by aiding and abetting the King of Unyoro in carrying on war, insurrection or revolution against the Kingdom of Uganda and the protecting power, and the first accused was further convicted of slave dealing. The war in which the King of Unyoro was engaged necessitated a partial occupation of his territory by military posts. The jurisdiction of H. M.'s Commissioner and Consul-General for Uganda, who convicted them, was questioned. *Held* that neither the Africa Order of 1889, nor the addition made to it by the Order in Council of 1892, gave jurisdiction to H. M.'s Commissioner and Consul General at Uganda, as the latter order applied only to places declared to be a protectorate, which Unyoro was not, notwithstanding the fact that the accused, being German subjects, were subjects of the Signatory powers, nor could the Government of a temporary and partial military occupation of Unyoro by the British force confer any jurisdiction on the Consular Court, whose powers are strictly limited by the various orders in Council. The phrase "British sphere of influence" is intended to mark out African territories within which other European powers are, by mutual understanding, not to extend their conquests to the disadvantage of the British power in East Africa, whose sphere is marked out by 30 Meridian East Longitude. IMPERATRIX v. JUMA *bin* FAKIR, **22 B. 54**

(43)—*Penal Code, ss.* 108-*A*, 372—*Disposal of minor girl for immoral purposes, effected outside British India—Jurisdiction of British Courts—Abetment, Crim. Pro. Code* (1898), s. 188.—The charge against the first accused was

***Jurisdiction of Criminal Courts*—ctd.**

—1.—General—*continued.*

that she took a minor girl of 16 years from Sholapur to Tuljapur (in the Nizam's territory) to dedicate her to the goddess Amba, with intent or knowing it to be likely that the girl would be employed or used for the purpose of prostitution, and the second accused was charged with having directed the first accused to do so. *Held* that the intention of either accused, while they were staying at Sholapur did not constitute any offence and their removal with the girl to Tuljapur did not by itself, constitute an abetment. The second accused was, therefore, not guilty of abetment under s. 108-A, I.P.C, *Held* also that the British Courts had no jurisdiction over the offence of the disposal of the girl in Tuljapur in the absence of a certificate of the Political Agent or the sanction of the Local Government as required by s. 188, Crim. Pro. Code. QUEEN-EMPRESS v. BAKU, **24 B. 287 = 1 Bom. L R. 678.**

(44)—*Magistrate being a servant of the corporation—Competency to try a case prosecuted by the Corporation.*—A Magistrate, who was also a servant of the Corporation of Calcutta, was held disqualified, by reason of his connection with the Corporation, to try a case prosecuted by the Corporation, and the trial and conviction were held illegal. QUEEN v. BHOLANATH SEN, **2 C. 23.** [*R.*, 9 C.W.N. 1046 = 2 C.L.J. 241 = 33 C. 68, F.B]

(45)—*Power of Courts to question legality of orders by the executive under the Crim. Pro. Code.*—The power of Courts to question the propriety or legality of an order made or a notification issued by the executive under the Crim. Pro. Code arises only when an attempt is made to enforce the exaction of a penalty against a person committing a breach of such order or notification. *In the matter of the petition of* SURJANARAIN DASS, EMPRESS v. SURJANARAIN DASS, **6 C. 88.**

(46)—*Tributory mehals — Mohurbhunj — Powers of Government, extent of—Jurisdiction.*—The Tributary mehals are a portion of British India, which the Government of India has exempted from the ordinary law and jurisdiction of the Courts, and governs through special officials and enactments. The powers of Government as to Mohurbhunj (one of the "estates" forming the Tributary mehals), whatever they may be, do not extend to empowering the legally constituted tribunals of a British District to follow, in that District, and in the case of residents in it, any procedure, and to exercise any jurisdiction, other than that created by the law. The Tributary mehals (and Mohurbhunj) being British India and being excluded from the operation of all the laws in force in British India, unless specially extended to them, the orders of Government, conferring powers on particular officers over criminal offences committed within the Tributary mehals, are without authority. Where, on a British subject residing in Midnapore and apparently a ryot of the Maharaja of Mohurbhunj) being charged with defamation before the Maharaja of Mohurbhunj, the case against him was transferred, on an application by the accused himself, to the Midnapore Magistrate, who was also Assistant Superintendent of the Tributary mehals, and tried. *held*, the proceedings were without jurisdiction. HURSEE MAHAPATRO v. DINOBUNDO PATRO, **7 C 523 = 9 C.L.R. 93** [*R.*, 34 A. 451 = 13 Cr. L.J. 575 = 9 A.L.J. 696 = 15 Ind. Cas. 991, 8 C. 985, F.B., 9 C. 288.]

—1.—General—*continued.*

(47)—*Offence committed in Tributary mehals—British District—Conviction in another District—Crim. Pro. Code (Act X of 1872), s. 70—"Mohurbhunj"—British India—Inapplicability of law in British India to the territory.*—The Tributary mehals constitute by themselves a "district" within the meaning of the Crim. Pro. Code and by the Government Order of 1872, the Superintendent of the Mehals was vested with the powers of a Sessions Judge. Hence a conviction under the Penal Code for an offence committed in Mohurbhunj, though the trial was not by the Superintendent of the Mehals, ought not to be set aside, in view of the provisions of s. 70 of the Crim. Pro. Code.—*Per Mitter*, J. The territory of Mohurbhunj is not within the limits of British India. (*Mitter and Prinsep. JJ., dissenting.*) Though Mohurbhunj is part of British India, the Acts which extend to British India do not extend to Mohurbhunj. The law in force in British India cannot come into operation into Mohurbhunj until its exemption has been removed.—*Per Prinsep*, J. EMPRESS v. KESHUB MOHAJAN, **8 C. 985, F.B. = 11 C.L.R. 241.** [*R.*, 9 C. 288, 16 C. 667.]

(48)—*Tributary mehal of Kheonjur—Ss. 182, 531 of the Crim. Pro. Code, 1882—Local area, meaning of.*—The Penal Code and the Crim. Pro. Code do not apply to the tributary mehal of Kheonjur, which stands exactly upon the same footing as Mohurbhunj, as regards its relations with British Government and its independence, and neither ss. 182 nor 531 of the Code would confer jurisdiction on a Magistrate or a Judge in British India to take cognizance of an offence committed within that territory. [*R.*, 4 P.R. 1902, Cr. = 21 P.L.R. 1902, 96, F.B.]. The words "local area" in s. 182, Crim. Pro. Code, means a local area over which the Code applies, and it would not refer to a local area in a foreign country, or in a portion of the British Empire to which the Code has no application. Further, the section in reality intends to provide for the difficulty which would arise where there is a conflict between different areas in order to prevent an accused person getting off entirely, because there may be some doubt as to what particular Magistrate has jurisdiction to try the case. S. 531 only refers to Districts, Divisions or Sub-Divisions, and local areas governed by the Code, but does not refer to a local area in a foreign

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country, or in a portion of the British Empire to which the Code has no application. BICHITRANUND DASS v. BHUG BUT PERAI, **16 C. 667.** [*R.*, 15 C.W.N. 300=9 Ind. Cas. 688, 96 P.L.R. 1901, 2 P.R. 1902, Cr.=9 P.L.R. 1902, 1 P.R. 1911, Cr.]

(49)—*The State of Sandoor—Jurisdiction of Bellary Sessions Court over Native subjects of the Raja and over Europeans.*—Sandoor is the State of a Native Ruler, though subordinate to the British power. The Sessions Court of Bellary has, therefore, no jurisdiction, under the Penal Code, to try Native subjects of the Raja. According to the treaty entered into between the British Government and the Raja of Sandoor in 1857, the Raja has surrendered exclusive criminal jurisdiction over a limited class of persons, *viz.*, Europeans and their servants, and all other resident persons, not Native subjects of the Raja, and leaves the Government unfettered to provide in the way they deem right for the preservation of the peace and the trial and punishment of offences committed by such persons. They can be apprehended, committed and tried by the Magistrate or Justices of the Peace and the Courts within Her Majesty's Indian territories or by Judicial Officers empowered to exercise jurisdiction in that place. QUEEN v. VENKANNA, **3 M.H.C. 354.**

(50)—*Crim Pro. Code, s.*182—"*Local area,*" *meaning of.*—The expression "local area" in s. 182 includes Sessions Division, district or sub-division, and cannot be restricted to mean the scene of an alleged occurrence only. Where there is an uncertainty in which of two districts the scene of an alleged offence lies, s. 182 is applicable and the offence may be tried in the Court of either district. PUNARDEO NARAIN SINGH v. RAM SARUP ROY, **25 C. 858=2 C.W.N. 577.** [*R.*, 28 B. 129, 34 M. 29=11 Cr. L J. 310=6 Ind. Cas. 313=20 M.L.J. 500 =8 M.L.T. 22=1910 M.W.N. 163, 13 C.L.J. 625=6 Ind. Cas. 392, 96 P.L.R. 1901.]

(51)—*Officer invested with special powers under s.* 34 *of the Crim. Pro. Code*, 1882—*Trial of cases under s.* 209, *Crim.Pro.Code—Jurisdiction.*—An officer exercising special powers, under s. 34 of the Crim. Pro. Code, should rarely try a case himself under s. 209 of the Code, when there is some evidence which, if believed, would substantiate the charge of an offence beyond his jurisdiction. EMPRESS v. PARAMANANDA, **10 C. 85=13 C.L.R. 375.** [*R.*, 12 M. 54=2 Weir 23.]

(52)—*Crim. Pro. Code* (1898), s. 183—*Offence committed on a journey, where triable.*—The only Courts competent to try the case of an offender in respect of an offence committed on a journey, are the Courts through or into the local limits of whose jurisdiction the offender in the course of the journey he was performing passed at the time the offence was committed. The journey referred to in the first part of s. 183 is the journey which the offender is in the course of performing; and the words "that journey" at the end of the section refer to the same journey. AMINULLA SERANG v. P. M. GUHA, **1 C.L J. 334=2 Cr. L J. 411.**

(53)—*Offence committed on interrupted journey—Crim Pro. Code* (*Act* X *of* 1872), *s.* 67, *illn.* (*a*).—Where an offence was alleged to have been committed during a journey from Bombay to Calcutta, and was in fact committed between Bombay and Allahabad, at which latter place the complainant and the person by whom the offence was alleged to have been committed separated and proceeded to Calcutta by different trains, *held* that the Magistrate of Howrah had no jurisdiction to try the charge. To bring the matter within his jurisdiction, the journey should have been continuous from one terminus to the other without any interruption by either party. QUEEN v. PIRAN, *alias* GUNZAI *alias* KURREMUN, **13 B.L.R. Ap. 4=21 W.R. Cr. 66.** [*F.*, 1 M.L.T. 345=30 M. 94.]

(54)—*Theft of box during journey—Crim. Pro. Code* (1872), *s.* 67.—A box containing money having been missed during a halt at Sumbhoogunge, from a boat which was on the way to Chittagong, and a question having been raised whether the charge of theft, which was based on the loss, should be tried at Tipperah or Chittagong, *held* that the journey was not broken by the halt, and that, under s. 67, Crim. Pro. Code, the case could be tried at Chittagong. QUEEN v. ABDUL ALI, **25 W.R. Cr. 45.**

(55)—*Crim. Pro. Code* (1882), s. 180—*Offences committed in two districts—Commitment to sessions — Jurisdiction.* — Where it appeared that one of the accused was charged with an offence punishable under s. 366, committed in a certain district, and the other three accused were charged with an offence punishable under s. 368, I.P.C., committed in another District, and two of them also were charged with the offence punishable under that section, committed in the former District, *held*, that the proper Court to which commitment should be made was the Sessions Court of the former District. Where the Magistrate ordered the commitment of the case to the Sessions Court of the latter District, the order of commitment was not set aside by the High Court, but the case was transferred to the Sessions Judge of the former District. QUEEN-EMPRESS v. RAM DEBI, **18 A. 350=A.W.N. 1896, 96.** (1 M. 173, A.W.N. 1883, 164, *N.F.*; 16 B. 200, 17 M. 402, *R.*; 8 B 312, *F.*) [*F.*, 36 M. 387= 13 Cr. L.J. 35=22 M.L.J. 141=10 M.L.T. 563 =1912 M.W.N. 3=13 Ind. Cas. 275; *R.*, 27 C. 1041.]

(56)—*Offence begun in one place and completed in another—St.* 9, *Geo.* IV., *c.* 74, *s.* 56.—S. 56 of the St. 9, Geo. IV, c. 74 (applying and extending to the British territories in India the provisions then recently made for England with respect to offences committed in two different places or partially committed in one place and

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accomplished in another) applies only to the cases of persons amenable to the Supreme Court at Calcutta beginning to commit offences in one place which are afterwards completed in another, and not to a case where the persons committing the offence were not amenable to the said Court, and where the whole offence which has been committed was within one jurisdiction. The term "within the limits of the Charter of the said United Company," must be construed to mean within the limits of the Trading Chapter of the East India Company. NGA HOONG v. QUEEN, **4 W.R.P.C. 109=7 M.I.A. 72=Boul. 189=1 Suth. 285.** [*R.*, 7 B.H.C. Cr. 89, F.B., 10 B.H.C. 75, 10 B. 263.]

(57)—*Charge of abetment of waging war against the Queen—Offence committed in Calcutta and tried at Patna.*—Where the prisoner was charged with having, at Calcutta, abetted the waging of war against the Queen, and was tried at the Sessions Court of Patna, it was held that the Court of Session at Patna had jurisdiction to try him, because he was a member of a conspiracy, other members of which had done acts within the District of Patna in pursuance of the original concerted plan, and with reference to the common object. The Court of Patna had jurisdiction, also, because the prisoner had sent money from Calcutta to Patna by *hundis*, and until that money reached its destination, the sending continued on the part of the prisoner. QUEEN v. AMIRKHAN, **9 B.L.R. 36=17 W.R. Cr. 15.** [*R.*, 11 Cr. L.J. 453=7 Ind. Cas. 359=37 C. 467, 39 C. 164=15 C.W.N. 1053=14 C.L.J. 375=12 Cr.L.J. 505=12 Ind. Cas. 273.]

(58)—*Grant of jurisdiction to British Government over Railway line through—Independent States—Extent of jurisdiction — Government Notification, effect of.*—In the absence of any express treaty and words which, in themselves, precisely define the amount of jurisdiction intended to be conveyed by the Nizam to the British Government, reference should be made to the correspondence which passed between the two Governments. On such reference, it is clear that the only jurisdiction that has been granted is civil and criminal jurisdiction along the line of Railway as in the case on other lines running through Independent States. Therefore an arrest of a person for an offence committed in British territory and not committed on the Railway, or in any way connected with the administration of the Railway, merely because he was physically present on a portion of that line of the Railway, would not be legal. The territory on which the Nizam's State Railway is constructed has been and continues to be, part of the dominions of the Nizam. The authority, therefore, to execute any criminal process there must be derived in some way or another from the Nizam (the Sovereign of that territory). Notification in the Gazette of India by the Government of India could give no such authority, but it could only give effect to the extent in which the Nizam had permitted the British Government to make the notification. MUHAMMAD TUSUF-UD DIN v. QUEEN-EMPRESS, **25 C. 20=24 I.A. 137=2 C.W.N. 1 =6 P.R. 1897, Cr.=7 Sar. 239, P.C.** [*R.*, 35 B. 225=1 Bom. Cr. C. 26=13 Bom. L.R. 296 =12 Cr. L.J. 356=10 Ind. Cas. 956, 33 C. 219 =3 C.L.J. 395=3 A.L.J. 250=8 Bom. L.R. 129=10 C.W.N. 361=33 I.A. 1=16 M.L.J. 115 =1 M.L.T. 115, 26 M. 607=1 Weir 13, 12 Cr. L.J. 113=9 Ind. Cas. 677=1 P.R. 1911, Cr.= 84 P.L.R. 1911=4 P.W.R. 1911, Cr.]

(59)—*Jurisdiction of Criminal Courts—Civil claim.*—The Criminal Courts should not be put in motion with a view to assistance in the prosecution of a civil claim. HARI BHUIMALI v. EMPEROR, **9 C.W.N. 974=2 Cr.L.J. 836.** [*F.*, 15 C.W.N. 414, 11 Cr.L.J. 248=14 C.W. N. 408=5 Ind. Cas. 794; *Rel. on*, 9 Ind. Cas. 46=12 Cr.L.J. 7; *R.*, 14 C.W.N. 410.]

(60)—*Criminal Courts—Question of title—Duty of Magistrate.*—It is at all times desirable that questions of title should not be tried in Criminal Courts, and more especially when such questions depend on the construction of obscure documents, or are to be decided in respect to transactions of which, at the best, only an imperfect record is preserved. The prosecution, in order to establish that a title has been asserted with a fraudulent or dishonest intent, must show that the accused had no reasonable grounds for asserting the title, and that he asserted it dishonestly or fraudulently in the sense which these terms bear in the Indian Penal Code. QUEEN v. KISHEN PERSHAD, **2 N.W.P. 202.**

(61)—Bona fide *dispute as to the right to use a trade mark.*—A case in which there is a *bona fide* dispute between the parties as to the right to use a trade mark should be taken before a Civil and not before a Criminal Court. SURJI PRASAD v. MOHABIR PROSAD, **11 C.W.N. 887 =6 Cr.L.J. 151.** (32 C. 431, *R. & Appr.*) [*R.*, 13 Cr.L.J. 175=13 Ind. Cas. 927=1912 M W.N. 85.]

(62)—*Abetment of waging war.*—The Sessions Court at Patna was held to have jurisdiction to try the offence of abetment of waging war against the Queen, though the waging of war did not take place in Patna; the rule of law as to abetment being that, where parties concert together and have a common object, the act of one of the parties, done in furtherance of the common object and in pursuance of the concerted plan, is the act of the whole. QUEEN v. AMEER KHAN, **17 W.R. Cr. 15=9 B.L.R. 36.**

(63)—*Entrusting of goods in a British port to be conveyed to another British port—Conversion of goods at a foreign port—Jurisdiction of British Courts—Crim. Pro. Code* (1872), *ss.* 67, 70—12 *and* 13 *Vic., C.* 96—23 *and* 24 *Vic., C.* 88.—Where rice was entrusted at Mangalore to the accused, the tindal of a *pattimar*, for conveyance to a person at Calicut, and the

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accused, after getting to sea, instead of taking his *pattimar* to Calicut, went off to Goa and there sold the rice, *held*, that the Sessions Court of Mangalore had no jurisdiction to try the offence under Crim. Pro. Code, as the offence was committed outside British India and that there was no offence committed on the high seas so as to give jurisdiction under 12 and 13 Vic., C. 96, as extended by 23 and 24 Vic., C. 88, inasmuch as the act of conversion did not take place till Goa was reached, although the intention to commit the offence and the act of deviating from the course with that intention took place upon the high seas, and that, for want of a certificate from the Political Agent of Goa, as required by s. 9 of Act XXI of 1879, the trial and conviction were illegal. BABU DALDI v. QUEEN, **5 M. 23 = 1 Weir 1.**

(64)—*Exercise of ecclesiastical jurisdiction.*—Where the exercise of ecclesiastical jurisdiction is plainly *ultra vires* or otherwise unsanctioned by the ordinances of the society to which it appertains, or where such ordinances controvert the general law, and, in either case, consequences result which the Criminal Law was intended to restrain, the Criminal Courts are not at liberty to decline jurisdiction. *In the matter of* PAUL DE CRUZ; *In the matter of* JOHN RAYMOND BIBER, **8 M. 140 = 2 Weir 249 = 2 Weir 22 = 1 Weir 624.**

(65)—*Crim. Pro. Code* (1898), *ss.* 7 (3), 408, 435—*Two Sessions Divisions in one District—Magistrate having jurisdiction over the whole District—Jurisdiction of the Sessions Courts in appeals against the Magistrate's decisions.*—Under s. 435, the Sessions Judge may call for and examine the records of any inferior Criminal Court "situate" within the local limits of his jurisdiction. The word "situate" means fixed or located, and when applied to a Court, it must be taken to refer to the place where the Court ordinarily sits. In the absence of any indication to the contrary in the Code, the principle thus laid down in regard to the analogous powers of revision under s. 435, should be followed in the case of appeals also. So, where a Magistrate, against whose decisions appeals are preferred, has his headquarters in a place, which is within the local limits of one of the two Sessions Divisions in a District (*e.g.*, Malabar), though he is authorised to try offences throughout the whole District, including cases arising within the other Sessions Division, the appeals lie to the Sessions Division, within whose jurisdiction the head-quarters of the Magistrate are situate, irrespective of the place where the offence was committed. VALIA AMBU PODUVAL v. EMPEROR, **30 M. 136 = 1 M.L.T 402 = 16 M.L.J. 444 = 4 Cr. L.J. 443.** [*R.*, 13 Cr. L.J. 850 = 17 Ind. Cas. 786 = 12 M.L.T. 601 = 23 M.L.J. 670.]

(66)—*What Court should try a charge of murder—Penal Code, ss.* 300, 304—*Commitment.*—Where there is evidence to sustain a charge of murder, unless the accused is entitled to the benefit of one of the exceptions to s. 300, I.P.C., the case should be tried by a Court which has jurisdiction to try the accused for murder, *i.e.*, by the Court of Sessions; and which is, therefore, the Court which is competent to decide whether the accused is guilty of that offence or not. Where a Deputy Commissioner, in trying a case under s. 304, I.P.C., had to decide whether the accused was guilty of murder or not and he was not competent to try a charge of murder, *held*, he should have committed the accused to the Sessions Court. EMPRESS v. PERMAN, **5 C.P.L.R. Cr. 7.**

(67)—*Jurisdiction of Deputy Commissioner in cases of murder—Intention.*—In all ordinary cases where there is evidence that an accused person has caused the death of a man, and the question is whether the offence amounts to a murder or not, the case should be committed to the Sessions for trial. The Deputy Commissioner is not empowered to try a murder case, and therefore, all such cases should be committed, so that the question may be determined by a competent Court. Intention must not be confounded with wish. If a weapon used is such a weapon as would be likely to cause death when used, the law would presume an intention, a person being held to intend the natural consequences of his acts. EMPRESS v. SONHAR, **5 C.P.L.R. Cr. 48.**

(68)—*Local jurisdiction.*—Where the branch, in Ferozepore, of a firm in Karachi employed certain persons as their purchasing agents at Sangla in the Jhang District, the Court of Ferozepore had jurisdiction to try the offence of misappropriation by the purchasing agents at Sangla, as the moneys were payable at Ferozepore. UTTAM CHAND v. EMPEROR, **2 P.R. 1902, Cr. = 9 P.L.R. 1902. (58 P.R. 1900, Cr. Misc. *D.*)** [*R.*, 18 P.W.R. 1908, Cr.]

(69)—*Crim. Pro. Code* (*Act* V *of* 1898), *ss.* 177, 179—*Jurisdiction—Goods despatched from Delhi for sale on commission to the accused at Calcutta, misappropriation—Jurisdiction—The words "any consequence that has ensued" in s.* 179—*Meaning.*—Where the complainant despatched goods from Delhi to the accused at Calcutta for sale on commission, and the accused mortgaged the goods and appropriated the money to their own use, *held*, that the offence alleged was complete as soon as the money had been misappropriated, and that the Calcutta Court alone had jurisdiction. *Held* also, the fact that the money should have been, and was not, sent to Delhi, did not give the Delhi Court jurisdiction, the accused having put the money into his own pocket at Calcutta. A Court which has no jurisdiction *to try* has no jurisdiction *to acquit* the accused, and the proper order is one of discharge. The words 'any consequence that has ensued' in s. 179 Crim. Pro. Code, mean some consequence modifying or completing the act or acts constituting the offence, and do not include the loss resulting to an employer from criminal

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breach of trust by his servant. GOKAL CHAND v. PHUL CHAND, **7 P.R. 1910, Cr.=5 Ind Cas. 830=7 P.W.R. 1910, Cr.=11 Cr. L.J. 253.**

(70)—*Committing Magistrate entitled to weigh evidence in cases triable by the Sessions, and to pronounce as to their credibility.*—*Held*, that a committing Magistrate is entitled, at any rate to some extent, to weigh the evidence of direct witnesses, and to pronounce as to their credibility. Provided that he uses caution, and that, where the question is one of probabilities only, he leaves the decision to the Sessions Court, he is entitled to use his discretion and discharge the accused, if he disbelieves the evidence. SULTANI v. CROWN, **10 P.R. 1909, Cr.=155 P.L.R. 1909=11 Cr. L.J. 18=4 Ind. Cas. 612.** (21 A. 265, 26 A. 564, 14 P.R. 1908, Cr., *R.*; 11 B. 372. 27 B. 84, *D.*) [*F.*, 8 Ind. Cas. 1044=215 P.L.R. 1910=11 Cr. L.J. 751 =58 P.W.R. 1910.]

(71)—*Criminal appeal—Remand, power of appellate Court as to.*—From their conviction, by a Deputy Magistrate, under ss. 147 and 349, Penal Code, the petitioners had preferred an appeal to the Sessions Judge. Without disposing of the appeal on the merits of the case, the Sessions Judge merely remarked that the Magistrate was wrong in having convicted the accused under the above sections, without arriving at any findings as regards the common object of the unlawful assembly and the possession of the property and passed an order remanding the case to the said Magistrate and sent the records back to him, with instructions to write out a proper judgment. *Held*, on revision, that the Sessions Judge had no authority, under any section of the Crim. Pro. Code, to pass the order, which he did. If he thought the Magistrate's decision was unsatisfactory, it was his duty, as the appellate Court, to go into the whole facts fully and dispose of the case. He had no power to devolve this duty, as he did, on the lower Court, which tried the case in the first instance. TARA CHAND SINGH v. EMPEROR, **32 C. 1069=3 Cr. L.J. 119.**

(72)—*Penal Code*, s. 370—*Crim. Pro. Code*, s. 182—*Jurisdiction.* — Under s. 182, Crim. Pro. Code, the jurisdiction of the Court of one district to try an offence under s. 370, Penal Code, buying or disposing of any person as a slave is not ousted by a re-sale of the same person as a slave in another district. QUEEN-EMPRESS v. NGA SHWE PE, **L.B.R. 1893—1900, 81.**

(73)—*Crim. Pro. Code* (1882), ss. 182, 183, 526—*Criminal breach of trust—Offence committed on journey—Jurisdiction.*—A resident of Kamaun District was travelling in the plains with the accused, his servant, who had the charge of his money and other moveable property. On arriving at Bulandshahr District, the master demanded an account from his servant and found a considerable amount unaccounted for and certain moveable property missing. The same night the accused disappeared, and the master made a report to the police and returned to Kamaun. Subsequently the accused was arrested in the Kamaun District but no property was found with him. *Held*, that the Magistrate of Bulandshahr would have jurisdiction to try the case, but as it was represented to the Court, under s. 526, Crim. Pro. Code, that it would tend to the general convenience of the parties and the witnesses, the trial was ordered to be held in Kamaun. EMPRESS v. HARAK SINGH, **A.W.N. 1883, 88.**

(74)—*Abduction—Jurisdiction of Magistrate.*—Where the charge is of abduction of a girl from a place within the jurisdiction of the committing Magistrate, the latter has jurisdiction, though, on the evidence, it is possible to infer that the girl voluntarily left the place, but that the offence, if any, was committed by only a further removal from another place beyond the jurisdiction of the Magistrate. If the charge is not proved, that would be a ground for acquitting the accused. EMPRESS v. DAWAN SINGH, **A.W.N. 1884, 31.**

(75)—*Kidnapping—Place of trial—Jurisdiction—I.P.C.*, s. 366.—The prisoner was committed to the Court of Sessions at Aligarh on a charge of kidnapping a girl with intent to compel marriage (I.P.C., s. 366). The offence was said to have been committed within the jurisdiction of Sessions Judge of Budaon. The sole ground, apparently, for taking proceedings in the District of Aligarh was that the girl was found with the accused in that District. The Sessions Judge relying on the rulings in 3 A. W.N. 67 and 164 referred the case to the High Court for quashing the commitment on the ground that, kidnapping not being a continuous offence, the Courts of his District had no territorial jurisdiction over the case. *Held* that all proceedings theretofore had in the case should be quashed, and the record transferred to the Magistrate at Budaon, to proceed in the matter according to law. EMPRESS v. PRASADI, **A.W.N. 1887, 139.**

(76)—*Kidnapping.*—Where the offence of kidnapping is committed outside British India, the subsequent act of conveying the kidnapped person into British India is not such a consequence as is contemplated by the section, so as to give jurisdiction to a British Indian Court over the offence of kidnapping. S. 181 (4) applies only where the offence of kidnapping is committed within the jurisdiction of a Court in British India, and the person kidnapped is conveyed within the jurisdiction of another British Court. JAIMAL SINGH v. EMPRESS, **1 P.R. 1901, Cr.=121 P.L.R. 1901** (10 B.H.C. 356, 30 P.R. 1889, Cr., 7 P.R. 1894, *R*; 30 P.R. 1894, Cr., *D.*)

(77)—*Jurisdiction—Kidnapping from lawful guardianship — Occurrence at a different Sessions Division —Order of committal quashed.*—Where a charge of kidnapping a girl from lawful

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guardianship was rested upon a false statement made to the accused at Trichinopoly by a person in whose custody the minor was that she was his daughter and *thus induced the accused to register her as an emigrant for Ceylon*, the offence was one really committed at Trichinopoly and the Sessions Judge of Chingleput has no jurisdiction, though the accused may have come with the minor within the limits of his jurisdiction, and his order directing the committal of the accused to the Sessions was one passed without jurisdiction and must be set aside. SADAYA PILLAI v. EMPEROR, **(1911) 2 M.W.N. 191 = 12 Ind. Cas. 301 = 12 Cr. L.J. 533.**

(78)—*Criminal breach of trust — Property must be received or retained within jurisdiction of the trying Court.*—In order to confer on a Court jurisdiction to try a case of criminal breach of trust, it must be shown that either the whole or part of the property, in respect of which the charge is laid, was either received or retained by the accused within the jurisdiction of the trying Court. An accused cannot be said to retain within the jurisdiction of the trying Court the unaccounted for balance, which he is alleged to have misappropriated, merely because, he sent accounts and remittances to the complainant within the jurisdiction of that Court. M. A. SHAKUR v. NGA ME GYI *alias* MI GYI, **8 Ind. Cas. 595 = 3 Bur. L.T. 10.**

(79)—*Jurisdiction—Criminal breach of trust —Cheating—Offence committed and completed.* —The complainant received a letter from Calcutta from a firm there which caused him to order goods of this firm and to send currency notes by registered cover which was handed over to the Post Office at Moradabad. The goods proved to be worthless, whereupon the complainant lodged a complaint at Moradabad charging the accused with cheating and criminal breach of trust. *Held*, that the offence of cheating, if at all committed, was completed at Moradabad, and the Magistrate of Moradabad had jurisdiction to try the complaint. *Held*, further, that the Courts at Moradabad had no jurisdiction to try the offence of criminal breach of trust which was committed, if at all, at Calcutta. YUSUF ALI v. WAHAJUDDIN, **12 A.L.J. 1022 = 15 Cr.L.J. 719 = 26 Ind. Cas. 167.**

(80)—*Jurisdiction—Penal Code*, s. 406, *Criminal breach of trust—Code of Criminal Procedure*, s. 177.—G L was entrusted with a machine at Bombay and had misappropriated it and the money made out of it. G A, who claimed to be the owner of the machine, alleging that G L had committed criminal breach of trust with respect to it, filed a complaint in the Court of the Cantonment Magistrate, Cawnpore. G L applied to the High Court to quash the proceedings on the ground that the Court at Cawnpore had no jurisdiction. *Held*, that, as the loss to the complainant had accrued to her at Cawnpore and as loss entailed by criminal breach of trust is a consequence that completes the offence, the Court at Cawnpore had jurisdiction to try the case. GEORGE LANGRIDGE v. GRACE ATKINS, **10 A.L.J. 431 = 13 Cr.L.J. 856 = 17 Ind. Cas. 792 = 35 A. 29.** [*F.*, 15 Cr.L.J. 207 = 22 Ind. Cas. 991 = 26 M.L.J. 235.]

(81)—*Malicious prosecution, suit for—Letters Patent*, 1865, *cl.* 112—*Jurisdiction.*—Where the plaintiff, in an action for malicious prosecution, alleged that the defendant had instituted criminal proceedings against him before the Magistrate of Moradabad, causing a warrant to be issued by the Magistrate, and having him arrested under that warrant in Calcutta, *held* that the whole cause of action did not arise at Moradabad; that part of the cause of action arose in Calcutta, so as to entitle the plaintiff, with the leave of the Court, to bring an action in the High Court. LUDDY v. JOHNSON, **6 B. L.R. 141.**

(82)—*Magistrate—Arms Act*, XXXI *of* 1860. —A Sub-Magistrate had no jurisdiction to try a case under s. 5, Act XXXI of 1860. CROWN v. BHOOPA, **3 P.R. 1869, Cr.**

(83)—*Acquittal by Deputy Commissioner in a preliminary investigation—Effect—Act* XV *of* 1862.—Where the preliminary enquiry in a case of affray and culpable homicide was made by the Assistant Commissioner, but the case was afterwards made over to the Deputy Commissioner, who after examining the Assistant Commissioner's file and putting a few questions to the witnesses directed the discharge of the accused, *held*, that the Deputy Commissioner, in proceeding under Act XV of 1862, did not become a Sessions Judge. He was merely holding a preliminary enquiry and the proceedings were quite distinct from a trial under Act XV of 1862. Therefore, the acquittal of the accused on the charge of culpable homicide, did not preclude the Commissioner from trying the accused on the charge of murder. SEKUNDER KHAN v. CROWN, **32 P.R. 1868, Cr.**

(84)—*Special or enhanced powers of Deputy Commissioner—Act* XV *of* 1862.—The special or enhanced power conferred upon a Deputy Commissioner under Act XV of 1862 lapses on his ceasing to hold chief executive charge of the District, and it does not revive on his re-appointment, unless he were re-invested under the Act. CROWN v. LEHNA, **22 P.R. 1867, Cr.** BISHESHAR NATH v. EMPRESS, **15 P.R. 1884, Cr.**

(85)—*Cases of security for good behaviour.*— A Magistrate has no jurisdiction to proceed against a person under s. 110, when he resides outside his jurisdiction. CROWN v. KALLU, **12 P.R. 1901, Cr. = 91 P.L R. 1901.** (27 C. 993, *F.*)

(86)—*Warrant case--Summary trial.*—Where a Magistrate has issued a summons for an offence punishable with more than six months' imprisonment, the Code of 1882 did not authorize the Magistrate to change his procedure from that described in a warrant case

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——1.—General—*continued.*

into that prescribed in a summons case, by reason of his estimate of the prosecution evidence. EMPRESS v. GHULAM HOSAIN, **17 P. R. 1887, Cr.**

(87)—*Defamation—Publication.*—Where a petition presented to a person at L contained defamatory matter against another and was published at A, at the request of the petitioner, the Court at A has jurisdiction to try the case of defamation; for, the publication at A, being done at the request of the petitioner, was the act which completed the offence. Even an error as to local jurisdiction is curable under s. 531, Crim. Pro. Code, when such error has not occasioned a failure of justice. MAHESH DAS v. EMPRESS, **44 P.R. 1885, Cr.** (33 P.R. 1874, *R.*) [*R.*, 18 P.W.R. 1908, Cr.]

(88)—*Sentence or order of subordinate Court —Jurisdiction to alter.*—No Court, other than the Sudder Court, could, under Crim. Pro. Code, 1861, except upon appeal, alter the sentence or order of the subordinate Court. The Deputy Commissioner has no such power. GUNDA SINGH v. MUNSOOK, **52 P.R. 1866, Cr.**

(89)—*Subordinate Magistrate — Transfer— Continuance of powers.*—A person cannot exercise the powers of a Magistrate of any class under s. 12, Crim. Pro. Code, 1882, at a particular time in a particular district, unless (*a*) he has been appointed by the Government under s. 12 to be a Magistrate in such district and such appointment is still in force; or (*b*) he holds in that district at the time when he assumes to act as Magistrate, some office on which s. 40 can operate. Where an Assistant Commissioner in one district is transferred to another, that by itself does not authorize him to exercise the functions of the Assistant Commissioner without being specially authorized by the Government. BISHESHAR NATH v. EMPRESS, **15 P.R. 1884, Cr.**

(90)—*Magistrate—Cognizance of an offence under s. 399, I.P.C.—Facts disclosing also an offence under s. 4 (b), Explosives Act* (VI *of* 1908)—*Incompetency of Magistrate to take cognizance of latter offence without sanction of Government--Sanction subsequently obtained and complaint made to a superior Magistrate of the latter offence—Jurisdiction of superior Magistrate to take cognizance without withdrawing case to his own file—Search for explosives in the presence of superior Police officers—Legality—Preparation to commit dacoity—Mode of recording opinion of assessors—Ss.* 190, 309, 529 (*e*), 530 (*k*), 531, *Crim. Pro. Code—Rule* 32 (1) (*b*), *framed under Explosives Act* (IV *of* 1884).—A Police Sub-Inspector filed a complaint before a Sub-Divisional Magistrate of an offence under s. 399, I.P.C. The facts also disclosed an offence under s. 4 (*b*) of Act VI of 1908, but, for want of Government sanction under s. 7 of that Act, the Magistrate could not then take cognizance of the latter offence. Such sanction was subsequently obtained and a complaint was filed by the Superintendent of Police before the Additional District Magistrate. *Held*, that the latter Court had jurisdiction to take cognizance of the offence, and that the initiation and continuation of the proceedings by him were legal, in spite of the fact that he did not withdraw the original case to his own file. (27 C. 798 and 979, 30 C. 449, 37 C. 412, 4 C.W.N. 242, 367 and 560, 3 C.L.J. 87, 89, *D.*), and that such proceedings could not be set aside, unless they had occasioned a failure of justice, having regard to the provisions of ss. 529 (*e*), 530 (*k*) and 531, Crim. Pro. Code. (21 W.R. 88, Cr., *R.*) The distinction between a case of making preparation to commit dacoity (s. 399, I.P.C.) and a case of having in possession or under control any explosive substance (s. 4 (*b*), Act VI of 1908) is that, in the former case, the possession of bombs may be one of several means to the end; in the latter case it is the offence itself, provided the necessary intent is proved. Under rule 32 (1) (*b*) of the rules framed under the Explosives Act (IV of 1884), a search for explosives by a Police officer not inferior in rank to that of an Inspector is legal. Under s. 309 (1), Crim. Pro. Code, the opinions of assessors must be stated orally, and not in writing or in the form of a judgment under s. 367 of the Code. LALIT CHANDRA CHANDA CHOWDHURY v. EMPEROR, **39 C. 119 = 15 Ind. Cas. 65 = 13 Cr. L.J. 433.**

(91)—*Crim. Pro. Code* (*Act* XXV *of* 1861), *s.* 404—*Question of jurisdiction not raised in lower Court.*—In an application for revision under the extraordinary jurisdiction of the High Court on the ground that the Full Power Magistrate who tried the case had no jurisdiction to try a case referred to him by the District Magistrate, without a complaint, *held*, that the question of jurisdiction, not having been raised in the Sessions Court, could not be raised before the High Court. REG v. VISVANATH DAULARAV, **4 B.H.C. Cr. 33.**

(92)—*Criminal Court—Objection taken for first time on appeal.*—A plea as to the want of jurisdiction may be taken in the High Court, though not taken below. MACDONALD v. MR. RIDDELL, **16 W.R. Cr. 79.**

(93)—*Presumption of jurisdiction—Objection to jurisdiction.*—The High Court, being a Court of superior jurisdiction, the want of jurisdiction is not to be presumed, but the contrary. Where the High Court had jurisdiction to try a prisoner for the offence committed, if a charge had been made against him by a person authorized to make that charge, and the prisoner pleaded not guilty, *held* that proof need not be given that the officer had authority to send up the charge. Objections to the jurisdiction should be made before pleading to the general issue. QUEEN v. NABADWIP CHANDRA GOSWAMI, **1 B.L.R. O. Cr. 15 = 15 W.R. Cr. 71, Note = 17 W.R. Cr. 36, Note.**

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——1.—General—*continued*.

(94)—*Duty of Court to show its jurisdiction on its proceedings*.—It is not necessary that the Court must show its jurisdiction and competency on the face of all its proceedings. QUEEN v. BIPRO DOSS, **8 W.R. Cr. 45.**

(95)—*Omission to maintain wife*.—An application for maintenance under s. 536, Crim. Pro. Code, 1872, could, under s. 63 of that Code, be made only to the Court of the place where the husband refused to maintain his wife and not in any other District. MT. BIBI NUR BHARI v. SHAH WALAIT, **9 P.R. 1883, Cr.** [*R.*, 13 P.R. 1885, Cr., 3 P.R. 1893, Cr.]

(96)—*Application for maintenance*.—*Held*, that an application under s. 488, Crim. Pro. Code, 1882, for maintenance was not a complaint of an offence, and the provisions of the s. 177 were not applicable to determine the jurisdiction of a Court competent to entertain such application. REV. FATHER HILDEPHONSUS v. MALONE, **13 P.R. 1885, Cr.** (9 P.R. 1883, Cr., *Cited.*) [*F.*, 154 P.L.R. 1914; *Appr.*, 5 P.R. 1914, Cr.; *R.*, 3 P.R. 1893, 19 P.R. 1903, Cr.]

(97)—*Penal Code, s.* 227—*Violation of conditions of remission of punishment—Jurisdiction —Crim. Pro. Code* (1861), *s.* 33.—The accused, was convicted by the Recorder's Court of Prince of Wales's Island, Singapore and Malacca, of burglary, and was sentenced by him "to be transported beyond the seas to such place as the Governor-General of India in Council may direct and appoint, for the term of ten years." He suffered, in pursuance of the sentence, imprisonment in the Ratnagiri jail for over eight years, at the end of which he was permitted to reside at Karwar, on a ticket of leave. While at Karwar, the accused committed the offence of theft in a dwelling-house, and was convicted by a Full Power Magistrate and sentenced to 15 months' imprisonment, before his original sentence of transportation had expired. *Held* that the Full Power Magistrate had power to sentence the convict to suffer so much of the punishment on the original conviction as he had not already suffered, that term being manifestly within his power, though he should have determined and declared the exact term of punishment, the convict was required to undergo in consequence of breaking the conditions of his ticket of leave. REG. v. AHONE AKONG, **9 B.H.C. 356.**

(98)—*European British soldier—Jurisdiction of Military authorities—Beng. Regs.* XX *of* 1825 *and* XIII *of* 1833—4. *Geo.* IV, *c.* 81.—A British-born European soldier in a regiment stationed at Hazaribagh was committed by the Deputy Commissioner of that place to the High Court on a charge of the murder of a comrade. Upon an application to have the commitment quashed and the prisoner handed over to the Military authorities in accordance with Reg. XX of 1825, it was *held* that the provisions of Reg. XX of 1825, as to the course to be taken in dealing with European British subjects who have committed offences were rescinded in Hazaribagh by Reg. XIII of 1833, s. 3, as being rules for the administration of Criminal Justice within the meaning of that section. Assuming the Regulation was in force, *held* that 4 Geo. IV, c. 81, and Reg. XX of 1825, though they gave jurisdiction to the Military authorities in certain cases, did not wholly exclude the jurisdiction of the Civil, as opposed to the Military Courts, and that, inasmuch as the proceedings before the Deputy Commissioner had been taken at the request of the Military authorities and assented to by them such proceedings were not void, and the commitment was valid. QUEEN v. WILLIAM JACKSON, **13 B.L.R. 474 = 22 W.R. Cr. 20.**

(99)—*European British subjects—Proof of status—Question of fact*.—The question whether an accused is a European British subject is a matter of fact to be determined judicially by the Court of Sessions on the evidence, in the event of the prisoner raising that question. *In re* JOSEPH PARKS, **10 W.R. Cr. 6.**

(100)—*Power to try European British subject —Crim. Pro. Code (Act* X *of* 1872), *ss.* 71, 88 *—Power of Indian Legislature*—24 *and* 25 *Vict., c* 57 (*Indian Councils Act*), *ss.* 22 *and* 42.—A European British subject in the mofussil was convicted by a Magistrate under the provisions of Ch. VII of Act X of 1872. He appealed to the High Court on the ground (*inter alia*) that the Magistrate had no jurisdiction to try the case, inasmuch as the Governor-General in Council had not the power, under 24 and 25 Vict., c. 67, to subject a European British subject to any jurisdiction other than that of the High Court, and, therefore, the provisions of Act X of 1872, under which the prisoner had been tried, were *ultra vires* and illegal. *Held* that the jurisdiction of the High Court as given by the Letters Patent was subject to the Legislative powers of the Governor-General in Council, and therefore the Magistrate had jurisdiction to try the case. QUEEN v. GERALD MEARES, **14 B.L.R. 106 = 22 W.R. Cr. 54.**

(101)—*Trial by Jury—Commissioner of Cooch Behar*.—The Commissioner of Cooch Behar had no jurisdiction to hold a trial by jury in the Gowalpara District. QUEEN v. BHAGIDHONE KATCHERI, **8 W.R. Cr. 53.**

(102)—*Resistance to process of Civil Court*.—The resistance to the process of a Civil Court is punishable, under the Code of Criminal Procedure, by a Court of Criminal jurisdiction. QUEEN v. BHAGAI DAFADAR, **2 B.L.R. F.B. 21 = 10 W.R. Cr. 43.** (9 W.R. Cr. 63, *Overruled.*)

(103)—*Obstruction to right of way—Erection of building on public way*.—Where a party residing on one side of a public lane encroaches on the lane by building, and narrows the passage at that particular spot, so far as to cause the traffic to pass over a portion of the land of the party residing on the opposite side of the

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——1.—General—*continued.*

lane, the remedy of the latter is, by recourse to the Criminal Court, to prevent the obstruction of the public thoroughfare. If he does not do so, he has no cause of action against the other. ABDOOL HYE v. RAM CHURN SINGH, **11 W. R. 445.** [*D.*, 21 W.R. 408.]

(104)—*Suit for closing new road and opening old one.*—In a suit for closing a new road opened by the defendants through the land of the plaintiff, and for opening an old road, which had been closed by the defendant, *held* by *Markby, J.*, that the question of opening or closing a public road belongs to the Criminal, and not the Civil, Court. HIRA CHAND BANERJEE v. SHAMA CHARAN CHATTERJEE, **3 B.L.R. A.C. 351=12 W.R. 275** [*Appr.*, 7 B.L.R. 184; *F.*, 1 A. 249; *R.*, 2 B. 370.]

(105)—*Penal Code, ss. 304-A, 323—Death resulting from intentional violence.*—Where the facts found showed that death resulted from violence intentionally directed against the deceased by the accused, the Chief Court, on the revision side, altered the conviction from one under s. 304-A, Penal Code, to one under s. 323 of the same Code. EMPRESS v. GANDA SINGH, **11 P.R. 1880, Cr.**

(106)—*Jurisdiction — Offence committed in British India—Accused committed to Sessions —Transfer of territory to Native State—Crim. Pro. Code, s. 435—Accused discharged for want of jurisdiction— No appeal — Revision.*—The accused were charged with committing an offence at a place in British India and were committed to the Sessions Court at Mirzapur. The State of Benares was then constituted and the place where the offence had been committed fell within that State. The Sessions Judge of Benares, to whom the case had been transferred, discharged the accused, holding that he had no jurisdiction to try the case. The Government appealed against the order and also applied in revision. *Held* that no appeal lay, but that the High Court could interfere in revision. *Held*, further, that, by the constitution of the State of Benares, the Sessions Court of Mirzapur was not deprived of jurisdiction to dispose of criminal appeals then pending or cases which had been committed to it for trial, inasmuch as, at the time of such constitution, the accused were in British India in custody, in point of law, if not in fact, of a Court of competent jurisdiction. KING-EMPEROR v. RAM NARESH SINGH, **9 A.L.J. 51=13 Ind. Cas. 921=34 A. 118=13 Cr. L.J. 169.** (8 A.L.J. 630, *Appl.*; 1 B. 367, *D.*) [*R.*, 34 A. 451=9 A L.J. 696= 13 Cr. L.J. 575=15 Ind. Cas. 991.]

(107)—*Jurisdiction—Bhatinda Railway Station—Offence committed in—Proper Court to try—Ferozepur and Hissar Courts—Exclusive jurisdiction of Ferozepur Courts—Appeal—Political Agent of Phulkian and Bhawalpur—Proper appellate forum.*—According to the Government of India Notification No. 515-I-B, dated the 17th March 1913, the Courts of Hissar District and those of Ferozepur have concurrent jurisdiction over the Bhatinda Railway Station under its cl. (3), and trial by neither of cases occurring there can be said to be illegal. The arrangement being inconvenient, the Chief Court directed that, for the purposes of the notification, the Bhatinda Railway Station be in future, deemed to be part of the North-Western Railway system, and that the Ferozepur Courts shall exercise jurisdiction there and not the Hissar Courts. *Held* also that, under the Notifications Nos. 515-I-B, and 516-I-B, the appeal lies to the Political Agent for the Phulkian States and Bhawalpur. RAM LAL v. CROWN, **7 P.R. 1914, Cr.=141 P.L.R. 1914 =15 Cr. L.J. 550=24 Ind. Cas. 958.**

See ABETMENT, 16 A. 389=A.W.N. 1894, 135, 19 B. 105, 4 C. 10=3 C.L.R. 81.

See ACQUITTAL, 9 Bom. L.R. 156=5 Cr. L. J. 171.

See ACT XVIII OF 1850, 12 A. 115=A.W.N. 1890, 32.

See ACT XIII OF 1859, s. 1, 13 P.W.R. 1910, Cr.

See ACT XIII OF 1859, s. 2, 7 M. 354=1 Weir 672.

See ACT XX OF 1863, s. 20, 1 M. 55=1 Weir 755.

See ACT XIII OF 1864, s. 71, 4 M.H.C. App. 4.

See ACT XI OF 1872, s. 9, 6 B. 622.

See ACT III OF 1877, s. 82, 10 C. 604.

See ACT XXI OF 1879, ss. 1, 11, 12, 18, 5 O.C. 55, 8 C. 985=11 C.L.R. 241, F.B.

See ACT IV OF 1880, 14 B. 227.

See ACT XV OF 1903, ss. 7 and 8, 33 C. 1032 =4 Cr. L.J. 366.

Offence under s. 103, Presidency Towns Insolvency Act—Presidency Magistrate—Not competent to try—*See* ACT III OF 1909, s. 103, 25 M.L.J. 577=1913 M.W.N. 1000=14 Cr. L.J. 637=21 Ind. Cas. 685.

See BEN. ACT VI OF 1901, s. 164, 37 C. 27.

See BOM. ACT V OF 1878, ss. 6, 43 (*a*) and (*f*), 5 Bom. L.R. 873.

See BOM. ACT VII OF 1878, ss. 6, 14, 3 B. 384.

See ATTEMPT, 24 B. 287=1 Bom. L.R. 678.

See CASTE, 1 Weir 514.

Accused sentenced by Magistrate under two offences, one of which was exclusively triable by Court of Sessions—Sentence under each offence not specified—Objection as to irregularity and jurisdiction verbally taken for first time before High Court—Apportionment of aggregate sentence—Setting aside of conviction and sentence—*See* CONFESSION—GENERAL, 15 Cr. L.J. 502=24 Ind. Cas. 590.

See CONSULAR COURT, Rat. Un. Cr. C. 880 =Cr. Rg. 3 of 1897.

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——1.—**General**—*continued.*

See CONTEMPT OF COURT, 25 P.R. 1873, Cr., 7 P.R. 1874, Cr., 3 P.R. 1875, Cr., 4 P.R. 1876, Cr., 3 P.R. 1877, Cr., 22 P.R. 1879, Cr., 30 P.R. 1882, Cr.

See CRIMINAL MISAPPROPRIATION, A.W. N, 1881, 89.

See CRIM. PRO. CODE, 1898, s. 144, 8 C.W. N. 376.

See CRIM. PRO. CODE, 1898, s. 145, 30 C. 155=6 C.W.N. 737, F.B., 31 C. 48=7 C.W.N. 825, F.B., 5 C.W.N. 563, 6 C.W.N. 841.

Omission to take evidence when amounts to want of jurisdiction—*See* CRIM. PRO. CODE, 1898, ss. 145, 146, 16 C.W.N. 1052=15 Ind. Cas. 486=13 Cr. L.J. 486=40 C. 105.

See CRIM. PRO. CODE, 1898, s. 145, 147, 3 Bom. L.R. 416.

See CRIM. PRO. CODE, 1898, ss. 179, 222, 235 to 239, 531, 537, 18 P.W.R. 1908, Cr.=8 Cr. L.J. 75.

Assumption of, in Criminal cases—*See* CRIM. PRO. CODE, 1898, s. 304, 13 Cr. L.J. 815=17 Ind. Cas. 559=9 P.W.R. 1913, Cr.=6 P.R. 1913, Cr.=175 P.L.R. 1913, F.B.

When Courts said to be of equal jurisdiction —*See* CRIM. PRO. CODE, 1898, s. 526, 1911, 2 M.W.N. 50=11 Ind. Cas. 795=12 Cr. L.J. 451=10 M.L.T. 518.

See CRIM. PRO. CODE, 1898, s. 530, 13 B. 502.

See CRIM. PRO. CODE, 1898, s. 531, 1 M.L. T. 345=30 M. 94=4 Cr. L.J. 500.

No sanction for prosecution — Question of want of jurisdiction not raised — Omission whether cured by s. 537, Crim. Pro. Code—*See* CRIM. PRO. CODE, 1898, ss. 537, 195, 11 A.L. J. 809=14 Cr. L.J. 607=21 Ind. Cas. 479.

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 10 O.C. 89=5 Cr. L.J. 394, 7 C.L.R. 516.

See ENTICING AWAY MARRIED WOMAN, 21 P.L.R. 1902.

High seas—Murder by a British Indian on a British vessel bound for Calcutta—Jurisdiction of Calcutta High Court—*See* PENAL CODE, s. 4, 16 C.W.N. 471=39 C. 487=14 Ind. Cas. 598=13 Cr. L.J. 246.

See PENAL CODE, s. 107, 16 A. 389=A.W. N. 1894, 135.

See PENAL CODE, s 228, 6 C.L.J. 713= 6 Cr. L.J. 405.

Offence of kidnapping— Jurisdiction— *See* PENAL CODE, s. 361, 7 S.L.R. 17=20 Ind. Cas. 599=14 Cr. L.J. 439.

See PENAL CODE, ss. 392, 411, A.W.N. 1906, 52=3 A.L.J. 146=3 Cr. L.J. 247=28 A. 372.

Criminal breach of trust — Offence where deemed to have been committed—Jurisdiction —*See* PENAL CODE, s. 405, 1914 M.W.N. 894=16 M.L.T. 505=15 Cr. L.J. 688=26 Ind. Cas. 136.

See PENAL CODE, ss. 410, 411, 5 B. 338.

Jurisdiction of Criminal Courts—ctd.

——1.—**General**—*concluded.*

See REVISION — GENERAL PRINCIPLES, 13 C.W.N. 753=10 Cr. L.J. 190=2 Ind. Cas. 846=36 C. 643.

See SANCTION TO PROSECUTE—AUTHORITIES COMPETENT TO GRANT SANCTION, ETC., 4 N.L.R. 140, 1 L.B.R. 47.

See SANCTION TO PROSECUTE—WHO MAY APPLY FOR SANCTION, 9 C.P.L.R. Cr. 27.

See SECURITY TO KEEP THE PEACE—APPELLATE COURT, 10 O.C. 287=6 Cr. L.J. 302.

See THEFT—MISCELLANEOUS, 10 B. 186.

——2.—**Jurisdiction over Europeans.**

See EUROPEAN BRITISH SUBJECT.

(1)— *Crim. Pro. Code,* 1872, ss. 74, 83— *European British subject—Procedure.*—Where a Magistrate tried an accused person as being other than a European British subject, notwithstanding the fact that the accused raised the plea, and convicted him, without deciding the question, and sentenced him to a punishment which, if the accused was a European British subject, the Magistrate had no right to award, the High Court remanded the case to the Magistrate, in order that he might decide, in the manner prescribed by s. 83, Crim. Pro. Code, whether the accused was or was not a European British subject. On its being found that the accused was a European British subject, *held*, that, as the Magistrate had tried the case without jurisdiction, the High Court could not proceed with the appeal on its merits, and to reduce the sentence, if the offence be established, to one which the Magistrate was competent to pass under s. 74 of the Code. EMPRESS OF INDIA *v.* BERRIL, **4 A. 141.** [*D.*, 2 A.L.J. 20 =27 A. 397=A.W.N. 1905, 5=2 Cr. L.J. 17.]

(2)—*Crim. Pro. Code*, 1882, *ss.* 4, 453, 454— *European British subject — Waiver—Effect.*— The definition in s. 4 must be read with reference to the "special proceedings" against European British subjects contemplated in Ch. XXXIII, and not with reference to proceedings generally against Europeans, including proceedings in which they waive their rights under that Chapter. If, therefore, in any particular case the special rules contained in Ch. XXXIII cease to have any application, the definition of "High Court" in s. 4 (*i*), ceases also to have any application to such a case. The definition in the latter part of s. 4 (*i*) then prevails; and the case falls within the category of "other cases," to which that part of the definition applies. If the case is one tried in the Province of Sind, the High Court, in reference to the proceedings in it, would be the Sadar Court in Sind. Where a European British subject waives his right to be dealt with as such by the Magistrate before whom he is tried, he shall not assert it in any subsequent stage of the same case. He thereby loses all the benefits of the special procedure provided for him, including the right to have the proceedings in his case reviewed by a Presidency High Court, if another

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——2.—Jurisdiction over Europeans—*ctd.*

Court exercises the highest revisional jurisdiction under the Code, in cases other than those against European British subjects, in the place where he is tried. QUEEN-EMPRESS v. J. GRANT. **12 B. 561 = 13 Ind. Jur. 110.** [*F.*, 37 C. 467 = 14 C.W.N. 1114 = 11 Cr. L.J. 453 = 7 Ind. Cas. 359, 12 Cr. L.J. 436 = 11 Ind. Cas. 620 = 7 N. L.R. 93; *R.*, 7 Cr. L J. 274 = 1 P.R. 1908, Cr. = 136 P.L.R. 1908 = 4 P.W.R. 1908, Cr.]

(3)—*Act* XXIV *of* 1859 (*Police*), *s.* 48—*Offence by a European British subject—Jurisdiction.*—The Cantonment Magistrate has no jurisdiction to try a European British subject for an offence under s. 48 of Act XXIV of 1859. HIGH COURT PROCEEDINGS, 13TH JUNE 1870, **5 M. H.C. App. 25.**

(4)—*Letters Patent*, 1865 (*Madras*), s. 21—*European British subjects— Power of High Court to try them for offences committed in Mysore.*—By the operation of s. 21 of the Letters Patent constituting the High Court, the provisions in the Charter of the late Supreme Court still govern the criminal jurisdiction of the High Court. The Court is empowered to try British subjects for offences committed within the factories subordinate to Fort St. George or within territories subject to, or dependent upon, the Government of Madras, "or within any of the dominions of the Native Princes of India in alliance with the said Government." Mysore is the territory of a Native Prince in alliance with the Madras Government, and, consequently, the High Court has jurisdiction to try European British subjects for criminal offences committed within such territory. REG. v. JAMES WATKINS, **1 Weir 4 = 2 M.H.C. 444.** [*R.*, 6 M.H.C. App. iii, 12 M. 39.]

(5)—*British-born subject—Proof.*—Where a prisoner pleaded that he was a British-born subject and that he ought, therefore, to be tried before the High Court, and where the evidence showed that the prisoner was the legitimate grandson of a person said to have been a Serjeant in the service of the King or of the East India Company and there was no sufficient evidence to establish a valid marriage between the grandfather and a Native Christian woman through whom the prisoner traced his descent, and there were also doubts about the nationality of the said grandfather, *held*, that there was no evidence to show that the prisoner was a British-born subject. *In re* THOMAS NASH TURNBULL, **2 Weir 11 = 6 M.H.C. 7.**

(6)—*Crim. Pro. Code*, 1898, *ss.* 9 *and* 215—*Jurisdiction of Courts of Sessions in British Beloochistan—European British subject—Chief Court's jurisdiction—Reg.* VIII *of* 1896.—The Courts of Sessions in Beloochistan have jurisdiction to try European British subjects committed to them by competent Courts. These Courts having been appointed by the Governor-General in Council under s. 3 of the Regulation, their jurisdiction is not affected by the fact that they have not been appointed by the Local Government under s. 9 of the Code. The Political Agent and the Cantonment Magistrate, Quetta, commit to the Chief Court, while the Extra Assistant Commissioner and Assistant Political Agent, Quetta, commit to the Sessions Court. So, a commitment of a European British subject to the Court of Sessions by the Extra Assistant Commissioner, Quetta, cannot be quashed under s. 215 of the Code. KING-EMPEROR v. ARTHUR MERCER, **5 P.R. 1907, Cr. = 26 P.W.R. 1907 = 41 P.L.R. 1907 = 6 Cr. L.J. 108.**

——3.—Jurisdiction over Natives.

(1)—*Crim. Pro. Code*, 1882, s. 188—*Native Indian subject of Her Majesty committing offences in Native State—Jurisdiction of British Courts.*—A person born in the Baroda State of a father who was presumably a subject of His Highness the Gaikwar, since the father was resident in the Baroda State and was not shown to have been born outside that State, is not a Native Indian subject of Her Majesty, although both the father and the son have occasionally lived in British Territory within the meaning of s. 188, Crim. Pro. Code. But if he is a servant of the Queen, because of his employment in the British Government, he is, under s. 4, I.P.C., subject to punishment, under the I.P.C., for any offence committed "within the dominions of any State any alliance with the Queen." But it does not follow that the Magistrate of the place, in whose jurisdiction he is found, has jurisdiction under s. 188, Crim. Pro. Code, to try him for the offence committed in a foreign State. The Term "Native Indian subject of Her Majesty" in s. 188, Crim. Pro. Code, must be construed strictly, and cannot be held to include "servants of Her Majesty." QUEEN-EMPRESS v. NATWARAI, **16 B. 178.** [*R.*, 14 Cr. L.J. 298 = 19 Ind. Cas. 954 = 2 S. L.R. 260.]

Jurisdiction of High Court.

See HIGH COURT, JURISDICTION OF.

Jurisdiction of Magistrate.

See ACT VII OF 1853.

See MAGISTRATE, JURISDICTION OF.

Jurisdiction of Sessions Judge.

See SESSIONS JUDGE, JURISDICTION OF.

Jurisprudence.

See MEDICAL JURISPRUDENCE.

Juror.

Service of summons on servant of—*See* CRIM. PRO. CODE, 1898, s. 332, A.W.N. 1899, 13.

Jury.

See ASSESSORS.

See CHARGE TO JURY.

See CRIM. PRO. CODE, 1898, ss. 276, 282, 284, 285, 287, 288, 289, 292, 297, 298, 299, 300, 301, 302, 303, 304, 306, 307, 309, 310, 326 and 332.

Jury—*continued.*

See JUDGE AND JURY.

See NUISANCE UNDER CRIM. PRO. CODE.

See NUISANCE UNDER PENAL CODE.

See REVISION—MISDIRECTION AND VERDICT OF JURY.

See VERDICT OF JURY.

(1)—*Crim. Pro. Code*, 1898, *ss.* 274, 451 (6) —*Trial with a jury not properly constituted in accordance with Government Notification, validity of.*—Where the Local Government has issued a notification that in trials by jury, the jury should consist of five persons, a District Magistrate, trying a person with a jury consisting of seven persons under an old notification, is acting improperly, and the trial is a nullity. EMPEROR v. GEORGE BOOTH, **26 A. 211 = A. W.N. 1904, 1 = 1 Cr. L J. 43.**

(2)—*Crim. Pro. Code*, 1882, *ss.* 306, 307 *and* 536—*Trial by Jury of offence triable with assessors—Judge disagreeing with Jury's verdict—Proper proceedings.*—Where the accused charged with an offence triable with the aid of assessors was tried by a Jury and was acquitted and the Sessions Judge who disagreed with the jury treated the verdict of the jury, on learning that the case was triable with the aid of assessors, as the opinion of assessors and recorded a judgment convicting the accused, *held*, that the conviction was bad, as the trial by the jury was not invalid and the trial was complete when the jury returned their verdict. The Judge was bound to act either under s. 306 or under s. 307, that is, he was bound either to give judgment in accordance with the verdict, or to submit the case for orders of the High Court if he disagreed with the verdict, and was clearly of opinion that the reference was necessary for the ends of justice. SURJA KURMI v. QUEEN-EMPRESS, **25 C. 555.** [*R.*, 23 B. 696, 2 Weir 453 = 26 M. 243.]

(3)—*Crim. Pro. Code*, 1872, *ss.* 233 *and* 263 —*Trial by jury of charges, some of them triable by jury and others with the aid of assessors—Verdict of acquittal—Duty of Judge.*—Where charges, some of them triable by jury and others with the aid of assessors, are tried by a jury, and the jury return, by a majority, a verdict of "not guilty" on all charges, the Judge is not competent to treat the trial so far as regards the latter charges, as having been held with the aid of assessors, and to convict the accused concurring with the minority. He must accept the verdict of the jury as one of acquittal and then pass orders in accordance with s. 263. *In re* BHOOTNATH DAY, **4 C.L.R. 405.** [*F*, 25 C. 555; *R.*, 23 B. 696, 2 Weir 453 = 26 M. 243.]

(4)—*Powers of—Verdict with respect to an offence of which the accused was not charged, validity of—High Court, interference by, with the verdict of a jury.*—Where an accused, who was tried with the aid of a jury, was charged of an offence of rape, and the verdict of the jury was to the effect that the charge of a rape was not proved, but that the prisoner was guilty of an attempt to commit rape which verdict was accepted by the Sessions Judge, *held* that it was competent to the jury to return a verdict of guilty with respect to an offence of which the accused was not formally charged. *Held further* that a High Court will not interfere with the verdict of a jury, unless it is shown to be clearly and manifestly wrong. SHUBRATI v. KING-EMPEROR, **13 O.C. 295 = 11 Cr. L.J. 630 = 8 Ind. Cas. 373.** (3 C. 189, 5 C. 871, 20 B. 215, *R.*)

(5)—*Crim. Pro. Code*, 1898, s. 307—*Verdict of jury as assessors—Judge differing from the verdict.*—The accused was tried with the aid of a jury, on four charges. On the first, second and the fourth charge, the Judge agreed with the jury and acquitted the accused. On the third charge, however, which referred to an offence not triable by a jury, the Judge invited the verdict of the jury as jurors instead of assessors, and disagreeing with their verdict, referred the matter for the orders of the High Court under s. 307, Crim. Pro. Code. *Held*, that though the procedure adopted by the Sessions Judge was most irregular, the trial must be accepted as a legal one, and that the case was one which could be submitted to the High Court under s. 307. QUEEN-EMPRESS v. JAYRAM HARIBHAI, **23 B. 696 = 1 Bom. L.R. 114.** [*R.*, 3 Bom. L.R. 278, 10 Bom. L.R. 632.]

(6)—*Crim. Pro. Code*, 1898, *ss.* 303, 307—*Questioning the jury when allowable—Differing from the verdict of jury, when allowable.*—The mere fact that, upon consideration of all the evidence before the Court, a Judge would have arrived at a conclusion different from that arrived at by the jury, would not justify the High Court in interfering with their unanimous verdict. Where the verdict of the jury is quite free from ambiguity, the Sessions Judge would not be acting legally under the provisions of s. 303 of the Code, in asking questions of the jury, and the High Court in this case declined to consider their answers. EMPEROR v. CHIRKUA, **2 A.L J. 475 = 2 Cr. L.J. 357.** [*Not F.*, 36 C. 629 = 9 C.L.J. 638 = 13 C.W.N. 757 = 10 Cr. L.J. 32 = 2 Ind. Cas. 497.]

(7)—*Crim. Pro. Code*, 1882, *s.* 303—*Question to jury—Purpose—Practice.*—In a trial by jury where the verdict is general and has been delivered without ambiguity or incompleteness, and there is no reason to suspect a misconception of the doctrines of law, the Sessions Judge has no right to put questions to the jury with a view to piont out on what points of evidence their opinions are at variance with his own. And the answers given to such questions cannot be taken into consideration. Even where special verdicts are required, such verdicts deal with the facts to be found and not with the evidence adduced to prove them. QUEEN-EMPRESS v. DESAI DAJI, **Rat. Un. Cr. C. 442.**

(8)—*Practice—Judge — Jury—Taking evidence in absence of jury—Reference to High Court.*—It is not competent to a Sessions Judge

Jury—*continued.*

to examine witnesses in a jury-trial after the jury has gone and in the absence of the accused, and then to act on the evidence in determining whether or not he should differ from the jury and refer the matter to the High Court. EMPEROR v. NINGAPPA, **7 Bom. L.R. 979 = 3 Cr. L.J. 42.**

(9)—*Crim. Pro. Code*, 1882, *ss.* 297, 301—*Trial by jury—Necessity for summing up by Judge*—In cases tried by jury, the Crim. Pro. Code does not contemplate the reception of a verdict from the jury without their having the assistance of a summing up by the Sessions Judge, since a careful summing up may often change the hasty and superficial impression of a jury, and the parties are entitled to this service. QUEEN-EMPRESS v. ABDUL KARIM, **Rat. Un. Cr. C. 288 = Cr. Rg. 27 of 1886.**

(10)—*Penal Code, ss.* 147, 149—*Charge of rioting—Jury, power of, to decide physical capability of accused to take part in the riot.*—Where an accused person charged with rioting alleged that he was incapable of taking part in a riot, *held* that the verdict of the jury after seeing the physical condition of the accused is to be preferred to the testimony of witnesses. The jury was competent to decide whether a person in physical condition was capable of taking part in a riot and could have had the courage to be at a place where a riot took place. EMPEROR v. KAMAR ALI, **6 C.L.J. 253 = 6 Cr. L.J. 359.**

(11)—*Jurymen—Disqualification.*—A clerk in the office of the District Magistrate is not disqualified on that account from sitting on a jury. EMPRESS v. ROCHIA MOHATO; *In the matter of the petition of* ROCHIA MOHATO, **7 C. 42 = 8 C.L.R. 273.**

(12)—*High Court—Crim. Pro. Code*, 1875, *ss.* 32 *to* 37—*Trial by jury—Hindu prisoner.*—The right conferred on a person not being a European British subject, to be tried by a jury, the majority of whom shall not be Europeans or Americans or both, only arises in the event of a British subject, who is accused jointly with him, choosing to avail himself of the privilege conferred on him by s. 35. In other cases, a person, not being a European British subject, has not such a right. REG. v. LALU BHAI GOPALDASS, **1 B. 232.**

(13)—*Crim. Pro. Code*, 1898, *s.* 332—*Gentlemen on the jury list, duty of, to intimate change of address—Service of summons upon juror.*—The law does not contemplate the imposition of any obligation on persons on the jury list, either to notify their change of address to the Court before leaving their usual place of residence, or to make any arrangement for the acceptance of notice and for the giving of information to the Court that he would be unable to attend. Where summons was served by affixing the duplicate on the door of the dwelling-house of a juror, who, at the time, was living away from home, and had no knowledge of such service, *held* that he was not liable for fine for non-attendance. MONI LAL ROY v. EMPEROR, **6 C.W.N. 887.**

Jury—*continued.*

(14)—*Murder—Intention—Circumstantial evidence—Conviction based on circumstantial evidence—Duty of juries—Soundness and honesty of decision—How far they should expect truth from witnesses—Moral conviction—Certainty of the conclusion.*—Intention is the result of working of the brain, and as one human being cannot see into another human being's brain, the only way of gathering intention is to judge from the act itself and from the circumstances under which it was done. Circumstantial evidence is evidence of circumstances as opposed to what is called direct evidence. Circumstances, however, sometimes afford just as strong, if not stronger, grounds for coming to a conclusion as to something having happened than the evidence of any witness even of the highest stamp, who may say he saw it happen. Juries are expected to give the best of their brains to consideration of the matters brought before them and to give a sound and honest decision. If that is not done, it must bring the jury system into disrepute. As regards belief of witnesses, juries should not expect the witnesses to come to the reputed standard of Washington, but must take people as they are and try and discover the truth by close consideration of each one's evidence, in order that truth may prevail and that justice may be done in the acquittal of an innocent man or in the conviction of a guilty man. Before the jury convict an accused of the offence with which he is charged, they must come to a certain conclusion on the matters brought before them. Those matters must appear to them to leave no reasonable doubt, and prove with certainty that the accused and the accused alone could have been the man who committed the offence. By "certainty" it is not meant that juries are not to act upon evidence unless it puts them in the position of having actually seen the thing done; but that they have to be satisfied upon the whole evidence beyond reasonable doubt as they would be on any important question on which they have to take action one way or the other. EMPEROR v. ALI CASSIM ARIFF, **12 Cr. L.J. 329 = 10 Ind. Cas. 929.**

(15)—*Crim. Pro. Code*, 1882, *ss.* 423-*D*, 507 *and* 537—*Statements inadmissible—New trial—Appeal.*—Where inadmissible statements contained in the deposition of a witness obtained on commission were allowed to go to the jury, the High Court, on the appeal of the prisoner against the verdict of conviction, upheld the verdict. *Held*, that the High Court has discretion either to determine the appeal on the evidence or to order a new trial. QUEEN-EMPRESS v. RAMCHANDRA, **Cr. Rg. 11 of 1895.**

(16)—*Withdrawal of case from jury—Improper acquittal.*—The Sessions Judge has no right to pronounce his own judgment on the credibility of the evidence, and to withdraw the consideration of the due weight to be given to the evidence from the jury. *In re* HUROO SHAHA, **16 W.R. Cr. 20.** [*R.*, 10 A. 414.]

Jury—*continued.*

(17)—*Trial by jury or assessors — Deputy Commissioner of Non-Regulation provinces.*—*Held*, with reference to the provisions of ss. 445-A and 445-B of Act VIII of 1869, that the chief executive officer of a Non-Regulation province was bound to proceed under the provisions of Act XXV of 1861 in the trial of offences punishable by a Court of Session, and that he must try the prisoners with a jury or assessors, even if one of the counts of the charge against the prisoners be in respect of an offence not triable by a Court of Sessions. QUEEN v. KISHTO RAM DASS, **13 W.R.Cr. 59.**

(18)—*Case tried by jury to which trial by jury had not been extended—Invalidity—Appeal.*—Where a case, to which the Government had not extended trial by jury, was tried by jury, the trial was not considered invalid on that ground: but the Judge's charge may be treated as his judgment in the case, and the prisoner's appeal may be heard on the facts. QUEEN v. DOORGA CHURN SHOME, **24 W.R. Cr. 30.**

(19)—*Trial by jury of case triable by assessors —Adultery—Crim. Pro. Code*, 1872, *s.* 233.—The fact that a charge under the Penal Code, s. 497, was triable with assessors and not by a jury, would not affect the legality of a conviction of adultery before a jury. QUEEN v. LUCKHY NARAIN NAGORY, **24 W.R. Cr. 18.**

(20)—*Appointment of jury—Crim. Pro. Code*, 1872, *s.* 523—*Discretion of Magistrate.*—A Magistrate under Act X of 1872, s. 523, should exercise his own independent discretion in selecting the members of the jury. RAJAH SHATYANUNDO GHOSAL v. THE CAMPERDOWN PRESSING COMPANY, LTD., **21 W.R.Cr. 43.**

(21)—*Jury improperly constituted — Crim. Pro. Code*, 1861, *s.* 310—*Award delivered after time fixed, effect of Act* X *of* 1872, *s.* 523.—A jury appointed under s. 310, Crim. Pro. Code, is not properly constituted when only the foreman is appointed by the Magistrate and the rest of the members by the parties. A Magistrate cannot receive and enforce the award of a jury under s. 310 of the Crim. Pro. Code, 1861, delivered long after the day fixed for the purpose. QUEEN v. HARGOBIND PAL, **7 B.L.R. Ap. 57 = 16 W.R. Cr. 23.**

(22)—*Crim. Pro. Code*, 1872, *s.* 523—*Jury.*—A Jury consisting of the complainant and his witnesses is not a proper tribunal and an order on the footing of their decision is not valid. BRINDABUN DUTT v. DWARKA NATH SEN, **22 W.R. Cr. 47.**

(23)—*Magistrate bound by verdict—Crim. Pro. Code*, 1861, *s.* 310.—A Magistrate who has appointed a jury under s. 310, Crim. Pro. Code, 1861, is not at liberty to take only a part of their finding. He is bound to be guided by their decision. If their finding is ambiguous, he can ask them to express their opinion clearly. QUEEN v. POHOLEE MULLICK, **12 W.R. Cr. 28.**

Jury—*continued.*

(24)—*Fixing time for award of jury—Crim. Pro. Code*, 1861, *s.* 310.—In referring a case regarding a nuisance to arbitrators under s. 310, Code of Criminal Procedure, 1861, a Magistrate should fix a time within which the arbitrators are to send in their award; and this must be done whenever from any cause the constitution of the jurors is changed and a fresh juror is appointed. *In the matter of* SHAMA KANT BUNDOPADHYA, **14 W.R. Cr. 69.**

(25)—*Report of majority of jury — Crim. Pro. Code*, 1872, *s.* 523—*Duty of Magistrate.*—Where, under s. 523 of the Crim. Pro. Code, a Magistrate receives the report of a jury, he is bound to act according to the recommendation of the majority. When a number of jurors do not agree with one another in every respect, but all agree that a certain order passed by a Magistrate, taken as a whole, is not necessary, such jurors should be counted together objecting to the order. QUEEN v. NAKORI PAROEE, **25 W.R. Cr. 31.**

(26)—*Omission to swear in jury in Sessions case.*—*Quære.*—Whether the omission of a jury in a Sessions case to be sworn, is one which would be covered by s. 13 of the Oaths Act, 1873. QUEEN v. RAMSODOY CHUCKERBUTTY, **20 W.R. Cr. 19.**

(27)—*Objection to Juror—Crim. Pro. Code*, 1861, *s.* 344, *cl.* (3).—The allowing of an objection to a juror coming within the third clause of s. 344 of the Code of Criminal Procedure, 1861, is in the discretion of the Court; and although the Judge is not bound to admit the objection, yet he should not treat it as frivolous. QUEEN v. KRISHNO CHURN, **16 W.R. Cr. 66.**

(28)—*Qualification of Juror—Selection of Jury.*—In forming a jury, a Sessions Judge should endeavour to obtain persons of an independent position in life and men of judgment and experience. QUEEN v. RAM DUTT CHOWDHRY, **23 W.R. Cr 35.**

(29)—*Special Jury—Power of Clerk of Crown —Drawing up list of special jurors.*—The drawing up of the list of special jurors is entirely in the discretion of the Clerk of the Crown, and the Court will not interfere *In re* SHAMCHAND MITTER, **1 Ind. Jur. N. S. 106.**

(30)—*Crim. Pro. Code* (*Act* XXV *of* 1861)—*Trial by jury—Swearing if necessary.*—It is not necessary, in a trial by jury under the Crim. Pro. Code, that the jurors should be sworn. REG. v. LAKSHUMAN RAMCHANDRA, **3 B.H.C. 56.** [*R.*, 16 B. 359.]

(31)—*Question for jury—Crim. Pro. Code*, 1872, *s.* 523—*Procedure.*—Where a Magistrate directed a person either to remove an obstruction to a path leading to a road or to show cause why such order should not be enforced, and in which subsequently the Magistrate, at the request of the accused, appointed a jury under s. 523, Crim. Pro. Code, *held*, that what the jury should have been asked to try was the question whether the first order of the Magistrate was reasonable and proper, and for that

Jury—*continued.*

purpose to consider whether there was a *bona fide* question between the parties as to the right of way over this particular piece of land. ROY OMESH CHUNDER SEN v. ICHANATH MOZUMDAR, **21 W.R. Cr. 64.** [*F.*, 5 C. 875.]

(32)—*Appointment of second jury— Crim. Pro. Code*, 1872, *s.* 523.—A jury appointed by a Magistrate under s. 523, Crim. Pro. Code, had thoroughly considered the matter submitted to them. The individual members of the jury had given in their opinion to the foreman to report to the Magistrate. The only delay occurred in the foreman's making the report. *Held* that the Magistrate could not appoint a second jury to consider the matter afresh, but ought to have acted on the report of the first jury which had been given in before he made his final order in the matter. SHEIKH NOZUMUDDY v. HASIM KHAN, **21 W.R. Cr. 54.**

(33)—*Supreme Court, Bombay—Practice—Jury—Crimes and misdemeanours—High Court—Letters Patent*, 1862, *cl.* 38—*Penal Code, Act* XLV *of* 1860, *s.* 467.—By cl. 38 of the Letters Patent of 1862, the practice in criminal proceedings observed by the Supreme Court should be followed by the High Court in its Original Criminal Jurisdiction. Such practice, in cases of trial by jury, was to detain the jurors together for the night in Court in cases of felonies, and to send them home in cases of misdemeanours. *Held*, in a trial for an offence under s. 467 of the Penal Code, where the jury were allowed to go to their homes before the close of the trial, that there was no irregularity since under the classification of offences before the operation of the Penal Code, the offence defined in s. 467 of the said Code was only a misdemeanour. The exercise of discretion by the lower Court is not reviewable under cl. 26 of the Letters Patent when there is no error of law. REG. v. DAYAL JAIRAJ, **3 B.H.C. Cr. 20.** [*R.*, 10 B. H.C. 75, Cr.]

(34)—*Jury trial—Misdirection — Grievous hurt—Abetment by conspiracy—S.* 326 *read with s.* 114, *Penal Code—Session by Jury—Retrial—Jurisdiction.*—Where there was evidence that certain persons conspired to eject the complainant from his land, or in other words, to commit criminal trespass, and the Judge said that, if the jury found that those persons conspired with the first accused to commit criminal trespass, then they would, if absent, be guilty of abetment, and being present they were guilty of the substantive offence: *Held* that the omission to notice that the substantive offence for which the accused were being tried was not one of criminal trespass but of voluntraily causing grievous hurt constituted misdirection. *Held*, also, that when the evidence against the co-accused was that they themselves came with the first accused and joined in beating the deceased, they could not be convicted of abetting the causing of grievous hurt by their presence, because they would have been guilty of abetment had they been absent. If it be found that they all joined in the beating and that the specific act which caused the grievous hurt was not brought home to any particular individual, they would be held liable under s. 34, Penal Code; if they aided and abetted or abetted by intentionally aiding the first accused in beating the deceased, then they would be liable under s. 326 read with s. 109, Penal Code. The jury have to give their verdict on the facts as against each man severally, and they are not like the Judge, in charge of the entire case as a whole. When an accused is to be retried, he must be placed before the jury upon all the charges which were framed against him, and the High Court has no jurisdiction to uphold the conviction under one section and to order him to be re-tried under another. JAMIRRUDDI BISWAS v. KING-EMPEROR, **16 C.W.N 909=16 Ind. Cas. 523=13 Cr. L.J. 715.**

See ABETMENT, 1 W.R. Cr. Letters, 2.

See ACT XX OF 1866, s. 91, 14 W.R. Cr. 32.

See ACT X OF 1875, s. 33, 1 B. 462.

Rules regarding choosing jurors—*See* APPROVER, 12 Cr. L.J. 537=12 Ind. Cas. 513.

Proceeding under s. 133, Crim. Pro. Code—Function of—*See* CRIM. PRO. CODE, 1898, s. 133, 19 C.L.J. 631=18 C.W.N. 1148=24 Ind. Cas. 603=15 Cr. L.J. 515.

Respective duties of the Magistrate and of the—*See* CRIM. PRO. CODE, 1898, s. 133, 3 C.L.J. 360=3 Cr. L.J. 331.

Offence triable both by jury and assessors—Proper procedure—*See* CRIM. PRO. CODE, 1898, ss. 269 (3) and 309, 2 Weir 334.

See CRIM. PRO. CODE, 1898, ss. 269 (3), 309, 537, 26 M. 598=2 Weir 333=2 Weir 713.

See CRIM. PRO. CODE, 1898, ss. 269, 403, 536, 24 M. 641=2 Weir 458.

Trial by jury instead of with the aid of assessors—*See* CRIM. PRO. CODE, 1898, ss. 418, 439, 536, 25 B. 680=3 Bom. L.R. 279, F.B.

Competency of witness to testify—Credit to be given to the deposition—Function of Jury—*See* CRIM. PRO. CODE, 1898, s. 422, 14 Cr. L. J. 485=20 Ind. Cas. 741=18 C.L.J. 582=18 C.W.N. 147.

See CRIM. PRO. CODE, 1898, s. 423, 2 Weir 499.

Right of European British subject to be tried by a jury—*See* CRIM. PRO. CODE, 1898, s. 451 (1), 24 A. 511=A.W.N. 1902, 142.

See CRIM. PRO. CODE, 1898, ss. 521, 526, 10 C.L.R. 193.

See CRIM. PRO. CODE, 1898, ss. 536, 537, 26 M. 243, Note.

Trial by—Irregularity in charging jury—Conviction whether had—*See* CRIM. PRO. CODE, 1898, s. 537 (*d*), 14 Cr. L.J. 638=21 Ind. Cas. 686.

Verdict of—High Court if should discuss weight of evidence—*See* DACOITY, 15 C.W.N. 434=10 Ind. Cas. 684=12 Cr. L.J. 193.

Province of Judge and—*See* DEFAMATION, Rat. Un. Cr. C. 140.

Jury—*concluded.*

Effect of not claiming—*See* EUROPEAN BRITISH SUBJECT, 27 A. 397=2 A.L.J. 20=A.W.N. 1905, 5=2 Cr. L.J. 17.

Case of dacoity and burial—Trial partly with aid of jury whether necessary—*See* EVIDENCE ACT, 1872, ss. 24, 27, 1911, 2 M.W.N. 197=12 Cr. L.J. 488=12 Ind. Cas. 96.

See EVIDENCE ACT, 1872, s. 30, Rat. Un. Cr. C. 436.

Document for comparison by—Duty of Judge—*See* EVIDENCE ACT, 1872, s. 73, Rat. Un. Cr. C. 491=Cr. Rg. 61 of 1889.

See EVIDENCE ACT, 1872, s. 167, 19 B. 749.

See JUDGMENT, 23 W.R. Cr. 32.

Verdict of not guilty on charge of conspiracy in favour of co-accused at previous trial—Effect on accused in supplementary trial on charge under ss. 34, 307, I.P.C.—Repugnancy in verdict of Jury—Effect—Weight to be attached to opinion of Judge and Jury—*See* PENAL CODE, ss. 34, 307, 18 C.W.N. 580=15 Cr.L.J. 402=41 C. 754=23 Ind. Cas. 1002.

Questioning the—*See* SESSIONS TRIAL, Rat. Un. Cr. C. 289=Cr. Rg. 29 of 1886.

See TRANSFER OF CRIMINAL CASES—GROUNDS FOR TRANSFER, 25 C. 727=2 C. W.N. 65.

Jury Trial.

Misdirection—Citation of ruling in the charge to the jury—Right of private defence, when trespassers have begun cutting crop—*See* MISDIRECTION, 16 C.W.N. 46.

Jury under Nuisance Sections of Crim. Pro. Code.

See CRIM. PRO. CODE, 1898, ss. 133—138.

See NUISANCE UNDER CRIM. PRO. CODE.

(1)—*Crim. Pro. Code*, 1898, *ss.* 133 *and* 138—*Obstruction to public way*—Bona fide *question of title—Reference to jury—Decision on mere inspection of locality—Validity—Nomination of jury—Duty of Magistrate.*—When the person called upon under s. 133, Crim. Pro. Code, 1898, to show cause why an obstruction should not be removed from a public way denies that it is a public way, it is for the Magistrate to determine whether there is a *bona fide* objection, and he cannot in spite of the objection (unless he determines that it is not *bona fide*) refer the matter to a jury. The jury is not competent to decide whether the way obstructed is or is not a public way. They can merely find whether the Magistrate's order is reasonable and proper, as originally made, when the matter is properly submitted to them. [*R.*, 2 P.R. 1903, Cr.] A jury cannot decide a matter referred to them under s. 138 without taking evidence and merely on inspection of the locality. They are bound to hear the parties and such witnesses as they may desire to have heard. [*F.*, 6 C.W.N. 886.] A Magistrate should use his own independent discretion in the nomination of the foreman and one half of the remaining members of the jury. KAILASH CHUNDER SEN v. RAM LALL MITTRA, **26 C. 869.** [*F.*, 19 C.L.J. 631=15 Cr. L.J. 515=24 Ind. Cas. 603.]

Jury under Nuisance Sections of Crim. Pro. Code—*continued.*

(2)—*Crim. Pro. Code*, 1882, *ss.* 133, 135, 138, 139—*Appointment of jury to consider the reasonableness of order under s.* 133—*Verdict of majority—Duty of Magistrate.*—Where a person, against whom an order under s. 133 was made, applied to the Magistrate to appoint a jury, and the majority of the jury, after examining the spot, found the order of the Magistrate to abate the nuisance was reasonable, but the Magistrate, however, discharged his order, *held*, that that portion of the order discharging his order under s. 133 should be set aside, and the questions should be considered again by a fresh jury. If the jury appointed under s. 138, required evidence, it should be produced before them. It is for the Magistrate to show by evidence that the obstruction referred to is an unlawful obstruction of a public way or in a public place. QUEEN-EMPRESS v. KHUSHALI RAM, **18 A. 158=A.W.N. 1896, 15.** [*R.*, 20 A. 364=5 A.L.J. 488=A.W.N. 1908, 151=8 Cr. L.J. 1.]

(3)—*Crim. Pro. Code*, 1898, *ss.* 133, 135—*Questions of title could not be raised after verdict of jury.*—Where a person called upon to show cause, under s. 133, why he should not remove an unlawful obstruction from a road, alleged to be a public road, put in a petition denying that there was ever a road as asserted, and also asked for the appointment of a jury, *held*, that he was bound by the verdict of the jury appointed, and should not raise a question of title subsequently. *In the matter of the petition of* LACHMAN, **22 A. 267=A.W.N. 1900, 80.**

(4)—*Crim. Pro. Code*, 1882, *ss.* 133, 138 *and* 139—*Jury—One of the jurors refusing to act.*—Where one of five jurors appointed under s. 138, had not acted at all on the jury, and, of the remainder, two were in favour of the temporary order under s. 133 being maintained, and the other two against it, the Magistrate would be wrong in declining to pass an order under s. 139 of the Code, but should summon a fresh jury and commence the enquiry afresh. UMA CHURN MUNDLE v. JOSHEIN SHEIKH, **11 C. 84.**

(5)—*Crim. Pro. Code*, 1882, *s.* 133, *Proceedings under—Majority of jury.*—The majority of the jury contemplated by s. 139 of the Code is a majority of the jurors appointed, and not merely the majority of the jurors, who attended the meetings held. The Magistrate cannot act upon the report submitted by such majority, but he can pass such order as he may think fit under s. 141 of the Code. DURGA CHARAN DAS v. SASHI BHUSAN GUHO, **13 C. 275.**

(6)—*Crim. Pro. Code*, 1882, *s.* 138—*Nomination of jury—Delegation.*—Under s. 138 of the Crim. Pro. Code, the Magistrate cannot delegate the duty of nominating the jury to another jury. QUEEN-EMPRESS v. VITHU, **Rat. Un. Cr. C. 460=Cr. Rg. 17 of 1889.**

Jury under Nuisance Sections of Crim. Pro. Code—*concluded.*

(7)—*Crim. Pro. Code*, 1898, *ss.* 133, 138, 140 *and* 141—*Jury failing to return the verdict —Appointment of a fresh jury—Magistrate's discretion.*—Where, in a proceeding under s. 133, Crim. Pro. Code, the jury, appointed under s. 138, failing to return the verdict on account of certain causes, the petitioner appeared before the Magistrate and prayed for the appointment of a fresh jury, but the Magistrate refused the prayer, and, proceeding under s. 141, Crim. Pro. Code, made his original order absolute, *held*, that the Magistrate, in so doing, did not exercise a proper discretion. He ought to have, in the exercise of his discretion, appointed a fresh jury in compliance with the prayer of the petitioner. SHIB CHANDRA GOSSAIN v. HRIDAY CHANDRA DASS, **12 C.W.N. 1047=8 Cr.L.J. 233.**

Verdict of jury if can be questioned in Civil Court—*See* JURISDICTION OF CIVIL COURTS, 19 W.R. 345.

Justice of the Peace.

(1)—*Crim. Pro. Code—Justice of the peace—Power of.*—The powers conferred on Justices of Peace are the ordinary powers conferred on first-class Magistrate under s. 36 of the Crim. Pro. Code. The power to entertain complaints is not one of such powers. E. R. LOGHAN v. S. W. ROMER, 1911, **2 M.W.N. 196=34 M. 343 =12 Cr.L.J. 535.**

(2)—*Jurisdiction—Magistrate and Justice of the Peace—British-born subject—Imprisonment in default of fine.*—A Magistrate, being also a Justice of the Peace, can try a British-born subject only under 53 Geo. III, c. 155, s. 105 and Act VII of 1853, but under neither of them has the power to award imprisonment in default of payment of fine. REG. v. DIXON, **6 B.H.C. Cr. 14.**

See ACT XXI OF 1879, 12 M. 39=1 Weir 10, 26 M. 607=1 Weir 13=1 Weir 757.

See BOM. ACT VII OF 1867, 7 B.H.C. Cr. 6.

See JUDICIAL COMMISSIONER OF MYSORE, 5 M. 33=1 Weir 7.

See JURISDICTION OF CRIMINAL COURTS —GENERAL, 7 B.H.C. Cr. 1.

Jute.

See STORING JUTE.

Jute Warehouse and Fire Brigade Act.

See BEN. ACT II OF 1872.

Juvenile Offenders.

See ACT VI OF 1864.

See ACT V OF 1876.

See ACT VIII OF 1897.

See CRIM. PRO. CODE, 1898, s. 399.

See SENTENCE.

See WHIPPING.

(1)—*Crim. Pro. Code* (1872), *s.* 318—*Sentence of imprisonment—Confinement in Reformatory instead — Term* —A Magistrate, finding a

Juvenile Offenders—*concluded.*

juvenile offender guilty of theft in a building, sentenced him to three months' rigorous imprisonment and ordered that, in place of this sentence, the offender should be confined in a Reformatory for fourteen months. *Held* that the Magistrate, having once passed a sentence of imprisonment for a particular term, could not direct the offender should be confined in a Reformatory for a longer term. REG. v. GANPAYA, **Rat. Un. Cr. C. 109=Cr. Rg. 8—6—1876.** [*R.*, Rat. Un. Cr. C. 180.]

(2)—*Meaning of term—Crim. Pro. Code*, 1882, *s.* 399—*Act* VI *of* 1864 (*Whipping*), *Act* V *of* 1876 (*Reformatory Schools*), *s.* 7.—A juvenile offender is a person under the age of 16 as declared by s. 399, Crim. Pro. Code, and s. 7 of the Reformatory Schools Act, and hence a sentence of whipping purporting to have been passed on an offender aged 19 years under s. 5 of the Whipping Act is illegal. QUEEN-EMPRESS v. NGA ME, **L.B.R. 1893—1900, 79.** (8 B.H.C. Cr. 9, 6 A. 482, *F.*)

(3)—*Age of accused sent to a Reformatory decision by Magistrate as to—Reformatory Schools Act*, ss. 7, 10, 11.—An order, under s. 7, Reformatory Schools Act, as to the accused being a juvenile offender, is not, as to its legality, open to question. Under s. 10, it is open to the District Magistrate or to the authorities of the Reformatory Schools to bring the case to the notice of the Local Government, which has power, under s. 11, to order the discharge of any accused, who, in their opinion, is above the age of 18 years. QUEEN-EMPRESS v. NGA TUN ZAN, **L.B.R. 1893—1900, 255.**

See CRIM. PRO. CODE, 1898, s. 562, 24 A. 306=A.W.N. 1902, 69.

Fine, whether an appropriate sentence for —*See* GRIEVOUS HURT, 1 L.B.R. 221.

See SECURITY FOR GOOD BEHAVIOUR, 4 L.B.R. 12=6 Cr. L.J. 123.

Kabuliyats.

Evidentiary value of—, Chittas, accounts, receipts and survey maps—*See* EVIDENCE—GENERAL, 29 C. 187=29 I.A. 24=6 C.W.N. 386, P.C.

Kaju Liquor.

See BOM. ACT V OF 1878, ss. 47, 9 and 11, 10 Bom. L.R. 284=7 Cr.L.J. 307.

Kallans.

Whether lower castes of people — *See* MAD. REG. XI OF 1816, s. 10, 7 M.L.T. 305=5 Ind. Cas. 797=11 Cr. L.J. 249.

Kanungo.

See CRIMINAL BREACH OF TRUST, A.W.N. 1884, 105.

Inquiry by—Kanungo's report and evidence —Admissibility—*See* CRIM. PRO. CODE, 1898, s. 148, 12 Cr. L.J. 480=12 Ind. Cas. 88.

"Karao Marriage."

See MAINTENANCE, 4 N.W.P. 128.

Karens.

Law relating to marriage among Karens—*See* BUDDHIST LAW—MARRIAGE, 15 Cr. L.J. 590=25 Ind. Cas. 342.

Karkoon.

See PENAL CODE, s. 183, Rat. Un. Cr. C. 325=Cr. Rg. 13 of 1887.

Employed under Broach Thakur's Relief Act—*See* PUBLIC SERVANT, Rat. Un. Cr. C. 117=Cr. Rg. 20-11-1876.

Karnam.

Power of Tahsildar to issue summons to—Disobedience to such summons—*See* MAD. ACT III OF 1869, 5 M. 377=1 Weir 91.

Receiving illegal payment—*See* CRIMINAL BREACH OF TRUST, 1 Weir 466.

Criminal misappropriation by Karnam—*See* CRIMINAL MISAPPROPRIATION, 1 Weir 455.

Village—and Village Monigar furnishing false information regarding applications for vacant Government lands—*See* PENAL CODE, ss. 167, 177, 1 Weir 108.

See PENAL CODE, s. 174, 1 Weir 93.

Failure by—to submit cultivation accounts—*See* PENAL CODE, s. 176, 1 Weir 105.

See PENAL CODE, s. 177, 1 Weir 111.

Disobedience of order by, to desist from constructing a pyal—Encroachment on public road—*See* PENAL CODE, ss. 186, 188, 1 Weir 132.

See PENAL CODE, s. 424, 1 Weir 483.

See PUBLIC SERVANT, 15 M. 127=1 Weir 72.

Karnam, Office of.

See MAD. REG. XXIX OF 1802.

Kazi.

Dispute between persons claiming to be entitled to officiate as Kazis in a mosque, applicability of the section to—*See* DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 29 M. 237=4 Cr. L.J. 58.

Kazis Act.

See ACT XII OF 1880.

Khandesh and Ahmednagar Act.

See BOM. ACT XI OF 1846.

Khasgi Land.

See KHOTI KHASGI LAND.

Khazanchi.

See CRIM. PRO. CODE, 1872, s. 90, 4 C. 603=3 C.L.R. 87.

Kheonjur.

See JURISDICTION OF CRIMINAL COURTS—GENERAL, 16 C. 667.

Khoti Khasgi Land.

(1)—Khoti khasgi *land, whether entitled to benefit of* Dunlop's *proclamation.—Khoti khasgi* land must be deemed to be entitled to the benefit of *Dunlop's* proclamation by virtue of which the trees then growing and thereafter to be planted on the land become the land-holder's

Khoti Khasgi Land—*concluded.*

property free from any right on the part of Government. *Dunlop's* proclamation could not be withdrawn by Government in so far as it related to trees planted after its date. *In re* ANTAJI KESHAV TAMBE, **18 B. 670.** [*R.*, 23 B. 518.]

Kidnapping.

See ABDUCTION.

See PENAL CODE, ss. 359—369.

(1)—*Kidnapping, what constitutes—Penal Code,* s. 363.—To constitute the offence of kidnapping, it must be shown that the person was abducted from lawful guardianship which is the guardianship of a person who is lawfully entrusted with the care or custody of a minor. QUEEN v. BULDEO, **2 N.W.P. 286.** [*D.*, 10 Ind. Cas. 97=154 P.L.R. 1911=12 Cr. L.J. 211=7 P.R. 1911, Cr.]

(2)—*Penal Code, s.* 366—*Kidnapping not a continuing offence.*—The taking of a minor from lawful custody is not the same thing as keeping the minor out of such custody, and therefore during the time the minor is kept out of the custody of his or her guardian, the offence of kidnapping cannot be held to continue. The act of taking is completed so soon as the minor is actually taken out of the custody of his or her guardian. EMPEROR v. TIKA, **26 A. 197=A.W.N. 1903, 233=1 Cr. L.J. 561.** (1 M. 173, 19 A. 109, 2 C.W.N. 81, *R.*) [*R.*, 15 O.C. 351.]

(3)—*Not continuing offence.*—The offence of kidnapping under s. 363 is not a continuing offence. QUEEN-EMPRESS v. RAM SUNDAR, **19 A. 109=A.W.N. 1896, 191.** [*F.*, 27 C. 1041, 26 A. 197=A.W.N. 1903, 233.]

(4)—*Penal Code, s.* 361—*Kidnapping from lawful guardianship—Omission to inquire whether the minor abducted has a guardian or not, no defence,*—A child, ten years of age, is *prima facie* subject to guardianship, and no one is at liberty to take away such child without permission properly obtained. Any one, removing such child without such permission, does so at his risk, and cannot escape the legal consequences. The fact of having omitted to inquire whether a child has a guardian or not is no defence. EMPRESS v. UMSADBAKSH, **3 B. 178.** [*R.*, Rat. Un. Cr. C. 440.]

(5)—*Penal Code, s.* 363—*Kidnapping from lawful guardianship—Consenting to go with a girl coming to one's house and asking him to take her away, whether an offence.*—A minor girl left her parents' house with the intention of asking the accused to take her away and of going away with him if he consented, and the accused took the girl away as desired by her. *Held*, the question was whether the female minor, when she left her guardian's house, had given up the intention of returning home; that, in this case, the girl, when she left her parents' house, had no such intention of not returning as to remove her from their guardianship, and that the

Kidnapping—*continued.*

accused was therefore guilty of the offence of kidnapping from lawful guardianship. KING-EMPEROR v. ASGAR ALI, **U.B.R. 1909, 3rd Qr., Penal Code, 27=4 Ind. Cas. 901=11 Cr. L.J. 81.** (1 L.B.R. 205, U.B.R. 1907—1909, I, Penal Code, p. 1, 11, 4 W.R. Cr., 6 *R.*) [*R.*, 14 Cr. L.J. 109=18 Ind. Cas. 669=U.B.R. 1912, 136.]

(6)—*Penal Code*, *ss.* 361 *and* 363—*Offence of kidnapping, when complete.—Per Rampini, J.* —The offence of kidnapping is not necessarily complete as soon as the minor is removed from the house of the guardian. When the act of kidnapping would be complete would appear to be a question of fact to be determined according to the circumstances of each case. A person may be properly convicted of kidnapping from lawful guardianship, though he may not take part in the actual removal of the minor from the guardian's house, though the minor may come to him of his or her own accord, and though the acts, which render him amenable to the provisions of s. 363, Penal Code, are committed subsequently to that event, but before the minor is completely beyond the direct or constructive keeping of the guardian. NEMAI CHATTORAJ v. QUEEN-EMPRESS, **27 C. 1041 =4 C.W.N. 645, F. B.** [*F.*, 26 M. 454=2 Weir 296; *R.*, 15 C.P.L.R. 185, 12 Cr.L.J. 94= 9 Ind. Cas. 511=56 P.L.R. 1911, 14 Cr. L.J. 93, 14 Cr. L.J. 439=20 Ind. Cas. 599=7 S.L.R. 17, 18 Ind. Cas. 653=14 Cr. L.J. 93=15 O. C. 351.]

(7)—*Abetment of kidnapping, what amounts to—Offence when complete.*—The only evidence against an accused person, charged with abetment of kidnapping was first, that he was at the house of certain prostitutes who kindnapped a girl, secondly, that he was the first man, who had connection with the girl, thirdly, that he carried her about from place to place, and fourthly, that he endeavoured to conceal himself and that he himself absconded. *Held*, that there was no evidence to show that the accused abetted the offence of kidnapping. The offence of kidnapping a person is complete when a minor is actually taken out of the custody of the lawful guardian. RAKHAL NIKARI v. QUEEN-EMPRESS, **2 C.W.N. 81.** [*F.*, 23 A. W.N. 233=26 A. 197; *R.*, 27 C. 1041, F.B.]

(8)—*Offence of, when complete.*—The offence of kidnapping from lawful guardianship is complete when the minor is actually taken from lawful guardianship, and it is not an offence continuing as long as a minor is kept out of such guardianship. CHEKUTTY v. EMPEROR, **26 M. 454=2 Weir 296.**

(9)—*Hindu wife removing her infant daughter and marrying her without her husband's consent —Abetment.*—Where a Hindu wife removed her infant daughter from her husband's house for the express purpose of marrying her without his consent and thereby depriving him for ever of her guardianship and custody, and so married her, *held*, she was rightly convicted of the offence of abetment of kidnapping. EMPRESS v. PRANKRISHNA SURMA ; *In the matter of the petition of* PRANKRISHNA SURMA, **8 C 969=11 C.L.R. 6=4 Shome L.R. 280.** [*R.*, 24 M. 284 =10 M.L.J. 405=1 Weir 349, 15 C.P.L.R. 185, 12 Cr. L.J. 94=9 Ind. Cas. 511=56 P.L.R. 1911.]

(10)—*Penal Code*, *ss.* 109, 116 *and* 363—*Abetment of kidnapping—Failure of attempt to kidnap out of British India—Punishment for abetment.*—So long as the process of taking a minor out of the keeping of his lawful guardian continues, the offence of kidnapping may be abetted. But where the offence attempted is kidnapping from British India, and the attempt fails, the abetment of such an offence is punishable under ss. 363 and 116 and not under ss. 363 and 109. REG. v. SAMIA KAUNDAN, **1 M. 173= 1 Weir 353.** [*Diss.*, 26 A. 197=23 A.W.N. 233 ; *Not F.*, 18 A. 350=16 A.W.N. 96 ; *R.*, 13 P.R. 1893, Cr., 26 M. 454=2 Weir 296; *D.*, 27 C. 1041=4 C.W.N. 645.]

(11)—*Penal Code*, *ss.* 369 *and* 370—*Kidnapping—Absence of consent of guardian essential.* —Absence of the consent of the guardian is an essential element of the offence of kidnapping, and, therefore, where a Magistrate found that the grandmother of the children agreed, or rather was made to agree, to their being taken away for four days, a conviction for kidnapping was held to be unsustainable, as the evidence indicated that an offence under s. 370 had been committed. KAUK SANIG v. KING-EMPEROR, **14 Bur. L.R. 335=9 Cr. L.J. 66.**

(12)—*Penal Code*, *ss.* 361, 363 *and* 366—*Kidnapping girl whom her father placed under the temporary guardianship of another.*—The explanation to s. 361 is not intended to limit the protection which the section gives to parents and minors. It is intended to extend that protection by including in the term "lawful guardian," any person lawfully entrusted with the care and custody of the minor. The fact that a father allows his child to be in the custody of a servant or friend for a limited purpose and for a limited time, cannot determine the father's rights as guardian or his legal possession for the purposes of the Criminal law. Such a temporary guardianship does not exclude the higher legal guardianship of the father. In such cases, the Court must consider all the facts and see whether they are consistent or not with the continuance of the father's legal possession of the minor. If they are not inconsistent, the minor must be held to be in the father's possession or keeping, even though the actual physical possession should be temporarily with a friend or other person. Where, with the connivance of a person to whom a minor girl was entrusted by a father for a limited time, she was taken from his custody by the accused persons for the purpose of being married to one of them, and was so married without having obtained the consent of the father of the girl, *held*, that the temporary guardian would be guilty of abetment of an offence under s. 361 and the other accused

Kidnapping—*continued.*

would be guilty of kidnapping. JAGANNADHA RAO v. KAMARAJU, **24 M. 284 = 1 Weir 349 = 2 Weir 458 = 10 M.L.J. 405.** [*R.*, 31 A. 448 = 6 A. L.J. 682 = 10 Cr.L.J. 295 = 3 Ind.Cas. 480, 6 Cr. L J. 30 = U.B.R. 1907, 1st. Qr., Penal Code, 1.]

(13)—*Penal Code, ss.* 363, 368—*Kidnapping from lawful guardianship—"Keeping," scope and meaning of.*—A girl under sixteen years of age was going to a vegetable market in search of work. On her way, she met a woman, who asked the girl to accompany her under a promise of obtaining work for her. The woman took the girl to her house and kept her there till the evening, when she was removed by the accused in a closed carriage to a solitary bungalow far away from the town. The accused kept the girl there for two days and two nights, after which she was permitted to return to her home. *Held*, that the accused were guilty under s. 368, I.P.C., of the offence of wrongfully confining a minor knowing that she had been kidnapped. In s. 363, the Legislature has advisedly preferred the phrase "keeping of the lawful guardian" to the word "possession" which frequently recurs in the Code in connection with inanimate objects. The word "keeping" connotes the fact that it is compatible with independence of action and movement in the object kept. It implies neither prevention nor detention but rather maintenance, protection and control, manifested not by continual action, but as available on necessity arising. This relation between the minor and the guardian is certainly not dissolved so long as the minor can at will take advantage of it and place herself within the sphere of its operation. EMPEROR v. JETHA NATHOO, **6 Bom. L.R. 785 = 1 Cr. L.J. 93.** [*F.*, 13 Cr. L.J. 736 = 16 Ind. Cas. 768 = 6 S.L.R. 71; *R.*, 8 Cr. L.J. 361 = 1 S L.R. 104, Cr., 14 Cr.L.J. 439 = 20 Ind. Cas. 599 = 7 S.L.R. 17.]

(14)—*Penal Code, ss.* 363 *and* 366—*Kidnapping from lawful guardianship—Illicit intercourse, consent to, before elopement—Presumption—No intention of seduction*—S. 366 of the Penal Code is inapplicable where a girl at the time of kidnapping from lawful guardianship intends to cohabit of her own free will with the kidnapper, as no intention to seduce to illicit intercourse can be presumed under the circumstances. KING-EMPEROR v. NGA NGE, **U.B.R 1905, Penal Code, 17 = 2 Cr. L J. 476.** (U.B.R. 1897—1901, 328, *Overruled*; U. B.R. 1903, Penal Code, 15, 1 L.B.R. 297, *F.*)

(15)—*Penal Code, ss.* 361, 363—*Kidnapping—Motive—Consent of guardian—Punishment.*—For a conviction under s. 363, Penal Code, it is sufficient to prove that the minor was taken away from the custody of a lawful guardian without his consent. Motive has nothing to do with the offence of kidnapping (s. 361, I.P.C.), though it might have much to say to the punishment. Consent given by the guardian after the commission of the offence would not mitigate it. GANESH v. KING-EMPEROR, **6 A.L.J. 682 = 3 Ind. Cas. 480 = 31 A. 448 = 10 Cr. L.J. 295.**

Kidnapping—*continued.*

(16)—*Penal Code, s.* 368—*Kidnapping—Concealing a kidnapped girl.*—The mere fact of a girl being received into a house and retained there by the owner, even after he may have become aware or found reason to believe that she had been kidnapped, does not amount to concealment of her, unless an intention of keeping her out of view be apparent. QUEEN v. JHURRUP BHUNJUN SINGH, **5 N.W.P. 133.** [*F.*, 15 C.P.L.R. 185.]

(17)—*Concealing kidnapped girl.*—The mere circumstance of a kidnapped girl staying in the accused's house for a day or two does not warrant the conclusion that she was wrongfully concealed with the object of baffling any search that might be made for her. QUEEN v. MUSSAMUT CHUBBOOA, **5 N.W.P. 189.** [*F.*, 15 C.P.L.R. 185.]

(18)—*Concealing kidnapped girl.*—The mere fact that a child had been received into the house and retained there by the owner, after he may become aware that the child had been kidnapped, would not constitute a concealment of the child, that is, an offence under s. 368, I.P.C., unless there was either wrongful concealment or confinement. EMPEROR v. RAM SASTRI, **15 C.P.L.R. 185.** (5 N.W.P. 133, 189, *F.*; 8 C. 969, 27 C. 1041, *R.*)

(19)—*Penal Code, ss.* 361, 362, 366—*Paternal relation of minor girl removing her from her guardianship and giving her in marriage against her wish—Hindu law.*—The right of the paternal relative of a minor girl to select a husband and perform her marriage is not, according to the Hindu law, absolute as against the guardian. The right to dispose of the girl in marriage does not necessarily belong to the person who has the right of guardianship. The latter right may, as often happens in regard to the person and properties of female infants, belong in Hindu law to a woman. The paternal relative is not, by Hindu law, justified if he removed the minor by fraud or force for the purpose of getting the marriage performed, without any consideration for her own wishes and in spite of the objections of the guardian. *Held*, upon the facts, that the act of the accused, the paternal relative of a minor girl, in giving her in marriage to his nominee, notwithstanding the objection to the marriage raised by the girl and her guardian, amounted to kidnapping under s. 361, and also to abduction as defined in s. 162, and that the case did not come within the exception to s. 361, as there was no evidence of good faith, and was not taken out of s. 366 as the girl objected to the marriage. QUEEN-EMPRESS v. BAI MAHAKOR, **Rat. Un. Cr. C. 820 = Cr. Rg. 66 of 1895.**

(20)—*Penal Code, ss.* 368, 370—*Kidnapping—Slavery.*—If, knowing that a girl had been kidnapped, the accused wrongfully confines her, and subsequently detains her as a slave, he is guilty of two separate offences under ss. 368 and 370. QUEEN v. MIRZA SIKUNDER BUKHUT, **3 N.W.P. 146.**

Kidnapping—*continued.*

(21)—*Penal Code*, ss. 342, 346, 363, 511—*Separate sentences for wrongful confinement and attempt at kidnapping.*—Where an act of restraint or confinement in an attempt to kidnap has been exercised in furtherance of the attempt, and goes to form part of that offence, and it is not done with any intention or object which can be separated from the general intention to kidnap, it will constitute an integral part of that offence and should not form the subject of a separate conviction and sentence. QUEEN v. MUNGROO, **6 N.W.P. 293.** [*R.*, 2 A. 139, 10 A. 58.]

(22)—*Penal Code*, s. 361—*Kidnapping from lawful guardianship—Guardianship of a minor wife after marriage—Taking of a minor wife by her father from her husband.*—The husband of a Hindu minor girl is her lawful guardian. It amounts to kidnapping even if, without any criminal intention, the father takes away his minor daughter from the lawful guardianship of her husband. In such a case the Magistrate must proceed according to law, and, if he believes the complainant, he is bound to issue a process. *In the matter of the petition of* DHURONIDHUR GHOSE, **17 C. 298.** [*R.*, 31 A. 448=6 A.L.J. 682=3 Ind. Cas. 480=10 Cr. L.J. 295, 28 C. 751, Rat. Un. Cr. C 820, 1 L.B.R. 205.]

(23)—*Penal Code*, ss. 361 *and* 363—*Kidnapping from lawful custody—Guardianship of Mahomedan minor girl—Right of Mahomedan mother.*—Until a Mahomedan girl attains her puberty, her mother is entitled, under Mahomedan law, to the guardianship of the girl, in preference to her husband. Where a Mahomedan girl of about 11 or 12 years of age was left by her husband in charge of his mother, and the girl's mother had her removed by a third person from the custody of her mother-in-law, *held*, that no offence of kidnapping from lawful guardianship was committed. KORBAN v. KING EMPEROR, **32 C. 444=2 Cr L J. 328.** (11 C. 649, *R.*)

(24)—*Penal Code*, ss. 366, 368—*Kidnapping from lawful guardianship—Mahomedan Law—Girl having attained the age of* 15 *years.*—A Mahomedan girl, after having attained the age of 15 years, does not cease to be under the lawful guardianship of her mother, with whom she is actually residing, within the meaning of ss. 366 and 368 of the Indian Penal Code. EMPEROR OF INDIA v. MIRAN BAKSH, **21 P. L. R. 1906=3 Cr.L.J. 296=60 P.R. 1905. Cr.** (8 C. 971, *F.*)

(25)—*Penal Code*, ss. 302 *and* 363—*Murder and kidnapping—Legal keeping of parents—Intention to make unlawful use of minor, whether should be proved—Misdirection—Sufficient evidence for conviction of murder.*—In a case of kidnapping and murder, the prosecution evidence proved that, on a certain day, the mother of a girl of 7 years of age dressed her up in fine clothes and ornaments and sent her, and saw her go to the accused's house that, in the afternoon of that day, the accused and the girl were seen going together; that, on the evening of that day, a search was made for her and the accused was questioned about her, but she could not be found; and that, sometime after this, the corpse of the child was found, not far from the accused's house in a sack and in a state of decomposition and all the ornaments were intact, except a silver necklet which was missing: *held* that, the jury having been misdirected upon the charge of murder, the conviction and sentence for that offence, under s. 302, I.P.C., should be reversed and that the conviction and sentence, under s. 363, for kidnapping should be confirmed. *Per Hayward, A.J.C.*, "If a girl goes on a visit with or without the knowledge of the guardian, she is still in the legal keeping of her parent, and, further, it is not necessary that there should be any intention to make an unlawful use of the minor to constitute the offence of kidnapping." IMPERATOR v. VILAITALISHAH *wd.* MAHOMEDSHAH, **1 S.L R. 104, Cr.=8 Cr. L.J. 361** (6 Bom. L. R. 785, *F.*) [*R.*, 14 Cr. L.J. 439=20 Ind. Cas. 599=7 S.L.R. 17.]

(26)—*Penal Code*, s. 361, *Exception—Kidnapping by mother of minor children from father's guardianship.*—A woman should not be convicted of kidnapping her own minor children from the lawful guardianship of their father, when she believes, in good faith, herself entitled to the lawful custody of the children. *In re* HOWKA RAMALAKSHMI, **1 Weir 348=2 Weir 665.**

(27)—*Girl kidnapped in love with the accused—Girl going after the accused out of her own free will—Taking from lawful guardianship—Penal Code*, s. 361.—An accused can be held guilty of having kidnapped a minor from lawful guardianship where there is no evidence of the accused having in any way enticed the minor away, and where the evidence is to the effect that the minor of her own motion left her guardian's keeping, and proposed elopement to the accused and went with him of her own free will. Whether the girl was out of the keeping at the time she and the accused went off together is a question of fact. CROWN v. SAN HLAING, **1 L.B R. 205.** (L.B.R. 1872--1892, 202, 2 W.R. Cr. 5, 7 W.R. Cr. 36, 10 W.R. Cr. 33, 17 C. 298, *R.*) [*Discussed & applied*, U.B.R. 1909, III, P.C., 27, 7 Cr. L.J. 210, 11 Cr. L J. 81=4 Ind. Cas. 901.]

(28)—*Penal Code*, s. 366—*Girl going after her lover of her own free will.*—S. 366, Penal Code, does not apply in the case of a girl over 12 and under 16 years of age, who goes with a lover, of her own free will, for the purpose of co-habitation. CROWN v. CHAN MYA, **1 L.B. R. 297, F.B.** (3 W.R. Cr. 15, 4 P.R. 1902, Cr., *R*)

(29)—*Penal Code*, ss. 361 *and* 363—*Kidnapping from lawful guardianship—Girl leaving her parents' house by previous arrangement with accused—Liability of accused.*—A girl of 13, living with her parents, fell in love with the accused, and, by previously arranging with him, left the

Kidnapping—*continued.*

house and met him at a place appointed, went away with him and lived with him as his wife. *Held*, that the accused was an active participator in the girl leaving her parent's guardianship, and that he was therefore rightly convicted under s. 363, I.P.C., of kidnapping a minor from lawful guardianship. NGA TE HLA v. KING-EMPEROR, **U B.R. 1907 3rd Qr., Penal Code, 11 = 14 Bur. L.R. 262 = 7 Cr. L J. 210.** (U.B.R. 1907, I, Penal Code 1, 1 L.B.R. 205, *R.*)

(30)—*Kidnapping—Consent—Taking by force or fraud—Penal Code*, s. 361.—Under s. 361 of the Penal Code the consent of a minor is immaterial, and neither force nor fraud form elements of the offence. QUEEN v. SOOKEE, **7 W.R. Cr. 36.**

(31)—*Consent—Taking by force or fraud—Penal Code*, s. 361.—The abduction of a girl under 16 with intent to marry, etc., without her lawful guardian's consent is punishable under ss. 363, 366, I.P.C. The consent of a kidnapped person is immaterial, and it is not necessary for a conviction, under s. 361, I.P.C., that the taking or enticing should be shown to have been by means of force or fraud. QUEEN v. KOORDAN SINGH, **3 W.R. Cr. 15.**

(32)—*Abduction—Taking by force or fraud—Penal Code*, s. 361.—The abduction of a minor girl under 16 out of the custody of her lawful guardian is punishable under s. 361, Penal Code. It is not necessary to such a conviction that the carrying off was forcible. QUEEN v. MODHOO PAUL, **3 W.R. Cr. 9.**

(33)—*Consent—Taking by force or fraud—Penal Code*, s. 361.—The consent of a kidnapped person is immaterial, and it is not necessary for a conviction, under s. 361, Penal Code, that the taking or enticing should be shown to have been by means of force or fraud. QUEEN v. BHUNGEE AHUR, **2 W.R. Cr. 5.** QUEEN v. AMGAD BUGEAH, **2 W.R. Cr. 61.**

(34)—*Penal Code*, s. 366—*Kidnapping—Evidence.*—The first accused meeting a young Ahir girl outside the fort at Allahabad, took her against her will into the fort and there had forcible connection with her. Immediately after this, the second, third, and the fourth accused, appeared on the scene with an ekka, and took the girl off to a *sarai* in the city, and there the three had, or attempted to have, forcible connection with her. The girl was taken for the night to the house of the second accused, but was brought back in the morning, and, apparently, returned to the custody of the first accused, and she spent that day, if not the following night, in his house. All four of the persons concerned had work about the fort, they were all previously acquainted with each other. *Held* that, upon these facts, it could not be said that there was no evidence upon which a jury could find a conspiracy to kidnap against all four persons. KING-EMPEROR v. RAHMAT ULLAH, **A.W.N. 1902, 143.**

(35)—*Crim. Pro. Code*, 1882, s. 180—*Kidnapping in one District—Confinement in another District—Jurisdiction.*—A girl was kidnapped from the lawful guardianship of her husband at a village in the Mainpuri District, by the first accused, and was wrongfully confined, with the knowledge that she had been abducted or kidnapped, by the second and third accused at Aligarh. All the accused were committed to the Aligarh Sessions Court. *Held*, that the offence of kidnapping having been committed at Mainpuri, the first accused should have been committed at Mainpuri Court of Sessions, and the second and the third accused could be tried in the same Court under s. 180, Crim. Pro. Code. EMPRESS v. SURJA, **A.W.N. 1883, 164.** [*Not F.*, 18 A. 350 = A.W.N. 1896, 96.]

(36)—*Penal Code*, ss. 366, 368—*Kidnapping—Jurisdiction—Crim. Pro. Code*, 1882, s. 180.—The offence of kidnapping is not a continuing offence, but is complete directly the minor has been taken from the keeping of the lawful guardian. Where the offence of kidnapping was completed in the Agra District, and the children kidnapped were not confined or concealed in the Aligarh District, but were being carried on a cart openly in the latter district, *held*, that the Court of Sessions at Aligarh had no jurisdiction to try the offence. EMPRESS v. BUDHA, **A.W.N. 1883, 67.** [*R.*, A.W.N. 1887, 139.]

(37)—*Proof of offence—Evidence of kidnapped girl.*—The testimony of the kidnapped person, if satisfactory, legally suffices for a conviction for kidnapping. QUEEN v. DOORGA DOSS, **7 W.R. Cr. 104.**

(38)—*Penal Code*, ss. 363, 366, 368—*Illegal concealment.*—A eleven years old girl was taken out of the custody of her lawful guardian by the first accused, and offered for sale in marriage to another, and the second accused illegally concealed her. The conviction of the former was upheld under s. 363 of the Penal Code only, and of the latter under s. 368 only. A separate conviction of both under s. 366 was set aside. QUEEN v. ISREE PANDAY, **7 W.R. Cr. 56.**

(39)—*Kidnapping—Rioting.*—A husband or those who aided him cannot be convicted of kidnapping for taking away his own life, but they are guilty of rioting, if they carry out the husband's object of getting possession of his wife by force and violence and in the darkness of night. QUEEN v. ASKUR, **W.R. 1864, Cr., 12.**

(40)—*Penal Code*, s. 363—*Betrothed girl after marriage is broken off.*—Where a person carries away, without the consent of her lawful guardian, a girl to whom he had been betrothed by her father, after the father had changed his mind and broken off the marriage, he is guilty of kidnapping from lawful guardianship. QUEEN v. GOOROODOSS RAJBUNSEE, **4 W.R. Cr. 7.**

(41)—*Enticing away child playing on public road—Taking from lawful guardianship.*—To entice away a child playing on a public road is to kidnap it from lawful guardianship. QUEEN v. MUSSAMUT OOZEERUN, **7 W.R. Cr. 98.**

(42)—*Penal Code*, ss. 361, 363—*Enticing from lawful guardianship.*—For a conviction of kidnapping under ss. 361 and 363 of the

Kidnapping—*continued.*

Penal Code, that the accused took or enticed away from lawful guardianship the person kidnapped must be established. QUEEN v. NEELA BEBEE, **10 W.R. Cr. 33, 16 W R. Cr. 42.**

(43)—*Penal Code, ss.* 363, 366—*First class Magistrate convicting under s.* 363, *Penal Code, on facts amounting to an offence under s.* 366, *Penal Code—Crim. Pro. Code* (1882) *ss* 346, **317.**—Where, in a case in which the evidence showed that there was a *prima facie* case under s. 366, Penal Code, the Magistrate of the first class convicted the accused under s 363, and sentenced him to the full extent of his powers, *held*, that in such case it was the duty of the Magistrate either to have submitted the record to the District Magistrate under s. 346, or to have committed the accused to the Sessions Court for trial in s. 347, Crim. Pro. Code, on the graver offence under s. 366. KAKA v. EMPRESS, **30 P.R. 1886, Cr.**

(44)—*Abetment of.*—There can be no abetment of kidnapping by conduct commencing only after the minor has once been completely taken out of the keeping of the guardian when the guardian's keeping of the minor is at an end. CHANDA v. EMPRESS, **6 P.R. 1894, Cr.**

(45)—*Gist of the offence.*—It is not incumbent on the prosecution, in a case of kidnapping, under s. 361, Penal Code, to prove that the accused knew that the minor had a lawful guardian. It is for the accused to prove ignorance of the fact of the existence of a lawful guardian, when he raises that plea, though it does not follow that such ignorance will be a complete answer to the charge of an offence under ss. 361 and 363. KHUDA BAKHSH v. EMPRESS, **27 P.R. 1887, Cr.**

(46)—*Kidnapping a married girl—Abetment of kidnapping* —Where the acts and the conduct of the girl kidnapped from the lawful guardianship of her husband showed that she was a consenting party to a comfortable home being found for her and she was never compelled to marry any person against her will or forced or seduced to illicit intercourse, *held* that the person taking her away from her husband was not liable to be convicted under s. 366 (2). The offence of kidnapping not being a continuing offence, there could be no abetment of the taking after the minor had once been completely taken out of the keeping of her lawful guardian. DURGA DAS v. KING-EMPEROR, **13 P.R. 1904, Cr. = 1 Cr. L J. 949 = 114 P L.R. 1904.** (6 P.R. 1894, Cr., 8 P R. 1894, Cr., 13 P.R. 1880, Cr.; *F.*, 27 P.R. 1880, Cr., *R.*) [*R.*, 12 Cr. L.J. 94 = 9 Ind. Cas. 511 = 56 P.L.R. 1911.]

(47)—Enticing away married woman—Abetment— *See In re* BALAMBAL, **26 M. 463 = 1 Weir 574.**

Conspiracy—Abetment of — Evidence Act, s. 10—*See* ABETMENT, 4 C.W.N. 528.

See ABETMENT, 8 P.R. 1894, Cr.

See CHARGE TO JURY—MISDIRECTION, 14 A. 25 = A.W.N. 1891, 170, 7 W.R. Cr. 22.

Kidnapping—*concluded.*

See COMPOUNDING OFFENCE, 22 W.R. Cr. 26.

See CRIM. PRO. CODE, 1898, s. 181(4), 121 P.L.R. 1901.

See EVIDENCE—GENERAL, 13 M. 426 = 1 Weir 290.

See JOINDER OF CHARGES—MISJOINDER OF CHARGES, 26 M. 454 = 2 Weir 296, 1 L. B.R. 361.

See JURISDICTION OF CRIMINAL COURTS —GENERAL, A.W.N. 1887, 139, 1 P.R. 1901, Cr.

See MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION, 17 C.P.L.R. 105, L.B.R. 1893—1900, 212.

See RIOTING, W.R. 1864, Cr. 12.

See SENTENCE—GENERAL, 8 W.R. Cr. 3.

See SENTENCE—CUMULATIVE AND SEPARATE SENTENCES, 8 W.R. Cr. 35.

Kilns.

License for—*See* MAD. ACT IV OF 1884, ss. 188, 189, 1 Weir 737.

King's Coin (Counterfeiting of).

See COIN.

See COUNTERFEITING COIN.

See PENAL CODE, ss. 230-251.

(1)—*Penal Code, ss.* 71, 232 & 235—*Possessing instruments for counterfeiting Sentence.*—A person cannot be convicted once again, after a previous conviction for performing a part in the process of counterfeiting the King's coin, for having in his possession implements and materials for the purpose of using the same for counterfeiting King's coin. HAYAT v. EMPEROR, **14 P.R. 1904, Cr. = 111 P.L.R. 1904 = 1 Cr. L.J. 846.** (6 N.W.P. 39, 23 A. 266, *R.*)

Knife.

Whether an utensil—*See* MAD. ACT I OF 1886, s. 65, 1 Weir 652.

Knowledge.

See PENAL CODE, s. 304-A, 4 C. 764.

Kunbon.

See ACT I OF 1878, s. 4, L.B.R. 1872-1892, 619.

Kwin.

See ACT III OF 1867, s. 13, L.B.R. 1872—1892, 317.

Labour Emigration, Assam.

See BEN. ACT VI OF 1901.

Labourer.

See ACT XIII OF 1859.

—employed by Government — *See* PUBLIC SERVANT, 7 M. 18 = 1 Weir 27.

Labourers, Emigration of Native, Act.

See ACT XIII OF 1864.

Labour—Madras, Compulsory Labour Act.

See MAD. ACT I OF 1858.

Labourers, Transport of Native, Act.

See BEN. ACT VI OF 1865.

Laccadive Islands.

See ACT XIV OF 1874, ss. 3 and 4, 13 M. 353=2 Weir 1.

Ladder.

Removing a. thereby detaining a person on roof—*See* WRONGFUL RESTRAINT, 1 Weir 340.

Lambardar.

See ACT XIII OF 1859, s. 2, 28 P.R. 1908, Cr.=9 Cr. L.J. 107.

Omission by—to report absence of bad character— Information already given by village watchman—*See* PUN. ACT IV OF 1872, s. 39-A. 20 P R. 1903, Cr.

Omission to give information of theft—*See* PENAL CODE, s. 202, A.W.N. 1883, 9.

Land.

See CRIM. PRO. CODE, 1898, s. 145, 2 Weir 108.

Land Acquisition Act.

See ACT I OF 1894.

Land, Acquisition of. for public purposes, Act.

See ACT VI OF 1857.

Land, and Revenue Act.

See BUR. ACT II OF 1876.

Landing and Shipping fees, Out-ports Act.

See MAD. ACT III OF 1885.

Landlord and Tenant.

See CRIM. PRO. CODE, 1898, s. 144, 32 C. 154.

Dispute between tenants of joint owners—Jurisdiction of magistrate to proceed under s. 145—*See* CRIM. PRO. CODE, 1898, s. 145, 8 Ind. Cas. 453=3 Bur. L.T. 74.

Ejectment of tenant by revenue authority—Tenant's unlawful obstruction—*See* CRIM. PRO. CODE, 1898, s. 145, 33 P.W.R. 1912, Cr.=193 P.L.R. 1912=16 Ind. Cas. 527=13 Cr. L.J. 719.

Exclusive possession claimed by each set of landlords through respective tenants—One tenant setting up tenancy against another—Jurisdiction of Magistrate—*See* CRIM. PRO. CODE, 1898, s. 145, 12 Cr. L.J. 408=11 Ind. Cas. 592.

Landlords claiming exclusive possession through tenants—Rival claims set up by other landlords to exclusive possession—*See* CRIM PRO. CODE, 1898, s. 145, 15 C.L.J. 184.

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 15 W.R. Cr. 1.

See MISCHIEF, 1 Weir 491.

Tenant cutting trees on *jirayati* land after execution of *Kadapa*—No theft—*See* PENAL CODE, ss. 24, 379=15 Cr. L.J. 586=25 Ind. Cas. 338.

Landlord and Tenant—*concluded.*

Tree on tenant's holding—Severance by action of wind—Malguzar trying to remove the tree—Obstruction by tenant—Malguzar's right of private defence—*See* PENAL CODE, s. 98, 10 N.L.R. 38=15 Cr. L.J. 352=23 Ind. Cas. 704.

Crop cut by landlord jointly with tenant—Not a case of theft—*See* PENAL CODE, s. 379, 10 A.L.J. 527=14 Cr. L J 3=18 Ind. Cas. 146.

Tenant in possession of paddy—Conviction for theft—Legality—*See* PENAL CODE, s. 379, 1914 M.W.N. 106=15 Cr. L J. 186=22 Ind. Cas. 762.

Tenant not paid price of standing crop—Ejectment—Tenant cutting and removing standing crop—Whether theft—*See* PENAL CODE, s 379, 13 Cr L.J. 298=14 Ind. Cas. 762=11 A.L J. 270.

Trees—Theft—Possession of tenant—Exclusive or joint—*See* PENAL CODE, ss. 379 403, 424, 1914 M W.N. 483=15 Cr. L.J. 440=24 Ind. Cas. 176.

See RIOTING, 1 Weir 44=1 Weir 56=8 M. H.C. App. 11, 13 M. 148=1 Weir 67.

See THEFT, GENERAL—WHAT CONSTITUTES THEFT, 1 Weir 411.

Landlord and Tenant Procedure Act.

See BEN. ACT VIII OF 1869.

Land Registration Act.

See BEN. ACT VII OF 1876.

Land Revenue Acts.

See PUN. ACT XVII OF 1887.

See U.P. ACT XIX OF 1873.

See U.P. ACT III OF 1901.

Land Revenue, Ceded Provinces, Realization of.

See BEN. REG. XXVII OF 1803.

Land Revenue Code (Bombay).

See BOM. ACT V OF 1879.

Language.

Confession recorded in a, different from that in which it was given—Admissibility—*See* CONFESSION—CONFESSION TO MAGISTRATES—ADMISSIBILITY— RECORD OF CONFESSIONS, 22 C. 817.

Larceny.

What is—*See* PENAL CODE, s. 379, 8 A.L.J. 1237=12 Ind. Cas. 844=12 Cr. L.J. 580.

Laskars.

Powers of—Jurisdiction of High Court over—*See* GARO HILLS. 9 Ind. Cas. 114=12 Cr. L J. 10=13 C L.J. 444.

Lathis.

Association in lathi play if evidence of intention to wage war—*See* CONSPIRACY, 16 C.W. N. 1105=16 Ind. Cas. 257.

When becomes a deadly weapon — *See* PENAL CODE, ss. 95,144, 12 Cr. L.J. 103=9 Ind. Cas. 586.

Lathis—*concluded.*

—whether a deadly weapon—*See* PENAL CODE, s. 148, 15 A. 19=A.W.N. 1892, 158.

Hurt with—*See* PENAL CODE, ss. 302, 304, 325, A.W.N. 1892, 105.

Latrine.

See BEN. ACT III OF 1884, ss. 230, 231, 270, 6 C.W.N. 167.

Law.

See BYE-LAW.

See MISTAKE OF LAW.

See SPECIAL LAWS.

Usage infringing—*See* USAGE, 2 M. 140=2 Weir 68.

Lawful Authority.

See CONTEMPT OF LAWFUL AUTHORITY.

Laws Local Extent.

See ACT XV OF 1874.

Laws of Procedure.

Whether can have retrospective effect—*See* STATUTES, CONSTRUCTION OF, 6 M. 336=7 Ind. Jur. 301.

Leading Questions.

(1)—*By whom to be permitted.*—It is the Court, and not the counsel for the crown, who can determine whether leading questions should be permitted, and the responsibility for that permission rests with the Court. BARINDRA KUMAR GHOSE v. EMPEROR, **37 C. 467=14 C.W.N. 1114=11 Cr. L.J. 453=7 Ind. Cas. 359.**

Lease.

Abetment of criminal trespass and theft—Penal Code, ss. 107, 108—Execution of document giving lease over property not belonging to the lessor—Lessor's liability as abettor for criminal trespass and theft of crops by lessee—*See* ABETMENT, 1 Weir 48.

Attachment of property—Power to deal with land under attachment—Power to lease—*See* DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 17 W.R. Cr. 38.

Legal Practitioners.

1.—GENERAL.
2.—ADVOCATE.
3.—ATTORNEY.
4.—BARRISTER.
5.—COUNSEL.
6.—MUKTEAR.
7.—PLEADER.
8.—PLEADER AND CLIENT.
9.—VAKIL.

See ACT XVIII OF 1879.

——1.—General.

(1)—*Facility for Counsel taking instructions from accused—Police—Opprobrious epithets used by Magistrate regarding Vakil.*—Though it is proper that means should be adopted to prevent prisoners from escaping while holding an interview with their vakil, the police or other

Legal Practitioners—continued.

——1.—General—*continued.*

persons should not be placed sufficiently near to overhear their conversation. An observation by the Magistrate that vakils are come to tout for clients or applying to them opprobrious epithets, is improper. REG. v. KASHINATH DINKAR, **8 B H.C. Cr. 126.**

(2)—*Duties and responsibilities of—Advocate—Professional misconduct—Allowing clients to execute documents without warning them that they are invalid—Allowing clients to give up part of their just rights by compromise—Evidence taken in one proceeding used in another—Admissibility—Costs against Government, power of Privy Council to allow.*—A legal practitioner was charged with certain acts of professional misconduct in connection with a case, in which he had been engaged, and the records in that case and in some other proceedings were put in in their entirety and treated as evidence in the proceeding: *Held*, that the procedure was irregular. It is extremely dangerous to take the evidence, which has been given in one case, upon issues raised in that case (examination-in-chief and cross-examination alike having been directed to those issues), and to apply it in another case, in which other issues arise. When a legal adviser allowed his client to enter into certain agreements which (he later on admitted) he believed to be invalid in law: but the Court found them to be valid agreements, and it was, in any case, doubtful at the time they were entered into, as to whether they were valid or not; *held*, that, under the circumstances, he was not guilty of such professional misconduct as to call for punishment. A legal practitioner, when taking part in connection with the execution or a compromise directly arising out of the matter in which he is employed, is bound to warn his clients, if they are acting in ignorance of the nature of what they are doing, while he is in a position to inform them, or under a mistake as to their rights, which he could correct, even when he is not expressly asked by them on the subject. A legal practitioner would not be chargeable with professional misconduct, if he allowed his clients to enter into a compromise in derogation of their legal rights, unless he himself was aware of those rights and of the fact that his clients did not know them and did not intelligently and deliberately realise them. *In re* HENRY LEWIS LUBECK, **7 Bom. L R. 894=2 A.L.J. 806=2 C L.J. 421=10 C.W N. 57=15 M.L.J. 432=2 Cr L.J. 775=33 C 151=1 M.L T. 17, P.C.=32 I.A. 217=8 Sar. 861.**

(3)—*Inherent power of Courts over legal practitioners—Prevention of scandal.*—Every Court has an inherent power to restrain legal practitioners from conducting proceedings openly dishonorable or unfair as to amount to a scandal. No legal practitioner of any description, who has mainly conducted the case of one party in the first Court, should be allowed to act against that party in a subsequent stage of the same case, either in the first Court or in the Court of appeal. Where a Counsel is retained to

Legal Practitioners—continued.

——1.—General—*concluded.*

appear in a second appeal only, the engagement ends with the appeal, and he can appear and plead for the opposite party in any subsequent second appeal, though arising out of the same cause. UGRI BHOI v. SHRIDHAR KULTA, 1 N.L.R. 52.

(4)—*Penal Code, ss.* 464, 466—*Muktear correcting plaint in open Court.*—Where a Mukhtear who was appearing for the plaintiff in a suit in ejectment in a Revenue Court, took up the plaint in open Court, but without the permission of the Court or of the clerk in whose custody it was, and added one more field to the number of fields already in suit, and he was charged with an offence under s. 464 and s. 466 of the Penal Code, *held* that it was not established that he did it with any fraudulent or dishonest intention and that although his conduct was a very serious contempt of Court, yet, the benefit of the doubt as to whether his act was dishonest or foolish may be given to him and that he must be acquitted. EMPEROR v. BISHESHAR DAYAL, **A.W.N. 1905, 93=2 Cr.L.J. 234.**

(5)—*Legal practitioner—Conviction for an offence under s.* 182, *Penal Code—Certificate.*—The mere fact that a pleader has been convicted of an offence under s. 182 of the Penal Code in that he preferred a false complaint of theft, is no reason for dealing with him under the Legal Practitioners Act. Where there are no materials to show clearly that the pleader knew the charge to be false, there is no justification for suspending the pleader or withdrawing his certificate. *In the matter of* GHULAM HUSAIN, **A.W.N. 1896, 20, Note.** [*R.*, A.W.N. 1896, 20.]

(6)—*Appellant, right of, to be heard by mukhtear—Crim. Pro. Code* (1872), *s.* 278.—The appellant in a criminal case has a right to be heard by a mukhtear. IMPERATRIX v. SHIVRAM GUNDO, **6 B. 14.**

(7)—*Right of complainant to be represented by Counsel.*—A complainant has a right to retain and be represented by his own pleader or counsel ; but where Government takes up a prosecution, the complainant's pleader would be led by the representative of Government. CROWN v. BIHAREE, **30 P.R. 1870, Cr.**

(8)—*Right of accused to be heard by Counsel. —Necessity for giving counsel sufficient time to appear.* FUZL v. CROWN, **31 P.R. 1870, Cr.**

Defamatory letter addressed to a—in reply to the notice of a claim on behalf of his client, which contains imputation concerning the client —Publication — Privileged communication—Imputation addressed to the person himself—Defaming husband in wife's presence and *vice versa*—*See* DEFAMATION, 6 P.W.R. 1910, Cr.= 10 P.R. 1910, Cr.

Legal Practitioners—continued.

——2.—Advocate.

See ACT XVIII OF 1879.
See ADVOCATE-GENERAL.

(1)—*Advocate, power of enrolment and suspension—of High Court of Allahabad—Letters Patent, ss.* 7, 8.—By ss. 7 and 8 of the Letters Patent, the Allahabad High Court is authorised and empowered to approve, admit and enrol as many advocates as it thinks fit and to suspend any advocate on a reasonable cause. A Barrister of England or Ireland may be admitted under Rules 180 and 181 of the Rules of the High Court as an advocate, and when he is so admitted, he becomes subject to the disciplinary jurisdiction of the Court. Rule 197 provides for cases, in which the Chief Justice and Judges may, for good cause, and without charge or trial, suspend or remove from the rolls of the Court an Advocate of the Court. An Advocate may, therefore, be tried by three Judges under Rule 2. Where a counsel was guilty of contempt, in the attempt to vindicate his professional conduct in a publication of which he is an editor, *held*, that the libel constituted a "reasonable cause" for which he may be suspended from practice. *In re* SASHI BHUSHAN SARBADHICARY, **29 A. 95, P.C =17 M L.J. 74=4 A.L J 34=9 Bom. L R. 9=11 C. W.N. 273=5 C.L.J. 130=2 M.L.T. 1=5 Cr.L. J. 57=34 I.A. 41.** (1866 L.R. 1 P.C. 283, *D.*) [*R.*, 11 Cr. L.J. 615=8 Ind. Cas. 282=6 N.L. R. 129.]

(2)—*Right to appear for prosecution in Sessions Court.*—An advocate of the High Court may appear on behalf of the prosecution in the Court of Sessions and conduct the prosecution without being specially empowered by the Magistrate of the district for the purpose. *In re* GUNGADHUR SIRCAR, **23 W.R. Cr. 14.**

(3)—*Right to appear — Criminal Courts — Prosecution.*—A counsel or advocate is entitled to appear and act on behalf of the prosecution in the Criminal Courts. CHANDI CHARAN CHATTERJEE v. CHANDRA KUMAR GHOSE, **5 B.L.R. App. 70=14 W.R. Cr. 23.**

(4)—*Prosecution by advocate or attorney before Presidency Magistrate—Presidency Magistrate's Act* (IV of 1877), s. 129.—With the exception of certain officers, such as the Advocate-General, Standing Counsel, Government Solicitor, &c., no counsel or attorney can claim the right of conduct of a prosecution before the Presidency Magistrate without his permission. EMPRESS v. BUTOKRISTO DASS, **6 C. 59=6 C.L.R. 374.**

(5)—*Act* XI *of* 1889 (*Lower Burma Courts*), *ss.* 86 *and* 87—*Crim. Pro Code* (1861), *s.* 340.—Sessions Judges are permitted to allow third class Advocates to appear, plead and act before them in criminal appeals. *In the matter of the petition of* TRAVERS DRAPES, **L.B.R. 1872—1892, 260.**

(6)—*Attorney—Advocate—Competent witness.* —An attorney who has acted as advocate for

Legal Practitioners—continued.

——2.—**Advocate**—*continued.*

one of the parties, and pleaded his case in Court, can be examined as a witness in the case. RAMFAL SHAW v. BISWANATH MANDAL, **5 B L.R. App. 28.**

(7)—*Defamation—Privilege of an advocate.*—An advocate speaking in a Court of Justice in England is not liable either civilly or criminally for defamatory words spoken in his office if they are pertinent to the inquiry. Similarly, an advocate in this country has and should have the same privileges in respect of liberty of speech which he has so long enjoyed in England. An advocate in this country cannot, therefore, be proceeded against either civilly or criminally for words uttered in his office as advocate. SULLIVAN v. NORTON, **10 M. 28, F.B.**. [*F.*, 9 Cr. L. J. 385 = 1 Ind. Cas. 799 = 19 M L J. 217 = 6 M.L.T. 15; *R.*, 19 B. 340, 17 M. 87 = 3 M L.J. 94, 31 M. 400 = 18 M.L.J. 353 = 4 M.L.T. 222, 10 M.L.T. 489, 2 Bom. L.R. 3, 9 Bom. L.R. 1287, 9 Ind. Cas. 509, 3 L.B R. 265, 11 M.L.T. 416 = 1912 M.W N. 476, 2 L. B.R. 130, 13 Cr. L.J. 275 = 14 Ind. Cas. 659]

(8)—*Privilege of speech.*—Question of the extent of the privilege of speech accorded to advocates and counsel considered. REG. v. KASHINATH DINKAR, **8 B.H.C. Cr. 126.**

(9)—*Crim. Pro. Code* (1872), *s.* 186 (s. 340 *of the Code of* 1898)—*Accused defended by authorised pleader—Vokalatnamah.*—An advocate or attorney of the High Court or an authorised pleader, appearing in defence of an accused person, under s. 186, Crim. Pro. Code, 1872, is not required to file a vakalatnamah. H C. PROCEEDINGS, 23RD NOVEMBER 1874, NO. 1891, **2 Weir 402 = 7 M H.C. App. 40.**

(10)—*Unprofessional conduct of — Special leave to appeal to the Privy Council.*—Case in which the Privy Council granted special leave to an Advocate to appeal against his dismissal on the ground of unprofessional conduct. BOMANJEE CAWASJEE v. CHIEF JUDGE AND THE JUDGES OF THE CHIEF COURT OF LOWER BURMAH, **4 Cr. L.J 236, P.C. = 34 C. 129 = 11 C.W N. 370 = 5 C.L J 123 = 17 M.L.J. 67 = 9 Bom. L.R. 3 = 34 I A. 55.**

(11)—*Suspension of advocate—Burma Courts Act* (VII *of* 1872), *s.* 58—*Entering into contract contrary to public policy.*—In a case in which an advocate of the Recorder's Court at Rangoon was suspended by the Recorder under Act VII of 1872, s. 58, for having entered into a contract, which was contrary to public policy, the High Court, though reprobating such a practice as improper and mischievous, yet considered that a serious warning was all that was called for under the circumstances, inasmuch as it appeared that the advocate in this instance did that which was done by other advocates, even by persons to whom he might fairly look for an example. *In re* MOUNG HTOON OUNG, **21 W.R 297.**

(12)—*Conduct of—Endeavouring by irregular means to influence evidence of witness—Credibility of.*—A jailor and an advocate clandestinely got into communication with some witnesses and offered them money as a reward to speak the truth after they admitted having been paid money to speak falsely. *Held*, there is much to condemn in the conduct of any person, who endeavours to influence, by irregular means, the evidence of a witness, in a case pending before a Court of Justice, and, especially so, when this is done by an advocate professionally engaged in the case, in which such witness is produced; there is no real reason why the conduct of such advocate and jailor, though it might bear the complexion of tampering with witnesses, should be treated as rendering their evidence entirely unworthy of credit. TAMBI v. QUEEN-EMPRESS, **L B R. 1893—1900, 263.**

(13)—*Difference between advocate's ordinary and back fees—Whether receipt for ordinary fees requires to be stamped.*—*Held* (*per Roe, C J., Frizelie* and *Reid*, JJ.,) that no stamp is necessary for the receipt given by a barrister in respect of his ordinary fees; and (*per Frizelie, Stogden* and *Reid, JJ., Roe, C.J., dissenting*) that no difference in principle exists between an ordinary fee and a "back fee." (*per Stogden, J.*): — A barrister cannot enter into a contract of hiring, as an advocate; he can enter into a contract to serve any one as an advocate in consideration of the money paid or to be paid to him, and a fee so paid or to be paid to him is for consideration and needs a stamp, whether it is an ordinary or a back fee. SHIRCORE v. EMPRESS, **15 P.R. 1897, Cr.**

See DEFAMATION, 19 B. 340.

See LETTERS PATENT—LETTERS PATENT, 1865—MADRAS, s. 10, 10 M. 28, F.B.

Examining witnesses and recording their evidence in Chambers—Whether such practice objectionable—*See* WITNESS—EXAMINATION OF WITNESSES, 13 Cr. L.J. 299 = 14 Ind. Cas. 763 = 5 Bur. L.T. 38.

——3.—**Attorney.**

(1)—*Crim. Pro. Code* (1872), *s.* 186 (= *s.* 340 *of the Code of* 1898)—*Accused defended by authorised pleader*— Vakalathnama.—An advocate or attorney of the High Court or an authorised pleader, appearing in defence of an accused person, under s. 186, is not required to file a *vakalathnamah.* H.C. PROCEEDINGS, 23RD NOVEMBER 1874, NO. 1891, **2 Weir 402 = 7 M H C. App. 40.**

(2)—*Striking off the rolls—Power of High Court.*—The High Court in Calcutta is not authorised in striking an attorney off the rolls, when such a step would not be sanctioned by the practice of the Courts in England. *In the matter of* STEWART, **1 B L R. P.C. 55 = 10 W. R. P.C. 43 = 2 Suther. 155.**

(3)—*Letters Patent, cl.* 10—*Attorney—Striking attorney's name off the rolls—Rule, service of—Practice—Grounds, copy of, to be served on attorney personally — Sufficient time to be given—Disciplinary action against attorney—Misconduct of attorney, by whom to be brought*

Legal Practitioners—continued.

——3.—**Attorney**—*concluded.*

to Court's notice– Verification, importance of—Suspicion not enough to justify disciplinary action.—The rules of the High Court make no special provision for the disciplinary procedure of the Court. The English procedure in its entirety cannot be adopted. When the alleged misconduct of an attorney is the subject of consideration, it is expedient to initiate proceedings by a rule, or motion or notice, calling on the attorney to answer the matter in the affidavits of the applicant. Service should be personal, a copy of the affidavits should be served with the rule or notice of motion, and the returnable date should allow sufficient time for an answer to be put in. Ordinarily ten days should suffice. Disciplinary action against an attorney rests on the principle that the Court deems him an unfit person to act as an attorney, and not by way of punishment. Any body is entitled to inform the Court of the misconduct of an attorney (25 Q.B.D. 17=59 L.J Q B. 238=38 W.R. 533, *F.*) A verification is a matter of great importance as possessing the security of being made under the sanction of a solemn declaration, for which the person making it would be liable to the penalties attaching to the crime of giving false evidence, if the declaration where falls to his knowledge. (15 A. 59=A.W.N. 1892, 235, W. R. Sup. No. 54=1 Ind. Jur. O.S. 63=1 Hay 379, *R.*) Even a strong case of suspicion is not enough to justify the disciplinary action on a summary proceeding, especially when there is a positive sworn denial and repudiation of the misconduct imputed. *In re* AN ATTORNEY, **14 Cr. L.J. 305=19 Ind. Cas. 993, S.B.=41 C. 113.**

(4)—*Suspension for negligence.*—Where an attorney had been guilty of negligence in allowing his clerk to act in his absence and file a false affidavit and adopted it without inquiring into its character, he was suspended from practising in the High Court in its original jurisdiction for one year, but he was at liberty to practice as a vakil on the appellate side. It had not been proved that the clerk was acting as an attorney without a license, or had a share in the profits. Had this been so, the attorney's name would have been struck off from the rolls. *In the matter of* POORNOO CHANDRA MOOKERJEE, **Bourke, O.C. 377.**

(5)—*Prosecution before Presidency Magistrate by advocate or attorney—Presidency Magistrate's Act* (IV *of* 1877), *s.* 129.—With the exception of certain officers, such as the Advocate-General, Standing Counsel, Government Solicitor, etc., no counsel or attorney can claim the right to conduct a prosecution before the Presidency Magistrate without his permission. EMPRESS v. BUTOKRISTO DASS, **6 C. 59=6 C.L.R. 374.**

(5-*a*) Proceedings under cl. 10, Letters Patent—Attorney proceeded against—Attorney if can make affidavit in answer to rule against him under Court's disciplinary powers—Liability for false statement in affidavit—*See* CRIM. PRO. CODE, 1898, s. 195, 15 Cr. L.J. 49=22 Ind. Cas. 321=41 C. 446.

Legal Practitioners—continued.

——4.—**Barrister.**

(1)—*Suspension from practising*—Malus animus—*Ground for suspension.*—An order of a High Court suspending a barrister from practise for five years was set aside, the ground being that there was no *malus animus* to show an intention to commit a fraudulent act, although there had been grave irregularity. *In re* THOMAS NEWTON, **10 B L.R. 88=17 W R. 35=14 M.I A. 267=2 Suther. 505=3 Sar. 15.**

(2)—*Barrister or pleader appearing as litigant in person—Practice.*—In cases where a barrister or pleader appears before the Court as a litigant in person, he must not address the Court from the Advocate's table or in robes, but from the same place and in the same way as any ordinary member of the public. *In the matter of the* WEST HOPETOWN TEA COMPANY, LTD., **9 A. 180** [*R.*, 148 P.R. 1907, 8 Ind. Cas. 444=3 Bur. L.T. 49.]

See ACT XIV OF 1908, 13 C.W.N. 605.

——5.—**Counsel.**

(1)—*Crim. Pro. Code, s.* 340—*Right of counsel to be heard.*—Where a Judge proceeds to hold a preliminary enquiry under s. 476 of the Crim. Pro. Code, the person against whom such enquiry is started is not the accused person ; and even if he be an accused person, the Court making such enquiry is not a Criminal but a Civil Court. It is a very general practice to hear pleaders on behalf of persons in Civil or Criminal matters, and as *amici curiae* even in criminal revision. RAM NIHORE UMAR v. KING-EMPEROR, **8 A.L.J. 237=12 Cr. L.J. 231=10 Ind. Cas. 740.**

(2)—*Impropriety of one and the same counsel appearing for parties having conflicting interests.*—Two accused persons, who made different confessions partially exonerating themselves and accusing one another with the commission of the principal offence, appealed, on their conviction, through one and the same counsel, *held* that it was improper. HIRA v. EMPRESS, **13 P.R. 1890, Cr.**

(3)—*Right to appear in Criminal Courts.*—A counsel or pleader is entitled to appear and act on behalf of the prosecution in a criminal case. CHANDI CHARAN CHATTERJEE v. CHANDRA KUMAR GHOSE, **5 B.L.R. App. 70 =14 W.R. Cr. 23.**

(4)—*Crim. Pro. Code* (1872), *ss.* 59, 60, 235, 251, 252—*Right of complainant to conduct case by counsel.*—Whether a private complainant is permitted or not to conduct the prosecution under s. 59, he may instruct counsel through a pleader under the Rules of the High Court, and the Public Prosecutor may avail himself of counsel's services under s. 60. S 235 makes every case tried by a Sessions Court a case under s. 60, and the Public Prosecutor may avail himself of counsel's services in all such cases, and the right of general management of the case still vests in him. The assistance of counsel extends also to the summing up and the reply. *In re* NARAYAN M. PENDSHE, **11 B.H.C. 102.**

Legal Practitioners—continued.

——5.—Counsel—*concluded.*

(5)—*Right of counsel to address Court—Address not finished owing to favourable remark by the Court—Judgment afterwards unfavourable—Not finishing address a material error.*—Where a counsel sat down without finishing his address in consequence of a remark by the Court from which he thought and had good reason for thinking that the Court had made up its mind in favour of his client, but where the Court afterwards delivered an unfavourable judgment convicting his client, *held* that the not finishing of the Counsel's address under the circumstances was a material error and the conviction was bad in law. *In re* OMBICA CHURN SEN, **1 J G. 15.**

(6)—*Reference to High Court under s. 434, Crim. Pro. Code (Act XXV of 1861).*—In a reference to the High Court under s. 434 of the Criminal Procedure Code, counsel are not heard as a matter of right, but by the indulgence of the Court. ANGELO v. CARGILL, **9 B.L.R. 417 =18 W.R. Cr. 41**; *see also* REG. v. DEVAMA, **1 B. 64.**

Prosecution by Advocate or Attorney before Presidency Magistrate—*See* ACT IV OF 1877, s. 129, 6 C. 59=6 C.L R. 374.

See DEFAMATION, 19 B 340.

Accused defended by—Making defamatory statements about a witness—*See* DEFAMATION, 15 M. 414=1 Weir 588=2 M.L.J. 142.

——6.—Muktear.

See ACT XX OF 1865.

See ACT XVIII OF 1879.

See LEGAL PRACTITIONERS—PLEADER.

(1)—*Appellant, right of, to be heard by mukhtear—Crim. Pro. Code (1872), s. 278.*—The appellant in a criminal case has a right to be heard by a mukhtear. IMPERATRIX v. SHIVRAM GUNDO, **6 B. 14.**

(2)—*Accused person — Right to appear by Mukhtear - District Magistrate, discretion of.*—The applicant applied to the High Court to set aside an order of a First Class Magistrate refusing to allow him to defend an accused in a case before him as a *Mukhtear*. *Held,*—to refuse or allow the appearance of a *Mukhtear* for an accused person is entirely within the discretion of the Magistrate concerned. *In re* VENKATESH, **Rat. Un. Cr. C. 314=Cr. Rg. 68 of 1886.**

(3)—*Mukhtear—Court's permission—Right to appear—Crim. Pro. Code, 1898, ss. 4 (r), 340, 421, 422, 423.*—A Mukhtear can only plead with the permission of the presiding officer of a criminal Court. TOPANMAL JETHMAL v. CROWN, **4 S L.R. 195=9 Ind. Cas. 711=12 Cr.L J. 118.** (6 B. 14, *D*)

(4)—*Mukhtear, a pleader—Code of Criminal Procedure (Act of 1898), ss. 4, cl. (r), 340—Mukhtear's license—Right of accused to be represented by Mukhtear before a Magistrate and Sessions Judge—Discretion of Magistrate or Sessions Judge how to be exercised in granting permission to mukhtears to appear for defence.*—No general rule of practice can be laid down between pleaders and mukhtears as to the right of the latter to appear in criminal cases. The law is contained in s. 340, Crim. Pro. Code, read with s. 4 (*r*), and the practice is regulated by the High Court Rules. Subject to the permission of Magistrates and Sessions Judges in each case, a mukhtear is authorised to practise in Criminal Courts. Magistrates and Sessions Judges are not to deprive parties of legal aid which they may obtain at a moderate cost, and they will not be exercising a wise discretion by an indiscriminate refusal of such permission to mukhtears who have a distinct professional status in Criminal Courts. Mukhtears should not be permitted to appear in the Sessions Court where their appearance is unnecessary or where there is no reason for their appearance, but that is a matter which must be decided independently in each case and no general rule can be laid down. The object of the law and the rules is that the defence of an accused person may not be shut out merely by the fact that he is represented by a Mukhtear. The High Court rule that every Magistrate is bound in each case that comes before him, use the discretion vested in him by law before giving audience to an uncertified pleader and the character of the person appointed to plead is one of the matters to be taken into consideration—does not apply to *muktears* who are licensed legal practitioners and who may be excluded on other than personal grounds. ISHAN CHANDRA BHAT v. EMPEROR, **15 C. W.N 409=9 Ind Cas. 664=12 Cr. L.J. 111= 13 C L.J. 635=38 C 488.**

(5)—*When Revenue agents can practise as.*—Revenue agents should not practise as *mukhtears* without renewing their certificates in that capacity. CRIMINAL CIRCULAR MEMO. No. 8, DATED 19TH AUGUST, 1873, **20 W.R. Cr. Cir. 18.**

(6)—*Removal of* muktear—*Criminal charge—Evidence justifying dismissal.*—Evidence which does not support a conviction on a criminal charge cannot justify the removal from a profession (the present case being that of a *muktear*). *In re* NIL KUNT BISWAS, **9 W. R. Cr. 29.**

(6-*a*)—*Act XX of 1865, s. 16—Charge—Notice — Magistrate, powers of, to suspend Mooktear.*—Before a Magistrate can suspend a Mooktear from practice, he must observe the requirements of s. 16, Act XX of 1865, and furnish the Mooktear with a copy of the charge against him, and a notice fixing a day on which such charge will be taken into consideration. *In re* GOLAB KHAN, **6 B.L.R. App. 83=15 W. R. 171.**

(7)—*Act XX of 1865—Power of Magistrate to suspend mooktear.*—Where a Magistrate suspended a mooktear for three months for wilfully

Legal Practitioners—continued.

——6.—**Muktear**—*continued.*

making a false statement *held* that the Magistrate had no power to suspend the mooktear under Act XX of 1865. *In re* BANCHANIDHI MAHANTY, **17 W R Cr. 6.**

(8)—*Dismissal of* muktear—*Power of Magistrate to dismiss.*—A Magistrate has no power to give a *muktear* a "general dismissal" unless he is convicted of an offence involving moral turpitude or infamy. QUEEN v. SHAM CHAND CHOWDRY, **1 W R. Cr. 34.**

(9)—*Suspension or dismissal of* muktear—*Power of High Court.*—The High Court had power, under s. 15, Act XX of 1865, to suspend or dismiss a *muktear* from his office, when it saw "reasonable cause," although he might not have committed any act of "professional misconduct" under s. 16. *In the matter of* GHOLAB KHAN, MOOKHTEAR, **7 B.L R. 179 = 16 W.R. Cr. 15.** [*R.*, 11 Cr. L.J. 310 = 6 Ind. Cas. 313 = 1910 M.W.N. 163.]

(10)—*Suspension of* muktear — *Power of Magistrate to suspend* muktear—*Act* XX *of* 1865.—A Magistrate has no power to suspend a muktear under Act XX of 1865. ROOPOO BEWAH v. KEKAROO, **21 W.R. Cr. 41.**

(11)—*Re-instatement of mookhtear—Conviction on criminal charge—Act* XX *of* 1865.—Where the circumstances under which a mookhtear was convicted and suspended from practice do not show that he was guilty of any moral turpitude or that he was unfit to act in the Criminal Court as a mookthear, the High Court reinstated him *In the matter of* KOYLASH NATH CHOWDHRY, **16 W R. Cr. 41.**

(12)—*Admission of mooktears, Rules of High Court relating to, construction of.*—The intention of the High Court has not been either that persons presenting themselves for admission as mooktears should be subjected to regular examinations, or that the duty imposed upon the Judges by the rules of the Court relating to the matter could be delegated to the Magistrate. Every person who had been practising as a mooktear of the Criminal Courts should be at liberty under Rule 39, to satisfy the Judge that he was a person of good moral character and qualified by his knowledge of law and procedure; and only if, on such opportunity being given him, he fails to satisfy the Judge upon these points, could he be refused admission under that rule. *In re* GOLUCH CHUNDER KUR, **6 W.R. Mis. 29.**

See ACT VII OF 1870, s. 34, 30 C. 921 = 7 C. W.N. 704.

See APPEAL—GENERAL, 5 P.R. 1898, Cr.

Presentation of complaint by *mukhtear* — *See* COMPLAINT—DISMISSAL OF COMPLAINT, Rat. Un. Cr. C. 625 = Cr. Rg. 51 of 1892.

See CRIM PRO CODE, 1898, s. 4, 5 A.L.J. 40 = A.W.N. 1908, 11 = 30 A. 66 = 7 Cr. L.J. 21.

See CRIM. PRO. CODE, 1898, s. 4, 7 C.W. N. 524.

Legal Practitioners—continued.

——6.—**Muktear**—*concluded.*

See CRIM. PRO. CODE, 1898, s. 340, 14 W.R. Cr. Cir. 5.

See CRIM. PRO. CODE, 1898, s. 488, 2 Bom. L.R. 700.

See EVIDENCE ACT, 1872, ss. 126, 127, 25 C. 736 = 2 C.W.N. 484.

See PRISONER, 2 W.R. Cr. 50.

See PRIVILEGED COMMUNICATION, 1 B.L. R.A. Cr. 8 = 10 W.R. Cr. 14.

——7.—**Pleader.**

See ACT XX OF 1865.

See ACT XVIII OF 1879.

See GOVERNMENT PLEADER.

(1)—*Letters Patent,* 1866, *s.* 8—*Conviction under s.* 471, *I.P.C., whether a sufficient cause for the removal of a vakil from the roll.*—On a vakil of the High Court of Allahabad being convicted of forgery under s. 471, I.P.C., the conviction being affirmed by the High Court with a slight modification in the period of imprisonment, the High Court ordered notice to be given to the vakil to show cause why he should not be removed from the roll of vakils and his certificate cancelled in consequence of the offence of which he had been convicted. The High Court held that the propriety in law or in fact of the conviction could not be questioned, but the counsel for the vakil was not precluded from showing, if he could, that the conduct of the vakil in the matter was not such as to render him an unfit person to be retained on the rolls of vakils of the Court. The High Court held, also, that the vakil's name should be struck off the roll of vakils. Against the order, the vakil appealed to the Privy Council. *Held*, by the Privy Council, that, as the object of the appeal was to have the judgments of the Sessions Judge and of the High Court on appeal reviewed and reversed in substance, if not in form, and in effect to have an appeal against the conviction, when, if he had petitioned for leave to appeal against it, the leave would certainly have been refused, the appeal should not be allowed. *Held*, further, that the conviction for forgery, followed by a sentence of imprisonment, was sufficient without further enquiry to justify the Court in removing the appellant from the roll of vakils and cancelling his certificate, and that the vakil's counsel was not entitled to go behind the conviction in order to show that he had committed no offence at law. *In the matter of* RAJENDRO NATH MUKERJI, **22 A. 49, P.C. = 3 C.W.N 736 = 1 Bom. L.R. 708 = 26 I.A. 242 = 7 Sar. 556.** [*R*, 29 A. 95, P.C. = 4 A.L.J. 34 = 9 Bom L R 9 = 5 C.L J. 130 = 11 C.W.N. 273 = 17 M.L.J. 74 = 2 M L T. 1, 32 B. 106 = 10 Bom. L R. 21 = 3 M.L.T. 131, 37 M 238 = 13 Cr. L.J 800 = 17 Ind. Cas. 544 = 23 M.L J. 447 = 12 M.L.T. 615 = 1912 M W.N. 1029, 11 Cr. L J. 503 = 14 C.W.N. 1073 = 7 Ind. Cas. 622, 11 Cr. L.J 615 = 8 Ind. Cas 282 = 6 N.L.R. 129; *D.*, 8 A.L.J. 389 = 9 Ind. Cas. 1013.]

Legal Practitioners—continued.

——**7.—Pleader**—*continued.*

(2)—*Act* XVIII *of* 1879 (*Legal Practitioners*), ss. 12, 14—Muktear—*Conviction for rioting—Liability to suspension from practice—Conviction if conclusive.*—Two *muktears*, who were parties to a proceeding under s. 145, Crim. Pro. Code, in the course of which a *chur*, the subject of the proceeding, was attached under s. 146 and placed in charge of a receiver, collected a number of armed men who formed an unlawful assembly with a view to take forcible possession of the *chur*; *Held* that, having regard to the character of the offence, an order under s. 12 of the Legal Practitioners Act could properly be passed against them; that, in such a proceeding, it was not open to them to go behind their conviction by the Criminal Court and invite the Court to examine the facts with a view to showing that the conviction was erroneous. But the Court in such a case will look into all the facts as found to determine the position of the persons concerned. *In re*, KALI PROSONNO BOSU CHAUDHURY, **14 C.W.N. 1073 = 12 C.L.J. 553 = 11 Cr. L.J. 503 = 7 Ind. Cas. 622.**

(3)—*Act* XVIII *of* 1879, *ss.* 13, 40—"*Other reasonable cause,*" *meaning of, in s.* 13—*Not restricted to matters* ejusdem generis *with matters in cl. (a) to (e)—Charge, necessity to formulate with particularity—Evidence Act* (I *of* 1872), *s.* 132—*Answers not objected to—No privilege.*—An order under s. 13 of the Legal Practitioners Act can only be made, after notice has been given to the pleader to show cause why he should not be suspended or dismissed. The notice must formulate the charges with sufficient precision, to enable the pleader to know the charge which he is called upon to meet. The words "other reasonable cause" in s. 13, cl. (*f*) are not restricted to matters *ejusdem generis* with the matters mentioned in cl. (*a*) to (*e*). Two pleaders organized a political meeting and one of the speakers at the meeting was convicted of sedition. The two pleaders were also charged with having published a leaflet to honour B.C. Pal. *Held*, these circumstances did not constitute "reasonable cause" for their suspension or dismissal. The evidence given by witnesses can be used against them in a subsequent proceeding, if they did not claim privilege or object to answer any of the questions which were put to them. *In re* A. G. GANAPATHY SASTRY, **6 M.L.T. 253, F.B. = 11 Cr. L.J. 274.**

(4)—*Penal Code, s.* 500—*Defamation by a pleader in pleadings.*—A pleader or mooktear is not liable to a charge of defamation, if, relying on the statements of his client, he introduced into a pleading, in good faith, a defamatory statement. QUEEN v. CHRESTEIN, **2 N.W.P. 473**

(5)—*Pleader pressing question found improper—Fine—Act* I *of* 1846—*I.P.C.*, *s* 288—*Crim Pro Code,* 1861, *ss.* 163 *and* 429—*Opportunity to show cause—Irregularity*—A pleader who presses a Court to put a question which the Court considers improper, and insists on a note being made of his request, is not liable to fine under Act I of 1846. No opinion was offered on the point whether such conduct on the part of a pleader amounted to an offence under s. 228 of the Penal Code. Where the pleader under the above circumstances was fined for an offence under s. 228 without being called on to make a statement in his defence, *held* that the procedure was irregular and that though there was no appeal from the order, the High Court could in revision, interfere with the order on account of such irregularity. KASHI NATH VITHAL, v. DAJE GOVIND, **7 B H.C A C. 102.**

(6)—*Practice—Allegation by council containing imputation against Magistrate—Propriety.*—It is improper for counsel, however zealously he is privileged to argue on instructions given him, to bring forward a serious charge against a Magistrate without having reasonable grounds for supposing that the charge might be proved. REG. v. KASHINATH DINKAR, **8 B.H.C.Cr. 126.** [*R.*, 2 Bom. L. R. 3.]

(7)—*Rejection of appeal on the ground of counsel's supposed indiscretion.*—A Sessions Court ought not to decline to hear an appeal merely on the ground that certain expressions used with reference to the Lower Court, which might amount to contempt, were found in the appeal presented by the pleader, as it would be unjust to punish the appellants with the consequences of their counsel's supposed indiscretion. QUEEN-EMPRESS v. CHEDI, **S.C. 166**, **Oudh.**

(8)—*Trial before Sessions Court—Prosecution on behalf of Government.*—A council instructed by a private person cannot conduct a prosecution on behalf of the Government, in a trial before a Court of Sessions, without being specially empowered by the Magistrate of the District. CROWN v. CHAITAN LAL, **S. C. 31, Oudh.**

(9)—*Authority of, to bind client—Admission of vakil in criminal case.*—An admission of a vakil cannot bind his client in a criminal case. QUEEN v. KAZIM MUNDLE, **17 W.R. Cr. 49.**

(10)—*Admission by pleader.*—Admissions made by the prisoner's pleader in formal matters of law, which can be better entrusted to him, are evidence against the prisoner. *In re* JANARDHAN, **Cr. Rg. 60 of 1894.**

(11)—*Proceeding under s.* 180, *Crim. Pro. Code,* 1861—*Right of vakil to represent complainant.*—In the course of a preliminary inquiry, when the Magistrate is merely bound to inquire for the purpose of ascertaining the truth or falsehood of the complaint, the Magistrate is at liberty to allow the complainant to be represented by a vakil or not. He is therefore not liable in damages for not having allowed a vakil to appear in such a case. Even assuming that the Magistrate's act was without jurisdiction, there must be an allegation of bad faith to sustain an action for damages against him. BINDACHARI v. DRACUP, **8 B H.C.A.C. 202.**

Legal Practitioners—continued.

——7.—Pleader—*continued.*

(12)—*Power of a Judge to remove a vakil.*—A District Judge is not empowered to remove a vakil against his will from a Court to which he has once been allotted, except under s. 56, Reg. II of 1827, for a criminal offence, misbehaviour or neglect of duty. *In re* VAMANAJI KONERAS, **1 B.H.C. 136.**

(13)—*Pleader—Setting up a false plea of* alibi *—Professional misconduct.*—In a case where a pleader was alleged to be guilty of professional misconduct in setting up a false plea of *alibi* in a case of defamation brought against him, their Lordships were of opinion that they were not called upon to make any order under the Legal Practitioners' Act. *In re* SECOND GRADE PLEADER, **20 M.L.J. 498 = 7 Ind. Cas. 356 = 11 Cr. L.J. 452.**

(14)—*Act* XVIII *of* 1879 (*Legal Practitioners*), *ss.* 12, 13 *and* 14—*Pleader—Unprofessional conduct—Meaning of " any other reasonable cause"—Letters Patent*, s. 10—Ejusdem generis, *principle of—Interpretation of statute—Marginal notes, value of.*—Where two pleaders became directors of a Provident Society, which was in no sense an undertaking for the purposes of life insurance in the ordinary acceptation of the term, but was a means of furnishing profit to the directors, by enabling those who so desired to gamble to become applicants to the society ; *held*, that they were guilty of unprofessional conduct under s. 13 cl. (*f*) of the Legal Practitioners Act. *Per Miller, J.*—" Any other reasonable cause " must be given a wide meaning, and must not be construed in a limited way on the principle of *ejusdem generis. Per Krishnaswami Iyer, J.*—Dishonourable or dishonest conduct, not in the discharge of professional duty, would fall within the purview of " reasonable cause " in s. 13. (The application of the doctrine of *ejusdem generis* considered). When a vakil does that which involves dishonesty, is for the interest of suitors that the Court should interpose and prevent a man guilty of such misconduct from acting as a vakil of the Court. Value of marginal notes considered. *In the case of* TWO SECOND GRADE PLEADERS, **6 Ind. Cas. 313 = 1910 M.W.N. 163 = 11 Cr. L.J. 310.**

(15)—*Act* XVIII *of* 1879, *s.* 13, (*c*) (*d*)—*Payment by pleader out of his Munshi's fee to a person who brings a case to him—Misconduct.*—*Held* by the Full Bench that :—*Munshiana* (Clerk's fee) does not mean the fee paid or payable to a pleader for his services, within the term of s. 13 (*c*) of Act XVIII of 1879 as amended ; paying wholly or in part *Munshiana* to a person, who introduces a client to a pleader, is not objectionable under the said s. 13 (*c*), provided it is not done in pursuance of any previous arrangement between that person and the pleader, for the procuring by the former of clients for the latter. *Obiter* :—The *Munshiana* system is very similar to that in force in England, where a Counsel's clerk is paid by his employer and receives fees as well from that employer's clients. On receiving back the case from the Full Bench, the Division Bench (*Johnstone and Williams JJ.*) after remarking as follows, *held*, that a pleader, who himself pays a sum of money to a procurer of clients or allows him to take his clerk's *Munshiana* in whole or in part as a gratification for having procured him a client, is as liable to be dealt with under s. 13 (*c*) of Act XVIII of 1879 as if he has paid out of his own fee. Remark—" In referring the aforesaid question regarding it (s. 13c) to the Full Bench, we rather assumed that the words "out of any fee...services" qualified " tenders " or " gives " as well as " consents to the retention of ;" but examination of the structure of the clauses shows that this assumption was hardly correct...the real meaning of the clause is this :—" Who tenders or gives any gratification for procuring or having procured the employment, etc., or consents to the retention out of any fee paid or payable to him for his services, or any gratification for procuring, etc." *In the case of* AMOLAK RAM, **22 P.W. R. 1910, Cr = 6 Ind. Cas 736 = 11 Cr. L J. 396 = 27 P.R 1910, Cr. = 69 P.L R. 1910.**

(16)—*Legal practitioner allowing a client to enter into invalid agreement—Misconduct.*—A legal practitioner, in allowing his client to execute certain documents, which, he thought, were invalid, is not guilty of such professional misconduct as to justly call for a punishment, though such conduct may be open to disapprobation. *In re* HENRY LEWIS LUBECK, **15 M L.J 432 = 1 M.L.T. 17 = 7 Bom. L.R. 894 = 2 A.L.J. 800 = 2 C.L J. 421 = 10 C W N. 57 = 33 C. 151, P.C. = 32 I.A. 217 = 8 Sar. 861.**

(17)—*Pleader—Application for enrolment—Concealment of conviction—Misconduct—Dismissal.*— A pleader who conceals his past conviction by intentionally omitting to recite it in his application for admission is liable to be dismissed. *In the matter of a* SECOND GRADE PLEADER, **15 Cr. L.J. 587 = 25 Ind. Cas 339.**

(18)—*Professional misconduct, what amounts to—Reflections upon conduct of Judge.*—In this case a Vakil of the High Court presented a petition to the Sessions Judge (Tanjore) a day after the summing up of the case to the assessors and before judgment was delivered, in which he alleged that the Judge, before the arguments in the case were over, came to the Court with a draft judgment, and added not only that but that the draft judgment was the *judgment* for *conviction.*—These allegations were found to be quite unfounded. *Held* that the vakil was guilty of professional misconduct, for which he must be reprimanded and made to pay the costs of the proceedings against him. *In the matter of a* HIGH COURT VAKIL, **8 M. L T. 375, F.B. = 8 Ind. Cas. 574 = 21 M.L.J. 76 = 1911, 1 M.W.N. 359.**

(19)—*Letters Patent, s.* 8—*Conviction of vakil for criminal offence—Right of vakil to show that he was not guilty of the offence—Duty of High Court.*—In a proceeding under s. 8 of the

Legal Practitioners—continued.

—— 7.—Pleader—*continued.*

Letters Patent of the High Court, consequent upon the conviction by a Sessions Judge of a vakil upon the rolls of the High Court of the offence punishable under s. 471, I.P C., the conviction having been upheld on appeal to the High Court, the Vakil is not entitled to show that he is not guilty of the offence. But it is incumbent on the High Court, under s. 8 of the Letters Patent, to consider whether there exists reasonable cause for removing or suspending him from practice, and, for that purpose, it would be necessary to ascertain, if it is not admitted, the decree of culpability involved in the acts which constituted the offence of which he has been convicted. *In the matter of* RAJENDRO NATH MUKERJI, 18 A. 174, F.B. = A.W.N. 1896, 20.

(20)—*Remarks in judgment against pleader—Copy of judgment to be given to pleader.*—An advocate against whom remarks have been made by a Court imputing misconduct to him should have furnished to him a copy of the written judgment containing those remarks, in order that he may place his own conduct before the particular Court in the light most favourable to himself and with such explanations as he may be able to afford and as may perhaps induce the Court to alter, modify or perhaps even withdraw the opinion expressed adversely to the advocate's conduct in the particular case. *In re* PHILLIP GODINHO, 6 Bom. L. R. 540 = 1 Cr. L. J. 636.

(21)—*Plea of not guilty—Procedure—Plea by counsel.*— The legal course is that an accused person should *plead* by his own mouth and not through his pleader, though of course his counsel or pleader may, at the proper time, address the Court on his behalf. QUEEN v. ROOPA GOWALLA, 15 W.R. Cr. 42 = 6 B L.R. Ap. 148.

(22)—*Right of representation by.*—There is no general rule of law that entitles every person to be represented by a pleader before public officers. The claim must, in each and every case, be referred to some express provision of law. The right of a person, ordered to furnish security under s. 118, Crim. Pro. Code, to be represented by a pleader in the subsequent proceedings relating to the fitness of sureties offered under s. 122, is entirely within the discretion of the Court. IMPERATOR v. TAWAKALI, 4 S.L.R. 49 = 7 Ind. Cas 606 = 11 Cr. L. J. 501.

(23)—*Prosecution—Right to appear in Criminal Courts.*—A counsel or pleader is entitled to appear and act on behalf of the prosecution as well as for the accused in the Criminal Courts. CHANDI CHARAN CHATTERJEE v. CHANDRA KUMAR GHOSE, 5 B.L.R. Ap. 70 = 14 W.R. Cr. 23.

(24)—*Crim. Pro Code*, 1861, *s.* 432—*Vakil—Right to appear for the accused.* -A Magistrate has no power under s. 432 of the Crim. Pro. Code, 1861, to forbid a duly qualified pleader to appear for the accused. REG. v. DAJEE MANSUKHRAM, Rat. Un. Cr C. 25 = Cr. Rg. 7-10-1869.

(25)—*Accused's pleader's right to be heard before judgment is given* —It is an elementary principle of law that no order should be made to a man's prejudice, especially in a criminal case, without hearing him and the very object of the Legislature in allowing parties to be represented at trials by counsel is that counsel must be heard before a final opinion is formed by the Court. It is not a question of indulgence but of right. It is not necessary that the Magistrate should be asked by the accused's counsel the usual opportunity to be heard on the case. EMPEROR v. IBOO, 6 Bom. L.R. 665 = 1 Cr. L J. 760.

(26)—*Appearance of pleader, dispute as to possession of immoveable property—Quære.*—Whether pleaders could appear before the High Court at all in cases under s. 62, Crim. Pro. Code, 1861, where there is a dispute as to the possession of immoveable property. SHEIKH LALOO v. ADAM SIRCAR, 17 W.R Cr. 37. [*Dist.*, 18 W.R. Cr. 22.]

(27)—*Crim. Pro. Code*, 1872, *s.* 186—*Private vakils.* -The practice of admitting private vakils to defend parties in Criminal Courts is not illegal. S. 186 of the Code of 1872 leaves it to the discretion of the Magistrate whether to hear such agents or not. HIGH COURT PROCEEDINGS 11TH NOVEMBER 1874, No. 1762, 2 Weir 400 = 7 M H C. App 37.

(28)—*Crim. Pro. Code*, 1872, *s.* 186 (= s. 340 *of the Code of* 1898)—*Pleaders of District Munsiff's Courts*—Vakalatnamah *in criminal cases.*—A pleader of a District Munsiff's Courts comes within the category of "authorised pleaders," and, as such, is not required to file a *vakalatnamah* in criminal cases. HIGH COURT PROCEEDINGS, 28TH MARCH, 1879, No. 559, 2 Weir 402.

(29)—*Appointment and appearance—Private prosecutor—Criminal reference to High Court—Crim. Pro. Code (Act* XXV *of* 1861), *s.* 434.—A private prosecutor is not allowed to appear by pleader on a reference to the High Court under s. 434 of the Crim. Pro. Code, 1861. QUEEN v. RAMJI MAZUMDAR, 6 B.L R. Ap. 46 = 14 W.R Cr. 51.

(30)—*Pleader—License to practise in one district—Incompetency to practise in another district—Crim. Pro. Code*, 1898, *s.* 4 (*r*).—A pleader's license which entitles him to practise as a pleader in the Civil and Criminal Courts of a particular district does not entitle him, as a matter of right, to practise in the Courts of another district. KIMATRAI v. CROWN, 4 S. L.R 207 = 9 Ind. Cas. 717 = 12 Cr. L J. 118. [*R.*, 15 Cr. L.J. 382 = 23 Ind. Cas. 750 = 7 S. L.R. 98.]

See ACCUSED PERSON, 15 P.R. 1900, Cr. = P.L.R. 1900, Cr., p. 59.

Legal Practitioners—continued.

——7.—**Pleader**—*continued.*

See ACT III OF 1867, ss. 3 and 4, 5 P.W.R. 1910, Cr.

Whether Court can pass remarks in the judgment upon suggestion by accused's pleader —*See* ACT I OF 1878, s. 9, 15 Cr.L.J. 420=24 Ind. Cas. 156.

Whether includes private practitioner in Magistrate's Court—*See* MAD. ACT III OF 1871, cl. 4, sch. (B), 6 M. 100.

Summary rejection of appeal, without opportunity given to pleader—*See* APPEAL—GENERAL, 7 Bom. L.R. 89=2 Cr. L.J. 58.

Change of place of hearing of appeal—Notice to accused or his—*See* APPEAL—GENERAL, 7 P.R. 1891, Cr.

See APPEAL—GENERAL, 29 P.R. 1886, Cr.

See APPEAL—APPEAL — PRACTICE AND PROCEDURE, 21 M. 114=2 Weir 470.

Attempt at cheating—False representation to pleader—Damage or harm in mind, reputation—Complainant, position of—*See* CHEATING—GENERAL, 7 C.L.J. 375=12 C.W.N. 750 =7 Cr. L.J. 342.

Conduct of a Pleader in a suitor's capacity—*See* CONTEMPT OF COURT, 5 P.R. 1902, Cr., F.B.

Contempt case—Assurance of pleader not accepted by Munsiff—Interference in revision—*See* CONTEMPT OF COURT, 11 A L.J. 955.

See CONTEMPT OF COURT, Rat. Un. Cr. C. 861=Cr. Rg. 25 of 1896.

Right of counsel to be heard—*See* CRIM. PRO CODE, 1898, s. 340, 8 A.L.J. 237=10 Ind. Cas. 740=12 Cr. L J. 231.

Unauthorised pleaders — *See* CRIM. PRO. CODE, 1898, s. 340, 2 Weir 400.

Summary dismissal of appeal—Reasonable opportunity of being heard to be given to appellant or his—*See* CRIM. PRO. CODE, 1898, s. 421, 29 M. 236=4 Cr. L.J. 57.

See DEFAMATION, 13 C.W.N 340=9 C.L J. 259=36 C. 375=1 Ind. Cas. 147=9 Cr. L.J. 165, 9 Bom. L R. 1287=6 Cr. L J. 387, 1 Weir 587.

See DISTRICT MAGISTRATE, 6 P.R. 1905, Cr.=70 P L.R. 1905.

See EVIDENCE ACT, 1872, s. 126, L.B.R. 1893—1900, 358.

Right of, to inspect books—*See* INSPECTION, 10 C.L R. 54.

Engaged by wife of accused, right of, to appear—*See* MAGISTRATE, DUTY OF, 1 Bom. L.R. 856.

Ejecting a trespasser from the pleader's room after warning—Abuse—Act causing slight harm — Offence—*See* PENAL CODE, ss. 95, 504, 355, 15 Bom. L.R. 1039=2 Bom. Cr. C. 168.

See PENAL CODE, s. 174, 6 C.W.N. 927.

See PENAL CODE, s. 228, 6 Bom. L.R. 541.

Legal Practitioners—continued.

——7.—**Pleader**—*concluded.*

Stopping Counsel's arguments with promise to hear him further—Order passed to his client's prejudice without hearing—Setting aside order —*See* PRACTICE AND PROCEDURE, 13 Bom. L.R. 27=9 Ind. Cas. 350=12 Cr. L.J. 64.

Appointment of pleader as Presidency Magistrate—*See* PRESIDENCY MAGISTRATE, 23 B. 490.

Sanction to prosecute pleader for presenting suspicious document in Court on behalf of client—*See* SANCTION TO PROSECUTE—REVOCATION OF SANCTION, 22 B. 317.

Right of accused to be heard by a—Refusal to accept a surety—*See* SECURITY FOR GOOD BEHAVIOUR, 4 C.W.N. 797.

See SECURITY FOR GOOD BEHAVIOUR, 23 C. 493.

—— 8.—**Pleader and Client.**

See EVIDENCE ACT, 1872, s. 126.

(1)—*Pleader, duty of, to call witnesses at the request of his client.*—A pleader is bound to call witnesses, whose evidence his client wishes to submit to the Court, even though he suspects their evidence. It is for the Court to determine the value of such testimony ; and any threatening on its part to report to the High Court the conduct of the pleader in calling such witnesses, is improper. KING-EMPEROR v. BAJYA ANANDRAO, **3 Bom. L.R. 562.**

(2)—*Pleader — Misconduct — Abandoning client's case in midst of client's examination in Court to attend another case—Legal Practitioners Act* (XVIII *of* 1879), *ss* 13, 14—*Professional misconduct.*—A pleader appeared on behalf of the plaintiff in a suit. While the plaintiff was being examined in chief, the pleader left him in order to attend to another case in another Court. *Held*, that the pleader, in abandoning his client's case while he was in the witness-box, acted improperly; and that, after he had once taken up his client's case, he ought to have seen that it was terminated. The High Court suspended the pleader from his work for one month for professional misconduct. *In the matter of* BABU BENI MADHUB DAS, **14 Cr. L.J 379=20 Ind. Cas. 139.**

(3)—*Legal Practitioner changing sides in connected cases—Professional misconduct—Practice.* —A professional gentleman should as far as possible stick to the side who first employed him. It might be a very good practice if, when gentlemen were offered instructions by the opposite side in any connected case, they should at least in the first place inform their first clients. *In the matter of* AMBA PRASAD, **16 Cr. L J. 420=28 Ind. Cas. 996.**

(4)—*Pleader — Misconduct—Cheating client out of the subject matter of suit—Penalty—Removal from practice—Suspension.*—Where it was found by the Chief Court before whom the appellant practised as a pleader, that he had taken advantage of his position of trust, in order to cheat his client out of the subject-matter of

***Legal Practitioners*—continued.**

——8.—Pleader and Client—*continued.*

the suit and obtain it for himself, and on the appellant's application for a review of the finding, he, instead of pressing it, deliberately admitted the charges made against him in the sense in which those charges were understood by the Judges. *Held*, that the Chief Court was amply justified in passing orders removing the appellant permanently from the list of pleaders on the ground of misconduct, and the subsequent order of the Court upon the application for review, reducing the penalty to suspension from practice for three years, went as far in the direction of mercy as it properly could go. *In the matter of* CHANDA SINGH, **14 C.W.N. 521 = 11 C.L J. 438 = 7 M.L T. 412 = 6 Ind. Cas. 269 = 12 Bom. L R. 425 = 11 Cr. L.J. 303 = 10 P.W.R. 1915, Cr. P.C.**

(5)—*Privileged communications between party and counsel—Act* II *of* 1855.—The privilege of counsel not to disclose in evidence communications made by their clients, without their consent, existed even before Act II of 1855. REG v. KASHINATH DINKAR, **8 B.H.C. Cr. 126.**

(6)—*Evidence Act, s.* 126—*Communication by client to pleader—Privilege.*—A pleader cannot claim privilege under s. 126 from closing statement made to him by a person, if the same was not made to him in the course and for the purpose of his employment as a pleader; and the fact that the pleader has been acting as a professional adviser to the party, makes no difference. EMPEROR v. BALA DHARMA, **4 Bom. L.R. 460.**

(7)—*Evidence Act, s.* 126—*Statements made to solicitor by client.*—S. 126, Evidence Act, has no application where the statement made by a client to his solicitor was not made in confidence, but for the purpose of communication. EMPEROR v. MARIANE G. RODRIGUES, **5 Bom. L.R. 122.**

(8)—*Legal Practitioners Act* (XVIII *of* 1879), *s.* 13—*Professional misconduct—Pleader suggesting a theory not supported by the record—Defamatory statement—Privilege.*—A tailor was charged with an indecent assault on the complainant, an English lady, in the presence of Gunner, who was the only witness to support the complainant. At his trial in the first Court, the accused denied the charge and attributed the false complaint to the fact that he had damned the complainant for Rs. 2, but he was convicted. In appeal, the accused's pleader argued that the defence put forward in the lower Court was not a true one, and, when pressed by the Judge what the real facts were, he said: "Possibly Gunner was doing all that is attributed to the accused." The Court rejected this theory as without any foundation and dismissed the appeal. Further it made a reference to Court of Judicial Commissioner in the exercise of its disciplinary jurisdiction, regarding the conduct of the pleader, pointing out that the allegation made by him was not only outside the record and unsupported by any kind of evidence, but was quite inconsistent with what the accused himself said in the lower Court; that it was also a very *opprobrious* imputation, not only affecting the complainant's reputation, as a woman, but calculated to injure very seriously her professional career as a school mistress: *Held*, by the Full Bench, that the reference was uncalled for, as the pleader's conduct was not only undeserving of censure but correct. *Per Crouch, A.J C.*—A Counsel, like a Judge, should not be subject to fear for the consequences of anything which he might say in the course of his duty. Where no malice is imputed, and a pleader speaks under instructions from his client, no criminal or civil proceedings would lie against him for a defamatory statement. A pleader is not only justified to state what the accused's defence really is, but is bound to do so. He is not limited to the record in his attempt to furnish an explanation of the evidence which is consistent with his client's innocence. *Per Knight, A.J.C.*—Instructed or not, it is the duty of a pleader to make a suggestion, if he thinks it might advance the interests of his client. *In re,* MR. ACHALSING, **4 Ind. Cas. 176 = 3 S.L.R. 177 = 10 Cr.L.J. 514.**

(9)—*Admissions by pleader, appointed by Court, if binding on accused.*—The admissions made by a pleader, who is appointed by the Court to help the accused in his defence, are not binding on the accused. QUEEN-EMPRESS v. SANGAYA, **2 Bom. L.R. 751.**

(10)—*District to which pleader's license does not extend—Practising before Criminal Court in such district—Necessity of obtaining Court's permission previously—S.* 4 *(r), Crim. Pro. Code—Duty not to accept engagement or to inform client of his engagement being contingent on Court's permission—Refusal to extend* sanad *to Civil Court—Proper inference.*—A refusal to extend the *sanad* to the Civil Courts could not imply that the *sanad* had been extended to the Criminal Courts. It is the duty of a pleader, who appears in a Criminal Court of a District to which his *sanad* does not apply, to inform the Magistrate that he cannot appear as of right, and to apply for permission under s. 4 *(r)*, Crim. Pro. Code. The better course is not to accept a fee for an engagement until that permission has been recorded. But if the pleader accepts an engagement before attending the Magistrate's Court, he ought to explain to his client that his appearance will be contingent on the Magistrate's permission. *Re* MR. C. H. CLEMENTS, **7 S.L.R. 98 = 15 Cr.L J. 382 = 23 Ind. Cas. 750.**

(11)—*Professional misconduct — Judgment and proceedings in Civil Court out of which charge arises—Admissible in evidence — Evidence Act, s.* 11—*Actionable claim—Purchase by pleader—Unprofessional—Position of pleader in administration of justice—Fee wholly not paid—Obligation to appear—Vakils when trading—Family trade—Legal Practitioners Act, s.* 13, *r.* 27—*Vakil both advocate and solicitor*

Legal Practitioners—continued.

—— 8.—**Pleader and Client**—*continued.*

—*Gross negligence of vakil—Disciplinary powers of Court—Reasons why vakil should not engage in trade.*—The judgment and the proceedings in a civil suit against a vakil, out of which a charge of professional misconduct is framed against him, are admissible in evidence in an enquiry into the latter charge under s. 11 of the Evidence Act, but the decision of Civil Court is not conclusive proof against him in such enquiry. An actionable claim does not cease to be one because a suit is instituted for its enforcement. An actionable claim should not be purchased by a pleader *Benson, O.C.J.* —A pleader holds a privileged position in connection with the administration of justice and the law imposes on him certain restrictions and disabilities by reason of the position or office which he holds, and in order to safeguard the interests of litigants and the pure administration of justice. It is professional misconduct for a man to do that which the law expressly forbids him to do by reason of the profession which he exercises. *Sankaran Nair, J.*—A vakil is bound to appear and conduct his case even if the fee or any portion thereof remains unpaid, in the absence of any agreement to the contrary or at least notice to that effect to the client in sufficient time to enable him to make other arrangements. The purchaser of an actionable claim after suit offends against public policy more than the purchase of such a claim before suit. It is not required by the conditions of the legal profession or the circumstances of this country that the High Court should declare that it is unprofessional for a pleader to follow any trade or business. To grant permission to a vakil to trade under r. 27, the character of the person making the application, the nature of the trade or business, the time the pleader would have to devote to it will all be factors to be taken into account. It is difficult to say that a pleader should not engage himself in a trade or business. A vakil is both an advocate and a solicitor, and he should not be debarred from performing those functions which a solicitor is, and a barrister may not be, entitled to discharge. The notion that no trade, however honestly carried on, is worthy of a vakil, is a relic of the times that have passed away. *Sundara Iyer, J.* —In the absence of an agreement that the fee should be previously paid, whether non-payment of a portion of the fee would absolve the pleader from his duty to appear for the client? A pleader, who is wilfully and grossly negligent in the discharge of his duties, can be punished for his misconduct, in the exercise of the Court's disciplinary powers Where a pleader was guilty not merely of a mere omission to do his duty but also repudiated the agreement he entered into with his client and did so deliberately and without justification, he is guilty of nothing less than fraudulent conduct. Gross negligence of a vakil or any conduct which interfered with the responsible orderly and pure conduct of proceedings in Court, would be punishable under the disciplinary jurisdiction of the Court. A purchase of an actionable claim by a pleader is unprofessional conduct. The *onus* lies on the pleader to prove that it does not amount to gross misconduct. A pleader, who belongs to a trading family, should not be regarded as trading, because other members carry on a trade, the benefit of which goes also to the pleader. But if all the members of a joint family enter into a partnership and carry on a family trade, all of them must be regarded as carrying on the trade. A pleader cannot be held to be not guilty, of misconduct, if he is engaged in trade or other business without the permission of the Court, if his doing so is inconsistent with the profession of a pleader. A pleader ought not to be engaged in trade, because it might prevent him from devoting that attention to the work as a pleader which his duty to his public and to the Court would require that he should, and because he should not be permitted to engage himself in a pursuit which is inconsistent with his status as a member of a learned and honourable profession. MUNI REDDI v. VENKATA ROW, **23 M L J. 447 = 1912 M.W N 1029 = 12 M.L.T. 615 = 37 M. 238 = 13 Cr. L J. 800 = 17 Ind. Cas. 544.**

See ABETMENT, A.W.N. 1887, 195.

See CONFESSION—MISCELLANEOUS, 11 B. H.C. 237.

See DEFAMATION, 13 C.W.N. 1037.

See PENAL CODE, ss. 471, 511, 26 C. 863 = 3 C.W.N. 653.

Pleader examining witnesses and recording their evidence in chambers—Whether such practice objectionable—*See* WITNESS—EXAMINATION OF WITNESSES, 13 Cr. L.J. 299 = 14 Ind. Cas. 763 = 5 Bur. L.T. 38.

——9.—**Vakil.**

See PRIVATE VAKIL.

See MAD. ACT III OF 1871, cl. (4), sch. (*b*), 6 M. 100 = 7 Ind. Jur. 78.

See ADMISSION, 17 W.R. Cr. 49.

Presentation of appeal memorandum by vakil of one of the accused—*See* APPEAL—GENERAL, 2 Weir 470.

Recording evidence, when necessary—Admission by—*See* CRIM. PRO. CODE, 1898, s. 145, 7 C.W.N. 351.

See CRIM. PRO. CODE, 1898, s. 217, 2 Weir 309.

Vakil instructed to support the prosecution —Right to be heard—*See* CRIM. PRO. CODE, 1898, ss. 423, 495, 2 Weir 476.

Threat by a joint vakil to withdraw from a case unless additional fee is paid—*See* EXTORTION, 1 Weir 438 = 5 M.H.C. App. 14.

Obtaining order from Magistrate staying proceedings on pretence of motion to High Court for transfer—*See* TRANSFER OF CRIMINAL CASES—MISCELLANEOUS CASES, 3 C. W.N. 758.

Legal Practitioners Act.

See ACT I OF 1846.
See ACT XX OF 1865.
See ACT XVIII OF 1879.
See ACT XI OF 1896.

Legal Remembrancer.

See PRACTICE AND PROCEDURE, 4 C. 20= 3 C.L.R. 93.

Legal Representative.

Legal representative—Necessity to be brought on record—Criminal proceedings—*See* CRIM. PRO. CODE, 1898. s. 145, 16 M.L.T. 248=1914 M.W.N. 790=27 M.L.J. 613=15 Cr. L.J. 676 =25 Ind. Cas. 1004.

Legislature, Powers of.

(1)—*Power of the Supreme Council—Jurisdiction of the High Court.*—The power of the supreme legislative authority of India to remove any place or territory from the jurisdiction of the High Court is expressly authorised and contemplated by the Statutes and Letters Patent which affect the constitution and jurisdiction of the High Court SOONDERJEE NANJEE v. MAYLON, **26 C. 874=3 C.W.N. 564.**

(2)—*Act* XXII *of* 1869, *validity of—Delegation of legislative powers by the Legislative Council of India—Indian Legislature, its powers and limitations—Acts of Legislative Council may be questioned by the Indian High Courts—Jurisdiction of High Courts subject to Legislative Council of India—Presumption.*—The jurisdiction of the High Court is expressly made subject, by the second clause of ss. 9, 24 and 25, Vic., c 104. to the Legislative Council of India. It is quite competent for the High Court to question the validity of the Acts of the Indian Legislative Council, it being purely a legal, and not a political question to decide whether a subordinate Legislature has not exceeded its powers.—(*Per Garth C. J., Jackson, Markby, Ainslie and Kemp, JJ.*) The High Court has no such power, if the Act is not within any of the prohibitions of the Indian Council's Act. — (*Per Macpherson and Pontifex, JJ.*) The Legislative Council of India cannot delegate its powers ; the powers of delegation cannot be considered as validated by a long course of practice, nor as sanctioned by the tacit recognition of Parliament. Act XXII of 1869, in so far as it delegates Legislative powers to the Lieutenant-Governor of Bengal is, therefore, invalid. *Per Kemp, Jackson, Markby and Ainslie, JJ.*) Such delegation is valid and the passing of Act XXII of 1869 was not *ultra vires* —(*Per Garth, C.J., Macpherson and Pontifex, JJ.*) —*Obiter* —(1) Courts of law cannot question the validity of acts of the Legislature upon general considerations of religion, morality, natural justice, the so-called social contract, or other similar grounds. (6 B.L.R. 482, *Referred to.*) (2) Acts of the Supreme Legislature, and those of a limited Legislature, not in excess of the powers conferred upon the latter, are equally binding upon Courts of law. (3) The presumption is that Laws and Regulations made in India are known to the Imperial Parliament in

Legislature, Powers of—*continued.*

England. EMPRESS v. BURAH. **3 C. 63, F.B. =1 C L.R. 161, F.B.** [*Reversed*, 4 C. 172, P.C.=16 C.W.N. 1105 ; *R* , 11 A. 490=9 A.W. N. 1889, 194, F.B. U.B.R. 1897—1901, Vol. II, 535.]

(3)—*Jurisdiction of High Courts, subject to the Indian Legislature—. Indian Legislature—Its powers and limitations—Act* XXII *of* 1869, *s.*9 —*Authorised vesting of discretion by the Indian Legislature.*—3 C. 63 was reversed on appeal in 4 C. 172=5 I.A. 178=3 C.L.R. 197 which decided :—By the terms of 24 and 25 Vict., c. 104, the exercise of jurisdiction, in any part of Her Majesty's Indian territories, by the High Courts was meant to be subject to, and not to be exclusive of, the general legislative power of the Governor-General in Council as to "all Courts of justice whatever." An exercise of legislative authority by the Governor-General in Council removing any place or territory from the jurisdiction of the High Court is expressly contemplated and authorised both by Statutes 24 and 25 Vict., c. 104 and by the Letters Patent issued thereunder. Though the Indian Legislature cannot act beyond the limits expressly imposed by the Act of the Imperial Parliament creating it, yet, when acting within those limits, it has plenary powers of legislation as large, and of the same nature, as those of Parliament itself and is in no sense an agent or delegate of the Imperial Parliament. The established Courts of Justice, when a question arises whether the prescribed limits have been exceeded, must determine that question by looking to the terms of the instrument by which the legislative powers were created and restricted. The Governor-General in Council could not, by any form of enactment, create in India, and arm with general legislative authority, a new legislative power, not created or authorised by the Councils Act. Where plenary powers of legislation exist as to particular subjects, whether in an Imperial or Provincial Legislature, they may be well exercised, either absolutely or conditionally. Legislation, conditional on the use of particular powers or on the exercise of a limited discretion entrusted by the Legislature to persons in whom it places confidence, is no uncommon thing ; and in many circumstances, it may be highly convenient. The Imperial Parliament did not, when constituting the Indian Legislature, use words to exclude such conditional legislation from its powers. So, it was held by the P C., overruling the decision of the majority of the F.B. in 3 C. 63 that s. 9 of Act XXII of 1869 authorising the Lieutenant-Governor of Bengal to extend the operation of the Act to certain territories was not *ultra vires.* EMPRESS v. BURAH. **4 C. 172, P C =5 I.A. 178=3 C.L.R. 197=3 Sar. 834=3 Suther. 556=2 Shome L. R. 63.** (3 C. 63, *Overruled*). [*R.*, 11 A. 490, F B., 10 B 428, 15 B. 505, 18 B. 636, 26 C. 188, 26 C. 874=3 C.W.N. 564, 13 Cr L J. 609 =16 Ind. Cas. 257=15 C.L.J. 517=16 C.W.N. 1105 ; *D.*, 5 L.B.R. 163, F.B.]

Power of Commissioner of Police to prohibit processions or public assembly—Competency of

Legislature, Powers of—*concluded.*

Indian Legislatures to make regulations for the purpose—*See* BEN. ACT IV OF 1866, s. 62-A, cls. 4, 6, s. 102, 17 C.W N. 505=18 Ind. Cas. 685=14 Cr. L.J. 125=40 C. 470.

See EUROPEAN BRITISH SUBJECT, 5 M. H.C. 277.

See HIGH COURT, JURISDICTION OF—GENERAL, 26 C. 188=3 C W N. 49.

See JURISDICTION OF CRIMINAL COURTS—GENERAL, 14 B.L.R. 106=22 W.R. 54, Cr.

See LOCAL GOVERNMENT, 5 M.H.C. 277.

See REVISION—MISCELLANEOUS CASES, Rat. Un. Cr. C. 672=Cr. Rg. 37 of 1893.

Legitimacy.

See CRIM. PRO. CODE, 1898, s. 488, U.B.R. 1892—1896, Vol. I, 74.

Lessor and Lessee.

See CRIMINAL TRESPASS, 1 Weir 517.

Letter.

Defamation—Addressed to a legal practitioner in reply to the notice of a claim on behalf of his client, which contains imputation concerning the client—Publication—Privileged communication—Imputation addressed to the person himself—Defaming husband in wife's presence and *vice versa*—*See* DEFAMATION, 6 P.W.R. 1910, Cr.=10 P.R. 1910, Cr.

From Medical Officer — Letter expressing opinion—*See* EVIDENCE — MEDICAL EVIDENCE, 12 W.R. Cr. 25.

Letter Lost.

Newspaper in which published — Whether secondary evidence — *See* EVIDENCE ACT, 1872, s. 63, 8 A.L.J. 302=10 Ind. Cas. 259=10 Ind. Cas. 852.

Letters Patent.

1.—ALLAHABAD.
2.—BENGAL.
3.—BOMBAY.
4.—MADRAS.

——1.—Letters Patent, 1865, Allahabad.

(1)—*Letters Patent—St.* 24, 25 *Vict.*, c. 194, s. 16—*Constitution of Court—Appointment of the sixth Judge to the High Court for N.W.P.—Practice—Conviction on evidence similar to that given in another case—Appeal from acquittal.*—It was perfectly competent by Letters Patent to appoint a sixth Judge to the High Court of Judicature for the North-Western Provinces and it is a properly constituted High Court. Where three persons were charged of the same offence on the same facts, and two of them, who were found, were tried and convicted, the case of the third, when found, should be heard and decided altogether irrespective of the fact that there had been a previous trial and conviction upheld by the High Court against the other accused. There is no distinction between the right of appeal against an acquittal and a right of appeal against a

Letters Patent—continued.

——1.—Letter Patent, 1865—Allahabad—*cld.*

conviction. KING-EMPEROR v. GHURE, 12 **A.L J. 231=36 A. 168=15 Cr.L.J. 200=22 Ind.Cas. 984.** (20 A. 459, *Appr.*; 16 A. 212, *R.*)

(2)—S. 8—*See* ACT XVIII OF 1879, s. 36, 17 A. 498=22 I.A. 193, P.C.

(3)—S. 8—*See* LEGAL PRACTITIONERS—PLEADER, 18 A. 174, F.B =A.W N. 1896, 20, 22 A. 49, P.C.=26 I.A. 242=3 C.W.N. 736.

(4)—Ss. 18, 19—*See* REVIEW, 7 A. 672.

(5)—S. 19—*See* No. 4, *supra.*

(6)—*S.* 27—*High Courts Acts, s.* 13—*Difference of opinion among the Judges of a Division Bench—Procedure.*—The term appellate, used in s. 13 of the High Courts Act and s. 27, Letters Patent, include the judicial function of the High Court as a Court of Revision, as well as the judicial functions of the Court as a Court of appeal. Therefore the Court is empowered to delegate its functions, as a Court of Revision, as well as its functions as a Court of appeal to Division Benches. *Held by Morgan, C. J. and Turner, J.* (*Ross and Spankie, JJ., dissenting*) :—When a case is heard by a Division Bench, and on the decision thereof, a difference of opinion arises, the opinion of the senior Judge must prevail, and the order of the Court must issue in accordance with his judgment; the reference of the case to a third Judge is beyond the competency of a Division Court. Where such reference is made, an application to set aside the order is not in the nature of review of its own judgment, but is in the nature of an application to correct or amend its order which is therefore cognizable by the High Court. QUEEN v. NYN SINGH, 2 N.W.P. 117, F.B. [*R.*, 22 M. 68=8 M.L.J. 231, F.B.]

——2.—Letters Patent, 1865—Bengal.

(1)—Cl. 10—Proceeding under—Attorney proceeded against making affidavit—Alleged false statements—Public Prosecutor applying for sanction to prosecute—What Bench to give sanction—*See* CRIM. PRO. CODE, 1898, s. 195, 15 Cr. L.J. 49=22 Ind. Cas. 321=41 C. 446.

(2)—*Cls.* 10, 39—*Review—Civ. Pro. Code,* 1908, *s.* 114, *O.* XLVII, *r.* 1—*Crim. Pro. Code, s.* 195—*Order of High Court—Disciplinary jurisdiction—High Court's power to grant leave to appeal to Privy Council against order under cl.* 10 *of Letters Patent—Privy Council, appeal to — Public Prosecutor of Calcutta — Order granting leave to appeal whether may be reviewed at instance of Public Prosecutor.* — Cl. 39 of the Letters Patent empowers the High Court to declare the fitness of an appeal to the Privy Council in any matter not being of criminal jurisdiction, if it is a final judgment, decree or order of the Court made on appeal or in the exercise of original jurisdiction. A proceeding under cl. 10 of the Letters Patent, under which the High Court is

Letters Patent—continued.

——2.—**Letters Patent, 1865—Bengal**—*ctd.*

empowered to deal with professional misconduct, does not fall under any of the jurisdiction specified in the Letters Patent, and, therefore, is not governed by cl. 39. Therefore, no leave to appeal to the Privy Council can be given by the High Court in such a proceeding. Where the High Court, in a proceeding under cl. 10 of the Letters Patent, has granted sanction to the Public Prosecutor to prosecute an Attorney for alleged perjury, the High Court cannot, under cl. 39 of the Letters Patent, grant leave to the Attorney to appeal to the Privy Council against the order of the High Court. Where such a sanction was granted to the Public Prosecutor, and under some misconception the High Court granted leave to the Attorney to appeal to the Privy Council: *Held*, that the order granting leave was clearly an order affecting the authority which the Public Prosecutor had under the sanction to prosecute the Attorney, and an application for review of the order of the High Court was maintainable at the instance of the Public Prosecutor. MR. HUME v. PORESH CHANDRA GHOSH, **15 Cr. L.J. 52 = 22 Ind. Cas. 324 = 41 C. 734.**

(3)—Cl. 12—*See* JURISDICTION OF CRIMINAL COURTS—GENERAL, 6 B.L.R. 141.

(4)—*Cl 15—"Appeal" — "Judgment"—Appealable order—Order granting* mandamus. —*Held* (*per Couch, C.J. and Markby, J*; on appeal), the word "judgment" in cl. 15 of the Letters Patent of 1865 means a "decision," whether final or preliminary, or interlocutory, which affects the merits of the question between the parties by determining some right or liability. The order of the Court below, that a writ of *mandamus* should issue, was not a "judgment," and therefore no appeal lay from it. JUSTICES OF THE PEACE FOR CALCUTTA v. ORIENTAL GAS COMPANY, **8 B L R. 433 = 17 W R 364.** *See, also*, HOWARD v. WILSON, **4 C. 231 = 2 C.L.R 488.** [*Appr.*, 21 C. 473, 26 C. 361, 18 C. 182; *F.*, 2 C. 466, 5 C.W.N. 781; *D*, 12 B.H.C. 129, 1 M. 148; *R.*, 9 B.H C. 398, 6 C. 594, 22 C. 928, 22 M. 68, F.B., 8 M.L J. 231, F.B, 24 B. 302, 11 A. 375, 29 C. 286, 301]

(5)—S. 15—*See* APPEAL—CASES WHERE APPEAL LIES, 29 C. 286 = 6 C.W.N. 254, F.B.

(6)—S 15—*See* SANCTION TO PROSECUTE —EXPIRY OF SANCTION AND LIMITATION, 32 C. 379 = 9 C.W.N. 321.

(7)—Cls. 22 to 24—*See* ACT XIV OF 1908, 13 C.W.N. 605.

(8)—Cl. 23—*See* No. 7, *supra*.

(9)—Cl. 24—*See* No. 7, *supra*.

(10)—*S. 26—Prisoner sentenced by Sessions Judge to rigorous, for an offence punishable only with simple, imprisonment.*—Where the Sessions Judge sentenced a prisoner to rigorous imprisonment for a crime punishable only with simple imprisonment, *held* that this was an error which might be reviewed on the Advocate-General's certificate under the Charter of 1865, s. 26. REG. v. YED ALI KHAN, **1 Ind. Jur. N.S. 424.**

(11)—*Cl. 26—Power to review whole case.*—In a case under cl. 26 of the Letters Patent, the Court has power to review the whole case and affirm or quash the conviction. QUEEN v. HURRIBOLE CHUNDER GHOSE, **1 C. 207 = 25 W R. Cr. 36.** [*F.*, 25 C. 711; *R.*, 10 M.L.J. 147, 9 Bom. L R. 789 = 6 Cr. L.J. 164 = 2 M. L.T. 414 = 32 B. 111.]

(12)—*S. 26—Certificate by Advocate-General, when grantable.*—It would be a dangerous doctrine to admit that a certificate ought to be granted by the Advocate General in a case in which he thinks that a Judge of the High Court, sitting in the Ordinary Original Criminal Jurisdiction of the High Court, has exercised his judicial discretion erroneously in not granting an adjournment applied for by the prisoner's counsel. It is not also compulsory on the Court to deal with a certificate founded upon such a point EMPRESS v. PATRICK MC. GUIRE, **4 C.W.N. 433, F.B.**

(13)—*S. 26—Review of criminal case decided by High Court in Original Criminal Jurisdiction on certificate of Advocate-General—Statement by Presiding Judge as to what took place at trial—Jurisdiction of High Court to consider case when errors alleged in certificate not established—Crim. Pro. Code, ss. 297, 298—Duty of Judge in charging jury—Judge in charging jury if bound to explain law on exceptions reducing murder to culpable homicide when no exception pleaded and when there is no evidence of that—Withdrawal of case under s. 304, I.P.C., if necessarily follows from direction that exceptions in s. 300 do not apply—Court if should consider case not made by counsel defending accused—"Lay down the law" in s. 297, meaning of—Non-direction if always misdirection—Evidence Act, s 105.*—The accused was tried and convicted in the Criminal Sessions of the High Court. He was placed on his trial on charges under ss. 302, 304 and 326, I.P.C, to which he pleaded not guilty. He was defended by counsel who argued that the case against the accused was one of murder or nothing, and the jury could not convict him of murder on the meagre and unsatisfactory testimony before the Court. Grave and sudden provocation was no part of the defence case. The Judge in charging the jury laid down the law under s. 302, I.P.C., but not that under s. 304, or the exceptions contained in s. 300. He observed that he did not see that there was any evidence of any of the exceptions provided for in s. 300. He did not explain to the jury the application of the exception of provocation to the facts of the case. The jury found the accused guilty under s. 302 by a majority of 8 to 1 and the Judge agreeing with the verdict gave judgment in accordance therewith. No verdict was taken on the charges under ss. 304

Letters Patent—continued.

——2.—Letters Patent, 1865—Bengal—*ctd.*

and 326, I.P.C. The case came up before a Full Bench on a certificate granted by the Advocate General under s. 26 of the Letters Patent. *Held*—That a statement by the Trial Judge as to what took place at the trial is conclusive. That there was no illegality in not taking the verdict of the jury on the charge under s. 304, I.P.C. That, where there is no misdirection or other error as certified by the Advocate-General under s. 26 of the Letters Patent, his certificate is misconceived and the High Court has no power to interfere. It is not within its power to re-open the case and express any opinion on the merits. That, in the present case, in the absence of any direct evidence of grave and sudden provocation or of facts from which this exception could be legitimately inferred, the Judge was correct in excluding enquiry into the exception. That, under s. 105 of the Evidence Act, the Court has to regard the absence of grave and sudden provocation as proved until the contrary is proved by the accused on whom the *onus* lies. *Per Jenkins, C.J.*—That it is not impossible under the law to leave the case to the jury under s. 304, I.P.C., after holding that the exceptions enumerated in s. 300 do not apply to the circumstances of the case. That, under ss, 297 and 298, Crim. Pro. Code, it comes within the duty of the Judge to determine whether any evidence has been given on which the jury can properly find the question for the party on whom the *onus* of proof lies. It is not enough to say that there was some evidence. There must be evidence on which the jury might reasonably and properly conclude the fact to be established. That the duty of the Judge in charging the jury is to lay down the law in reference to the case presented to the Court and the facts of the case and not to perplex the minds of the jury with considerations that are outside the legitimate scope of the enquiry. That the conduct of a case by counsel is not a negligible factor even in a criminal suit, though it may not conclude the accused, and in approaching the question whether the Judge rightly decided as a matter of law that there was no evidence of any of the exceptions, it is relevant to consider how the accused's case was placed before the Court. *Per Stephen, J.*—That the propriety and not the possibility of an inference is the test by which a Judge should decide whether or not he should suggest a case for the consideration of the jury on his own initiative. It is the duty of a Judge to make a case for the accused on which he thinks that a verdict of not guilty may be properly returned, though the case has not been suggested by or on behalf of the accused. It is the duty of defending counsel to make the Judge aware of any case that he considers may be made on behalf of the accused though he has not made it himself. *Per Woodroffe, J.*—It cannot be laid down as a general proposition of universal applicability that a Court cannot and should not consider a case in favour of the accused which he has not raised. If such a case arises on the prosecution

Letters Patent—continued.

——2.—Letters Patent, 1865—Bengal—*ctd.*

evidence, it should be put to the jury for their consideration, whatever line might have been taken by the accused or his counsel. But on the question whether an inference does arise in favour of the accused, the fact that a particular defence has or has not been taken may affect the significance of the evidence given. *Per Mookerjee, J.*—The expression "lay down the law" in s. 297, Crim. Pro. Code, does not signify "lay down the whole law on the subject irrespective of the facts of the particular case before the Court." The reasonable construction of s. 297, Crim. Pro. Code, is that the Judge should lay down the law only in so far as it bears upon the evidence adduced in the particular case. The mere fact that counsel for the accused has failed to present to the Court a particular aspect of the case cannot justify an omission on the part of the Judge to draw the attention of the jury to what appears to be a possible answer to the charge against the accused even on the prosecution evidence: it would be the duty of the judge to draw the attention of the jury to such possible view of the case on the evidence, notwithstanding that it may have escaped the counsel for the accused. Mere non-direction is not necessarily misdirection: those who allege misdirection must show that something wrong was said or that something was said which would make wrong that which was left to be understood. Every summing up must be regarded in the light of the conduct of the trial and the questions which have been raised by the counsel for the prosecution and for the defence respectively. *Per Holmwood, J.*—No error of law is committed by a Judge who refrains from directing the jury as to exceptions which have neither been raised nor relied upon by the accused and have no basis in evidence on the record. Where there is no evidence bringing the case directly within any such exception, it would be misdirection to ask the jury to come to a finding of fact on a hypothetical state of circumstances which do not bring the case within the exception as a matter of fact. KING-EMPEROR v. UPENDRA NATH DAS, **19 C.W.N. 653=21 C.L.J. 377, F.B.**

(14)—S. 26—*See* CHARGE TO JURY—MISDIRECTION, 17 C. 642.

(15)—S. 28—*See* CRIM. PRO. CODE, 1898, ss. 423, 427, 435, 439, 27 C. 126=3 C.W.N. 601.

(16)—Cl. 28—*See* HIGH COURT, JURISDICTION OF—REVISIONAL POWERS OF HIGH COURT, 26 C. 746=3 C.W.N. 598.

(17)—Cl. 39—*See* No. 2, *supra*.

(18)—Cl. 41—Decision of third Judge on reference—Leave to appeal to Privy Council—*See* APPEAL—APPEAL TO PRIVY COUNCIL, 18 C.L.J. 121=14 Cr. L.J. 672=21 Ind. Cas. 912.

Letters Patent—continued.

——2.—Letters Patent, 1865—Bengal—*cld.*

(19)—Cl. 41—Order by High Court in revision under s. 118, Crim. Pro. Code—Appeal to Privy Council if lies—*See* CRIM. PRO CODE, 1898, s. 118, 18 C.L.J. 119=21 Ind. Cas. 470 =14 Cr. L.J. 598.

——3.—Letters Patent, 1865—Bombay.

(1)—*Leave to appeal to Privy Council—Criminal cases—Murder, abetment of—Sorcery.*—Only in cases where there has been any difference of opinion amongst the Judges, or any question of jurisdiction, or in which any other question of great and general importance has been decided, will the High Court be justified in granting permission to appeal to Her Majesty in Council. Whether abetment of murder by sorcery or other impossible means is an offence under the Penal Code. REG. v. PESTANJI DINSHA, **10 B.H.C. 75.**

(2)—*S. 15—Appeal against order of discharge—Interference by High Court.*—There is no appeal against an order of discharge made by a Presidency Magistrate, nor can a complainant apply to the High Court with a view to invoke its aid under s. 15 of the Charter. HOWARD v. MAHAMADALLI, **Rat. Un. Cr. C. 335.**

(3)—*Cl. 15—Crim. Pro. Code* (1882), s. 491—*Custody of minor—Habeas Corpus.*—An order discharging a rule to show cause why a minor should not be delivered to the claimant is a judgment under the Letters Patent, cl. 15, and consequently there is a right of appeal against such order. *In the matter of* NARRONDAS DANJI, **14 B. 555.** [*R.*, 29 C. 286.]

(4)—Cl. 24—*See* HIGH COURT, JURISDICTION OF—GENERAL, 9 B. 288, F.B.

(5)—*Cl. 25—High Court's Criminal Procedure Act*, X *of* 1875, *s.* 101—*Points of law reserved for the consideration of the High Court—Its powers—Evidence Act*, *s.* 167.—The High Court, on a point of law, as to the admissibility of evidence, reserved under cl. 25 of the Charter Act and s. 101 of Act X of 1875, can review the whole case and determine whether the admission of the rejected evidence would have affected the result of the trial; and a conviction ought not to be reserved unless the omission of the rejected evidence would have affected the result of the trial. IMPERATRIX v. PITAMBER JINA, **2 B. 61.** [*R.*, 19 B. 749, 32 B. 111=9 Bom. L.R. 789=6 Cr. L.J. 164=2 M L.T. 414, 10 M.L.J. 147.]

(6)—*Cls.* 25, 26—*Refusal of Judge to reserve point of law.*—It is completely a matter of discretion with the Judge whether he reserves for the High Court any point of law. The exercise of the discretion of the Judge is not reviewable by the High Court under cl. 26 of the Letters Patent. REG v. PESTANJI DINSHA, **10 B.H.C. 75.**

(7)—*Ss.* 25 *and* 26—*Confession of accused, admissibility of—No certificate of the Advocate-General—Review.*—On the question whether the High Court can review the whole case and decide whether a confession of the accused was properly admitted by the learned trial Judge, when there was no certificate of the Advocate-General, under cl. 26 of the Amended Letters Patent, 1865, that it was wrongly admitted. *Held, by Davar, J.*, (*Russel, Ag. C. J., Chandavarkar and Batty, JJ.*, did not express their opinion), that, in the absence of any reservation of the point by the trying Judge, as provided by cl. 25 of the Amended Letters Patent or of any certificate from the Advocate-General, the Court was precluded from re-opening the question, which was decided by the learned Judge presiding at the trial. The words "review the case" in cl. 26 must be read with the words that follow, *viz.*, "or such part of it as may be necessary and finally determine such point or points of law." Under cl. 26 the Court is at liberty to review the case or part of the case, for the purpose of determining the point or points of law that are either reserved for our opinion or are certified by the Advocate-General to be wrongly decided. *Per Beaman, J.*—Where the Advocate-General has certified a particular piece or pieces of evidence to have been wrongly admitted, the Court of Reference, constituted under cl. 26 of the Charter, has first to determine whether or not the certificate is well founded, and if it decides that it is, then, to deal with what remains of the evidence, after striking out what has thus been adjudged not to be evidence. If the party applying for the Advocate General's certificate has objected to another piece of evidence as wrongly admitted, but the Advocate-General has refused to certify that, in his opinion, it was done so, then, there are two opinions, his and that of the trying Judge, in favour of admissibility of the evidence, and that is and was intended to be enough. If the party did not object, did not ask for a certificate in respect to evidence, which is thus challenged, for the first time after the trial, at the hearing before the Court of Reference, the objection comes too late. On the question whether the confessions of the accused were not irrelevant under s. 24 of the Indian Evidence Act: *Held* by *Batty, J.*, that it is not sufficient to render a confession irrelevant under s. 24 that there may have been added to it a statement which has been improperly induced by threat or promise. In order to make a confession irrelevant, it must be shown that the confession itself was improperly induced. *Per Beaman, J.*—Had it been open to us to decide whether the confessions ought to have been admitted, it was doubtful whether s 24 might not have shut them out. EMPEROR v. NARAYAN RAGHUNATH PATKI, **9 Bom L.R. 789, F.B.=32 B. 111=6 Cr. L.J 164=2 M L.T. 414.** [*F.*, 11 Cr. L J. 117=5 Ind. Cas. 357=13 O.C. 7; *Rel.*, 11 Cr. L.J. 498=7 Ind. Cas. 601=4 S. L.R. 38; *R.*, 36 C. 281=9 C.L.J 198=13 C.W.N. 197=5 M.L T. 97, 35 M. 397=13 Cr. L J. 352=14 Ind. Cas. 896=12 M.L.T. 1=1912 M.W.N. 549, 7 A L.J. 468=11 Cr. L J. 235=6 Ind. Cas. 101, 16 Bom.L.R 603, 22 M.L.J. 490 =1912 M.W.N. 207; *D.*, 1 Ind. Cas. 970.]

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——3.—Letters Patent, 1865—Bombay—*cld.*

(8)—*Ss.* 25 *and* 26—11 *and* 12 *Vict*, c. 78—*Reserving of questions of law—Non direction—Powers of High Court.*—The power under Stat. 11 and 12 Vict., c. 78, and under the Letters Patent, to reserve questions of law, is, in criminal cases, to a considerable extent, more analogous to the mode of raising questions of law in civil cases by a bill of exceptions than to a motion for a new trial. The power is confined only to cases of misdirection, and does not extend to cases of non-direction. For the latter class of cases, the Advocate-General should not grant a certificate under cl. 26 of the Letters Patent. But on motions for a new trial, where the questions whether a verdict is against the weight of evidence may be raised, the Courts are accustomed to give more consideration as to the point whether the Judge has omitted to give a proper direction to a jury than upon a bill of exception. REG. v. PESTANJI DINSHA, **10 B.H.C. 75.** [*R.*, 8 B. 380, 17 C. 642, Rat. Un. Cr. C. 644.]

(9)—*S.* 26—*Powers of High Court, when point of law is reserved—Evidence Act, s.* 167.—*Held by Sargent, C.J. and Green, J.* (*Bayley, J., dissenting*).—The High Court, in considering a point of law reserved under cl. 26, Letters Patent, should not set aside a conviction on the head of charge (where there are two heads of charges relating to distinct and separate offences and where that Court is of opinion, that evidence had been improperly admitted on only one head of charge) on which there had been no such improper admission of evidence, but should pass judgment and sentence upon it, if it appears that the evidence improperly admitted could not have reasonably influenced the jury on this charge. *Quære*:—Whether the High Court disposing of a point or points of law reserved, if it considers that any evidence tendered on the part of the prosecution on one head of charge has been improperly admitted by the Judge trying the case, has power to look at the evidence in support of that head of charge against the admission of which no exception can be taken, and say whether on such evidence alone, the conviction on that head of charge can be sustained. REG. v. NAUROJI DADABHAI, **9 B H C. 358.** [*R.*, 1 C. 207, 2 B. 61, 19 B. 749, 25 C. 711, 10 M.L.J 147, F.B.]

(10)—S. 26—*See* Nos. 6, 7 and 8, *supra.*

(11)—S. 28—*See* ACT V OF 1876, s. 8, Rat. Un. Cr. C. 494.

(12)—*S.* 29—*Transfer of criminal appeal.*—Under s. 29 of the Amended Letters Patent of the 28th December, 1865, the High Court can transfer for hearing by itself, a criminal appeal filed in a Court of Sessions. REG. v. APPA MALLYA, **Rat. Un. Cr. C. 110 = Cr. Rg. 5-10-1876.**

(13)—Cl. 41—*See* APPEAL—APPEAL TO PRIVY COUNCIL, 7 B.H.C. Cr. 77.

Letters Patent—continued.

——4.—Letters Patent, 1865—Madras.

(1)—S. 8—Effect—*See* CERTIORARI, WRIT OF, 1912, M.W.N. 1012 = 23 M.L J. 393 = 16 Ind. Cas. 755 = 13 Cr. L J. 723.

(2)—*S.* 10—*Powers of a Divisional Court to direct rule to be issued against an Advocate.*—A Divisional Bench of the High Court consisting of two Judges has power to direct a rule to be issued calling on an Advocate of the High Court to answer matters alleged against him under s. 10 of the Letters Patent. SULLIVAN v. NORTON, **10 M. 28, F.B**

(2-*a*)—S. 11—*See* No. 27, *infra.*

(2-*b*)—S. 12—*See* No. 27, *infra.*

(2-*c*)—S. 13—*See* No. 27, *infra.*

(3)—*Cl.* 15—*High Court—Letters Patent—Appeal under cl.* 15 *against order in criminal appeal by a single Judge—"Trial" includes appeal.*—The word trial in cl. 15 of the Letters Patent of the High Court includes an appeal. WALLAJAPET RAJAMMAL v. EMPEROR, 1911, **2 M.W.N. 479 = 10 M.L.T. 502 = 12 Cr. L.J. 565.**

(4)—*Cl.* 15—*Order refusing bail—Judgment—Appeal, whether lies from order of a single Judge of the High Court to a Division Bench.*—An order of a High Court Judge refusing to grant bail to an accused person is an order in a criminal trial. It is not a judgment within the meaning of cl. 15 of the Letters Patent and is not appealable to a Division Bench. SUBRAHMANYA AIYAR v. EMPEROR, **4 Ind. Cas. 871 = 19 M.L.J. 478 = 11 Cr. L.J. 279.**

(5)—*S.* 15—*Judgment—Appealability of order of single Judge of High Court interfering or declining to interfere in revision.*—An appeal lies against the decision of a single Judge of the High Court whenever it amounts to a judgment; and an order of a single Judge interfering in revision is an appellate judgment. Similarly, the rejection by such a Judge of a revision petition, on the ground that the objection therein taken to the jurisdiction of the lower appellate Court to pass a certain order was unfounded, is also a judgment and is appealable. RAMA AYYAR v. VENKATACHALA PADAYACHI, **30 M. 311 = 2 M. L.T. 84 = 17 M.L.J. 123 = 5 Cr. L.J. 288**

(6)—*S.* 15—*Order by single Judge of High Court under s.* 195, *Crim. Pro. Code.*—An order under s. 195, Crim. Pro. Code, by a single Judge of the High Court, is not a sentence or order passed in a criminal trial. Therefore, an appeal lies from such an order. CHAKRAPANI AIYANGAR v. KING-EMPEROR, **1 Weir 787 = 2 Weir 199.**

(7)—*S.* 15—*Order by a Judge of High Court dismissing appeal under s.* 421, *Crim. Pro. Code.*—A judgment by a single Judge of the High Court dismissing an appeal under s. 421, Crim. Pro. Code, is an order made in a criminal trial in appeal, and, therefore, no appeal lies from such order under s. 15 of the Letters Patent. *In re* CHINNA KARUPPAN, **1 Weir 788 A.**

Letters Patent—continued.

——4.—Letters Patent, 1865—Madras—*ctd.*

(8)—*S.* 15—*Order by single Judge of the High Court regarding compensation under s.* 545, *Crim. Pro. Code.*—An order by a single Judge of the High Court on a criminal revision petition, refusing to interfere with an order relating to compensation under s. 545, Crim. Pro. Code, is one passed in a criminal trial, and, therefore, is not appealable. VIJIARAGHAVA IYENGAR v. CHAKRAVARTI IYENGAR, **1 Weir 788-B.**

(9)—*Cl.* 15—*Order under s.* 488, *Crim. Pro. Code passed by a Magistrate—Revision to High Court—Order of a single Judge—No appeal.*—An order under s. 488, Crim. Pro. Code, awarding maintenance is an order passed in a criminal trial, and no appeal under s. 15 of the Letters Patent lies against an order of a single Judge of the High Court passed in a criminal revision case preferred against an order of a subordinate Magistrate awarding maintenance under s. 488. RAJANA APPADU v. RAYANA APPANNA, **17 M.L.T. 330 = 28 M.L.J. 483 = 16 Cr. L.J. 326 = 28 Ind. Cas. 662.** (5 B H.C. Cr. 81, *R.*)

(10)—*Cl.* 15—*Criminal trial—Revision—Appeal, if competent.*—The order passed by a single Judge of the High Court in the exercise of its criminal revisional jurisdiction is one passed in a criminal trial if the proceedings which gave rise to the revision were a criminal trial, and no appeal lies under cl. 15 of the Letters Patent against such an order. *In re* ADAPALA VENKATA NARASA REDDY, **2 L.W. 363.** (27 M. 510, *F.*)

(11)—S. 15—*See* APPEAL—CASES WHERE APPEAL DOES NOT LIE, 27 M. 510 = 1 Weir 787 = 14 M.L.J. 394.

(12)—S. 15—*See* SANCTION TO PROSECUTE—AUTHORITIES COMPETENT TO GRANT SANCTION, ETC., 17 M. 105 = 1 Weir 786.

(13)—S 15—*See* SANCTION TO PROSECUTE—NATURE AND FORM OF SANCTION, 12 M. L.J. 408.

(14)—S. 21—*See* JURISDICTION OF CRIMINAL COURTS—JURISDICTION OVER EUROPEANS, 1 Weir 4 = 2 M.H.C. 444.

(15)—Cls. 22, 24, 25, 26, scope of—*See* EVIDENCE ACT, 1872, ss. 25, 26, 114, Ill. (*b*), 133, 157, 1912 M.W.N. 549 = 12 M.L.T. 1 = 13 Cr. L.J. 352 = 14 Ind. Cas. 896 = 35 M. 397.

(16)—Cl. 24—*See* No. 15, *supra.*

(17)—Cl. 25—*See* No. 15, *supra.*

(18)—Cl. 26—*See* No. 15, *supra.*

(19)—S. 28—*See* ACT XIV OF 1874, 14 M. 121 = 2 Weir 7.

(20)—Ss. 28 and 29—*See* HIGH COURT, JURISDICTION OF—REVISIONAL POWERS OF HIGH COURT, 4 M.L.T. 186.

(21)—*S.* 29—*Powers of High Court to transfer cases.*—It is competent to the High Court, under s. 29 of the Letters Patent, to transfer any criminal case from one Court to another. COLLECTOR AND DIST. MAGISTRATE OF SALEM, *Petitioner*, **1 Weir 788-B. = 2 Weir 680.**

(22)—S. 29—Power of High Court to transfer a case under s. 145, Crim. Pro. Code—*See* CRIM. PRO. CODE, 1898, ss. 145 and 526, 26 M. 188 = 12 M.L.J. 391 = 2 Weir 678.

(23)—S. 29—*See* CRIM. PRO. CODE, 1898, s. 186, 2 Weir 146 = 1 Weir 789.

(24)—S. 29—*See* TRANSFER OF CRIMINAL CASES—TRANSFER BY HIGH COURT, 6 M. 32.

(25)—S. 29—*See* No. 20, *supra.*

(26)—S. 36—Sanction to prosecute—Order granting or revoking sanction—Difference of opinion among Judges—*See* CRIM. PRO. CODE, 1898, ss. 195, cl. (6), 429, 439, 1912 M.W.N. 499, F.B. = 14 Ind. Cas. 305 = 11 M.L.T. 367 = 22 M.L.J. 419 = 13 Cr. L.J. 209.

(27)—*Cls.* 39, 11, 12, 13—*Deputy Collector acting as Income Tax Officer—Order sanctioning prosecution for offence under s.* 193, *I.P.C., by such officer—Order of High Court refusing to quash the order by* writ of certiorari—*No appeal to Privy Council.*—No appeal lies under cl. 39 of the Letters Patent to the Privy Council against an order of the High Court refusing to quash by a *writ of certiorari* the order made by a Deputy Collector as an Income-tax officer directing that the petitioner be prosecuted for an offence under s. 193, I.P.C. *Per Sadasiva Iyer, J.*—Even if the matter was not one relating to Criminal jurisdiction, s. 39 of the Letters Patent would not apply. It is not an order passed on an appeal, though the order may be said to have been passed under the appellate jurisdiction of the High Court. It is not an order passed in the exercise of the High Court's original jurisdiction, as cls. 11, 12 and 13 of the Letters Patent show what is meant by the original civil jurisdiction of the High Court. *In re* NATARAJA IYER, **14 M.L.T. 421 = 25 M.L.J. 565 = 14 Cr. L J. 656 = 21 Ind. Cas. 897.**

Level-crossing.

Notice by the Magistrates prohibiting traffic on Railway—*See* NUISANCE UNDER CRIM. PRO. CODE, 8 B.H.C. Cr. 23.

Libel.

See DEFAMATION.

(1) *Prosecution for libel—Publication—Proof of—Admissions of accused—Cannot fill gaps in prosecution evidence—Absence of pleadings in criminal cases—Indian Evidence Act, s.* 81—*Genuineness of newspaper—Crim. Pro. Code, s.* 428—*Appellate Court—Additional evidence.* In a prosecution for libel, the prosecution must affirmatively prove that the defendant published the libel complained of. Admissions as to publication in the written statement of the accused cannot be used to fill up the gap in the

Libel—*continued.*

prosecution evidence (27 M. 238, 29 M. 372, 26 C. 49, *R.*) There are no pleadings in criminal cases which are conclusive against the party making it. The accused need only plead guilty or not guilty. The presumption of the genuineness of the newspaper, under s. 81 of the Indian Evidence Act, does not also raise a presumption that it was printed and published by the person by whom it purports to be (English Law *contra*). (15 M. and W. 319, Russ and R. 274, *Cons.*) The other sections in Chap. V of the Evidence Act under the heading of "presumptions as to documents" relate only to the admissibility of secondary evidence. The appellate Court can call for further evidence, under s. 428, Crim. Pro. Code, only if it considers necessary, that is, where the evidence on record is unsatisfactory or leaves room for some doubt, and not where there is no evidence at all. A re-trial may be ordered not necessarily in cases where the trial was held by a Court without any jurisdiction (28 C. 104, *F.*) Such a retrial is not to be ordered where the prosecution, of its own negligence, failed to produce evidence which it was bound to. *Phillips, J.*—S. 528, Crim. Pro. Code, merely says when "necessary." Necessity depends on the facts of the case. G. G. JEREMIAH v. F. S. VAS, **1911, 2 M.W.N. 576 = 10 M.L.T. 506 = 12 Ind. Cas. 961 = 12 Cr. L.J. 585 = 36 M. 457.** (17 M. 238, *F.*)

(2)—*Libellous language, interpretation of—Charge by writer in newspaper of tampering with loyalty of soldiers—Penal Code (Act* XLV *of* 1860), *s* 131 —*Fair comment—Mis-statement of fact in comment — Parliament, statements made in, put forward as writer's own, if privileged—Parliamentary debates, relevancy of—" Hansard's Reports," admissibility of—Judicial notice of facts of public history—Evidence Act* (I *of* 1872), *ss.* 57 *and* 78 (2)—*S.* 55—*Damages — Character, evidence of—Political reputation, inquiry to deportation of plaintiff under Reg.* III *of* 1818 *and reasons given therefor if mitigate damages—Official acts —Presumption of regularity—Costs.*—Where a writing in a newspaper contained the statement that the plaintiff "has been guilty of tampering with the loyalty of the Punjab sepoys." *Held* that the statement amounted to an imputation that the plaintiff had been guilty of a criminal offence (s. 131, Penal Code). *Per Harrington, J.*—In deciding whether the allegation was libellous, the meaning put on the word "tamper" in the dictionary was of little importance. The question was what would a reasonable man understand to be conveyed by the statement taken with the rest of the writing. *Per Curiam*—When what purports to be a comment on a matter of public interest contains a false allegation of fact, such statement is not protected as fair comment. It was urged in defence that the allegation of fact, *viz.*, that the plaintiff was guilty of tampering with the loyalty of sepoys, was a repetition of statements made by a responsible Minister in Parliament, and that in any case the statements made in Parliament in connection with the deportation of the plaintiff by Government under Reg. III of 1818, and the fact of deportation itself went in mitigation of the damages: *Held* that a statement which was put forward as the writer's own cannot claim to be privileged as a fair and accurate report of a proceeding in Parliament; and that moreover the statement was not in fact a reproduction of the statements in Parliament. *Per Harrington, J.*—That what was said in Parliament cannot, in the circumstances, be relevant to the issue of privilege. That the statements were not also admissible in mitigation of damages, as evidence of the plaintiff's bad character, since evidence of rumours or suspicions to the same effect as the defamatory matter cannot be given. That even if relevant, the speeches made in Parliament could not be proved by the mere production of Hansard's reports without formal proof by examining the reporter, nor could they be referred to by the Court as relating to a matter of public history under s. 57 of the Evidence Act. *Per Woodroffe, J.* (*contra*).—That although the penultimate clause of s. 57 does not absolve a party from proof of any fact which does not fall within the provisions of cls. 1 to 13 of the section, the facts of which the Court may take judicial notice are not limited to those clauses; that the facts that there were debates in Parliament in which the plaintiff's deportation and conduct were discussed were matters of public history and of such notoriety that it was reasonable to assume their existence without formal proof; and Hansard's reports were properly referred to, to enable the Court to take judicial notice of the facts relating to the debate. *Per Curiam.*—The debates in Parliament were not covered by the expression "course of proceeding" in cl. (4). *Per Woodroffe, J.*—The debates were relevant as disclosing the reasons for the deportation, which were such as could be relied on in mitigation of damages. They were also relevant as furnishing matter for comment. *Held* (*per Harrington, J.*)—That the fact that the plaintiff was deported taken in conjunction with the events which preceded it, and the part which he took in the agitation at a time of political unrest, should be taken into consideration in estimating the injury done to his reputation by the particular allegation, though if the fact of the deportation had stood alone it would not probably weigh heavily in reduction of damages. *Per Woodroffe, J.*—The fact that the Government thought fit to deport the plaintiff, the reasons therefor as inferrible from the preamble to Reg. III of 1818 and from the answers given in Parliament, and the plaintiff's conduct in so far as it appeared to justify the action of the Government, were matters to be considered in estimating the injury caused by the particular libel to his political reputation which alone was affected by the libel, but which had probably already suffered greatly from the action of Government and statements publicly made by responsible Government officials. *Per Curiam.*—That the decision of a Judge as to the

Libel—*concluded*.

amount of damages is open to review on appeal, that although the amount was materially reduced on appeal, the respondent was, in the circumstances, entitled to the costs of the appeal. "ENGLISHMAN," LIMITED v. LALA LAJPAT RAI, **14 C.W.N. 713=37 C. 760=6 Ind. Cas. 81**, (20 Q.B.D. 275, 4 Q.B. 73, 8 Q.B.D. 491, 36 C. 883, *R*.)

License.

See ACT XI OF 1878.

See MAD. ACT III OF 1878.

(1)—*Offensive trade—A storage place where oil for daily consumption is kept—License necessary.*—A place where a varying quantity of oil is kept for daily sale is a place used for storing oil, and as such license must be taken. GOVINDASAMY CHETTY v. EMPEROR, **1913 M.W.N. 74 =13 M.L.T. 144=18 Ind. Cas. 663=14 Cr. L. J. 103.**

Manufacturing and selling gunpowder without license—*See* ACT XXXI OF 1860, ss. 5 and 44, 5 M.H.C. App. 23.

Possession of arms without a license—*See* ACT XXXI OF 1860, s. 32, 9 B.L.R. Ap. 34= 18 W.R. Cr. 1, 18 W.R. Cr. 26, 9 B. 478.

Selling stamps without—*See* ACT I OF 1879, s. 68, Rat. Un. Cr. C. 317=Cr. Rg. 3 of 1887.

See ACT III OF 1880, s. 14, 15 C. 452.

Manufacturing and selling exciseable article without a license—Putting false trade marks upon cases containing exciseable articles—*See* ACT IV OF 1889, ss. 6 and 7, 23 C. 174.

See ACT IX OF 1890, s. 7, 11 Bom. L.R. 1181=34 B. 252=10 Cr. L.J. 543.

See BEN. ACT III OF 1899, ss. 198, 199, 465, 466 (1), and 574, 11 C.W.N. 885=6 C. L.J. 183=6 Cr. L.J. 148=34 C. 913.

See BOM. ACT VI OF 1863, s. 6, 5 Bom. L. R. 133.

See BOM. ACT VI OF 1873, ss. 66, 67 (2), Rat. Un. Cr C. 209.

See BOM. ACT V OF 1878, s. 45 (c), Rat. Un. Cr. C. 214=Cr. Rg. 6-8-1885.

See BOM. ACT III OF 1888, s. 394, 4 Bom. L.R. 945, Note.

See BOM. ACT III OF 1888, s. 394 (1) (c), 4 Bom. L.R. 943.

See MAD. ACT III OF 1864, ss. 21, 22, 5 M. 131.

Fee for—Place used for more purposes than one—Powers of President of the Municipality—*See* MAD. ACT III OF 1904, s. 322, 8 M L T. 373.

Houses used by pragwal for accommodating pilgrims—*See* U.P. ACT I OF 1892, s. 5 (2), 20 A. 534=A.W.N. 1898, 142.

For sale of aerated waters—Invalid condition in license—Whether breach of it is an offence—*See* CANTONMENT CODE, 1899, ss. 167, 168, 173, 47 P.R. 1905, Cr.=191 P.L.R. 1905= 3 Cr. L.J. 131.

License—*concluded*.

See CANTONMENT CODE, 1899, ss. 283, 167, 14 C.P.L.R. 135, Cr.

Application for renewal of—Producing carriage not his own before Police Superintendent—*See* PENAL CODE, ss. 177, 182, A.W.N. 1887, 268.

See BOM. REG. XII OF 1827, s. 19, Rat. Un. Cr. C. 483=Cr. Rg. 48 of 1889.

Licensing Professions and Trades.

See ACT XXI OF 1867.

Limitation.

See SANCTION TO PROSECUTE—EXPIRY OF SANCTION AND LIMITATION.

(1)—*Limitation—Holiday.*—If the time for doing an act expires when the Court is closed and, by reason of this, the act cannot be done, the act, if done on the day on which the Court re-opens, shall be held to be done within the time prescribed. MUSSAMMAT MUCHUL KOOER v. LALJEE, **2 N.W.P. 112.** [*R*., 11 O. C. 144.]

See ACT III OF 1877, s. 82, 12 C.W.N. 47.

See ACT IV OF 1889, s. 15, 22 M. 488=1 Weir 821.

Obstruction to drains—Removal—*See* BEN. ACT III OF 1884, ss. 218, 353, 1 C.W.N. 492.

See BEN. ACT III OF 1899, ss. 408, 419, 574, 631, 11 C.W.N. 1097=34 C. 909=6 Cr. L. J. 317.

See BEN. ACT III OF 1899 cl. (18), of ss. 559, 561 (*b*), 631, 10 Cr. L.J. 623=14 C. W.N. 614=4 Ind. Cas. 259=10 Cr. L.J. 522 =37 C. 545.

See APPEAL—GENERAL, 7 P.R. 1871, Cr.

Appeal presented out of time—Rejection—*See* APPEAL—APPEAL—PRACTICE AND PROCEDUDE, 5 W.R. Cr. 80.

See APPEAL—APPEAL—PRACTICE AND PROCEDURE, 6 M.H.C. 349.

See CRIM. PRO. CODE, 1898, s. 195, cl. (6), 12 Cr. L.J. 382=11 Ind. Cas. 246.

Prosecution of time barred—Effect of—*See* PENAL CODE, s. 482, 12 Cr. L.J. 246=10 Ind. Cas. 787.

See SANCTION TO PROSECUTE—CONDITIONS REQUISITE FOR GRANT OF SANCTION, ETC., L.B.R 1893—1900, 377.

Second sanction—Repetition of first sanction—Period of limitation not to be extended—*See* SANCTION TO PROSECUTE—GRANT OF FRESH SANCTION, 14 Cr. L.J. 213=19 Ind. Cas. 309=40 C. 584.

Limitation Act.

See ACT XIV OF 1859.

See ACT IX OF 1871.

See ACT XV OF 1877.

See ACT IX OF 1908.

Lingayats.

Religious procession—Exhibition of an emblem—Vyasantol emblem—District Magistrate—Order permitting the carrying of emblem—High Court—Revisionary powers—Crim. Pro. Code. 1898, s. 435—*See* BOM. ACT IV OF 1890, s. 44, 12 Bom. L.R. 1029=8 Ind. Cas. 747.

Liquor.

See KAJU LIQUOR.

Lithograph.

Signature of Magistrate—Stamp of Signature—*See* SIGNATURE, 14 W.R. Cr. 81.

Loan.

Breach of trust—Advance to brokers on pro-notes—Or trust—Debtor and creditor—Trust—*See* PENAL CODE, s. 405, 6 L.B.R. 62=17 Ind. Cas. 824=5 Bur. L.T. 143=13 Cr. L.J. 888, F.B.

Advances to brokers for supply of paddy—Absence of pro-notes—Undertaking to apply advances to purchasing paddy for advancing firm—On trust—*See* PENAL CODE. s. 405, 14 Cr.L.J 145=19 Ind. Cas. 145=7 L.B.R. 16=6 Bur. L T. 13, F.B.

Advance for purchase of paddy—Balance of—Criminal breach of trust in respect thereof—Transaction only a—No trust—No offence—*See* PENAL CODE, s. 409, 6 L.B.R. 46=14 Ind. Cas. 653=13 Cr. L.J. 269=5 Bur. L.T. 11.

Local Area.

Meaning of—*See* JURISDICTION OF CRIMINAL COURTS—GENERAL, 16 C. 667, 25 C. 858=2 C.W.N. 577.

Local Board.

Magistrate issuing notice as Chairman of—Case should not be tried by him—*See* CRIM. PRO. CODE, 1898. ss. 133, 556, 11 Cr. L J. 2=4 Ind. Cas. 437=10 C.L.J. 484.

Local Board Road Sircar.

(1)—*Penal Code*, s. 21 (10)—*Local Board Road Sircar, whether a public servant.*—A Local Board Road Sircar is not a public servant within the meaning of s. 21, Penal Code. ADDAITA BHUIA v. KALI DAS DE, **12 C.W.N. 96=6 Cr. L.J.** 393.

Local Boards Act.

See MAD. ACT V OF 1884.

Local Enquiry.

See LOCAL INQUIRY.

Local Funds Act.

See MAD. ACT IV OF 1871.

Local Government.

(1)—*Crim. Pro. Code, Act* X *of* 1882, s. 541—*Act* IX *of* 1894, s. 60 (*t*)—*Act V of* 1871 (*Prisoners*) — *Different jails — Jurisdiction.*— From s. 541 of the Crim. Pro. Code, s. 60, cl. (*t*) of Act IX of 1894, and the Prisoner's Act of 1871. it is clear that the power of directing imprisonment to be in different jails belongs to the Local Government and the Inspector-General of Prisons, and not to the Criminal Court passing sentence. QUEEN-EMPRESS v. RADHA, **Rat. Un. Cr. C. 827=Cr. Rg. 70 of 1895.**

Local Government—*concluded.*

(2)—*European British subject—Power of Local Legislature to confer jurisdiction on Magistrate over such subject for a newly-created offence.*—*Quære*—Whether the local Legislature has the power to render European British subjects punishable by a Magistrate on a summary conviction for an offence newly created by them. REG v. DONOGHUE, **5 M H C. 277.**

See ACT XIV OF 1874, ss. 3, 5, 6, 10 B. 274.

See ACT I OF 1878, ss. 5 and 9, 1 S.L.R. Cr. 70=8 Cr. L.J. 188.

Powers of, to transfer case—*See* BUR. ACT XVII OF 1875, 10 C. 643.

Government established by law in British India includes—*See* ACT I OF 1910, ss. 4 (1) (c), 17, 19, 210 P.L.R. 1914=36 P.W.R. 1914, Cr.=15 Cr L.J. 490=24 Ind. Cas. 578=27 P. R 1914, Cr., F.B.

See PUN. ACT IV OF 1872, s. 45, 9 P.R. 1907, Cr.=36 P.W.R. 1907=6 Cr L.J. 379=42 P.L.R. 1908.

Power of—to appoint Additional Sessions Judge to try a case of bribery against a Public officer—*See* CRIM. PRO. CODE, 1898, ss. 9, 193, 197, 1 M.L J. 397.

See SANCTION TO PROSECUTE—NATURE AND FORM OF SANCTION, 7 C.L.J. 49=7 Cr. L.J. 10=35 C. 141=2 M.L.T. 500.

Local Inquiry.

(1)—*Local inquiry, by the trying Magistrate, whether vitiates the trial—Purposes for which it may be held—To understand and test evidence given—Duty of Magistrate to record opinion formed on local inquiry—Crim. Pro. Code (Act* V *of* 1898), *ss.* 148, 202, 293, 294, 556—*Indian Penal Code* (*Act* XLV *of* 1860), *s* 147—*Unlawful assembly—Common object charged and common object proved—Variance between, when not material.*—Where, in a prosecution for an offence under s. 147, I.P.C., the common object charged was "by means of criminal force to obtain possession of certain lands which comprised two plots, one of 15 cottahs and the other of 5 cottahs, and it was found by the Court that the offence was committed for obtaining possession of the 5 cottahs plot: *Held* that the variance between the common object alleged and that found was not such as to invalidate the conviction. Where the trying Magistrate, on the consent of both parties, made a local inquiry in their presence in order to test the evidence adduced before him in Court, and made use of the impression made on his mind by what he saw in deciding the case: *Held, per Stephen, J.*, that the course adopted by the Magistrate was not illegal, and that, although the Code of Criminal Procedure does not expressly authorise such a local enquiry, the Code is not exhaustive in dealing with the powers of a Magistrate, and it cannot, by omitting to justify a certain course of action on his part, deprive him of powers which he otherwise possesses. A trying Magistrate may visit the scene of an alleged offence to test the evidence he has heard in Court, and act on the

Local Inquiry—*continued.*

opinion he has formed from what he has seen in adjudicating between the parties. *Per Woodroffe, J.*—That a Court cannot take a view of the locality for any purpose other than that of understanding the evidence adduced in Court. The Court ought, in every case, in which it has made a local inspection, to acquaint the parties with the opinion it has formed. *Per Chatterjee, J.*—(on reference).—That a Magistrate may inspect the *locus in quo* in cases where he cannot follow or understand the evidence without himself seeing the features of the land, and he does not by merely so doing disqualify himself from trying the case. As local inquiry is permissible, the Magistrate may use his own observation for testing the evidence adduced before him with regard to the features of the locality. The disadvantages of a local inquiry discussed. While however the law allows a view of the locality by the trying Magistrate, and it is in some cases not only convenient but necessary for the ends of justice, every possible precaution should be taken that such a view should be nothing but a view of the local features, and an immediate report of what is seen should be placed on the record, and laid open to the scrutiny of the parties. Where it was contended that, apart from the Magistrate's own observation, there was sufficient evidence on the record to support the conviction, *held, per Woodroffe, J.*—Such a contention must fail, for it is a matter of entire speculation how far the Magistrate was influenced by what he saw, as distinguished from what was deposed to by witnesses. *Per Chatterjee, J.*—That as the Magistrate in this case had done much more than viewing the place for the purpose of following or understanding the evidence and testing it, the conviction was bad. BABBON SHEIK v. KING-EMPEROR, **14 C.W.N. 422 = 5 Ind. Cas. 365 = 11 Cr. L.J. 121 = 37 C. 340 = 11 C.L.J. 335.** (20 C. 857, 21 C. 920, 19 M. 263, 19 A. 302, 3 C.W.N. 607, 9 C.W.N. ccxxii, 10 C.W.N. 181, *R.*) [*R.*, 13 Cr. L.J 156 = 13 Ind. Cas. 844 ; *D.*, 39 C. 476 = 16 C.W.N. 426 = 15 C.L.J. 403]

(2)—*First Class Magistrate's right of reference to his subordinate.*—A First Class Magistrate has no right to refer a case to his subordinate without pointing out how any local inquiry is necessary, and merely because there is a criminal trespass case pending before the subordinate Magistrate. *In re* RAMASWAMI NAYAKER, **3 M.L T. 402 = 8 Cr. L J. 150.**

See CRIM. PRO. CODE, 1898, ss. 118, 406, A.W.N. 1896, 73.

See CRIM. PRO. CODE, 1898, ss. 133, 135, 138, 139, 141, 2 C.L.R. 509.

Order of Magistrate taking cognizance making over a case to another Magistrate for disposal after a local enquiry, if legal—*See* CRIM. PRO. CODE, 1898, ss. 202, 203, 476, 18 C.W.N. 95.

Jurisdiction of Court to order local enquiry by pleader in the nature of commission in a civil case—*See* CRIM. PRO CODE, 1898, ss. 202, 522, 18 C.W.N. 399 = 15 Cr. L. J. 302 = 23 Ind. Cas. 510.

Local Inquiry—*concluded.*

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 21 W.R. Cr. 25, 2 C.L.R. 134

See JUDGMENT, A.W.N. 1896, 73.

Reference for—to a Magistrate not competent to entertain the complaint—*See* MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION, 6 C.W.N. 295.

Local Inspection.

(1)—*Local inspection—Notice to the parties.*—If, in a Sessions trial, the Judge should think it necessary or desirable to visit the place of the alleged occurrences, he should give due notice to the parties, and should proceed thither with the assessors, before the case is closed. *In re* OUDH BEHARI NARAIN SINGH, **1 C.L. R. 143.**

(2)—*Local inspection — Magistrate to have parties or pleaders by his side.*—A Magistrate, when inspecting the scene of an offence, should have the parties or their pleaders with him so as to avoid drawing wrong inferences. QUEEN-EMPRESS v. CHANBASAPA MADIAPA, **Rat. Un. Cr. C. 854 = Cr. Rg. 20 of 1896.**

(3)—*Powers of Magistrate.*—Although the law makes no provisions for a local inspection by a Magistrate of the *locus in quo* in a case being tried by himself, it cannot be said that, under no circumstances, local inspection could be made. But such inspection should only be made for the purpose of enabling him to understand better the evidence which is laid before him, and it must be strictly confined to that. When such inspection is made, the Magistrate should invariably be accompanied by both the parties or their representatives QUEEN-EMPRESS v. MANICKAM, **19 M. 263 = 2 Weir 725 = 6 M.L J. 143.**

(4)—*Local inspection, power of Magistrate to make — Evidence Act, s. 3—"Proved"—"Matters before Court"—Omission of the Magistrate to make a note of the local inspection on the spot—Irregularity or illegality—Prejudice.*—There are in effect three different kinds of local inspections: (1) Those that are authorised or directed by the Code of Criminal Procedure and which are governed by the rules and limitations imposed by the Code itself. (2) Those which are in the nature of the view by the jury laid down in s. 293 of the Code. It is not only not objectionable, but in many cases, highly advisable, that a Magistrate trying a criminal case (having the functions of both Judge and Jury) should view the place in order to understand fully the bearing of the evidence given in the Court. But if he does so, he should be careful not to allow any one on either side to say anything to him which might prejudice his mind one way or the other (19 A. 303, *R.*). (3) Local inspections, not provided for as above in the Crim. Pro. Code, but which, in so far as they conform to the provisions of the Evidence Act, cannot also be excluded. The Evidence Act gives the Court power to

Local Inspection—*continued.*

adjudge the existence of facts on "matters before it" as well as according as they are deposed to in the evidence. In adjudicating on matters before him, which require proof, the Judge may use his eyes as well as his ears. A Court of Appeal therefore cannot exclude from its consideration the personal observations made by the trying Court at a local investigation (9 C. 363, *F.*). A case cannot be decided merely on an observation made by the Court locally. But if, in looking at a place in order to understand the evidence, the Magistrate thereby understands that the description of the place given in the evidence is erroneous or false, he is not precluded from holding that the facts as stated by the witnesses who gave that description are not proved, and in so holding he does not make himself a witness but acts as a Judge deciding on "matters before him" (37 C. 340 = 14 C. W. N. 422, 20 C. 857, *D.*). It is very desirable that the results of the local investigation should be placed upon record as soon as it is completed. If the facts which the judicial officer considers to be established by the local investigation be impugned, and there is no contemporaneous record of them, the Judge would not be able to act upon them. But where they are not impugned, the Appellate Court cannot exclude them from consideration, merely because the facts observed were not immediately placed upon record, for it is not a positive rule of law that a note must be placed on the record on the spot. Where the observations of the Magistrate were not placed on the record on the spot, but were embodied in his judgment soon after: *Held*, that the Appellate Court was right in refusing to exclude them from its consideration, when the correctness of the observations was not impugned before him, and the accused did not appear to have been prejudiced by the irregularity in the matter of recording them. ALIAR RAI v. JHINGUR TEWARI. **16 C.W.N. 426 = 15 C.L.J. 403 = 13 Ind. Cas. 844 = 13 Cr.L. J. 156.**

(5)—*Conviction on evidence recorded by another Magistrate — Local inspection.* — A Deputy Commissioner should not convict on evidence recorded by another Magistrate, nor will it suffice for him to inspect the locality and to attest such evidence. CROWN v. SAIN DASS, **17 P.R. 1867, Cr.**

(6) *Crim. Pro. Code* (1898), *s.* 556—*Magistrate making local inspection of the scene of occurrence—Competency to try case.*—Although the law makes no provisions for a local inspection by a Magistrate of the *locus in quo* in a case tried by himself, it cannot be said that, under no circumstances, local inspection could be made. But such inspection should only be made for the purpose of enabling him to understand better the evidence which is laid before him, and it must be strictly confined to that. When such inspection is made, the Magistrate should invariably be accompanied by both the parties or their representatives. KRISHNAPPA GOUNDEN v. SENGODA GOUNDAN, **2 Weir 727.** [*R.*, 37 C. 340 = 11 Cr. L. J. 121 = 14 C. W.N. 422 = 5 Ind. Cas. 365.]

Local Inspection—*concluded.*

Re-trial—Discharge after full enquiry—Evidence — Magistrate's personal knowledge and personal inspection of a spot not evidence—*See* CRIM. PRO. CODE, 1898, ss. 253, 435, 439, 18 P.W.R. 1909, Cr.

Summary disposal of a case under s. 147, after—Scope of s. 147—*See* DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 4 C.W.N. 779.

See MAGISTRATE, JURISDICTION OF — MISCELLANEOUS, A.W.N. 1885, 264.

Local Investigation.

(1)—*Crim. Pro. Code*, 1898, *s.* 526—*Disqualification to try a case—Inspection of locality.* —Where it was contended that the Magistrate who convicted the accused had visited the spot and decided the question in dispute on the result of his personal inspection, and that, in acting thus, he constituted himself a witness and disqualified himself from trying the case, *held*, that the contention was not sound. Inspection by the Magistrate was not only allowed by law, but was proper under the circumstances of the case. CROWN v. HARSA SINGH, **89 P.L. R. 1901 = 13 P.R. 1901, Cr.**

(2)—*Local investigation—Examining prosecution witness after defence closed—Crim. Pro Code, s.* 540—*Theft—Servant—Act committed at master's order—Guilty knowledge, proof of—Liability of servant.*—The practice of examining witnesses for the prosecution after the defence is closed, to bolster up the prosecution if it appeared that the evidence was prejudicial, deprecated. Where a Sub-deputy Magistrate was sent out to hold a local investigation after the defence was closed: *Held*, that it at most amounted to an irregularity, and that it was in no sense an illegality, and the conviction was not bad where it was not shown that the defence had been prejudiced. A servant should not be held guilty of theft, where he acted under the orders of his master, unless he knew of his master's dishonest intention. There must be some evidence from which the Court can infer such knowledge, and no presumption should be made against the servant in that respect. RADHA MADHAB PAKRA v. EMPEROR, **9 Ind. Cas. 46 = 12 Cr. L.J. 7 = 15 C.W.N. 414.** (9 C.W.N. 974, 2 Cr. L.J. 836, *Rel.*)

Police officer making negligent or incorrect report of—*See* ACT V OF 1861, s. 29, 15 W.R. Cr. 17.

See ASSESSORS, 5 W.R. Cr. 59.

—how and when to be made—*See* CRIM. PRO. CODE, 1898, ss. 147, 148, 10 Ind. Cas. 615 = 12 Cr. L.J. 319.

—power of Magistrate to direct local investigation by police—*See* CRIM. PRO. CODE, 1898, s. 155, 12 B. 161.

See CRIM. PRO. CODE, 1898, ss. 190, 200, 202, 2 Weir 241 = 2 Weir 149 = 2 Weir 38.

See CRIM. PRO. CODE, 1898, ss. 195, 476, 90, 342, 6 M.H.C. App. 2.

Local Investigation—*concluded.*

Powers of Magistrate—Effect of—*See* CRIM. PRO. CODE, 1898, ss. 200, 202, 203, U.B.R. 1910. 4th Qr. p. 73=11 Ind. Cas. 249=12 Cr. L.J. 385.

Duty of the Magistrate when investigation by person other than himself ordered by a Magistrate—No further—by himself in the absence of the accused—*See* CRIM. PRO. CODE, 1898, s. 202, 11 A.L.J. 754=14 Cr.L.J. 493=20 Ind. Cas. 749.

See CRIM. PRO. CODE, 1898, s. 202, A.W.N. 1900, 187.

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 10 C.W.N. 181=3 Cr. L.J. 193.

See MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION, 19 A. 302=A.W N. 1897, 52, 3 C.W.N. 607.

Local and Special Laws, Offences against Act.

See MAD. ACT III OF 1865.

Local Self Government Act.

See BEN. ACT III OF 1885.

Lock Hospital.

See BOM. ACT III OF 1867, Rule 71, Rat. Un. Cr. C. 361=Cr. Rg. 4 of 1888.

Lock-up.

—not a prison—*See* ACT XXVI OF 1870, L. B. R. 1872-1892, 596.

Locus Penitentiae.

See ATTEMPT, 3 M. 4=1 Weir 543.

See CRIM. PRO. CODE, 1898, ss. 110 and 118, 31 C. 783=8 C.W.N. 909.

Witness retracting statements before the Sessions Court—,for witness—*See* FALSE EVIDENCE, W.R. 1864, Cr. 10.

See SECURITY FOR GOOD BEHAVIOUR, A.W.N. 1906, 30=3 A.L.J. 29=3 Cr. L.J. 96=1 M.L.T. 58=28 A. 306.

Lodging House Act.

See U.P. ACT I OF 1892.

Lord's Day Act.

(1)—*Application of—British Burma—Abkari rules.*—The Lord's Day Act (29 Car. II, C. 7) does not extend to criminal cases in British Burma. A was convicted and fined for the breach of an Abkari rule. *Held* that the conviction could not be supported, on the ground that the Abkari rule had not the force of law. D. ABRAHAM v. THE QUEEN, **1 B. L. R. A. Cr. 17=10 W.R. 350.**

(2)—*Applicability to Moulmein.*—The Lord's Day Act does not apply to Moulmein. GRASEMANN AND CO. v. GARDNER, BROOKE, AND CO., **3 W.R. Rec. Ref. 2.**

Loss.

See WRONGFUL LOSS.

Loss of material records—Loss of judgment—Inherent power of Courts to replace lost records—*See* CRIM. PRO. CODE, 1898, ss. 366, 537, 14 M.L.T. 317=25 M.L.J. 445=1913 M.W.N. 862=21 Ind. Cas. 467=14 Cr. L.J. 595.

Loss of Records.

See RECORD, A.W.N. 1889, 55.

Lost Currency Notes.

False claim for payment of—*See* ATTEMPT, 16 C. 310.

Lost Goods.

(1)—*Right of finder of lost goods.*—The finder of goods has a right to it against the whole world, except the real owner, and after an infructuous proclamation requiring the owner to come forward and claim it, the necklace should be returned to the finder and not be ordered to be sold. MAUNG PO KYWIN v. KING EMPEROR, **1 U.B.R. 1902—1903, Police 1.**

Property in—*See* CRIMINAL MISAPPROPRIATION, 18 B. 212.

Lost Letter.

Newspaper in which published—Whether secondary evidence—*See* EVIDENCE ACT, 1872, s. 63, 8 A.L.J. 302=10 Ind. Cas. 259=10 Ind. Cas. 852.

Lottery.

See ACT XXVII OF 1870, 10 B. 97.

Assessing income-tax on the profits of lotteries whether tantamount to authorization of the—*See* PENAL CODE, ss. 11, 34, 294-A, 15 Cr L. J. 243=23 Ind. Cas. 195=7 Bur. L. T. 187.

Dishonestly obtaining lottery prize—Offence—Chief Court in revision ordering person receiving prize to refund it to lottery officials—Magistrate directed to recover it in manner provided for recovering fines—*See* PENAL CODE, ss. 24, 420, 15 Cr. L.J. 555=24 Ind. Cas. 963.

See PENAL CODE, s 294-A, 1 Weir 252, 14 P. W.R. 1910, Cr.=17 P.R. 1910, Cr.=6 Ind. Cas. 620=11 Cr. L.J. 382=92 P.L.R. 1910.

Lottery Office.

See ACT XXVII OF 1870, s. 10, 15 W.R. Cr. 2=6 B.L.R. App. 98.

See PENAL CODE, s. 294-A, 14 P.W.R. 1910, Cr.=17 P.R. 1910=6 Ind. Cas. 620=11 Cr. L.J. 382=92 P.L.R. 1910.

Keeping—*See* PENAL CODE, s. 294-A, 1 Weir 251.

Lottery-Tickets.

—if instruments of gaming—*See* ACT III OF 1867, ss. 1, 4, 12 W.R. Cr. 34.

Lower Burma Acts.

See ACT—BURMA ACT.

Loyalty.

(1) *Previous expressions of loyalty, if evidence*—Expressions of loyalty used by the newspaper in previous issues of the same are not relevant as an excuse. GHULAM QADIR KHAN v. EMPEROR, **211 P.L.R. 1914 = 15 Cr. L.J. 493 = 24 Ind. Cas. 581 = 37 P.W.R. 1914, Cr. = 28 P.R. 1914, Cr.**

(2)—*Profession of loyalty*—No amount of professed loyalty on other occasions can be taken as nullifying the probable effects of the violent writings contained in the particular articles dealt with under the Press Act, and the order of forfeiture must stand or fall by the terms of those particular articles. GULAM QADIR KHAN v. EMPEROR, **210 P.L.R. 1914 = 36 P.W.R. 1914, Cr. = 15 Cr.L.J. 490 = 24 Ind. Cas. 578 = 27 P.R. 1914, Cr. F.B.**

Lunacy.

See ACCUSED PERSON.

See INSANITY.

See LUNATIC.

See PENAL CODE, ss. 84, 85.

See UNSOUNDNESS OF MIND.

(1)—*Penal Code, s. 84—Defence of lunacy—Crim. Pro. Code*, 1882, s. 540—*Evidence Act* (I of 1872), *ss* 45, 165.—When the defence is based on s. 84, I.P.C., the Sessions Judge may, under s. 540, Crim. Pro. Code, and s. 165, Evidence Act, ascertain the behaviour exhibited by the prisoner during the years of his life previous to the homicide, and, if accused has been kept in a lunatic asylum, record medical evidence of the facts observed there, and of the opinion formed as to the particular form of lunacy. S. 45 of the Evidence Act, *ilt.* (*b*), indicates the evidence as relevant to determine the issue raised. QUEEN-EMPRESS v. DONGAR, **Rat. Un. Cr. C. 279 = Cr. Rg. 18 of 1886.**

—of accused—Crim. Pro. Code, Ch. XXXIV—Enquiry under—*See* CRIM. PRO. CODE, 1898, s. 341, 11 M.L.T. 24 = 13 Ind. Cas. 216 = 13 Cr. L.J. 24.

Lunatic.

See ACCUSED PERSON.

See INSANITY.

See LUNACY.

See PENAL CODE, ss. 84, 85.

See UNSOUNDNESS OF MIND.

(1)—*Crim. Pro. Code, Act* X *of* 1882, s. 341—*Applicability.*—S. 341 of the Crim. Pro Code applies only when there has been a conviction. The Magistrate should decide on evidence whether the accused is capable of understanding the proceedings or not and even if he is found incapable, the Magistrate is to proceed with the inquiry and report to the High Court if he convicts or commits the accused. *In re* A DUMB MAN, **Rat. Un. Cr. C. 879 = Cr. Rg. 1 of 1897.**

(2)—*Criminal lunatics*—Where an accused person is found at his trial incapable by reason of insanity of making a defence, he should not be acquitted of the offence on the ground that

Lunatic—*concluded.*

at the time it was committed the accused was insane. HURREE CHUNDER v. GUNGA, **28 P.R. 1868, Cr.**

Brother of lunatic husband, whether "person aggrieved" by wife's bigamy—*See* BIGAMY, 10 B. 340.

Father of a lunatic, whose wife has been married a second time, if an "aggrieved person" in the legal sense.—*See* CRIM, PRO. CODE, 1898, s. 198, 3 C.L.J. 38 = 3 Cr. L.J. 187.

Trial of—*See* CRIM. PRO. CODE, 1898, ss. 271, 465, 169 P.L.R. 1905 = 54 P.R. 1905, Cr. = 3 Cr.L.J. 80.

See CRIM. PRO. CODE, 1898, ss. 341 and 465, U.B.R. 1892—1896, Vol. I, 38.

Lunatic Asylums Act.

See ACT XXXVI OF 1858.

(1)—*Penal Code, s. 456—Lurking house trespass by night—Intention.*—In a prosecution for lurking house-trespass by night under s. 456 of the Code, the burden of proving what his intent was lies upon the accused. ISHRI v. KING EMPEROR, **3 A.L.J. 652 = 4 Cr. L.J. 291 = A.W.N. 1906, 279 = 29 A. 46.**

(2)—*Penal Code, Ss.* 456, 457—*Imprisonment—Whipping—Previous conviction.*—An accused, who having been convicted of an offence under s. 456 is again convicted of an offence under s. 457 of the Penal Code, is not liable to imprisonment and whipping. EMPRESS v. TITROO, **14 C.P.L.R. 16.**

Lurking House Trespass.

See GRIEVOUS HURT, 2 W.R. Cr. 52.

See HOUSE-BREAKING, 1 W.R. Cr. Letters 9.

See MAGISTRATE, JURISDICTION OF—MISCELLANEOUS, 9 W.R. Cr. 5.

See PENAL CODE, s. 456, 3 A.L.J. 652 = 29 A. 46 = A.W.N. 1906, 279 = 4 Cr. L.J. 291.

See SENTENCE—CUMULATIVE AND SEPARATE SENTENCES, 3 W.R. Cr. 19.

Machine.

Working husking—at night—*See* CRIM. PRO. CODE, 1898, s. 143, 34 P.L.R. 1903.

Working rice husking—at night—*See* PENAL CODE, ss. 268, 290, 69 P.L.R. 1904 = 9 P.R. 1904, Cr.

Madras Acts.

See ACTS—MADRAS ACTS.

Mafis.

See CONFISCATION, 64 P.R. 1866, Cr.

Magistrate.

See ADDITIONAL DISTRICT MAGISTRATE.

See BENCH OF HONORARY PRESIDENCY MAGISTRATES.

See BENCH OF MAGISTRATES.

See CANTONMENT MAGISTRATE.

See COMPLAINT.

Magistrate—*concluded.*

See CONFESSION — CONFESSIONS TO MAGISTRATES, ETC.

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY.

See DISTRICT MAGISTRATE AND COLLECTOR.

See DISTRICT MAGISTRATE, POWERS OF.

See DIVISIONAL MAGISTRATE.

See MAGISTRATE, JURISDICTION OF.

See NUISANCE UNDER CRIM. PRO. CODE.

See NUISANCE UNDER PENAL CODE.

See PRESIDENCY MAGISTRATE.

——dictating judgment to clerk, not in accordance with law—*See* BEN. ACT III OF 1899, ss. 325, 574, 4 C.L.J. 411=4 Cr. L.J. 394.

Attestation of—*See* EVIDENCE—GENERAL, 11 W.R.Cr. 39=7 B.L.R. 67, Note

Respective duties of the police and the—*See* EVIDENCE—GENERAL, 6 C. 496=7 C L.R. 467.

See EVIDENCE ACT, 1872, s. 26, 20 B. 165.

Alternative charges—False statement before an investigating police officer and before a—on oath—Penal Code, s. 193—Contradictory statements—*See* FALSE EVIDENCE, 23 M. 544, Foot-note=1 Weir 166.

Personal interest — Public capacity—*See* NUISANCE UNDER CRIM. PRO CODE, 10 C. L J. 484=4 Ind. Cas. 347=11 Cr. L J. 2.

Verification, evidence of, best evidence of—*See* PENAL CODE s. 400, 16 C.W.N. 69.

Extra-judicial order by—*See* REVISION—MISCELLANEOUS CASES, A.W.N. 1883, 25.

Judicial officer, suits against—Suit against Government for acts of—*See* RIGHT OF SUIT, 2 Agra 81, Cr.

Signature of—Lithographed stamp of signature—*See* SIGNATURE, 14 W.R. Cr. 81.

Magistrate, Duty of.

See BENCH OF MAGISTRATES.

See CANTONMENT MAGISTRATE.

See COMPLAINT.

See CRIM. PRO. CODE, 1898, ss. 133, 145 to 148, 177 to 189.

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY.

See JURISDICTION OF CRIMINAL COURTS.

See MAGISTRATE, JURISDICTION OF.

See NUISANCE UNDER CRIM. PRO. CODE.

See NUISANCE UNDER PENAL CODE.

See SECURITY FOR GOOD BEHAVIOUR.

See SECURITY PROCEEDINGS.

See SECURITY TO KEEP THE PEACE.

See SENTENCE.

(1)—*Persons having judicial authority—Duty.*—Persons invested with judicial authority must put the law in force, although they may think that, in the case before them, it will have an

Magistrate, Duty of—*continued.*

unjust operation, and although they are by statute clothed with a discretion. *In re* GANESH NARAYAN SATHE, 13 B. 600.

(2)—*Magistrates, duty of, to expedite trials.*—Magistrates must take care that the proceedings in their Courts are conducted with such reasonable expedition as will prevent the parties from being improperly harassed by undue delay. *In re* LAKSHMAN GOVIND NIRGUDE, 26 B. 552=4 Bom. L.R. 276.

(3)—*Magistrate—Translation of finding.*—Magistrates are bound to record translations of their findings in criminal cases. REG. v. RATANJI BHUKAN, 1 B.H C. 17, Cr.

(4)—*Defence, right of—Duty of Magistrate.*—A Magistrate is bound to afford to the accused and his friends every opportunity of making his defence, and he should not personally interpose in any way between them. A Magistrate would not, therefore, be justified in refusing to allow the pleaders engaged by the wife of the accused to defend him, to have an interview with him or to appear and sit in Court. QUEEN EMPRESS v. WASUDEV HARI CHAPEKAR, 1 Bom L.R. 856

(5)—*Delay in police investigation—Duty of committing Magistrate and Sessions Judge.*—It appeared that the accused committed an offence between the 26th and 27 May, 1900. They were found on the 27th and were brought back to Delapur, the place where the offence was committed. The Chief Constable arrived there on the 31st, and made the formal arrest on the 4th June at the same time asking for a sanction to detain the prisoners in custody till the 15th June. The police then asked for further detention up to 28th June; this was not allowed, but time for preparing the case was given up to 6th July. The case was, after several adjournments, committed to the Court of Sessions on the 23rd July. *Held* that it was really the duty of the committing Magistrate, and failing him, of the Sessions Judge, to have enquired fully into the circumstances of the great delay in the investigation by the police. QUEEN-EMPRESS v. MAJESTY, 2 Bom. L.R. 1092.

(6)—*Coercion to witness.*—A Magistrate exceeds his duty by addressing a witness thus:—"Recollect, or else I will send you into custody." It is the duty of a Magistrate to protect a witness from coercion of this kind. QUEEN-EMPRESS v. ISHRI SINGH, 8 A. 672=A W.N. 1886, 257.

(7)—*Trial of accused—Magistrate's personal knowledge.*—A Magistrate trying an accused person ought not to import his own knowledge of or as regards the accused into the case. *In re* A. FONSECA, 6 Bom. L.R 480=1 Cr. L J. 589.

(8)—*Crim. Pro. Code (Act X of 1882), s. 257—Processes to defence witnesses unserved—Adjournment.*— Where a Magistrate has issued processes for defence witnesses, some of whom were unserved, *held* that the Magistrate was bound to assist the accused in enforcing the attendance of the witnesses in the absence of

Magistrate, Duty of—*continued.*

any such reason, as is mentioned in the section. The Magistrate's opinion that the witnesses could give the same evidence as others on whom he did not rely is no reason for refusing an adjournment. QUEEN-EMPRESS v. SHAMSHERKA, **Rat. Un. Cr. C 594 = Cr. Rg. 14 of 1892.** (10 C. 931, *F.*)

(9)—*As to enforcing attendance of witnesses.*—In a proceeding under s. 145 of the Crim. Pro. Code, it is not obligatory on the Magistrate to enforce the attendance of any witness at the instance of the parties. HARENDRA KUMAR BOSE v. GRISH CHANDRA MITRA, **7 Ind. Cas. 798 = 38 C. 24 = 11 Cr. L J. 580.**

(10)—*Presence of Magistrate during enquiry—Discovery of corpse.*—A Magistrate should always be present at an enquiry following the discovery of a corpse. QUEEN-EMPRESS v. YAKUB, **Rat. Un. Cr. C 612 = Cr. Rg. 34 of 1892.**

(11)—*Crim Pro. Code,* 1898, *s.* 526—*Information of order for transfer —Duty of Magistrate to stay proceedings.*—A Magistrate acts injudiciously in proceeding with a case after he has been credibly informed by a telegram from one of the accused to his *mukhtear* that a rule for the transfer of the case from his file and for stay of further proceedings has been granted by the High Court. *In the matter of* SURJYA NARAIN SINGH, **5 C W.N. 110.** [*Rel. on,* 39 C. 885 = 16 C.W.N. 1155 = 13 Cr. L.J. 774 = 17 Ind. Cas. 406.]

(12)—*Petition to Magistrate—His duty—Disobedience to summons—Right of party summoning.*—A Magistrate should pass an order on every petition made before him, either granting the prayer of the petition or refusing it. To merely pass the order "file," is to leave the matter open and is improper. Where witnesses summoned by a party have neglected to obey the summons, he has a right to call upon the Court to compel their attendance. BHOMAR MUNSHI v. DIGAMBAR DAS, **6 C.W.N. 548.**

(13)—*Crim. Pro. Code,* 1898, *s.* 254—*Framing of charge on complainant's evidence—Final order.*—If a Magistrate has framed a charge against an accused person on hearing the complainant's evidence, he is not entitled to pass any final orders without taking further evidence. BELLEW v. PARKER, **7 C W N. 521.** [*R.*, 36 C. 994 = 11 C.L.J. 50 = 13 C.W.N. 1221 = 10 Cr. L.J. 385 = 3 Ind. Cas. 861.]

(14)—*Magistrate called upon to show cause—His rights.*—Though it is open to a Magistrate called upon to show cause, to submit his remarks in answer to the ground urged by the petitioner who obtained the rule, it is not open to him to submit observations with a view to supplement or add to his judgment. MADHU SUDHAN DAS GUPTA v. SASTI PROSAD NANDY, **7 C.W.N. 859.** [*D.*, 3 C.L.J. 357 = 3 Cr. L.J. 329.]

(15)—*Summoning of police as witnesses—Crim Pro Code,* 1861, *s.* 367.—Where a Magistrate thinks that the police ought to be made witnesses, they must be summoned under s. 367, Crim. Pro. Code. Magistrates are not prosecutors on the part of Government, but it is their duty to investigate every case thoroughly examining both sides of it, and they must not be satisfied with a mere superficial enquiry. **1 W.R. Cr. Letters, 12.**

(16)—*Statement by prisoner.*—It is not necessary for a Magistrate to caution a prisoner before receiving a statement from him. HIGH COURT PROCEEDINGS, 9TH DECEMBER 1869, **5 M.H.C. App. 11.**

(17)—*Submission of Magistrate's orders to District Magistrate.*—When an order is passed by a Sub-Magistrate, a copy of the order submitted must be forwarded by the Magistrate of the Division, if any appointed to hear appeals from such Sub-Magistrate, without more delay than is necessary for the purpose of revision, to the Magistrate of the District, who will, after perusal, return the same to the Magistrate of the Division. HIGH COURT PROCEEDINGS, 28TH AUGUST 1871, **6 M.H.C. App. 35.**

(18)—*Magistrate's duty to commit a case of homicide to Sessions.*—Although, where death appears to have resulted from an injury voluntarily inflicted, and on the evidence it would be open to a Sessions Court to convict an accused person of culpable homicide, a Magistrate should not take it upon himself to determine that an offence has been committed of a less serious character and to deal with it himself, yet, where it is clear there is not sufficient evidence to warrant a commitment, the Magistrate is not justified in making a commitment. HIGH COURT PROCEEDINGS, NO. 1002, 19TH MAY 1881, **1 Weir 288.**

(19)—*Small sentences—Magistrate's duty.*—A Magistrate inflicting small sentences should be most careful to avoid doing an injury that cannot be repaired. PATANDIN v KING-EMPEROR, **2 A.L J. 26 = A.W N. 1905, 19 = 2 Cr.L J. 19.**

(20)—*Duty of Magistrate in security proceedings—Habitual offender—Crim. Pro. Code,* 1898, *ss.* 110 *and* 117—*Procedure.*—In order to satisfy himself that an accused's *general repute* is that of an habitual offender of one of the types mentioned in s. 110, Crim. Pro. Code, a Magistrate should require more evidence than that of policemen and village authorities. Inquiries under s. 117 should, if possible, be conducted in the place where the accused has lived, and the Magistrate should himself pick out at haphazard some of the villagers, and examine them as to the accused's general repute. He should not be content with the evidence of merely such witnesses as the police or village authorities choose to send up to him. He should also consider in every case whether the necessity for putting the alleged habitual offender on security has been proved, and whether the police and village authorities could not ensure good behaviour on the part of the accused, if they exerted themselves more in executing their duties. KING-EMPEROR v. NGA SHWE U, **2 L.B.R. 166.** (1 L.B.R. 90, 2 L.B.R. 40, *R.*) [*R.*, 10 Cr. L.J. 355 = 3 Ind. Cas. 681 = 5 L.B.R. 72.]

Magistrate, Duty of—*continued.*

(21)—*Power of Magistrate to reopen case after dismissal of complaint or discharge of accused—Crim. Pro Code*, 1898, *ss.* 403 *Expln. and* 437.—The explanation to s. 403, Crim. Pro. Code, expressly declares that the dismissal of a complaint, the discharge of the accused, and the like, are not acquittals for the purposes of that section. Therefore, the discharge of the accused or the dismissal of a complaint does not prevent the institution of fresh proceedings otherwise than under s. 437, Crim. Pro. Code. This section, which is an enabling section, does not, by implication, take away the jurisdiction which is vested in the Magistrate to hear the complaint. Again s. 437 provides means, whereby a further enquiry into the case of an accused person who has been discharged, or into a complaint dismissed, can be ordered. It is not necessary that that order should be set aside before a further enquiry can be ordered. The Magistrate may proceed of his own motion, and his authority to do so is quite independent of an order from the Court of Session. KING-EMPEROR v. NGA PYU DI, 2 L B R. 27=10 Bur. L R.1=1 Cr. L J. 167. (29 C. 726, L.B.R. 1893—1900, 169, *F* ; 23 C. 983. 22 A. 106, 1 U.B R. 48, *Diss.*; 2 C. 405, 1 C.W.N. 49, *R.*)

(22)—*Power of Magistrate to alter procedure from that prescribed for warrant, to that prescribed for summons cases.*—There is authority in the Crim Pro. Code, for a Magistrate to alter his procedure from that prescribed for warrant cases to that prescribed for summons cases, by reason of his estimate of the evidence of the prosecution. EMPRESS v. GHULAM HOSAIN, 17 P.R. 1887.

(23)—*Criminal trial—Duty of Magistrate not to be carried away by extraneous considerations.*—Nothing can be more mischievous than for a Magistrate dealing with criminal cases, either when determining the guilt of the prisoner or the sentence to be passed upon him, to allow himself to be impressed by vague and general considerations based on extraneous experiences of his own and supported by no proof. They are invariably most misleading, and are just as likely to lead to an unjust conviction or to an unduly severe punishment as to an erroneous acquittal and an absurdly inadequate sentence. EMPEROR v. HARDEWA, A.W.N. 1887, 54.

(24)—*Magistrate not to rely on statements made out of Court.*—It is extremely improper for a Magistrate in disposing of a case to rely in any way on statements made to him out of Court. QUEEN-EMPRESS v. SAHADEV *valad* TUKARAM, 14 B. 572. [*R.*, 15 A. 192. F. B., L.B.R. 1893-1900, 445.]

(25)—*Magistrate using his personal previous knowledge of the accused.*—A Magistrate ought not to use in a criminal trial, his own previous knowledge of the character of the accused. REG. v. VYANKATRAV SHRINIVAS, 7 B.H.C. Cr. 50. [*R.*, 12 B. 377.]

(26)—*Private knowledge or information—Crim. Pro. Code*, 1861, *s.* 316—*Wife—Maintenance.*—An order made by the Magistrate under s. 316, Code of Criminal Procedure, must be founded upon proof in the same proceedings, and not upon the knowledge acquired by the Magistrate in some other case. LOPOTEE DOMNEE v. TIKHA MOODAI, 8 W.R. Cr. 67.

(27)—*Private knowledge or information.*—A Judge has no business to import his own private knowledge or opinions into a case ; he is simply to decide the issues before him on the evidence before him. MEHEROONISSA v. BHASHAYE MERDHA, 2 W.R. Act X. 29. REG. v. VYANKATRAV SHRINIVAS. 7 B.H.C. Cr. 50 ; LALLAMEVA LALL v. SREEMAHATO, 25 W.R. 152 ; LOPOTEE DOMNEE v. TIKHA-MOODAI, 8 W.R. Cr 67.

(28)—*View by assessors of scene of offence—Power of judge to delegate to assessors examination of witnesses.*—Where the assessors desire to view the scene of the alleged offence, it is the duty of the officer conducting the jury or assessors to the spot, not to suffer any other person to speak to or hold any communication with any of jury or assessors, who, when the view is finished, are to be immediately conducted back to the Court and the judge could not delegate his own function of examining witnesses on the spot to the assessors. QUEEN v. CHUTTERDHAREE SING, 5 W.R. Cr. 59.

(29)—*Trial by Magistrate who, as Collector, instituted proceedings.*—It is not proper for a District Magistrate himself to try a case in which he instituted the prosecution as Collector. QUEEN v. NADI CHAND PODDAR, 24 W. R. Cr. 1. [*F.*, 3 C. 622 ; *R.*, 20 A. 440.]

(30)—*Conviction by Magistrate for practising in Collector's Court without certificate—Officer both Magistrate and Collector.*—Where an officer is acting in two capacities, *viz.*, as Assistant Collector and Assistant Magistrate,—he should not, in his capacity of Magistrate, convict a person of an offence committed before him as Collector ; therefore, he has no authority as Magistrate to fine a person under s 34, Act XX of 1865, for practising in his Court as Collector without a certificate. *In the matter of* RAM DAYAL SINGH, 5 B.L.R. Ap. 89 ; [*Doubt.*, 12 B L.R. 35.] QUEEN v. HIRALAL DAS, 8 B L.R. F.B 422=17 W.R. Cr. 39.

(31)—*Order determining a matter* sub judice—*Submission of the proceedings to the Court of Sessions.*—Every order which determines or disposes of the matter *sub judice* and copies of every proceeding passed by a Magistrate with full powers on review of the calendars of the Sub-Magistracy should be submitted to the Court of Sessions. HIGH COURT PROCEEDINGS, 16TH NOVEMBER, 1869, 5 M.H.C App. 7.

(32)—*Duty of—Judgments.*—Magistrates should refrain from joking in their judgments. EMPRESS v. BALDEO. 5 C P.L.R. Cr. 24.

(33)—*Duty in judicial capacity*—The necessity of a Magistrate acting in a dispassionate and impartial manner, and not in the spirit of a prosecutor, observed upon. *In the matter of* MAHESH CHANDRA BANERJEE, 4 B.L.R. Ap. 1=13 W.R. Cr. 1. [*F.*, 20 W.R. Cr. 23.]

Magistrate, Duty of—*continued.*

(34)—*Conviction of public servant - Sentence.*—Where the person in the employment of the Court is convicted of a criminal offence punishable by fine or imprisonment, it is quite competent to the Magistrate in his administrative capacity to dismiss him from office. QUEEN v. CHUNDER KOOMAR SEN, **1 Ind. Jur. N.S. 97 = 5 W.R. Cr. 4.**

(35)—*Quashing of proceedings by Sessions Judge — Convicting for lesser offence.*—The Sessions Judge has no power to quash proceedings taken by a Magistrate and order the committal of the accused to the Sessions A Magistrate should not convict a person for a lesser offence than that which has been proved, in order to avoid sending a case to the Sessions Court. REG. v. GOVINDA *bin* BABAJI, **5 B H. C. Cr. 15.**

(36)—*Criminal trial — Practice— Examination of witnesses—Duty in regard to evidence of experts* —A Judge should not elect himself into an expert, nor should he slightly treat proper medical evidence. It is no part of Judge's duty to examine a prisoner's witness when his pleader has refused to do so. EMPRESS v. HARPAT, **A.W.N. 1883, 189.**

Duty of—in taking the signature of the accused to statements recorded under s. 364, Crim. Pro. Code—*See* ACCUSED PERSON, Cr. Rg. 8 of 1894 = Rat. Un. Cr. C. 687.

Duty of a—in trying an undefended accused – *See* ACCUSED PERSON, 1 L.B R. 238.

See CRIM PRO. CODE, 1898, s. 145, 6 C.W. N. 101, 28 C. 416.

Discretion given to Magistrates in issuing summons or a warrant—*See* CRIM. PRO. CODE, 1898, s. 204, U.B.R. 1892—1896, Vol. I, 31.

Duty of Magistrate in passing order—*See* CRIM. PRO. CODE, 1898, s. 250, 25 A. 315 = A. W.N. 1903, 57.

Duty of—after a charge has been drawn up—*See* CRIM. PRO. CODE, 1898, s. 256, 14 C P.L. R. Cr. 137.

See CRIM. PRO. CODE, 1898, s. 478, 7 B.H. C. Cr. 29.

See DISCHARGE OF ACCUSED, 3 C. 389.

See FALSE EVIDENCE, 2 C.L.R. 181.

See PENAL CODE, ss. 354, 376 and 511, U.B.R. 1892– 1896, Vol. I, 231.

See PREVIOUS CONVICTION, 32 P.R. 1905, Cr.

Duty of prosecution – Witnesses present at offence—Duty of Judge—*See* PROSECUTION, Rat. Un. Cr. C. 581 = Cr. Rg. 41 of 1891.

Duty of, in granting sanction to prosecute for perjury—*See* SANCTION TO PROSECUTE—CONDITIONS REQUISITE FOR GRANT OF SANCTION, ETC., 2 A L.J. 836 = 3 Cr. L.J. 45.

Duty of, in summary trials—*See* SUMMARY TRIAL, 27 C. 450.

Magistrate, Duty of—*concluded.*

The Court should stop the witness the moment he commences giving inadmissible evidence, to wit, hearsay—*See* WITNESS—EXAMINATION OF WITNESSES, 7 W.R. Cr. 25.

See WITNESS – EXAMINATION OF WITNESSES, 6 C. 774 = 8 C.L R. 124.

Magistrate, Jurisdiction of.

1.—GENERAL JURISDICTION.

2 —COMMITMENT TO SESSIONS COURT.

3.—TRANSFER OF CASES—REFERENCE TO OTHER MAGISTRATES—REVISION—REVIEW.

4.—TRANSFER OF MAGISTRATES DURING TRIAL.

5.—WITHDRAWAL OF CASES.

6.—MISCELLANEOUS CASES.

See BENCH OF MAGISTRATES.

See CANTONMENT MAGISTRATE.

See COMPLAINT.

See CRIM. PRO. CODE. 1898, ss. 133, 144 to 148, 177 to 189.

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY.

See JURISDICTION OF CRIMINAL COURTS.

See MAGISTRATE DUTY OF.

See NUISANCE UNDER CRIM. PRO. CODE.

See NUISANCE UNDER PENAL CODE.

See SANCTION TO PROSECUTE.

See SECURITY FOR GOOD BEHAVIOUR.

See SECURITY PROCEEDINGS.

See SECURITY TO KEEP THE PEACE.

See SENTENCE.

——1 —General Jurisdiction.

(1)—*Jurisdiction, Want of, fatal to proceedings—Arms Act, 1860— Jurisdiction of Sub-Magistr te, 1st class.*—Case where proceedings under the Arms Act, 1860, were annulled for want of jurisdiction in the Magistrate and the fines were ordered to be refunded. CROWN v. WAZIR SINGH, **93 P R. 1866, Cr.**

(2)—*Facts giving jurisdiction to be found.*—Magistrates should carefully find the facts which support their jurisdiction. MAHRAM, *on behalf of his brother* BAHWUL, **111 P.R. 1866, Cr.**

(3)—*Order passed by a District Magistrate in the absence of statutory authority, effect of —Power of Magistrate to do an act, where to be derived from.*—*Held*, that an order passed by a District Magistrate, cannot be supported as an executive order in the absence of any statutory authority which would justify the making of it. The authority of every Magistrate to do any act as Magistrate or as Collector, if such authority exists, must ultimately be found in the powers conferred by Parliament. The immediate power may be an executive order of the Local Administration, but the power of the Local Administration to make an order must

Magistrate, Jurisdiction of—continued.

——1.—General Jurisdiction—*continued.*

be derived either directly or indirectly, from Parliament and it is a mistake to assume that because an officer is an Executive Officer or a Judicial Officer, he has any power to interfere with private or public persons which cannot be derived from a lawful origin. GOUHAR (MUSAMMAT) v. KING EMPEROR, **17 O.C. 263 = 15 Cr. L.J. 668 = 25 Ind. Cas. 996.**

(4)—*Cognizance of offence by Magistrate—His power.*—A Magistrate cannot take cognizance of an offence except as empowered by law in that behalf. QUEEN-EMPRESS v. NGA TA YOK PYU, **U.B R. 1897—1901, Vol. I, 55.**

(5)—*Powers of Magistrate after assuming jurisdiction.*—A Magistrate having taken cognizance of an offence may deal with any person supposed to be concerned in it. NGA PAING v. QUEEN EMPRESS, **U.B.R. 1897—1901, Vol. I, 56.** (U.B.R. 1897—1901, 59, 4 C.W.N. xlv, 26 C. 786, *R*,) [*Affirmed*, U.B.R. 1910, 1st Qr.. Cr. 2.]

(6)—*Sessions cases also triable by Magistrates —Question of commitment to Sessions Court in Magistrate's discretion—Respective jurisdiction of Magistrates and Sessions Judges.*—It is for each Magistrate to use his own discretion in deciding whether the particular case before him, which is triable by him concurrently with the Sessions Court, ought to be committed to the Court of Sessions, or whether the justice of the case will be fully satisfied by a sentence which he himself is authorised to pass. In cases of theft, the amount of property stolen is one very proper point for consideration in determining this question, and due weight must be carefully allowed to every other circumstance of aggravation. HIGH COURT PROCEEDINGS, 23RD JULY 1866, **2 Weir 19.**

(7)—*Crim. Pro. Code, Chapter III—Jurisdiction of Magistrates—Objection to—Interference by High Court.*—Where the accused was charged before the Sub-Magistrate with stealing a pot of toddy, the property of their employer, and the Magistrate, holding that the offence charged was punishable under s. 381, Penal Code, forwarded the case to the Assistant Magistrate, who had first class powers, but the latter returned it to the Sub-Magistrate for disposal and the accused was convicted by the Sub-Magistrate, *held*, that, although the Assistant Magistrate acted injudiciously in sending back to the Sub-Magistrate a case which he himself was competent to dispose of and which contained an element which put the offence beyond the jurisdiction of the Sub-Magistrate, the accused had clearly committed an offence within the Sub-Magistrate's jurisdiction, and the sentence should not therefore be quashed, merely because he had also committed an offence without jurisdiction. HIGH COURT PROCEEDINGS, 12TH JULY 1871, NO. 1190, **2 Weir 20.** [*R.*, 24 M. 675 = 2 Weir 699.]

(8)—*Assumption of jurisdiction by ignoring facts of aggravation.*—No tribunal can properly clutch jurisdiction by intentionally ignoring facts of aggravation which make the offence really cognizable only by a higher tribunal. Where the accused has himself objected to the jurisdiction, it is possible that the High Court would feel itself bound to interfere; then it is not a matter of discretion even with the High Court whether the conviction should be allowed to stand. HIGH COURT PROCEEDINGS, 26TH OCTOBER 1885, NO. 517, **2 Weir 21 = 2 Weir 421 = 2 Weir 428.** [*R.*, 24 M. 675 = 2 Weir 699.]

(9)—*Crim. Pro. Code,* 1872, *s.* 2—*Scope of the section.*—The saving of special forms of procedure by s. 2 of the Code cannot operate on matters which belong, not to procedure, but to jurisdiction and the constitution of tribunals, and particularly, it does not touch the special qualification by law required, to give Magistrates jurisdiction over European British subjects. HIGH COURT PROCEEDINGS, 18TH DECEMBER 1872, NO. 2243, **2 Weir 578 = 7 M H.C. App. 32.**

(10)—*Crim Pro. Code,* 1861, *s.* 61—"*Magistrate of the District*" *meaning of.*—The words "the Magistrate of the District" in s. 61, Crim. Pro. Code, 1861, apply only to the Magistrate of the particular district in which the Court which imposes the fine sits. HIGH COURT PROCEEDINGS, 20TH FEBRUARY 1867, **3 M.H.C. App. 29.**

(11)—*Crim. Pro. Code,* 1861, *s.* 15—*Heads of villages, whether "Magistrates"—Confession.*—The head of a village is within the definition of a Magistrate as defined in s. 15 of the Code and therefore a confession made in his presence is one made in the presence of a Magistrate. HIGH COURT PROCEEDINGS, 14TH FEBRUARY 1868, **4 M.H.C. App. 2.**

(12)—*Recognisance by witnesses and complainant.*—A subordinate Magistrate has no power to take recognizance from the witnesses and the complainant to appear on a certain day before a Magistrate with co-ordinate jurisdiction. HIGH COURT PROCEEDINGS, 31ST OCTOBER 1868, **4 M H.C. App. 17.**

(13)—*Crim. Pro. Code,* 1861, *s.* 44—*Power to seize property of the accused.*—A Magistrate has no power to seize the property of a person convicted of theft, unless he has been sentenced to pay a fine. HIGH COURT PROCEEDINGS, 16TH JANUARY 1869, **4 M.H.C. App. 28.**

(14)—*Crim. Pro. Code,* 1882, *s.* 144—*Power to direct re-building of a structure on private land.*—A District Magistrate has no power to order a building which had fallen down in private grounds to be re-built by the owner of those grounds; nor has he any jurisdiction to interfere with the execution of a Civil Court decree. *In the matter of the petition of* RAHMAT-ULLAH, **17 A 485, F.B. = A.W.N. 1895, 96.**

(15)—*First complaint—Second complaint by a different person—Same acts.*—A complaint was filed by a woman charging the accused with certain offences. One of these offences

Magistrate, Jurisdiction of—continued.

——1.—**General Jurisdiction**—*continued.*

was that her daughter had been wrongfully taken away by the accused. This complaint was dismissed. A second complaint was filed by the husband of the daughter. The acts complained of by the husband were the same as the acts that the girl's mother had complained of, although the offences suggested by the complaints were different. *Held*, that the Magistrate had jurisdiction and was bound to entertain the second complaint and deal with it according to law. KING-EMPEROR v. MEHARBAN HUSAIN, **3 A.L.J. 562=A.W.N. 1906, 245=29 A. 7=4 Cr. L.J 59.** [*F.*, 11 Ind. Cas. 132=10 P.R. 1911, Cr., 205 P.L.R. 1911.]

(16)—*Crim. Pro. Code*, 1861, *s.* 273 (=s. 192 *of the Code of* 1898)—*Submission of a case for enquiry only—Nature of the enquiry.*—It is doubtful whether it is in accordance with the spirit and intention of s. 273 of the Code of 1861, to refer a case to a Deputy Magistrate for inquiry only when he is himself competent to try the case. Where a case is referred to a subordinate Magistrate for inquiry only, the inquiry cannot be regarded as a trial. When the case is returned to the referring Magistrate, he is bound to proceed to try the case and is not justified in considering the proceedings of the Magistrate as proceedings on trial. *In re* KEWUL SINGH, **1 N.W.P. 306.**

(17)—*Crim. Pro. Code* (1872), *ss.* 467, 471, 473—*Offence under s.* 185, *I.P.C.*—The public servant concerned, in an offence under s. 185, I.P.C., is not competent to try the person committing the offence. QUEEN v. JAGANATH, **7 N.W.P 132.**

(18)—*Crim. Pro. Code, s.* 94—*Inspection of books of accused.*—It is not open to a Magistrate to issue an order allowing the prosecution to inspect the entries in the books of the accused relating to the subject-matter of the charge of the offices of the accused's lawyers. *In re* LAKHMUDAS NARANJI, **3 Bom. L.R. 978.** [*R.*, 5 Bom. L.R. 1032.]

(19)—*Crim. Pro. Code* (1861), *ss.* 44, 62, 308—*Subordinate Magistrate—Nature of order—Penal Code, s.* 188.—Where a first class subordinate Magistrate convicted a person under s. 188 of the Penal Code for disobeying an order issued by himself under s. 62 of the Crim. Pro. Code, directing the accused to repair a well, and also ordered him to pay a fine wherefrom he also directed the well to be repaired, *held*, that, under s. 308 of the Crim. Pro. Code, the Magistrate had no jurisdiction and that the order to repair the well out of the fine was also illegal. REG v. TATYA, **Rat. Un. Cr. C 50=Cr. Rg. 13-4-1871.**

(20)—*Crim. Pro. Code*, 1872, *ss.* 174, 175—*Offence committed in Native State—Arrest in British district—Jurisdiction.*—A first class Magistrate who has got a person arrested in a British district for an offence committed in a Native State, has jurisdiction to inquire into the case himself, under s. 9 of the Extradition

Magistrate, Jurisdiction of—continued.

——1.—**General Jurisdiction**—*continued.*

Act, XI of 1872 and s. 175 of the Crim. Pro. Code, without sending the accused to the District Magistrate, where the certificate from the Political Agent required by the former provision has been obtained. REG v. KAHANDAS, **Rat. Un. Cr. C. 97=Cr. Rg. 18 11-1875.**

(21)—*Crim. Pro. Code*, 1861, *s.* 434—*Magistrate's power to alter his own sentence.*—A Magistrate has no power to reverse or alter his own sentence when it has been finally recorded. The High Court alone is invested with such authority under s. 434, Crim. Pro. Code. REG v. TUKIA *valad* GANJI, **1 B.H.C. 3.**

(22)—*First class Magistrate of whole District—Jurisdiction.*—An officer, appointed a Magistrate of the first class for a whole district, but put in charge by the District Magistrate of particular Talukas only, is not without jurisdiction, if he inquires into or tries a case in another Taluka of the same District. An order of the District Magistrate directing the first class Magistrate to take up a case is unnecessary. QUEEN-EMPRESS v. JAMSHEDJI, **Rat. Un. Cr. C. 177=Cr. Rg. 31-8-1881.**

(23)—*Crim. Pro. Code*, 1882, *ss* 437, 438—*Case of discharge—Jurisdiction of District Magistrate.*—The accused was charged with theft and discharged by the first class Magistrate. The District Magistrate referred the case to the High Court. *Held* that the High Court need not interfere in a case of mere discharge, the District Magistrate being competent to take steps himself, should he deem it necessary. QUEEN-EMPRESS v. SHRINIVAS, **Rat. Un. Cr. C. 290=Cr. Rg. 31 of 1886.**

(24)—*Crim. Pro. Code* (1882), *s.* 555—*Disqualification of Magistrate to try case in which he has arrested the accused.*—The Magistrate and the accused were fellow-passengers in railway carriage. The latter were smoking; the Magistrate requested them to desist from smoking, but they contemptuously refused to do so. After some altercation, the Magistrate arrested the accused and subsequently tried and convicted them under s. 35 of the Railway Act, 1879: *Held* that, under the circumstances of the case, the Magistrate was legally and morally disqualified from exercising his judicial functions in relation to the offence imputed; and that, although s. 64 of the Crim. Pro. Code, gives to a Magistrate authority to arrest a person committing an offence in his presence, yet, that section was clearly not intended to trench upon the great principle embodied in s. 555 of the Code, that no Judge or Magistrate shall deal judicially with a case in which he is personally interested. QUEEN-EMPRESS v. VENKANA, **Rat. Un. Cr. C. 339=Cr. Rg. 30 of 1887.**

(25)—*Crim. Pro. Code*, 1882, *s.* 147, *Ch.* VIII—*Decision of Civil Court—Jurisdiction of Magistrate.*—Where a competent Civil Court has given a decision on the rights of the parties, the Magistrate ought not to proceed under

Magistrate, Jurisdiction of—continued.

——**1.—General Jurisdiction**—*continued.*

s. 147, but under Ch. VIII of the Crim. Pro. Code, 1882. *In re* MOTILAL, **Rat. Un. Cr. C. 462=Cr. Rg. 20 of 1889.** (6 C. 835, 6 M. 203, *F.*)

(26—*Crim. Pro. Code* (1882), *s.* 260—*Offence under* s. 211, *I P C.—Summary trial under s.* 182, *Penal Code—Jurisdiction.*—A first class Magistrate cannot give himself jurisdiction to try an offence under s. 211, I.P.C., by treating it as an offence under s. 182 of the Code. QUEEN-EMPRESS v. LAKSHMAN, **Rat. Un. Cr. C. 670=Cr. Rg 30 of 1893.**

(27)—*Crim. Pro. Code* (1882), ss. 110, 192, 530—*Jurisdiction of Magistrate.*—A case falling under s. 110 of the Crim. Pro. Code cannot be tried by a first class Magistrate not specially empowered under that section even when the case is transferred to him by the District Magistrate under s. 192. QUEEN-EMPRESS v. KHANDU GANU, **Rat. Un. Cr. C. 838=Cr. Rg. 6 of 1896.** (22 C. 901, *F*)

(28)—*Crim. Pro. Code* (1872), *s.* 530—*Basis of jurisdiction of Magistrates under.*—The essence and basis of the jurisdiction, which a Magistrate can exercise under s. 530 of the Crim. Pro. Code depends upon there being a dispute likely to create a breach of the peace; and when the parties appear before the Magistrate, if they are able to show, or if it otherwise appears to the Magistrate, that there is no dispute, or no such dispute as is likely to induce a breach of the peace, the Magistrate should hold his hand and not proceed further. —*Per Field, J.* GOBIND CHANDER MOITRA v. ABDUL SAYED, **6 C. 835=8 C L.R. 217.** [*R.*, 33 C. 33=2 C.L.J. 271=10 C.W.N. 257=2 Cr. L.J. 670, 8 Cr. L.J. 170=1 S.L.R. 50.]

(29)—*Crim. Pro. Code* (1872), s. 215—*Discharge of accused—Competency of Magistrate to revive proceedings before himself.*—A Magistrate has no power to revive before himself criminal proceedings against an accused person, who has been discharged under s. 215, where no evidence further than that already on the record is forthcoming. Such revival, if any, will be illegal and *ultra vires*. EMPRESS v. DONNELLY, **2 C. 405.** [*F.*, 4 C. 16=3 C.L.R. 263, Rat. Un. Cr. C 145; *R*, 28 C. 652, F.B., 29 M. 126=16 M.L.J. 79=1 M.L.T. 31, F.B.; *D.*, 5 C.W.N. 169=28 C. 211.]

(30)—*Evidence — Respective duties of the Police and the Magistrate.*—The Police perform their duty in *collecting evidence* and it is the function of the Magistrate alone to decide upon the sufficiency or credibility of his evidence when collected. GOVERNMENT v. KARIMDAD, **6 C. 496=7 C.L.R. 467=3 Shome L.R. Cr. 48** [*R.*, 11 M L.T. 367=1912 M.W.N. 499=22 M.L.J. 419=14 Ind. Cas. 305=13 Cr. L.J. 209, 10 Cr.L.J. 225=2 S.L.R. 11.]

(31)—*Complainant, absence of—Order of dismissal or dis charge—Powers of Magistrate—Crim. Pro. Code* (1882), *ss.* 253 *and* 259.—In warrant cases not coming under s. 259 of the Crim. Pro. Code, except under the last clause of s. 253, the absence of the complainant will not authorise a Magistrate to pass an order of dismissal or discharge. GOVINDA DASS v. DULALL DASS, **10 C. 67=13 C.L.R. 408.**

(32)—*Crim. Pro. Code* (1882), *ss.* 555, 537—*Disqualifying interest of Magistrate directing the preliminary enquiry—Court of competent jurisdiction.*—A disqualifying interest under s. 555 of the Code may result from a purely official connection with the initiation of criminal proceedings. Where the investigation of the police at the preliminary enquiry was directed by a Magistrate to a considerable degree and where the Magistrate himself traced some of the accused and ordered their arrest, *held*, that the Magistrate was disqualified from trying the case by the provisions of s. 555 of the Code. [*R.*, 1 L.B.R. 86; *D*, 24 C. 167.] The saving provisions of s. 537 extend only to the orders and so forth of Courts of competent jurisdiction; a Magistrate who, in consequence of a personal disqualification, is forbidden by law to try a particular case, though he may be authorised generally to try cases of the same class, cannot be said, with respect to that case, to be a Court of competent jurisdiction. SUDHAMA UPADHYA v. QUEEN-EMPRESS, **23 C. 328** (20 C. 857, *F.*) [*Rel. on*, 13 Cr. L.J. 236=14 Ind. Cas. 428=8 N.L.R. 1; *R.*, 8 Cr. L.J. 356=1 S.L.R. 98, Cr; 14 Cr. L.J. 385=9 N.L.R. 81=20 Ind. Cas. 209.]

(33)—*Crim. Pro. Code* (1882), *ss.* 202 *and* 555—*Magistrate holding preliminary enquiry, whether disqualified from trying a case.*—There is nothing in the Code of Criminal Procedure which disqualifies a Magistrate, who holds a preliminary enquiry under s. 202, Crim. Pro. Code, from trying the case himself, when there is nothing to indicate that he initiated or directed the proceedings or took any personal interest in the matter of the complaint presented before him. ANANDA CHUNDER SINGH v. BASU MUDH, **24 C. 167.** [*R.*, 4 C.W.N. 601.]

(34)—*Crim. Pro. Code* (1882), *s* 364—*Statements of accused made before Magistrate—Omission to record them—Whether Magistrate disqualified from trying the case.*—Where a Magistrate hearing certain statements made by an accused in open Court when brought before him omits to record them under s. 364, Crim. Pro. Code, he does not, simply by reason of his having heard the statements, make himself a witness in the case, and thereby disqualify himself from trying the same. But the Magistrate ought not to allow his mind to be in any way influenced in the consideration of the question before him by such statements. QUEEN-EMPRESS v. FATTAH CHAND, **24 A. 493=1 C.W.N. 435.**

(35)—*Crim. Pro. Code* (1898), *ss.* 192, 202, 203 *and* 204—*Issue of process to the accused after examination of complainant—Inquiry into the truth of complaint—Suspension of the issue of process.*—The law ordinarily provides that, after the examination of the complainant, on a

Magistrate, Jurisdiction of—continued.

——1.—General Jurisdiction—*continued.*

complaint made to a Magistrate, process for the attendance of the accused shall issue, and it is only when, in the terms of s. 202, the Magistrate after examining the complainant, has reason to doubt its truth, that he is authorised to suspend the issue of such process and to hold an enquiry or investigation into the truth of the complaint. JHUMUCK JHA v. PATHUK MANDAL, 27 C. 798. [*D.*, 39 C. 119=13 Cr. L.J. 433=15 Ind Cas. 65.]

(36)—*Crim. Pro Code* (1898), *ss.* 423 (*d*) *and* 522—*Magistrate of First Class specially empowered to hear appeals—Competency to hear appeal from an order under s.* 522 —S. 423 of the Code of 1898 provides for the making by an appellate Court of any consequential or incidental order that may be just or proper. Therefore, a Magistrate of the First Class specially empowered to hear appeals from subordinate Magistrates has jurisdiction, under s. 423 (*d*), to hear an appeal and pass order with reference to an order under s. 522. GOURHARI GOPE v. ALAY GOPINI, **29 C 724=6 C W N. 713.** (25 C. 620, *Declared obsolete*). [*R.*, 14 Cr. L.J. 172=19 Ind. Cas. 172.]

(37)—*Crim. Pro. Code* (1898), *s.* 556—*Local inspection by Magistrate—Judgment based on information not obtained from inspection.*—Where a Magistrate exceeds the proper limits of his discretion in holding a local inspection of the scene of occurrence, and imports into the judgment what he cannot possibly have noted from the locality or from anything connected therewith, he is not competent to try the case. He should be examined as a witness at the retrial. SATRI DULALI v. EMPRESS, **3 C.W.N. 607.** [*R.*, 37 C. 340=11 C.L.J. 335=14 C.W.N. 422=11 Cr. L.J. 121= 5 Ind. Cas. 365.]

(38)—*Local inspection by Magistrate—Practice.*—In a criminal case, in which the evidence is conflicting or is unintelligible to a person not acquainted with the locality, the Magistrate may go and see the locality himself. But where a Magistrate goes to view a place for the purpose of understanding the evidence, he should be careful not to allow anyone on either side to say anything to him which might prejudice his mind one way or the other. *In the matter of the petition of* LALJI, **19 A. 302=A.W.N. 1897, 52.** [*R.*, 37 C. 340=14 C.W.N. 422=11 Cr. L.J. 121=5 Ind. Cas 365=11 C.L.J. 335, 39 C. 476=15 C.L.J. 403 =16 C.W.N. 426=13 Cr. L.J. 156=13 Ind. Cas. 844, 13 P.R. 1901, Cr.=89 P.L.R 1901.]

(39)—*Crim. Pro. Code* (1898), *s.* 202—*Expression of opinion by Magistrate in a report, after local investigation, effect of—Transfer.*—The fact that a subordinate Magistrate expressed his opinion in submitting a report, in a case referred to him for local investigation under s. 202, is no bar to his holding the trial on an order by the District Magistrate making over the case to him for the purpose. BANI MADHAB ROY v. ROSARAJ GOSSAMI, **4 C.W.N. 604.**

Magistrate, Jurisdiction of—continued.

——1.—General Jurisdiction—*continued.*

(40)—*Reference for local inquiry to a Magistrate not competent to entertain the complaint.*—A Deputy Magistrate to whom a case was referred for local inquiry dismissed the complaint, disbelieving the story of the complainant. *Held*, that the complainant had no right to claim to have the witnesses examined by a competent Magistrate, on the ground that the Magistrate was not comptent to entertain the complaint. SURJYA HARIANI v. KING-EMPEROR, **6 C.W.N. 295.**

(41)—*Crim. Pro. Code* (1898), *s.* 145—*Power to issue warrant.*—A Magistrate has no jurisdiction to issue a warrant to compel the attendance of a party in a proceeding under s. 145. KEFATULLAH v. FERUZUDDIN MIAH, **5 C. W. N. 71.** [*D.*, 30 C. 112.]

(42)—*Jurisdiction of Magistrate having power to receive a complaint to finally dispose of the same.*—A Magistrate having power to receive a complaint has power to deal with it finally. It is for him to dispose of it, either by issue of process or by dismissing the complaint, and the District Magistrate has no power to pass any order for the issue of process upon the accused, unless he first removes the case to his own file. MRINAL KANTI GHOSH v. EMPEROR, **6 C.W.N. 843.**

(43)—*Crim. Pro. Code* (1882), *s.* 399—*Reformatory Schools Act*, 1876, *ss.* 2, 7—*Power of Second Class Magistrate to send a youthful offender to Reformatory.*—The introduction of Reformatory Schools Act repeals the operation of s. 399, Crim. Pro. Code, "so far as may be practicable." Under ss. 7 and 8 of the former Act, only a First Class Magistrate can send a male youthful offender to a Reformatory School. Therefore, an order by a Second Class Magistrate sentencing a male juvenile offender to rigorous imprisonment to be sent to the reformatory instead of being imprisoned in the criminal jail, was held to be not valid, inasmuch as only the first class Magistrate should pass an order for sending such person to the Reformatory Schools and as only reformatory schools have been established and not reformatories. QUEEN EMPRESS v. MADASAMI, **12 M. 94=1 Weir 875=2 Weir 11=2 Weir 454.** [*R.*, 25 C. 333].

(44)—*Magistrate's duty to decide points of law raised at the trial—Postponement of case to enable accused to get a ruling from the High Court—Impropriety of.* — Where the trying Magistrate, finding it difficult to decide whether certain coins, which the accused was charged with making, were King's coins or not, postponed the case to enable the accused to obtain a ruling of the High Court on the point. *Held* that the Magistrate was wrong in doing so ; it was his duty to decide whether the coins were King's coins or not, and whether any offence was committed under s. 230, I.P.C. It was not the business of the High Court to decide the point at that stage. MOHESH SONAR v. KING EMPEROR, **12 C.W.N. 604=7 Cr. L.J. 400.**

Magistrate, Jurisdiction of—continued.

——**1.—General Jurisdiction**—*continued.*

(45)—*Village Magistrate, power of, to issue summons.*—Although the regulation conferring on the Village Munsiff jurisdiction in criminal cases does not give him expressly power to issue summons, yet he has authority incidental to his jurisdiction to issue summons, whether written or oral, to persons within the local area of his jurisdiction, whose attendance may be required in cases which he is empowered to try. But he has not that power if the persons summoned are outside that area. QUEEN v. PUKELLA KRISHNAMA, **5 M. 230 = 1 Weir 922 = 6 Ind. Jur. 411.**

(46)—*Sheep stealing—Jurisdiction of Village Magistrates—Reg.* IV *of* 1821, *s.* 6—*Reg.* XI *of* 1816, *s.* 10 (1).—A Village Magistrate is not debarred by s. 6, paragraph 1, Reg. IV of 1821 from taking cognisance of a case of theft of a sheep worth less than a rupee, when the theft is not attended with aggravated circumstances and when the accused are not persons of notoriously bad character. His power of punishment, as provided in s. 10 (1), Reg. XI of 1816 does not go beyond imprisonment in choultry or in the stock. He has not, therefore, the power to fine. QUEEN v. BOYA LINGA, **5 M. 268 = 1 Weir 925.**

(47)—*Prevention of public streets to be used for procession—Duty of Magistrate—Crim. Pro. Code* (1872), *ss.* 549 *and* 518.—The power conferred upon a Magistrate by s. 518 is an extraordinary power, and the Magistrate should resort to it only when he is satisfied that other powers with which he is entrusted are insufficient. Where rights, such as rights of procession, are threatened, the persons entitled to them should receive the fullest protection the law affords them and circumstances admit of. The authority of the Magistrate should be exerted in the defence of rights rather than in their suspension; in the repression of illegal rather than in interference with lawful acts; if the Magistrate is satisfied that the exercise of a right is likely to create a riot, he can hardly be ignorant of the persons from whom disturbance is to be apprehended, and it is his duty to take from them security to keep the peace. SUNDARAM CHETTY v. QUEEN, **6 M. 203, F.B. = 2 Weir 77.** [*F.*, 14 B. 25, 34 M. 92 = 7 M.L.T. 430 = 6 Ind. Cas. 774 = 11 Cr. L.J. 400; *R.*, 18 B. 693, 26 M. 376, 26 M. 554 = 1 Weir 260, 32 M. 478 = 19 M L.J. 617 = 1 Ind. Cas. 716, Rat. Un. Cr. C. 462, Rat. Un. Cr. C. 708.]

(48)—*Crim. Pro. Code* (1882), *ss.* 443 *and* 454—*European British subject—Waiver of the right of being dealt with as such subject.*—Where a European British subject, who was prosecuted before a Hindu second class Magistrate, relinquished his right to be dealt with as a European British subject, *held*, that he had lost, all the benefit of the special procedure laid down in Ch. XXXIII, Crim. Pro. Code, and the Magistrate was competent to proceed with the case and to dispose of it. QUEEN-EMPRESS v. BARTLETT, **16 M. 308 = 2 Weir 579.** [*F.*, 37 C. 467 = 14 C.W.N. 1114 = 7 Ind. Cas. 359 = 11 Cr. L.J. 453].

(49)—*Crim. Pro. Code* (1898), *s.* 530—*Trial by Magistrate for an offence under s.* 193, *Penal Code—Facts disclosing an offence under s.* 194, *Penal Code—Conviction by Magistrate on the former offence—Jurisdiction of Magistrates—Interference by High Court.*—Certain witnesses made statements in a preliminary inquiry into a murder case before a Magistrate and contradicted them at the trial before the Sessions Court. The Sessions Judge then sanctioned their prosecution for offences punishable under s. 193, and they were accordingly convicted by the District Magistrate under s. 193, for having given false evidence by making statements, one or other of which must have been false. On appeal, the Sessions Judge of another District to whom the appeal was transferred, *held* that as the statements were made in connection with a murder case, the offence was punishable under s. 194 and was therefore triable exclusively by the Court of Sessions and not by a Magistrate of the first class. He, accordingly, set aside the conviction under that section and ordered one of the appellants to be committed for trial by the Sessions Court on a charge under s. 194, Penal Code, but did not direct any further proceedings as regards the other accused, as he considered the imprisonment already undergone sufficient punishment. *Held*, that the proceedings of the Magistrate were not void, but were merely improper, and that the proceedings should not be set aside, if they had not occasioned a failure of justice. Whether the High Court as a Court of revision or the appellate Court ought to interfere in any particular case depends entirely on the facts of the case and whether such interference is called for in the interests of justice. KING-EMPEROR v AYYAN, **24 M. 675 = 2 Weir 699.** [*R.*, 14 Cr. L J. 640 = 21 Ind. Cas. 688 = 25 M. L J. 484.]

(50)—*Crim. Pro. Code* (1861), *s.* 435—*Conviction for an offence beyond jurisdiction of Magistrate—Powers of Sessions Judge.*—If a Sessions Judge, after a persual of the records, is of opinion that the subordinate Magistrate has convicted an accused person of an offence, which the Magistrate has no jurisdiction to try, he may annul the conviction and direct the committal of the accused for trial before himself. HIGH COURT PROCEEDINGS, 21ST JULY 1870, **5 M.H.C. App. 32.**

(51)—*Crim. Pro. Code* (1872), *ss.* 467, 468, 469 *and* 473—*Offence committed before Court—Jurisdiction.*—A Magistrate cannot try any offence described in ss. 467, 468, 469, when committed before himself, except in cases triable by the Court of Sessions exclusively; and the prohibition contained in s. 473 extends

Magistrate, Jurisdiction of—continued.

——1.—**General Jurisdiction**—*continued.*

to those sections. HIGH COURT PROCEEDINGS, 24TH MARCH 1873, **7 M.H.C. App. 17** [*Appr.*, 1 B. 339; *F.*, 1 B. 311, 7 M.H.C. App. 28.]

(52)—*Crim. Pro. Code* (1882), s. 28—*Offences under the Treasure Trove Act—Jurisdiction of third class Magistrate.*—Third class Magistrates have no jurisdiction to try offences punishable under s. 20 of Act VI of 1878. CRIMINAL REVISION CASE NO. 328 OF 1882, **2 Weir 23.**

(53)—*Summons—Omission to specify the place of attendance—Competency of Magistrate to proceed* ex parte.—Where an accused was summoned to appear before a Magistrate on a certain date but the summons did not specify the place at which he was to appear, *held*, that the Magistrate was not competent to dispose of the case *ex parte*. HIGH COURT PROCEEDINGS, 30TH NOV. 1874, NO. 1968, **2 Weir 38 = 7 M.H.C. App. 43.**

(54)—*Crim. Pro. Code* (1861), s. 228 (= s. 216, *second proviso of the Code of* 1898)—*Confiscation of a deposit made by a prisoner.*—In the absence of any provision authorising a forfeiture to the Government, an order directing the forfeiture of a deposit made by a prisoner is erroneous. The deposit should be returned to the jailor in trust for the depositor, or paid to any person authorised by the depositor to receive it. HIGH COURT PROCEEDINGS, 13TH DEC. 1870, NO. 2288, **2 Weir 263 = 6 M.H.C. App. 9.**

(55)—*Report to police by husband—Kidnapping—Penal Code, ss.* 363 *and* 498.—Where, upon a report made to the police by a husband that the accused had kidnapped his lawful wife, the police placed the accused before a Magistrate for trial of an offence under s. 363, I.P.C., it was *held*, that the report, though made by the husband, did not give the Magistrate jurisdiction to convict the accused under s. 498, Indian Penal Code. EMPEROR v. KHUSHAL SINGH, **17 C.P. L.R. 105 = 1 Cr. L.J. 763.**

(56)—*Crim. Pro. Code, ss.* 203, 250—*Dismissal of a false complaint under s.* 203—*Compensation to accused, whether can be awarded.*—Compensation can be awarded to the accused when there has been a discharge or acquittal after the trial of a frivolous or vexatious charge. In cases in which the complaint is dismissed under s. 203, without issue of process to the accused, the fact that the latter was present with a pleader at the enquiry under s. 202 could not enable the Court to award compensation to the accused. HARPHUL v. MANKU, **3 P.R. 1906, Cr. = 4 Cr. L.J. 36 = 84 P.L.R. 1906.** [*R.*, 11 Cr.L.J. 638 = 8 Ind. Cas. 387 = 30 P.R. 1910, Cr.]

(57)—*Crim. Pro. Code* (1898), s. 345—*Penal Code*, s. 147—*Rioting—Magistrate allowing the offence to be compounded—Reasons for so allowing—Order* ultra vires.—A Magistrate has no jurisdiction to allow a non-compoundable offence to be compounded, on the ground that it would probably be better for the complainant to do so, that the accused also wished for the compromise, and that it was probable that the case might in the end turn out to be a compoundable offence. Such an order is *ultra vires*. The offence of rioting under s. 147, Indian Penal Code, being an offence against the public tranquillity, primarily concerns the state more than the individual; and that is probably one reason why it was not made a compoundable offence. KING-EMPEROR v. HIRA SINGH, **11 P.R. 1907, Cr. = 34 P.W.R. 1907, Cr. = 6 Cr.L.J. 336 = 47 P.L.R. 1908.**

(58)—*Application under s.* 133, *Crim. Pro. Code—Power of Magistrate to go into the main issue as to right of way—Question of jurisdiction when to be raised.*—On an application by the respondent to the Magistrate under s. 133, Crim. Pro. Code, for an order directing the applicant to open a certain road over which the respondent said the public had a right of way, the applicant alleged that the road was a private one and that he was entitled to close it. The *bona fides* of the applicant's allegation not being questioned,—*held* that the Magistrate had no jurisdiction to go into the main issue between the parties as to whether the road in question was a public or a private one. *Held*, also, that, so long as the applicant had not waived his right to sue in the Civil Court or expressly assented to accept the decision of the Magistrate upon the main point in issue between the parties, the question of jurisdiction can be raised at any time. SUTHERLAND v. SINGALA MAHOMED, **L.B.R. 1872—1892, 530.**

(59)—*Crim. Pro. Code* (1898), *s.* 133—*Jurisdiction of a Magistrate over a private right of way.*—Where the right-of-way obstructed is a right of way from a private house to a public road and the public road was in no way obstructed, such a right of way is a private and not a public right of way, and a Magistrate has no jurisdiction, under s. 133, Crim. Pro. Code, over a private right of way. QUEEN-EMPRESS v. MA MYA, **L.B.R. 1893—1900, 574.**

(60)—*Jurisdiction of Magistrate to take cognisance of offence without order of superior Court directing further inquiry—Previous discharge of accused—Crim. Pro. Code* (1882), *ss.* 436, 437, 403 *and* 191—*Re-arrest of accused by police upon their own authority after a discharge by Magistrate.*—A Magistrate of competent jurisdiction, before whom an accused person is prosecuted after the conditions requisite for the initiation of proceedings and for enabling such Magistrate to take cognisance of an offence have been fulfilled, does not cease to be empowered by law to try such offender, merely because that offender has been discharged but not acquitted in a previous prosecution for the same offence, and no order to make a further inquiry has been passed under s. 436 or s. 437 of the Crim. Pro. Code by one of the Courts therein specified. QUEEN-EMPRESS v. NGA O BOK, **L.B.R. 1893—1900, 169.**

Magistrate, Jurisdiction of—continued.

—— **1.—General Jurisdiction**—*continued.*

(61)—*Jurisdiction of Magistrate to try an accused of an offence under s. 211, I.P.C., committed before himself—Crim. Pro. Code* (1882), ss. 195 *and* 487.—Under s. 487 of the Crim. Pro. Code, a Magistrate is not competent to try an accused for an offence under s. 211, I. P.C., committed before himself, whether he had sanctioned the prosecution or not before it began, that offence being one mentioned in s. 195 of the Crim. Pro. Code. RUNGASAWMY v. QUEEN-EMPRESS, **L.B.R. 1893—1900, 190.**

(62)—*Kidnapping a minor—I P.C., s.* 366.—Magistrates should not assume jurisdiction to deal with a case which really falls under s. 366, I.P.C., by ignoring the circumstances which bring the case under that section, *viz*, the intention to seduce for the purpose of illicit intercourse. QUEEN-EMPRESS v. SHEIK FREIGH, **L.B.R. 1893—1900, 212.**

(63)—*Preventive jurisdiction of Magistrate—Crim. Pro. Code* (1882), *Ch VIII.*—A distinct advantage, conducing to the general welfare, is gained by multiplying private interests which coincide with the public interest, shared by the community at large, in the maintenance of public order. Such private interests coinciding with the public interest becomes multiplied when private individuals undertake a personal responsibility for the good behaviour of others, whose conduct has become a menace to the social order of the community in which they live. This advantage is missed when Magistrates incautiously make the security demanded too heavy in amount or too long in duration, so that the actual result of enforcing the provision of Ch. VIII of the Crim. Pro. Code is to transfer bad characters in undue numbers to the jails, instead of binding them over and leaving them free to gain an honest livelihood. The extent to which the preventive jurisdiction of the Magistracy under Ch. VIII of the Crim. Pro. Code is, at any particular period and in any districts, exercised, is dependent upon executive policy more than upon judicial control, as no effective judicial control over Magisterial action in this matter has been provided for, as long as the law is not exceeded in individual cases. QUEEN EMPRESS v. NGO ON, **L B.R. 1893—1900, 223.**

(64)—*Order demanding security—Same order providing for imprisonment in default—Validity.*—A Magistrate is not authorised to record an order directing security to be given and in the same order to direct the person from whom security is demanded to be imprisoned if security be not furnished. QUEEN-EMPRESS v. NGA SAING GYI, **L.B.R 1893—1900, 245.**

(65)—*Trial of offence other than that reported by the police—Offence disclosed by evidence.*—A Magistrate having taken cognizance of a case upon a police report is bound to enquire into *any* offence which the evidence discloses and to try the accused for such offence, provided it is triable by him. QUEEN-EMPRESS v. NGA YE, **L.B.R. 1893—1900, 386.**

Magistrate, Jurisdiction of—continued.

—— **1.—General Jurisdiction**—*continued.*

(66)—*Power of Magistrate of Second or Third Class having jurisdiction to frame a charge—Crim. Pro. Code, ss.* 245 *and* 349.—It is not illegal or irregular for a Magistrate of the second or third class to frame a charge against an accused person, in a case which he has jurisdiction to try, even though, at the time of framing the charge, he intends, if he should be of opinion that the accused is guilty, to submit the proceedings to the District or Sub-Divisional Magistrate to pass sentence. S. 254, Crim. Pro. Code, must be read as subject to the general provision in s. 349. KING-EMPEROR v. HLA GYI, **2 L.B.R. 285 = 10 Bur.L.R. 306 = 1 Cr.L.J. 1010.** (Rat. Un. Cr. C. 499, *Diss.*; 4 B. 240, 10 B. 196, 1 M. 289, 4 M 233, 9 M. 377, 13 C. 305, 14 C. 355. 4 A. 366, S.J.L.B. 574. L.B.R. 1893—1900, 258, 1 L.B.R. 141, *R.*) [*R.*, 8 Cr. L.J. 478 = 4 L.B.R. 282.]

(67) *Crim. Pro. Code* (1898), *ss.* 255 *and* 349—*Accused pleading guilty, conviction on, without taking accused's defence—Procedure.*—Where the accused is tried by a third class Magistrate and pleads guilty to a charge of theft in a house, and the Magistrate, thereupon, sends him to the Sub-Divisional Magistrate for sentence under s. 349, the Sub-Divisional Magistrate should not send the case back to the third class Magistrate to take the accused's defence, under the erroneous belief that, in warrant cases, no accused can be convicted on his mere plead of guilty. If there had been any need to take the accused's defence, the Sub-Divisional Magistrate ought to do it himself. S. 349 does not give him any power to return the case to the third class Magistrate for the purpose of supplying omissions. Sub-s. 2 indicates the course he should adopt. KING-EMPEROR v. TAW PYU, **3 L.B.R 279 = 5 Cr. L J. 416.**

(68)—*Trial of previously convicted offender—Penal Code, s.* 75—*Magistrate considering that on conviction he cannot himself pass adequate sentence—Procedure—Crim. Pro. Code, ss.* 348 *and* 349.—Where a person is charged with an offence before a second class Magistrate, and the Magistrate thinks that, on conviction of the accused, he cannot himself pass an adequate sentence, he has no jurisdiction to do anything but to transfer the case to a District Magistrate specially empowered under s. 30, or if he is empowered to commit to sessions, follow the procedure of Ch. XVIII of the Code for enquiry into cases triable by the Court of Session. The accused, who had been previously convicted and was liable, if again convicted, to enhanced punishment under s 75 of the Penal Code, was sent before a second class Magistrate, charged with theft in a building. The Magistrate, being of opinion that he was guilty, but that he could not pass an adequate sentence himself, referred the case under s. 349, Crim. Pro. Code, to the Sub-divisional Magistrate, who sentenced him to two years' rigorous imprisonment and whipping. *Held*, that s. 348 of the Code applied to the case, and that the Magistrate was debarred

Magistrate, Jurisdiction of—continued.

——**1.—General Jurisdiction**—*continued.*

from referring the case for a higher punishment under s. 349. KING-EMPEROR v. PO THWE, **4 L.B.R. 282=8 Cr. L.J. 478.** (2 L.B.R. 285, *R.*)

(69)—*Evidence disclosing the commission of a graver offence than the Magistrate could punish—Procedure.*—When the evidence discloses the possible commission of an offence graver than he is himself competent to deal with, a Magistrate should not attempt to dispose of the case on the chance of its being confined within his own jurisdiction, but should submit it for determination to the Court by which alone, according to law, the more serious offence is triable. QUEEN-EMPRESS v. NGA MYA, **U.B.R. 1897—1901, Vol. I, 327.**

(70)—*Crim. Pro. Code* (1898), *s.* 488 (9)—*Maintenance for wife.*—Occasional visits of a husband to a wife, who lives apart from him, do not give jurisdiction to a Magistrate in the district in which the wife resides, within the meaning of s. 488 (9), Crim. Pro. Code, 1898. MAUNG WAING v. MA CHIT, **U.B.R. 1904, 1st Qr., Cr. P.C. 10=10 Bur. L.R. 319=1 Cr. L. J. 545.** (L.B.R. 1902, 222, 24 C. 638, U.B.R 1897—1901, 104, *R.*)

(71)—*Crim. Pro. Code* (1882), *s.* 487—*Scope—I.P.C., s.* 174.—In determining the construction of s. 487, Crim. Pro. Code, effect must be given to the words "as such Judge or Magistrate," and as these words must be read in connection with all the three classes of offences previously referred to, a Magistrate is not debarred by law from trying an accused person under s. 174, I.P.C., for disobedience of a summons issued by him in his capacity of Mamlatdar. QUEEN-EMPRESS v. RAIJI DAJI, **18 B. 380, F.B.** [*R.*, U.B.R. 1897—1901, 61 (*a*); *D.*, Rat. Un. Cr. C. 904.]

(72)—*Second class Magistrate—Power to inflict sentence of whipping—Crim. Pro. Code—Act* X *of* 1872—*Act* X *of* 1882, *ss.* 2, 32 — Magistrates of the second class who had under Act X of 1872, power to inflict the punishment of whipping, could not, after Act X of 1882 had come into force, pass that sentence, unless that power had been specially conferred upon them. EMPRESS v. BHAGVANTA RAVJI, **7 B. 303.**

(73)—*Crim. Pro. Code* (1882), *s.* 555—*Disqualification of Magistrate—Personally interested—Statements made to Magistrate out of Court.*—A Magistrate who was one of several persons obstructed by a person driving on the wrongside of a road, could not himself, as having been personally interested in the case, try the offence under ss. 28 and 29 of Bombay Act VII of 1867. So also, a Magistrate was held to be "personally interested" within the meaning of s. 555, Crim. Pro. Code, when it was his wife, who was driving a dog-cart for passing which the accused had been convicted of rash and negligent driving. [*R.*, 15 A. 192, F.B.] It is extremely improper for a Magistrate, in disposing of a case, to rely in any way on statements made to him out of Court. QUEEN-EMPRESS v. SAHADEV *valad* TUKARAM, **14 B. 572.** [*R.*, L.B.R. 1893—1900, 445.]

(74)—*Pecuniary interest of Magistrate.*—Where the accused, a compounder in the employment of a medical firm, was charged with criminal breach of trust in respect of about Rs. 20, the property of the said firm, *held* that a Magistrate, who was a share-holder in that firm, was not competent to try him, as he had a pecuniary interest, however small, in the result of the accusation. *In re* P.A. RODRIGUES, **20 B. 502.**

(75)—*Crim. Pro. Code* (1882), *s.* 555—*Personal interest—Magistrate himself affected by alleged offence under ss.* 28, 29 *of Bom. Act* VIII *of* 1867—*Jurisdiction.*—Where a Magistrate is himself one of those obstructed by the driving of the accused on the wrong side of the road, he should not himself try the accused under ss. 28 and 29 of the Bombay Village Police Act. QUEEN-EMPRESS v. LAHANA, **Rat. Un. Cr. C. 321=Cr. Rg. 7 of 1887.**

(76)—*Crim. Pro. Code* (1882), *s.* 555 —*Disqualification of Magistrate—Magistrate having legal interest in decision of case—"Personally interested"—Object of disqualifying rule.*—Where it appeared from the judgment of a Magistrate and the evidence in the case, that he himself initiated the proceedings under ss. 143 and 150 of the Penal Code, which he, as a Magistrate, had subsequently tried, and that he took an active part in the dispersing of the unlawful assembly, and had pursued and directed the pursuit of the members of that assembly, and that subsequently he took pains to collect the evidence showing the connection of the accused with the unlawful assembly and the keeping of armed men, on which they were afterwards convicted, *held*, that in these circumstances, the Magistrate should not have tried the case himself, as he had initiated and directed the whole proceedings and as he could also be said to have been personally interested in them. [*F.*, 23 C.328; *R.*, 27 A. 33=A.W.N. 1904. 157, 36 A. 239=12 A.L.J. 399=15 Cr. L.J. 212=22 Ind. Cas. 996, 24 M. 238=2 Weir 238, 11 C.L. J. 335=14 C.W.N. 422=5 Ind. Cas. 365=11 Cr. L J. 121=37 C. 340; *D.*, 24 C. 167, 39 C. 476=16 C.W.N. 426=15 C.L.J. 403=13 Cr L.J. 156=13 Ind.Cas. 844.] The term "personally interested" in s. 555 does not mean merely "privately interested," but includes such an interest as the Magistrate should have had in the conviction of the accused. The law, in laying down the strict rule that, if a Magistrate had any legal interest in the decision of the case, he is disqualified from trying it, however small that interest may be, had regard not so much to the motives which might be supposed to bias the Judge, as to the susceptibilities of the litigant parties. One important subject, at all events, is to clear away everything which might engender suspicion and distrust of the

Magistrate, Jurisdiction of—continued.

——**1.—General Jurisdiction**—*continued.*

tribunal, and to promote the feelings of confidence in the administration of justice which is so essential to social order and security. GIRISH CHUNDER GHOSE v. QUEEN-EMPRESS, **20 C. 857.** [*R.*, 23 C. 495, 17 P.L.R. 1904=88 P.R. 1903; *D.*, 10 C.W.N. 441.]

(77)—*Magistrate being also a Municipal Chairman—Competency to try, or hear an appeal from a Municipal case—Crim. Pro. Code* (1882), *s.* 555—*Disqualification of Magistrate.*—Even apart from the question whether a Magistrate, who is also the Chairman of a Municipality, is disqualified under s. 555 from trying a case or hearing an appeal in which the prosecution has been sanctioned by the Municipality, he ought not to try the case or hear the appeal, and a transfer should be made, as it is desirable that the parties should have the fullest confidence in the tribunal that has to try them. *Per Banerjee, J.*—S. 555 renders a Magistrate incompetent to try a Municipal case where he is the Chairman of the Municipality. The words "to try in any case" in the section are comprehensive enough to include the hearing of an appeal. *Per Macpherson, J.*—"The order of transfer ought to be made altogether apart from the question whether there is a disqualification under s. 555 of the Code. On that point I should prefer to reserve my opinion rather than to decide it in the present case." NISTARINI DEBI v. GHOSE, **23 C. 44.** [*F.*, A. W.N. 1899, 74, U.B R. 1905, 1st Qr. Cr. P. C., p. 37; *R.*, 14 Cr. L.J. 385=9 N.L.R. 81=20 Ind. Cas. 209.]

(78)—*Crim. Pro. Code* (*Act X of* 1872), *ss.* 56 *and* 222=*ss.* 40 *and* 260 *of the present Code* (*Act V of* 1898)—*Summary jurisdiction.*—Where a Magistrate having been, before his going to England on furlough, invested with first-class powers, as well as powers under s. 222 of the Code of 1872, in a certain local area under a certain Local Government, was, on his return, posted to another local area under the same Local Government and was invested only with first-class powers, *held*, that s. 56 did not apply so as to give him jurisdiction within the latter local area to try offences summarily under s. 222 of the Code of 1872. *Per Mitter, J.*—On the ground that the office to which he was appointed after his return from England was not equal to or higher than that which he held previous to his going out on furlough. *Per Markby, J.*—On the ground that the terms under which he was originally invested with summary jurisdiction precluded the exercise of the same jurisdiction within the local area to which he was subsequently posted. *Quære*—*Per Markby, J.*—Whether the posting of the officer after his return from furlough, could be said to be a transfer within the meaning of s. 56 of the Code of 1872. *In the matter of* PURSOORAM BOROOAH, **2 C. 117.**

(79)—*Conviction by Assistant Magistrate—Order investing him with first class powers made on the same date—Appeal to District Magistrate—When above order takes effect.*—In order to set aside the order of acquittal made by a District Magistrate on appeal against the conviction of an Assistant Magistrate, on the ground that, as an order of the Lieutenant-Governor of the same date invested the Assistant Magistrate with first-class powers, no appeal lay to the District Magistrate, it must be shown, supposing that the Lieutenant-Governor's order took effect instantaneously, that such order was made prior to the conviction by the Assistant Magistrate. *Quære*—Whether an order investing a Magistrate with first-class powers is of any force, or amounts to an authority to exercise such powers, until the order has been officially communicated to the Magistrate? *In the matter of the petition of* MOHAMED ESHAK, CHUNDRO MARWARI v. MOHAMED ESHAK, **6 C. 476.**

(80)—*Crim. Pro.Code* (1898), *s.* 524—*Competency of third-class Magistrates to make orders under.*—Third-class Magistrates, as such, have no authority to make an order under s. 524, Crim. Pro. Code, 1898. NARAYAN v. VISAJI, **23 B. 494.**

(81)—*Crim. Pro. Code* (1882), *s.* 555—*Magistrate being Vice-President and Chairman of Municipality—Competency to try Municipal offences—Bom. Act VI of* 1873—The mere fact that a Magistrate is the Vice President of a Municipality and Chairman of the Managing Committee does not disqualify him from trying an offence against the Bombay District Municipal Act. But if he has taken any part in promoting the prosecution, as for instance, by concurring in sanctioning it at a meeting of the Managing Committee or otherwise, he would be disqualified by reason of the existence of a personal interest over and above what may be supposed to be felt by every Municipal Commissioner in the affairs of the Municipality. QUEEN-EMPRESS v. PHEROYSHA PESTONJI, **18 B. 442.** [*R.*, 23 C. 44, U.B.R 1897—1901, 133, Cr.].

(82)—*Disqualification of a Magistrate to try a case—Evidence, admissibility of.*—A Magistrate may become disqualified from dealing with a case by his previous action, but the character of the evidence and its inadmissibility cannot be affected by his subsequent conduct; in other words, what is admissible in evidence cannot become inadmissible through the course subsequently taken by a Magistrate. EMPRESS v. LAL SHEIKH, **3 C.W.N. 387.**

(83)—*Rules of evidence—Duty of Magistrate—Order of re-trial—Record of former proceedings, whether, can be made use of.*—A Magistrate trying a case is as much bound by strict rules of evidence as any Sessions Judge or Civil Court. Where a former trial has been set aside and a new trial is ordered, the Magistrate holding the second trial is not justified in referring to the former record as a whole, but he may refer to particular depositions which are specially put in evidence. *In the matter of* DEVI DUTT, **7 C. L.R. 193.**

Magistrate, Jurisdiction of—continued.

——1.—**General Jurisdiction**—*continued.*

(84)—*Trial by Bench of Magistrates—Some not present throughout the trial—Irregularity, whether curable.*—In a trial of a case by a Bench of Magistrates, three out of six Magistrates, who had heard only the defence part of the trial, expressed their judgments in the case as well as the other three, who had tried the case throughout. The former three came to the same conclusion as the latter three Magistrates and the accused was rightly convicted. *Held*, that, as the case was rightly decided, the irregularity was not such as to vitiate the proceedings or to require the High Court's interference. RAMASAMI AIYAR v. AMBALAVANA PILLAI, **9 M.L.J. 335.**

(85)—*Disqualification—Order for prosecution under s. 211, I.P.C.*—A Magistrate, who has taken cognizance of a case under s. 211, I.P.C., and has directed the prosecution upon a police report, is not disqualified from trying the case himself. KARIM BAKHSH v. EMPEROR, **12 P.R. 1905, Cr. = 2 Cr. L.J. 66 = 74 P.L.R. 1905.** (29 P.R. 1894, Cr., *F.*) [*R.*, 9 N.L.R. 81.]

(86)—*Disqualification to try a case.*—A personal inspection by the Magistrate, of the locality to test the correctness of the evidence, does not disqualify the Magistrate from trying the case by making him a witness. CROWN v. HARSA SINGH, **13 P.R. 1901, Cr. = 89 P.L.R. 1901.** (19 M. 263, *D.*; 19 A. 302, *Appl.*) [*F.*, 11 Cr. L.J. 171 = 5 Ind. Cas. 602 = 1 P.W.R. 1910, Cr.; *R.*, 19 P.W.R. 1910, Cr.]

(87)—*Magistrate not to import his own knowledge into the case.*—A Magistrate trying an accused person ought not to import his own knowledge of, or as regards, the accused into the case. *In re* A. FONSECA, **6 Bom. L.R. 480 = 1 Cr. L.J. 589.**

(88)—*Crim. Pro. Code (Act XXV of 1861), s. 62—Legality of order to widen door-way of temple.*—Where a Magistrate issued an order under s. 62 of the Crim. Pro. Code, to the hereditary priests of a public temple to widen and raise the height of a door-way in the same with a view to the safety of pilgrims, *held* that such an order was legal and would be so even if the temple were a private one. REG v. RAMCHANDRA EKNATH, **6 B.H.C. Cr. 36.** [*R.*, 7 B.H.C. Cr. 2.]

(89)—*Crim. Pro. Code (Amended Act, XXV of 1861), ss. 23-G, 434—Full power Magistrate—Subordinate to whom.*—Under s. 23 G of the Crim. Pro. Code, a Magistrate of Full Powers, is for the purposes of s. 434, immediately subordinate to the District Magistrate and not to the Sessions Court which has, therefore, no authority to call for the proceedings. REG. v. KESHAVSHET, **6 B.H.C. Cr. 74.**

(90)—*Full Power Magistrate—Power to refer complaints to subordinate Magistrate.*—A full Power Magistrate has no power to refer a case sent to him to a subordinate Magistrate of the first class. REG. v. FAKIRAPPA *bin* NINGAPPA, **9 B.H.C. 168, Note.**

Magistrate, Jurisdiction of—continued.

——1.—**General Jurisdiction**—*continued.*

(91)—*Crim. Pro. Code (1872), ss. 123, 127, 141—Magistrate of third class—Power to entertain charge on police reports.*—A Magistrate of the third class can try a person accused of a cognizable offence, who has been forwarded by the police under s. 123, Crim. Pro. Code, 1872. REG v. LALA SHAMBHU, **10 B.H.C. 70.** [*R.*, 2 L.B.R. 146, U.B.R. 1904, 3rd Qr. Crim. Pro. Code, 164, 364.]

(92)—*Conviction by subordinate Magistrate for hurt—Reversal by District Magistrate and order to commit to Sessions—Legality.*—Where a District Magistrate reversed a conviction passed by a subordinate Magistrate, First Class, for causing hurt with an instrument for cutting, stabbing, etc., under s. 324 of the I.P.C. for an offence cognizable by the subordinate Magistrate) on the ground that the facts disclosed the offence of causing grievous hurt by a dangerous weapon (a charge cognizable by the Court of Session) and directed the accused to be committed to the Sessions; *held* that the order was illegal, the subordinate Magistrate having jurisdiction to try the accused for the offence of which he was convicted, and that the District Magistrate should have referred the matter to the High Court. REG. v. HANMAPA *bin* MALAPA, **7 B.H.C. Cr. 37.**

(93)—*Crim. Pro. Code (Act XXV of 1861), s. 270—Nature of complaint.*—The complaint as originally presented was not for an offence under Ch. XV of the Crim. Pro. Code. The Magistrate altered it into such an offence, and finding it to be frivolous and vexatious, awarded compensation, *held* that the order was illegal. REG. v. GURLINGAPA, **7 B.H.C. Cr. 58.** [*R.*, 6 M. 316.]

(94)—*Crim. Pro. Code (1872), ss. 473, 518—Disobedience of order under s. 518, duly promulgated — Jurisdiction of Magistrate who issued the order.*—The offence of disobedience of an order duly promulgated under s. 518, Crim. Pro. Code, 1872, directing the removal of a local nuisance, cannot be tried by the Magistrate who has issued the order, by reason of s. 473 of the Code. REG. v. RANCHOD DAYAL., **10 B.H.C. 424.** [*Appl.*, 24 M. 262 = 2 Weir 611.]

(95)—*Crim. Pro. Code (1882), ss. 346, 350—Commitment without fresh evidence.*—A Magistrate, to whom a case has been submitted under s. 346 of the Crim. Pro. Code, can commit for trial without taking the evidence afresh, basing his determination on the evidence already recorded and the report sent with it. QUEEN-EMPRESS v. SHESHA, **Rat. Un. Cr. C. 472 = Cr. Rg. 29 of 1889.**

(96)—*Crim. Pro. Code, s. 190, cl. (1) (b)—Magistrate trying an accused person—Evidence of police officer during trial—Direction to put another person in dock as co-accused—Cognizance of offence—Conviction of both—Legality.*—Where a Magistrate directed the petitioner, who was present in Court during the trial of another on a charge of theft, to be put in the

Magistrate, Jurisdiction of—continued.

—— 1.—General Jurisdiction—*continued.*

dock as co-accused on the strength of the evidence of a police Sub Inspector given in the course of such trial, tried them both, and convicted them both. *Held*, that the Magistrate took cognizance under s. 190, cl. (1) (*b*) and the conviction was legal. NGA PO YON v. KING-EMPEROR, **U.B.R. 1910, 1st Qr., Cr. P.C. 2=7 Ind. Cas. 861=11 Cr. L.J 489.** (U. B.R. 1897—1901, I, 56, *Affirmed*; 1 C.W.N. 105, 26 C. 786, 4 C.W N. xiv, Rat. Un. Cr. C. 951 *R.*)

(97)— *Crim. Pro. Code*, s. 556—*Magistrate ordering prosecution as president of octroi subcommittee—Personally interested—Jurisdiction.* —A Magistrate, as the president of *octroi* subcommittee, ordered the prosecution of the accused, and, with the consent of the accused, tried the case himself. *Held*, that the Magistrate must be deemed to have been personally interested within the meaning of s. 556, Crim. Pro. Code, and was not qualified to try the case of the applicant, whose consent could not confer jurisdiction upon him. BISHESHAR BHATTACHARYA v. KING-EMPEROR, **7 A.L. J. 749=32 A. 635=11 Cr. L.J. 447=7 Ind. Cas. 291.** [*R.*, 8 A.L.J. 1129=12 Cr. L.J. 575=12 Ind. Cas. 839, 11 A.L J. 852, 13 Cr. L J. 30=13 Ind Cas. 222=5 S.L.R. 137.]

(98)—*Crim. Pro. Code*, ss. 208, 209, 211, 213 —*Framing of a charge—Order of commitment —Procedure— Magistrate's order — Power to change the order.*—The applicant was being tried before a Magistrate. After the witnesses for the prosecution had been examined, and the Magistrate was about to frame charges against the applicant, his pleader pointed out to the Magistrate the propriety of committing the case for trial to the Court of Session. Yielding to that suggestion, the Magistrate framed certain charges, one of which was under s. 467, Penal Code, and directed that the case should be tried by the Court of Session. The applicant then raised the objection that the charge under s. 467, Penal Code, could not proceed for want of sanction under s. 195 of the Crim. Pro. Code. The Magistrate thereupon amended the charge and intimated his intention to try the case himself, instead of committing it to the Court of Session. The applicant applied to the High Court. *Held*, that the Magistrate had merely framed the charge and arrived at the procedure so far only as s. 210 of the Crim. Pro. Code laid it down: but that did not divest him of his jurisdiction to proceed with the case. He had further procedure to adopt before passing his order of commitment; and when that procedure had been followed, it was open to him to consider whether he ought to commit the case to the Court of Session or to try it himself. This discretionary power was given to the Magistrate by the provisions of s. 213 itself. When the evidence referred to in s. 208 of the Crim. Pro. Code has been taken and the accused examined under s. 209, the Magistrate may either discharge the accused, or, if he finds there are sufficient grounds for commitment, he shall frame a charge, read and explain it to the accused. After that the Magistrate has to direct the accused to give in, orally or in writing, a list of his witnesses (s. 211). When the list has been given, the Magistrate may in his discretion summon and examine any witness named in it. It is only after all this procedure has been followed that the Magistrate can make an "order of commitment" recording briefly his reasons for it. The mere framing of a charge against the accused, as required by s. 210, is distinct from and does not amount to an order of commitment, which has to be made under s. 213. A Criminal Court has no power given to it by the Code of Criminal Procedure, to review and modify an order which it has once passed; the order, however, must be such as is contemplated by the Code. EMPEROR v. VENKATESH SADSHIV NARGUND, **12 Bom. L.R. 521=7 Ind. Cas. 450=11 Cr. L J. 486.**

Language of record of statement of accused to Magistrate- *See* ACCUSED PERSON, 5 C. 826.

Court importing its own knowledge into case —*See* ACCUSED PERSON, 6 O.C. 204.

See ACT XXVI OF 1850, s. 7 (5), 3 B.H.C. Cr. 36, 8 B.H.C. Cr. 12, 8 B.H.C. Cr. 39.

See ACT XVIII OF 1854, s. 17, 3 B.H.C. Cr. 54.

See ACT XVIII OF 1854, s. 25, 7 M.H.C. App. 8.

See ACT XVIII OF 1854, s. 26, 3 B.H.C. Cr. 10, 6 M.H.C. App. 41, 4 M.H.C. App. 9.

See ACT XVIII OF 1854, ss. 30, 35, Rat. Un. Cr. C. 83=Cr. Rg. 28-7-74.

See ACT XXII OF 1855, ss 46, 62, 5 B.H.C. Cr. 14.

See ACT I OF 1859, s. 83 (5), 4 M.H.C. App. 23.

See ACT XIII OF 1859, 4 M.H.C. App. 64.

See ACT XXXI OF 1860, ss. 5, 44, 5 M.H.C. App. 23.

See ACT XXXI OF 1860, s. 35, Rat. Un. Cr. C. 80.

See ACT V OF 1861, s. 29, 22 A. 340=A.W. N 1900, 110, 4 W.R. Cr. 2, 1 W.R. Cr. 5.

See ACT XVII OF 1862, 1 B.H C. 100.

See ACT XXII OF 1864, ss. 17, 20, A.W.N. 1882, 52.

See ACT XX OF 1866, ss. 91, 95, 5 B.H.C. Cr. 7.

See ACT III OF 1867, ss. 3, 4, 5, 14, L.B.R. 1872—1892, 486.

See ACT III OF 1867, ss. 3, 4 and 16, L.B. R 1872—1892, 378.

See ACT III OF 1867, s. 13, L.B.R. 1893—1900, 251.

See ACT IX OF 1868, s. 17, 4 M.H.C. App. 61.

Magistrate, Jurisdiction of—continued.

——**1.—General Jurisdiction**—*continued.*

See ACT XVIII OF 1869, s. 43, 2 A. 806, 3 C, 622=2 C.L.R. 179.

See ACT I OF 1871, ss. 8, 20, 22, 23 C. 442.

See ACT X OF 1873, ss. 4, 5 and 14, 16 M. 421=1 Weir 175.

Withdrawal of cases—*See* ACT XI OF 1874, s. 6, 8 C. 851.

Effect of repeal of Madras Act III of 1865, by Act XVI of 1874—*See* ACT XVI OF 1874, 1 M. 223.

See ACT III OF 1877, s. 82, 10 C. 604, 14 W.R.Cr. 74=8 B.L.R. 423-N, 18 W.R. Cr. 15=5 B.L.R. Ap. 89, 8 B.L R. 422=17 W.R. Cr. 39.

Registrar transferring complaint to Magistrate and then as Magistrate transferring it to police—*See* ACT III OF 1877, s. 83, 10 W.R. Cr. 21=6 B.L.R. 693, note.

Jurisdiction of Sessions Judge to try offences under Registration Act—*See* ACT III OF 1877, s. 83, 15 W.R. Cr. 58=6 B.L.R. F.B. 692.

See ACT I OF 1878, s. 3, Rat. Un. Cr. C. 375 Cr. Rg. 23 of 1888.

See ACT VII OF 1878, Rat. Un. Cr. C. 873 =Cr. Rg. 48 of 1896.

See ACT XI OF 1878, ss. 19 and 29, 4 L.B. R. 247=8 Cr. L.J. 65.

See ACT XVIII OF 1879, s. 14, 10 C.W.N. 1059=4 C.L.J. 229=4 Cr. L.J. 160, 3 M.L.T. 237=7 Cr. L.J. 333=18 M L.J. 184, 15 C. 152, P.C.=14 I.A. 154.

Offence committed by His Majesty's Native Indian subject in Native State—Warrant issued by Political Agent of Native State for execution in British territory—*See* ACT XXI OF 1879, ss. 1, 11, 12, 18, 5 O.C. 55.

See ACT III OF 1880, s. 14, 15 C. 452.

See ACT XIII OF 1880, s. 18, 4 L.B.R. 12= 6 Cr. L J. 124.

See ACT VI OF 1882, s. 35, 20 C. 676.

To entertain complaint against director for failure to file accounts—*See* ACT VI OF 1882, s. 74, 8 A.L J. 1260=12 Ind. Cas. 972=12 Cr. L.J. 596.

Power of Court to send insolvent to Magistrate on an enquiry independent of that under s. 350. Civ. Pro. Code, 1882—*See* ACT XIV OF 1882, ss. 350, 359, 15 M.L.J. 12.

Powers of Magistrates—*See* ACT III OF 1884, s. 8 (6), 9 A. 420=A.W.N. 1887, 39.

See ACT II OF 1886, s. 25, 44 P.R. 1905, Cr. =187 P.L R. 1905=3 Cr. L.J. 128.

See ACT IX OF 1890, s. 113, 20 M. 365=1 Weir 871.

Permitting cattle to stray upon Railway—Respective liability of owner and of person in charge of cattle—*See* ACT IX OF 1890, s. 125, cls. 1 and 2, 18 M. 228=1 Weir 874.

See ACT IX OF 1890, ss. 126 and 130, U.B. R. 1892—1896, Vol. 1, 302.

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——**1.—General Jurisdiction**—*continued.*

To try Railway offences—*See* ACT IX OF 1890, ss. 127 and 130, 14 C.P.L.R. 176.

See ACT I OF 1894, ss. 9 and 10, 27 C. 985= 5 C.W.N. 131.

See ACT IX OF 1894, s. 52, 32 M. 303.

See ACT VIII OF 1897, ss. 1, 2, 25 C. 333=2 C.W.N. 11.

See ACT VIII OF 1897, s. 10, 15 C.P L.R. Cr. 151.

See ACT XV OF 1903, ss. 7 and 8, 33 C. 1032 =4 Cr. L.J. 366, 7 C.L.J. 171=7 Cr. L.J. 198 =12 C.W.N. 602.

See ACT III OF 1909, ss. 17, 103, 12 Bom. L.R. 750=7 Ind. Cas. 963=11 Cr. L.J. 548.

See BEN. ACT III OF 1863, 10 W.R. Cr. 30.

Power of Magistrate to release salt seized—*See* BEN. ACT VII OF 1864, s. 18, 8 W.R. Cr. Cir. 1.

See BEN. ACT VIII OF 1885, s. 58 (3), 9 C. W.N. 816=2 Cr. L.J. 532.

See BOM. ACT VI OF 1863, s. 2, Rat. Un. Cr. C. 921=Cr. Rg. 26 of 1897.

See BOM. ACT IX OF 1863, s. 2, 3 B.H.C. Cr. 12.

See BOM. ACT VIII OF 1866, s. 11, 4 B. 167.

Jurisdiction of Magistrate to inquire into correctness of cess claimed—*See* BOM. ACT VI OF 1873, Rat. Un. Cr. C. 559=Cr. Rg. 35 of 1891.

See BOM. ACT VI OF 1873, s. 68, Rat. Un. Cr. C. 763=Cr. Rg. 24 of 1895.

See BOM. ACT VI OF 1873, s. 84, 23 B. 446.

See BOM ACT V OF 1879, ss. 125, 214, 215, 13 B. 291.

See BOM. ACT V OF 1879, s. 214, cl. 1, item (*d*), r. III, 8 B. 591.

See BOM. ACT III OF 1901, s. 142, 3 S.L.R. 13.

See BUR. ACT III OF 1889, s. 8, L.B.R. 1893—1900, 186.

See BUR. ACT III OF 1898, ss. 92 (1, 2, 3), 180, 5 L B.R. 12=9 Cr. L.J. 578=2 Ind. Cas. 357.

See BUR. ACT I OF 1899, ss. 12 and 14, U.B.R. 1897—1901, Vol. I, 224.

Trial by wrong Court—Effect—Venue of trial when material—*See* BUR. ACT IV OF 1899, s. 30, cl. (*c*), 12 Cr. L.J. 280=10 Ind. Cas. 921.

See C.P. ACT XVIII OF 1889, s. 122, 7 C.P. L.R. Cr. 4.

See MAD. ACT XXIV OF 1859, s. 48, 15 M. 132=2 Weir 36.

See MAD. ACT III OF 1865, 7 M.H.C. App. 6.

See PUN. ACT XX OF 1891, ss. 42 (1) (*f*) 201, 109 P.L.R. 1909=23 P.W.R. 1909=2 P. R. 1910, Cr.

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——**1.—General Jurisdiction**—*continued.*

See PUN. ACT XX OF 1891, s. 201, 3 Ind. Cas. 638=9 P.W.R. 1909, Cr.

See U. P. ACT XV OF 1883, s. 46, 22 A. 111 =A W.N. 1899, 202.

See ADDITIONAL DISTRICT MAGISTRATE, 25 P.R. 1908, Cr.=9 Cr. L.J. 104.

See AFFIDAVIT, 14 C. 653.

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See CHARGE—GENERAL, 6 W.R. Cr. 20, 7 C.W.N. 521, 11 C.P.L.R. Cr. 9.

See CHEATING—GENERAL, Rat. Un. Cr. C. 96=Cr. Rg. 25-9-1875.

See COGNISABLE OFFENCE, 11 C.W.N. 832 =6 Cr. L.J. 34=Rat. Un. Cr. C. 951=Cr. Rg. 2 of 1898.

See COMMITMENT TO SESSIONS COURT, Rat. Un. Cr. C. 975=Cr. Rg. 29 of 1898, 9 Bom. L.R. 225=5 Cr. L.J. 213, 22 M. 148=2 Weir 150, 4 M.H.C. App. 30, 2 L.B.R. 209, 12 C.W.N. 117=6 C.L.J. 760, 26 M. 477=2 Weir 542.

See COMPENSATION—GENERAL, Rat. Un. Cr.C. 961=Cr. Rg. 14 of 1898, 9 Cr.L.J. 502= 2 Ind. Cas. 159.

See COMPOUNDING OFFENCE, 10 C. 551, 11 P.R. 1907, Cr.=34 P.W.R. 1907, Cr.=47 P.L.R. 1908.

See CONFESSION—CONFESSIONS TO MAGISTRATES, ETC., 22 B. 235, 3 C. 756=2 C.L.R. 317, 8 P.R. 1907, Cr.=33 P.W.R. 1907, Cr.=6 Cr. L.J. 377=4 P.L.R. 1908, 1 C.P.L.R. Cr. 115.

See CONTEMPT OF COURT, 13 M. 24=2 Weir 610, 15 M. 131=2 Weir 605.

Jurisdiction of Magistrate to punish for disobedience to his own summons—*See* CONTEMPT OF COURT, 4 M.H.C. App. 51.

Disobedience to summons—Jurisdiction—*See* CONTEMPT OF COURT, 4 M.H.C. App. 52.

See CRIMINAL BREACH OF TRUST, 2 C.L.R. 515.

See CRIM. PRO. CODE, 1898, ss. 1 (2) (*a*), 4 (*p*) and (*s*), 55 (*b*), 109 (*b*), 31 C. 557=7 C.W.N. 661.

See CRIM. PRO. CODE, 1898, s. 4, 5 A.L.J. 40=A.W.N. 1908, 11=30 A. 66=7 Cr. L.J. 21.

See CRIM. PRO. CODE, 1898, s. 4 (*r*), 7 C.W. N. 524.

See CRIM. PRO. CODE, 1898, ss. 4 (*h*), 190 (*c*), 6 C.W.N. 926.

See CRIM. PRO. CODE, 1898, ss. 4, 195, 537, A.W.N. 1904, 266.

See CRIM. PRO. CODE, 1898, ss. 6, 32, A.W. N. 1906, 201=4 Cr.L.J. 140=3 A.L.J. 825.

See CRIM. PRO. CODE, 1898, ss. 7 (3), 408, 435, 16 M.L.J 441=4 Cr. L.J. 443=30 M. 136 =1 M.L.T. 402.

See CRIM. PRO. CODE, 1898, ss. 10, 12, 32 M. 303.

Magistrate, Jurisdiction of—continued.

——**1.—General Jurisdiction**—*continued.*

Powers of District Magistrate to distribute work—District Magistrate cannot delegate his powers—*See* CRIM. PRO. CODE, 1898, s. 17, 12 A.L.J. 803=36 A. 468=15 Cr. L.J. 584= 25 Ind. Cas. 336.

Bench of Honorary Presidency Magistrates' power to act under s. 106, Crim. Pro. Code—*See* CRIM. PRO. CODE, 1898 ss. 18, 21, 106, 7 Bom. L.R. 833=2 Cr L.J. 770.

See CRIM. PRO. CODE, 1898, s. 30, 17 P.W. R. 1908, Cr.

See CRIM. PRO. CODE, 1898, ss. 30, 337, 338, 10 C.W.N. 847= 4 Cr. L.J. 44.

See CRIM. PRO. CODE, 1898, s. 35, 8 Bom. L.R. 850=4 Cr. L.J. 445, 11 A. 393=A.W.N. 1889, 152.

See CRIM. PRO. CODE, 1898, ss. 36, 107 (3), (4), 104, 114 and 334, 3 M.L T. 311, F.B.=31 M. 315=7 Cr. L.J. 360.

See CRIM. PRO. CODE, 1898, ss. 37, 64, 190, 242, 243, Colm. Dig. Cr. 22 of 1875.

Powers of Magistrate of first class conferred on a Magistrate of second class during trial—Sentence—*See* CRIM. PRO. CODE, 1898, ss. 39, 435, 7 A. 414, F.B.=A.W.N. 1885, 105.

See CRIM. PRO. CODE, 1898, ss. 75, 437, 438, 1 C.W.N. 650.

See CRIM. PRO. CODE, 1898, s. 94, 5 Bom. L.R. 980.

See CRIM. PRO. CODE, 1898, ss. 94, 96, 190 (*c*), 537, 12 C.W.N. 1075=8 Cr. L.J. 235=35 C. 1076.

See CRIM. PRO. CODE, 1898, ss. 96, 99, 104, Rat. Un. Cr. C. 880=Cr. Rg. 2 of 1897.

See CRIM. PRO. CODE, 1898, ss. 96, 105, 165, 13 C.W.N. 458=9 C.L.J. 298=36 C. 433 =5 M.L.T. 367.

See CRIM. PRO. CODE, 1898, s. 100, 2 S.L. R. 2, Cr.=10 Cr. L.J. 219.

See CRIM. PRO. CODE, 1898, s. 106, U.B.R. 1897—1901, Vol. I, 9, 6 Bom. L.R. 34.

See CRIM. PRO. CODE, 1898, s. 107, 32 C. 80=8 C.W.N. 779.

See CRIM. PRO. CODE, 1898, ss. 107, 144, 145, 32 C. 966=10 C.W.N. 288=2 Cr.L.J. 769.

See CRIM. PRO. CODE, 1898, ss. 107, 145, 14 C. L J. 429, F.B.=16 C.W.N. 83=12 Cr. L. J. 569, 9 A.L.J. 693=15 Ind. Cas. 982=13 Cr. L.J. 566.

See CRIM. PRO. CODE, 1898, ss. 109 and 110, S.C. 73, Oudh.

See CRIM. PRO. CODE, 1898, s. 110, 25 A. 272=A.W.N. 1903, 36, 31 C. 419, 27 C. 993=5 C.W.N. 29, L.B.R. 1872—1892, 239, 27 A. 293= 1 A.L.J. 601=A.W.N. 1904, 231.

See CRIM. PRO. CODE, 1898, ss. 110, 125, 29 C. 455=6 C.W.N. 291.

See CRIM PRO. CODE, 1898, s. 112, 15 Cr. L.J. 254=23 Ind. Cas. 206.

Order under s. 146 (2), Crim. Pro. Code—Magistrate's authority to retain property after

Magistrate, Jurisdiction of—continued.

——1.—General Jurisdiction—*continued.*

Civil Court determines the rights of the parties —*See* CRIM. PRO CODE, 1898, ss. 146 (2), 435 (3), 15 Cr. L J. 500=24 Ind. Cas. 588.

Power of Magistrate to direct Police investigation—*See* CRIM. PRO. CODE. 1898. s. 155, 12 B. 161.

See CRIM. PRO. CODE. 1898, ss. 156, 159, 200, 202, 203, 30 C. 923=7 C.W.N. 525.

Police report, effect of, on jurisdiction of Magistrates—*See* CRIM. PRO. CODE, 1898, ss. 157, 158, 190, 203, 2 Weir 119.

Authority of Police officer to have witness's statement recorded by Magistrate not competent to deal with the case—*See* CRIM PRO. CODE, 1898, ss. 162 and 164, 29 C. 483=6 C. W.N. 596.

See CRIM. PRO. CODE, 1898, ss. 164, 364, 3 L.B.R. 213=4 Cr. L.J. 385.

See CRIM. PRO. CODE, 1898, ss. 190, 13 A. 345=A.W.N 1891, 102, 186 P L.R. 1901, 28 A. 212=A.W.N. 1905, 258=2 A.L.J. 745=2 Cr. L.J. 809, U.B.R. 1905, Cr. P.C. 41.

See CRIM. PRO. CODE, 1898, s. 190, 191, 21 A. 109=A.W.N. 1896, 186.

See CRIM. PRO CODE, 1898, ss. 190 (*a*), 191, 26 C. 786=3 C.W.N. 491.

See CRIM. PRO. CODE, 1898, ss. 190, 191, 260, 537, 31 P.L.R. 1905=2 Cr. L.J. 187.

See CRIM. PRO. CODE, 1898, ss. 190, 253, 1 A.L.J. 609.

Procedure of a Magistrate not empowered by s. 191 (*c*) of Crim. Pro. Code in taking cognizance of a case—*See* CRIM. PRO. CODE, ss. 191 (*c*), 200, U.B.R. 1892—1896, Vol. I, 28.

See CRIM. PRO. CODE, 1898, s. 192, 2 N.-W.P. 21, 5 O.C. 164.

See CRIM. PRO. CODE, 1898, ss. 193, 195, 465, 471, 476, 9 Cr. L J. 180=1 Ind. Cas. 220.

See CRIM. PRO. CODE, 1898, ss. 198, 487, 3 A. 322.

See CRIM. PRO CODE, 1898, s. 199, 1 S.L.R. Cr. 72=8 Cr. L.J. 190.

See CRIM. PRO. CODE, 1898, ss. 200, 190 and 198, Colm. Dig. Cr. 57 of 1876.

Duties and powers of Magistrates—*See* CRIM. PRO. CODE, 1898, s. 202, 11 A.L.J. 754=14 Cr. L.J. 493=20 Ind. Cas. 749.

See CRIM. PRO. CODE, 1898, s. 203, 1 M. L.T. 31, F.B.=29 M. 126=16 M.L.J. 79=3 Cr. L.J. 274, 29 A. 7=3 A.L.J. 562=A.W.N. 1906, 245=4 Cr. L.J. 59, S.C. 230, Oudh.

See CRIM PRO CODE, 1898, s. 206, 6 A. 477.

See CRIM. PRO. CODE, 1898, s. 209, 24 M. 136=2 Weir 544.

Care to be taken by Magistrates in framing charges.—*See* CRIM. PRO. CODE, 1898, s. 221, U.B R. 1892—1896, Vol. I, 32.

See CRIM. PRO. CODE, 1898, ss. 243, 244, 246, 36 C. 869.

Magistrate, Jurisdiction of—continued.

——1.—General Jurisdiction—*continued*.

See CRIM. PRO. CODE, 1898, s. 244, 30 C. 121.

Absence of jurisdiction in Magistrate—His duty—*See* CRIM. PRO. CODE, 1898, s. 253, 2 Weir 323.

See CRIM PRO. CODE, 1898, s. 257, 26 B. 418=4 Bom. L.R. 38.

See CRIM. PRO. CODE, 1898, s. 260, 29 C. 409=6 C.W.N. 713.

Procedure to be adopted by—in case of persons unable to understand proceedings in Court and make their defence—*See* CRIM. PRO. CODE, 1898, ss. 341 and 465, U B.R. 1892—1896, Vol. I, 38.

See CRIM. PRO. CODE, 1898, s. 349, 6 C.L. R. 276, 26 A. 344=A.W.N. 1904, 42, 1 M. 289 =2 Weir 425, 2 Weir 424, F.B., 4 M. 233.

See CRIM. PRO. CODE, 1898, s. 350, 7 C.P. L.R. Cr. 1, 2 L.B.R. 17.

See CRIM. PRO. CODE 1898, ss. 350 and 528, 12 C.W.N. 416=7 Cr. L J. 220=35 C. 457.

Power of Native Second-Class Magistrate to record memorandum of evidence in English—*See* CRIM. PRO. CODE, 1898, ss. 355, 356, 357, 537, 19 M. 269=2 Weir 433=6 M.L.J 134.

See CRIM. PRO. CODE, 1898, ss. 367, 369, 421, 422, 423, 5 N L.R. 76=9 Cr. L J. 553=2 Ind. Cas. 247.

See CRIM. PRO. CODE, 1898, s. 384, 6 M. 396=2 Weir 328=8 Ind. Jur. 35.

Procedure to be adopted by Magistrates in cases of persons not able to withstand whipping—*See* CRIM. PRO. CODE, 1898, s. 395, U.B R. 1892—1896, Vol. I, 45.

See CRIM. PRO. CODE, 1898, s. 435, 12 C. 473, F.B.

District Magistrate, power of, to order further enquiry—*See* CRIM. PRO. CODE, 1898, s. 437, 5 C.P.L.R Cr. 20.

See CRIM. PRO. CODE, 1898, s. 451, 24 A. 511=A.W.N. 1902, 142.

See CRIM. PRO CODE, 1898, s. 476, 6 P.R. 1909, Cr.=104 P.L.R. 1909=10 Cr.L J. 158=2 Ind Cas. 812, 1 A.L.J. 315, 13 C.W N. 122= 36 C. 72=1 Ind. Cas 203.

See CRIM. PRO. CODE, 1898, s 487, U.B.R. 1892—1896, Vol. I. 53.

Order restraining the honouring of a Hundi —*See* CRIM. PRO. CODE, 1898, s. 517, 1 A L.J. 607.

Power of a Magistrate to order destruction of dangerous dog—*See* CRIM. PRO. CODE, 1898, ss. 517 and 144, L.B.R 1893—1900, 579.

Magistrate becoming Chairman of Municipal Board—Transfer of case—Jurisdiction as Magistrate —*See* CRIM. PRO. CODE, 1898, s. 528, 12 A.L.J. 890=36 A. 513=15 Cr.L.J. 693=26 Ind. Cas. 141.

See CRIM. PRO. CODE, 1898, s. 528, 14 M 399=2 Weir 683=15 M. 94=2 Weir 692, Rat. Un. Cr. C. 34.

Magistrate, Jurisdiction of—continued.

——1.—**General Jurisdiction**—*continued.*

See CRIM. PRO CODE, 1898, s. 556, 15 M. 83 = 2 Weir 326, 14 Bur. L.R. 335 = 9 Cr.L.J. 66, 19 M. 263 = 2 Weir 725 = 6 M.L.J. 143.

See CRIMINAL PROCEEDINGS, 4 C. 18 = 3 C. L.R. 44.

See CRIMINAL TRESPASS, 7 C.L.J. 238 = 7 Cr.L.J. 312.

See DEATH, 1 L B.R. 259.

See DEFAMATION, 3 P.W.R. 1909, Cr. = 9 Cr. L.J. 154 = 1 Ind. Cas. 99.

Discretion, how to be exercised—*See* DISCRETION, 1 A.L.J. 315.

See EUROPEAN BRITISH SUBJECT, 2 Weir 578 = 7 M.H.C. App. 32.

Magistrate on leave and outside jurisdiction whether a "Magistrate"—*See* EVIDENCE ACT, 1872, ss. 24, 25, 26, 8 P.W.R. 1914, Cr. = 38 P. L.R. 1914 = 15 Cr.L.J. 6 = 22 Ind. Cas. 150.

See EVIDENCE ACT, 1872, ss. 33, 157, 8 A. 672 = A.W.N. 1886, 257.

See EVIDENCE ACT, 1872, s. 80, 10 C.P.L. R. Cr. 16

See EVIDENCE ACT, 1872, s. 121, 3 A. 573.

See EVIDENCE ACT, 1872, s. 151, 3 M H.C. 372.

See FALSE CHARGE, 1 Weir 120.

See FALSE EVIDENCE, 7 M.H.C. App. 28.

See FULL BENCH, 2 A. 218, F.B.

See HIGHWAY, 1 M.H.C. 50.

Power of Magistrates to order persons suffering from infectious diseases to be removed to hospital—*See* INFECTIOUS DISEASE, 24 C. 494 = 1 C.W.N. 274.

See IRREGULARITY, 16 C.P.L.R. 9.

Incapacity to try case where he is witness —*See* JUDGE, L B.R. 1893—1900, 72.

See JUDGMENT, Rat. Un. Cr. C. 854 = Cr. Rg. 20 of 1896, Rat Un. Cr. C. 124.

See JURISDICTION OF CIVIL COURTS, 1 W. R. 277, 1 W.R. 324, 7 W.R. 48, 11 W.R. 434 = 3 B.L.R. App 43, 8 W.R. 239, 7 W.R. 11.

See LOCAL INQUIRY, 3 M L T. 402 = 8 Cr. L.J. 150.

Means of the husband, to be taken into consideration when awarding maintenance—Jurisdiction of Magistrates—*See* MAINTENANCE, 2 Weir 617.

See MAINTENANCE, 27 A. 11 = A.W.N. 1904, 149, 25 A. 545 = A.W.N. 1903, 103, 25 A. 165 = A.W.N. 1902, 224, 1 C.L.R. 89, 7 C.P.L.R. Cr. 12, 2 Weir 650, 4 M. 230 = 2 Weir 652, 9 B. 40.

See MISCHIEF, 12 M. 54 = 2 Weir 22 = 1 Weir 552.

Duty of Magistrate—*See* PENAL CODE, s. 83, 27 C. 133

See PENAL CODE, s. 174, 2 A. 405, S.C. 99, Oudh, 1 Weir 81.

See PENAL CODE, ss. 187 and 188, 3 A. 201.

Magistrate, Jurisdiction of—continued.

—— 1.—**General Jurisdiction**—*concluded.*

See PENAL CODE, s. 188, L.B.R. 1872—1892, 363.

See PENAL CODE, ss. 211, 500, U.B.R. 1897—1901, Vol. I, 279.

See PENAL CODE, ss. 363, 366, U.B.R. 1897—1901, Vol. I, 328.

See PENAL CODE, s. 380, 1 B.H.C. 88.

See PENAL CODE, ss. 392, 394 and 397, 1 Weir 448 = 2 Weir 258 = 2 Weir 20.

See PENAL CODE, ss. 394 and 397, 1 Weir 449.

See PRACTICE AND PROCEDURE, 4 C. 20 = 3 C.L.R. 93.

See PRIVATE VAKIL, 4 M.L.T. 91.

See RESTORATION OF PROPERTY, Rat. Un. Cr. C. 957 = Cr. Rg. 10 of 1898, 14 C. 834.

See RETRIAL, 2 C.L.R. 515.

See REVIVAL OF CRIMINAL PROCEEDINGS, 8 C. 580 = 11 C.L.R. 414, 4 C. 16.

See RIOTING, 1 C.W.N. 426.

See SUMMARY TRIAL, 10 A. 55 = A.W.N. 1887, 280, U B.R. 1906, Cr. P.C., 51 = 5 Cr. L.J. 298, 10 C. 408, 6 N.W.P. 254, 6 M. 396 = 2 Weir 328, 21 P.L.R. 1907.

See SURETY, 18 P.R. 1906, Cr. = 14 P.L.R. 1907 = 5 Cr. L.J. 148 = 5 P.W.R. 1907, Cr.

See TRANSFER OF CRIMINAL CASES—TRANSFER BY OTHER COURTS, 23 C. 442, 1 L.B R. 308.

See TRANSFER OF CRIMINAL CASES—MISCELLANEOUS, 4 C.W.N. 821, 11 C.W.N. 316 = 5 Cr. L.J. 112.

A Magistrate cannot be both Judge and a delegate of the prosecutor—Trial by Magistrate—Evidence recorded on order of officer initiating prosecution—Conviction based thereon—Legality—*See* TRIAL, 7 S.L.R. 82 = 15 Cr.L.J. 375 = 23 Ind. Cas. 743.

Trial—Magistrate taking part in detection and investigation of crime—Trial by—Impropriety—*See* TRIAL, 8 N.L.R. 1 = 14 Ind. Cas. 428 = 13 Cr. L.J. 236.

See TRIAL, L.B.R. 1872—1892, 153.

See VILLAGE MAGISTRATE, 27 M. 223 = 2 Weir 208 = 14 M.L.J. 74 = 2 Weir 577.

See WAGING WAR AGAINST QUEEN, L.B. R. 1872—1892, 158.

See WARRANT, Rat. Un. Cr. C. 90.

Use in Sessions trial of evidence before Magistrate—*See* WITNESS—MISCELLANEOUS CASES, 7 A. 862.

—— 2.—**Commitment to Sessions Court.**

See COMMITMENT SESSIONS COURT.

See CRIM. PRO. CODE, 1898, ss. 206—220.

(1)—*Commitment to Sessions—General rule.*—As a general rule, cases on the border line of jurisdiction and cases of great difficulty ought to be committed to Sessions. QUEEN-EMPRESS v. NGA THAN BO, L.B.R. 1872—1892, 158.

Magistrate, Jurisdiction of—continued.

—— 2.—**Commitment to Sessions Court**—*ctd.*

(2)—*Crim. Pro. Code, ss.* 209, 210—*Commitment, when should be made—Sufficient grounds for committing.*—According to the Crim. Pro. Code, ss. 209, 210, the Magistrate is to commit or not, as there are or are not, in his opinion, "sufficient grounds for committing." What are "sufficient grounds for committing" is not in any way defined, but it is manifest that they are not identical with grounds for convicting, since, taken in that sense, the provisions would enable the Magistrate virtually to supersede the Court of Sessions to which the cognizance of the case for actual trial belongs. The true principle appears to be that expressed in the English Statute. The Magistrate ought to commit when the evidence is enough to put the party on his trial, and such a case obviously arises, when credible witnesses make statements which, if believed, would sustain a conviction. The weighing of the testimony with regard to improbabilities and apparent discrepancies is more properly the function of the Court having jurisdiction to try the case. QUEEN-EMPRESS v. NAMDEO SATVAJI, **11 B. 372.** [*F.*, 148 P.L.R. 1903; *R.*, 35 B. 163=12 Bom. L.R. 923=11 Cr. L.J. 692=8 Ind. Cas. 631, A.W.N. 1904, 5, 9 Bom. L.R. 225=5 Cr. L.J. 213, 6 C.L.J. 760=12 C.W.N. 117=6 Cr. L J 406, 11 Cr. L.J. 18=4 Ind. Cas. 612 =10 P.R. 1909, Cr =155 P.L.R. 1909=32 P. W.R. 1909, Cr., 14 P.R. 1908=30 P.W.R.1908, Cr.=8 Cr. L.J. 263, 14 Cr. L.J. 529=21 Ind. Cas. 129=14 M L.J. 200.]

(3)—*Crim. Pro. Code* (1861), *ss.* 273, 435 (*ss.* 192 *and* 436 *of the Code of* 1898)—*Acquittal by District Magistrate—Direction of Sessions Judge to commit—Committal by Joint Magistrate—Validity.*—Where a District Magistrate had acquitted the accused, but was subsequently directed by the Sessions Judge to commit the accused to the Sessions, and the commitment was eventually made by the Joint Magistrate, *held* that such commitment was not illegal. QUEEN v. LEKHRAJ, **2 N.W.P. 132.**

(4)—*Committing officer, duty of.*—The duty of a committing officer is to ascertain whether, by the evidence of the prosecution, a *prima facie* case is made out against the accused. QUEEN v. MAHA SINGH, **3 N.W.P. 27.**

(5)—*Committing Magistrate entitled to weigh evidence in cases triable by the Sessions, and to pronounce as to their credibility.*—*Held*, that a committing Magistrate is entitled, at any rate to some extent to weigh the evidence of direct witnesses, and to pronounce as to their credibility. Provided that he uses caution, and that, where the question is one of probabilities only, he leaves the decision to the Sessions Court, he is entitled to use his discretion and discharge the accused, if he disbelieves the evidence. SULTANI v. CROWN, **10 P.R. 1909, Cr.=155 P.L.R. 1909=11 Cr. L.J. 18=4 Ind. Cas. 612.** (21 A. 265, 26 A. 564, 14 P.R. 1908, Cr., *R.*; 11 B. 372, 27 B. 84, *Dist.*) [*F.*, 8 Ind. Cas. 1044=215 P.L.R. 1910=11 Cr. L.J. 751, 58 P.W.R. 1910.]

Magistrate, Jurisdiction of—continued.

——2.—**Commitment to Sessions Court**—*ctd.*

(6)—*Penal Code, ss.* 394, 397—*Grievous hurt—Commitment.*—Where it appears that in committing robbery the accused had caused grievous hurt, *held*, that the offence is one under s. 397 and the Magistrate should commit it to the Sessions, instead of treating the hurt as simple hurt and convicting under s. 394 of the Penal Code. QUEEN-EMPRESS v JOBANIA, **Rat. Un. Cr. C. 476=Cr. Rg. 36 of 1889.**

(7)—*Crim. Pro. Code* (1882), *s.* 349—*Reference to superior Magistrate—Commitment—Jurisdiction.*—The reference of a case by a second-class Magistrate to a Sub-Divisional Magistrate under s. 349, would open up the whole case and leave the latter Magistrate free to deal with it according to his discretion, and one of the powers he would have would be to order a commitment to the Court of Sessions. QUEEN-EMPRESS v. CHINNAPPA, **Rat. Un. Cr. C. 945.**

(8)—*Second-class Magistrate, jurisdiction and powers of—Reference to District Magistrate—Committal to Court of Sessions—Crim. Pro. Code, s.* 239.—Where a second-class Magistrate, upon conviction of the accused under ss. 406 and 417 of the Penal Code, referred the case to the District Magistrate, for sentence under s. 349 of the Crim. Pro. Code, and the District Magistrate referred the case to the High Court, holding that the case was one properly punishable under s. 420 of the Penal Code and as such beyond the jurisdiction of the second class Magistrate, who tried it, *held* that the second class Magistrate was not wholly without jurisdiction as he could commit to the Sessions. Further the District Magistrate could pass, in a case of this kind, such order as he thought fit, in accordance with law, and he could consequently, commit the accused to the Sessions. ABDUL WAHAB v. CHANDIA, **13 C. 305.** [*R.*, 2 L.B.R. 285, F.B.]

(9)—*Crim Pro. Code* (1882), *ss.* 28, 207, 245 *and* 254—*Offence exclusively triable by Magistrates—Commitment to Sessions—Penal Code, s.* 147—*High Court Circular No.* 9, 6*th September*, 1869—*Commitment to Sessions by Magistrates.*—Where a Magistrate finds that an accused person has committed an offence, which, in his opinion, cannot be adequately punished by him, he is not precluded from committing the case to the Court of Sessions, notwithstanding the fact that in the schedule appended to the Code, the case may be shown "as exclusively triable by Magistrates." Therefore the commitment of a case under s. 147, Penal Code, to the Court of Sessions by a Deputy Magistrate is not necessarily illegal. [*F.*, 4 Bom. L.R. 85.] The High Court's Circular No. 9 of September 1869 was never intended to direct Magistrates to commit cases to the Sessions Court otherwise than in accordance with the provisions of the Code. QUEEN-EMPRESS v. KAYEMULLAH MANDAL, **24 C. 429=1 C.W.N. 414.** [*F.*, 6 A.L.J. 989=11 Cr. L.J. 54=4 Ind. Cas. 812, 4 Bom. L.R. 85.]

Magistrate, Jurisdiction of—continued.

——2.—**Commitment to Sessions Court**—*ctd.*

(10)—*Crim. Pro. Code* (1872), s. 45—*Order of reference made by District Magistrate to a subordinate Magistrate—Subordinate Magistrate ordinarily not competent, whether acquires jurisdiction over the matter by reason of such order—Commitment to Sessions Court—Validity.*—A second class Magistrate, before whom a prisoner was charged by the Police, was transferred pending the trial, to another place, whereon the case was also transferred to his file by the District Magistrate. Subsequently, the second class Magistrate found the offence committed was robbery which he was not competent to try and stayed proceedings and submitted the case to the Magistrate of the Division, who, considering that he had no jurisdiction, the offence having been committed beyond his division, sent it on to the District Magistrate. The District Magistrate directed the second class Magistrate to hold the enquiry and to commit the accused to the Court of Sessions, if the offence was found true. *Held*, that the order of the District Magistrate directing a commitment was not warranted by law and the commitment by second class Magistrate was therefore not a proper commitment. QUEEN v. ADAPPA VENKANNA, **4 M. 327**=**2 Weir 419.**

(11)—*Crim. Pro. Code* (1861), s. 359—*Commitment to Sessions of cases not exclusively triable.*—S. 359 is not a narrowing but an enabling clause. Magistrates are competent, under the section, to commit cases to Sessions Courts, even if they are not exclusively triable by the latter. HIGH COURT PROCEEDINGS, 23RD JANUARY 1871, **6 M.H.C. App. 16.**

(12)—*Powers of a Deputy Commissioner to try a charge of murder.*—A Deputy Commissioner with the powers of a District Magistrate has no jurisdiction to try a charge of murder, and should, without deciding whether an offence is culpable homicide or murder, commit the case to the Sessions. EMPRESS v. ATMARAM HAJAM, **5 C P L.R. Cr. 38.**

(13)—*Crim. Pro. Code* (1872), *Chap.* XV—*Enquiry by Magistrate of case triable by Court of Sessions—Annulling conviction—Commitment on the same evidence.*—Where, on appeal, the Sessions Judge annulled the conviction and sentence passed upon a person charged with an offence exclusively triable by a Court of Sessions, the subsequent committal of the accused to the Sessions was not vitiated, because the Magistrate committed him on the evidence given before him at the trial, inasmuch as the mere conviction and sentence were set aside and not the proceedings held at the trial. EMPRESS OF INDIA v. ILAHI BAKSH, **2 A. 910**. [*R.*, 36 M. 321=23 M.L.J. 368=1912 M.W.N. 1243=13 M L T. 116=17 Ind. Cas. 410=13 Cr. L J. 778, 6 L.B R. 129=5 Bur. L.T. 239=17 Ind. Cas. 813=13 Cr. L.J. 877.]

(14)—*Crim. Pro. Code* (1872), *s.* 46—*Reference to superior Magistrate for severe punishment— His power to commit the case to the*

Magistrate, Jurisdiction of—continued.

—— 2.—**Commitment to Sessions Court**—*ctd.*

Sessions—Term "order" in the section explained.—Per *F. D. Melvill, Pinhey, JJ., and Sargent, C J.* (*M. Melvill and Kemball, JJ, dissenting*):—Where the proceedings of a case are submitted, under s. 46, Crim Pro. Code, 1872, to a superior Magistrate, he has power to order its committal to the Sessions. Per *M. Melvill, J.*—S. 46, Crim. Pro. Code, 1872, goes on to direct that the superior Magistrate "shall pass such judgment, sentence or order in the case as he deems proper, and as is according to law." By the ordinary rule of legal construction, the general word "order," following the particular and specific word "judgment and sentence," ought to be presumed to be restricted to the same terms as those words, and to comprehend only such orders as are final in their nature; and this construction seems warranted by other parts of the Code in which the word "order" is used in combination with the words "judgment and sentence" and in which it seems to be a mere expletive equivalent to one word or the other. Per *F. D. Melvill and Pinhey. JJ.*—It is not possible to give full effect to the whole section, unless it is held that the word "order" refers to something quite opposed to and distinct from, the word "judgment" or "sentence" The term "order" refers to an order of commitment. Per *Kemball, J.*—No inference can be drawn as to the intention of the Legislature from the use of the words "judgment sentence, or order" in s. 46. Their use is quite compatible which the proposition that the Magistrate, to whom the reference is made, is bound to dispose finally of the case himself. Per *Sargent, C.J.*—The term "order" contemplates a final order, *i.e.*, one disposing of the case so far as the Magistrate is concerned; but it is not a mere expletive. An order by the Magistrate of the District committing a case for trial at Sessions may well be supposed to be such an order as was contemplated by the words "judgment, sentence, or order." IMPERATRIX v. ABDULLA, **4 B 240.** [*F.*, 26 A. 344=A.W.N. 1904, 42, 1 L.B.R 125; *R.*, 13 C 305, 2 L B. R. 285, Rat. Un. Cr. C. 472.]

(15)—*Crim Pro. Code* (1882), *s.* 349—*Reference to District Magistrate under the section—Return of the case to the subordinate Magistrate for committing the accused to Sessions—Validity of such committal.*—A second class Magistrate, considering that a case before him required a higher punishment than he was empowered to give, forwarded the accused to the District Magistrate to be dealt with in accordance with s. 349 of the Code The District Magistrate returned the record to the Subordinate Magistrate directing him to commit the case to the Session. *Held*, that committal to the Sessions by second class Magistrate, under such circumstances, was not illegal. QUEEN-EMPRESS v. CHANDU GOWALA, **14 C. 355.** [*R.*, 2 Weir 428; *D.*, Rat. Un. Cr. C. 472]

(16)—*Crim. Pro. Code* (1872), s. 197—*Committal of case to Sessions by Magistrate going*

Magistrate, Jurisdiction of—continued.

——2.—**Commitment to Sessions Court**—*cld.*

on leave. where the case is triable by him—Power of High Court.—A Magistrate about to go on leave exercises an improper discretion in committing to the Court of Sessions, a case properly triable by himself, merely on the ground that the witnesses for the defence are not in attendance, and that it would be inconvenient for his successor to commence the trial anew; but in so doing he does not commit any such illegality as will justify the High Court in quashing the commitment. SHOLAPUR SESSIONS JUDGE'S LETTER NO. 838, **Rat. Un. Cr. C. 110.**

(17)—*Crim. Pro. Code* (1861), *s.* 435—*Case of grievous hurt—Power to order retrial.*—The offence of voluntarily causing hurt not being an offence specified in the seventh column of the schedule to the Crim. Pro. Code, 1861, as triable by a Court of Session only, or by a Court of Session or Magistrate of the District. S. 435 is inapplicable so as to enable the District Magistrate to direct a re-trial. REG. v. SUBHANA *bin* GANU, **9 B.H.C. 169.**

(18)—*Reference to Magistrate under s.* 277, *Crim. Pro. Code,* 1861—*Power to send to Sessions for higher sentence.*—Where a case is referred to a Magistrate under s. 277 of the Code of Criminal Procedure, *held* that the Magistrate alone has jurisdiction, and cannot commit to the Sessions Court, on the ground that he considers that the sentence, which he is empowered to inflict, is insufficient. *In the case of* BHICKAREE MULLICK, **10 W.R. Cr. 50.**

(19)—*Obligation to commit—Perjury committed in proceeding under s.* 318, *Crim. Pro. Code,* 1861.—A Magistrate cannot try, but must commit to the Sessions Court, a case of perjury committed before him in the course of a proceeding taken under s. 318 of the Code of Criminal Procedure, 1861. QUEEN v. BULORAM **7 W.R. Cr. 68.**

(20)—*Power to commit— Crim. Pro. Code* (1861), *s.* 171—*False evidence—Preliminary inquiry.*—A Munsif sent a witness before a Magistrate, in order that the latter might hold a preliminary investigation on a charge of giving false evidence, under s. 193 of the Penal Code. The Magistrate, without completing the investigation, sent the case back to the Munsif, who finally committed the prisoner. *Held* that, while the Munsif could have committed the prisoner himself under s. 173 of the Crim. Pro. Code, without sending him before the Magistrate to conduct the preliminary investigation on a charge of giving false evidence, the Magistrate had acted irregularly in not himself completing the inquiry. Case remanded to the Magistrate accordingly. QUEEN v. JAN MAHOMMED, 3 **B.L.R. A. Cr. 47 = 12 W. R. Cr. 41.**

(21)—*Crim. Pro. Code* (*Act* VIII *of* 1869), *s.* 435 — *Case dismissed without sufficient inquiry.—Semble.*—When a charge is dismissed by a Subordinate Magistrate without inquiry, a Magistrate has no power, under s. 435 of Act VIII of 1869, to order a trial before another Magistrate, but can only order a commitment to the Court of Sessions. QUEEN v. HIRA LAL SING, **5 B.L.R. Ap. 48 = 14 W.R. Cr. 8.**

(22)—*Magistrate and Joint Magistrate, power of—Preliminary enquiry* —Legally and for the purpose of a commitment, a District Magistrate and a Joint Magistrate have equal powers. Hence, the Joint Magistrate is not bound to act upon the instructions of the District Magistrate in a judicial proceeding, such as the commencement of a preliminary enquiry. QUEEN v. TILKOO GOALA, **8 W.R. Cr. 61.** [*Diss.*, 13 W.R. Cr. 66; *F.*, 14 W.R. Cr. 65.]

See CRIM. PRO. CODE, 1898, s. 253, 21 A. 265 = A.W.N. 1899, 61.

See CRIM. PRO. CODE, 1898, s. 349, 1 L.B. R. 141.

See CRIM. PRO. CODE, 1898, s. 436, 26 A. 564 = A.W.N. 1904, 125 = 1 A.L.J. 292.

Commitment to Sessions Court—*See* DISCHARGE OF ACCUSED, 5 A. 161.

——3.—**Transfer of Cases — Reference to other Magistrates—Revision—Review.**

(1)—*Crim. Pro. Code* (1898), *ss.* 190 *and* 191 —*Transfer—Cognizance taken by Magistrate on information derived from a police report.*—A Magistrate, after perusing a police report, in which it was recommended that proceedings should not be taken against two persons, *R* and *J*, came to the conclusion that a charge of theft ought to be framed against *D*, and ordered accordingly. *Held*, that the Magistrate had not taken cognizance of the case on his own information within the meaning of s. 190 (*c*) of the Code, so as to render it necessary for the case to be transferred for trial to another Magistrate. EMPEROR v. DALIP SINGH, **A.W.N. 1907, 93 = 5 Cr. L.J. 275.**

(2)—*Crim. Pro. Code* (1861), *s.* 273 (*s.* 192 *of the Code of* 1898)—*Transfer of security proceedings.*—A Magistrate of the District or a Division is competent to transfer security proceedings to his subordinates. QUEEN v. ABDOOLLAH, **2 N.W.P. 401.**

(3)—*Discharge—New trial—Crim. Pro. Code* (1872), *ss.* 44, 142, 215, 295 *and* 296.—Where an accused person had been discharged under s. 215, Crim. Pro. Code, by a Subordinate Magistrate, and the Magistrate of the District called for the record and proceedings, and ordered a new trial by another Magistrate, *held* that the District Magistrate was not competent to do so, but that the proper course to have been adopted by him was to refer the proceedings for the orders of the High Court. IMPERATRIX v. GOWDAPA *bin* VENKUGOWDA, **2 B. 534.** [*R.*, 1 Cr. L.J. 167 = 2 L.B.R. 27; *D.*, 5 B. 405, 10 B. 131.]

(4)—*Jurisdiction of Magistrates—Magistrate's servant being complainant.*—The mere fact that the Magistrate is the master of the complainant

Magistrate, Jurisdiction of—continued.

——3.—Transfer of Cases — Reference to other Magistrates — Revision—Review —*continued.*

who was complaining on his own account merely, does not deprive him of his jurisdiction, although in such a case, it would generally be expedient for him to refer the complainant to another Magistrate. *In the matter of the petition of* BASAPA, **9 B. 172.**

(5)—*Crim. Pro. Code* (1861), *ss.* 23-*G and* 273—*Amendment by Act* VIII *of* 1869—*Reference of cases by Magistrates—" Full power Magistrate," meaning of.*—Before the amendment of the Crim. Pro. Code by the Act of 1869, the District Magistrate had no power to refer an inquiry to a full power Magistrate, nor the latter to a subordinate Magistrate. A full power Magistrate is not a subordinate Magistrate within the meaning of Ch. XVI of the Crim. Pro. Code, s. 23-G, which has not altered the power of District Magistrates to refer cases under s. 273 of the Code. AHMEDNAGAR MAGISTRATE'S LETTER NO. 1984 OF 1869, **Rat Un. Cr. C. = 18 Cr. Rg. 27-7-1869.** *See, also, In re* AKBAR ALI, **Rat. Un. Cr. C. 18 = Cr. Rg. 29-7-1869.**

(6)—*Reference to Magistrates*—S. 23-G empowers District Magistrates to refer cases under s. 273, Crim. Pro. Code, 1861, to Divisional Magistrates. HIGH COURT PROCEEDINGS, 23RD APRIL 1872, **7 M.H.C. App. 5.**

(7)—*Crim. Pro. Code* (1861), s. 273—*District Magistrate—Reference.*—A District Magistrate has no authority under s. 273 of the Crim. Pro. Code, 1861, to refer a case for trial to a Full Power Magistrate REG. v. BABON ANTONE, **Rat. Un. Cr. C. 32.**

(8)—*Crim. Pro. Code* (*Act* X *of* 1882), *ss.* 191, 350 *and* 438—*Re-trial ordered by one District Magistrate—Successor—Reference—Jurisdiction of successor-in-office.*—Where a District Magistrate refers to the High Court a case in which his predecessor in office had ordered a re-trial, *held* that he exceeded the jurisdiction conferred by s. 438 of the Crim. Pro. Code, 1882. In a case begun by a Magistrate and continued by his successor-in-office who has jurisdiction in cases of the kind, the latter has power, under s. 191 of the Crim. Pro. Code, to issue process for the arrest of an accused person, though the predecessor had not issued such process before commencing the trial. A Magistrate who succeeds another Magistrate in his office has power, under s. 350 of the Crim. Pro. Code, to try a case in which his predecessor has issued process but not recorded evidence. QUEEN-EMPRESS v. GOVINDA, **Rat. Un. Cr. C. 652 = Cr. Rg. 18 of 1893.**

(9)—*Jurisdiction—Reference of case for trial by District Magistrate to subordinate Magistrate—Power of District Magistrate to issue warrants for arrest of persons concerned in the offence.*—Where a District Magistrate takes cognisance of an offence on a police report and makes over the case to a subordinate Magistrate, no other Magistrate is competent to deal with it, and an application for warrants against other persons accused of that offence should be made to the Magistrate before whom the case is, and to no other Magistrate. Unless the case has been withdrawn by the District Magistrate for trial by himself, he could not properly pass an order directing proceedings to be taken against other persons. GOLAPDEY SHEIKH v. QUEEN-EMPRESS, **27 C. 979 = 4 C.W.N. 827.** [*R.*, 30 C. 449, 32 C. 783 = 2 Cr L.J. 524 = 9 C.W.N. 810, 3 C.L.J. 87 = 3 Cr. L J. 209; *D.*, 39 C. 119 = 13 Cr. L.J. 433 = 15 Ind. Cas. 65.]

(10)—*Crim. Pro. Code* (1861), ss. 68 *and* 273—*Power of Magistrate acting under s.* 68 *to refer a case for enquiry to another Magistrate.*—There is no provision in the Code which authorises a Magistrate, acting under s. 68, to refer the case for inquiry, or trial to another Magistrate. S. 273 applies only to criminal cases brought before the Magistrate of the District, etc., either on complaint preferred direct to such Magistrate, or on the report of a police officer. HIGH COURT PROCEEDINGS, 17TH JANUARY, 1872, **7 M.H.C. App. 2.**

(11)—*Crim. Pro. Code* (1872), *s.* 45—*Submission to District Magistrate.*—Where a Magistrate to whom a complaint of an offence under s. 498, I.P.C., is made, is competent to try it, he has no power to submit the case to the District Magistrate under s. 45, Crim. Pro. Code, 1872, for disposal, on holding that the evidence disclosed an offence under s. 494, I.P.C FAIZ AHMED v. EMPRESS, **5 P.R. 1879, Cr.** [*R.*, 19 P.R. 1882, Cr.]

(12)—*Crim. Pro. Code* (1882), *s.* 349—*Reference to superior Magistrate for enhanced punishment—Duty of the latter.*—Where a second class Magistrate sends a case to a superior Magistrate for a more severe punishment than he can inflict, the latter is not empowered to send the case back to the referring Magistrate for committal, but is bound to pass a final judgment, sentence or order. QUEEN-EMPRESS v. HAVIA TELLAPA, **10 B. 196.** (4 B. 240, *F.*) [*F.*, 1 L.B.R 124; *R.*, 26 A. 344 = A.W.N. 1904, 42, 2 L.B.R. 285, Rat. Un. Cr. C. 354.]

(13)—*Crim. Pro. Code* (1882), *ss.* 17, 435, 436 *and* 437—*Power of District Magistrate to call for records of subordinate Magistrates.*—The Court of a Magistrate of the first class is inferior to that of the District Magistrate within the meaning of s. 435, s. 17, distinctly providing that all Magistrates, of whatever class, are subordinate to the District Magistrate. He has, therefore, power to call for the proceedings held by a Magistrate of the first class. QUEEN-EMPRESS v. PIRYA GOPAL, **9 B 100** (10 C. 263, 10 C. 551, *Diss.*) [*F.*, 12 C. 473, F.B.; *Appl.*, 9 Cr. L.J. 104 = 25 P.R. 1908, Cr., Rat. Un. Cr. Cas. 849.]

(14)—*District Magistrate's power to call for records from first class Magistrates.*—A first class Magistrate is not " inferior " to a District

Magistrate, Jurisdiction of—continued.

——3—Transfer of Cases — Reference to other Magistrates — Revision — Review — *continued.*

Magistrate; and hence the latter is not competent to call for the record of a case from the former and to act under s 437 of the Crim. Pro. Code. QUEEN EMPRESS v. NOWAB JAN, **10 C 551.** (10 C. 268, *F.*) [*Overruled*, 12 C. 473, F.B.; *Diss.*, 9 B. 100, *F.*, 7 A. 134 = 4 A.W.N. 286.]

(15)—*Crim. Pro. Code* (1882), *s.* 437—*Deputy Magistrate in charge of current duties of the District Magistrate's office — Jurisdiction — Splitting up of charges for purposes of jurisdiction.*—A Deputy Magistrate placed in charge of the current duties of the District Magistrate's office is not, thereby, vested with jurisdiction under s. 437 of the Code. A Magistrate cannot discard one of two charges against an accused, for the purpose of enabling himself to proceed to try the case summarily. RAMANUND MAHTON v. KOYLASH MAHTON, **11 C. 236.** [*D.*, 25 B. 90 = 2 Bom. L.R. 653.]

(16)—*Splitting up offences for purpose of jurisdiction.*—It is not open to a Magistrate to split up a grave offence into a number of smaller offences which, when combined, constitute that offence in order to give himself jurisdiction. OTARUDDI MANGHI v. KAFILUDDI MANGHI, **5 C.W.N. 372.** [*R.*, 7 Cr.L.J. 319 = 4 N.L.R. 18.]

(17)—*Crim. Pro. Code*, 1882, *ss.* 436, 437—*Case triable exclusively by Sessions Court—Improper discharge—Power of District Magistrate to order further enquiry—Notice to accused.*—Under s. 436 of the Code, a District Magistrate, in a case triable exclusively by a Court of Sessions, is not restricted to ordering the commitment of the accused who, in his opinion, has been improperly discharged by a subordinate Magistrate. He is not prevented from dealing with such a case, under s 437; and there is nothing in s. 437 which would prevent him from ordering a further enquiry, merely because the case may be one triable exclusively by a Court of Sessions. The mere fact, that the notice to the accused may have been merely to show cause why he should not be committed to the Sessions, would not, necessarily, prevent the District Magistrate from directing a further enquiry instead of a commitment. The accused cannot, possibly, be prejudiced by such an order passed in his presence and could not claim a notice, specially under s. 437, to show cause why a further enquiry should not be held. QUEEN-EMPRESS v MANIRUDDIN MUNDUL, **18 C. 75.**

(18)—*Crim. Pro. Code* (*Act* XXV *of* 1861), *s.* 277—*Magistrate to whom case to be sent.*—A second class Magistrate who has to submit a case under s. 277 of the Crim Pro. Code, has to submit it to the District Magistrate and not to a full power Magistrate. REG. v. KUBERIO RATNO, **4 B.H.C. Cr. 8.**

Magistrate, Jurisdiction of—continued.

——3.—Transfer of Cases — Reference to other Magistrates — Revision — Review —*concluded.*

(19)—*Crim. Pro. Code* (*Act* XXV *of* 1861) *s.* 277—*District Magistrate's circular to stay proceedings.*—A District Magistrate's circular to subordinate Magistrates to stay proceedings in all cases where they consider a more severe punishment is called for than they are competent to pass, and to send the records and the accused to the officer in charge of the Taluk or to the District Magistrate, is illegal and based on a wrong view of s. 277 of the Crim. Pro. Code. REG. v. GUNA *bin* RAGNAK, **3 B.H.C. Cr. 29.**

(20)—*Crim. Pro. Code, ss.* 284, 297—*Conviction by second class Magistrate for offence triable by him—Power of District Magistrate to annul conviction.*—Where a second class Magistrate convicts a person of an offence triable by him, the District Magistrate as an appellate Court, has no jurisdiction under s 284, to annul the conviction and sentence on the ground that the evidence on which the accused was convicted warrants a graver charge than the Magistrate had authority to try. The proper course is to refer the matter to the High Court. REG. v. TUKARAM RAGHO, **12 B.H C. 234.**

(21)—*Crim. Pro. Code*, 1861, *s.* 276—*Reference by subordinate Magistrate under section to whom to be made.*—A subordinate Magistrate who wants to refer a case under s. 276, Crim. Pro. Code, 1861, should refer to the District Magistrate and not to a Magistrate with Full Power, although the latter is empowered to hear appeals from the subordinate Magistrate. REG. v. BHAGU *bin* SHABAJI, **5 B.H.C. Cr. 47.**

(22)—*Review of orders—Committing order, power to cancel.*—Where a Deputy Magistrate has once made an order transferring a case for trial to the Magistrate, he has no power to cancel the order and replace the case on his own file. QUEEN v. CHUNDER SEEKUR ROY, **12 W.R.Cr. 18.**

——4.—Transfer of Magistrates during Trial.

(1)—*Crim. Pro. Code*, 1872, *ss.* 35, 37—*Transfer of Magistrate, while trying case—Jurisdiction to proceed with case.—By the Full Bench* (*Spankie, J., dissenting.*)—A Magistrate of the first class (or Joint Magistrate), who is appointed to act for the Magistrate of the District, and who is, while so acting, transferred to another district with effect from date of relief, has no jurisdiction, after being relieved, to proceed with a case he had been trying as a first class Magistrate of the District. EMPRESS OF INDIA v. ANAND SARUP, **3 A. 563 = A.W.N. 1881, 37.** [*F.*, 15 C.P L.R. 15; *R.*, 19 A. 114; *D.*, 22 M. 47 = 2 Weir 431.]

(2)—*Crim. Pro. Code*, 1882, *s.* 12—*Transfer of Magistrate—Order passed after his successor has entered upon his appointment.*—Where by a notification of Government, a Magistrate was transferred from a District on the arrival of the

Magistrate, Jurisdiction of—continued.

——4.—**Transfer of Magistrates during Trial** —*concluded.*

person appointed to succeed him; *held*, by *Banerji, J.*, that the Magistrate's jurisdiction ceased on the assumption, by his successor, of his duties as Magistrate, and from the date on which the successor took over charge of his duties, the former ceased to have jurisdiction; *held*, by *Aikman, J.*, that the Magistrate ceased to have any jurisdiction on the arrival of his successor; but whether the arrival was the arrival within the District or the arrival at the Head quarters of the District was not clear from the order. BALWANT v. KISHEN, **19 A. 114 = A.W.N. 1896, 195.** (3 A. 563, *R*)

(3)—*Crim. Pro. Code*, 1882, s. 350—*Transfer of Magistrates to another part of the same district —Order of District Magistrate transferring a part-heard case to his file to the place to which he was transferred.*—Where a Head Assistant Magistrate, having almost completed the trial of a criminal case, was appointed to the office of a Deputy Magistrate in another place in the same district and the case was, by the order of the District Magistrate brought on to his file to the latter place, *held*, that the Magistrate could proceed with the case from the point at which he had arrived as Head Assistant Magistrate prior to his transfer to the post of the Deputy Magistrate and that the trial need not be commenced *de novo*. QUEEN-EMPRESS v. SRI AHOBALLAMATAM JEER, **22 M. 47 = 2 Weir 430.** [*R.*, 3 A.L.J. 825 = A.W.N. 1906, 201 = 4 Cr. L.J. 140.]

——5.—**Withdrawal of Cases.**

(1)—*Withdrawal of case by District Magistrate—Crim. Pro. Code*, 1872, *ss.* 47, 491 *and Act* XI *of* 1874, *s.* 6.—Under s. 47 of the Code of Criminal Procedure, 1872, as amended by Act XI of 1874, a District Magistrate may withdraw a case falling under s. 491 of the same Code (= s. 107 of the Code of 1898). *In the matter of the petition of* DINENDRO NATH SHANIAL, **8 C. 851.** [*R.*, 31 C. 350.]

(2)—*Fresh trial after discharge—Crim. Pro. Code*, 1861, *ss.* 68 *and* 225—*Discharge of accused—Institution of fresh proceedings.*—Where an accused person is discharged by a Deputy Magistrate under s. 225 of the Code of Criminal Procedure, after a preliminary enquiry, the Magistrate of the District may proceed against him afresh under s. 68 of the Crim. Pro. Code. *In the matter of the petition of* RAMJAI MAZUMDAR, **6 B.L.R. Ap. 67 = 14 W.R. Cr. 65.**

(3)—*Crim. Pro. Code*, 1872, *ss.* 45, 47, 328, 329—*Withdrawal of case for trial.*—The provisions of Act X of 1872, s. 328, only apply when a Magistrate, after hearing part of the evidence in a case, ceases to exercise jurisdiction, and is succeeded by another, who has and exercises jurisdiction in such case. So s. 329 only applies to "enquiries" under Ch. XV, and only when the Magistrate is "unable" to complete the enquiry himself. But when a case under trial

Magistrate, Jurisdiction of—continued.

——5.—**Withdrawal of Cases**—*concluded.*

is removed under s. 47, the whole proceedings must commence *de novo* in the manner provided for in s. 45 QUEEN v. KHAN MAHOMED, **24 W.R. Cr. 53.** [*D.*, 22 M. 47.]

——6.—**Miscellaneous Cases.**

(1)—*Bond for appearance, taken by one Magistrate for appearance before another Magistrate.*—A bond to secure the appearance of the accused before a Magistrate is not invalid because it was taken by a Magistrate other than the one before whom the appearance was to be made. QUEEN EMPRESS v. NIHAL CHAND DAHYABHAI, **2 Bom. L.R. 589.**

(2)—*Crim. Pro. Code*, s. 293 — *Mitigating penalty in recognizance.*—A Magistrate has no power to mitigate the penalty contained in a personal recognizance bond to keep the peace. He should enforce the penalty to its full amount. REG. v. KUCHRA PREMCHAND **Rat. Un. Cr. C. 20 = Cr. Rg. 6 9 1869.** (1 B.H.C. Cr. 138, *F.*)

(3)—*Crim. Pro. Code*, 1882, s. 545—*I.P.C.*, s. 188—*Taking plague-stricken person without informing Municipal authorities—Conviction—Compensation to Municipality for expenses incurred.*—The accused took his sister who was suffering from plague, into a town without informing the Municipal authorities about it, and was convicted of an offence under s. 188, I.P.C., and was sentenced to pay a fine of Rs. 20. The Magistrate further ordered that, out of the fine so recovered, Rs. 10 should be paid to the Municipality as damages on account of the expenses incurred in disinfecting the house into which the accused brought the case of plague:—*Held* that the order was illegal. QUEEN-EMPRESS v. RAHIMATKHA, **Rat. Un. Cr. C. 958.**

(4)—*Crim. Pro. Code* (1882), s. 386—*Distress warrant—Trial of claims.*—The Code does not contain any provision for the trial of claims which may be preferred to property which is distrained under s. 386, and any orders which the High Court may issue can only be by way of advice. When a Magistrate has issued the warrant under the section in the form given in the schedule, he has done all that is required of him by the Code, and he is not required by law to try any claim that may be preferred to the ownership of the property distrained. The question how such claims could be determined was left undecided in this case. QUEEN-EMPRESS v. GASPER, **22 C. 935.** [*F.*, Rat. Un. Cr. C 976; *R.*, 4 Bom. L.R 109.]

(5)—*Order of police.*—The orders of the police are not binding on the Magistracy. QUEEN-EMPRESS v. KANAPPA PILLAI, **20 M. 387 = 2 Weir 240.**

(6)—*Alteration of sentence.*—A Magistrate is at liberty to alter his sentence at any time before the despatch of the Calendar to the appellate authority. HIGH COURT PROCEEDINGS, 29TH MARCH 1870, **5 M.H.C. App. 19.**

Magistrate, Jurisdiction of—continued.

—— 6.—**Miscellaneous Cases**—*continued.*

(7)—*Crim. Pro. Code* (1872), *s.* 41—*Power of superior Magistrate to call for explanation from subordinate Magistrates.*—A superior Magistrate has the power to call for an explanation from subordinate Magistrates of their proceedings. HIGH COURT PROCEEDINGS, 4TH AUGUST 1873, **7 M.H C. App. 26.**

(8)—*Special Magistrate for local area.*—It is essential that a Special Magistrate should be appointed for a ' local area.' The connotation of a Special Magistrate, under the Code of Criminal Procedure, is that he should have (1) specified powers conferrable on a Magistrate by the Local Government ; (2) a local area within which to exercise those powers, and (3) jurisdiction to try particular cases or a particular class or classes of cases generally. Each of the above ingredients enters into the conception of a Special Magistrate, as defined in s. 14 of the Code, but the last is a variable element and does not necessarily require specific mention. If nothing is said about the cases to be tried, it will be understood that all cases triable by law by a Magistrate invested with the powers of a Special Magistrate may be tried by him. But the powers and the local area must be defined. LAKHMI CHAND v. EMPEROR OF INDIA, **96 P.L.R. 1901 = 24 P.R. 1901, Cr.** (18 B. 342, 16 C. 194, *R.*)

(9)—*Whether appeal lies from order of District Magistrate in trials conducted by him as Superintendent of Hill States outside the limits of British India.*—No appeal lies to the Chief Court from the order of a District Magistrate, in the case of trials conducted by him in his capacity as Superintendent of Hill States outside the limits of British India, since the Magistrate is not acting in his ordinary capacity as a Magistrate under the Crim. Pro. Code. *In the matter of the appeals of* BISHEN DAS, **14 P.R. 1910, Cr = 6 Ind. Cas. 640 = 20 P.W.R. 1910, Cr. = 45 P.L.R. 1910 = 11 Cr. L.J. 390.**

(10)—*Police Act* (V of 1861)—*Crim. Pro. Code* (1861), *s.* 133—*Offence under local Act.*—A Magistrate can, under s 133 of the Code of Criminal Procedure, 1861, direct an equiry to be made by a police officer into an offence punishable under a local Act, such as the Police Act. *In re* PRANKISTO PAL, **14 W.R. Cr. 41**

(11)—*Robbery—Deputy Magistrate, power of.*—A charge of robbery, under Act VIII of 1866, can be tried only by the Court of Session or by the Magistrate of the District, but not by a Deputy Magistrate. MADHUB GHOSE v. BULLYE METEA, **7 W.R. Cr. 11.**

(12)—*Penal Code, ss.* 351, 497, 498—*Crim. Pro. Code* (*Act* V *of* 1898), *s.* 199—*Jurisdiction of Magistrate.*—S. 199 of the Crim. Pro. Code does not bar the jurisdiction of a Magistrate in a case of criminal trespass on the ground that the offence intended to be committed by the accused person was one under s. 497 or s. 498 of the Penal Code. EMPRESS v. CLIFTON, **A.W.N. 1899, 212.**

Magistrate, Jurisdiction of—continued.

—— 6.—**Miscellaneous Cases**—*continued.*

(13)—*Act* XVI *of* 1861 (*Stage Carriage*), *ss.* 8, 9—*Jurisdiction.*—A second class Magistrate has no jurisdiction to try an offence under ss. 8 and 9 of Act XVI of 1861. The offence is triable only by a Magistrate of a District or a Magistrate of the first class. EMPRESS v. MOTI RAM, **7 P R. 1879, Cr.**

(14)—*Magistrate—Local inspection—Hearing statements of persons not on oath—Disbelieving witnesses—Conviction—Accused not finding real offender.*—A Magistrate has authority to inspect a locality for the purpose of ascertaining the truth about a case. But he should not during such inspection hear or take statements of persons not on oath. It is wrong to convict people on the evidence of witnesses whom the Court considers unworthy of credit or on the ground that the accused, if they were not the real offenders, have not found out the real offenders. EMPRESS v. SARFARAZ ALI, **A.W.N. 1885, 264.**

(15)—*Jurisdiction of.*—A *bona fide* claim of title deprives a Magistrate of jurisdiction to deal with a criminal charge in a summary way. ISSUR CHUNDER MUNDLE v ROHIM SHEIK, **25 W.R. Cr. 65.**

(16)—*Penal Code*, *ss.* 457, 458—*Jurisdiction of Magistrate.*—A Deputy Magistrate has jurisdiction to try and convict for offences under ss. 457 and 458 of the Penal Code. EMPRESS v. IMAMI, **A.W.N. 1885, 297.**

(17)—*Act* XXVI *of* 1850—*Crim. Pro. Code, Act* XXV *of* 1861, *Act* VIII *of* 1869—*Jurisdiction of Magistrates.*—Though, under the Crim. Pro. Code of 1861, only a full power Magistrate had jurisdiction to try breaches of rules framed under Act XXVI of 1850, the effect of the addition to the schedule made by Act VIII of 1869 is to give even subordinate Magistrates such jurisdiction. REG. v. YENKU BAPUJI, **8 B.H.C. Cr. 39, F.B.** (3 B.H.C. Cr. 36, 8, 12, *R.*)

(18)—*Court importing its personal knowledge into the case.*—Where a Magistrate, in a dacoity case, stated in his judgment that the identification at the jail was carried out in his presence in such a manner "as to admit of no fraud," *held* that the Magistrate could not import his own knowledge into the case except as a witness, there being no evidence on the record as to the way in which the identification was conducted. SRI KISHEN v. KING-EMPEROR, **6 O.C. 204.**

(19)—*Magistrate with power to do particular act or make particular order—Order for maintenance under s.* 536, *Crim. Pro Code.*—Where the law empowers Magistrates of a particular grade to do a particular act, or make a certain order, it should always appear upon the proceedings that the Magistrate making the order or doing the act is a Magistrate who had jurisdiction to do it. MUSSAMMAT SOMREE v. JITUN SONAR, **22 W.R. Cr. 30.**

Magistrate, Jurisdiction of -continued.

——6.—Miscellaneous Cases—*continued.*

(20)—*Powers of Magistrates—Joint Magistrates with powers of Magistrate of District—Crim. Pro. Code* (1861), *ss.* 15, 23 *and* 68.—A Joint Magistrate who has been vested with the full power of the Magistrate of a district, and to whom a case is duly made over by the Magistrate, is competent, under ss. 15. 23 and 68 of the Code of Criminal Procedure, 1861, to initiate proceedings without any formal complaint against parties other than those mentioned in the original complaint. *In re* ROY LUCHMIPUT SINGH, **18 W.R. Cr. 43.**

(21)—*Deputy Magistrate—Default in appearance of party bailed.*—In consequence of the default in appearance of a person bailed, the surety was compelled to pay the penalty mentioned in the recognizance. The Deputy Magistrate applied for and received the permission of the District Magistrate to try the accused under s. 174 of the Penal Code. *Held* that the Deputy Magistrate had no jurisdiction to try the case, it not having been referred to him "either on complaint preferred directly to the Magistrate or on the report of a police officer." QUEEN v. TAJUMADDI SAHOY, **1 B.L.R.A.Cr. 1 = 10 W.R. Cr. 4.** [*Doubt.*, 13 W.R. Cr. 66.]

(22)—*Power of delegation of authority to receive complaints—Crim. Pro. Code* (1869), *ss.* 23(*d*) *and* 66(*b*)—*Order of Local Government, effect of.*—The power of a Magistrate to delegate the receiving of complaints under s. 66 (*b*), Code of Criminal Procedure, is not equivalent to the power of the Local Government to invest with local jurisdiction under s. 23 (*d*); and no Magistrate can act under Ch. XX who has not been legally invested with the local jurisdiction. No order of the Local Government under the latter section can legally have retrospective effect. MAC DONALD v. MR. RIDDELL, **16 W.R. Cr. 79.**

(23)—*Magistrate trying case himself after referring it—Trial without recording proceeding under s.* 36, *Crim. Pro. Code*, 1869.—A Magistrate of a District, before whom a complaint had been made, without complying with the provisions of s. 66, Act XXV of 1861, sent the petition to be disposed of by a Deputy Magistrate; and when the Deputy Magistrate had proceeded to some extent with the case, the Magistrate took it up and tried it himself. *Held* that the Magistrate, having once sent the case to the Deputy Magistrate for trial, had no power to try the case himself without formally recording a proceeding under s. 36 of Act VIII of 1869. QUEEN v. GIRISH CHANDRA GHOSE, **7 B.L.R. 513 = 16 W.R. Cr. 40.** [*F.*, 8 B.L.R. 19, 4 N.W.P. 88; *Expl.* 18 W.R. Cr. 18.]

(24)—*Removal of case from file of Deputy Magistrate—Crim. Pro. Code (Act* XXV *of* 1861), *s.* 66—*Act* VIII *of* 1869, *s.* 36—*Discretion of Court.*—Interference by the High Court in a case where the Magistrate had improperly exercised his discretion in removing a case from the file of a Deputy Magistrate. *In the matter of the petition of* NABA KUMAR BANERJEE, **5 B.L.R. Ap. 45.**

(25)—*Transfer of case from one Magistrate to another—Principle—Crim. Pro. Code* (1861), *s.* 66-*A*—*Second class Magistrate—Report of police officer.*—To move a case from one Magistrate to another on grounds personal to such Magistrate is tantamount to a severe censure on such officer, and the very clearest grounds must exist before the Court will interfere. A second class Magistrate, before the notification extending s. 66-A of the Crim. Pro. Code to such Magistrates, had no jurisdiction to try a case on the report of a police officer or on a complaint directly preferred by him. *In re* SHANKAR ABAJI HOSHING, **6 B.H.C. Cr. 69.**

(26)—*Full Power Magistrate—Power to refer complaint to subordinate Magistrate.*—A full power Magistrate who has received a complaint is not competent to refer it to a subordinate Magistrate for disposal. REG v. PAPIDIO MUTHDO, **9 B.H.C. 167.**

(27)—*Crim. Pro. Code* (1861), *ss.* 14, 273, 434—*Power of District Magistrate to refer case to Magistrate with full power.*—A Magistrate with full powers does not come within the meaning of s. 273, and the Magistrate of the district has not, therefore, any power to send a criminal case brought before him, either on complaint preferred directly to such Magistrate or on the report of the police officers, as such Magistrate is not subordinate to the District Magistrate within the meaning of Ch. XVI or s. 434, Crim. Pro. Code. REG. v. KRISHNA PARASHRAM, **5 B.H.C. Cr. 69. F.B.** [*R.*, 6 B.H.C. 258.]

(28)—*Crim. Pro. Code (Act* XXV *of* 1861), *s.* 273—*Grievous hurt.*—A Magistrate has no power, under s. 273 of the Code of Criminal Procedure, to refer to a case of grievous hurt for trial to a Deputy Magistrate having only the power of a subordinate Magistrate of the second class. GOBIND CHANDRA BISWAS v. HEM CHANDRA BARDER, **6 B.L.R. Ap. 115.**

(29)—*Reference of case after initiation to subordinate Magistrate—Crim. Pro. Code* (1872), *ss.* 44, 45, 47, 49.—In all cases in which a Magistrate refers a complaint already initiated to a subordinate Magistrate for inquiry, the procedure adopted for the purpose ought to conform either to s. 44 or s 49 of the Crim. Pro. Code. RAMZAN ALI v. DURPO KOMILLA, **24 W.R. Cr. 58.**

(30)—*Crim. Pro. Code (Act* XXI *of* 1861), *s.* 276—*Reference by District Magistrate to full power Magistrate of a case submitted.*—Where a case is submitted by a subordinate Magistrate to a District Magistrate under s. 276 of the Crim. Pro. Code, it is competent to the latter to try it himself or to refer it to some other Magistrate competent to try it. REG. v. MANGLA BHULIA, **7 B.H.C. Cr. 69.**

Magistrate, Jurisdiction of—continued.

—— 6.—**Miscellaneous Cases**—*continued.*

(31)—*Subordinate Magistrate.*—It is proper for a subordinate Magistrate under s. 277 of the Code of Criminal Procedure, 1861, to refer a case, not to the Magistrate of the district, but to the Assistant Magistrate in charge of the sub-division to which he was attached. *In re* NIDREE TELHINEE, **11 W.R. Cr. 7.**

(32)—*Reg.* XXI *of* 1827—*Rules for retaining opium - Jurisdiction of Magistrates.*—A full power Magistrate has no jurisdiction to try a case of breach of rules passed for the retail sale of opium under Reg. XXI of 1827, since only a Zillah Magistrate has such jurisdiction. REG. v. SADU *valad* PAVADI, **3 B H C. Cr 39**; REG. v. GANIA *bin* BAPU, **3 B.H.C. Cr. 50.**

(33)—*Crim. Pro. Code* (*Act* XXV *of* 1861), s. 296—*Irregular order for security.*—A Magistrate's order on convicting a person to six months' imprisonment, that the convict be brought up after the expiry of the sentence to give security for good behaviour under s. 296 of the Crim. Pro. Code, is illegal, since the section contemplates a special proceeding for the purpose. REG. v. KRISHNAJI BAPUJI GAIKWAD, **3 B.H.C. Cr. 39.**

(34)—*Crim. Pro. Code* (*Act* VIII *of* 1869)—*Jurisdiction of Magistrate to fine for breach of Municipal rule*—By the addition of "offences against other laws" to the Schedule of the Crim. Pro. Code, by Act VIII of 1869, a subordinate Magistrate is empowered to impose a fine for breach of a rule made by a Municipality under Act XXVI of 1850. REG. v. DHARMAYA *valad* SANGAPA, **8 B.H.C. Cr. 12.** [*Appr.*, 8 B.H.C. Cr. 39, F.B.]

(35)—*Crim Pro. Code* (1861), ss. 186, 187—*Service of summons.*—The mere showing of the summons to a witness is not sufficient service. Either the original summons should be left with the witness, or should be exhibited to him and a copy delivered or tendered. REG v. KARSANLAL DANATRAM, **5 B.H C. Cr. 20.**

(36)—*Crim. Pro. Code*, s. 21—*Reg.* XXI *of* 1827, *ss.* 4, 7 *and* 10, *cl.* 4—*Possession of smuggled opium—Jurisdiction.*—Under s. 21 of the Crim. Pro. Code, and s. 7 of Reg. XXI of 1827, the offence of having in possession more than one quarter of a Surat *ser* of opium is exclusively triable by a *Zillah* Magistrate. REG. v. HIRA JIVA, **7 B.H.C. Cr. 59.** [*Appr.*, 8 B.H.C. Cr. 118.]

(37) *Crim. Pro. Code* (*Act* XXV *of* 1861), s. 21—*Offence against Opium law—Jurisdiction of Magistrate—Reg.* XXI *of* 1827, s. 7.—Under s. 21 of the Crim. Pro Code, and under s. 7 of Reg. XXI of 1827, the offence of being in possession of smuggled opium is one in which the only Magistrate having jurisdiction is the District Magistrate or the Magistrate of a division exercising the District Magistrate's powers. And it is only under the special circumstances set forth in s. 12 of Reg. XII of 1827 that such Magistrate could transfer the case to the Sessions Court. REG. v. LAKHU *valad* SAKRU, **8 B.H.C. Cr. 118** (7 B.H.C. Cr. 59, *R.*) *But see* REG v. SADU DADABHAI, **9 B. H.C. 166.**

(38)—*Crim. Pro. Code* (1861), ss. 21, 409—*Offence under s.* 7 *of Reg.* XXI *of* 1827—*Appellate and Original jurisdiction.*—Although the effect of s. 21, Crim. Pro. Code, 1861, is to give exclusive original jurisdiction to the Magistrate of the District in the trial of cases under s. 7 of Reg. XXI of 1827, yet, it does not exclude the appellate jurisdiction vested in the Court of Sessions by s. 409, Crim. Pro. Code. REG. v. SADU DADABHAI. **9 B.H C. 166.** *But see,* REG. v. LAKHU SAKRU, **8 B.H.C. Cr. 118.**

(39)—*Reg.* XXI *of* 1827, s. 10, *cl.* 4—*Jurisdiction of Magistrate - Retail sale of opium.*—A full power Magistrate has no jurisdiction to try a case of breach of rules under Reg. XXI of 1827, since only the Zillah Magistrate is empowered to do so. REG. v. GANIA *bin* BAPU, **3 B.H. C. Cr. 50.**

(40)—*Transit duties for Holkar's Government—Collection in British territory.*—Where an agent of H. H. the Holkar who received payments of transit duties for the Holkar's Government in British territory was charged with and convicted of the offence of disobeying the order of a public servant (the Collector) prohibiting the receiving of the same, *held* that, as nothing was done by the accused within British territory to compel the payment, but there was only a voluntary payment, the order, so far as it prohibited any person from receiving a payment so made, was beyond the power of the Collector. REG. v. VITHAL LAKSHMAN, **5 B.H.C. Cr. 13.**

(41)—Chowkidars—*Maintenance of* chowkidar *on chakeran land.*—A Magistrate has power to maintain a *chowkidar* in the possession of his chakeran land (*i.e.*, land set apart for his subsistence by his Zamindar). Any such order of the Magistrate is appealable to the Superintendent of Police. QUEEN v. ZEMINDAR OF COLGONG, **1 W.R. Cr. 12.**

(42)—*Penal Code*, ss. 392, 75—*Enhanced punishment.*—Where the offence under s. 392, I.P.C., with which the accused was charged was not committed subsequently to any convictions, *held* that a sentence of transportation for fourteen years was not legal and that s. 75 did not apply to the case. REG. v. SAKYA *valad* KAVJI, **5 B.H.C. Cr. 36.**

(43)—*Penal Code*, s. 509—*Making indecent gestures to annoy.*—An offence coming under s. 509 of the Penal Code is triable by the Magistrate of the district only. MUSSAMMAT KULREE v. JHOONOO, **7 W.R. Cr. 52**

(44)—*Penal Code*, s. 471—*Forged document—Power to commit for forgery produced before the Collector.*—Where a forged document is put in evidence before the Collector, the power of

Magistrate, Jurisdiction of—continued.

—— **6.—Miscellaneous Cases**—*continued.*

commitment rests with the revenue authorities, and does not, under any circumstances, extend to the Magistrate. GOVERNMENT v. HUNGESSUR SEIN, **1 Ind. Jur. O.S. 11.**

(45)—*Penal Code, ss.* 380, 458, 459—*Lurking house-trespass by night with aggravating circumstances.*—A Deputy Magistrate cannot convict of theft where the offence charged is lurking house-trespass by night with aggravating circumstances but must commit on the latter charge. PURAN TELLEE v. BHUTTOO DOME, **9 W.R. Cr. 5.**

(46)—*Penal Code, s.* 458—*Deputy Magistrate, power of.*—A Deputy Magistrate has no jurisdiction in the case of an offence coming under s. 458 of the Penal Code. QUEEN v. SHADRY *alias* OGHURRY MALAKUR, **1 W.R. Cr. 34.**

(47)—*Penal Code, s.* 213—*Subordinate Magistrate—Illegal gratification.*—A Second Class Magistrate is not competent to initiate a charge of accepting an illegal gratification to screen an offender. OMRIT RAM v. NONAO RAM, **6 W.R. Cr. 90.**

(48)—*Penal Code, s.* 174—*Offence in contempt of Court.*—A Magistrate has power to take cognizance of an offence under s. 174, Penal Code, committed against his own Court. BAIJOO BAUL v. GUGUM MISSER, **8 W.R. Cr. 61.**

(49)—*Illegal confinement—Deputy Magistrate, power of.*—A person charged with the fault of illegal confinement for more than ten days is triable only by the Court of Session or by the Magistrate of the District, but not by a Deputy Magistrate. QUEEN v. KOMUL MANJEE, **7 W.R. Cr. 13.**

(50)—*Salt laws — Crim. Pro. Code,* 1861, *s.* 21—*Cases under local laws.*—A Magistrate is bound, with reference to s. 21 of the Code of Criminal Procedure, 1861, to proceed in the investigation of cases arising under a special law (such as the Salt Law), according to all the provisions of the Code of Criminal Procedure. QUEEN v. ABDOOL AZEEZ KHAN, **14 W.R. Cr. 36.** [*D.*, 4 N.W.P. 94.]

(51)—*Jurisdiction of Magistrate to make order under s.* 536, *Crim. Pro Code.*—An order under s. 536, Crim. Pro. Code, 1872, cannot be made by a Magistrate of the second class. MUSST. SOMREE v. JITUN SONAR, **22 W.R. Cr. 30.**

(52)—*Case originating with District Magistrate—Assistant's Magistrate's jurisdiction—Complaint—Assistant Magistrate—S.* 68, *Code of Criminal Procedure,* 1861.—An Assistant Magistrate of a district has no jurisdiction to entertain a case as of his own knowledge under s. 68, Code of Criminal Procedure, as he does not fill the character of a Magistrate of a District or a Magistrate in charge of a division of a District. Where a case did not come before an Assistant Magistrate on complaint, or in any other way than by transfer from the Magistrate of the District, who himself initiated the proceedings under s. 68, the proceedings of the Assistant Magistrate were declared to have been without jurisdiction. *In re* DHUNPUT SINGH, **19 W.R.Cr. 30.**

(53)—*Power to refer to subordinate officers—Case originating with District Magistrate—Crim. Pro. Code,* 1861, *s.* 88.—A case originating with a Magistrate of the District must, under s. 88 of the Code of Criminal Procedure, be disposed of by the Magistrate himself, and cannot be referred to a Subordinate Magistrate. *In re* HOSSAIN MANJEE, **9 W.R. Cr. 70**; *In re* DHUNPUT SING, **19 W.R. Cr. 30.**

(54)—*S.* 277, *Act* XXV *of* 1861—*Jurisdiction of Magistrate of district.*—In this case the Chief Court acting as a Court of revision was of opinion that the Magistrate of a district was limited to his ordinary jurisdiction in passing sentences in cases referred to him under s. 277 of the Crim. Pro. Code. BHAG SINGH v. CROWN, **16 P.R. 1869, Cr.**

(55)—*Jurisdiction—S.* 316, *Crim. Pro. Code,* 1861 *and s.* 23-*H of Act* VIII *of* 1869.—A Magistrate with full powers could try cases under s. 316, Crim Pro. Code, 1861 without being specially empowered under s. 23-H, Act VIII of 1869. MUSST. HUR KOUR v. BHOOSA, **22 P. R. 1870, Cr.**

Magistrates, Jurisdiction of.

See ACT VII OF 1853.

Magistrate of the first class.

See ACT IX OF 1894, s. 52, 32 M. 303.

Magistrate's (Presidency) Court Fees Act.

See ACT IV OF 1877.

Magistrates, Fines by, Act.

See ACT II OF 1839.

Mahomedan.

Words describing atrocities committed by Christians upon the Mahomedans—Tendency to make—hate Christians—*See* ACT I OF 1910, ss. 4, 12, 17, 19, 22, 14 Cr. L.J. 497 = 20 Ind. Cas. 977 = 18 C W.N. 1 = 41 C. 466.

Hindus taking forcible possession of cows from—*See* DACOITY, 15 A. 299.

Punishment of stocks, whether can be imposed upon—*See* MAD. REG. XI OF 1816, s. 10, 6 M. 247 = 1 Weir 927 = 7 Ind. Jur 304.

Mahomedan Law.

1.—CUSTODY OF CHILDREN.
2.—DIVORCE.
3.—GUARDIANSHIP.
4.—HUSBAND AND WIFE.
5.—MAINTENANCE.
6.—MARRIAGE.
7.—WILL.
8.—MISCELLANEOUS.

Mahomedan Law—continued.

——1.—**Custody of Children.**

(1)—*Right of Mahomedan mother to custody of male children.*—Under Mahomedan Law, the mother is, during the subsistence of marriage, entitled to the guardianship or custody of male children up to the age of seven years. This right of hers survives even after separation or divorce. ZARABIBI v. ABDUL REZZAK NAKSHBANDI, **12 Bom. L.R. 891=8 Ind. Cas. 618=11 Cr. L.J. 687.**

——2.—**Divorce.**

See BEN. ACT I OF 1876.

(1)—*Divorce—Custom.*—A person who was once a member of the Khoja community can validly divorce his wife according to the custom of the *Sunni* sect to which he belonged whether his wife belonged to such sect or not. *In re* KASAM PIRBHAI, **8 B.H.C. Cr. 95.** [*F.*, 1 Bom. L.R. 346; *R.*, 12 B.H C. Cr. 294.]

See BOM. ACT XLVIII OF 1860, s. 10, 8 B. H.C. Cr. 95.

Iddat—Maintenance to be paid till the expiration of *iddat*—*See* CRIM. PRO. CODE, 1898, s. 488, 12 Cr. L.J. 82=9 Ind. Cas. 457.

Maintenance by Mahomedan father of children in the custody of his divorced wife—*See* MAINTENANCE, 6 Bom. L.R. 536.

See MAINTENANCE, 2 Weir 617, 4 Ind. Cas. 140, 1 Bom. L.R. 346, 2 Weir 620, 8 C. 736=11 C.L.R. 237, 19 W.R. Cr. 73=10 B.L.R. App. 33, 5 A. 226, A.W.N. 1885, 29, A.W.N. 1888, 116, A.W.N. 1899, 85.

——3.—**Guardianship.**

See CRIM. PRO. CODE, 1898, s. 491, 11 Bom. L.R. 75=9 Cr. L.J. 214.

See KIDNAPPING, 32 C. 444=2 Cr. L.J. 328.

——4.—**Husband and Wife.**

Custody of, wife—*See* HABEAS CORPUS, WRIT OF, 13 B.L.R. 160.

——5.—**Maintenance.**

See MAINTENANCE.

(1)—*Adultery—Husband and wife — Maintenance—Crim. Pro. Code, s.* 488.—The intercourse of a Mahomedan with a Burmese woman to whom he is not married is adultery within the meaning of s. 488, Crim. Pro. Code. MI ALPHA BI v. MAUNG SHWE MAUNG, **L. B.R. 1872—1892, 596.**

(2)—*Mahomedans — Wife under age of puberty—Maintenance—Quære*:—Whether, in the case of Mahomedans, where a wife, although legally married, has not attained the age of puberty, there is a liability on the part of the husband to support her as long as she remains under the roof of her father? KOLASHUN BIBEE v. SHAIKH DIDAR BUKSH, **24 W.R. Cr. 44.**

Mahomedan Law—continued.

——6.—**Marriage.**

See BEN. ACT I OF 1876.

See MARRIAGE.

(1)—*Penal Code, s. 498—Proof of valid marriage—Mahomedan marriage*—It is essential, for a valid Mahomedan marriage, that the husband should be capable of giving a valid consent, or should be represented by some one, who can lawfully consent on his behalf; and that the girl also, when a minor, should be represented by a duly authorised person for the purpose of binding her. If such a proof is not given, a conviction under s. 498 cannot be had. SOBRATI v. JUNGLI, **2 C.W.N. 245.**

(2)—*Marriage with Buddhist woman, when lawful.*—Buddhists cannot be said to have a revealed religion and a *kitab*. Therefore a legal marriage cannot be contracted between a Mahomedan and a woman professing Buddhism, unless the latter makes a profession of Mahomedanism and the ceremony is performed according to Mahomedan rites. QUEEN-EMPRESS v. NGA PALE, **L B.R. 1893—1900, 607.** (19 C. 79, 21 C. 666, *F.*)

(3)—*Pregnancy, if bar to marriage.*—There is no authority for the assertion that pregnancy is a bar to a marriage under the Mahomedan Law. MAUNG TUN v. MI DU HLAING, **U. B.R. 1897—1901, Vol. I, 110.**

(4)—Nikah *wife, children of—Legitimacy.*—The *nikah* form of marriage is well known and established amongst Mahomedans. The issue of a *nikah* marriage is legitimate under the Mahomedan Law. SHEIKH MONEEROODDEEN v. RAMDHUN RAJEEKHUR, **18 W.R. Cr. 28.**

Marriage of minor Mahomedan girl by her mother—Second marriage after attaining puberty while the former husband was in jail —Repudiation of marriage—*See* BIGAMY, 19 C. 79.

Hindu wife becoming convert to Mahomedanism—Conditions necessary before marrying a Mahomedan a second time—*See* BIGAMY, 18 C. 264.

Marriage before Iddat null and void—Penal Code, s. 498—*See* CRIM. PRO. CODE, 1898, s. 250, 1 P.W R. 1912, Cr.=83 P.L.R. 1912=13 Cr. L J. 136=13 Ind. Cas. 824.

See MAINTENANCE, 2 Weir 615, 8 C. 736 =11 C.L.R. 237, 2 Weir 647.

See PENAL CODE, ss. 109, 494, 4 C. 10=3 C.L.R. 81.

Accused identifying person personating another before Mahomedan marriage Registrar —*See* PENAL CODE, ss. 114, 199, 466, 9 C.W. N. 69.

Hanafi Law—Marriage during iddut—Validity—Apostacy of husband—Effect—Status of parties during Iddut—Dissolution of marriage —Effect of separation—*See* PENAL CODE, s. 494, 15 C.L.J. 263=16 C.W.N. 451=39 C. 409=13 Cr. L.J. 257=14 Ind. Cas. 641.

See PENAL CODE, ss. 497, 498, 7 C.W.N. 143.

Mahomedan Law—concluded.

—— **7.—Will.**

See CRIM. PRO. CODE, 1898, s. 491, 11 Bom. L.R. 75 = 9 Cr. L.J. 214.

——**8.—Miscellaneous.**

See PENAL CODE, s. 296, 12 A. 494, F.B. = A.W.N. 1890, 179.

See RELIGION, OFFENCES RELATING TO, 13 A. 419, F.B.

Mahomedan Marriages and Divorces, Registration of, Act.

See BEN. ACT I OF 1876.

Maiming.

(1)—*Penal Code*, ss 428 *and* 429.—The word "maiming" in ss. 428 and 429, has a technical meaning and imports a permanent injury. BAHAWAL v. QUEEN-EMPRESS, **7 P. R. 1891, Cr.**

(2)—*Penal Code*, s. 428.—The term "maiming" as used in s. 428, I P.C., refers to those injuries which cause the privation of the use of a limb or member of the body. FATTEH DIN v. EMPRESS, **33 P R. 1881, Cr.**

Maintenance.

See BASTARDY PROCEEDINGS.

See CRIM. PRO. CODE, 1898, s. 488.

See HINDU LAW—MAINTENANCE.

See HUSBAND AND WIFE.

See MAHOMEDAN LAW—MAINTENANCE.

(1)—*Ch.* XXXVI — *Proceedings under—Nature of—"Maintenance," meaning and scope of the word.—Held*, that the proceedings under Ch. XXXVI do not amount to a civil suit, where the issue is as to the social standing of the wife and the amount of alimony appropriate, or the kind of education, the children of a person ought to receive, and the amount, if any, properly payable in schooling fees for them. These are questions beyond the scope of the Crim. Pro. Code. "Maintenance," as used in ss. 488, 489 of the Crim. Pro. Code, 1898, does not include children's schooling fees. NGA HLA v. MI HLA KYU, **11 Cr. L J. 40 = 4 Ind. Cas. 758 = U.B R. 1909, 1st Qr. Cr. P.C. 17.**

(2 & 3)—*Application for maintenance—Jurisdiction of Magistrate—Crim. Pro. Code* (1872), s. 536.— A Magistrate of the first class is competent to dispose of a maintenance case, notwithstanding that he may not have been empowered to take cognizance of offences without complaint. This jurisdiction is not barred by the fact that the defendant resided in another District or by the fact that an application of a similar nature had been rejected for want of jurisdiction by a Magistrate of the District where the defendant resided. *In re* U. B. TODD, **5 N W.P. 237.** [*F.*, 13 A. 348; *R.*, 1913 M.W N. 997 = 14 M.L.T. 223 = 26 M.L.J. 355 = 21 Ind. Cas. 469 = 14 Cr.L.J. 597; *D.*, 9 B. 40.]

Maintenance—*continued.*

(4)—*Crim. Pro. Code*, 1882, s. 488—*Jurisdiction of Magistrates—"District Magistrate," meaning of the expression.*—The jurisdiction in cases of maintenance is to be exercised in the district in which the person, against whom any final order that may be passed in the proceedings is to operate, has his residence at the time of making the complaint. The expression "the District Magistrate" in s. 488, Crim. Pro. Code, cannot mean any other District Magistrate than the Magistrate of the particular district in which the person against whom a complaint is made resides. That being the sense of the expression, it must be carried no further in the case of other expressions, "a Presidency Magistrate, or a Magistrate of the first class." *In the petition of* SHAIK FAKRUDIN, **9 B. 40.** [*F.*, 24 C. 638, A.W.N. 1894, 153, 7 C.P.L.R. 12; *R.*, 16 B. 269, 3 P.R. 1893, Cr., 24 P.R. 1901, Cr. = 96 P.L R. 1901; *D.*, 13 A. 348.]

(5)—*Crim Pro. Code*, s. 488—*Maintenance of lesser wife marrying without knowledge that husband had a first wife.*—A lesser wife, refusing to live with the chief wife, will not be deprived of her right to maintenance, if, at the time she married, she did not know that the husband had been previously married. MAUNG PO WE v. MA THE HLA, **8 Ind. Cas. 997 = 3 Bur. L.T. 154 = 11 Cr. L.J. 750.**

(6)—*Jurisdiction of Court in maintenance cases.*—Where the husband fails to maintain his wife, the proper Court to take cognisance of the complaint of the wife is the Court within the jurisdiction of which he may reside. G. BENBOW v. W. BENBOW, **24 C. 638 = 1 C. W.N. 577.** [*R.*, U.B.R. 1904, 1st Qr., Cr. P. C 10.]

(7)—*Jurisdiction of Court in maintenance cases.*—A complaint under s. 488, Crim. Pro. Code, falls within the cognizance of the Magistrate, competent to entertain such complaints, within the local limits of whose jurisdiction the husband or the father is actually residing at the time of such complaint. MUSSAMMAT JANKI v. LALJEE MISTREE, **7 C.P.L.R. Cr. 12.** (9 B. 40, *F.*)

(8)—*Crim. Pro. Code*, 1872, ss 536 *and* 538—*Maintenance order—Warrant for collection of arrears when husband is out of jurisdiction—Magistrate's jurisdiction—Agreement between husband and wife.*—S. 538 does not deprive a Magistrate, who has made an order for maintenance, of the jurisdiction given him by s. 536. When the defendant is beyond his jurisdiction, he may, in his discretion, issue a warrant for collection of arrears of maintenance, or refer the applicant to the Magistrate having jurisdiction at the place in which the defendant is to be found. QUEEN v. KARRI PAPAYAMMA, **4 M. 230 = 2 Weir 652.**

(9)—*Agreement between husband and wife—Effect on maintenance.*—The law empowers a Magistrate, only to direct payment of a monthly maintenance. An agreement between a husband and a wife whereby the husband agreed that he would furnish his wife with

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certain ornaments, build a house for her, deliver to her annually a certain amount of grain, and pay her a certain sum in cash was not an agreement which could be made under s. 536, Crim. Pro. Code, and therefore could not be enforced under its provision. VIRAMMA v. NARAYYA, **6 M. 283**=**2 Weir 626.**

(10)—*Crim. Pro. Code, s.* 488—*Maintenance, when claimable by wife.*—Where a wife voluntarily leaves her husband without being justified in so doing, she is not entitled to claim maintenance under s. 488. But if the husband either refuses to maintain her or turns her out or ill-treats her so as to make it impossible for her to live in the house, this will amount to refusal or neglect on his part to maintain her. GAVRISHANKER PRABHASHANKER v. BAI REVA, **5 Bom. L.R. 614.** [*R.*, 9 Bom. L.R. 359=5 Cr. L.J. 334.]

(11)—*Crim. Pro. Code, s.* 488—*Maintenance of children and wife—Their rights, nature of.*—The right of a wife and of children to be maintained by the husband and by the actual father is a statutory right, and the duty is created by express enactment independent of the personal law. If the children be illegitimate, that is, the offspring of a connection which is not a legal marriage, the refusal of the mother to surrender them to the father is no ground for refusing an allowance for maintenance. But, if on the other hand, the children be legitimate, though the mother be divorced, it might be unfair to hold that the father had refused to maintain them if he was ready and willing to do so should they live with him. In the latter case if the parties are governed by the Mahomedan law, the guardianship of the children belongs to the mother till they attain the age of 7 years and the husband is bound, in any case, to pay maintenance for the children until they attain that age. But, if the parties are governed by the Marumakkatayam Law, the question will arise whether the father could be held to have neglected his duty to provide for his children, if they were actually being maintained by the karnavan of their mother's tarwad, who is bound by law to maintain them. KARIYADAN POKKAR v. KAYAT VEERAN KUTTI, **19 M. 461**=**2 Weir 621.** [*R.*, 2 L.B.R. 46.]

(12)—*Crim. Pro. Code, s.* 488—*Husband, when bound to maintain wife—Application of Mahomedan wife for maintenance—Intervention of Kazi.*—If the husband has sufficient means, he is bound to maintain his wife and he is not relieved of the obligation by the circumstance that the wife may have friends able and willing to maintain her. The wife of a Mahomedan is not bound to seek the assistance of a Kazi before applying to the Magistrate for maintenance. A wife does not lose her right to maintenance, because she may not have advanced her claim immediately on her husband's desertion of her. *In re* VELUTH AHMED, **2 Weir 615.**

(13)—*Crim. Pro. Code*, 1882, *ss.* 488 *and* 545—*Liability of husband to maintain wife—Order for maintenance, nature of—Court-fees Act*, 1870, *s.* 31.—A husband cannot legally repudiate his obligation to maintain his wife, merely because she has of her own accord left his house and protection. He could not legally be made liable for the wife's costs of the application for maintenance. An order for payment of maintenance is not a conviction for an offence and s. 31, Court Fees Act, 1870, has therefore no application. (26 M. 34). MUSSAMMAT MUNNA v. MURLIDHER, **11 C P L.R. Cr. 14.** (16 M. 234, 9 C.P.L.R. Cr. 21, *R.*; 6 N.W.P. 205, *D.*)

(14, 15)—*Crim. Pro. Code. s.* 488—*Maintenance of wives in Upper Burma—What must be proved.*—In a case in Upper Burma for maintenance to a wife by her husband, it should be shown that the applicant was the wife and that there was publicity of union, which is an essential element in marriages in Burma. Without these, no order for maintenance should be passed. MAUNG KYAW ZAW v. MA HMU, **U.B.R. 1892—1896, Vol. I, 54.**

(16)—*Crim. Pro. Code*, 1882, *s.* 488—*Liability of father to maintain his child*—The father cannot divest himself of his liability to maintain his child, by an agreement with his wife. *In re* ALLA PICHAI ROUTHAN, **2 Weir 648.**

(17)—*Crim. Pro. Code*, 1898, *s.* 488—*Assignment of lands in lieu of maintenance—Jurisdiction of Magistrate.*—Where it appeared that, by mutual consent, the husband and wife have been living separately for a number of years, and that the maintenance of the wife was, by arrangement made at the time they began to live separately, provided for by the assignment to her of some land, *held*, that a Magistrate had no jurisdiction to make an order under s. 488. JAMPANA GANGARAJU v. JAMPANA BHADRAYYA, **2 Weir 648.**

(18)—*Contract relieving parties from obligation to maintain child.*—The obligation to maintain a child, unable to maintain itself, is a statutory obligation and parties cannot contract themselves out of it. MA GYI v. MAUNG PE, **1 L.B.R. 126.**

(19)—*Obligation to maintain child.*—The obligation to maintain a child unable to maintain itself is a statutory obligation, and the father is not released from it by the fact that the mother refuses to surrender the child. The obligation imposed by s. 488 is distinct from any ground on which a suit for maintenance would lie in a Civil Court. MAUNG SAN HLA v. MA ON BROIN, **2 L B R. 46.** (L.B.R. 1872=1892, 114, 1 L.B.R. 126, 4 C. 374, 8 Bur. L.R. 96, 19 M. 461, *R.*) [*R.*, 8 Cr. L. J. 422=14 Bur. L.R. 240, 9 Cr L J. 25=4 L.B.R. 340, 14 Cr. L.J. 98=18 Ind. Cas. 658=6 L. B. R. 127.]

(20)—*Father's duty to maintain a child—Payment of a lump sum to its mother on a previous occasion not a sufficient answer—Child not in starving condition, no valid plea against award of maintenance—Crim. Pro. Code*, 1898, *s.* 488.—S. 488 of the Crim. Pro. Code is based on the

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proposition that there is a continuing obligation upon a father, who has sufficient means, to maintain his child. The payment of a lump sum to the mother on some previous occasion is not a sufficient answer to an application by her or by any one else for an order for maintenance by the father. The fact that the child is not in a starving condition cannot also be set up as an answer to an application. Although an actual refusal is not proved, if a man, who is continuously bound to maintain his child, does not in fact do so, he neglects to do so. MA HNIN BYU v. MAUNG MYAT PU, **1 L.B.R. 189.** (1 L.B.R. 126, *F.*)

(21)—*Crim. Pro. Code*, 1882, s. 488—*Father's liability to maintain his married daughter.*—Where a husband is willing to maintain his wife who has not attained puberty, a Magistrate cannot order the father of the girl to maintain her, on the ground that the husband is not bound to maintain his wife until she attains puberty and the nuptials ceremony has been preformed. *In re* GURUSAMI PILLAI, **2 Weir 650.**

(22)—*Crim. Pro. Code*, s. 488—*Meaning of child.*—*Held*, that the word "child" as used in s. 488 of Act V of 1898, simply means son or daughter, and reference to age is purposely omitted therein; therefore any son or daughter is entitled to claim maintenance, whatever his or her age may be, so long as he or she is unable to maintain himself or herself. BHAGAT SINGH v. CROWN, **28 P.W.R 1910, Cr. =6 Ind. Cas. 960=11 Cr. L J. 427.**

(23)—*Crim Pro. Code*, s. 488—*Maintenance —Divorce of parents—Children living separately —Husband's remedy.*—Where the parents have divorced and live separately, and the children are in the mother's custody, the husband cannot justly refuse to maintain the children, on the plea that they will not live with him. If the husband wishes the children to live with him, his obvious course is to get an order from the proper authority giving him the custody of them. MI SAW v S., **U B.R. 1910, 1st Qr., 1, Cr.=7 Ind Cas. 460=11 Cr.L.J 488.** (U.B.R. 1902—1903, I, Cr. P.C 7, U.B.R. 1904—1906, I, Cr. P. C. 39, 16 W.R. 62, *Affirmed*). [*R.*, 8 Ind. Cas. 479=U.B R. 1910, 2nd Qr. 34=11 Cr. L.J. 662.]

(24)—*Power of Magistrate to reduce allowance*—A Magistrate has no power to reduce the rate of maintenance which has accrued due. He should enforce the payment of arrears at the rate originally awarded, and the reduction should be limited to payments accruing due after the date of the order. PARVATHAM v. MUTHU PILLAI, **2 Weir 650**

(25)—*Crim. Pro. Code* (1882), s. 488—*Right of mother to claim maintenance for a child.*—Where a mother has the custody of a child and has to maintain him, she is entitled to an allowance on his account. *In re* VAITHILINGA AIYAN, **2 Weir 630.**

(26)—*Child in cusdody of immoral mother—Neglect.*—Where a child has left its father and has chosen to live with its mother who, since she left her husband, has been leading a life of adultery, the father cannot be directed to pay maintenance to the child. The neglect to sue for the custody of a girl who has chosen to live with her mother who is living in adultery cannot be accepted as neglect on the part of the father to maintain her. PARVATHI v. RAMAWSAMI ROWTH, **2 Weir 630.**

(27)—*Cusdody of children—Father and mother.*—Where a father is entitled to the custody of his children, and the mother takes them away and does not allow them to return to him, there is no such refusal or neglect to maintain them as is contemplated by s. 488. *In re* VENKATA SUBBAIYAN *alias* SAMAIYAN, **2 Weir 632.**

(28)—*Crim. Pro. Code*, 1872, s. 536—*Order for maintenance, condition precedent for—Mahomedan Law—Divorce* Iddat.—The whole of Ch. XLI, Crim. Pro. Code, 1872, so far as it relates to maintenance of wives, contemplates the existence of the conjugal relation as a condition precedent to an order of maintenance, and, on general principles, it follows that, as soon as the conjugal relation ceases, the order of maintenance must also cease to have any enforceable effect. When and in what manner a cessation of the conjugal relation takes place, is a question which, *ex necessitate rei*, must be determined according to the law to which the parties concerned are subject. [*R.*, 15 A. 143, 19 A. 50=16 A.W.N 173, 11 C.P.L.R 72.] An order for the maintenance of a wife, passed under the Code, becomes inoperative, in the case of a Mahomedan, by reason of his lawfully divorcing his wife, and thus putting an end to the conjugal relation, but it does not become so before the expiration of the divorced wife's *iddat*, the length whereof, in the case of a divorced woman, not pregnant, extends over a period of three months, reckoned from the divorce *In the matter of the petition of* DIN MUHAMMED, **5 A. 226=A W N. 1882, 237.** [*F.*, 2 Cr L.J. 40=65 P.L R. 1905=5 P.R. 1905, Cr; *R.*, 4 Bur. L.R. 13=12 Cr. L.J. 82=9 Ind. Cas. 457, 10 Cr. L J. 502=4 Ind. Cas. 140=7 M.L.T. 33.]

(29)—*Crim Pro Code*, 1882, s. 488—*Omission to maintain wife—Jurisdiction of Criminal Court.*—The neglect to maintain a wife is an offence made punishable by the Code, and as an offence its place of trial must be determined by the provisions laid down in Ch XV of the Code. Where a wife returning to her husband, after a temporary absence, found herself compelled to leave him, because he had a woman living with him, and chose her own place of residence, and then applied for an order for maintenance, *held*, the Courts of the place where she resided had jurisdiction over the matter. *In the matter of* MALCOLM DE CASTRO, **13 A. 348=A.W.N. 1891, 115** (9 B. 40, *D.*; 5 N.W. P. 237, *F.*) [*R*; 3 P.R. 1893, Cr.]

(30)—*Crim. Pro. Code*, 1882, s. 488—"*Cruelty*," *what amounts to.*—The word "cruelty," in s. 488 is not limited to personal

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violence. There can be legal cruelty without the use of actual violence by the husband towards the wife. If force, whether physical or moral, is systematically exerted to compel the submission of a wife to such a degree and during such length of time as to injure her health and render a serious malady imminent, although there be no physical violence, it is a legal cruelty. RUKMIN v. PEARE LAL, **11 A. 480 = A. W. N. 1889, 162.** (2 A. 857, 7 C. 56, *D.*) [*R.*, U.B.R. 1897—1901, Vol. I, 104.]

(31)—*Crim. Pro. Code*, 1898, *ss.* 489, 488 (5), 490--*Divorce, whether a change in circumstances.* —The "change in circumstances" referred to in s. 489, Crim. Pro. Code, is not a change in status such as that following from a divorce. Under s. 488 (5), Crim. Pro. Code, "divorce" is a ground for ascertaining whether the parties are living separately by mutual consent. Further, under s. 490, Crim. Pro. Code, divorce is also a cause for refusing to enforce an order of maintenance. QUEEN-EMPRESS v. MAUNG ON BWIN, **1 L.B.R. 19.** (19 A. 50, *F.*)

(32)—*Crim. Pro. Code*, 1898, *s.* 488 (3)—"*Refusal to live with husband—Sufficient cause.*"—The fact that a younger wife is likely to suffer annoyance from an elder wife and has some reason to fear that her husband may not protect her from such annoyance, is not a sufficient cause for her refusing to live with her husband, within the meaning of the proviso to cl. (3) of s. 488. MAUNG WAING v. MA CHIT, **U.B.R. 1904, 1st Qr., Cr. P.C. 10 = 10 Bur. L.R. 319 = 1 Cr.L.J. 545.**

(33)—*Crim. Pro. Code*, 1898, *s.* 488 (4)—*Wife's claim for maintenance, forfeiture of, on single act of adultery*—"*Living in adultery,*" *scope of the expression.*—The words "living in adultery" refer rather to a course of conduct or at least to something more than a single lapse from virtue and, therefore, a single act of adultery does not necessarily amount to "living in adultery," so as to disentitle the wife from applying for maintenance under s. 488. PATALA ATCHAMMA v. PATALA MAHA LAKSHMI, **30 M. 332 = 2 M.L.T. 166 = 17 M.L J. 279 = 5 Cr.L J. 359.**

(34)—*Crim. Pro. Code, s.*488—"*Woman living in adultery*" *What amounts to.*—Where a woman applied to a Criminal Court for a maintenance order against her husband, and it appeared that she had, some two years prior to the application, given birth to an illegitimate son, and that, at the time of the application, she was living with her parents and leading a chaste and respectable life, *held*, that her past misconduct did not disentitle her to receive maintenance. The words 'living in adultery,' in s. 488, mean "living in adultery at the date of the application." KALLU v. KAUNSILIA, **26 A. 326 = 1 A.L.J. 18 = A W.N. 1904, 23.** (A.W.N. 1881, 37, A.W.N. 1881, 62, A.W.N. 1881, 113, *R.*) [*F.*, 30 M. 332 = 5 Cr. L.J. 359 = 17 M L.J. 279 = 2 M.L.T. 166, 9 Cr. L.J. 390 = 5 N.L.R. 19; *Rel.*, 1 Ind. Cas. 801.]

(35)—*Crim. Pro. Code* (1898), *s.* 488, *cls.* (1) and (5)—*Application to set aside maintenance order—Adultery—Birth of illegitimate son after order.*—If a husband moves to set aside a maintenance order on the ground of "adultery" on the part of his wife, he must prove it. The birth of an illegitimate child is not enough under cl. (5) to cancel an order previously passed. A single act of adultery may be a sufficient reason for refusing maintenance when asked for by a wife. But the circumstances under which an order once made may be cancelled are limited by sub-s. (5), 488, Crim. Pro. Code. One act of adultery cannot by itself amount to "living in adultery" and several such acts, if isolated, do not necessarily come within the meaning of that term. MUSSAMMUT PAIKI v. VISHVANATH, **5 N.L.R. 19 = 9 Cr. L.J. 390 = 1 Ind. Cas. 801.**

(36)—*Intercourse of a Mahomedan man with a woman other than his wife or slave is* "*adultery*"—*Wife entitled to maintenance.*—Under the Mahomedan Law, the intercourse of a man with a woman, who is neither his wife nor his slave, is unlawful and prohibited absolutely. Co-habiting with a Burmese woman, to whom he is not married, is therefore adultery within the meaning of s. 488, Crim. Pro. Code, and the wife is entitled to a maintenance. MI ALPHA BI v. MAUNG SHWE MAUNG, **L.B.R. 1872—1892, 596.**

(37)—*Crim. Pro. Code*, 1882, *s.* 488—*Scope of Ch.* 36—*Order under section when could be made—Grounds other than husband's cruelty or adultery.*—Sir James Fitzstephen describes Ch. 36 as "a mode of preventing vagrancy, or at least of preventing its consequences." The scope of the chapter is limited, and the Magistrate may not, except as therein provided, usurp the jurisdiction in matrimonial disputes possessed by the Civil Courts. To justify an order under s. 488 for maintenance, it must be shown that the husband has either refused or neglected to maintain the complainant, and that the complainant is the wife of the defendant. There is no authority for the proposition that the words "as his wife" should be read into s. 488. Where the defendant offered to maintain the complainant in his house, but did not agree to keep her with him as his wife, alleging that the marriage was invalid, *held* that it was an offer to maintain coming within the scope of the section, the object of the section being to provide maintenance, and not to enforce conjugal duties. *Quære.*—Whether in the absence of any allegation, against the husband, or adultery or habitual cruelty, an order under s. 488, may be made against him, *i.e.*, whether the Magistrate has jurisdiction to make the order or finding that there is other sufficient reason for the wife's refusal of the offer. *In re* GULABDAS BHAIDAS, **16 B. 269.**

(38)—*Crim. Pro. Code*, 1882, *s.* 488—*Married woman, right of, to claim maintenance for illegitimate children—Evidence Act, s.* 112—*Evidence of wife to prove non-access.*—A married woman has a *locus standi* under s. 488, Crim. Pro. Code, to claim maintenance for her illegitimate

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children. [*R.*, 19 M. 461=2 Weir 623.] A wife can be examined to prove non-access of her husband during her married life, without independent evidence being first offered to prove the illegitimacy of the children, in a proceeding under s. 488, as such proceedings are of a civil nature, and as in all civil proceedings parties to the suit are competent witnesses. ROZARIO v. INGLES, **18 B. 468.**

(39)—*Maintenance to illegitimate children.*—The intention of the Legislature is to enforce the liability of the husband of a woman, and of the male parent of an illegitimate child, as the person primarily responsible for their maintenance. The Code imposes no restriction on allowance of maintenance for the illegitimate children of women, who, having been married, may have lost their husbands, or for the illegitimate children of a married woman having a husband living, and not divorced, although the presumption in the latter case would be very strongly in favour of the child being legitimate. KANAKA v. PARASURAMAN; MUNIAMMA v. NADI KALAPPA, **2 Weir 619.**

(40)—*Crim. Pro. Code,* 1882, *s.* 488—*Claim for maintenance for illegitimate child—Proof, nature of.*—Where maintenance is claimed for an illegitimate child from an alleged father, it is not enough that the defendant may have been the father, but the Magistrate must be able to find that, in all reasonable probability, no one else can have been. ARUNACHELLA PILLAI v. KAMALA BAI, **2 Weir 621.**

(41)—*Crim. Pro. Code,* 1882, *s.* 488—*Separate living by mutual consent* —No order for maintenance under s. 488 of the Crim. Pro. Code, can be made where the husband and wife are living separately by mutual consent. *In re* TRICUMLAL KALIDAS, **Rat. Un. Cr. C. 870=Cr. Rg. 41 of 1896.**

(42)— *Crim. Pro. Code,* 1872, *Ch.* XLI—*Maintenance proceedings before Magistrate—Guardianship and custody of child.*—The provisions of Ch. XLI, Crim. Pro. Code, 1872, only enable a Magistrate to make an order for the maintenance of the wife and children, on its appearing to the satisfaction of the Court, that he has neglected or refused to do so, although in the possession of sufficient means. In maintenance proceedings before a Magistrate, he cannot determine the question of the lawful guardianship of a child ; nor can he order the mother of an illegitimate child to surrender it to the father. A refusal, by mother, to surrender her child to the father, would be no ground for stopping an allowance previously ordered. LAL DAS v. NEKUNJO BHAISHIANI, **4 C. 374=1 Shome L.R. 215.** [*R.*, 19 M. 461=2 Weir 621.]

(43)—*Crim. Pro. Code,* 1898, *s.* 488—*Maintenance—Offer by the husband to maintain his wife—Dismissal of application for default—Rehearing.*—In a case for maintenance, where the husband offers to maintain his wife, and the wife states that she is willing to live with him, the Magistrate cannot make an order under s. 488, unless the complainant satisfies him that, notwithstanding such offer, there is a just ground for making such order. The law does not empower a Magistrate to re-hear an application for maintenance, under s. 488, Crim. Pro. Code, dismissed for non-appearance. HAKIMI JAN BIBI v. MOUZA ALI, **1 C.L.J. 214=2 Cr. L.J. 213.** (1 C.L.R. 89, *D.*)

(44)—*What is sufficient offer by husband to maintain wife.*—An offer by a Hindu husband having two wives, to maintain his first wife in case she returned to live in his house, adding, however, that he could not live with her as a husband would live with his wife, but supply grain for her to cook her own food in his house and eat it separately was held to be not a sufficient offer to maintain within the meaning of the proviso of s. 536 of the Code of Criminal Procedure, 1872. MARAKKAL v. KANDAPPA GOUNDAN, **6 M. 371=2 Weir 639.** [*Diss*, 16 B. 269 ; *F.*, 17 M. 260=2 Weir 641.]

(45)—*Crim. Pro. Code,* 1882, *s.* 488—*Liability of Hindu undivided son to maintain his wife.*—A son not divided from his father can be ordered to maintain his wife under s. 488, Crim. Pro. Code. QUEEN-EMPRESS v. RAMASAMI, **13 M. 17=2 Weir 620.**

(46)—*Crim. Pro. Code,* 1898, *s.* 488—*Claim by an illegitimate son of a Hindu born of a non-Hindu woman for maintenance—Right, how and when enforceable.*—There is no text of Hindu Law, under which an illegitimate son of a Hindu, by a woman who is not a Hindu, can claim maintenance. But under s. 488 of the Crim. Pro. Code, such illegitimate child is entitled to claim maintenance from his putative father, but such claim could only be enforced during the lifetime of the father and terminates with his death. This remedy is only cumulative, in the case of a person otherwise entitled to maintenance under the common law and will not take away the remedy under the common law to enforce such right by action brought against his father during his lifetime, or after his lifetime, or after his death, against his estate. But in the case of illegitimate children, by a woman who is not a Hindu, they are not entitled to claim maintenance from the putative father under the common law ; the right conferred on them by the Statutory Law can be enforced only by the particular remedy provided by the statute and to the extent therein provided. He cannot seek to enforce it by suit, nor does such right survive the death of his putative father. LINGAPPA GOUNDAN v. ESUDASAN, **27 M. 13.**

(47 & 48)—*Crim. Pro. Code* 1882, *s.* 488—*Delay in claiming maintenance.*—A wife does not lose her right to maintenance, because she has delayed making the application. KUNNATH ANJUMMA v. VELUTH AHMED, **2 Weir 616.**

(49)—*Liability of beggar to pay maintenance.*—A person who is a professional beggar is not relieved thereby from the obligation to contribute to the support of his illegitimate child.

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If a man is capable of labour, and the Magistrate is satisfied that the child is his child, he should order and enforce the payment of a reasonable sum. BOYA KONDAMMA v. BOYA KONDAIYA, **2 Weir 616.**

(50)—*Crim. Pro. Code,* 1882, *s.* 488—*Means of the husband, to be taken into consideration when awarding maintenance - Jurisdiction of Magistrates.*—The fact that the husband may be of slender means will justify a small amount of maintenance, but does not justify an absolute refusal of maintenance. Maintenance cases must be tried by Magistrates of first class. *In re* CHOCKALINGAM PILLAI, **2 Weir 617.**

(51)—*Crim. Pro. Code,* 1882, *s.* 488—*Order for maintenance for child yet unborn.*—An order for maintenance for a child of which the wife is pregnant is illegal. CRIMINAL REVISION CASE, NO. 345 OF 1885, **2 Weir 618.**

(52)—*Crim. Pro. Code,* 1882, *s.* 488—*Maintenance, payment of, in grain.*—An order for payment of maintenance in grain is not in accordance with the Code. *In re* SELAMBAL, **2 Weir 626.** [*F.*, 2 Weir 627.]

(53)—*Maintenance, payment in, grain.*—A Magistrate is not competent to order payment of maintenance in grain. ODACHI v. VIRAMUTHAN, **2 Weir 627.**

(54)—*S.* 536, *Crim. Pro. Code—Maintenance—Order to give wife grain and a house to live in.*—The allowance which a Court is competent to award for the maintenance of a wife or child, is a money allowance only: an order to provide a certain quantity of grain every month or a house to live in, is not contemplated by Act X of 1872, s. 536. BALI v. MUSSUMMAT BANO, **13 P.R. 1876, Cr.**

(55)—*Order for payment of cloths.*—The law does not allow an order for the payment of two cloths annually. The payment ordered must be a monthly payment. CHAVADI v. BASUVAN, **2 Weir 627.**

(56)—*Order for payment of money for value of cloth.*—An order for the payment of a certain sum annually for the value of a cloth is not legal. But where a razinama entered into between the parties contains an agreement to that effect, the wife is entitled to ask the Court to give effect to the general intention of the parties as disclosed by the razinama. SIVABAGIAM v. SAMINATHA MUTTUKARAN, **2 Weir 634.**

(57)—*Crim. Pro. Code,* 1882, *s.* 488—*Payment of maintenance in Taluk Office.*—The law does not provide for payment of maintenance at the Taluq Cutchery. KALLAVELAPIL ALAGAMMA v. PALLKEL KUTTUSSA, **2 Weir 627.**

(58)—*Crim. Pro. Code,* 1882, *s.* 488—*Order for maintenance without inquiry—Legality.*—An order for payment of maintenance without recording evidence and without examining any witnesses is illegal. *In re* VENKATACHALA PADIACHI, **2 Weir 628.** [*D.*, 2 Weir 629.]

Maintenance—*continued.*

(59)—*Crim. Pro. Code,* 1882, *s.* 488—*Revised order for maintenance.*—The Revision of an order for maintenance and the grant of it on a lower scale than that of the original order, is not legal without an application from one of the parties and proof of a change of circumstances. *In re* VENKATACHELA PADIACHI, **2 Weir 628.**

(60)—*Crim. Pro. Code,* 1882, *s.* 488—*Compromise of maintenance claim—Duty of Magistrate.*—Where a claim for maintenance is compromised by the consent of parties, the Magistrate is not competent to pass an order in accordance with the terms of the compromise. He can only dismiss the petition and strike it off the file. LINGADU v. LABBAKKA, **2 Weir 629.** [*R.*, 2 Weir 649; *D.*, 2 Weir 629.]

(61)—*Order for maintenance of child based on compromise.*—An order of a Magistrate directing a monthly payment of a fixed sum of money is in accordance with the Code, and is not rendered illegal because it was made on consent of parties which dispensed with the necessity of taking evidence. *In re* RANGAMMAL, **2 Weir 629.**

(62)—*Order for maintenance based on compromise.*—Where, subsequent to an application for maintenance the parties put in a razinamah, stating that the wife had come to live with her husband, but that, if he failed to support her thereafter, he should pay her a certain allowance and praying for a decree accordingly, *held* that the Magistrate should have dismissed the application as no refusal or neglect to maintain had been established, and should not have decreed according to the compromise. *In re* KUPPU MUDALI, **2 Weir 630.**

(63)—*Crim. Pro. Code,* 1882, *s.* 488—*Compromise by mother of illegitimate children regarding latter's maintenance—Effect of.*—Where, on a certain sum being paid, the complainant executed a document, in return, renouncing on behalf of her minor children, all future claims for maintenance, *held*, that a Magistrate was not competent to pass any further order for maintenance, unless there was proof of fraud in the execution of the document, or unless it was proved that there was a valid subsequent oral agreement in supersession of the document. YERUKULA JAGABANDHU SUBBIDHI v. JAMUNA BAYI, **2 Weir 631.** [*R.*, 2 Weir 649.]

(64)—*Crim. Pro. Code,* 1898, *s.* 488—*Order for maintenance fixing duration.*—An order for maintenance, fixing the duration of the period for which it is to be paid, is unauthorized by law. MANGALA THAYAMMAL v. MANGALA BAGHAVATHI, **2 Weir 634.**

(65)—*Crim. Pro. Code,* 1872, *s.* 536—*Order for maintenance from a date prior to that of the order.*—Where an order granting maintenance from a date prior to the date of the order has been passed by consent of the parties, the High Court will not interfere with the order. HIGH COURT PROCEEDINGS, 14TH DECEMBER, 1880, No. 2572, **2 Weir 635.**

Maintenance—*continued.*

(66)—*Order for arrears of maintenance, validity of.*—A direction to pay arrears of maintenance is opposed to the provision in cl. 2, s. 536 of the Code. The allowance is only payable from the date of the order. HIGH COURT PROCEEDINGS, 30TH JULY 1875, NO. 1626, 2 **Weir 635.**

(67)—*Crim. Pro. Code* (1898), *s.* 488—*Order for maintenance—Enforcement necessary, unless revised.*—A Magistrate is not competent to refuse to enforce his order for maintenance, on the ground of the defendant's inability to pay. But, on further inquiry, he may revise the rate of maintenance, and the order will take effect subsequent to the date of such inquiry. *In re* VEMBALI, **2 Weir 636.**

(68)—*Crim. Pro. Code* (1882), *s.* 488—*Concubinage whether entitles wife to claim maintenance.*—The circumstance that a Hindu husband keeps a concubine in the house will not entitle a wife to an allowance for maintenance, if her husband is willing to receive her and treat her with consideration which is due to her position. LATCHMI v. PAVADAI, **2 Weir 641.** [*R.*, 17 M. 260=2 Weir 641, 20 M. 470, F.B.=2 Weir 643.]

(69)—*Crim. Pro. Code, s.* 488—*Wife residing with husband after order of maintenance—Effect.*—If, after an order of maintenance has been made for a wife and child, the wife returns with the child and lives with the husband, who maintains them in his own house, such conduct in the parties puts an end to the previous proceedings under s. 488, Crim. Pro. Code, and renders the order of maintenance ineffectual and incapable of being enforced. But it is open to the wife to make a fresh application. MA TIN v. MAUNG AN GYI, **U.B.R. 1904, 2nd Qr. Cr. P.C. 23=1 Cr. L.J. 870.** (A. W.N. 1888, 217. *R.*)

(70)—*Crim. Pro. Code, s.* 488—*Maintenance for wife and child—Contract by wife to absolve husband from statutory liability to maintain, validity of.*—Where a wife first applied for maintenance for herself and child, but on receipt of a certain lump amount from respondent, withdrew her application and, later on, again applied stating that the lump amount had been expended, and the respondent objected that the lump amount had been paid in final settlement of all her claims; *held*, that, on such application, the duty of the Magistrate is (1) to find out whether respondent has sufficient means and (2) whether he refuses or neglects to maintain applicant; and, on the last point he must find out whether the settlement made by the husband still furnishes sufficient means for the wife's support. Although, if the lump sum had been invested, it would have yielded a sufficient income to maintain her for the rest of her days, this question is immaterial if, in fact, the money was spent or lost and is no longer yielding a sufficient income. The language of the section is inconsistent with a wife making a contract to absolve the husband from liability. The object of the law being to prevent the wife, whom her husband is able to support, from becoming a burden on other people, and this object would not be obtained by a contract, which ultimately leaves the wife to the charity of her neighbours. The section does not say that a wife is not eligible for maintenance, if she is able to maintain herself, or if she has made a bad use of the money, which her husband gave her sometime back. MI LE v. NGA PAW DIN, **U.B.R. 1905, Cr. P. C. 45.** (U.B.R. 1892—1896, I, 64, U.B.R. 1897—1901, I, 108, *R.*)

(71)—*Crim. Pro. Code* (1898), *s.* 488—*Maintenance—Offer by husband to maintain his wife—Award of maintenance without considering wife's willingness or unwillingness to live with her husband—Illegality.*—Where, in an enquiry under s. 488, Crim. Pro. Code, the husband offers to maintain his wife, it is the duty of the Magistrate to ask the wife if she is willing to live with her husband, and to consider the grounds of her refusal, if any, and any order allowing maintenance to the wife, without consideration of the said circumstance, is illegal. PANDULA SUBBAYA v. PANDULA AMBAMMA, **9 Cr. L.J. 501=Ind. Cas. 155.**

(72)—*Crim. Pro. Code, ss.* 488, 489—*Cancellation of order under s.* 488.—A Magistrate has no power to cancel a previous order made by another Magistrate for the maintenance of the child of a divorced Mahomedan wife, who has married again. An order for maintenance cannot be cancelled except on the ground of change of circumstances mentioned in s. 489. BUDHNI v. DABAL, **27 A. 11=A.W.N 1904, 149=1 Cr. L J. 595.**

(73)—*Application for cancelment of order.*—An application for the cancelment of an order for maintenance should be made to the Magistrate who made the original order or to his successor in office. BHAGWANIA v SHEO CHARAN LAL, **25 A. 545=A.W.N. 1903, 103.**

(74)—*Crim. Pro. Code* (1882), *s.* 488—*Cancellation of an order for maintenance on the ground of a disputed compromise.*—Where the wife denied the validity of an alleged deed of compromise by which the parties agreed to a reduction in the rate of maintenance allowed by the Magistrate, *held*, that the Magistrate was not competent to cancel the order for maintenance, until the agreement has been declared by a competent tribunal to be binding on the wife. KARUPPA GOUNDAN v. KARUPPAKKAL, **2 Weir 649**

(75)—*Crim.Pro.Code, s.* 488—*Order for maintenance—Power of Magistrate to cancel an order awarding a lump sum—Whether such an order is legally enforceable.*—Although the Code of Criminal Procedure contain no express provision for cancelling an order for maintenance in cases where the woman has received a lump sum of money in satisfaction of her claims for maintenance, yet a Magistrate would clearly not only be justified in refusing to enforce the order of maintenance in such cases, but would be wrong in enforcing it. RANGAMMA v. MUHAMMAD ALI, **10 M. 13=2 Weir 635.** [*R.*, 25 A. 165=A.W.N. 1902, 224.]

Maintenance—*continued.*

(76)—*Crim. Pro. Code* (1872), *s.* 536—*Order for maintenance—Jurisdiction of Civil Courts to cancel—decision of Civil Court regarding matters disentitling wife to maintenance, effect of.*—A suit to cancel an order of a Magistrate awarding maintenance under s. 488, Crim. Pro. Code, cannot be brought in a Civil Court Where a Civil Court has decided any points which would disentitle a wife to maintenance, the Magistrate, who has passed an order for maintenance, will be bound, in the interests of justice, to take the judgment into consideration before passing a fresh order to enforce the former order, because such a decision would, as between the parties, be strong, if not conclusive evidence, of what it decided. HIGH COURT PROCEEDINGS, 11TH SEPTEMBER 1877, NO. 2067, **2 Weir 614.**

(77)—*Crim. Pro. Code* (1882), *ss.* 488, 490—*Order for maintenance—Jurisdiction to execute order.* — The second-class Magistrate of the place where the husband is at the time, is competent to enforce an order for maintenance passed against the husband. QUEEN-EMPRESS v. UBHAI, **Rat. Un. Cr. C. 288 = Cr. Rg. 25 of 1886.**

(78)— *Crim. Pro. Code* (1898), *s.* 488 — *Maintenance order—Evidence of cruelty by husband—Separate residence—Construction of statute.*—Where it is proved that a husband has not refused or neglected to maintain his wife, a Criminal Court, acting under s. 488 of the Crim. Pro. Code, has no jurisdiction to make an order upon the husband for her maintenance on the ground that the husband has been guilty of cruelty to her. But, that is a very different thing from holding that no evidence of cruelty can be admitted in a proceeding under the section to prove, not indeed cruelty as a ground for separate maintenance, but the conduct and acts of the husband from which the Court may draw the inference of neglect or refusal to maintain the wife. A neglect or refusal by the husband to maintain his wife may be by words or by conduct. It may be express or implied. BHIKAJI MANECKJI v. MANECKJI MANCHERJI, **9 Bom. L.R. 359 = 5 Cr. L.J. 334.** (6 N.W.P. 205, 5 Bom. L.R. 614, *R.*) [*R.*, 14 Cr. L.J. 303 = 19 Ind. Cas. 959 = 6 S.L.R. 208.]

(79)—*Crim. Pro. Code* (1882), *s.* 489—*Maintenance, order for—Rate—Variation from time to time.*—The rate of maintenance allowed by a Magistrate must be fixed, subject only to any possible alteration under the provisions of s. 489 of the Code. The fact that a child, to whom a maintenance has been awarded, has grown older constitutes a "change in the circumstances of the person receiving the allowance." Therefore, the rate can be varied from time to time on application being made as the child gets older. *In re* RAMAYEE, **14 M. 398 = 2 Weir 651.** [*F.*, L.B R. 1893—1900, 393.]

(80)—*Crim Pro. Code*, *s.* 488—*Application for increase of maintenance—Competency of Magistrate to question the previous order.*—

Maintenance—*continued.*

On an application for increase of maintenance, the only question open to a Magistrate to determine is whether the allowance previously obtained should be increased or not and to what extent. He has no jurisdiction to inquire into the propriety or otherwise of the previous order for maintenance. *In re* MARAKKAL, **2 Weir 650.**

(81)—*Crim. Pro. Code* (1872), *s.* 536—*Maintenance order for, by one Magistrate—Adultery of wife—Subsequent order by another, disallowing maintenance*—Res judicata.—Where an order of a District Magistrate awarding maintenance to the wife, had adjudicated upon all the facts antecedent thereto and connected with the objection of the husband as to his wife leading an adulterous life, *held*, that, upon the general principles of *res judicata*, another Magistrate was wrong in law in re-opening such matters and that his order directing the discontinuance of maintenance on the ground of facts antecedent to the District Magistrate's order was illegal. LARAITY v. RAM DIAL, **5 A. 224 = A.W.N. 1882, 240.** [*Diss.*, 14 Bur. L. R. 259 = 4 L.B.R. 337.]

(82)—*Crim. Pro. Code* (1882), *s.* 488 (3)—*Construction of the section—Warrant for levying arrears for several months—Arrears of maintenance — Term of imprisonment.* — *Per Straight, J.*—The provisions contained in the third para of s. 488, being distinctly of a penal character, ought to be strictly construed, and, as far as possible, in favour of the subject. A condition precedent to the infliction of a term of imprisonment is the issue of a warrant in respect of each breach of the order directing maintenance, and where, after distress has been issued, *nulla bona* is the return. *Per Edge, C.J.*—S. 488 contemplates that a separate warrant should issue for each separate monthly default, and, where that is done, the maximum punishment can be one month's imprisonment. *Per Oldfield*, J.—A claim for accumulated arrears of maintenance arising under several breaches of orders may be dealt with in one proceeding under a single warrant. [*Appl.*, 22 C. 291.] Even supposing that the Magistrate is competent to levy a single warrant for a claim of accumulated arrears of maintenance, the term of imprisonment inflicted in default must be limited to a term of one month. QUEEN-EMPRESS v. NARAIN, **9 A. 240 = A.W.N. 1887, 54.** (6 M.H.C. App. 33, *R.*) [*Diss.*, 20 M. 3 = 2 Weir 638 ; *F.*, Rat. Un. Cr. C. 801, 15 Cr. L. J. 434 = 24 Ind. Cas. 170; *R.*, L.B.R. 1893—1900, 316.]

(83)—*Crim. Pro. Code* (1882), *ss.* 488, 489 *and* 490—*Application for maintenance—Proof of divorce—Change in the circumstances of the parties—Effect of divorce on order for maintenance.*—Where a person called upon to show cause why an order for maintenance for his wife should not be passed against him alleges that he has divorced her, the Magistrate dealing with the application is not only competent, but it is his imperative duty, to enquire into the plea, and determine on such evidence as may be

Maintenance—*continued.*

adduced before him whether the plea is a valid one; unless the relation of husband and wife exists between them, he has no authority to pass an order for maintenance as between husband and wife. The "change" in the circumstances referred to in s. 489 is a change in the pecuniary or other circumstances of the party paying or receiving the allowance, which would justify an increase or decrease of the amount of the monthly payment originally fixed, and not a change in the status of the parties which would entail the stoppage of the allowance. It is a mistake to say that the only questions, which a Magistrate before whom an order for maintenance is produced under s. 490 has to consider, or whether he has jurisdiction over the person affected by the order, and whether he is satisfied as to the identity of the parties. A most material question which it is incumbent on him to consider is, whether the order to which it is sought to give effect is still in force, or whether it has become *functus officio*. The order can only have been passed for an allowance to the woman as wife, and, if she no longer occupies that position by reason of her being divorced, the allowance is no longer due under the order, made for the period before she ceased to be the wife of the person ordered to pay the allowance. That period includes, in the case of Mahomedans, the period of the *iddat*—*Per Aikman and Blannerbassetti, JJ., Knox, J., dissenting*). *Per Knox, J., contra.*—The words of s. 490 are clear, precise, and imperative, and the Legislature did not intend the Magistrate, to whom an order, unconditional and undetermined, was taken, to consider any point, other than the identity of the parties and the non-payment of the allowance due. SHAH ABU ILYAS v. ULFAT BIBI, **19 A. 50 = A.W.N. 1896, 173.** (5 A. 226, 5 C. 558, A.W.N. 1885, 29, 8 B.H.C. 95, 7 B. 180, 14 C. 276, 21 P.R. 1894, Cr., 10 B.L.R. App. 33, 15 A. 143, *Overruled.*) [*F.*, 2 Cr. L.J. 40 = 5 P.R. 1905, Cr. = 85 P.L.R. 1895; *R.*, 10 Cr. L.J. 502 = 4 Ind. Cas. 140 = 20 M.L.J. 12 = 7 M.L.T. 33, 1 L.B. R. 19, 17 O.C. 260.]

(84)—*Divorce, effect of, on the right to maintenance—Mahomedan law — Act X of* 1872, *ss.* 536, 537.—An order for maintenance having been made under s. 536 of Act X of 1872, the plaintiff applied to have the order enforced. The defendant, being called on to show cause why the order should not be enforced, divorced his wife in the presence of the Court. *Held* that, even if such divorce made such an alteration in the circumstance as to justify the Court, on the application of the husband, in altering the order for maintenance, yet the defendant would not be relieved from obeying the order during the time which had elapsed up to the date when the change of circumstances had occurred. NEPOOR AURUT v. JURAI, **19 W.R. Cr, 73 = 10 B.L.R. App. 33.**

(85)—*Divorce, effect of.*—A divorced Mahomedan wife is not entitled to maintenance, under s. 488, Crim. Pro. Code, 1882. KHAJAH SHARFOODEEN v. AHMED BEE BEE, **2 Weir 620.**

Maintenance—*continued.*

(86)—*Crim. Pro. Code, s.* 488—*Order for maintenance for Mahomedan wife—Subsequent divorce—Effect.*—An order made by a Magistrate under s. 488, Crim. Pro. Code, directing a Mahomedan husband to pay a sum monthly for the maintenance of his wife, cannot preclude the husband from divorcing her. The husband is not liable to pay maintenance after the date of divorce, and after that date the Magistrate's order cannot be enforced. *In re* SULEMAN VARSI, **1 Bom. L.R. 346.**

(87)—*Crim. Pro. Code* (1872), *s.* 536—*Divorced Mahomedan wife—Claim for maintenance—*Iddat.—According to Mahomedan Law, a valid divorce is effected by the pronouncement of the declaration of divorce thrice on one and the same occasion. A divorced wife, according to Mahomedan Law, is entitled to maintenance only during gestation, and during the *Iddat* or period of probation. GULAM MOHIDIN v. KASARA BIVI, **2 Weir 617.** [*R.*, 20 M.L.J. 12, 10 Cr. L J. 502 = 4 Ind. Cas. 140 = 7 M.L.T. 33; *F.*, 2 Weir 620.]

(88)—*Crim. Pro. Code, s.* 488—*Maintenance by Mahomedan father of children in the custody of his divorced wife.*—A divorced wife is, according to the Mahomedan Law, entitled to the custody of her children; but the father is not on this account relieved from the obligation of maintaining them. Their maintenance can, therefore, be claimed by the wife by a proceeding under s. 488, Crim. Pro. Code. EMPEROR v. AYSHABAI, **6 Bom. L.R. 536 = 1 Cr.L.J. 599.**

(89)—*Crim. Pro. Code, s.* 488—*Maintenance of child—Father offering to maintain child.*—Where a Mahomedan father offered to maintain his daughter aged about fourteen years and asked for the custody of the child and it was contended by him that he should not be charged with her maintenance, *held*, that the contention was valid. ABDULLA v. MUSSAMMAT ZAINAB, **5 P.L.R. 1904 = 1 Cr. L.J. 39.** (18 P.R. 1894, Cr., *R.*)

(90)—*Crim. Pro. Code* (1882), *s.* 488—*Marriage of Mahomedan husband with wife's step-mother.*—The marriage of a Mahomedan with the step-mother of his wife is not valid under Mahomedan Law. The wife is, in such a case, entitled to say that she would not live with the husband during the continuance of such marriage. SHEIKH ISSAKE v. BIYYAMUNNI UMMAH, **2 Weir 647.**

(91)—*Grounds of refusal of maintenance.*—The husband is bound to maintain his wife, unless it is proved that she is living in adultery or that, without sufficient cause, she refuses to live with him or that they are separated by mutual consent. A Magistrate cannot refuse an order merely because he considers the wife's conduct open to suspicion. *In re* SOUNDRARAJASWAMI CHETTI, **2 Weir 647.**

(92)—*Crim Pro. Code* (1898), *s.* 488 —*Whether Magistrate can enforce an order for the maintenance of wife during the period of her* iddat—*Mahomedan Law—Right of divorced*

Maintenance—*continued.*

wife to maintenance during the period of iddat. —An irrevocable divorce, under Mahomedan Law, does not completely destroy the relationship of husband and wife, until after the expiry of the period of *iddat*, and, therefore, a wife in that position is entitled, during *iddat*, to an order for maintenance under s. 488, Crim. Pro. Code. Also any such order already existing in favour of the wife can be enforced by the Magistrate during the period of her *iddat*. SYED SAIB v. MEERAM BEE, **4 Ind. Cas. 140 =7 M.L.T. 33=20 M.L.J. 12=10 Cr.L J. 502.**

(93, 94)—*Order for maintenance of wife by Presidency Magistrate—Competency to stay—Effect of divorce on order.*—A Presidency Magistrate is competent to stay the operation of an order for maintenance of a wife and to refuse to issue a warrant though he cannot formally cancel it altogether; and he can try all questions raised before him affecting her right thereto. (8 B.H.C. Cr. 95, *R.*). [*F.*, 19 A. 50=16 A.W.N. 173=14 C. 276.] A dissolution of marriage under Mahomedan Law, as much as under the Indian Divorce Act, would put an end to the operation of a Magistrate's order for maintenance, since it is only as wife that the woman is to continue to receive an allowance. ABDUR ROHOMAN v. SAKHINA, SOBHAN v. SHUBRATON, OSSUFF v SHAMA, **5 C. 558= 5 C.L.R. 21.** [*F.*, 5 A. 226; *R.*, 5 P.R. 1905 =85 P.L.R. 1905=2 Cr.L.J. 40; *D.*, 11 C.P.L. R. 72.]

(95)—*Mahomedan law* — Mutta *marriage—Repudiation—Right to maintenance—S.* 536, *Crim. Pro. Code* (1872)—Zihar.—Under the Mahomedan law of the Shia sect, the *mutta* form of marriage does not admit of repudiation. [*R.*, 14 C. 276.] A *mutta* wife is not, under the Mahomedan Law of the Shia sect, entitled to maintenance; but this disability, arising from her personal law, is different from her statutory right to the maintenance under the Crim. Pro. Code. [*F.*, 5 A. 226; *R.*, 19 M. 461, =2 Weir 623.] *Quære.*—Whether the *zihar* form of divorce is allowable in the *mutta* form of marriage. LUDDUN SAHIBA v. MIRZA KAMAR KUDAR, **8 C 736=11 C.L.R. 237.**

(96)—*Crim. Pro. Code, ss.* 488, 489, 490—*Enforcement of order for maintenance.*—It is not the intention of the Legislature that the Magistrate, to whom an application is made to enforce an order of maintenance, should take into consideration anything further than the identity of the parties and the non-payment of the allowance. It is, no doubt, also open to the Magistrate to consider whether the person to whom the order of maintenance has been given is, at the time she makes the application, still holding the position of wife. No further step relaxing the clear words of s. 490 should be allowed. If a person, against whom an order for maintenance has been made, considers that such order should no longer be in force against him, it is for him to apply under s. 489 and get the order altered. It is not suitable or expedient that it should be open to a second Magistrate to call in question an order duly given upon proof. PRABHU LAL v. RAMI, **25 A. 165=A.W.N. 1902, 224.**

(97)—*Crim. Pro. Code* (1882), *s.* 488—*Person against whom maintenance proceeding is taken, whether can depose on his own behalf—Bad character of applicant, whether sufficient excuse.*—In a proceeding for maintenance by a woman for her illegitimate child, the two people who are most competent to give evidence about the parentage of the child are the woman and the alleged father of the child. A woman may be of bad character and yet be entitled to an order for maintenance of her illegitimate child, if she proves that the man against whom she proceeds was the father of the child. HIRA LAL v. SAHEB JAN, **18 A. 107=A.W.N. 1895, 242.**

(98)—*Crim. Pro. Code* (1882), *s.* 488—*Order for maintenance—Jurisdiction of Civil Courts.* —A Magistrate's order for maintenance duly made under s. 488 cannot be superseded and set aside by a decree of a Civil Court declaring that the wife to whom maintenance is ordered to be given has no right to it. SUBHUDRA v. BASDEO DUBE, **18 A. 29=A.W.N. 1895, 147.** (20 W.R. Cr. 58, *R.*) [*F.*, 11 C.P.L.R. 72; *R.*, L.B.R. 1893-1900, 662; *D.*, 32 C. 479=13 C. W.N. 150=7 Cr.L.J. 235=2 Ind. Cas. 550=2 M. L.T. 344; 30 M 400=17 M.L.J. 288=2 M.L. T. 360, 26 P.R. 1903=100 P.L.R. 1903.]

(99)—*Crim. Pro. Code* (1882), *ss.* 488, 490—*Maintenance order—Duty of Magistrate to enforce the order.*—Where a person in whose favour an order for maintenance has been given takes it before a Magistrate, and the Magistrate finds that he has jurisdiction owing to the residence of the person affected by the order, and is satisfied as to the identity of the parties and the non-payment of the allowance due, it is his duty to enforce the order for maintenance. He is not entitled to consider the question whether the person applying for the enforcement of the order is not entitled to it by reason of her having been divorced. MAHBUBAN v. FAKIR BAKSH, **15 A. 143=A W.N. 1893, 63.** [*F.*, 17 O.C. 260, U.B.R. 1897—1901, 112, Cr.; *D.*, 19 A. 50=A.W.N. 1896, 173.]

(100)—*Crim. Pro. Code, s.* 488—*Order for maintenance—Civil Court decree for restitution of conjugal rights.*—A decree of Civil Court for restitution of conjugal rights, even if passed on a compromise, supersedes a maintenance order passed by a Magistrate under s. 488, Crim. Pro. Code, if the wife persists in refusing to live with her husband. If the conditions laid down in the consent decree have not been complied with, the wife should prefer an objection in the Civil Court. NUR MUHAMMAD v. AYESHA BIBI, **27 A. 483=2 A.L J. 160=A. W.N. 1905, 54=2 Cr. L J. 104.** (23 B. 484, *F.*) [*D.*, 14 Cr. L.J. 98=18 Ind. Cas. 658=6 L.B. R. 127.]

(101)—*Restitution of conjugal rights—Effect of order as to maintenance.*—The decree of a Civil

Maintenance—*continued.*

Court for restitution of conjugal rights supersedes any previous order of a Magistrate for maintenance, if the wife should persist in refusing to live with her husband. The Magistrate ought to cancel his order, or rather to treat it as determined, if the wife, failing to comply with the decree for restitution, refuses to live with her husband. *In re* BULAKI DAS, **23 B. 484.** [*Appl.*, 27 A. 483=2 A.L.J. 160= A W.N. 1905, 54; *R.*, 4 P.R. 1906, Cr.=115 P.L.R. 1907=4 Cr. L.J. 73.]

(101-*a*)—*Right of wife to—Effect of decree for restitution of conjugal rights—S.* 488, *Crim. Pro. Code—Maintenance of children.*— The wife's application for maintenance should not be granted where a decree for restitution is in full force against her and no new cause for living apart is alleged. A father is not at liberty to refuse to maintain his children on the ground that they are not living with him. If he does not wish to provide them with separate maintenance, it is his business to apply to the proper authority and get the custody of them. NGA PO SAW v. MI THET, **U.B R. 1910, 2nd Qr. 34 =8 Ind. Cas. 479=11 Cr. L.J. 662.** (23 B. 484, U.B.R. 1904-06, 1 Cr. Pro. 10, U.B.R. 1802-03, 1 Cr. Pro. 7, 1905 U.B.R. 1904-06, 1 Cr. Pro. 39, U.B.R. 1910, Vol. I, p. 1, *R.*)

(102)—*Crim. Pro. Code* (1861), *s.* 316—*Prospective maintenance at an increased rate.*—A prospective order, providing for increase being made in the amount awarded for a child's maintenance hereafter as the child grows older, is not justified by law. MUSSAMMAT MUNGLO v. JUMNA DASS, **2 N.W.P. 454.**

(103)—*Maintenance for unborn child—Crim. Pro. Code* (1861), *s.* 316.—No order can be passed under Ch. XXI of the Code of 1861 for the maintenance of a fœtus of which it is believed that a woman is pregnant. Until it is born, it can hardly be regarded as a child. MUSSAMMAT LARIEE v. BUNSEE DITCHIT, **3 N.W.P. 70.**

(104)—*Father being a student of sixteen years and studying at school—Liability to maintain his illegitimate offspring.*—The mere fact that the defendant is sixteen years of age only, and studying at school, would not by itself be a sufficient reason for holding him excused from the necessity of providing for his illegitimate offspring after due proof that the child was his, and that he neglected or refused to maintain it. The law requires that the person on whom the order is made must have sufficient means to support his child. QUEEN v. ROSHUM LALL, **4 N.W.P. 123.** [*R.*, U.B.R. 1911, 2nd Qr. 90.]

(105)—"Karao *marriage*"—*Jats—Right of wife.*—Among Jats, a "*Karao*" marriage is valid, and the woman is entitled to maintenance. QUEEN v. BAHADUR SINGH, **4 N.W. P. 128.**

(106)—*Separate maintenance for wife when to be allowed—Crim. Pro. Code* (1872), *s.* 536.—A Magistrate is not authorised to entertain an application for separate maintenance, on the ground of ill-treatment, from wives whose husbands have not neglected or refused to maintain them, but who have of their own accord left their husbands' house and protection, and to order an allowance to be paid on evidence of ill-treatment. *In the matter of the petition of* W. A. THOMPSON, **6 N.W.P. 205.** [*F.*, 16 B. 269; *R.*, U.B.R. 1897-1901, Vol. I, 104; *D.*, 11 C. P.L.R. 14 Cr., 9 Bom. L.R. 359=5 Cr. L J. 334.]

(107, 108)—*Crim. Pro. Code* (1882), *s.* 488—*Hindu wife, whether entitled to separate maintenance on the ground of husband's second marriage.*—Where on a Hindu husband marrying a second wife, his first wife refused to live with him and applied for an order for maintenance, and the Magistrate ordered him to pay her a separate maintenance, on the sole ground that he had married again, although the husband was ready to maintain her in his own house, *held*, that as a Hindu, the petitioner was not debarred from marrying a second wife, and the mere fact that he had done so did not entitle the first wife to separate maintenance. ARUMUGAM v. TULUKANAM, **7 M. 187=2 Weir 640.** [*F.*, 7 C.P.L.R. 39; *R.*, 11 A.L.J. 161=18 Ind. Cas. 713.]

(109)—*Second marriage of husband.*— No order for maintenance can be passed on the application of a wife on the ground that her husband had married another wife, unless it is proved that he habitually treated the applicant cruelly. REG. v. PURUSHOTAM, **Rat. Un. Cr. C. 7.**

(110) — *Second marriage of husband.*— A second marriage by the husband is not a sufficient reason for refusal on the part of a Hindu wife to live with him so as to entitle her to claim separate maintenance under this section. MUSST. JANKI v. SEWA DHIMAR, **7 C P.L.R. Cr. 39.** (7 M. 187, *R.*)

(110-*a*)—*Husband marrying a second wife.*— A first wife cannot claim separate maintenance, merely because she and the husband's second wife are not in good terms or because the husband is more affectionately disposed towards the second wife. GANDA SINGH v. ATMA DEVI, **14 P.R. 1901, Cr.=122 P.L.R. 1901.** (2 P.R. 1878, Cr. *R.*)

(111)—*Husband marrying a second wife.*—A wife is not entitled to maintenance, merely because the husband marries a second time. ATTAR SINGH v. MUSST. DARMON, **66 P.R. 1887, Cr.** [*R.*, 12 P.R. 1914, Cr.]

(112)—*Husband marrying a second wife.*—A wife is not entitled to claim maintenance, merely because the husband has married a second wife. DAMODAR DOSS v. RANI, **21 P. R. 1873, Cr.**

(113)—*Second marriage of the husband.*— The mere fact that a husband has contracted a second marriage, which it is within his legal competency to contract, is not a lawful reason for the refusal of the wife to live with her husband. DAVIDITTA v. LACHMI, **30 P.R. 1881, Cr.** [*R.*, 31 P.R. 1882, Cr.]

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(114)—*Refusal by wife to live in same apartment with second wife.*—Where a wife claimed a separate maintenance, refusing to live with her husband who was willing to maintain her on condition of her living with him, on the ground that he had contracted a second marriage, and that she could not live in the same apartment with the second wife, *held*, that no sufficient ground had been made out for the wife refusing to live with her husband and that her claim for maintenance should be disallowed. BASANT SINGH v. KURI, **31 P.R. 1882, Cr.** (15 P.R. 1880, Cr., 30 P.R. 1881, Cr., *R.*)

(115)—*Crim. Pro. Code, s.* 488—*Order for separate maintenance by a Magistrate—Jurisdiction of Civil Courts—Specific Relief Act, s.* 42—*Decree of Civil Court—Duty of Magistrate.*—An order for payment of separate maintenance to a wife by a Magistrate does not take away the jurisdiction of Civil Courts to make a declaration that the husband is not liable to pay separate maintenance to his wife under s. 42 of the Specific Relief Act. [*F.*, 2 M.L.T. 344=30 M. 400.] It is not open to a Magistrate to ignore a final decree of a Civil Court on the ground that it rests on reasons which do not appear to him to be satisfactory, the jurisdiction vested to him being auxiliary to that of the Civil Courts. VEERAN v. AYYAMMAH, **2 Weir 615.**

(116)—Where a decree for a monthly allowance for maintenance had been obtained in the High Court and was in force, *held*, that the Magistrate was not entitled to order a further and separate maintenance. *In re* SUBBARAMAKKAMMAH, **2 Weir 615.**

(117)—Magistrates are not authorized to entertain applications for separate maintenance on the ground of ill-treatment from wives, whose husbands have not neglected or refused to maintain them, but who have, of their own accord, left their husbands' houses and protection. A wife, who wishes to obtain a separate maintenance on the ground of her husband's cruelty, must go to a Civil Court. MUSSAMMAT RANGU v. GANESH DHUNDI RAJ, **9 C.P.L.R. Cr. 21.**

(118)—*Crim. Pro. Code, ss.* 488 *and* 490—*Maintenance of wife—Effect of subsequent Civil Court's decree declaring the parties not being husband and wife, as to enforcement of order of.*—A obtained, from a Bench of Honorary Magistrates, against B, an order for maintenance, under s. 488 of the Crim. Pro. Code, upon the allegation that she was the wife of the latter. Thereafter, B obtained a declaration from the Munsiff's Court that A was not his wife. B having failed to pay the maintenance as directed by the Magistrates, A applied for the enforcement of the order. B put in a petition, in which he recited the litigation in the Munsiff's Court and contended that he was no longer bound by the Magistrates' order. The Magistrates, without further enquiry into the question of marriage, rejected the petition, on the ground that they were not bound to take any notice of the decree of the Munsiff. *Held*, that, when a competent Civil Court has decided that A is not, and never has been, the wife of B, then a Magistrate cannot, in proceedings under s. 488, Crim. Pro. Code, hold that A is the wife of B and order B to maintain her; *held*, therefore, that the Magistrates were bound to consider the effect of the Munsiff's decree, which was binding on them and that, under s. 490 of the Code, they should have refused to enforce the order of maintenance. NAWAB ZULFIKAR KHAN v. MUSSAMMAT ZAINAB BEGAM, **9 O. C. 49 (B.)=3 Cr. L.J. 229.**

(119)—*Crim. Pro. Code* (1872), *s.* 538—*Maintenance, order for, to be paid in advance—Legality.*—A Magistrate's order directing the payment of maintenance allowance in advance from the date of the Magistrate's order is illegal. *In re* SHIDDU VITHOJI, **Rat. Un. Cr. C. 189 =Cr. Rg. 20-3-1883.**

(120)—*Crim. Pro. Code* (1882), *s.* 488—*Wife deserting husband—Her adultery—Right of such wife to claim maintenance.*—Where there has been a desertion of the husband for many years coupled with adultery and no attempt to seek the husband's pardon for past misconduct, the wife is not entitled to an order for maintenance under s. 488 of the Crim. Pro. Code, merely because, at the time she makes her application, she may not be living in adultery. *In re* SHIVRAM, **Rat. Un. Cr. C. 506=Cr. Rg. 21 of 1890.**

(121)—*Crim. Pro. Code* (1882), *s.* 488—*Order for maintenance—Subsequent adultery.*—Adultery subsequent to an order for maintenance disentitles a wife to claim a continuance of the maintenance and entitles the husband to apply for cancellation of the order. QUEEN-EMPRESS v. TOTA RAM, **Rat. Un. Cr. C. 353= Cr. Rg. 42 of 1887.**

(122)—*Crim. Pro. Code* (1882), *s.* 488—*Execution of order for maintenance—Breaking open door.*—A Police officer, in executing a warrant to levy the amount of maintenance ordered under s. 488 of the Crim. Pro. Code, can break open an inner door of the house of the person against whom the order is made. QUEEN-EMPRESS v BABA RAGHUNATH, **Rat. Un. Cr. C. 431=Cr. Rg. 2 of 1889.**

(123)—*Crim. Pro. Code* (1882), *s.* 488—*Application to enforce order for maintenance—Court Fees Act,* VII *of* 1870, *s.* 31, *sch.* II, *art.* 1 (*b*)—*Stamp—Order for repayment.*—An application made to a Magistrate to enforce payment of maintenance already awarded under s. 488 of the Crim. Pro. Code, is chargeable with a fee of eight annas under sch. II, art. 1 (*b*) of the Court Fees Act, 1870. The Court cannot, under s. 31 of the Court Fees Act, order the defaulter to repay to the complainant the fee so paid. *In re* PALI, **Rat. Un. Cr. C. 488=Cr. Rg. 56 of 1889.**

(124)—*Crim. Pro. Code* (1888), *s.* 488—*Claim for accumulated arrears of maintenance—Sentence.*—S. 488 contemplates that a separate warrant should issue for each separate monthly

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default, and when that is done, the maximum punishment can be one month's imprisonment. If a warrant is issued for an accumulation of arrears for several months, the Magistrate has no power to pass a greater sentence in such a case than if the warrant only related to one particular breach. QUEEN-EMPRESS v. PANDU MAHADU, **Rat. Un. Cr. C. 801 = Cr. Rg. 57 of 1895.**

(125)—*Arrears of maintenance—"Debt or liability"—Protection order—Insolvent Act* (XI *and* XII *Vic., ch.* 11) *s* 13.—Arrears of maintenance, included in an insolvent's schedule, are a debt or liability (notwithstanding that they may be enforceable in Criminal Courts) within the meaning of s. 13 of the Insolvent Act; and a protection order would protect the insolvent from arrest or imprisonment in respect of such debt. *Quære.*—Whether the protection order extends to proceedings in respect of maintenance accruing subsequent to the filing of the schedule? TOKEE BIBEE v. ABDOOL KHAN, **5 C. 536 = 5 C.L.R. 458.** [*R.*, 17 C.P.L.R. 127.]

(126)—*Order for—Magistrate, Powers of—Crim. Pro. Code* (1882), *ss.* 488 *and* 489.—A Magistrate has no power to make an order, under s. 488 of the Crim. Pro. Code, for maintenance at a progressively increasing rate. The allowance must be ordered at a fixed monthly rate, though it may be altered from time to time under s. 489. UPENDRA NATH DHAL v. SOUDAMINI DASI, **12 C. 535.** [*F.*, 14 M. 398 = 2 Weir 651.]

(127)—*Crim. Pro. Code* (1882), *s.* 488—*Order for maintenance—Change of circumstances of defendant—Imprisonment in default of payment of maintenance—Sentence of imprisonment not absolute.*—Although a maintenance order of a Criminal Court, under s. 488, may be modified, on a change of circumstances being shown, still, so long as that order remains in force, it must carry with it its proper consequences. Before an order for maintenance can be enforced by a sentence of imprisonment, it is necessary that it should be made out that the non-payment of maintenance was the result of wilful negligence on the part of the defendant. [*F.*, 25 C. 291, 5 O.C. 316.] The imprisonment awarded under the section is not a punishment for contempt of the Court's order, nor is it an absolute sentence. It is passed only for the unpaid portion of the maintenance, or, in other words, it is owing to default of payment of the unrealized portion of the maintenance. Therefore, upon payment of the amount by the defendant, the imprisonment ought to cease. SIDHESWAR TEOR v. GYANADA DASI, **22 C. 291.** (8 M 70, *Diss.*) [*R. & Disc.*, U.B.R. 1892—1896, Vol. I, 70.]

(128)—*Crim. Pro. Code* (1882), *s.* 488—*Order of maintenance—Default in payment—Imprisonment—Mode of computing term.*—Before an order of commitment to prison can be made for default by a husband in the payment of his wife's maintenance allowance, it must be proved that non-payment was due to wilful neglect of the person ordered to pay. When arrears of maintenance ordered under s. 488 have been allowed to accumulate, the procedure contemplated by the Legislature is that the Magistrate, after satisfying himself by evidence that the non-payment has been due to wilful neglect on the part of the person bound by the order, should issue a warrant for the levy of the whole amount due in the manner prescribed by the section. If after the course has been taken, any part of the aggregate amount due remains unsatisfied, the Magistrate may sentence the defaulter to a proportionate term of imprisonment. Separate terms of imprisonment in respect of the arrears of each month preceded by a separate enquiry is bad in law. [*R.*, 5 O.C. 316.] The mode of computing the term of imprisonment in default of payment of maintenance is as follows The sum levied should be deducted from the sum due, and the Court should ascertain how many months arrears the balance represents. The maximum imprisonment will then be one month for each month's arrears, and if there is a balance representing the arrears for a portion of a month, a further term of a month's imprisonment may be imposed for such arrear. BHIKU KHAN v. ZAHURAN, **25 C. 291.** (22 C. 291, 20 M. 3, *F.*) [*Diss.*, 7 Bur. L.T. 225 = 15 Cr. L.J. 434 = 24 Ind. Cas. 170.]

(129)—*Crim. Pro. Code, s.* 488—*Right of an illegitimate child to be maintained by its putative father—Refusal of maintenance by Magistrate—Suit to enforce payment of maintenance.*—A Hindu woman applied, under s. 488, Crim. Pro. Code, to a Magistrate for maintenance of her child alleged to have been begotten by the defendant. The Magistrate refused maintenance. Hence this suit in a Civil Court. The defence contended that the suit was not maintainable, and that the order of the Magistrate was conclusive. *Held*, the Crim. Pro. Code does not bar a suit in a Civil Court. It simply enables a Magistrate to pass an order for maintenance under a given state of circumstances. Further, s. 11 of the Civ. Pro. Code allows a civil suit in respect of a matter of a civil nature unless a suit is barred by special enactment; there being no enactment barring the cognizance of a suit, it was maintainable. If the Magistrate had passed an order, no suit might lie for setting aside the order. That is not this case. It was contended, also, that the Hindu Law does not authorize maintenance being granted to illegitimate children. *Held*, apart from the Hindu law, maintenance is awardable in such cases, on general principles. The defendant having begotten the child, he was bound to provide for its maintenance. GHANA KANTA MAHANTA v. MUSST. GERELI, **32 C. 479 = 13 C.W.N. 150.**

(130)—*Crim. Pro. Code* (1872), *s.* 536—*Re-opening of a decided maintenance case—Legality.*—Where a duly empowered Magistrate has, in a maintenance case, gone fully into the question of the paternity of the child, the

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principal question to which he addressed himself, and decided the matter, the Deputy Commissioner is not competent to entertain the complaint *de novo*. MUSSAMMAT JAMOTI v. GODALO KAMAR, **1 C.L R. 89.** [*R.*, U.B.R. 1892—1896, 1, 64, 6 O.C. 262; *D*, 1 C.L.J. 214=2 Cr. L.J. 213.]

(131)—*Crim. Pro. Code* (1898), *s.* 488, *sub-ss.* 6 *and* 9—*Proceedings for maintenance—* Ex-parte *order, validity of.*—Proceedings aginst a person for maintenance, on the ground that he is the father of an illegitimate child, should not be conducted *ex parte*. Evidence, in such proceedings, ought to be taken in the presence of such person or his pleader, unless he is wilfully avoiding service of summons or neglecting to attend the Court. *Quære.*—Whether the present case has been brought under sub-s. (9) of s. 488. AJOY CHANDRA DAS v. DULI BEWAH, **1 C.L J. 102.**

(132)—*Crim. Pro. Code* (1882), *s.* 488—*Order for maintenance—Imprisonment on default of payment—Subsequent payment, effect of.*—Although a Magistrate is not bound to order the full term of imprisonment for which a defaulter is liable under s. 488, yet a person committed to jail for non-payment of maintenance ordered by a competent Magistrate, is not entitled to be released when the arrears are paid. The imprisonment ordered in default of payment of maintenance is a punishment for a breach of the order by the Court. BIYACHA v. MOIDIN KUTTI, **8 M. 70=2 Weir 639.** [*Diss.*, 22 C. 291; *F.*, L.B.R. 1893—1900, 316; *R.*, 20 M. 3=2 Weir 638, U B.R. 1892—1896, Vol. I, 70.]

(133)—*Order for maintenance passed on report by Subordinate Magistrate, validity of.*—Where a wife made a complaint to a first class Magistrate, under s. 488, Crim. Pro. Code, and the Magistrate referred it to the second class Magistrate for inquiry and report, and the latter, on being informed by the defendant that he would pay to the complainant the maintenance fixed by the Court on his share of the property, reported the same to the first class Magistrate, who thereupon passed on order for maintenance, *held*, that the reference to the second class Magistrate was irregular and the order should be set aside, as there was nothing to show that the defendant had even an opportunity of appearing before the first class Magistrate. VENKATTA v. PARAMMA, **11 M. 199=2 Weir 628** [*R.*, 29 P.R. 1905=90 P.L.R. 1905 =2 Cr.L.J. 421]

(134)—*Crim. Pro. Code* (1882), *s.* 488—*Application for maintenance—Omission to pay process fees, effect of—Court Fees Act, s.* 20, *cl.* 2. —S. 20, cl. 2 of the Court Fees Act has reference only to fees for processes issued in the case of "offences," and an order for payment of maintenance is not a conviction for an offence. Therefore, an application for maintenance, under s. 488, cannot be dismissed on the ground that the applicant failed to pay process fees as ordered by the Court. *In re* PONNAMMAL, **16 M. 234=2 Weir 252=2 Weir 635.** [*F.*, 11 C.P.L.R. 14, 4 Ind. Cas. 1045=6 M.L.T. 261=11 Cr. L.J. 156.]

(135)—*Crim. Pro. Code* (1882), *s.* 488—*Default in payment of maintenance—Order for imprisonment—Period of imprisonment.*—Under s. 488, Crim. Pro. Code, imprisonment in default of payment of maintenance order is not to be limited to one month. The procedure contemplated by the Code appears to be to deduct the some levied from the sum due, and then to ascertain how many months' arrears the balance represents. The maximum imprisonment that can be imposed will then be one month for each months arrears, and if there is a balance representing the arrears for a portion of a month, a further term of a month's imprisonment may be imposed for such arrear. ALLAPICHAI RAVUTHAOR v. MOHIDIN BIBI, **20 M. 3=2 Weir 638.** [*F.*, 25 C. 291; *R.* 11 Cr. L.J. 79= 4 Ind. Cas. 900=U.B.R. 1907—1909, Vol. II, Cr. P.C. 21, 5 O.C. 316, 15 Cr. L.J. 434=24 Ind.Cas. 170, U.B.R. 1909, Cr. P.C. p. 19.]

(136)—*Crim. Pro. Code* (1882), *s.* 488—Marumukkatayam *Law*—"*Sambandham*"—*Liability of father to pay maintenance to children born of such marriage.*—The provisions of s. 488 of the Crim. Pro Code apply to Malabar and the father of children born in the form of marriage known as "sambandham" is liable to pay maintenance to the children. AYYA PATTER v. KALIANI AMMAL, **22 M. 247, Note=2 Weir 624=3 M.L.J. 281.** [*F.*, 22 M. 246=2 Weir 625; *R.*, 19 M. 461=2 Weir 621]

(137)—*Crim. Pro. Code, s.* 488—*Magistrate's order for maintenance—Subsequent civil suit, maintainability of—Injunction.*—A Magistrate's order for maintenance does not take away the jurisdiction of the Civil Courts. Civil Courts cannot grant an injunction restraining the Magistrate from enforcing an order for maintenance. DERAJI MALINGA NAIKA v. MARATI KAVERI, **2 M.L.T. 344=7 Cr. L.J. 235=30 M. 400.**

(138)—*Application for maintenance by Christian wife of a Christian, reverted to Hinduism.*—The rejection of an application for maintenance, made by the wife of a Christian who had reverted to Hinduism and married a second wife, is not proper. HIGH COURT PROCEEDINGS, 18TH FEBRUARY 1868, **4 M.H.C. App. 3.** [*R.*, 33 M. 371=11 Cr. L J. 682=8 Ind. Cas. 572.]

(139)—*Crim. Pro. Code, s.* 488—'*May,*' *meaning of, as distinguished from* '*shall*'—*Wife guilty of adultery with a low caste man—Expelled from caste—Husband likely to lose caste—Propriety of Magistrate's order in refusing her maintenance.*—The use of the word "may" in s 488, Crim. Pro. Code, as distinguished from "shall," shows that the Magistrate has a discretion to decide in what cases the award of maintenance may properly be made. Where a Magistrate refused to

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award maintenance to a wife, not because she was living in adultery, within the meaning of s. 488, Crim. Pro. Code, but because she had been guilty of adultery with a low caste man, which led to her expulsion from caste and rendered it impossible for her husband to keep her with him without himself losing the society of his fellow caste men, *held* that the Magistrate was not wrong in refusing to award her maintenance. PONNAYEE v. PERIYA MOOPPAN, 3 **M.L.T. 269=31 M. 185=18 M.L.J. 150 =7 Cr. L J. 346.**

(140)—*Crim. Pro. Code* (1882), s. 488—*Order rejecting an application for maintenance — Fresh application on fresh facts.*—It cannot be generally laid down that, when a duly empowered Magistrate had dismissed an application under s. 488, no other Magistrate is competent to entertain the complaint *de novo.* A woman, may apply for maintenance on a given state of facts in one year, and if, subsequently different facts take place, they may justify an application for maintenance, though the prior facts did not. AVUDAI AMMAL v. SUBRAMANIA PILLAI, **2 Weir 633.**

(141)—*Crim. Pro. Code* (1861), s. 316—*Warrant for recovery of arrears of maintenance —Punishment.*—A warrant is permissible for every breach of the order for maintenance. But the defendant cannot get out of his liability for any payment, by the failure to issue a warrant for the levy of that payment. It is not, therefore, illegal for a Magistrate to levy arrears of maintenance in one proceeding. The result of issuing the warrant for an aggregate of payments is that one month's imprisonment only would be awardable in default. HIGH COURT PROCEEDINGS, 19TH APRIL 1871, NO. 789, **2 Weir 637=6 M.H.C. App.** 22. [*R.*, U.B.R. 1902, 2nd Qr. Cr., P. C. 3 ; *D.*, 2 Weir 638=20 M. 3.]

(142)—*Crim. Pro. Code* (1882), s. 488—*Order awarding maintenance to child—Civil suit re the status of the child—Maintainability.*—A suit for a declaration that a child, for whose maintenance an order under s. 488, Crim. Pro. Code, was passed, is not the illegitimate child of the plaintiff cannot be entertained in a Civil Court. MUSSAMMAT MANTOTA v. MOHAN LAL, **11 C.P.L.R. Cr. 72.**

(143)—*Crim. Pro. Code*, s. 488—*Order for maintenance of wife, application to enforce on—Subsequent decree for custody of wife, effect of.*—An order for maintenance, obtained by a wife, under s. 488 of the Code, might cease to have effect from the date of a subsequent decree obtained by the husband for the custody of his wife, if the wife should leave such custody without proper cause justifying her doing so. But, where the decree was subject to certain conditions, non-compliance of the husband with those conditions would justify the wife's having left his custody and revive her right to maintenance. The powers of the Magistrate, under this section, to consider the grounds of efusal by the wife to live with her husband,

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include the power to decide whether the conditions of such a subsequent decree for custody of the wife have been complied with by her husband. DEVI DITTA v. GUNGA DEVI, **4 P. R. 1906, Cr.,=4 Cr. L.J. 73=155 P.L.R. 1907.** (13 W.R. 52 Cr., 23, B. 484, *R.*)

(144)—*Crim. Pro. Code*, s. 488—*Application for maintenance—Husband living with a mistress—Whether the wife is justified in refusing to live with him—Offer by husband in Court to give up his mistress—Whether it deprives the wife of her right of refusal to live with her husband.*—The applicant's wife, with his approval, went to stay for a while with her mother, and while she was there, a serious quarrel took place, which resulted in the wife refusing to return to her husband. Applicant subsequently took a woman to live with him as his mistress, and she lived with him up to the time when this case came on for hearing before the Magistrate. Before the Magistrate, the wife agreed to return to her husband within a week on his putting away his mistress and promising to have nothing more to do with her ; but subsequently she refused to abide by that arrangement. *Held* that, at the date of the application the wife had an unanswerable reason for refusing to live with her husband, and that her right to refuse was not demolished by the fact, even if it be a fact, that the husband was driven to concubinage by his wife's continued refusal to live with him. *Held* also that an offer made in Court by the husband to give up his mistress does not deprive the wife of her right of refusal to live with her husband. E.G. GARRATY v. RUTH GARRATY, **14 Bur. L R. 240=8 Cr.L.J. 422.**

(145)—*Order of imprisonment in anticipation of default, whether legal—Crim. Pro. Code* (1882), s. 488—*Fresh order.*—Making an order of imprisonment in anticipation of a default of payment of the maintenance ordered under s. 488, Crim. Pro. Code, is illegal. If default has been made, the Magistrate must pass a fresh order to enforce payment. QUEEN-EMPRESS v. PO TEIK, **L.B.R. 1893—1900, 253**(5 M 34 *F.*)

(146)—*Crim. Pro. Code* (1898), s. 488—*Order of maintenance, enforcement of—Accumulation of arrears, payment of—Payment from time of application— Principle to be observed in the recovery of arrears.*—As long as the order of maintenance holds good, it deserves to be enforced ; and while a Magistrate may, in the exercise of his discretion, refuse to recover an accumulation of arrears, there seems to be no good reason why he should not enforce payment from the time of the new application. MI THAING v. NGA PO MIN, **U B.R. 1909, 3rd Qr., Cr.P C., 19=4 Ind. Cas. 899=11 Cr.L.J.** 79. U.B.R. 1902—1903, 1, Cr. P.C., 3, 4 B.L.R. 29, 20 M. 3, *R.*) [*Disc and Appl* ; 11 Cr. L.J. 79=4 Ind. Cas. 900=U.B.R. 1907—1909, II, Cr. P. C. 21.]

(147)—In a case where the question arose whether arrears of maintenance for a long period should be recovered by the summary

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procedure provided in s. 488, *held*, that, in each case, the Magistrate ought to ascertain under what circumstances the arrears came to accumulate; and, if there was no good reason why the applicant should not have applied with greater promptitude, and whether it would be equitable and in accordance with the spirit of the Crim. Pro. Code, to enforce payment of the accumulation. In the nature of things no hard and fast rule can be laid down. Each case must be considered on its own merits. Where it would not be proper to enforce payment of the whole of the arrears, the Magistrate ought to consider whether he should enforce payment of any part of the arrears, and, if so, for how many years. MI MYA v. NGA PADON, **U.B.R. 1909, 3rd Qr., Cr.P.C. 21=4 Ind. Cas. 900=11 Cr. L.J. 79.** (20 M. 3, 4 B. L.R. 29, U.B.R. 1902-03, I, Cr. P.C., 3. *R.*)

(148)—*Arrears due under private agreement between husband and wife*—Ex parte *order of Magistrate — Warrant for accumulation of arrears—Sentence upon defaulter—Release of defaulter on payment of arrears due—Crim. Pro. Code* (1882), *s.* 488.—An order for the payment of arrears of maintenance accruing due under a private agreement between husband and wife is not authorized by s. 488, Crim. Pro. Code; only an order for a future allowance can be passed. Evidence of neglect to pay maintenance cannot be taken, or an order awarding maintenance be passed in the absence of the husband. If a warrant is issued for an accumulation of arrears for several months, the Magistrate has no power to pass a greater sentence than if the warrant related to only one breach. A sentence of imprisonment under s. 488 is absolute, and the defaulter is not entitled to release on payment of the arrears due. MI ME MA v. MRA THA TUN, **L.B.R. 1893—1900, 316.** (9 A. 240, 8 M. 70, *F.*)

(149)—*Change in the circumstances of person receiving—Accumulated arrears, levy of warrant for.*—The fact that the child for whose maintenance an order has been passed had grown older constitutes a change in the circumstances of the person receiving maintenance. It is not necessary that there should be a change in the circumstances of a person who was ordered to pay maintenance. It is only when there is a *wilful* neglect to comply with an order directing payment of maintenance, that a Magistrate can issue a warrant to levy the amount due. It is never the intention of the Legislature that arrears of maintenance should be allowed to accumulate for over seven years and that payment of the accumulated arrears should then be enforced in a summary manner. CHARLES NEPEAN v. MA KYAW, **L.B.R. 1893—1900, 393.** (14 M. 398, *F.*)

(150)—*Status of a Buddhist wife where Buddhist husband enters priesthood—Liability of husband—Buddhist Law.*—Among Buddhists, the status of the wife does not cease merely because the husband enters the priesthood. The wife commits no fault, if she takes another husband after the lapse of seven days, but her first husband has a right to reclaim her even if he has entered and left the priesthood as many as seven times. The husband is, therefore, bound to maintain his wife and child, on his leaving the priesthood, till such time as she marries again or he, re-enters the priesthood. MA THIN v. MAUNG MAUNG, **L.B.R. 1893—1900, 611.**

(151)—*Crim. Pro. Code, s.* 488—*Burmese Buddhists—Polygamy—Right of first wife to personal maintenance.*—Petitioner, a Burmese Buddhist, was the first wife of respondent, her husband. She applied under s. 488, for her maintenance, on the ground that the respondent had taken a second wife. *Held*, polygamy being legal among Burmese Buddhists, the petitioner was not entitled to an order for her personal maintenance on the ground solely of the respondent's taking a second wife. PWA THIN v. BA WIN, **4 L.B.R. 146=7 Cr. L.J. 444.** [*Overruled*, 4 L.B.R. 340=9 Cr. L J. 25.]

(152)—*Crim. Pro. Code* (1898), *s.* 488—*Burman Bhuddhist law—Husband taking lesser wife without headwife's consent—Right of headwife to demand separate residence—Failure of husband to do so—Consequent right of such headwife to maintenance—Effect of her refusal to live with him in same house on her right to maintenance—Principles of awarding maintenance in civil and criminal cases, whether necessarily identical.*—Where a Burman Buddhist takes a lesser wife, without the consent of his headwife, the refusal of the headwife to live and cohabit with her husband, unless she is provided with a separate residence, is not a sufficient reason for refusing her maintenance, under s. 488 of the Code. Per *Irwin, C.J.*—The principles that should guide a Civil Court in granting or refusing an order for maintenance are not necessarily identical with those, which ought to guide a Criminal Court in deciding applications under s. 488, Crim. Pro Code. MA KA U v PO SAW, **4 L.B.R. 340, F.B.=9 Cr. L.J. 25.** (U.B.R. 1897—1901, 104, S.J. L.B. 114, 103, U.B.R. 1892—1896, 48, 2 L.B. R. 46, *R.*; 4 L.B.R. 146, *overruled*). [*Appr.*, 3 Bur. L.T. 154=11 Cr. L.J. 750=8 Ind. Cas. 997.]

(153)—*Application for—Whether a "complaint" of an offence—Order for payment of, whether appealable—Declaratory decree of a Civil Court, whether supersedes such order—Woman claiming maintenance for herself and her child, but order for payment of maintenance for the child only—Advocate making an unauthorised statement, whether precludes wife from claiming—Crim. Pro. Code* (1898), *ss.* 439 *and* 488.—An application for maintenance is not a "complaint" of an offence and an order for the payment of a monthly allowance is not a conviction for an offence, and consequently is not appealable. They are, however, "judicial proceedings" and subject to revision by the High Court under s. 439, Crim. Pro. Code. These proceedings are not, however, purely civil proceedings. An order for the maintenance of a wife duly

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made under s. 488, Crim. Pro Code, cannot be superseded by a declaratory decree of a Civil Court to the effect that the wife in whose favour such order had been made has no right to maintenance. Conversely, where the wife is held by a Criminal Court not to be entitled to maintenance, unless she is successful in obtaining a revision of that order, she will be debarred from obtaining a declaratory decree in a Civil Court that she is entitled to maintenance. A woman who had claimed maintenance for herself and child before a Magistrate and obtained an order of maintenance for her child only is not precluded from claiming maintenance for herself on the ground that her advocate had made an unathorized statement that she was divorced from her husband. She is not debarred from obtaining an adjudication on the question whether she was divorced from her husband, and whether she had instructed her advocate to admit that she no longer held the *status* of a wife. MA THA MA PRU v. MAUNG BON, **L.B. R. 1893—1900, 662.** (7 W.R. Cr. 10, 5 B.H.C. 81, 20 C. 351, 18 A. 29, *F.*; 16 C. 781, 13 P.R. 1885, Cr., L.B.R. 1872—1892, 175, *R*)

(154)—*Crim Pro. Code* (1898), s. 488—*Offer to maintain made in Court after summons—Jurisdiction of Magistrate.*—A mother, having the custody of a child, applied under s. 488 of the Code for its maintenance by its father. Before the receipt of summons under her application, the father had neither asked for the custody of the child nor offered to provide for it in any way. He now made an offer in Court to maintain the child if it was left with him. *Held*, that the present offer to maintain will not take away the Magistrate's jurisdiction, under this section, to order him to pay for the child's maintenance. MI GAUK v. NGA PO HMI, **U.B. R. 1905, Cr. P.C., 39=2 Cr. L.J. 830.** (U.B.R. 1902, Cr. P.C. 7, 18 P.R. 1894, Cr. 16 W.R. 64, 2 L.B.R 46, *R.*) [*R.*, 11 Cr. L.J. 488 =7 Ind. Cas. 460=U.B.R. 1910, Cr. P.C. 11 Cr. L.J. 662=8 Ind. Cas. 479=U.B.R. 1910, 34.]

(155)—*Crim. Pro. Code* (1882), s. 488—*Grounds for order for maintenance.*—A Magistrate cannot award maintenance to a married woman unless it is found that her husband refused or neglected to maintain her or was living in adultery or had habitually treated her cruelly. MUSSAMMAT RUPA v. RAMGOPAL, **Colm. Dig. Cr, 86 of 1877.**

(156)—*Crim. Pro. Code* (1872), ss. 536 *and* 537—*Cancellation of order.*—A Magistrate, who awards maintenance under this section, cannot cancel his order; such order will be enforceable, until it is altered under s. 537, Crim. Pro. Code, 1872, or until the forfeiture of the maintenance under the last para. of s. 536. MUSSAMMAT MANNIA BAI v. NANHU PARWAR, **Colm. Dig. Cr. 21 of 1875.**

(157)—*Crim. Pro. Code* (1882), s. 488—*Order for maintenance—Reduction in amount owing to wife's earnings.*—The husband could not claim a reduction of the moderate allowance of ten annas a day on the mere ground that his deserted wife might possibly be able to make a few pice by her own labour. He had no right to her co-operation after he had abandoned her. GHURBIN v. GOBINDI, **A.W.N. 1887, 107.**

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(158)—*Crim. Pro. Code* (*Act* X *of* 1882), s. 488—*Mahomedan wife—Divorce.*—No order for maintenance can be made in favour of a Mahomedan wife who had been divorced before three months and thirteen days prior to the application though the divorce was not repeated three times. QUEEN-EMPRESS v. MURAD, **A.W.N. 1888, 116.**

(159)—*Crim. Pro. Code* (*Act* X *of* 1882), s. 488—*Effect of wife returning to husband.*—Where, after an order for maintenance under s. 488 of the Crim. Pro. Code, the wife returns to the husband, the original order becomes ineffectual as to the future, and the wife, if again turned out, should again institute formal proceedings under Ch. XXXVI of the Crim. Pro. Code. PHUL KALI v. HARNAM, **A.W.N. 1888, 217.** [*R.*, U.B.R. 1897—1901, Vol. I, 104.]

(160)—*Crim. Pro. Code* (*Act* V *of* 1898), s. 488—*Mahomedan—Divorce.*—Where a Mahomedan against whom an order for maintenance had been passed, deposited the arrears with what was due for the period of *iddat* and put in an application in which he repudiated his wife thrice and prayed for cancelment of the order, *held*, that this constituted a divorce when it came to the knowledge of the wife and that the repudiation need not be addressed to her directly. *In the matter of the petition of* MUHAMMAD ZAHUR, **A.W.N. 1899, 85.** (4 C. 588, *Dist.*)

(161)—*Crim. Pro. Code* (1882), s. 488—*Maintenance—Jurisdiction.*—The jurisdiction in cases of maintenance is to be exercised only in the District in which the person, on whom any final order that may be passed in the proceedings is to operate, has his residence at the time of making the complaint. DULARIA v. RAM CHARAN, **A.W.N 1894, 153.**

(162)—*Crim. Pro. Code* (1872), s. 536—*Maintenance for a wife.*—The mere fact that the child born to a woman was illegitimate would not be sufficient to disentitle her to receive maintenance from her husband, if she was not then living in adultery. EMPRESS v. NANDAN, **A.W N. 1881, 37** [*R.*, 26 A. 326=1 A.L.J. 18=A.W.N. 1904, 23.]

(163)—*Crim. Pro. Code* (1872), s. 536—*Maintenance of wife.*—In cases of claim by a wife for maintenance, where the husband sets up the defence that his wife is living in adultery, the Magistrate should enquire whether the wife was living in adultery, whether she was willing to live with her husband, or refused to do so without sufficient reason, or whether the husband and wife are living separately by consent *In the petition of* KASHI SHEODIALA, **A.W.N. 1881, 62.** [*R.*, A.W.N. 1882, 112, 26 A. 326=1 A.L.J. 18=A.W.N. 1904, 23.]

(164)—*Crim. Pro. Code* (1872), s. 536—*Maintenance of wife.*—Unless there is proof that the wife has been, at the time of the application for maintenance, living in adultery,

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or refused to live with her husband, she is not disentitled to receive maintenance. EMPRESS v DAULAT, **A.W.N. 1881, 113.** [*R.*, 26 A. 326 =1 A.L.J. 18=A W.N. 1904, 23.]

(165)—*Crim. Pro. Code (Act* X *of* 1872), *s.* 536 —*Maintenance—Petition by wife for arrears—Husband alleging adultery.*—Where in answer to an application by a wife for arrears of maintenance, the husband preferred a petition alleging that the wife at the time of her application was living in adultery, *held* that the Magistrate was bound to enquire into the allegation. SOHNI v. MANOHAR, **A. W. N. 1882, 168.**

(166)—*Crim. Pro. Code (Act* X *of* 1872), *s.* 536 —*Maintenance—Means of husband.*—Before an order is passed under s. 536 of the Crim. Pro. Code, it should be proved that the husband has sufficient means to pay the allowance ordered. PAYAGI v. DUDHNATH, **A.W.N. 1882, 179.**

(167)—*Crim. Pro. Code* (1882), *s.* 488—*Maintenance order — Subsequent adultery of wife—Proof.*—Where an order for the maintenance of a wife has been made, the wife should not be deprived of her maintenance, except on the clearest proof of her having lived in adultery, where adultery is alleged, subsequent to the date of the order. LARAITI v. RAM DIAL, **A.W.N. 1883, 180.**

(168)—*Cancellation of order on subsequent adultery of the wife.*—*Held*, that the adultery of the wife subsequent to the award of maintenance in her favour was "a change in the circumstances" requiring an alteration in the allowance by cancelling the order of maintenance altogether. *Held*, also, that the Magistrate cancelling the order need not be the same Magistrate who passed the order for maintenance. MUSSUMAT NIHALI v. GURDAT SINGH, **5 P.R. 1873.**

(169)—*Crim. Pro. Code* (1882), *s.* 488—*Maintenance— Procedure.*—In a maintenance case by a wife, the Magistrate should take evidence as to the means of the husband before deciding the amount of maintenance to be granted. Although the husband expresses his willingness to take his wife into his house and to provide for her, she should be asked whether she is willing to go back to him. PARASRAM v. DURGA, **A.W.N. 1883, 233.**

(170)—*Crim. Pro. Code Act* X *of* 1882, *s.* 488—*Mahomedans—Divorce.*—Where in an application for enforcing an order for maintenance, the husband (a Mahomedan) pleads divorce, the Magistrate should inquire when the divorce took place and allow maintenance till such date and for three months after. ZEBUNNISSA v. MENDU KHAN, **A.W.N. 1885, 29.** [*Diss.*, 15 A. 143 ; *F.*, 19 A. 50=A.W.N. 1896, 173 ; *R.*, 5 P.R. 1905=85 P.L.R. 1905= 2 Cr. L.J. 40.]

(171)—A Magistrate ordered a husband to maintain his wife. Against this order, the husband appealed to the High Court. Subsequent to this, an agreement was passed between the parties; but the husband did not act up to it. On the application of the wife to enforce the former order, it was *held* that the Magistrate was right in not enforcing it, as it had become inoperative; but that if the wife applied again under s. 488, Crim. Pro. Code, the Magistrate should deal with any fresh application on the merits. *In the matter of* GOOLBAI, **Cr. Rg. 8 of 1888.**

(172)—*Crim. Pro. Code* (1882), *s.* 488—*Order for maintenance—Application for cancellation of order on plea of adultery—Proof of adultery.*—An applicant for cancelment of an order for maintenance on the ground of the wife's adultery placed the following evidence before the Court in proof of adultery. (1) Three out of nine witnesses examined by the applicant disowned all or any knowledge of the misconduct imputed to the applicant's wife. (2) One of the witnesses said that he considered the woman adulterous because she went continually to the bazaar. (3) The remaining witnesses considered her adulterous because men went to the house where she lived. But other people including the woman's mother lived in that house. *Held*, that the evidence was absolutely worthless to cancel the order for maintenance. SHYAMA v. MADHO, **A.W.N. 1893, 56.**

(173)—*Wife, when not entitled to separate maintenance.*—An order for the separate maintenance of a wife cannot be passed on the ground of incompatibility of temper and of the presence of a second wife. DHERA SINGH v. NANDO, **2 P.R. 1878, Cr.**

(174)—*Refusal by wife to live with her husband.*—A wife is not entitled to claim maintenance if she, without proof of adultery or habitual ill-treatment on the part of the husband, refuse to live with him. MUSSUMAT GOORDITTA v. KHAN CHAND, **30 P.R. 1867, Cr.** MUSSUMAT MULKA v. AHMED, **21 P.R. 1870, Cr.**

(175)—*Agreement to live separate.*—Where the husband and wife agree to live separate, and the wife sues the husband by consent, *held*, that s. 316, of Act XXV of 1861, is not applicable. NUBBEE SHAH v. SYDA BANO, **55 P. R. 1866, Cr.**

(176)—*Infant wife.*—An infant wife living with her guardian is entitled to maintenance from the husband. MUSSUMAT MEHRAN v. IMAM DEEN, **22 P.R. 1869, Cr.**

(177)—*Step-grandmother.* — A step-grandmother is not entitled to an order for maintenance. MUSSUMAT KURM BHURREE v. PEERAN DITTA, **20 P.R. 1868, Cr.**

(178)—*Immoral wife.*—A wife leading an immoral life is not entitled to maintenance, until she amends her conduct at least. MOOSUMAT BOODHN v. GOLAB SINGH, **50 P.R. 1866, Cr.**

(179)—*Order for maintenance of children—Jurisdiction of Criminal Courts.*—Although an order for maintenance may be made to a wife,

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notwithstanding an offer to maintain her on condition that she lives with him, there is no similar provision as to children. A Criminal Court has no jurisdiction, merely because the father refuses to make a money allowance to children, who prefer to remain with their mother apart from him, to make an order that he shall do so; nor in a summary proceeding under s. 488, Crim. Pro. Code, is the Court competent to enter upon an enquiry into the fitness or unfitness of the father to act as guardian of his children. MAN SINGH v. DHARMAN, **18 P.R. 1894, Cr.** [*F.*, 21 P.W.R. 1914, Cr.]

(180)—*Jurisdiction.*—S. 177, Crim. Pro. Code, does not determine the place of enquiry in proceedings under s. 488, as the neglect or refusal mentioned in the section is not an offence as defined in s. 4 of the Code. The jurisdiction in proceedings under s. 488 is determined solely by the place in which the husband or father is present. BISHEN DAS v. MUSST. NANAKI, **3 P.R. 1893, Cr.** (5 N.W.P. 237, 9 B. 40, 13 A. 348, 9 P.R. 1883, 13 P.R. 1885, *R.*) [*R.*, 19 P.R. 1903, Cr.]

(181)—*Agreement between husband and wife—Jurisdiction of Criminal Courts.*—Where, on an application by a wife for maintenance the Magistrate passed an order in accordance with an agreement between the husband and wife, and the husband, subsequently, applied for cancellation of the order, which the Magistrate did, *held*, that the proper course would be to refuse to entertain the application. But the Chief Court refused to interfere with the order cancelling the previous order, as the first order should never have been made, an agreement between husband and wife not being enforceable under s. 488, Crim. Pro. Code, 1882. MUSSAMMAT FAZL-UN-NISSA v. CHIRAGH DIN, **12 P.R. 1890, Cr.**

(182)—*Allowance to child, whether can be cancelled.*—An allowance granted to a child cannot be cancelled under s. 488, though it may be altered under s. 489, Crim. Pro. Code, 1882. A Magistrate has no jurisdiction, in a proceeding under s. 488, to determine as to who is entitled to the custody of a child. MT. MEHTAB BIBI v. ALLA BAKHSH, **17 P.R. 1885, Cr.**

(183)—*Arrears—Jagir income.*—The jagire income of a person in the hands of the Tahsildar, can be taken in satisfaction of arrears due in respect of an order under s. 488. SIRDAR RAGHBIR SINGH v. MELA SINGH, **3 P.R. 1889, Cr.**

(184)—*Agreement between parties as to maintenance—Power of Criminal Court to enforce agreement.*—Where, subsequent to an order for maintenance, the wife applied for arrears of maintenance, but eventually both the parties came to an agreement that, for the future, if the wife resided in the house provided by the husband, she should get her monthly maintenance, and, if not, it should be stopped, and an order to this effect was made by the Magistrate, *held*, that such an agreement had the effect superseding the previous order of maintenance, and whatever rights it might give rise to in a Civil Court, neither the agreement, nor the order was one that could be enforced summarily under s. 488, Crim. Pro. Code. MUSSAMMAT RAHIM BIBI v. KHAIR DIN, **42 P.R. 1888, Cr.**

(185)—*Mother of illegitimate child accepting a sum in lieu of claim for maintenance—Child whether bound by the agreement.*—Where the mother of an illegitimate child accepted a certain amount in lieu of any further claim for maintenance, by herself or her child, *held*, that such agreement was not binding on the child or any person who might become the guardian of the child subsequent to the death of the mother, when there was nothing to show that the agreement was really for the benefit of the child. REV. FATHER HILDEPHONSUS v. MALONE, **13 P.R. 1885, Cr.** (9 P.R. 1883, Cr., *R.*) [*F.*, 154 P.L.R. 1914; *Appr.*, 5 P.R. 1914, Cr.; *R.*, 3 P.R. 1893, 19 P.R. 1903, Cr.]

(186)—*Order for payment of grain and cotton.*—A maintenance order can only direct the payment of a money allowance. It is not competent, therefore, for a Magistrate, to order in the alternative the payment of a certain quantity of cotton and grain. EMPRESS v. CHUHAR SINGH, **3 P.R. 1887, Cr.**

(187)—*Wife when entitled to maintenance.*—Where the husband offers to receive his wife, no order can be passed unless he is living in adultery or habitually treats his wife with cruelty. EMPRESS v. CHAJJU, **31 P.R. 1887, Cr.**

(187-*a*)—*Denial by husband of the petitioner being his wife—Magistrate's duty.*—Where the defendant, in a maintenance proceeding, denies that the petitioner is his wife, the Magistrate is bound to decide the question himself, and should not refuse to order maintenance till a Civil Court decides that point. MUSSAMMAT LADO v. PANNU, **11 P.R. 1881, Cr.**

(188)—*Minor wife, whether entitled to separate maintenance.*—The only grounds, upon which a husband can be compelled to pay maintenance to his wife, whom he offers to maintain in his house, are those stated in the last paragraph but one of s. 536, Crim. Pro. Code, 1872. A Magistrate is not competent to award maintenance merely because the wife is a minor and it will be better for her to live with her parents. JHANDO v. EMPRESS, **1 P.R. 1882, Cr.** (15 P.R. 1880, Cr., *Appr.*)

(189)—*Arrears—Warrant for payment of the whole sum due—Order for maintenance—Cancellation.*—Where several monthly payments of maintenance are due at one time, the whole sum can be levied by one warrant. Maintenance allowance ceases to be claimable if the wife is found to be living in adultery, or refuses to live with her husband without any sufficient reason. MUSSAMMAT ANUP KAUR v. RICHPAL SINGH, **31 P.R. 1880, Cr.**

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(190)—*Order for maintenance, when can be altered—Crim. Pro. Code* (1872), *ss.* 536, 537.—Per *Barkley, J.*—An order under s. 537 can be passed not only on the ground of a change in the pecuniary circumstances of the parties, but also on a change in any of the circumstances which might be taken into consideration in passing an order for maintenance. Per *Brandreth, J.*—When it is proved that the wife is living in adultery or refuses to live with her husband without sufficient reason, an order under s. 536, Crim. Pro. Code, 1872, can be cancelled. MUSSAMMAT GURDEVI v. GANDA SINGH, **28 P.R. 1880, Cr.**

(191)—*Mahomedan husband—Non-payment of prompt dower.*—Where the husband is willing to maintain his wife, the fact of the prompt dower not being paid is no ground for a separate order for maintenance. MEHTAB BIBI v. DINA, **15 P.R. 1880, Cr.** [*Appr.*, 1 P.R., 1882, Cr.; *R.*, 31 P.R. 1882, Cr.]

(192)—*Divorced Mahomedan wife*—Iddat.—A divorced Mahomedan wife is entitled to maintenance during her *iddat.* GHULAM RUKIA v. NIAZ ALI, **5 P.R. 1905, Cr. = 85 P.L.R. 1905 = 2 Cr. L.J. 40.** (5 A. 226, 19 A. 50, F.B. *F.*; A.W.N. 1885, 29, *Diss.*; 5 C. 558, *R.*)

(193)—*Negligence to pay the amount—Imprisonment.*—A person who had wilfully not paid the maintenance awarded by a Magistrate for several months could be imprisoned for more than a month. MANO v. KAKA, **12 P.R. 1877, Cr.**

(194)—*Plea of divorce—Competency of Magistrate to pass orders regarding custody of children.*—Where a Mahomedan husband pleaded that the wife was not entitled to maintenance as he had divorced her and paid her dower, *held*, that the Magistrate acted wrongly in awarding maintenance, without taking evidence on the plea of divorce. The case was ordered to be retried. *Held*, further, that in such a proceeding, the Magistrate was not competent to pass any order regarding the custody of children. MUSSUMAT AZIMAN v. PIR BAKHSH, **1 P.R. 1876, Cr.**

(195)—*Suit for recovery of arrears of maintenance ordered by a Criminal Court.*—Arrears of maintenance due under an order passed under Act X of 1872, could not be recovered by a suit. The procedure prescribed by the Code should be adopted. MUSSUMAT BISHEN DEVI v. MANA SINGH, **2 P.R. 1876.**

(196)—*European British subjects.*—The provisions as to maintenance in Act XXV of 1861, were held to apply to European British subjects. BRATBY v. BRATBY, **10 P R. 1871, Cr.**

(197)—*Period prior to that of complaint.*—Maintenance under Act XXV of 1861 could not be granted for any period prior to the date of complaint. MUSSUMAT OMREE v. ELAHEE BUKSH, **3 P.R. 1870, Cr.**

(198)—*Order based on agreement between parties—Enforcement.*—A Criminal Court cannot enforce an order for maintenance passed in accordance with a compromise entered into between the parties. RAHAM ALI v. FATEH BIBI, **2 Cr. L.J. 690 = 39 P.R. 1905, Cr. = 108 P.L.R. 1905.** (42 P.R. 1888, *F.*)

(198-*a*)—*Husband's father, liability of.*—An order for maintenance, under s. 488, Crim. Pro. Code, 1898, against the husband's father is not sanctioned by the section. CROWN v. MIRAN, **26 P.R. 1903, Cr. = 25 P.L.R. 1904 = 1 Cr. L.J. 110.** [*R.*, 12 P.R. 1914, Cr.]

(198-*b*)—*Personal attendance of petitioner.*—It is within the discretion of the Magistrate to dispense with the personal attendance of a *purdanashin* lady, as the section does not require the personal attendance of the petitioner. GHULAM RAKIYA v. NIAZ ALI, **19 P.R. 1903, Cr. = 168 P.L.R. 1903.** (3 P.R. 1893, Cr., 13 P.R, 1895, Cr., 41 P.R. 1887, Cr., 5 A. 92, 12 A. 69, 15 C. 775, 21 C. 588, 16 C. 781, *R.*) [*D.*, 5 P.R. 1905, Cr.]

(199)—*Order of maintenance—Cancellation.*—Where, on an application for the enforcement of an order under s. 488, Crim. Pro. Code, 1898, the husband alleged (1) that the wife was of bad character, (2) that she had agreed to take a less amount than that awarded by the Court and (3) that he would take, and live with her, if she be of good chracter, *held*, that the wife was not entitled to maintenance, if the husband succeeded in proving any one of his pleas. CROWN v. UTTAM SINGH, **36 P.R. 1902, Cr.**

(200)—*Cancellation of order—Divorce of wife.*—Where, after an award of maintenance to a wife, the husband alleges that he has lawfully divorced her and that she is, therefore, not entitled to maintenance; *held*, the Magistrate is bound to enquire into that plea, and to refuse to enforce the order from the date of the operation of the divorce, if the divorce is established. The conditions specified in s. 490, cl. 2, cannot be considered exhaustive. The cancellation or alteration of the order for maintenance can be sought for on any of the grounds mentioned in ss. 488, 489, Crim. Pro. Code. BAJI v. NAWAB KHAN, **21 P.R. 1894, Cr.**

(201)—*Justification for wife leaving husband—Unkindness or neglect short of cruelty—Wife when entitled to separate maintenance—Crim. Pro. Code*, 1872, *s.* 536.—Under the Hindu law, mere unkindness or neglect short of cruelty would not be a sufficient justification for a wife in leaving her husband's house. The Crim. Pro. Code of 1861, and the Crim. Pro. Code of 1872, recognize the right of the wife to leave her husband in certain cases of cruelty. Consequently, unless a husband refuses to maintain her in his house or has been guilty of acts of cruelty which would justify her in leaving his protection, she is not entitled to a separate maintenance. SITANATH MOOKERJEE v. SREEMUTTY HAIMABUTTY DABEE, **24 W. R. 377.**

(202)—Although in a suit for restitution of conjugal rights by a Mahomedan husband, the wife had successfully met the claim with the

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plea of unpaid prompt dower, *held*, that that was no sufficient ground for refusal to live with her husband, for purposes of s. 488, Crim. Pro. Code, and that she was not entitled to a separate maintenance. SADAR DIN v. MUSST. SUBAN, **6 P.R. 1888, Cr.**

(203)—*Crim. Pro. Code*, s. 316—*Order for maintenance—Subsequent proof of adultery.*—It is open to the husband against whom an order for maintenance has been passed under s. 316 of the Crim. Pro Code, to prove that his wife is living in adultery and to have the order cancelled. CHAKU v. ISHWAR BHUDAR, **8 B.H.C Cr. 124.** [*F.*, 5 A. 224 ; *R.*, 5 N.L.R. 19; *Rel.*, 9 Cr.L.J. 390 = 1 Ind Cas. 801 = 5 N.L. R. 19.]

(204)—*Crim. Pro Code* (1898), *s.* 488 (= *Crim. Pro. Code*, 1872, *s.* 535).—Where a Magistrate made an order under s. 536, Crim. Pro. Code, 1872, ordering the husband to pay a monthly sum for the maintenance of his wife, the High Court set it aside on the ground that the husband had not been required to maintain the wife, who had, up to that time, lived with her father, and that the father had refused to let the wife live with her husband without receiving money for him. An order for maintenance cannot be made by a second class Magistrate. Where the law empowers Magistrates of a particular grade to do a particular act or make a certain order, it should always appear upon the proceedings that the Magistrate making the order or doing the act is a Magistrate who had jurisdiction to do it. MUSST. SOWREE v. JITUN SONAR, **22 W.R.Cr. 30.**

(205)—*Willingness of husband to take charge of children—Crim. Pro. Code* (*Act* XXV *of* 1861), *s.* 316.—On an application by a wife for maintenance under s. 316, Act XXV of 1861, the Magistrate held that she had failed to establish her right to maintenance under that section, but he awarded maintenance to her for her two infant children, though the husband stated he was willing to take charge of them, provided they lived with him. *Held*, the order was illegal. PANCHU DAS v. SRIMATI SHUDHA MAYI, **8 B.L.R. Ap. 19 = 16 W.R. Cr. 72.**

(206)—*Complaint—Maintenance—Refusal to pay maintenance—Code of Criminal Procedure*, ss. 488 *and* 437.—When an order for maintenance is refused by a Magistrate under s. 488 of the Code of Criminal Procedure the District Magistrate is not empowered to make a further inquiry under s. 437 of the Code. MT. PARBATI v. CHOTEY, **17 C.P.L R. 127, Cr. = 1 Cr.L.J. 864.**

(207)—*Procedure in maintenance cases—Crim. Pro. Code* (1872), s. 536—*Mode of recording evidence—See* HURI KISHORE MALO v. BHAROTI JELYANI, **24 W.R. Cr 61.**

(208)—*Crim. Pro. Code* (1861), *s.* 316—*Procedure*—Though Ch. XXI of the Crim. Pro. Code does not provide for the recording of evidence, yet the words "due proof" used in s. 316 must mean "Legal proof," *i.e.*, proof on oath. Before a party is bound down under the

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provisions of that section, the charge must be legally proved against him. GONDA v. PYARI DASS GOSSAIN, **13 W.R. Cr. 19.**

(209)—*Maintenance of wife—S.* 316, *Code of Criminal Procedure.*—An order made by a Magistrate under s. 316 of the Code of Criminal Procedure must be founded upon proof in the same proceedings, and not upon knowledge acquired by him in some other case. LOPOTEE DOMNEE v. TIKHA MOODAI, **8 W.R. Cr. 67.**

(210)—*Ground for allowing maintenance—Inability to live together.*—Mere inability of a husband and wife to agree to live together is no ground for decreeing a separate maintenance to the wife. MUSSAMUT JESMUT v. SHOOJANT ALI, **6 W.R. Cr. 59.**

(211)—*Maintenance—Force of Civil Court's decree.*—Where a Criminal Court ordered a husband to pay a sum of money monthly towards the maintenance of his wife and children, and a Civil Court subsequently, on the suit of the husband for restitution of conjugal rights, gave the husband a decree, it was held that the order of the Criminal Court ceased to have any effect from the date of the decree of the Civil Court. LUTPOTEE DOOMONY v. TIKHA MOODOI, **13 W.R. Cr. 52.**

(212)—*Maintenance* (*of illegitimate child*)—*Code of Criminal Procedure*, s. 316—*Jurisdiction—Decision of Civil Court.*—A decision of the Civil Court, refusing to enforce a contract or agreement against a man for the maintenance of a woman, cannot conclude either the woman from applying, or a Magistrate from making an order, under s. 316 of the Code of Criminal Procedure, for the maintenance of their illegitimate daughter. *In re* JOHN MEISELBACK, **17 W.R. Cr. 49.**

(213)—*Order as to paternity of child.*—The order of a Civil Court as to the paternity of a child has no effect on a contrary order of the Criminal Court making the putative father, whom the order of the Civil Court had exonerated, liable for maintenance. SUBAD DOMNI v. KATIRAM DOME, **20 W.R. Cr. 58.**

(214)—*Crim. Pro. Code* (1872), s. 536—*Security for performance of order, for maintenance—Jurisdiction.*—The powers of a Magistrate in maintenance cases are defined in s. 536, Crim. Pro. Code, and the Magistrate cannot go beyond them. To demand security, therefore, that a person against whom an order for maintenance has been made will not leave the place in order to provide by anticipation for any default that may possibly occur is not legal. KANOO SOUDAGUR v. ALABUNDEE BEWA, **24 W.R. Cr. 72.**

(215)—*Effect of order for maintenance—Suit for maintenance.*—S. 316 of Act XXV of 1861 is no bar to a suit in a Civil Court by a wife against her husband for maintenance. MANNOO BEBEE v. NUND KISHORE LALL, **6 W.R. 87.**

(216)—*Maintenance allowance, reduction of—Crim. Pro. Code* (1861), s. 317.—Where a maintenance order is made with reference to the

Maintenance—*concluded.*

means of the husband, he should apply, under s. 317, Crim. Pro. Code, 1861, if he is aggrieved, for any reduction of the allowance. GOYAMONEY SURINEE v. MOHESH CHUNDER SHAHA, **9 W.R. Cr. 1.**

(217)—*Maintenance—Husband and wife—When wife is entitled to be maintained by living separate from him—Rate when may be reduced.*—*Held*, that, where the breach between husband and wife is irremediable and it is quite impossible for the latter to return to the former after many years' separation without leading to fresh trouble and dispute, she is entitled to maintenance by living separate from him. *Held*, also, that the rate of maintenance should be reduced when the husband's income falls down. NIHAN KAUR v. SARDAR BHAGWAN SINGH, **26 P.W.R. 1914. Cr.=170 P.L.R. 1914=15 Cr. L J. 554=24 Ind. Cas. 962.**

(218)—*Points for enquiry by Magistrate.*—Age up to which allowance for maintenance of child payable. MAUNG YIT v. MANI, **U.B.R. 1892—1896, Vol. I, 59.**

See ACT I OF 1877, s. 42, 100 P.L.R. 1903.

See BOM. ACT XLVIII OF 1860, s. 10, 8 B. H. C. Cr. 95.

To illegitimate child—*See* APPEAL—CASES WHERE APPEAL DOES NOT LIE, 2 Ind. Jur. N.S. 88=7 W.R. Cr. 10

See COMPLAINT—WHAT IS, AND WHO SHOULD INSTITUTE, 13 P.R. 1885, Cr.

Imprisonment on non-payment of, to wife, order of—Reference by Sessions Judge to High Court on point of law—*See* CRIM. PRO. CODE, 1898, ss. 435, 438, 488 (3), 5 O.C. 316.

Entry by ex-communicated wife into the husband's house for demanding—*See* HOUSE-TRESPASS, 1 Weir 523.

See JUDICIAL PROCEEDINGS, 5 A. 224.

See JURISDICTION OF CIVIL COURTS, 158 P.L.R. 1901.

See MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION, U.B.R. 1904, 1st Qr., Cr. P.C. 10

See MAGISTRATE, JURISDICTION OF—MISCELLANEOUS, 22 W.R. Cr. 30.

See REVISION — GENERAL PRINCIPLES, 16 B. 269, 5 B.H C. Cr. 81.

Nature of imprisonment for arrears of—*See* SENTENCE—IMPRISONMENT—GENERAL, 9 A. 240=7 A.W.N. 54.

Malabar, Compensation for Tenants' Improvements, Act.

See MAD. ACT I OF 1900.

Malabar Law.

Crim. Pro. Code, s. 488 (4)—Parties governed by Marumakkatayam law—Order for maintenance—Father willing to receive and maintain child—Effect—Meaning of 'unable to maintain'—Effect of tarwad being well-to-do

Malabar Law—*concluded.*

—Person entitled to the custody of the child—*See* CRIM. PRO. CODE, 1898, s. 488 (4), 14 M. L.T. 223=25 M.L.J 355=1913 M.W.N. 997 =21 Ind. Cas. 469=14 Cr.L.J. 597.

Duty of father to maintain the child born of Nayar woman—*See* MAINTENANCE, 3 M. L.J. 281.

Malabar Marriage.

See PENAL CODE, s. 498, 6 M. 374=1 Weir 560.

Malguzar.

See PENAL CODE, s. 98, 10 N.L.R. 38=15 Cr.L.J. 352=23 Ind. Cas. 704.

Malice.

See MALICIOUS PROSECUTION.

(1)—*Action for damages for malicious prosecution—"Malice," defined.*—The term "malice" in an action for damages for malicious prosecution is not to be considered in the sense of spite or hatred against an individual, but of *malus animus*, and as denoting that the party is actuated by improper and indirect motives. BHIM SEN v. SITA RAM, **24 A. 363= A.W.N. 1902, 92.**

Malice of complainant — *See* COMPLAINT —DISMISSAL OF COMPLAINT, Rat. Un. Cr. C. 549=Cr. Rg. 24 of 1891.

Presumption of—Rebuttal—*See* DEFAMATION, 1 Weir 607.

See DEFAMATION, 9 Bom. L.R. 230=5 Cr. L.J. 237=31 B. 293, 7 A. 906=A.W.N. 1885, 272, 11 C.W.N. 390=5 Cr.L.J. 160.

Malice in law — Malice in fact — *See* DEFAMATION, 6 M. 381=1 Weir 595.

See PENAL CODE, s. 153, 18 B. 758.

See WRONGFUL CONFINEMENT, 13 B. 376.

Malicious Attachment.

(1)—*Malicious attachment—Suit for damages.*—In an action for malicious attachment, the plaintiff should show that the defendant has acted with malice as well as without reasonable or probable cause. CHOWDHAREE SHEORAJ SINGH v. DWARKA DOSS, **4 N.W.P. 42.**

Malicious Prosecution.

(1)—*Malicious prosecution—English Law.*—The law applicable in India with regard to suits for malicious prosecution is the same as was laid down by the House of Lords in *Abrath* v. *North Eastern Railway Co.*, 11 App. Cas. 247. GULABCHAND v. CHUNILAL, **9 Bom. L.R. 1134.**

(2)—*Prosecutor in a criminal case.*—In an action for damages for malicious prosecution, the person who can be made liable is the prosecutor. The determination of the question, as to who is the real prosecutor, depends upon all the circumstances of the case. The mere setting of the law in motion is not the criterion, nor is it enough to say that the prosecution was instituted and conducted by the police; the conduct of the complainant before and after making the charge, his means of information

Malicious Prosecution—*continued.*

and motives must also be taken into consideration. The foundation of an action for damages for malicious prosecution is malice, and malice might be shown at any time in the course of the enquiry, a prosecution commenced *bona fide* may become malicious in any stage through which it has to pass. GAYA PRASAD v. BHAGAT SINGH, 30 A. 525, P.C = 12 C.W.N. 1017 = 4 M L.T 204 = 18 M.L.J 394 = 5 A L.J. 665 = 10 Bom. L R. 1080 = 8 C.L.J. 337 = 11 O C. 371, 35 I.A. 189. (26 M. 362, *D.*; 9 C.B.N S. 505, *R.*) [*R*, 12 Cr.L.J. 14 = 9 Ind. Cas. 137.]

(3)—*Suit for malicious prosecution—Reasonable and probable cause—Its meaning.*—In a suit for damages for malicious prosecution, the plaintiff, in order to succeed, must prove not only that the charge was unfounded and was instituted through malice, but also that it was without reasonable and probable cause. The fact that a Magistrate believed in the truth of the complaint and convicted the plaintiff, though the appellate Court set aside the conviction, is sufficient evidence of reasonable and probable cause. JADUBAR SINGH v. SHEO SARAN SINGH, 21 A 26 = A.W.N. 1898, 161. (3 M H.C.R. 238, *F.*) [*R.*, 26 M. 506. 12 C W. N. 818 (N), 6 Ind. Cas. 675, 18 Ind. Cas. 830, 2 L.B.R. 111, 176 P L R. 1901, U.B.R 1906 Tort 5; *D.*, 10 A.L.J. 423 = 17 Ind. Cas. 879.]

(4)—*Reasonable cause—View of trying Court—Reasonable and probable cause.*—In a suit for damages for malicious prosecution, it is important to see how the charge has been treated by the criminal authorities, and when it is found that the plaintiff has actually been convicted by one Court, the Civil Court may regard it as a weighty circumstance to show that the defendant acted from some adequate cause, and not maliciously. GANGA RAM v. HOOLASEE, 2 N. W.P. 88.

(5)—*Reasonable and probable cause, what is.*—The phrase "reasonable and probable cause," as used in an action for damages for malicious prosecution, may be defined as an honest belief in the guilt of the accused, based upon a full conviction founded upon reasonable grounds of the existence of a state of circumstances which, assuming them to be true, would reasonably lead any ordinarily prudent and cautious man placed in the position of the accused to the conclusion that the person charged was probably guilty of the crime imputed. The mere absence of reasonable and probable cause does not of itself justify the conclusion, as a matter of law, that an act is malicious. It is not identical with malice; but malice may, having regard to the circumstances of the case, be inferred from it. BHIM SEN v. SITA RAM, 24 A. 363 = A.W. N. 1902, 92.

(6)—*Suit for damages for malicious prosecution, when would lie—Want of "reasonable and probable cause"—Malice in law—Nominal damages.*—Where no complaint whatever was made by the defendant against the plaintiff, but, in the course of his examination upon oath as a witness in a trial against others who assaulted him, the defendant connected the plaintiff with the assault, though he carefully abstained from lodging a complaint against the plaintiff, but a prosecution was directed by the Magistrate *suo motu*, *held*, that an action for malicious prosecution would not lie under such circumstances. DUDHNATH KANDU v. MATHURA PRASAD, 24 A. 317 = A.W.N. 1902, 75.

(7)—*Reasonable and probable cause—Malice.*—To sustain an action for malicious prosecution, five factors must co-exist, (1) a prosecution of the plaintiff by the defendant, (2) want of reasonable and probable cause for the prosecution, (3) malice, express or implied, (4) the determination of the prosecution in favour of the party prosecuted, (5) loss or damage caused to that party by the prosecution. If any one of these factors is absent, no action will lie. Where the plaintiff was prosecuted by the defendant and convicted by the original Court for defamation, and the conviction was upheld on appeal, but set aside by the Chief Court on revision, the defamatory statements being found substantially true, it must be held that the defendant had no reasonable or probable cause for the charge, and that the charge was malicious in the legal sense. The plaintiff was awarded only nominal damages. BADRI DAS v. BABU NATHU MAL. 176 P L.R. 1901 = 112 P.R. 1901, Cr.

(8)—*Criminal prosecution—Reasonable and probable cause—Acquittal—Civil suit for damages against complainant—Probable and reasonable cause—Previous prosecution under s. 211, I.P.C., if essential.*—Where, on a complaint made by the defendant, a Sub-Magistrate convicted the plaintiffs under ss. 143 and 379, Penal Code, and on appeal the conviction was quashed and a suit for damages was instituted by the plaintiff against the defendant, *held*, that, in deciding whether the defendant had reasonable and probable cause for instituting the complaint, the judgment of the Sub-Magistrate was no doubt some evidence of reasonable and probable cause, but was not conclusive, and it was necessary that the effect of the judgment in appeal should also be considered. A suit for damages for preferring a false complaint is maintainable without instituting, previous to such suit, a criminal prosecution under s. 211, Penal Code. VIRANNA v. NAGAYYAH, 3 M 6 = 5 Ind Jur. 467.

(9)—*Reasonable and probable cause—Damages.*—Where the defendant had just grounds for setting the Criminal Law in motion against the plaintiff, in respect of an imputation made against the defendant, and where there was nothing to show that he was actuated by malicious motives in doing so, *held*, that the plaintiff was not entitled to damages for any injury or loss arising out of such prosecution, nor for the costs incurred by him in his defence before the Criminal Courts. KISHOREE LALL v. ENAET HOSEIN KHAN, 1 N W P. 71.

(10) *Malice in law—Reasonable and probable cause—Burden of proof.*—To report to the

Malicious Prosecution—*continued.*

police in good faith, even mistakenly, cannot involve legal malice unless gross carelessness be an ingredient in the proceeding. In a suit for compensation for malicious prosecution, it does not rest entirely on the accused (defendant) to rebut the *prima facie* evidence arising from the finding of the criminal Court in favour of accused (plaintiff) by showing that he had reasonable and probable cause. The judgment of the Criminal Court is admissible in the suit as a relevant fact. FEROZSHAH DOSSABHOY DARRAH v. J. W. WOUTERSZ, **73 P.L.R. 1902 = 60 P R. 1902, Cr.** (1 C.W.N. 537, *R.*)

(11)—*Torts—Making a statement to the police —Prosecution in consequence—Liability.*—If a man makes a false and malicious statement to the police with the intention of setting the criminal law in motion against his enemy, and if, as a consequence of his statement, criminal proceedings follow, he is liable in damages, in a suit for malicious prosecution. BANDI v. RAMADIN, **6 A L J 516 = 2 Ind Cas. 424 = 5 M.L.T. 387.** (12 C.W N. 1017, *F.*)

(12)—*Suit for damages—Prosecution started by police upon information from defendant—Real prosecutor liable.*—A private individual, upon whose information to the police a prosecution was started, cannot escape liability for damages for malicious prosecution by urging that the police, and not he, prosecuted, if it appears that he himself was the real prosecutor. HARI CHARAN SANT v. KAILASH CHANDRA BHUYAN, **12 C.W N 817 = 36 C. 278 = 1 Ind Cas. 970.** (12 C.W.N. 1017, *F.*)

(13)—*Damages with respect to—False information to Magistrate—"Prosecutor," meaning of—Information leading to proceedings for taking security—Crim. Pro. Code, ss.* 107 *and* 110. *Held*, that where a person lays an information before a Magistrate that a certain person is of bad character and should be bound over to be of good behaviour, and in consequence of the information, proceedings are instituted against him under s. 110 of the Code of Criminal Procedure, and the information turns out to be false, he ought to be considered to have set the law in motion against such person on a criminal charge and is liable for damages on account of malicious prosecution. It is not necessary that there should have been a prosecution of the plaintiff by the defendant for an offence described in the Indian Penal Code; if a person sets the Criminal law in motion, he must be treated as a "*prosecutor*" and as such liable to a claim for damages. KHWAJA SAIYID KAZIM HUSAIN v. MUNSHEE SHAMSUDDIN, **9 O C 357.**

(14)—*Malicious prosecution—Reasonable and probable cause—Malice—Justification.*—The question of reasonable and probable cause does not arise in a case of malicious prosecution where the charge was one which the person complaining must have known to be true or false and in which there could be no mistake. The bringing of a charge known to be false implies sufficient malice, to support a civil action. In a suit for malicious prosecution, where the defendant pleads justification, the defence, if it fails, may be taken into account in assessing damages. HIRA LAL v. BANDHU BHAGAT, **A.W.N. 1889, 189.**

(15)—*Malicious prosecution—Malice—Reasonable and probable cause.*—In a suit for malicious prosecution, the question to be considered is, whether the defendant had reasonable and probable cause to institute the prosecution. While malice may be inferred from the absence of such cause, want of reasonable and probable cause cannot be presumed from mere proof of malice. The most vindictive motive will not make a man liable, if he had grounds for believing that the plaintiff had committed the offence for which the prosecution was laid. DWARKA DAS v. HARIHAR DAT, **A W.N. 1884, 1.**

(16)—*Proof of reasonable and probable cause.*—If the charge were found to be false, the *onus* would be on the defendant to show that he had reasonable and sufficient cause for making the charge; and on his failure to show any such cause, malice may be inferred. BISWANATH RAKIT v RAMDHAN SIRKAR, **6 B L.R. 375, Note = 11 W R. 42.**

(17)—*Reasonable and probable cause, want of.*—In an action for damages for a malicious prosecution, it is not sufficient to prove merely the dismissal of the charge. It must be proved that the prosecution was without reasonable and probable cause. BABOO GUNESH DUTT SINGH v. MUGNEERAM CHOWDHRY, **11 B.L. R. P C. 321 = 17 W R. 283** [*F*, 24 M 59 14 B. 97, *Appr.*, 20 W.R 177, 27 C. 262, 11 M. 477, 17 B. 127, 573; *R.*, 19 B 340, 25 B 230, 36 M. 216 = 1912 M W N 476 = 11 M L.T. 416 = 23 M.L.J. 39 = 14 Ind. Cas. 659 = 13 Cr. L J. 275; *Cons.*, 23 C. 867; *D.*, 19 B. 340, 25 B. 230, 40 C. 433 = 17 C W N 297 = 14 Cr L.J. 100 = 18 Ind. Cas. 660.]

(18)—*Proof of malice or reasonable cause—Costs.*—*Held* that, there being no proof that the defendant acted maliciously or without probable cause, the suit was not maintainable; and under the circumstances the defendant was entitled to his costs. DUNNE v. LEGGE, **1 Agra 38.**

(19)—*Action for damages—Burden of proof.*—In an action for damages for malicious prosecution, where it is found that the charge was made not maliciously, but with good and reasonable cause, the *onus* is on the plaintiff, though the charge against him was dismissed, to prove malice on the part of the defendant. Malice is not to be inferred merely from the acquittal of the plaintiff. SHEIK ROSHAN SIRKAR v. NABIN CHANDRA GHATAK, **6 B.L. R 377, Note = 12 W R. 402.** [*Expl*, 14 W.R. 425; *R.*, 19 B. 717]

(20)—Onus probandi—*Proof of malice and want of reasonable or probable cause.*—In an action for malicious prosecution, it is for the plaintiff to prove the existence of malice and

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want of reasonable or probable cause, before the defendant can be called upon to show that he acted *bona fide* and upon reasonable grounds, believing that the charge which he instituted was a valid one. MOHANT GAUR HARI DAS ADHIKARI v. HAYAGRIB DAS MOANT, 6 B.L.R. 371 = 14 W.R. 425. [*R.*, 19 B. 717.]

(21)—*Measure of damages—Substantial damages.*—Where a charge has been made against a person of having given false evidence in a judicial proceeding and the circumstances of the case show no reasonable suspicion, the Court will, on suit brought, award substantial damages. ANUNDLOLL DOSS v. JOINTEE CHUNDER SEN, 1 Ind. Jur. N.S. 93.

(22 & 23)—*Malicious prosecution—Charge of abetment of riot and murder—Suit for damages—Prosecution for perjury.*—A party can sue for damages on the ground of a malicious and groundless charge of being an aider and abettor in a riot and murder. If the charge is groundless and malicious, the parties making it are liable to a criminal prosecution for perjury. If the charge is dismissed for want of proof, damages cannot be awarded. MUGNEE RAM CHOWDHRY v. GONESH DUTT SINGH, 5 W.R. 134.

(24)—*Suit for damages for malicious prosecution—Acquittal, not sufficient evidence of malice*—Onus of proof—*See* DOONGRUSSEE BYDE v. GRIDHAREE MULL DOOGUR, 10 W.R. 439.

(25)—*Want of reasonable cause—Inference of malice*—*See* GANGA PERSHAD v. RAMPTUL SAHOO, 20 W.R. 177.

(26)—*Damages, suit for, for malicious prosecution—Reasonable and probable cause—Evidence*—In a suit for damages for malicious prosecution, the plaintiff must prove that there was no reasonable cause for bringing the accusation in the Criminal Court. The proceedings in the criminal court are no evidence to prove the plaintiff's allegations in the Civil Court. AGHORENATH ROY v. RADHIKA PERSHAD BOSE, 14 W.R. 339.

Discharge of accused by Presidency Magistrate, effect of—*See* ACT IV OF 1877, s. 87, 6 B. 376.

Suit for damages for—Burden of proof—*See* BURDEN OF PROOF, L.B.R. 1893-1900, 387.

See COMPOUNDING OFFENCE, 3 M. 6 = 5 Ind. Jur. 467.

Injury to reputation—*See* DAMAGES, 7 W.R. 117.

Suit for damages for,—Conviction by a criminal Court bars such suit—*See* DAMAGES, 2 L.B.R. 111.

See JURISDICTION OF CRIMINAL COURTS—GENERAL, 6 B.L.R. 141.

Malicious Statements.

See DEFAMATION, 3 L.B.R. 265.

Mamlatdar.

See BOM. ACT III OF 1876, s. 10, 26 B. 353 = 3 Bom. L.R. 919.

Order of—Appeal—*See* APPEAL—CASES WHERE APPEAL LIES, 9 Bom. L.R. 896 = 6 Cr. L.J. 225.

Jurisdiction of—invested with second class powers—*See* CRIM. PRO. CODE, 1898, s. 40, Rat. Un. Cr. C. 322 = Cr. Rg. 8 of 1887.

See PENAL CODE, ss. 99, 186, Rat. Un. Cr. C. 380 = Cr. Rg. 33 of 1888.

See PENAL CODE, s. 183, Rat. Un. Cr. C. 325 = Cr. Rg. 13 of 1887.

See SANCTION TO PROSECUTE—AUTHORITIES COMPETENT TO GRANT SANCTION, ETC., 7 B.H.C. Cr. 64.

See SANCTION TO PROSECUTE—CONDITIONS REQUISITE FOR GRANT OF SANCTION, ETC., 5 B. 137.

Mamlatdars' Courts Act.

See BOM. ACT V OF 1864.

See BOM. ACT III OF 1876.

See BOM. ACT II OF 1906.

Manager.

See CRIM. PRO. CODE, 1898, s. 145, 7 C.W.N. 208.

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 25 C. 423, 21 C. 915.

Manager of Estate.

See PUBLIC SERVANT, 21 A. 127 = A.W.N. 1898, 205, A.W.N. 1885, 297.

Mandamus.

(1)—*Return to writ—Sufficiency of—Land Acquisition Act* (VI of 1857).—By Act VI of 1857, s. 2 (for the acquisition of land for public purposes), it is enacted that, "wherever it appears to the local Government that any land is required to be taken by Government at the public expense for a public purpose, a declaration shall be made to that effect, under the signature of a Secretary to the Government, or of some Officer duly authorized to certify the orders of Government," etc. Therefore where the Justices of the peace for the Town of Calcutta were called upon by writ of mandamus issued out of the High Court at Calcutta to "continue and maintain the existing Wellington square tank as a public tank and to cause the same to be supplied with water, or forthwith to substitute another such public tank," etc., and they returned that, by a Notification published in the *Calcutta Gazette* on the 5th day of March instant, under the provisions of Act VI of 1857 of the Legislative Council of India, it was notified that, "Whereas it appeared to the Honourable the Lieutenant-Governor of Bengal that land was required to be taken by Government for a public purpose, *viz.*, for the Calcutta Water-works, it was thereby declared that for the above purpose a public tank and square known as Wellington Square, etc., was required," and proceeded to

Mandamus—*continued.*

justify under this notification, etc., *held* that the return was bad. REG v. JUSTICES OF THE PEACE FOR THE TOWN OF CALCUTTA, 2 Ind. Jur. N.S. 24.

(2)—*Refusal to proceed with a criminal charge during pendency of a civil suit—High Court's power to issue* mandamus.—A *mandamus* is the proper remedy when a Magistrate refuses to exercise his jurisdiction, whether such refusal be caused by wilfulness or error. It is a high prerogative writ and ought not lightly to issue. A Magistrate's errors of judgment cannot be corrected by a writ of *mandamus* to rehear. Where a Magistrate refused to enter upon a criminal prosecution until after the termination of the civil proceeding, pending at the time and connected with the criminal charge, the High Court refused to issue a writ of *mandamus* to the Magistrate to proceed with the case. *Ex parte* P. VARADARAJULU NAIDU, **2 Weir 22=2 Weir 248=2 Weir 418 =1 M.H.C. 66.**

(3)—*Refusal by company to register transfer of shares—Transfer signed by Judge of High Court—Civ. Pro. Code* (1859), *s.* 267.—Where a company refused to register a transfer of shares purchased by an execution-creditor, on the ground that no share certificate had been produced, and the sale had been confirmed, and the transfer signed by a Judge of the High Court, under Act VIII of 1859, s. 267, a writ of *mandamus* was directed to issue out of the Court, ordering the company to register the transfer of such shares, and to issue fresh share certificates in respect of them. QUEEN v. EAST INDIAN RAILWAY COMPANY, **Bourke O.C 395=1 Ind. Jur. N.S. 258.**

(4)—*Ground for issue of writ — Criminal charge in respect of civil suit pending — Duty of Magistrate.*—A *mandamus* will not issue to compel a Magistrate to proceed with a criminal charge in respect of any matter involved in, or affecting the merits of, a civil suit still pending. The proper course for a Magistrate to pursue in such a case is not to dismiss the summons, but to adjourn the hearing pending the decision of the Court in the civil action. QUEEN v. CLERK, **1 Ind.Jur. O S. 137.**

(5)—*Writ to compel Registrar to register transfer of ship.*—A *mandamus* will lie to compel the Registrar to register the transfer of a ship sold in execution of a decree; but where the form of transfer was not as it should have been, but quite irregular, having reference to the Merchant Shipping Act, the Court refused to issue a *mandamus*. *In the matter of the Ship* SHAH CALANDER, **1 Ind. Jur N S 263.**

(6)—*Pleading—Demurrer.*—The prosecutor, could not, in India, both plead and demur to a return to a writ of *mandamus*, without first obtaining the leave of the Court. REG v. EAST INDIAN RAILWAY COMPANY, **1 Ind. Jur. N.S. 244.**

(7)—*Small Cause Court, Calcutta.*—A *mandamus* lies from the High Court to the Small

Mandamus—*concluded.*

Cause Court to compel to act in accordance with law. *In re* TOOLSEE DOSS SEAL, **2 Ind. Jur. N.S. 133=7 W R. 228.**

(8)—*Act* XX *of* 1865, *s.* 16—*Charge of misconduct against pleaders and mooktears.*—Any charge of misconduct against a pleader or mooktear holding a certificate under the Act, other than a recorded conviction for a criminal offence, must be made and substantiated and a report submitted to the High Court as provided by s. 16. BROMO ROOP GOSSAIN v. ANUND MOYEE DEBIA, **7 W R 316.**

High Court's power to issue *mandamus* to commit case to it—*See* ACT X OF 1875, 2 C. 278.

See BEN. ACT VI OF 1863, s. 18, 2 Ind. Jur. N.S. 182.

Maps.

Order under s. 145, Crim. Pro. Code, reports and, referred to in such orders, admissibility and value of, as evidence—Evidence Act, s. 13—*See* CRIM. PRO. CODE, 1898, s. 145, 29 C. 187=29 I.A 24=6 C W N. 386, P.C.

Marginal Notes.

See BAIL, 6 C.P L.R. 31, Cr.

See STATUTES—CONSTRUCTION OF, 23 C. 55, 25 C. 858=2 C.W.N. 577, 1 M.L.J. 37.

Marked Money.

Person supplying — *See* ACCOMPLICE — GENERAL, 19 B. 363.

Market.

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY.

(1)—*Market, right to establish.*—Any person is entitled to establish a market on his own land, and the owner of a neighbouring market has no right of suit for the loss which may ensue from the establishment of a new market. KEDAR NATH v. RUGHONATH, **6 N W.P 104.** [*F.*, 29 A. 740=4 A L.J. 728=A W.N. 1907, 248.]

(2)—*Law relating to the establishment and carrying on of a market — Right to establish market—Permanent and itinerant stall keepers, rights of—Rights of* ijaradar.—In this country there is no special law for regulating the establishment and the carrying on of a market. The owner of the land may establish a market wherever on his own land and whenever he desires to do so, provided he does not commit an offence involving the disturbance of public peace by establishing a market close to another existing market. He may regulate the sales and the conduct of stall-keepers, provided his conduct does not disturb the public tranquility, or he does not commit any offence punishable by law. Permanent stall-keepers acquire a right to occupy the land as tenure-holders. They are not mere licensees like itinerant stall keepers. The latter are entirely under the control of the owner of the land and the market. The law does not limit the right of the owner

Market—*concluded.*

so far as mere licensees are concerned. The rights of the proprietor can be exercised by the *ijaradar* of the market. NANDA KUMAR SIRCAR v. EMPEROR, 11 C W.N. 1148=6 Cr. L.J. 321. (11 C W.N. 28, *F.*)

(3)—*Crim. Pro Code* (1882), *s.* 144—*Order regarding holding of market.*—The Magistrate or Collector of a district has no power as an executive officer to stop the holding of a market within his district on a particular day when circumstances have not arisen, such as would justify him in taking action under s. 144, and even when such circumstances have arisen, the prohibition cannot be for an indefinite period. MUHAMMAD BAKAR ALI v HANWANT SINGH, A.W.N. 1897, 59. (19 C. 127, 5 C. 7, 8 C. 560, 4 C.L.R. 410, 14 B. 165, N.W.P. 1874, p. 104, *R.*)

See BOM. ACT VI OF 1873, s. 66, 11 B. 106.

See BOM. ACT III OF 1888, ss. 398, 410, 7 Bom. L.R. 726=2 Cr. L J. 604=30 B. 126.

See U.P. ACT XV OF 1873, s. 45, A.W.N. 1882, 241.

Opening a new market by the side of an old market—*See* CRIM. PRO. CODE, 1898, s. 133, 14 M L.J. 207.

Opening of a rival market—*See* CRIM. PRO. CODE, 1898, ss 133, 137, 2 Weir 62.

Entry into markes with intent to evade payment of tolls—*See* CRIMINAL TRESPASS, 5 M. 382=1 Weir 518=6 Ind. Jur. 576.

Market-place.

Gambling in a—*See* PENAL CODE, s. 290, 1 Weir 242.

Marriage.

See ADULTERY.

See BIGAMY.

See BUDDHIST LAW—MARRIAGE.

See HINDU LAW—MARRIAGE.

See HUSBAND AND WIFE.

See MAHOMEDAN LAW—MARRIAGE.

See MUTTA MARRIAGE.

See NATRA MARRIAGE.

See NIKKA MARRIAGE.

See PENAL CODE, ss. 497, 498.

(1)—*Maintenance.*—Among Jats, a "Karao" marriage is valid, and the woman is entitled to maintenance. QUEEN v. BAHADUR SINGH, 4 N W.P. 128.

(2)—*Penal Code, s.* 494—*Attempt to commit bigamy—Publishing the banns.*—The causing of the publication of the banns of marriage is not an attempt to marry, but only a preparation for such an attempt. QUEEN v. PETERSON, 1 A. 316.

Passing off girl for—as of high caste—*See* CHEATING—FALSE PERSONATION, 7 W.R. Cr 65.

See CHEATING — FALSE PERSONATION, A.W.N. 1882, 237.

See CONVERSION, 1 Weir 563.

Marriage—*concluded.*

See CRIM. PRO. CODE, 1898, s. 198, 3 C.L.J. 38=3 Cr. L.J. 187.

Evidence of — *See* ENTICING AWAY MARRIED WOMAN, A.W.N. 1898, 186.

See PENAL CODE, s. 366, L.B.R. 1872—1892, 202.

False representation of a girl belonging to a lower caste, as of a higher caste and inducing one to contract, with her—*See* PENAL CODE, ss. 372, 373, 2 A 694, F.B.

See PENAL CODE, s. 372, 15 M. 75=1 Weir 372.

See PENAL CODE, s. 494, 30 M. 550=2 M. L.T. 345=17 M.L.J. 476=6 Cr. L.J. 338, S. C. 16. Oudh.

Re-marriage of Hindu when Christian wife alive—Whether bigamy—*See* PENAL CODE, s. 494, 33 M. 371=8 Ind. Cas. 572.

See PENAL CODE, ss. 494, 496, Rat. Un. Cr. C. 77=Cr. Rg. 24-7-1873.

Marriage (Christian) Act

See ACT XV OF 1872.

Marriage Registrar.

Accused identifying person personating another before — Mahomedan—*See* PENAL CODE, ss. 114, 199, 466, 9 C.W.N. 69.

Marriages and Divorces, Registration of, Mahomedan Act.

See BEN. ACT I OF 1876.

Married Women.

See ENTICING AWAY MARRIED WOMAN.

Mashirnama.

Evidence—Mashirnama—*Evidentiary value.*—The "*mashirnama*" is, at best, a statement to the Police; and such a writing cannot, under s. 162, Crim. Pro. Code, be admitted as corroborative evidence. Such writing may, however, be used for the purpose of refreshing memory under s. 159, Evidence Act. CROWN v. BALOCHKHAN *wd.* KANDERO, 4 S L.R. 38, Cr.=7 Ind Cas. 601=11 Cr. L.J. 498. (32 B. 111, *R.*) [*Expl.*, 12 Cr.L.J. 489=12 Ind. Cas. 209=5 S.L.R. 31]

Master and Servant.

See ACT XI OF 1878, ss. 13. 19.

(1)—*Liability of master for acts of his servant.*—To make a master criminally responsible for an offence committed by his servants, it must be shown that there has been some act or illegal omission on the part of the master, whereby he abetted the offence, or some prior instigation or conspiracy. CROWN PROSECUTOR v. SHAM SUNDER, 1 N W P. 310.

(2)—*Criminal liability of master for the acts of his servant*—*Master*—*Servant*—A master is not criminally responsible for the acts of his servant unless those acts can be shown to have been done with his co-operation or under his authority. LOCAL GOVERNMENT v. LAKHMICHAND, 8 C P.L.R. Cr. 19. (7 C.P.L.R. 41, Cr., *R. & D.*)

Master and Servant—*continued.*

(3)—*Liability of master for criminal acts of servant—Express authorization.*—A master is not criminally responsible for the wrongful act of a servant, unless he expressly authorised it. SUFFER ALLY KHAN v. GHOLAM HYDER KHAN, **6 W.R. Cr. 60.**

(4)—*Criminal responsibility of master for acts of his servant — Act* VII *of* 1878 (*Indian Forest*) , *s.* 25 (*d*)—*Cattle found grazing in Government Forest Reserve—Liability of owner or grazier—Construction of penal statutes—"Intention of Legislature," meaning of.*—The general rule of law is that a master is not criminally responsible for the acts of his servants, unless he expressly command or personally co-operate in them. In criminal cases they must each answer for their own acts, and stand or fall by their own behaviour. There is a general presumption that *mens rea*, an evil intention or a knowledge of the wrongfulness of the act or some blameworthy condition of mind, is an essential ingredient of every offence. (1857 6 H.L.C. 746=10 E R. 1488, 1895 1 Q. B. 918, 1898, 2 Q B. 306, 1889 22 Q.B. 736, *R.*) The mere fact that the master may be liable *civiliter* does not make him liable *criminaliter* for an offence, illegal act or tort by his servant. (Latch. 187, 3 Wils. 316, 2 T.R. 148=1 R. R. 449, 1892, 2 Q B. 355, *R.*) This general rule of English Law is also the law of British India and has been followed in Central Provinces. (6 W.R. 60, Cr. 39 C. 344, 8 C.P. L.R. 19, *R.*) But there are exceptions to this general rule. By statute or by contractual undertaking there is some *public* duty legally binding upon the master, for the breach of which a criminal liability is imposed upon him, whether such breach is committed by him personally or by persons whom he chooses to employ in the discharge of that obligation: subject to this, that the acts of the servants fall within the scope of their authority. (12 A. 550, 28 C. 504, 24 B. 423, 32 B. 10, 7 C.P.L.R. 41, 1 N L.R. 81. 1906, 1 K.B. 432, 1908, 1 K.B. 586, 1894, 2 Q.B. 414, 1902, 2 K.B. 743, 1903. 2 K.B. 264, 1874, 9 Q.B. 292, 1896, 1 Q.B. 655; 1892, 66 L.T. 649, 1897, 1 Q B. 396=35 R.R. 701, 1830, 1 Cr. & Jer. 220, *R*). But the owner of cattle found grazing in a forest reserve cannot be convicted under s. 25 (*d*) of the Indian Forest Act, in the absence of evidence that he either pastured the cattle or permitted them to trespass in the reserve either by an overt act or by negligence. (15 M. 156, *F*). The wording of s. 25 (*d*) of that Act clearly applies only to the person who does any of the acts mentioned therein. Supposing the language to be ambiguous, it must be construed in the manner most favourable to the liberties of subjects. (1 B. 308, 8 C. 214, *R.*) The phrase "intention of the Legislature" cannot be extended to cover a speculative opinion as to what the Legislature probably would have meant although there has been an omission to enact it. SAIYYAD RAHIM v. EMPEROR, **11 N L.R. 76.** (1897, A.C. 22, *R.*)

(5)—*Motor-car and Cycle Act* (III *B.C., of* 1903), *Bye-law, No.* 4, *rr.* 4, 20—*Driving recklessly or negligently—Absence of owner—Master and servant—Liability of owner for act of chauffeur—Course of master's business.*—The owner of a motor car is responsible for the act of his servant whom he permits to use his motor-car. If the servant drives the car recklessly or negligently, the master is liable. But it is not in every case of improper user by the servant that the master should be punished. There must be permission express or implied to use the car; and once the permission is given, any misuse of the car, while that permission lasts, is punishable and the owner is responsible. A general injunction to the chauffeur never to drive the car beyond the regulation speed is not sufficient to get rid of the owner's responsibility. EDWARD THORNTON v. EMPEROR, **12 Cr. L. J. 89=15 C.W.N. 390=9 Ind. Cas. 480=13 C.L J 335=38 C. 415.** (1 Q.B. 574, 63 L.J. M.C. 1?6, 10 R. 105, 70 L.T. 452, 42 W.R. 399, 58 J.P. 231, 12 Q.B.D. 360, 53 L.J M.C. 77, 48 J.P. 327; 1 Q.B. 655, 74 L.T. 726, 44 W. R. 637, 18 Cox. C. C. 341, 60 J.P. 357, 66 L.J. Q.B. 170, 1897, 1 Q.B. 306, 75 L.T. 590, 18 Cox C. C. 481, 61 J.P. 102, *R., and Relied upon.*)

(6)—*Possession of servant.*—According to the English law, if a servant receives anything for his master from a third person, not being his fellow-servant, he has the possession as distinguished from the custody of it, until he has put it into his master's possession by putting it into a place or thing belonging to his master, or by some other act of the same sort, whether the servant himself has or has not the custody of that place or thing. But it was doubted whether any such doctrine applied in India, where there appears to be no reason why the possession of the master should not be held to begin immediately upon the servant receiving a thing on his behalf. QUEEN-EMPRESS v. NGA KYAW GAUNG, **U.B R. 1897—1901, Vol. I, 232.** [*Relied upon*, 11 Cr. L.J. 55=4 Ind. Cas. 823, U.B.R. 1907—1909, II, Opium, 1.]

(7)—*Servant possessing opium in contravention of Opium Rules.*—Where a master commits the offence of possessing opium in contravention of the Opium Rules, his servant, who purchases and carries it for him, would be held guilty of abetting the commission of that offence. QUEEN EMPRESS v. NGA KYAW GAUNG, **U. B R. 1897—1901, Vol. I, 232.** LAW CHEIN v. QUEEN EMPRESS, **U.B.R. 1897—1901, Vol. I, 237.**

See ACT XII OF 1875, s. 22, 9 C. 849=12 C. L.R. 508.

Right to have opium transported from one place to another through servant—*See* ACT I OF 1878, s. 3, 13 M. 191=1 Weir 834.

Liability of master for act of servant—*See* ACT I OF 1878, ss. 5, 9, 9 A.L.J. 288=14 Ind. Cas. 666=13 Cr. L.J. 282=34 A. 319.

See ACT I OF 1878, ss. 5, 9, 7 C.P.L.R. Cr. 41.

See ACT I OF 1878, s. 9, 11 C.L.R. 464.

Master and Servant—*continued.*

Coolies engaged by employer—Discovery by them of treasure in the course of performance of their work—Treasure removed by employer —Liability of coolies as 'finders' of the treasure—*See* ACT VI OF 1878, ss. 4, 20, 27 M.L. J. 477=15 Cr. L.J. 632=25 Ind. Cas. 740.

Master's liability for the criminal acts of his servant—*See* ACT XI OF 1878, s. 22, 24 B. 423=2 Bom. L.R. 52.

Lessee of ferry — Servants exacting unauthorized tolls from passengers—Liability of master—*See* ACT XVII OF 1878, s. 22, 8 A.L. J. 1324.

See ACT XXI OF 1883, ss. 6, 107, 111, 9 Bom. L.R. 967=6 Cr. L.J. 240.

See ACT XXI OF 1883, s. 107, 9 Bom. L.R. 1059=32 B. 10=7 Cr. L.J. 238.

Servant's possession whether master's—*See* ACT IX OF 1890, ss. 3, cl. (4), 122, 138, 1914 M.W.N. 124=15 Cr. L J. 225=23 Ind. Cas. 177.

Charge against both coachman and owner whether illegal.—*See* ACT XI OF 1890, s. 6 (1), 15 Cr. L.J. 695=26 Ind. Cas. 143.

Illegal sale of liquor by servant of manager of liquor shop—Presence and privity of manager to such sales—*See* ACT XII OF 1896, s. 49, L. B.R. 1893—1900, 489.

Liability of master for criminal acts of his servant—*See* ACT XII OF 1896, s. 52, U.B.R. 1892—1896, Vol I, 109.

Liability of master for acts done by servant —*See* ACT VIII OF 1899, ss. 11, 15 (*a*), 17 C. W.N. 207=17 C.L J. 390=13 Cr. L.J 792=17 Ind. Cas. 536=40 C. 356.

See BEN. ACT VII OF 1878, s. 53, 17 C. 566.

Servant's liability for master's act—*See* BEN. ACT VII OF 1878, ss. 53, 59, 61, 12 C.W.N. 461 =7 C.L.J. 377=7 Cr. L J. 344.

Sale of adulterated food by servant—Liability of master—*See* BEN. ACT III OF 1899, ss. 495, 507, 574, 16 C.W.N 455=14 Ind. Cas. 205= 13 Cr. L.J. 205=39 C 682.

Servant leaving shop and trying to export ganja—Master if may be punished—*See* BEN. ACT V OF 1909, ss. 46, 56, 16 C.W.N. 551= 15 Ind. Cas. 1007=13 Cr. L.J. 591=15 C.L J. 401=39 C. 344.

See BOM. ACT V OF 1878, ss. 43 to 46, 53, Rat. Un. Cr. C. 512=Cr. Rg. 17 of 1891.

See BOM. ACT V OF 1878, ss. 43 (*g*), 45 (*c*), Rat. Un. Cr. C. 671=Cr. Rg. 34 of 1893.

See BOM. ACT V OF 1878, s. 45 (c), Rat. Un. Cr. C. 668=Cr. Rg. 26 of 1893.

See BOM ACT V OF 1878, ss. 45, 46, 53, Rat. Un. Cr. C. 691=Cr. Rg. 15 of 1894.

See BOM. ACT V OF 1878, s. 53, 10 Bom. L.R. 171=7 Cr. L.J. 191.

See BOM. ACT III OF 1901, s. 125, 9 Cr. L. J. 257=1 S.L.R. 15, Cr.

See CANTONMENT CODE, 1899, s. 66 (1), 10 Bom. L.R. 1052=9 Cr. L.J. 182.

Master and Servant—*concluded.*

See CRIMINAL BREACH OF TRUST, 9 W.R. Cr. 37.

See CRIMINAL MISAPPROPRIATION, 11 W. R. Cr. 51.

Ferry—Servant levying toll without master's knowledge—Liability of master *See* CRIM. PRO. CODE, 1898, ss 233, 234, 1912 M.W.N. 69=13 Ind. Cas. 780=13 Cr. L.J. 124.

See CRIM. PRO. CODE. 1898, ss. 247, 203, 18 C.W.N. 1211=15 Cr. L.J. 726=26 Ind. Cas. 174.

See CRIM. PRO. CODE, 1898, s. 562, 4 N.L. R. 18=7 Cr. L J. 319.

Theft committed at master's order—Proof of guilty knowledge—Liability of servant—*See* LOCAL INVESTIGATION, 9 Ind. Cas. 46=12 Cr L J 7=15 C.W.N. 414.

See MURDER, 1 Weir 296.

See PENAL CODE, ss. 23, 411, 408, 114, 4 S.L R. 159=11 Cr. L.J. 730=8 Ind Cas. 929.

Possession of land delivered by Civil Court to master of accused—Accused cultivating land - Opposition by complainants—Right of private defence—*See* PENAL CODE, ss. 104, 105, 147, 325, 14 Cr. L.J. 380=20 Ind. Cas. 140.

See PENAL CODE, ss. 107 and 109, 9 Bom. L.R. 161=5 Cr. L.J. 176.

One accused servant of another accused—Liability of servant—*See* PENAL CODE, ss. 109, 280, 304-A, 1911, 2 M.W.N. 170=12 Cr. L.J. 495=12 Ind. Cas. 215.

See PENAL CODE, s. 304-A, 1 Weir 322=6 M.H.C. App. 31.

See PENAL CODE, s. 379, 9 C.W.N. 974=2 Cr. L.J. 836.

See PENAL CODE, ss. 405, 409, 8 A. 120= A W.N. 1886, 7.

See PENAL CODE, ss. 425, 426, 29 A. 565= 6 Cr. L.J. 13=A.W.N. 1907, 170.

Master cannot sue for defamation of servant —*See* PENAL CODE, ss. 499, ex. (9), 500, 8 Ind. Cas. 220.

See TRESPASS, 13 C.W.N. 485=9 C.L.J. 298.

Material Alteration.

See U.P. ACT I OF 1900, ss. 87, 147, 12 A.L. J. 227=15 Cr. L.J. 240=23 Ind. Cas. 192.

Material Irregularity.

See CRIM. PRO. CODE, 1898, s. 537.

See ILLEGALITY.

See IRREGULARITY.

See CRIM. PRO. CODE, 1898, ss. 310 (*a*), 537, 13 C L.R 110.

See REVISION— GENERAL PRINCIPLES, 5 A. 161.

Material Objects.

Production of—*See* PRACTICE AND PROCEDURE, A.W.N. 1894, 205.

Mats.

Made of bamboos—Inflammable material—*See* MAD. ACT IV OF 1884, s. 179, 1 Weir 733.

Mattam.

—if liable to be taxed—*See* MAD. ACT V OF 1878, s. 119, 6 M. 287.

Maxims.

"Delegata potestas non potest delegari"—*See* ACT I OF 1878, ss. 5 and 9, 1 S L.R. Cr. 70 = 8 Cr. L.J. 188.

"Ejusdem Generis"—*See* MAD. ACT III OF 1888, ss. 75, 23, 6 M L T. 16 = 9 Cr. L.J. 496 = 2 Ind. Cas. 84 = 33 M. 83.

"Ejusdem generis"—*See* COMPENSATION—GENERAL, 9 Cr. L J. 255 = 1 S.L R. 12, Cr.

"Ejusdem generis"—*See* LEGAL PRACTITIONERS—PLEADER, 6 M.L.T. 253, F.B. = 11 Cr. L.J 274.

"Ejusdem generis"—*See* PENAL CODE, s. 318, 13 C.P.L.R. 188.

Ex turpi causa non oritur actio—*Maxim explained.*—The maxim *ex turpi causa non oritur actio* is not a sufficient excuse for a man who acts in opposition to the provisions of a penal statute, and this principle is best illustrated by the familiar case of a man who gave a spurious coin to a prostitute; if the prostitute was suing the man, she could hardly succeed in getting compensation, but the person who cheated her committed a breach of the law and was convicted. QUEEN-EMPRESS v. BHAIJI, **Rat. Un. Cr. C. 301 = Cr. Rg. 49 of 1886.**

"Ignorantia juris non excusat," Applicability of, to a false declaration under s 18—*See* ACT XV OF 1872, ss. 18, 66, 16 A. 212 = A W.N. 1894, 49.

"Malatia supplet ætatem"—*See* PENAL CODE, s. 83, 1 W R. Cr. 43.

"Nemo debet bis vexari"—*See* U.P. ACT I OF 1900 s. 147, 8 O.C. 249 = 2 Cr.L.J. 511.

"Omnia praesumuntur rite esse acta"—*See* EVIDENCE ACT, 1872, s. 80, 9 M. 224 = 2 Weir 125.

"Omnia rite esse acta"—*See* BOM. ACT IV OF 1887, ss. 6, 7, 9 Ind. Cas. 895 = 12 Cr.L J. 149 = 5 S.L R. 40.

"Qui facit per aluim facit per se"—*See* PENAL CODE, s. 124 A, 5 M.L T. 415 = 32 M. 338 = 9 Cr L.J. 506 = 2 Ind. Cas. 193.

"Qui hæret in litera hæret in cortice"—*See* STATUTES, CONSTRUCTION OF, 1 Weir 732 (*a*).

Scire quid sit justum, but scire per legem—*See* PRACTICE AND PROCEDURE, 14 B. 331.

"Sic utere tuo ut alienum, non lædas"—*See* CRIM. PRO. CODE, 1898, s. 133, 32 C. 930 = 2 Cr.L.J. 762.

Measurement of Lands.

See BEN. ACT VIII OF 1876, ss, 112, 116, 22 C. 286.

Measures.

See WEIGHTS AND MEASURES.

Measures and Weights Act.

See ACT XI OF 1870.

Medal.

Taking pawn of a—from a Sepoy—*See* ST 44 AND 45, VIC, C. 58, s. 156, 10 M. 108 = 1 Weir 668.

Medical Certificate.

—not sufficient evidence—Medical officer to be personally examined—*See* INSANITY, 9 W. R. Cr. 23.

Sentence of whipping—Before executing sentence that the accused is fit to receive only a portion of the sentence—Validity—Imprisonment in lieu of whipping—*See* SENTENCE—WHIPPING, 17 M.L.J. 555 = 7 Cr. L.J. 5 = 3 M L.T. 31.

Medical Evidence.

See EVIDENCE—MEDICAL EVIDENCE.

See EVIDENCE—ADMISSIBILITY OF EVIDENCE, U B.R. 1897—1901, Vol. 1, 318.

See FURTHER ENQUIRY, 215 P.L.R. 1910.

See WITNESS—EXAMINATION OF WITNESSES, 11 W.R.Cr. 25.

Medical Examination.

(1)—*Of the person of a woman, not legal.*—The law does not sanction the compulsory medical examination by a man, of the person, of a woman, without her consent. The power to search the person is given in certain cases, but no power is given to medically examine a person. A woman can very well be asked if she will consent to be examined. If she consents, the examination may be made, but, if she does not, the refusal will be evidence against her. EMPRESS v. MUSSAMMAT KALU, **1 C.P.L.R. 163, Cr.**

Imputation of adultery to woman—of woman—*See* DEFAMATION, Rat. Un. Cr. C. 474 = Cr. Rg. 33 of 1889.

Medical Jurisprudence.

(1)—*Medical jurisprudence—Homicide or death from epilepsy—Scratches on the neck—Theory of the case should succeed collection of evidence—Concocted evidence to fit in with wrong theory.*—Where, amongst other marks noticed on the body of the deceased, there appeared certain scratches on the front part of the neck running downwards. *Held*, upon a consideration of medical authorities, that, though, in the opinion of the Civil Surgeon, it was probable that the deceased met with his death, from throttling, the alternative theory was equally probable that the scratches were self inflicted whilst the deceased was labouring under an epileptic or other fit and of which he died. Having regard to this as also to the nature of the evidence adduced in support of the prosecution, the accused who were charged with murder were acquitted. The theory of a murder upon which prosecution proceeded in this case was arrived at by the Sub-Inspector of Police the day following the night of the occurrence. *Per Curiam.*—"It is scarcely necessary to say that a theory should succeed and not precede the

Medical Jurisprudence—*concluded.*

collection of evidence; otherwise it is a matter of common knowledge that the evidence may be made to fit in with the theory, such as the police officer in this case propounded." EMPEROR v. GAYANATH DAS, **13 C.W.N. 622 = 4 Ind. Cas. 286 = 10 Cr. L.J. 548.**

Medical Officer.

Confession to medical officer—*See* CONFESSION—CONFESSIONS OBTAINED BY INDUCEMENT, THREAT, ETC., 8 Bom. L R. 507 = 4 Cr. L.J. 49.

Reporting immoral conduct of—*See* DEFAMATION, 7 C.P.L.R. Cr. 20.

Medical Practitioner.

Medical practitioner putting brandy into medicine and selling it to a patient whether guilty under the Excise Act—*See* ACT XII OF 1896, s. 49, 33 P.R. 1914, Cr.

Medical Report.

Closing burning ground— Interference by Municipality—Reports by medical men—*See* BEN. ACT III OF 1864, s. 79, 19 W.R. 309.

See BOM. ACT III OF 1867, ss. 11, 13, 14, 7 B.H.C. Cr. 87.

Medical Witness.

Deposition of, before committing Magistrate when admissible in a Sessions trial—Presumption—*See* EVIDENCE ACT, 1872, s. 80, 10 A. 174.

See SUMMONS—DISOBEDIENCE OF, 9 W.R. Cr. Cir. 3.

See WITNESS—EXAMINATION OF WITNESSES. Rat. Un. Cr. C. 792 = Cr. Rg. 50 of 1895, 6 B.L.R. App. 88 = 15 W.R. Cr. 34.

Medicated Article.

See BOM. ACT V OF 1878, ss. 3 (9), 62, 27 B. 551 = 5 Bom. L.R. 498.

Memorandum of Appeal.

See PRACTICE AND PROCEDURE, 15 B. 488.

Memory.

See REFRESHING MEMORY.

Mens Rea.

(1)—*Proof of criminal intention.*—It is true that there must be a 'mind at fault before there can be a crime' But in applying this principle, it must be remembered that every man is presumed to be cognizant of the statute law of the country and to be able to construe it aright; that if any individual should infringe it, through ignorance or carelessness, he must abide by the consequence of his error; that it is not competent to him to aver in a Court of Justice that he was ignorant of the criminal law of the land, and that no Court of Justice is at liberty to receive such a plea. There may be some important ingredient of a particular offence, independently of the mere ignorance of law, such as dishonest intention in the case of theft, which may be shown not to exist owing to an

Mens Rea—*concluded.*

error in applying the law to the facts of a particular case. *Per Muttusami Ayyar, J.* QUEEN-EMPRESS v. FISCHER, **14 M. 342 = 1 M.L.J. 458 = 1 Weir 802, F.B.**

See BOM ACT V OF 1878, s. 53, 10 Bom. L.R. 171 = 7 Cr. L J. 191.

See PENAL CODE, ss. 372, 373, Rat. Un. Cr. C. 440.

Mental State.

(1)—*Nature of provocation — Penal Code, s. 300, excep. 1.*—In determining whether the provocation contemplated in s. 300, excep. 1, was of a character to deprive the offender of the power of self-control, it is admissible in evidence to take into account the state of mind in which the offender was at the time of the provocation. NGA PO THA v QUEEN-EMPRESS, **L B.R. 1893—1900, 249.** (2 M. 122, *R.*)

Merchandise Marks Act.

See ACT IV OF 1889.

Merchandise Marks and Sea Customs Amendment Act.

See ACT IX OF 1891.

Merchant Seamen's Act.

See ACT I OF 1859, 2 Weir 461 = 2 M.H.C. 473.

Merchant Shipping Act.

See ACT I OF 1859.

Merger.

Of defamation in an offence under s. 182—*See* DEFAMATION, 1 Weir 585.

Merger of Tort in felony.

See EVIDENCE—ADMISSIBILITY OF EVIDENCE, 13 C.W.N. 501.

Mesne Profits.

Suit by real owner for possession and, and damages—*See* CRIM. PRO. CODE, 1898, s. 88, 28 C. 540 = 6 C.W N. 175.

Mhowra Flowers.

See BOM. ACT V OF 1878, s. 43 (*c*), Rat. Un. Cr. C. 949 = Cr. Rg. I of 1898.

See BOM. ACT V OF 1878, s. 43 (*e*) (*f*), 4 Bom. L R. 720.

Possession of—*See* BOM. ACT V OF 1878, ss. 43 (*f*). 53, 9 B. 556.

Middleman.

Broker or—is not employer—*See* ACT XIII OF 1859, 14 Bom. L.R 956 = 1 Bom. Cr. Cas. 200 = 13 Cr. L.J. 853 = 17 Ind. Cas. 789.

Military Authorities, Jurisdiction of.

See St. 41 VIC., CAP. 10, s. 101, 5 C. 124 = 4 C.L.R. 432.

Military Cantonments Act.

See ACT XXII OF 1864.

Military Courts of Requests Act.

See ACT XI OF 1841.

Military Transport Animals Act.

See PUN. ACT I OF 1903.

Milk.

Admixture of water with—*See* BOM. ACT III OF 1867, Rule 39, Rat. Un. Cr. C. 367=Cr. Rg. 14 of 1888.

Adulteration of, with water—*See* MAD. ACT I OF 1866, s. 26, 1 Weir 709.

Selling adulterated milk as pure milk—*See* CHEATING—GENERAL, Rat. Un. Cr. C. 145.

For sale, adding water to, if an offence—*See* PENAL CODE, s. 272, 1 L.B.R. 153.

Sale of, mixed with water—*See* PENAL CODE, s. 273, 1 Weir 228.

Mind.

Attempt at cheating—False representation to pleader—Damage or harm in mind, reputation—Complainant, position of—*See* CHEATING—GENERAL, 7 C.L.J. 375=12 C.W.N. 750=7 Cr. L.J. 342.

Ministerial Officer.

Order of Magistrate dismissing—*See* APPEAL—CASES WHERE APPEAL DOES NOT LIE, 3 B.L.R. A.C. 370=12 W.R. 323.

Minor.

(1)—*Penal Code, ss.* 372 *and* 373—*Unlawful and immoral purpose—Presumption as to guilty knowledge.*—The gist of the offence under ss. 372 and 373 and the culpability of a person who, without being a lawful guardian of a minor girl, disposes of her in marriage to a third party for a pecuniary consideration, either with or without the knowledge of a previous subsisting marriage discussed in this case. KHUSHALA v. EMPRESS, **27 P.R. 1880, Cr.**

(2)—*Penal Code,* s. 373—*Gist of the offences.*—In order to constitute an offence under s. 373, Penal Code, there must be a taking possession of the minor under some agreement or understanding, either with some third person or with the minor, that the minor is employed for some purpose specified in s. 373. HARDEO v. EMPRESS, **7 P.R. 1880, Cr.**

(3)—*Penal Code, ss.* 372 *and* 373—*Gist of the offence.*—If the purpose of the use or employment of a minor is not an unlawful and immoral purpose in respect of the minor regarded as a natural person, the use or employment does not become use or employment for an unlawful and immoral purpose, merely because the purpose may be unlawful and immoral in respect of the minor regarded as the subject of jural relations. Where the accused was found to have disposed of a minor girl in marriage to a third party for a pecuniary consideration, not knowing of the previous subsisting marriage, *held*, that the accused was not guilty of an offence under s. 372, I.P.C. *Held*, further, (*Powell, J., doubting*) that even if the accused knew that the girl had already been married, the accused could not be guilty. MULA v. EMPRESS, **13 P.R. 1888, Cr.** (27 P.R. 1880, *Cited*). [*F.*, 13 P.R. 1904, Cr.; *R.*, 10 Cr. L.J. 176.]

Minor—*continued.*

(4)—*Letting a minor girl for hire for purposes of prostitution.*—When the niece of the accused, a prostitute by profession, took to prostitution, when about twelve years old, her family profession, and supported the accused from her earnings, *held* that the accused was not guilty of an offence under s. 372, I.P.C. MUSSUMAT RAHMAN v. CROWN, **29 P.R. 1872, Cr.**

(5)—*Penal Code*, s. 373—*Hiring a minor for a single sexual intercourse.*—Hiring a minor girl for the purpose of having sexual intercourse with her on one occasion is not an offence within the meaning of s. 373, I.P.C. CROWN v. MOHUBBUT, **16 P.R. 1873, Cr.**

(6)—*Crim. Pro. Code*, 1898, s. 491—Habeas Corpus—*Minor's capacity to bind himself by contract—Whether action lies against minor for breach—Contract with guardian—Remedy on breach—Parental authority—Delegation Whether revocable—Power of Court to revoke—Welfare, meaning of the term.*—Where the defendant had no personal interest in the children whom the plaintiff sought to be delivered up to himself, or in their services, and no right to their custody, and where the only object of the defendants was to send back the children to their parents or natural guardians, the proceeding should be treated as on *Habeas Corpus* under s. 491, Crim. Pro. Code, for the purpose of determining the custody of the children. A minor may bind himself by a contract of apprenticeship, if it be for his benefit, but no action will lie against him for failing to serve as such. If such a remedy is desired, it is necessary to get a covenant from the guardian on which the guardian himself may be made liable. The delegation of parental authority is revocable at any time, and it is the duty of the parents and guardians to revoke it if used to the detriment of the children. It is also open to the Court, within whose jurisdiction the children are found, to revoke it at any time, if sufficient cause be shown for interference, especially when the parents have it out of their power to interfere themselves for the protection of their children by sending them touring round the world in the custody of strangers. The main consideration for the Court to be acted upon in the exercise of such power is the benefit or "welfare" of the child. The term "welfare" must be read in the largest possible sense. POLLARD v. ROUSE. **8 M L.T. 47=6 Ind. Cas. 754=33 M. 288=1910 M.W.N. 187=12 Cr. L.J. 180.**

European British minor—*See* ACT IX OF 1861, 3 W.R. Ree. Ref. 5.

Competency of, to compound offence—*See* COMPOUNDING OFFENCE, 17 P.R. 1891, Cr.

See CONTEMPT OF COURT, 84 P.R. 1866, Cr.

See CRIM. PRO. CODE, 1882, ss. 109, 112, 118, 123, L.B.R. 1893—1900, 129.

Prosecution for adultery — Husband —*See* CRIM. PRO. CODE, 1898, s. 199, 2 Weir 235.

Minor—*concluded.*

Minor complainant—Guardian whether can be asked to pay compensation to accused—*See* CRIM. PRO. CODE, 1898, s. 250, 1 P.W.R. 1912, Cr., 83 P.L.R. 1912=13 Cr. L.J. 136=13 Ind. Cas. 824.

See CRIM. PRO. CODE, 1898, s. 552, 16 C. 487.

See JURISDICTION OF CRIMINAL COURTS—GENERAL, 24 B. 287=1 Bom. L.R. 678.

Wife running out of husband's house—Husband's guardianship—Whether put an end to—*See* PENAL CODE, s. 363, 6 S.L.R. 71=16 Ind. Cas. 768=13 Cr. L J. 736.

Dedication of—Girl as dancing girl for temple—Prostitution—*See* PENAL CODE, s. 372, 16 B. 737.

Selling or buying minors for the purpose of prostitution—Minor already leading an immoral life—*See* PENAL CODE, ss. 372, 373, 8 Bom. L.R. 236=3 Cr. L.J. 334.

Buying and selling a minor girl for purposes of prostitution—*See* PENAL CODE, ss. 372 and 373, 1 Weir 356=5 M.H.C. 415.

Buying of, for purposes of prostitution—*See* PENAL CODE, s. 373, 11 C.P.L.R. Cr. 6.

Disposing of minor for purposes of prostitution—*See* PROSTITUTION, 7 Bom L.R. 562=2 Cr. L.J. 500.

Applicability of law requiring security—*See* SECURITY PROCEEDINGS, 6 C.P.L.R. Cr. 13.

Minors Act.

See ACT IX OF 1861.

See MINOR GIRL.

Minor Girl.

See ABDUCTION.

See KIDNAPPING.

See MINOR.

See PENAL CODE, ss. 372, 373.

Sexual intercourse with—*See* PENAL CODE, ss. 363, 366, U.B.R. 1897—1901, Vol. I, 328.

Minor Wife.

Bigamy by minor wife—Complaint—Person aggrieved—*See* PENAL CODE, s. 494, 13 Cr. L. J. 204=14 Ind. Cas. 204.

Misappropriation.

See CRIMINAL MISAPPROPRIATION.

See CRIM. PRO. CODE, 1898, s. 562, 3 L.B. R. 95=3 Cr. L.J. 21, F.B.

See PENAL CODE, ss. 23, 411, 408, 114, 4 S.L.R. 159=11 Cr. L.J. 730=8 Ind. Cas. 929.

Correction of false entries to conceal attempted—*See* PENAL CODE, s. 465, Rat. Un. Cr. C. 595=Cr. Rg. 15 of 1892.

Miscarriage.

See PENAL CODE, s. 312.

(1)—*Penal Code, s.* 312—"*Miscarriage*" *and* "*with child,*" *meaning of.*—The term "miscarriage" is not defined in the Code. In its popular sense, it is synonymous with abortion,

Miscarriage—*concluded.*

and consists in the expulsion of the embryo or *fœtus, i.e*, the immature product of conception. The stage to which pregnancy has advanced and the form which the *ovum* or embryo may have assumed are immaterial. S. 312 requires proof that the woman is "with child," but it is enough if the fact of pregnancy and the intentional expulsion of the immature contents of the uterus are established. The words "with child" mean pregnant, and it is not necessary to show that "quickening," *i e.*, perception by the mother of the movement of the *fœtus* has taken place, or that the embryo has assumed a fœtal form. QUEEN-EMPRESS v. ADEMMA, 9 M. 369=1 Weir. 331.

(2)—*What is causing—S.* 312, *I.P.C.*—A *fœtus* not bigger than a man's finger, but having the shape of a child, is a child within the meaning of s. 312, I.P.C. EMPRESS v. RUKHMA, 5 C.P.L R. Cr. 21.

(3)—*Causing miscarriage—Penal Code, s.* 312.—The offence defined in s. 312 can only be committed when a woman is in fact pregnant. QUEEN v. KABUL PATTUR, 15 W.R. Cr. 4.

(4)—*Penal Code, ss.* 312, 511—*Miscarriage—Attempts.*—Where a child was full grown a conviction under s. 312, Penal Code, was set aside, and one under s. 511 for attempt to bring about miscarriage was maintained. QUEEN v. ARUNJA BEWA, 19 W.R. Cr. 32.

Mischief.

See PENAL CODE, ss. 425—440.

(1)—*Penal Code, s.* 426—*Mischief, what constitutes.*—The offence of mischief involves the intention to cause wrongful loss. If, therefore, a person removes a building placed without his consent on his land, when the constructor of the building had no right to erect it and had acquired no right to retain it, he is not guilty of mischief, because the loss he has caused is not a wrongful loss. And if, by reason that he is ignorant of the true boundary of his land, the owner removes a building from the land which he, in good faith, believes to be his own, he cannot be convicted of mischief, inasmuch as he acts on a misconception of facts. He does no more than he believes himself justified in doing, *i e.*, the view he entertains of the ownership of the land. *In re* DANIEL GROVE, 1 Weir 488.

(2)—*Penal Code, ss.* 425 *and* 426—*Mischief, what constitutes—Essentials of the offence.*—The offence of mischief is committed if a person with an intent to cause or knowing he is likely to cause wrongful loss or damage to the public or to any person causes the destruction of any property. To sustain a conviction for the offence, it must be shown that there has been an intention or knowledge that from the destruction of the property, wrongful loss should or would accrue. If a person removes from his own property an obstruction placed thereon, he may cause loss to the person who has placed it, but not *wrongful* loss, and as he is justified by law in removing it, his act will not constitute an offence. If a person removes an obstruction

Mischief—*continued.*

from property which is not his own, but which he believes to be his own, and thereby causes loss, yet as he has not the intention nor the knowledge which is necessary to constitute the offence, he cannot be convicted of mischief. HIGH COURT PROCEEDINGS, 31ST MAY 1881, NO. 1058, **1 Weir 488.**

(3)—*Mischief—Essentials of offence.*—An intention on the part of the accused to cause damage, or knowledge on his part that he is likely to cause damage to the property of the complainant, must be proved in order to convict a person of the offence of mischief. KING-EMPEROR v. NGA LUN, **2 L.B.R. 158.**

(4)—*S.* 425, *offence under—Mischief.*—S. 425 of the Code does not necessarily contemplate damage of a destructive character. It is only necessary that there should be an invasion of right and diminution of the value of one's property, caused by that invasion of right, which must have been contemplated by the doer of it when he did it. JUGGESHWAR DASS v. KOYLASH CHUNDER CHATTERJEE, **12 C. 55.**

(5)—*Requisites for offence—Penal Code, s.* 425.—The authority vested in the Criminal Court of punishing persons for acts of mischief is one which must be exercised with great caution, and it must be very clear, before conviction, that the accused has brought himself within the true meaning of s. 425 of the Penal Code. *In re* RAM GOOLAM SINGH, **6 W.R. Cr. 59.**

(6)—*Penal Code, s.* 426—*Wrongful intention.*—In order to convict a person of the offence of mischief, it is for the prosecution to prove that the accused caused damage with the knowledge that he was not justified in doing it, and that the party under whose orders he was acting had no real title. ISSUR CHUNDER MUNDLE v. ROHIM SHEIK, **25 W.R. Cr. 65.**

(7)—*Mischief—Intent to cause wrongful loss—Penal Code s.* 426.—The removal of a structure will be mischief, and, as such, punishable under s. 426, I.P.C., only on a finding that the accused removed it with intent to cause or a knowledge that he would thereby cause, wrongful loss to the complainant. EMPRESS v. SHANKAR LAL, **A.W.N. 1887, 101.**

(8)—*Wrongful loss to property held under incomplete title—Penal Code, s.* 425—*Nature of damage.*— A person who destroys property which at the time belongs to himself, with the intention of causing, or knowing that it is likely to cause, wrongful loss or damage to another, is guilty of the offence of mischief. Any person, who contracts to purchase property, and pays in a portion of the purchase-money, has such an interest in that property, although his title may not be complete, or his right final and conclusive, that the destruction of such property may cause to him wrongful loss or damage within the meaning of s. 425 of the Penal Code. The damage contemplated in s. 425 of the Penal Code need not, necessarily, consist in the infringement of an existing present and complete right, but it may be caused by an act done now with the intention of defeating and rendering infructuous a right *about to come into existence.* DHARMA DAS GHOSE v. NUSSERUDDIN, **12 C. 660.**

(9)—*Penal Code, ss.* 425 *and* 426—*Mischief by straying of cattle—Essentials of the offence—Liability of owner of cattle—Intention—Cattle Trespass Act,* I *of* 1871, *ss.* 25, 26 —In order to constitute the offence of mischief by letting loose cattle to stray, it is not sufficient to show that the owner of cattle causing damage to complainant's property was guilty of carelessness in allowing it to stray. The prosecution should show that there was an intention to cause wrongful loss or damage. EMPRESS v. BAIBAYA, **7 B. 126.** [*F.*, 29 A. 565 = A.W.N. 1907, 170 = 6 Cr.L.J. 13, Rat. Un. Cr. 357.]

(10)—*Animal destroying crops—Mischief—Liability of owner of animal.*—Unless there is evidence that the owner of an animal wilfully turned it into another's land and so caused it to destroy his crops, the owner is not liable to be punished under s. 426, I.P.C. QUEEN-EMPRESS v. SHEIK RAJU, **9 B. 173 = 9 Ind. Jur. 363.** [*F.*, 13 Cr L.J 536 = 15 Ind. Cas. 808 = 5 S.L.R. 263 ; *R.*, Rat. Un. Cr. 357.]

(11)—*Cattle trespass—Master's liability.*—Where the accused's cattle entered upon the gymnasium garden in his absence, *held*, that the accused was not guilty of the mischief. KING-EMPEROR v. GHAZI, **23 P.R. 1904, Cr. = 198 P.L.R. 1905 = 1 Cr.L.J. 1097.**

(12)—*Cattle straying—Neglect on the part of the owner—Trespass.*—Mere neglect on the part of an owner of cattle to keep them from straying into the fields is not causing cattle to enter a compound within the meaning of s. 425 of the Penal Code. That section requires that, before the owner is convicted of the offence, it must be proved that he actually caused the cattle to enter, knowing that, by so doing, he was likely to cause damage. MAJOR FORBES v. GIRISH CHUNDER BHATTACHARJEE, **6 B. L.R. Ap. 3 = 14 W.R. Cr. 31.**

(13)—*Act* III *of* 1857, *s.* 17—*Mischief—Cattle-Trespasss—Owner's negligence.*—*S.* 425, *I.P.C.*—S. 425, I.P.C., supposes that the destruction caused has been caused with the intention to cause a wrongful loss or damage, and does not apply to cases of mere carelessness as when cattle stray into neighbouring field ; and s. 17 of Act III of 1857, supposes the mischief to be done by causing cattle to trespass, and does not refer to simple cases of cattle straying without the knowledge of their owners. *In re* ARAZ SIRCAR, **10 W.R. Cr. 29.**

(14)—*Allowing cattle to stray—Offence.*—The mere fact of allowing cattle to stray affords no evidence of an offence under s. 426 H. C. PROCEEDINGS, 10TH NOVEMBER, 1871, NO. 1749, **1 Weir 487 = 6 M.H.C. App. 36.** [*D.*, 1 Weir 492.]

(15)—*Mischief caused by buffaloes—Intention.*—For a conviction under the Penal Code for mischief caused by buffaloes, intention or

Mischief—*continued.*

knowledge must be proved. S. 26 of Act I of 1871 provides only for carelessly allowing pigs to do damage. REG v. LINGU, **Rat. Un. Cr. C. 60=Cr. Rg. 11-1-1872.**

(16)—*Mischief caused by buffaloes.*—Where the accused's buffaloes, by straying into the complainant's wheat fields, commit mischief, the complainant is not at liberty to set the criminal law in motion, his proper remedy being to impound the cattle. QUEEN-EMPRESS v. RANGU, **Rat. Un. Cr. C. 189.**

(17)— *Mischief caused by buffaloes.*— The allowing of a buffalo to stray without a keeper does not constitute the offence of mischief. To support a conviction under s. 426, I.P.C., it must be proved that there was an intention to cause wrongful loss or damage or to cause damage by wilfully turning an animal into an enclosure, or at least that the accused was present and able to restrain the animal from causing damage and did not restrain it from so doing. QUEEN-EMPRESS v. NARSU, **Rat. Un. Cr. C. 357.**

(18)—*Penal Code, s. 425— Directing one's bullock in a wrong direction—Damage—Intention.*—Where the accused in trying to get his cart out of the way of the complainant's carriage, wrongly directed his bullock and caused some damage to the carriage, *held* that no offence of mischief was committed since no criminal intention was proved. REG. v. SHAMA, **Rat. Un. Cr. C. 88.**

(19)—*Penal Code, s. 426—Mischief—Grazing cattle in a forest under re-settlement—Intention.*—A person grazing cattle in a Government Forest land, which is under re-settlement, cannot be convicted of an offence under s. 426 of the Code, in the absence of intention to cause wrongful loss or damage. EMPEROR v. JOTI BABU, **8 Bom. L.R. 549=4 Cr. L.J. 93.**

(20)—*Penal Code, s. 426—Grazing in Government waste lands after prohibition—Act* VII *of* 1878, *s.* 16.—The accused grazed the cattle in certain waste land which was not reserved within s. 16 of the Forest Act, in contravention of a notification by Government prohibiting the public from grazing cattle there, as it was intended to constitute the lands as forest reserve. The grass in the land was found to have been in the possession of the Government who were in the habit of selling the grass grown on the lands at fixed prices. It was also found that the accused knew that by so grazing they would cause wrongful loss to Government. *Held*, that the accused were guilty of an offence under s. 426. *In re* GURRAM SIDDUGADU, **1 Weir 492.**

(21)—*Penal Code, ss.* 427 *and* 428—*Grazing cattle on lands rented from Government, without payment of fees.*—Where the complainant, having leased from the Government the right of collecting grazing fees on waste lands, charged the defendants with mischief for grazing their cattle without payment of the usual capitation fee, *held*, that the accused was not guilty of an offence under s. 427, but was only liable to a civil action. HIGH COURT PROCEEDINGS, 22ND JULY 1870, No. 1367, **1 Weir 497=5 M. H C. App. 29.** [*D.*, 1 Weir 492.]

(22)—*Penal Code, s. 425—Illegal seizure of cattle—Impounding.*—The act of impounding cattle does not amount to causing such a change in the situation of property as diminishes its utility or value: the act does not do so *per se*, and the cattle when released are as useful as ever. EMPRESS v. RAMJIAWAN, **A.W.N. 1881, 158.**

(23)—*Throwing stone at a cow.*—Where the accused threw a stone at a cow which he was driving to the pound, and thereby broke one of its legs, *held*, that, in the absence of evidence, as to the size of the stone used, so that it might show the intention on the part of the accused to cause, or the knowledge that he was likely to cause, the injury, he could not be convicted of mischief under s. 428, Penal Code. HIGH COURT PROCEEDINGS 11TH APRIL 1881, No. 751, **1 Weir 497.** [*R.*, U.B.R. 1905, 1st Qr., Penal Code, 25.]

(24)—*Rights of owner of land trespassed upon.*—If the owner of land finds a trespasser thereon using the owner's tools, no doubt the owner would commit no mischief in destroying or removing those tools even though, by doing so, he might deprive the trespasser of the means of benefiting by his trespass. But the owner would have no right, merely because of the trespass, to destroy whatever property of the trespasser he found upon the premises. EMPEROR v. DINKAR CHINTAMAN PATKAR, **7 Bom. L R. 86=2 Cr. L J. 55.**

(25)—*Penal Code, s. 426—Destruction of carcass against alleged customary right to the skin.*—Where the owner of a bullock buried it after its death and thereby infringed an alleged customary right of the Mahars of his village to the skin, *held* that, although the custom alleged was held to have been proved, the owner was not guilty of any criminal offence the only remedy of the other party would be by a civil suit. QUEEN-EMPRESS v. GOVINDA PUNJA, **8 B. 295=8 Ind. Jur. 627.**

(26)—*Penal Code, s. 426—Disturbing graves for purposes of cultivation—Digging out tombs.*—Where the accused dug up some of the graves and removed the stones placed over them in order to extend his cultivation, the graves being in the charge of a guardian, *held*, that the accused was guilty under s. 426, for the graves should be treated as property capable of being the subject of trespass or mischief. *In re* RUMALA NAGAYYA, **1 Weir 496.**

(27)—*Digging out tombs.*—Where the accused was charged with having committed mischief by digging out the tombs of the forefathers of the complainant, standing on the accused's land, *held* that he could not be convicted of mischief as the tombs put up on land which came into the possession of others passed with the land. EMPEROR v. CHOTUALLY, **4 Bom. L.R. 463.**

Mischief—*continued.*

(28)—*Breaking open the gate of a graveyard.*—Where the accused, in the exercise of a *bona fide* claim of right, broke open the gate of a graveyard which they believed was wrongfully closed against them, in order to bury a dead person, *held*, that they had not committed the offence of mischief, for they could not be said to intend or know that they were likely to cause wrongful loss or damage to the public or to the priest in charge of the graveyard. VIAGULA FERNANDEZ VAS v. REV. AMIRTHANATHASAMI, **1 Weir 489.**

(29)—*Penal Code, s.* 426—*Mischief by fire—Spread of fire.*—The accused set fire to a heap of rubbish in his field, which was close to a protected forest. The wind carried the flames to the forest and destroyed a part of it:—*Held* (by *Russell, Ag. C.J., and Heaton, J., Agon, J., dissenting*) that, on these facts, the accused could not be convicted of the offence of mischief, punishable under s. 426 of the Code; for, the facts did not, at the outside, show more than "mere neglect or carelessness" on the part of the accused, to keep the fire from straying into the Government forest. EMPEROR v. NANDEYAPPA GOWDA v. SHIDDAN GOWDA, **8 Bom. L R. 851 = 4 Cr. L.J 446 = 1 M.L.T. 444.**

(30)—*Mischief by fire to human dwelling.*—Where the accused set fire to the thatched wall of an enclosure belonging to him, several houses from which some residential huts were situate, *held*, that the accused was guilty of an offence under s. 436, I.P.C., as the accused knew that the fire would be likely to burn the huts in which persons were sleeping. KEHAR v. EMPEROR, **7 P.R. 1903, Cr. = 68 P.L.R. 1903** (35 P.R. 1879, Cr., *R.*; 57 P.R. 1887, Cr., *D.*).

(31)—*Penal Code, ss.* 378, 426, 447—*Infringement of exclusive right of fishery.*—Fish in a public river cannot be said to the property in the "possession" of the person who may have the fishery right and, therefore, an infringement of that right is not a criminal offence as defined in s. 378 of the Penal Code, or does it constitute an offence under s. 426 (Mischief) or 447 (Criminal trespass) of the Code. BHAGIRAM DOME v. ABAR DOME, **15 C. 388.** [*F.*, 13 Cr. L.J. 22 = 13 Ind. Cas. 214 = 5 S L.R. 122; *R.*, 15 C. 402, 24 M. 81; *D.*, 28 A. 204 = A.W.N. 1905, 255 = 2 A L J. 826, 27 M. 551 = 1 Weir. 386, U.B R, 1892—1896, Vol. I, 234.]

(32)—*Penal Code, s* 426, *injury to rights of fishery whether an offence under—Fisheries Act,* IV *of* 1897, *s* 6, *applicability of.*—The accused caused the diversion of the course of a certain river, knowing that such diversion by him and the consequent destruction of very large quantities of fish in the river would injuriously affect the persons who, as lessees of Government, held rights of fishery in the river. He was thereupon convicted by the lower Court under s. 426 of the I.P.C., and also under s. 6 of the Fisheries Act (IV of 1897). *Held*, on revision, that as the accused most materially interfered with the river, knowing that he was likely to cause damage to the lessee, he was rightly convicted of the offence under s. 426 of the I.P.C. As to the conviction under the Fisheries Act, however, *held*, accepting the contention to that effect on behalf of the accused that the water in question being 'private water,' within the meaning of s. 6 of the said Act, that section had no application to the case and such conviction must therefore be set aside. EMPEROR v. CHANDA, **28 A. 204 = A.W.N. 1905, 255 = 2 A.L.J. 826 = 2 Cr. L.J. 801.**

(33)—*Interference with fishery—Penal Code, s.* 425—*Wrongful loss—Proof of title.*—The right to a fishery was in dispute between the Zamindar of Bally and the Zamindar of Maharajpore. The former obtained a decree in the Civil Court declaring the fishery to be his, in proceedings to which the latter was not a party, and the servants of the Bally Zamindar thereupon removed a bamboo bar, which the Maharajpore people had erected to prevent the passage of fish. For this they were convicted of mischief under the Penal Code, and punished with fine. *Held*, on a reference to the High Court, that the conviction could not stand, as the Maharajpore Zamindar had not shown that he was legally entitled to the fishery, and as it did not appear that the defendants were acting otherwise than from a *bona fide* belief that the Maharajpore Zamindar was encroaching on their master's rights. BAKAR HALSANA v. DINOBANDHU BISWAS, **3 B.L.R.A. Cr. 17 = 12 W.R. Cr. 1.** [*R.*, 8 B.H.C. Cr. 63.]

(34)—*Penal Code (Act* XLV *of* 1860), *ss.* 425, 427—*Mischief—Removal of fishing stakes—Right to fish in the sea.*—The right of fishing in the sea is common to all subjects of Her Majesty except when restrained by statute, and every one is entitled to make use of means ordinarily employed for the purpose without molesting another. The *Mamlatdar* of any place had no power under Bombay Act V of 1864, had no jurisdiction to deal with sea-fisheries, and no grant by him could confer any right. Where the fishermen of one village removed fishing-stakes fixed in the sea by those of another, *held* that they were guilty of the offence of mischief, since the alteration in the position of the stakes diminished their utility and caused wrongful loss to the other party, who had only exercised their lawful right in fixing the stakes without interfering with the right of the accused so as to give them a right to abate a nuisance. REG. v. KASTYA RAM, **8 B.H.C. Cr. 63.** [*R.*, 2 B. 19, 5 L B.R. 221.]

(35)—*Penal Code, ss.* 426 *and* 430—*Mischief to water course—Diminution of water-supply—Assertion of title.*—Where the complainant was proved to be the exclusive owner of the water-course stopped by the accused, and it appeared that the latter had no sort of right to assert any claim to it, the causing of a diminution of water-supply by the accused, on the ground that he was entitled to it, would only be an

Mischief—*continued.*

additional wrong, and would constitute mischief within the meaning of s. 430, I.P.C. QUEEN EMPRESS v. JAGANNATH BHIKAJI BHAVE, **10 B. 183=Rat. Un. Cr. C. 216.**

(36)—*Closing water-course.* — When the accused closed a water-course by which water had been supplied to the complainant's lands, he was held not to have committed mischief, under s. 430, I.P.C., by the diminution of the supply of water, as no damage was alleged to have been caused by the stoppage of water to any crop on the land. If mischief was done to the water-course itself, then, the case would fall under s. 426 GOVERNMENT OF BOMBAY v. KALAYA, **Rat. Un. Cr. C. 217.**

(37)—*Interfering with water channel.*—Where there was nothing to show that a Government channel was appropriated to the use of the complainant to the exclusion of the defendants through whose fields it passed, and where there was no evidence of any loss having been sustained by the complainant or that the intention of the accused was to cause loss, *held*, that the accused was not guilty of an offence under s. 430, Penal Code. *In re* VATTU KARAN, **1 Weir 507.**

(38)—*Penal Code, s.* 430—*Causing diminutions of water-supply for agricultural purposes —Wanton act of waste, whether necessary to convict a person under the section.*—It is no part of the definition of the offence of causing a diminution of water-supply for agricultural purposes, under s. 430, Penal Code, that the act of the accused should be, in common language, a mere act of wanton waste. The physical requisites of the act are the doing of an act which causes, or the doer's knowledge is likely to cause, a diminution of supply. He fulfils the mental requisite when he does the act with the intent to cause wrongful loss, and the intention is such when he takes without any sort of right. RAMA KRISHNA CHETTY v. PALANIYANDI KUDAMBAR, **1 M. 262, F.B.=1 Weir 502.** [*Diss & F.*, 12 Ind. Cas. 527= 1911, 2 M.W.N. 349=12 Cr. L J. 551, 10 B. 183=Rat. Un. Cr. C. 216; *R.*, 1 Weir 503, 1 Weir 505.]

(39)—*Penal Code, ss.* 425, 430—*Mischief—Cutting of dam by accused to save their own crops—Cutting a bund on poramboke land without Government's permission.*—Where the accused cut a dam erected by the complainant in order to secure their own crops, and it was not proved that the act of the accused caused any diminution of water for agricultural purposes, or that he knew that it was likely to cause such diminution in the future, *held*, that he was not guilty under s. 430, I.P.C. NAFAR CHANDRA BHATTA CHARJEE v. HELALUDDIN MONDAL, **8 C W N. 370=1 Cr. L J. 245.** [*R.*, 11 Cr. L J. 168=5 Ind. Cas. 560.]

(40)—*Cutting bund on Government poramboke.*—Where the accused were charged with cutting a bund which was put up by the complainant on Government poramboke without the previous permission of Government, for the purpose of storing water for the use of his land, *held*, that, as it did not appear that the interference of the accused was to protect their own interests, they were guilty under s. 430 and that it was for the Government and not for the accused, to object to the bund having been put up without previous permission. *In re* RANGANA GOUNDAN, **1 Weir 510.**

(41)—*Penal Code, s.* 430—*Act* XII *of* 1870 *(Canal Act), s.* 70—*Mischief—Definition—Cutting bank of canal.*—Certain persons having been found to have cut through the bank of a canal distributary and irrigated their own fields therefrom, it was *held* that they would be more properly convicted of an offence under s. 70 of Act VIII of 1876 than of an offence under s. 430 of the Indian Penal Code, in the absence of evidence to establish the one essential element of an offence, that by the act done a diminution of the supply of water for agricultural purposes had been caused. EMPEROR v. TAJ-UD DIN, **A.W.N. 1903, 55=5 A.L J. 159=7 Cr. L J. 296.**

(42)—*Penal Code, ss.* 425, 430—*Mischief to irrigation works—Essentials of the offence under s.* 430—Bona fide *assertion of right* —Where, under the orders of the Revenue authorities, a certain sluice for irrigation of lands was to be opened at a certain season only for the purpose of irrigating the lands of the accused, and at other seasons to be closed in order that other lands may be irrigated, *held*, that a violation of the orders by the accused was not an offence under s. 425, as there was no destruction of property or diminution in the value or utility of property by the accused within the definition of s. 425. HIGH COURT PROCEEDINGS, 12TH NOVEMBER 1874, **7 M.H.C. App. 39.**

(43)—*Causing loss of water for irrigation of lands.*—Where a channel had been set apart by Government for a particular village, Government having prohibited any damming of the channel, *held* that the accused, who had erected a dam, thereby causing loss of water for the irrigation of lands belonging to that village, was guilty of an offence under s. 430. *Held* also that it was not necessary to prove that the act of the accused caused damage to the crops of the villagers, but it was enough if the act was done with the knowledge that it was likely to cause loss and that the accused should be presumed to have known that, by diminishing the supply of water for agricultural purposes, he would be likely to cause wrongful loss to the ryots of the village. HIGH COURT PROCEEDINGS, 13TH APRIL, 1881, No. 774, **1 Weir 503.** [*F.*, 1 Weir 504.]

(44)—*Causing diminition of water-supply for agricultural purposes* —In order to constitute an offence under s. 430, it is sufficient to prove such a change in property as to destroy or diminish its value or utility. The placing across a channel of an embankment causes a change in the channel which diminishes or destroys its value, and may cause a diminution in the

Mischief—*continued.*

supply of water for agricultural purposes. Where the accused placed a dam across an irrigation channel and thereby diverted the water passing along the channel into his own fields, whereby the supply of water to the fields of others entitled thereto, on a lower level, was diminished, *held*, that the accused may be guilty of an offence under s. 430. *In re* NALLA NARAYANASAMI, **1 Weir 504.**

(45)—*Mischief to irrigation works.*—Where the accused, who were authorized by the D. P. W. authorities to take water from a tank for twenty-four hours, cut the bund of tank, and kept the breach open for six hours more than the time allowed by the D.P.W. authorities, *held*, that, even assuming that the original act of cutting the bund was lawful in consequence of the authorization given by the authorities, it clearly became illegal at the expiry of the period allowed by the authorities to keep the bund open, and it was the accused's duty them to cease to take the water, which they could only do by closing the breach they had made. *Held*, therefore, that the accused were guilty of an offence under s. 430 as the necessary elements of the offence were present in the case and as it was not necessary to prove actual damage. *In re* NALLAPPA UDAYAN, **1 Weir 505.**

(46)—*Mischief to irrigation works.*—The complainant alleged that the defendant had wrongfully filled up a channel by which his lands were irrigated, and so had caused him loss. The defendants alleged that the channel in question was not permanent, but was excavated temporarily in every rainy season to drain the first defendant's land, that the channel was on the first defendant's land, and that the complainant's land was never irrigatedby this channel but by another. The Magistrate held an inquiry upon the right of the complainant and found, upon visiting the spot, that the complainant's land was watered by the channel and the defendants had unjustly prevented the complainant from cultivating his lands by filling up the channel in question. The appellate Court reserved the decision of the original Magistrate on the ground that the latter had no power to decide whether the complainant had a right to the water coming by the first accused's own private channel. *Held*, that it was necessary, in order to determine whether the accused had been guilty of mischief, for the original Court to ascertain by inquiry whether the complainant had a right to the flow of water through the channel in question, and for that purpose he was justified not only in taking evidence but also in having a personal view of the place. He had authority to decide whether the complainant was entitled to the flow of water, but his decision would not determine the civil rights of the parties, nor would it be even admissible as evidence of their rights in a suit between them. *In re* MURUGA PILLAI, **1 Weir 508.**

(47)—*Endangering safety of river embankment —Intention.*—Where the accused had, while extending a garden and laying the foundation of a house, encroached on the inner slope of a river embankment, and thereby endangered the safety of the whole station, *held* that, as the house and garden on which the accused was engaged would be the first to be swept away in the event of the dreaded breach in the bund and consequent irruption of the river, a guilty knowledge could not reasonably be inferred on his part, and that, in such cases, where the Government is prosecutor and the case is commenced by no complaint, a Magistrate who acts on his own initiative and summarily, errs seriously in doing so and in sentencing the accused to imprisonment. *In re* PRAN NATH SHAHA ; *In re* RAMNATH BANERJEE, **25 W.R. Cr. 69.**

(48)—*Closing of channel in* bona fide *assertion of right.*—To constitute the offence of mischief under s. 430, it is necessary to show that the act was done with a mischievous intent, and not in the *bona fide* assertion of a right. ATHINARAYANASAWMY PILLAI v. SUBBIER, **1 Weir 505.**

(49)—*Penal Code, ss.* 425 *and* 426—*Mischief as to land*—Bona fide *claim of right—Intent.*—Where in a case of mischief regarding land, the defence raised a *bona fide* claim of right, the Court should determine whether the accused acted with any such intent as is specified in s.425 of the Penal Code. QUEEN EMPRESS v. MAHADSHET, **Rat. Un. Cr. C. 432.**

(50 to 60)—*Existence of a* bona fide *civil dispute between the parties.*—Where there is admittedly a *bona fide* civil dispute between the parties regarding a wall, and one of the parties pulls down a newly built wall in the *bona fide* exercise of his supposed right, he cannot be convicted under s. 426. The proper course will be a settlement of the dispute by a Civil Court. *In re* JAGANNATHAN, **1 Weir 490.**

(61)—*Penal Code, s.* 425—*Mischief*—Bona fide *dispute as to property— Power of Criminal Courts to punish acts of mischief, nature of.*—The authority vested in the Criminal Courts of punishing persons for acts of mischief is one which must be exercised with great caution, and it must be very clear before conviction that the accused has brought himself within the meaning of s. 425, Penal Code. The prosecution must show that the accused caused damage with a wrongful intent, with a knowledge that he was not justified in so doing and that he had no title to the property in dispute. When the accused, village proprietors, cut down trees and it was not shown that they had done so otherwise than under the belief that the trees were their own, *held*, that they could not be convicted for mischief, even if they were mistaken in their belief. NATHA SINGH v. EMPEROR, **73 P.L.R 1903 = 6 P.R. 1903, Cr.** (21 W.R. 38, Cr., 25 W.R. 65, Cr. 6 W.R. 59, Cr. *R.*)

(62)—Bona fide *claim of title—Dispute of a civil nature.*—Where the accused pulled down a wall which formed a side of the privy of the complainant and which was claimed by both

Mischief—*continued.*

the parties as their own property, the Magistrate convicted the accused of the offence of mischief. *Held*, reversing the conviction and sentence, that the dispute was of a civil nature and that no criminal offence was committed. QUEEN-EMPRESS v. VISHNU SAKHARAM, 2 **Bom. L.R. 340.**

(63)—*Penal Code, s.* 426—Bona fide *claim of right.*—Where the accused pulled down a wall in the *bona fide* belief that it was built on his own ground, *held* that no offence of mischief had been committed. EMPRESS v. RUSTAM ALI, **A.W.N. 1882, 209.**

(64)—Bona fide *disputed right—Cutting and carrying away bamboos the right to which was disputed—Penal Code, s.* 426.—Where the accused was charged with having cut and carried away bamboos, the right to which was disputed, held that he could not be convicted of mischief under s. 426 of I.P.C. SHAKUR MAHOMED v. CHUNDER MOHUN SHAH, **21 W.R. Cr, 38.**

(65)—*Disputed right between the parties cutting down bamboos—Mischief—Civ. Pro. Code, s.* 246.—Where a party whose land (as he says) is given possession of to another under a sale in execution by a Civil Court, and who, at the time of attachment made no objection as he might have done under s. 246, Civ. Pro. Code, and who since has taken no legal steps to enforce his alleged rights does, if he enters upon the land, possession of which has been formally made over to the execution purchaser, and cuts down the bamboos growing upon it, commit the offence of mischief. SONAI SARDAR v. BUKHTAR SARDAR, **23 W.R. Cr. 46.**

(66)—*Penal Code, ss.* 428, 429—*Maiming or permanent injury to a limb or member necessary to constitute offence under s.*425—*Mischief, offence of—Intention or knowledge of causing wrongful loss or damage essential.*—In order to drive a bullock away from his cow-shed, accused threw a stick at it, which hit and hurt one of its eyes. It was not definitely shown that the eye was blinded, but the accused was convicted by the Magistrate under s. 429 of the Code. *Held*, reversing the conviction, the term 'maiming' as used in ss. 428 and 429 signifies the permanent privation of the use of a limb or member and, so, in the absence of evidence, against the accused, that the sight of the bullock's eye was permanently impaired by his act, his conviction under s. 429 cannot stand. Further, the provisions of ss. 428 and 429 require that the offence of mischief must have been committed as a result of the acts specified therein and, in order to constitute that offence, it is necessary that the accused should either intend to cause, or know that he is likely to cause wrongful loss or damage. In the present case, there is no evidence as to whether the accused threw only a small stick at the bullock merely for driving it away and intending no harm, or whether he made use of such a stick as, at the time of using it, he knew or had reason to believe that it would be likely to injure the animal. If it had been proved that he used a stick of the latter description, his present conviction could be supported as one under s. 426. But as the case stands, the conviction cannot be sustained either under s. 429 or as under s. 426. NARAIN SINGH v. KING-EMPEROR, **U.B.R. 1905, Penal Code, 25=3 Cr.L.J. 107.** (25 W.R. Cr. 69, *R.*)

(67)—*Penal Code, s.* 431—*Injury to public road.*—Where the accused dug a trench on the waste land bordering on a public road for the purpose of protecting his land from drainage water, thereby causing damage to the road, *held*, that the accused was not guilty of an offence under s. 431, and that it would not be sufficient to prove that the act was calculated to do mischief incidentally to the public road. *In re* KAIRTHADI ANANTHA BHATTAR, **1 Weir 511.**

(68) *Penal Code, s.* 431—*Mischief by injury to public road.*—Where, in a case of mischief by causing injury to a public road, it is not proved that any mischief was caused to the road and that the road in consequence was rendered, or known to be likely to be rendered, impassable or less safe for travelling or conveying property, *held* that no offence of mischief was made out. QUEEN-EMPRESS v. NGA KUN, **U.B.R. 1892-1896, Vol. I, 260.**

(69)—*Penal Code, s.* 425—*Bailiff breaking open doors in execution of decree—Assisting the bailiff—Intention.*—The agent of a landlord accompained by a bailiff broke open the door of a room in his chawl, in the possession of a tenant, in execution of a distress warrant issued against the tenant for non-payment of rent. The Magistrate convicted the accused of the offence of mischief. *Held*, that the conviction could not stand, because the bailiff, if he improperly broke open the door, was acting mistakenly in what he supposed to be his duty, and the landlord's agent, who assisted him, had neither the intention nor the knowledge which is essential in the definition of mischief. QUEEN-EMPRESS v. KAIKHUSRO CURSEDJI, **Rat. Un. Cr. C. 949.**

(70)—*Decree for removal of an edifice—Pulling down of edifice by decree-holder—Subsequent erection and demolition—Rioting—Right of self-defence.*—Where, upon a decree got by A against B, for the removal of an edifice, which the latter had, against the will of the other, put up on land jointly owned by both, A's servants pulled it down, a conviction of A's servants for mischief under the Penal Code was held unsustainable. [*D.*, 6 M. 245.] Where B's servants, in the above case, were again putting up the erection, and, A's servants protesting against it, again pulled it down, throwing to the ground one of B's servants, *held* that A's servants did not form an unlawful assembly and could not be convicted of rioting under the Penal Code, Per *Cunningham, J.*—A's servants were merely exercising the remedy of abating a private nuisance and were exercising the legal right of self-defence. EMPRESS v. RAJCOOMAR SINGH, **3 C. 573=1 C.L.R. 352.** [*R.*, U.B.R. 1905, Penal Code, at p. 21.]

Mischief—*continued.*

(71)—*Penal Code, s.* 426—*Destruction of document containing immoral agreement* —Where an accused person was charged with having destroyed two documents containing an immoral agreement whereby the complainant allowed his wife to live in adultery with the accused, and she, in consideration of this liberty agreed to forego a claim to maintenance, *held*, that the accused was properly convicted under s. 426, Penal Code, inasmuch as one of the documents contained an acknowledgment by the wife that she had no right to be maintained by the complainant. QUEEN v. VYAPURI, **5 M. 401=1 Weir 490.**

(72)—*Penal Code, s.* 426—*Mischief—Odai, removal of earth from without any right to do so.*—Where an accused person, who had no right to remove earth from an Odai, did so in such a manner as to cause the destruction of the complainant's bund, *held*, that he must have contemplated the result and that he was rightly convicted. *In re* BAPPU REDDI, **3 M.L.T. 147=7 Cr. L.J. 133.**

(73)—*Penal Code, ss.* 426 *and* 431—*Floating timber and striking against arch of a bridge—Act rendering a bridge impassable.*—The accused persons were employed to float timber through a bridge. While doing so, some of the logs struck against the arch of the bridge. The accused were convicted under s. 426. *Held*, that the conviction was wrong, as there was no evidence whatever of mischief and still less of the intention and knowledge required by the section. HIGH COURT PROCEEDINGS, 4TH NOVEMBER 1870 **1 Weir 487=5 M.H.C. App. 40.**

(74) — *Rendering bridge impassable.* — The accused were charged with having committed mischief by doing an act which rendered a bridge impassable. The only facts proved were, (1) that two pieces of timber came floating down the river in a flood and, coming in contact with the bridge, destroyed two of its piers; and (2) that the accused cut the smaller pieces at a point on the bank of a river, some eight miles above the bridge, and left it lying on the bank. *Held*, that there was obviously no intention to cause mischief, and that the evidence was insufficient to prove knowledge that injury was likely to result from the act of the accused. *In re* MALAYAN KALAN, **1 Weir 510.**

(75)—*Penal Code, s.* 426—*Alleged owner harvesting tenant's crops.* — The complainant, having rented a plot of land from the owner, had cultivated it; and before the produce was harvested, the accused, alleging himself as owner, entered upon the land, carried away some of the produce and destroyed the rest. *Held*, that, even if the accused were the owner of the land, he would still have been guilty of mischief in destroying the tenant's crops. *In re* VENGAPPIEN, **1 Weir 491.**

(76)—*Penal Code, ss.* 426, 477—*Offence under s.* 477—*Power of Magistrate to try and convict under s.* 426—*Jurisdiction of Sessions Court.*—The destruction or attempted destruction of a promissory note is, by s. 477, specifically made an offence which is triable by the Sessions Court only. Where a person is charged with such an offence, the Magistrate, where there is evidence to support it, should commit the case to the Sessions, and should not convict him under s. 426. The Magistrate is not justified in assuming jurisdiction, when the evidence plainly points to a more serious offence beyond his jurisdiction. *In re* MADURAI, **12 M. 54=2 Weir 22=1 Weir 552.** [*R.*, 7 Cr. L.J. 319=4 N.L.R. 18.]

(77)—*Penal Code, s.* 426—*Custom of bringing an idol once a year underneath a tree for worship—Removal of the tree, if an offence.*—The fact, that for years an idol was allowed to be brought once a year underneath a tree on the land of the accused for public worship, cannot divest the owner of the land and of the tree standing thereon, of his ownership, and cannot amount to a dedication of the tree to the idol or to the public. The accused will not be guilty of an offence under s. 426 for the removal of the tree. *In re* VENKATAPURNANANDAM, **1 Weir 496.**

(78)—*Penal Code, s.* 428—*Escape of an animal* feræ naturæ *from the possession of the owner.*—Where an animal which was *feræ naturæ*, but which had been reduced into possession by being kept in a fold and having a nose-ring attached to it, escaped. *held*, that, although for the moment possession was lost by the escape of the animal, the owner's right to it had not, thereupon, come to an end. Therefore a person shooting such an animal would be guilty of an offence under s. 428. *In re* SUBRAYADU, **1 Weir 498.**

(79)—*Penal Code, s.* 429—*Killing a bull released at a funeral—Duty of Courts.*—Where a person was charged under s. 429, Penal Code, with killing a bull which was released at a funeral, but over which the owner had not parted with all control, *held*, that, before finding that it ceased to be private property, it was necessary to see whether the funeral ceremony referred to was followed by an abandonment of all control over the beast. It may be that the subsequent acts of the owner would amount only to a reservation of property for the purpose of putting the animal to pious or charitable uses only, or they would amount to a dedication to a temple or to a section of the public so as to vest the property in the latter. In none of these cases would it be correct to say that the bull belonged to no one. Courts of Justice ought not to look solely at the import of certain ceremonies, but to go a step further and determine whether the act of the owner, designed to give effect to that ceremony, amounts to one of the modes recognised by private law as sufficient to extinguish private property. GHANTA VEERANNA v. PUSHPATHI NARASIAH, **1 Weir 500.**

(80)—*Penal Code, s.* 429—*Death of buffalo caused by an unintentional act.*—Where the accused threw a stone at a buffalo, in order to

Mischief—*continued.*

drive it out of her backyard, and the animal after running some distance, fell down and died, *held*, that the accused was not guilty of an offence under s. 429, for there was nothing to show that the accused had, in throwing the stone, any intention to cause injury to the animal or reasonable cause to suppose that loss or damage was likely to be caused. *In re* OBAMMAL, **1 Weir 502.**

(81)—*Bull liberated according to Hindu custom.*—A bull liberated by a Hindu, according to the ancient usage, may be capable of being the subject of the offence of theft. BAHADUR SINGH v. EMPRESS, **34 P.R. 1888, Cr.** (8 A. 51, *Not F.* ; 27 P.R. 1884, Cr., *R.*)

(82)—*Penal Code, s. 429—Mischief—Bull let loose.*—No offence of mischief is committed in killing a bull branded and let loose according to the custom of Hindus on the death of a person, since such bull is no one's property. EMPRESS v. JANMURA, **A.W.N. 1884, 87.** [*F.*, 9 A. 348 = A.W.N. 1887, 73.]

(83)—*Penal Code, s. 426—Killing a stolen sheep.*—Where a person who stole a sheep was convicted of theft, *held*, that he could not be subsequently convicted under s. 426 for the subsequent killing of the sheep, as wrongful loss, which was an essential ingredient of the offence of mischief, had already been caused when the sheep was stolen. MADAR SAHIB, *Accused*, **1 Weir 497 = 2 Weir 458.**

(84)—*Stealing and destroying property.*—Stealing property and then destroying it are but one offence, *viz.*, theft, and not two offences, theft and mischief. CROWN v. HAMIRA, **37 P.R. 1866, Cr.**

(85)—*Cutting tree for public purpose.*—Where three Municipal Councillors permitted a tree within the Municipal limits to be cut for a public purpose, against the order of the Municipal Committee as a whole, *held*, that they were not guilty of an offence under s. 425, I.P.C. AMIR CHAND v. EMPRESS, **9 P.R. 1878, Cr.**

(86)—*Penal Code, s. 425—Mischief—Cutting down trees in the belief of a legal right.*—Where a tenant cut down certain trees found by the Court to belong to the landholder under the impression that he had a right to do so and it was also found that he did not intend to cause and did not know that he was causing loss to the landholder, *held* that the tenant had not committed mischief. EMPRESS v. BASANT RAI, **A.W.N. 1881, 64.**

(87)—*Destruction of postal receipt.*—Where the accused, who received a registered letter, instead of returning the acknowledgment duly signed to the postman, tore it away, *held* that the accused was guilty of the offence of mischief. KING-EMPRESS v. SUKHA SINGH, **24 P.R. 1905, Cr. = 71 P.L.R. 1905 = 2 Cr. L.J. 242.**

(88)—*Penal Code, ss. 425, 430—Mischief—Necessary elements of the offence—Knowledge of*

Mischief—*concluded.*

causing wrongful loss to others—Insufficiency of evidence—Conviction.—In order to convict a person of criminal mischief, it must be proved that the accused did the particular acts in question with the knowledge that they were likely to cause wrongful loss or damage to other persons. Where the intention was not to cause loss to any body, but to protect the accused's own property which was in danger of injury, the mere fact that the accused, by cutting through a bund and permitting a portion of the water of a *tal* to escape, caused thereby a diminution in the supply of water for agricultural purposes, is not sufficient to base a conviction, under s. 430, Penal Code, unless it be proved that wrongful loss or damage resulted to some person from such diminution in the supply of water. The mere diminution in water-supply does not lead to the presumption that loss or damage was thereby caused to some person. MOHAMMAD v. EMPEROR, **11 Cr. L.J. 168 = 5 Ind. Cas. 560.**

See ATTEMPT, 3 B.L.R.A. Cr. 55.

See CATTLE TRESPASS, 7 B. 126.

See CHARGE—FORM OF CHARGE, 8 W.R. Cr. 30.

See COMPENSATION—GENERAL, 8 W.R. Cr. 54.

See COMPLAINT — DISMISSAL OF COMPLAINT, A.W.N. 1885, 43.

See CRIMINAL TRESPASS, 2 A. 101.

See PENAL CODE, ss. 23, 430, 4 L.B.R. 149 = 7 Cr. L.J. 448.

See PENAL CODE, ss. 32 and 426, 1 Weir 29 = 1 Weir 495.

See PENAL CODE, ss. 95, 425, A.W.N. 1882, 229.

By fire, what constitutes offence — *See* PENAL CODE, s. 285, L.B.R. 1872—1892, 411.

See PENAL CODE, ss. 295, 378, 403, 425, 17 C. 852.

See PENAL CODE, ss. 336, 426, 504, 5 L.B.R. 100.

Criminal trespass—Damage of one's own property by himself—Intention—*See* PENAL CODE, ss. 447, 442, 7 Ind. Cas. 812 = 15 C.W.N. 224 = 11 Cr. L.J. 532.

Theft and mischief—Separate sentences—*See* SENTENCE—CUMULATIVE AND SEPARATE SENTENCES, Rat. Un. Cr. C. 430 = Cr. Rg. 1 of 1889, 2 A. 101, 8 W.R. Cr. 31, 6 W.R. Cr. 5.

Combined with theft — *See* SUMMARY TRIAL, 25 W.R. Cr. 5.

See SUMMARY TRIAL, 23 W.R. Cr. 19, 25 W.R. Cr. 69.

See THEFT—THINGS WHICH MAY BE THE SUBJECT OF THEFT, A.W.N. 1881, 73.

See THEFT—MISCELLANEOUS, 5 Bom. L.R. 460, Rat. Un. Cr. C. 129, U.B.R. 1892—1896, Vol. I, 241.

Person joining unlawful assembly to prevent, to his own property—*See* UNLAWFUL ASSEMBLY, 19 W.R. Cr. 66.

Misconduct.

Payment by pleader out of his Munshi's fee to a person who brings a case to him—*See* ACT XVIII OF 1879, s. 13 (*c*) (*d*), 22 P.W.R. 1910, Cr. = 6 Ind. Cas. 736 = 11 Cr. L.J. 396 = 27 P.R. 1910, Cr. = 69 P.L.R. 1910.

Misdirection.

See CHARGE TO JURY—MISDIRECTION.

See JURY.

See REVISION—MISDIRECTION AND VERDICT OF JURY.

See TRIAL BY JURY.

(1)—*Misdirection to jury—Test.*—The test whether the accused has been prejudiced by a misdirection to the jury is to see whether, if the trial has been held before a Judge and assessors, the defects are such as would have led the appellate Court to set aside the decision of the Judge. QUEEN-EMPRESS v. KALLAPPA, **Rat. Un. Cr. C. 806.**

(2)—*Charge to jury—Duty of Judge—Misdirection.*—It is the duty of the Judge to give a direction upon the law to the jury, so far as to make them understand the law as bearing upon the facts ; and if he does not give them an explanation of the law sufficiently comprehensive to enable them to decide the particular issue, it is a misdirection.—Per *Field, J.* EMPRESS v. JHUBBOO MAHTON; *In the matter of the petition of* JHUBBOO MAHTON, **8 C. 739 = 12 C.L.R. 233.** [*R.*, 6 Bom. L.R. 258 = Rat. Un. Cr. C. 736.]

(3)—*Crim. Pro. Code* (1898). *ss.* 297 *and* 298—*Misdirection to jury—Omission to state common object of unlawful assembly—Penal Code, s.* 149.—It is not sufficient that the common object of an unlawful assembly is stated in the charge. The Sessions Judge ought, in commenting upon the provisions of s. 149, Penal Code, to draw the attention of the jury expressly to the common object. MANGAN DAS v. EMPEROR, **29 C. 379 = 6 C.W.N. 292.**

(4)—*Crim. Pro. Code* (1898), *ss.* 307 *and* 418—*Refusal by Sessions Judge to refer to High Court—No misdirection—No failure of justice—Power of High Court to interfere.*—The High Court cannot interfere with the verdict of the jury, when the Sessions Judge has refused to refer the case under s. 307, Crim. Pro. Code, and there has been no material misdirection in the case, and no failure of justice has been caused by misdirection. *In re* KAIYAN, **4 M.L.T. 483 = 9 Cr. L.J. 93.**

(5)—*Charge to Jury—Misdirection—Jury not misled.*—In a case of theft the Judge in his charge to the Jury said "the accused may be presumed to be the thief *if there is no evidence to the contrary*" instead of the words "*unless he can account for his possession.*" But there were passages in the charge which showed that the Judge did not mean and the Jury did not understand him to mean that they should pay no attention to any explanation which the accused might put forward in the absence of evidence to support it : *Held*, that the passage in question did not amount to a misdirection. *In re* CHINNU, **16 Cr. L.J. 618 = 30 Ind. Cas. 442.**

Misdirection—*continued.*

(6)—*Trial by Jury—Misdirection in charge to Jury—Questions of fact, Judge's expression of opinion in dogmatic and unqualified terms—Material evidence, omission to refer to—Conditions precedent to using certain evidence and drawing adverse inference against accused, omission to point out—Absconding not incompatiable with innocence, omission to point out—Retrial by a new Judge.*—Where the accused was convicted under ss. 304, 328, I.P.C., for having administered arsenic mixed with sugar to two boys and thereby caused the death of one and hurt to the other and the Sessions Judge in his charge to the Jury expressed his own opinion on the evidence in terms too dogmatic and unqualified, although he informed them that, on questions of fact, they were not bound by any opinion of his, and omitted to refer to some statements of one of the two boys before the committing Magistrate and before the Sessions Judge and did not warn the Jury that, before drawing inferences against the accused, they must first be satisfied that he knew of the presence of arsenic in the sugar and that the evidence negatived the possibility of accident or mistake, and that before using the chemical examiner's report they must be satisfied on the evidence that the substances examined were in fact what they were said to be, and in discussing the questions of accused's absence from his village did not warn the Jury that, even if they believed that he absconded, absconding is not necessarily or invariably incompatible with innocence : *Held*, that the charge to the Jury was vitiated by misdirection. The High Court set aside the conviction and sentence and ordered a retrial by a new Judge, on the ground that the trying Judge had formed a strong opinion on the case. OFEL MOLLAH v. KING-EMPEROR, **18 C.W.N. 180 = 15 Cr. L.J. 147 = 22 Ind. Cas. 723.**

(7)—*Trial by jury—Sessions judge explaining away a fact—Explanation at variance with evidence — Misdirection — Illegality.*— A person charged with having committed dacoity alleged to have taken place at 7-30 P.M. on a certain date pleaded that he could not have been present at the scene of dacoity at that time, because he was on that very day released and acquitted by a Sub-Magistrate in another case at about 8-30 P.M. In an application for bail before the same Sub-Magistrate after arrest in the present case, the accused pleaded this very ground in support of his application, but the Sub-Magistrate without noticing it refused bail. In the trial before the Sessions Court, the Sessions judge told the Jury that the obvious answer to the argument of the defence on this point was that the Sub-Magistrate would have released the accused on bail if he had accepted as true his allegations as to the hour of his acquittal. *Held*, that there was a clear misdirection on a very important point and that the verdict of guilty ought to be set aside. SUBBU TEVAN, **14 M.L.T. 442 = 14 Cr. L.J. 623 = 21 Ind. Cas. 671.**

Misdirection—*continued.*

(8)—*Jury—Misdirection—Questions of law—Rioting—Common object—Suggestion by Judge that real cause might be between cases alleged by both sides—Penal Code*, ss. 146, 147, *Violence, if includes that against inanimate object—Minutest details, whether necessary for Judge to go into—Statement by prosecution witness that accused had been bound down, whether admissible—Evidence of bad character—Evidence Act*, s.54.—In a case of rioting in which one common object was alleged throughout, the Judge suggested to the Jury that the case might not be precisely as the prosecution alleged, nor what the defence set up, but something between the two: *Held*, that there was no misdirection; that the Judge left it entirely open to the Jury as to whether they would accept his suggestion or not; and that the acceptance of it by the Jury would not destroy the case for the prosecution. In s. 146, Penal Code, violence includes violence against inanimate objects, such as pulling down a man's house. In his charge to the Jury, it is not necessary for the Judge to go into the minutest details in the evidence. In a prosecution for riot, the statement by a prosecution witness that he had brought a case under s. 107, Crim. Pro. Code, against some of the accused who had been bound down, is admissible, if introduced not for the purpose of proving the bad character of the accused, but as part of the *res gestæ*, the events which had transpired before, and which eventually led up to, the riot with which the accused were charged. SAMARUDDIN v. EMPEROR, **13 Cr. L.J. 821 = 17 Ind. Cas.** 565 = **40 C. 867.** (20 W.R. Cr. 5, F.B. = 11 B. L.R. 347, 21 C. 955, *D.*)

(9)—*Jury—Misdirection — Admission of improper evidence — S. 33 of Evidence Act — Court must exercise judicial mind.—Spencer, J.* — The statements of a witness before a Magistrate who has not been examined as a witness in the trial of the accused are not admissible in evidence. The jury should be cautioned against acting on the evidence of persons who on their own admission are employed by the police to do private detection work. *Seshagiri Iyer, J.*—The Sessions Judge is guilty of misdirection where he failed to draw pointed attention to the fact that reliance has to be placed upon the testimony of an absent witness and where evidence has been improperly admitted under s. 33 of the Evidence Act. Under s. 33 of the Evidence Act there must be independent evidence before the Judge. Before he can exercise the powers given to him, he must have reliable evidence regarding the impracticability of procuring attendance of the witnesses. Where he acts upon the statement of the Public Prosecutor the procedure is irregular. The English decisions relating to evidence can be relied upon in India. The rules of evidence are subject to the general principles of jurisprudence. It is the duty of the prosecution to establish the case against the accused and they should not rely upon admissions made by him in the course of the trial for convicting him. There is no difference between the violation of a rule of procedure and the violation of a rule of evidence. *Prima facie* the consent of the accused or of his counsel is presumptive evidence of the absence of prejudice. It is not intended to rule thereby that, because an irregular procedure or improper admission of evidence has been consented to by the accused, it precludes the Judges hearing the case from deciding whether, notwithstanding the consent, the case of the accused has not been prejudiced by the irregularity. Where evidence ought not to have been allowed to be given such a course amounts to misdirection. ANNAVI MUTHRIYAN v. EMPEROR, (1915) **M.W.N.** 229 = **17 M.L.T. 214 = 28 M.L.J.** 329 = **16 Cr. L J.** 294 = **28 Ind. Cas.** 518. (27 B. 626, *F.*)

Misdirection—*concluded.*

(10)—*Jury trial—Misdirection—Citation of rulings in the charge to the jury—Right of private defence, when trespassers have begun cutting crop.*—When trespassers began cutting and carrying away crop grown by the person in possession, reasonable apprehension to the property having already commenced, the right of private defence of the latter commenced at the same time; and it was misdirection on the part of the Judge to leave it to the Jury to say whether the fact that the police station was only nine miles off from the place of occurrence did not take away that right. The reference in such circumstances to his civil remedies also amounted to misdirection. No rulings or authorities should be cited by the Judge in his charge to the jury, nor should they be asked to differentiate or form any opinion whatever on any authorities. Such procedure confuses the minds of the jury and constitutes misdirection. MEHER SARDAR v. KING-EMPEROR, **16 C.W.N. 46 = 13 Ind. Cas. 218 = 13 Cr. L J. 26.**

As to approver's testimony—What amounts to—*See* APPROVER, 12 Cr. L.J. 537 = 12 Ind. Cas. 513.

List of stolen properties prepared by Police—Admissibility—Misdirection to jury—*See* CRIM. PRO. CODE, 1898, s. 167 = 13 Cr. L.J. 244 = 14 Ind. Cas. 596.

Duty of Judge to explain the law to jury—Omission, whether amounts to misdirection—*See* CRIM. PRO. CODE, 1898, ss. 297, 298, 29 C. 379 = 6 C.W N. 292.

What amounts to—*See* DEAF AND DUMB PERSON, (1912) M W.N. 100 = 14 Ind. Cas. 655 = 13 Cr. L.J. 271.

See ILLEGALITY, Rat. Un. Cr. C. 466 = Cr. Rg. 24 of 1889.

See KIDNAPPING, 1 S.L.R. 104, Cr. = 8 Cr. L.J. 361.

Misjoinder of Charges.

See CRIM. PRO. CODE, 1898, ss. 233—239.

See JOINDER OF CHARGES—MISJOINDER OF CHARGES.

Law as to, applicable to enquiries, under s. 107, Crim. Pro. Code—*See* CRIM. PRO. CODE, 1898, ss. 107 and 537, 8 C.W.N. 180.

See CRIM. PRO. CODE, 1898, ss. 179, 222, 235 to 239, 531, 537, 18 P.W.R. 1908, Cr. = 8 Cr. L.J. 75.

Misjoinder of Parties.

See JOINDER OF PARTIES.

Law as to, applicable to enquiries under s. 107, Crim. Pro. Code—*See* CRIM. PRO. CODE, 1898, ss. 107 and 537, 8 C.W.N. 180.

See PRACTICE AND PROCEDURE, 31 C. 710.

Misrepresentation.

See CHEATING—GENERAL, 1 Weir 477=6 M.H.C. App. 12.

Mistake.

See WRONGFUL RESTRAINT, 24 C. 885.

Mistake of Fact.

(1)—*Penal Code, ss.* 52, 76. 96—*Soldier firing upon a mob under orders of his commanding officer—Right of private defence.*—Where three sepoys, acting under the orders of their Naik, fired upon a mob which was threatening them, under circumstances which did not render the act excusable under s. 96, I.P.C., with the result that two men were shot dead, *held*, that the accused were not protected by s. 76, I.P.C., as the sepoys were cognizant of all the circumstances of the quarrel, and as, there being no room for a mistake of fact, they should have known that the Naik was acting wrongly in ordering them to fire upon the mob. The liability of a soldier firing upon a mob under orders from a superior officer discussed. NIAMAT KHAN v. EMPRESS, **17 P.R. 1883.**

As a defence to a Criminal charge—*See* PENAL CODE, s. 79, 1 Weir 40.

Mistake of Law.

See POLICE, L.B.R. 1872—1892, 164.

Mitigation of Sentence.

See MURDER.

See SENTENCE—POWERS OF APPELLATE COURT—MITIGATION.

Mofussil Small Causes Court.

See SMALL CAUSES COURT, MOFUSSIL.

Mohurbhunj.

See FOREIGN TERRITORY, OFFENCES COMMITTED IN, 9 C. 288.

See JURISDICTION OF CRIMINAL COURTS—GENERAL, 7 C. 523=9 C.L.R. 93, 8 C. 985=10 C.L.R. 241, F.B.

Mohurrir.

If a public servant—*See* BEN. ACT IX OF 1862, 20 W.R. Cr. 49.

Mohurs.

See ACT XIX OF 1872, 5 N.W.P. 187.

Money.

See SUBSISTENCE-MONEY.

(1)—*Penal Code, s.* 420.—Property in this section includes money. BIRENDRA DAL BHADURI v. EMPEROR, **32 C. 22=8 C.W.N. 784=1 Cr. L.J. 794.**

Money—*concluded.*

Confiscation of—*See* MAD. ACT I OF 1886, s. 65, 1 Weir 652.

See COUNTERFEITING COIN, 11 B.H.C. 172.

Money Order.

Refusal to deliver a receipt—Money sent by—Acknowledgment signed—Second receipt refused—Whether person refusing guilty—*See* ACT II OF 1899, s. 65, 9 A.L.J. 97=13 Cr. L.J. 122=13 Ind. Cas. 778=34 A. 192.

Monomaniac.

See INSANITY, 109 P.R. 1866, Cr.

Mooktears.

See LEGAL PRACTITIONERS—MUKTEAR.

Mooktears, Revenue Agents, and Pleaders Act.

See ACT XX OF 1865.

Morphia.

Morphia habit—Absence of mental aberration—Effect—*See* CRIM. PRO. CODE, 1898, ss. 4 (i), 454 (i), 460, 13 Cr. L.J. 197=14 Ind. Cas. 197=24 P.W.R. 1912, Cr.=6 P.R. 1912, Cr.

Mortgage.

(1)—*Fraud by mortgagor in respect of mortgaged property.* RAM MANICK SHAHA v. BRINDABUN CHUNDER PODDAR, **5 W.R. 230.**

Stolen property—Payment of compensation ordered to mortgagee—*See* CRIM. PRO. CODE, 1898, ss. 519, 545, Rat. Un. Cr. C. 631=Cr. Rg. 55 of 1892.

Ouster of mortgagee in possession by third person—*See* CRIMINAL TRESPASS, A.W.N. 1902, 24.

Cheating—Mortgagor not disclosing his defective title—*See* PENAL CODE, s. 420, 40 P.W.R. 1910, Cr.

Cheating—Judgment-debtor raising money on the—of his house already sold in execution of decree — Discharge—Re-trial—*See* PENAL CODE, s. 420, 10 P.W.R. 1912, Cr.=114 P.L.R. 1912=15 Ind. Cas. 88=13 Cr. L.J. 456.

Mortgagee cutting trees to repair mortgaged premises whether guilty of mischief—*See* PENAL CODE, s. 426, 15 Cr. L.J. 290=23 Ind. Cas. 498.

Mortgage-suit.

Symbolical possession in execution of a foreclosure decree, not effective against a lessee who was not a party to the—Actual possession, to be considered in s. 145, Crim. Pro. Code—*See* DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 4 C.L.J. 562=4 Cr. L.J. 503.

Mosque.

Dispute concerning the right to perform religious worship in—*See* DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 11 M. 323=2 Weir 117.

Mother.

Kidnapping—Continuing offence—Abetment—Can be guilty of kidnapping her own child—*See* PENAL CODE, ss. 363, 498, 9 Ind. Cas. 511=56 P.L R. 1911=12 Cr. L.J. 94.

Motive.

See INTENTION.

(1)—*Absence of, for commission of crime—Penal Code, s.* 84.—The mere circumstance of an act being apparently motiveless is not a ground from which the existence of a powerful and irresistible influence or homicidal tendency can be safely inferred. SOBHA v. EMPEROR, **40 P.R. 1905, Cr.=143 P.L.R. 1905=2 Cr. L.J. 714.** (23 C. 604, *N.F.*)

(2)—*Proof of, if necessary to fix guilt on accused.*—It is not always possible or necessary for the prosecution to prove the motive of the accused in committing the crime, and the absence of any proof of motive is not in itself sufficient to justify the rejection of evidence, which, otherwise, is reliable. CROWN v. BALOCHKHAN *wd.* KANDERO, **4 S.L.R. 38=7 Ind. Cas. 38=11 Cr. L.J. 498.** (32 B. 111, *R.*) [*Expl.*, 12 Cr. L.J. 489=12 Ind. Cas. 209=5 S.L.R. 31.]

(3)—*Proof of motive if necessary.*—Though the motive for committing an offence as murder may not be made clear yet if there could be no doubt on the evidence that the prisoner was not at the time of the murder in such a state as to be irresponsible for his actions, the conviction is correct, and sentence of death reasonable. CROWN v. MAHOMED KHAN, **91 P.R. 1866, Cr.**

Want of proof of motive cannot of itself defeat a charge—*See* CRIM. PRO. CODE, 1898, ss. 476, 195, 9 N.L.R. 184.

Proof of—*See* MURDER, 10 W.R. Cr. 11.

Murder—Proof necessary where jewels of the murdered in possession of accused—*See* MURDER, 1913 M.W.N. 145=18 Ind. Cas. 337=14 Cr. L.J. 49.

Charge of murder—Village Munsif's report silent as to the murderer—Jewels worn by deceased missing and not accounted for—for murder very slight—Conviction bad—*See* MURDER, (1911) 2 M.W.N. 373=12 Ind. Cas. 577=12 Cr. L J. 551.

Proof of—Duty of prosecution—*See* PENAL CODE, ss. 85, 86, 84, 7 N.L.R. 180

Mischief—Intention — Cutting a channel through railway to let out water from fields—*See* PENAL CODE, s. 427, 16 C.W.N. 263=13 Ind Cas. 826=13 Cr.L.J. 138.

Motor Vechicles Act.

See BOM. ACT II OF 1904.

Mouzadar.

See PENAL CODE, s. 186, 8 W.R.Cr. 66.

Moveable Property.

See THEFT.

(1)—"*Moveable property*"—*Term explained.*—The term "moveable property" in s. 479, I.P.C., is intended by the Legislature to include a class or category of properties falling under one ownership, not merely the parts of it which may pass from the hands of the owner into other hands. The class is stable, though the units are ambulatory. The term is intended to include collective class nouns, *e.g.*, nouns that express a number of objects of the same class collected together. EMPEROR v. DAHYABHAI CHAKASHA, **6 Bom L R. 513=1 Cr. L J. 581.**

(2)—*Ownership and possession of.*—Ownership and possession of immoveable property are not so easily separated as ownership and possession of moveable property. KING-EMPEROR v. NAWTURA SINGH, U.B.R. 1904, **1st Qr., Penal Code, 7=1 Cr.L.J. 558=10 Bur. L.R. 356.** (U.B R. 1897—1901, 137, 139, L.B.R. 1903, 65, *R.*)

See CRIMINAL BREACH OF TRUST, 23 C. 372.

See CRIM. PRO. CODE, 1898, s. 386, 2 Weir 444.

See PENAL CODE, ss. 22, 378 and 379, 10 M. 255=1 Weir 413.

Muddutt.

License to sell—*See* ACT I OF 1878, s. 39, 13 C.L.R. 336.

Muharram.

Erection of temporary shed during—for purpose of worshipping religious symbol—*See* NUISANCE UNDER PENAL CODE, 7 M. 590=1 Weir 246.

Muktear.

See LEGAL PRACTITIONERS—MUKTEAR.

Municipal Board.

See U.P. ACT XV OF 1883, s. 69, 22 A. 123, F.B.

Municipal Cases.

Qualifications and disqualifications—Interest in case—Magistrate also Vice-Chairman of Municipality—*See* JUDGE, 3 W.R.Cr. 33.

Municipal Clerk.

See PENAL CODE, ss. 21, 186, 10 Bom. L. R. 761=8 Cr. L.J. 269=33 B. 213=1 Ind. Cas. 869.

Municipal Commissioner.

(1)—*Evidence— Oath— Municipal Commissioner—Illegality—Act VI of 1872, s. 5—Act X 1872, s. 296.*—The High Court declined to interfere, under s. 296, Act X of 1872, with the order of a Municipal Commissioner, who was the editor of a newspaper, who had, prior to the disposal of the case, made very strong remarks on the case in the newspaper of which he was editor, holding that there was nothing illegal in his order, though he would have exercised a wise discretion if he had refused to sit as one of the Commissioners in the case. QUEEN v. TARINEE CHURN BOSE, **21 W.R. Cr. 31.**

Municipal Commissioner—*concluded.*

(2)—*Crim. Pro. Code, s.* 539 — *Municipal Commissioner acting as Magistrate—Procedure.* —A Municipal Commissioner acting as a Magistrate, may inquire into a charge of the breach of a bye-law and may punish the accused party by inflicting a fine. But these provisions show that the procedure to be followed is that of the Code of Criminal Procedure. The Code of Criminal Procedure though it does not expressly prohibit, does not contemplate a proceeding against an absent party *ex parte*, TARINEY CHURN BHOSE v. MUNICIPAL COMMISSIONER OF SERAMPORE, **24 W.R. Cr. 25.**

Power of Municipal Commissioners to administer oath—Order to close burning ground—*See* BEN. ACT III OF 1864, ss. 6, 79, 19 W.R. 309.

Notice of action—Suit against Municipal Commissioners—*See* BEN. ACT III OF 1864, s. 77, 7 W.R. 92.

Illegal order of Municipal Commissioners—*See* CRIMINAL TRESPASS, 5 M.H.C. App. 38.

Liability of—sitting as Magistrate under Ben. Act. III of 1864—*See* JUDICIAL OFFICERS, LIABILITY OF, 13 W.R. 340.

If public servant—*See* SANCTION TO PROSECUTE—CONDITIONS REQUISITE FOR GRANT OF SANCTION, ETC., 17 P.R. 1902, Cr.

Municipal Committee.

Member of,—Advancing money to contractor for carrying out Municipal contracts—Offence under s. 168, Penal Code—*See* PENAL CODE, s. 168, 7 N.L.R. 53=10 Ind. Cas. 577=12 Cr. L.J. 281.

Municipal Corporation.

Not a public servant—*See* ACT IV OF 1877, s. 39, 3 C. 758=2 C.L.R. 520.

Municipal Councillor.

Municipal Councillor reporting a case for prosecution—His competency to be one of the Bench of Magistrates to try the case—*See* CRIM. PRO. CODE, 1898, s. 558, 2 Weir 728.

Municipal Election.

Application to Presidency Magistrate by counter-petitioner to declare that the inclusion of the petitioner as a candidate for the Municipal election by the President of the Madras Corporation was illegal—Order of Presidency Magistrate allowing the application—Revision whether lies—*See* MAD. ACT III OF 1904, s. 413, 16 M.L.T. 128=27 M.L.J. 227=15 Cr. L.J. 593=25 Ind. Cas. 345.

Municipal Inspector.

Whether a public servant—*See* MAD. ACT IV OF 1884, s. 41, 13 M. 131=1 Weir 345=1 Weir 726.

Municipality.

(1)—*N.W.P. and Oudh Municipalities Act* I *of* 1900, *ss.* 90, 91—*Powers of Municipal Board as to sanitation.*—Where a Municipal Board closed up a drain by which water used to flow from the plaintiff's premises, on the ground

Municipality—*continued.*

that the drain was prejudicial to health and public comfort, *held* that such action was justified by the powers given to the Municipal Board in ss. 90, 91 of Act I of 1900 and that the plaintiff had no cause of action. ABDUL AZIZ v. CHAIRMAN, MUNICIPAL BOARD, PELIBHIT, **A.W.N. 1905, 79.**

(2)—*Act* I *of* 1900 (*N.W.P. and Oudh Municipalities Act*), *ss.* 87, 132—"*Abutting on or adjoining a public street.*"—The words "abutting on or adjoining a public street," as used in s. 87 (1) (*a*) of Act I of 1900, could not be construed as applicable to an erection which was distant at its nearest point some 20 or 25 feet away from a public street. KING-EMPEROR v. MAKUND LAL, **A.W.N. 1901, 203.**

(3)—*Penalties under the Municipal Rules.*—Penalties under the Municipal rules must be enforced by the ordinary procedure, giving the accused an opportunity of defending himself. MUNICIPAL COMMITTEE v. DEEN MAHOMED, **62 P.R. 1866, Cr.**

(4)—*Powers of Municipal Committee.*—The powers of a Municipal Committee were limited to the definition and prohibition of nuisances and the fixing of reasonable penalties, which penalties were to be enforced by a Magistrate under the Crim. Pro. Code. The Committee has no power to impose a fine. *In re* NARAIN DAS, **4 P.R. 1866, Cr.**

(5)—*N.W.P. and Oudh Municipalities Act I of* 1900, *s.* 87—*Re-erection of building—Meaning.*—The blocking up of the archways of a verandah abutting on a public street in order to convert it into rooms, amounts to the re-erection of a building within the meaning of s. 87 of the N.W.P. and Oudh Municipalities Act I of 1900. EMPEROR v. JAGARNATH PRASAD, **A.W.N. 1904, 233=1 Cr. L.J. 915.**

(6)—*Municipal prosecution—Trial by Joint Magistrate who was himself Secretary to Municipal Committee.*—The accused was a Municipal Muharir. The Municipal Committee resolved to institute a criminal proceeding against the accused and directed the Secretary, the Joint Magistrate, to take necessary steps. A copy of the resolution of the Committee was forwarded to the Joint Magistrate by the Secretary, who took proceedings accordingly and tried the accused himself. *Held* that the trial by the Joint Magistrate himself was most objectionable and was not calculated to promote the confidence of the public in the perfect impartiality of the administration of criminal justice. EMPRESS v. BASANT RAI, **A.W.N. 1883, 181.**

(7)—*Act* XV *of* 1883, *s.* 55 (*c*)—*Powers of Municipal Board.*—It is not the intention of the Legislature in enacting s. 55 (*c*) of Act XV of 1883, that a Municipal Board should, of its own free will, and its own discretion, have a right to treat that as a nuisance which by no possible view could be regarded by the public or by a lawyer as a nuisance. The section does not contemplate the giving of a power to a Municipal Board to make a rule which could

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enable them to confiscate private right in markets, where the holding of the market and the maintenance of the market could not be objected to upon any public ground, and to do this without making any compensation to the person whose rights are affected. The clause gives only power to make rules for prohibiting the establishment of markets, that is, to prevent new markets being established, and to give them powers to control the maintenance of existing markets. By "maintenance" is meant the keeping of a market in such a manner as would make it a fit place for the carrying on of a market having regard both to public health and convenience. GANGA NARAIN v. MUNICIPAL BOARD OF CAWNPORE, **A.W.N. 1897, 65.**

See ACT V OF 1861, s. 29, U.B.R. 1892–1896, Vol. I, 296.

See BOM. ACT III OF 1901, s. 96, 6 Bom. L.R. 581.

Bye-laws of, validity of—Presumption—*See* U.P. ACT XV OF 1883, s. 55, 19 A. 493=A.W.N. 1897, 133.

Salaried officer in Municipality — Disqualification—*See* BENCH OF MAGISTRATES, 10 C. 194.

Magistrate becoming chairman of Municipal Board— Transfer of case — Jurisdiction as Magistrate—*See* CRIM. PRO. CODE, 1898, s. 528, 12 A.L.J. 890=36 A. 513=15 Cr. L.J. 693=26 Ind. Cas. 141.

See DEFAMATION, 26 M. 43=2 Weir 232=12 M.L.J. 413.

See PENAL CODE, s. 425, Rat. Un. Cr. C. 745=Cr. Rg. 10 of 1895.

Municipality, Acts relating to.

See BEN. ACT VI OF 1863 (CALCUTTA MUNICIPALITY).

See BEN. ACT III OF 1864 (DISTRICT MUNICIPAL IMPROVEMENT).

See BEN. ACT V OF 1876 (BENGAL MUNICIPALITY).

See BEN. ACT IV OF 1876 (CALCUTTA MUNICIPAL CONSOLIDATION).

See BEN. ACT III OF 1884 (MUNICIPAL).

See BEN. ACT II OF 1888 (CALCUTTA MUNICIPAL CONSOLIDATION).

See BEN. ACT III OF 1899 (CALCUTTA MUNICIPAL).

See BOM. ACT III OF 1872 (BOMBAY MUNICIPAL).

See BOM. ACT VI OF 1873 (BOMBAY DISTRICT MUNICIPALITIES).

See BOM. ACT IV OF 1878 (BOMBAY MUNICIPAL ACT, AMENDMENT AND CONTINUANCE).

See BOM. ACT II OF 1884 (DISTRICT MUNICIPALITIES AMENDMENT).

See BOM. ACT III OF 1888 (CITY OF BOMBAY MUNICIPAL).

See BOM. ACT III OF 1901 (DISTRICT MUNICIPALITY).

Municipality, Acts relating to—*concluded.*

See BUR. ACT XVII OF 1884 (MUNICIPALITY).

See BUR. ACT III OF 1898 (MUNICIPALITY).

See C.P. ACT XI OF 1873 (CENTRAL PROVINCES MUNICIPAL).

See C.P. ACT XVIII OF 1889 (C.P. MUNICIPALITY).

See MAD. ACT V OF 1878 (CITY OF MADRAS MUNICIPALITY.)

See MAD. ACT I OF 1884 (CITY MUNICIPALITY).

See MAD. ACT IV OF 1884 (DISTRICT MUNICIPALITIES).

See MAD. ACT III OF 1897 (DISTRICT MUNICIPALITIES AMENDMENT).

See MAD. ACT III OF 1904 (CITY MUNICIPALITY).

See MAD. ACT II OF 1907 (HILL MUNICIPALITIES).

See PUN. ACT XV OF 1867 (MUNICIPAL COMMITTEES, PUNJAB, OUDH, CENTRAL PROVINCES).

See PUN. ACT IV OF 1873 (MUNICIPAL).

See PUN. ACT XIII OF 1884 (MUNICIPAL).

See PUN. ACT XX OF 1891 (PUNJAB MUNICIPALITIES).

See ACT III OF 1911 (PUNJAB MUNICIPAL).

See U.P. ACT VI OF 1868 (MUNICIPAL IMPROVEMENTS).

See U.P. ACT XV OF 1873 (N.W.P. AND OUDH MUNICIPALITIES).

See U.P. ACT XV OF 1883 (UNITED PROVINCES MUNICIPALITIES).

See U.P. ACT I OF 1895 (MUNICIPALITIES AMENDING ACTS XV OF 1873 AND ACT XV OF 1883).

See U.P. ACT I OF 1900 (MUNICIPALITIES).

Municipal Offence.

See MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION, 18 B. 442.

Municipal Officers.

See CRIM. PRO. CODE, 1898, s. 200, U.B.R. 1892—1896, Vol. I, 131.

Municipal Rules (Cawnpore).

(1)—*Municipal Board—Rules of—Rules* 2, 4 —*Any person who sells—Meaning of.*—Where the only part a person takes in a transaction is the weighing of the produce and receiving of payment for his services as a weighman, he is not "any person who sells" within the meaning of the rules framed by the Municipal Board prohibiting a sale without payment of fees, and he cannot be convicted of breach of those rules. JABBAR SINGH v. MUNICIPAL BOARD, CAWNPORE, **11 A.L.J. 39=13 Cr L J. 797=17 Ind. Cas. 541.**

Municipal Servant.

Whether public servant — *See* PUBLIC SERVANT, 6 Bom. L.R. 54.

Municipal Taxes.

Order for payment of—Out of fine—Power of Deputy Magistrate to question legality of attachment by Civil Court—*See* SENTENCE—FINE, 8 W.R. Cr. 17.

Munsif.

Conviction by, in contempt cases — *See* APPEAL—CASES WHERE APPEAL LIES, 16 P.R. 1857, Cr.

Insulting a Village Munsif while sitting in a stage of judicial proceeding—*See* CONTEMPT OF COURT, 15 M. 131=2 Weir 605=1 Weir 218.

See CRIM. PRO. CODE, 1898, s. 476, 6 A.L.J. 924.

See JURISDICTION OF CIVIL AND CRIMINAL COURTS, 6 C.L.J. 713=6 Cr. L.J. 405.

See MAD. REG. IV OF 1816, s. 15, 11 M. 375=2 Weir 163.

See SANCTION TO PROSECUTE—AUTHORITIES COMPETENT TO GRANT SANCTION, ETC., 7 M.H.C. 182.

See SANCTION TO PROSECUTE — CONDITIONS REQUISITE FOR GRANT OF SANCTION, ETC., 9 P L.R 1905=29 P.R. 1904, Cr.=11 C.W.N. 119=4 Cr. L.J. 454.

See WITNESS—MISCELLANEOUS CASES, 6 M.H.C. App. 43.

Murder.

See CULPABLE HOMICIDE NOT AMOUNTING TO MURDER.

See PENAL CODE, ss. 299—307.

(1)—*Penal Code, ss 299, 300 — Culpable homicide—Murder, what must be proved to constitute the offence of—Charge.*—The knowledge that an act is likely to cause death does not constitute the offence of murder, but it must be proved that the act was done with the knowledge that it must in all probability cause death. QUEEN v. GIRDHAREE SINGH, **6 N.W.P. 26.**

(2)—*What constitutes murder.*—To constitute murder, there must have been the intention to cause death, or the knowledge that death would be the most probable result of the act done by the accused and such intent or knowledge should be set out in the charge. NGA NGE v. QUEEN-EMPRESS, **L B.R. 1893—1900, 328.**

(3)—*Culpable homicide when amounts to murder—Intention, proof and presumption of—Penal Code, s. 300, cl. (3).*—In order that culpable homicide may amount to murder under s. 300 (3), I.P.C., the prosecution must prove that the accused intended to cause such bodily injury as is sufficient, in the ordinary course of nature, to cause death Because, the bodily injury caused resulted in death in the ordinary course of nature, it does not necessarily follow that the accused intended to cause such bodily injury. Presumption of intention must depend upon the facts of each particular case. HLA TUN v. QUEEN EMPRESS, **L.B.R. 1893—1900, 452.** (B.L.R. Sup. Vol. 443, *F.*)

Murder—*continued.*

(4)—*Culpable homicide is of three degrees.*—(1) Culpable homicide of the lowest degree which is punishable with fine only or with imprisonment up to a limit of ten years or with both (s. 304, part 2). (2) Culpable homicide of the middle degree punishable with imprisonment up to a limit of ten years, or with transportation for life, to either of which fine may be added (s. 304, part (*a*)). (3) Culpable homicide of the highest degree or murder, which is made punishable with transportation for life, or with death, to either of which fine may be added (s. 302). The essentials which go to constitute these three degrees of culpable homicide and the distinction between them are pointed out in the judgment of *Powden, J.* BARKAT ULLA v. EMPRESS, **32 P R. 1887, Cr.** [*R.*, 62 P.R 1887, 40 P.R. 1888, 9 P.R. 1891.]

(5)—*Alternative finding—Murder or culpable homicide.*—The causing of death by an act done with the intention of causing death cannot alternatively be the offence of murder or the offence of culpable homicide not amounting to murder, neither s. 236, Crim. Pro. Code, nor s. 72, I.P.C., being applicable to the case. S. 236, Crim. Pro. Code, and s. 72, I.P.C., apply to cases in which the law applicable to a certain set of facts is doubtful by reason of the nature of a single act or series of acts done, and in which it is charged or proved that the act or series of acts constitutes one or more or some one of several offences, the doubt being on a matter of law only. KHAN MUHAMMED v. EMPRESS, **11 P.R. 1887, Cr.** [*R.*, 14 Cr. L J. 664=11 P.R. 1913=21 Ind. Cas. 904.]

(6)—*Penal Code, ss. 299, 300—Murder and culpable homicide.*—Where the deceased was dragged along with a ligature round his neck by two of the accused, in the presence of the other accused, and the Sessions Judge was of opinion that the original intention was only to maltreat the deceased, but that in their excitement, their passion got the better of them, and they strangled him either before they dragged him along or in that process; *held*, that the first two accused were guilty of murder; *held*, also, that the other accused also were guilty of murder by their presence and accompanying the deceased while he was being dragged. AZIM v. EMPRESS, **23 P.R. 1890, Cr.**

(7)—*Murder and culpable homicide.*—Where, on a quarrel between the accused and the deceased, the latter who was stronger than the other came towards the accused with his shoes in a menacing attitude and the accused thereupon picked up an axe and struck some blows upon the deceased, one of them penetrating to the heart and causing instant death, *held*, that the accused was guilty of murder. RUPA v. EMPRESS, **29 P.R, 1889, Cr.**

(8)—*Culpable homicide—Distinction between it and murder.*—Culpable homicide and murder distinguished. QUEEN v. GORACHAND GOPE, **B L.R. Sup. Vol. 443=5 W.R. Cr. 45=1 Ind. Jur. N.S. 177.**

Murder—*continued.*

(9)—*Culpable homicide and murder.*—Culpable homicide not amounting to murder is committed when a man kills another, being deprived of self-control by reason of grave and sudden provocation. But when the act is done after the first excitement had passed away, and there was time to cool, it is murder. QUEEN v. YASIN SHEIKH, 4 **B.L.R.A. Cr. 6 = 12 W.R.Cr. 68.**

(10)—*Death caused by snake charmers—Culpable homicide.*—Certain snake-charmers, by professing themselves to be able to cure snake-bites, induced several persons to let themselves be bitten by a poisonous snake. From the effect of the bite, three of those persons died. *Held*, that the offence was murder under cls. 2 and 3 of s. 300 of the Penal Code, unless it could be brought within the fifth exception to that section. If the prisoners, really believing themselves to have the powers they professed to have, induced the deceased to consent to take the risk of death, the offence would be culpable homicide not amounting to murder. QUEEN v. POONAI FATTEMAH, **3 B L.R.A. Cr. 25 = 12 W.R. Cr. 7.** [*D.*, 5 C. 351.]

(11)—*Absence of premeditation — Culpable homicide.*—Mere absence of premeditation will not reduce a crime from murder to culpable homicide not amounting to murder. QUEEN v. MAHOMED ELIM ABDOOL KURREEM, **3 W. R. Cr. 40.**

(12)—*Penal Code, ss.* 299, 300—*What constitutes murder, or culpable homicide—Duty of Judge.*—In deciding the question whether a transaction amounts to murder or to culpable homicide, not amounting to murder, the Judge should not conclude that the offence committed is murder, because there is nothing to show that the accused's act does not come within any of the exceptions mentioned in s. 300. He should consider, in the first place, whether the element or elements, which constitute the offence of murder, as defined in s. 300, exist. PASUPAT GOPE v. RAM BHAJAN OJHA, **1 C. W.N. 545.**

(13)—*Conviction for culpable homicide not amounting to murder by Deputy Commissioner —Chief Court finding accused guilty of murder —Commitment.*—Where the Deputy Commissioner convicted the accused of culpable homicide not amounting to murder, and sentenced him to seven years, the Chief Court, on appeal, *held*, that the facts disclosed the offence of murder and directed the accused to be committed to Sessions. MALLI v. CROWN, 2 P.R. **1876, Cr.**

(14)—*Penal Code, ss.* 300, *excep. I,* 302, 304 —*Murder—Grave and sudden provocation, what amounts to.*—Where the accused, suspecting his wife had, during his absence, formed a criminal intimacy with another person, and seeing that his wife on a certain night, under the impression that he was asleep, stealthily left his side with the intention of going to her paramour, took up an axe, followed her, found her in conversation with him, and immediately killed her, *held*, that the accused was guilty of murder, as the facts of the case did not bring it within excep. I, so as to reduce the offence to culpable homicide not amounting to murder. QUEEN-EMPRESS v MOHAN, **8 A. 622 = A.W. N. 1886, 250.** (A.W.N. 1885, 197, *R.*) [*R.*, 8 A. 635.]

(15)—*Deliberate intention negatives grave and sudden provocation.*—The accused and the deceased, the widow of his deceased first cousin, lived together. The accused, seeing her going in a southerly direction, followed her, taking his *gandasa* (chopper) with him, in the belief that she was going to keep an assignation and with the deliberate purpose of detecting her in doing so. He caught her in the very act of connection and killed her. *Held*, that the accused was guilty of murder, and there was no grave and sudden provocation in the case depriving him of his self-control, as he went deliberately in search of the provocation sought to be made the mitigation of his offence. QUEEN-EMPRESS v. LOCHAN, **8 A. 635 = A.W.N. 1886, 252.** (A.W.N. 1885, 197, *R.*)

(16)—*Grave and sudden provocation—What is valid excuse for breaking the law.*—It is not a necessary consequence of anger or other emotion that the power of self-control should be lost. Except where unsoundness of mind or real fear of instant death is proved, the pressure of temptation is no excuse for breaking the law. QUEEN-EMPRESS v. DEVJI GOVINDJI, **20 B. 215.**

(17)—*Plea of grave and sudden provocation.* —The character of an offence is determined by the state of the prisoner's mind at the time of the commission of the offence. Where, therefore, grave and sudden provocation is pleaded in a case of murder, the question that the Court has to decide is whether, between the cause of the grave and sudden provocation and the dealing of the fatal blow, there was time for the blood to cool and for reason to resume its seat. QUEEN-EMPRESS v. DHIRA, **Rat. Un. Cr. C. 122.**

(18)—*Grave and sudden provocation.*—Where the accused found a man entering his house at night, at the invitation of his wife, with whom that man had criminal intimacy, and being enraged, caught hold of him and took him outside the house to some distance and there assaulted him so severely, that he, subsequently, died of the injuries received, *held*, that the circumstances under which the deceased was found in the house of the accused on the night of the crime were sufficient to cause grave and sudden provocation to the accused and his relations, and that the provocation was of a nature that would continue to influence the feelings of the accused for a considerable period after the deceased was caught in the house in the company of the wife of the accused. ABALU DAS v. KING-EMPEROR, **28 C. 571 = 5 C.W.N. 708.**

(19)—*Grave and sudden provocation.*—Where the accused, who had been ill for three or four months and who attributed his illness to witchcraft, practised upon him by his brother caused

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the latter's death, *held* that the provocation arising out of the belief that he was bewitched by his brother, even if it were a real provocation, was not so sudden as to reduce the offence from murder to culpable homicide, not amounting to murder. *In re* GANDUVA NAYAKO, **1 Weir 305.**

(20)—*Grave and sudden provocation.*—Where the accused, who had been injured by the deceased in many ways extending over many years, killed the deceased, *held*, that the provocation was not so grave and sudden as to reduce the offence to culpable homicide not amounting to murder. *In re* MONI PRODHANO, **1 Weir 306.**

(21)—*Grave and sudden provocation.*—The prisoner's concubine had left him for another connection, which she refused to abandon notwithstanding his remonstrances. When she left at the termination of their last interview, he went after her and killed her with a dagger, which he had purchased with the intention of killing her. *Held*, that, although her conduct may have been a grave source of provocation, it was not a provocation of a sudden character, or such as the law could take into account in determining the legal aspect of the offence, which was murder. *In re* GHUNTAPPA, **1 Weir 306.**

(22)—*Grave and sudden provocation.*—The refusal of a wife to let the husband have connection with her does not amount to grave and sudden provocation, so as to reduce the offence of killing the wife to culpable homicide, not amounting to murder. GOVERNMENT PLEADER v. NATTEKALLAPPA, **1 Weir 308.**

(23)—*Grave and sudden provocation.*—The accused, who was already aware that his wife had an intrigue with the deceased, followed them on one occasion, and, having found them in each other's arms, killed the deceased. *Held*, that the case was not covered by excep. 1 to s. 300, I.P.C. GOHRA v. EMPRESS, **7 P.R. 1890, Cr.** [*D.*, 8 P.R. 1899, Cr.]

(24)—*Penal Code*, s. 300, *excep.* 1—*Grave and sudden provocation.*—Where there is no deprivation of self-control, grave and sudden provocation is not sufficient to bring a case under excep. 1 to s. 300, Penal Code. GHAUSAR SINGH v. EMPRESS, **33 P R. 1884, Cr.**

(25)—*Grave and sudden provocation—Claim to benefit of excep.* 1 *to s.* 300—*Penal Code.*—B struck A certain blows with a stick. A then ran into C's house; meanwhile B went into D's house and there gave up his stick and clasped a knife. A then came out of C's house and was joined by his father E, who inquired who had beaten his son. Both father and son went into D's house. The father E seized and held B and directed his son A to "do it;" on which the latter unclasped a knife and stabbed B in the neck, cutting the jugular artery and caused almost instant death. *Held*, that A could not claim the benefit of the first exception to s.300, Penal Code, as it cannot be said that, if a man who escapes from a beating, runs into another house, is joined by his father, and points out his assailant, and then, at his father's direction, stabs his assailant after opening a clasp knife, he is deprived of the power of self-control by grave and sudden provocation, and that E must be taken to have aided and instigated the doing of the act done by A, which amounted to murder. QUEEN-EMPRESS v. NGA TUN, **1 L.B.R. 46.**

(26)—*Penal Code*, s. 300, *exceps.* 1 *and* 4—*Grave and sudden provocation—Wound given in a fight resulting in death.*—Where a wound resulting in death was inflicted in a fight in which cruel and unusual means were used and where there was grave, but not sudden, provocation, *held*, that the accused was guilty of the offence of murder. *In re* TANGARA, **1 Weir 303.**

(27)—*Penal Code*, s. 300, *excep.* 1—*Grave and sudden provocation—Burden of proof.*—It is incumbent on an accused person, who seeks to bring his case within the first exception to s. 300, I.P.C., to prove not only that the provocation received was such as might be deemed sufficient to deprive him of his self-control, but also that the killing took place whilst the absence of self-control lasted and may be fairly attributed to it. LOCAL GOVERNMENT v. v. HANUMAN PERSHAD, **14 C.P.L.R. 188.**

(28)—*Grievous hurt—Grave and sudden provocation.*—A man who, by a single blow with a deadly weapon, kills another man who, at dead of night, entered his room for the purpose of having criminal intercourse with his wife, is guilty only of causing grievous hurt on a grave and sudden provocation. QUEEN v. CHULLUNDEE PORAMANICK, **3 W.R. Cr. 55.**

(29)—*Grave and sudden provocation—Actual intention to kill.*—Under the Penal Code, no constructive but an actual intention to cause death is required to constitute murder. QUEEN v. GUREEBOOLLAH, **5 W.R. Cr. 42.**

(30)—*Mutual provocation—Fight.* — Where an accused person, without necessity went out on the road armed with a knife, uttering a challenge to fight, and, on the fight beginning, used his knife so as to cause the death of his opponent, *held*, he had committed murder, although the deceased might have been, until the fatal blow was struck, equally to blame with the accused in the matter of provocation. KWIN YA v. QUEEN-EMPRESS, **L.B.R. 1893-1900, 459.**

(31)—*Pre existing enmity between accused and deceased—Inference of intent.*—Where the deceased, whose father had been killed by the prisoner, was present opposite the prisoner's abode, with the intent to revenge his father's death, and the prisoner, knowing what he had to expect from the deceased, unhesitatingly shot him, *held*, that the accused was guilty of culpable homicide amounting to murder. SAMARCAND v. CROWN, **85 P.R. 1866, Cr.**

(32)—*Penal Code*, s. 300, *excep.* 5, *application of.*—Excep. 5 of s. 300, I.P.C., applies to cases where a man consents to the doing of some

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particular act either knowing that it will certainly cause death or that death will be likely to be the result; but it does not refer to the running of a risk of death from something which a man intends to avert, if he possibly can do so, even by causing the death of the person from whom the danger is to be anticipated. EMPRESS v. ROHIMUDDIN, **5 C. 31=4 C.L.R. 285.** [*R.*, 6 C. 154, 18 C. 484, F.B.]

(33)—*Penal Code, s. 300—Murder—Right of private defence.*—A Head Constable, after searching the tents of certain gipsies for stolen property and finding nothing, received a certain sum of money from them and demanded more. They pleaded their inability to pay the further sum demanded and the Head Constable, thereupon, ordered one of them to be bound and taken to the *Thana*, and while the order was being executed, all the gipsies in the camp, some of them with sticks, came in a threatening manner to the place where the gipsy was being bound. Before any actual violence was used, the Head Constable fired on the mob and killed one of them. *Held*, that the Head Constable, himself having provoked the gipsies by his illegal and improper procedure, stood in no better and no worse position than any private person, and that no question of the right of self-defence arose in the case, for any apprehension of death or grievous hurt could have been determined by the release of the gipsy. The Head Constable was, therefore, guilty of culpable homicide amounting to murder. EMPRESS OF INDIA v. ABDUL HAKIM, **3 A. 253.**

(34)—*Right of private defence—Penal Code, ss. 100, 201—Accused killing deceased in attempt to commit rape on wife—Concealing dead body.*—Where the accused, husband and wife, in attempting to protect the latter from attempted rape by the deceased, killed him, held that the right of private defence extended to the causing of death in such a case and that no offence was committed. There can be no offence under s. 201 of the Penal Code in concealing the dead body in the above case, since no offence had been committed. QUEEN-EMPRESS v. RAMZAN SHAKEBHAI, **Rat. Un. Cr. C. 867.**

(35)—*Right of private defence—House-breaking by night.*—The prisoner found the deceased in the act of house-breaking by night in his house, and killed him with a *kodali*, which he had called for, as he admitted, for that purpose. He was convicted of murder, and sentenced to death by the Sessions Judge. The sentence being referred to the High Court for confirmation, it was *held* that the prisoner had been legally convicted of murder, that he had intentionally done to the deceased more harm than was necessary for any purpose of defence, and that, not whilst deprived of power of self-control. But the sentence was mitigated to transportation for life, than which, it was held, no less sentence could be legally passed. The Judge, however, in a letter to Government, suggested the mitigation of punishment, which

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was accordingly reduced to imprisonment for six months. QUEEN v. EAST INDIAN RY. CO., **1 Ind. Jur. N.S. 258=Bourke O.C. 395.** *See, also,* QUEEN v. DURWAN GEER, **5 W.R. Cr. 73.**

(36)—*Right of private defence—House-breaking by night.*—The prisoner found the deceased in the act of house-breaking by night in his house, and killed him with a sort of pole-axe which was near him. *Held* that this offence committed by the prisoner was culpable homicide not amounting to murder as the prisoner had inflicted more hurt than was necessary for the purpose of defence. QUEEN v. FUKEERA CHAMAR, **6 W.R. Cr. 50.**

(37)—*Right of private defence.*—Where, on a "cry" of theft being raised, the accused was pursued by persons, in whose view he had not committed any non-bailable or cognizable offence and he thereupon turned and shot dead one of the pursuers who was on the point of seizing him, *held*, that the accused was guilty of culpable homicide not amounting to murder, as he had exceeded his right of private defence. EMPRESS v. SHER BAZ, **1 P.R. 1880, Cr.**

(38)—*Exercise of right of private defence on thief.*—*Held* by the majority of the Court that the offence committed was murder where the death of a weak half-starved old woman, who was detected stealing, was caused in the exercise of the right of private defence by the doing of more harm than was necessary for the purpose of such defence. QUEEN v. GOKOOL BOWREE, **5 W.R. Cr. 33.**

(39)—*Murder of newly born child.*—Where the murder of a newly born child is deliberately committed in cold blood the murder is as serious an offence in the eye of the law as that of a grown up person, and deserves to be as severely punished. QUEEN-EMPRESS v. IROWA, **Rat. Un. Cr. C. 401.** QUEEN-EMPRESS v. BASAPA, **Rat. Un. Cr. C. 401.**

(40)—*Allowing child to languish and die.*—Where the accused allowed his motherless child, six months old, to gradually languish away and die, owing to his indifference, notwithstanding repeated warnings of the state of the child, *held* that he was guilty of murder. QUEEN v. GUNGA SINGH, **5 N.W.P. 44.**

(41)—*Starvation of infant child — Death caused thereby.*—Where it was proved that the accused had wilfully withheld all nourishment from a child with the intention of causing its death, and the child died in consequence, *held* that the prisoner was guilty of murder. EMPRESS v. BATTIA, **A.W N. 1883, 36.**

(42)—*Penal Code, s. 302—Murder—Punishment.*—When the deceased was returning from the bazaar to his house, two of the four accused struck him with a *lathi* causing him to fall to the ground, and then the other two accused struck him with their *lathi*, *held* that, inasmuch as it was doubtful whether the deceased was dead when they began to strike him, and as they did not commence the attack, the two latter would be adequately punished by the

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sentence of transportation for life and the former two deserved the sentence of death. Per *Oldfield and Pearson, JJ.*, (*Stuart, C.J., dissenting*). EMPRESS OF INDIA v. CHATTER SINGH, **2 A. 33.**

(43)—*Murder—Punishment.*—Murder should be punished with death or transportation for life. There is no other alternative. QUEEN v. AMAN, **5 N.W.P. 130.** [*R.*, L.B.R. 1872—1892, 164.]

(44)—*Murder—Punishment.*—There may be extenuating circumstances which may have to be laid before a jury for deciding whether the crime is culpable homicide or murder. But, where the conviction is for murder, the sentence should be one of death, and any extenuating circumstances justifying a lenient view of the case can only be represented to the Crown with a recommendation for mercy. QUEEN-EMPRESS v. ABDURRAHAMAN SAID, **Rat. Un. Cr. C. 852.**

(45)—*Suffering death by consent—Penal Code, s.* 300, *excep.* 5—*Sentence.*—Evidence of consent, which would be sufficient in a civil transaction, must be equally sufficient in exculpation of prisoner's guilt. QUEEN v. ANUNTO RURNAGAT, **6 W.R. Cr. 57.**

(46)—*Death caused by act known to be likely to cause death—Death not immediate object—Punishment.*—Where the accused had given to the deceased some substance which caused his death, but which the accused alleged to have been administered with intent to bring madness, *held* that, as the person knew that his act was likely to cause death, he was guilty of murder, but that, as death was not his immediate object, the sentence of death should be commuted. CROWN v. KHEMA, **8 P.R. 1869, Cr.**

(47)—*Murder — Capital sentence.*—In the awarding of capital sentences, the Chief Court does not make any distinction between cases of murder as proved by direct or indirect evidence. DIALA v. EMPRESS, **12 P.R. 1888, Cr.**

(48)—*Extenuating circumstances—Sentence.*—The fact that the accused was not arrested when actually committing the crime, or in the act of escaping from the spot, is no reason for not passing a sentence of death. KAMAL v. CROWN, **13 P.R. 1873, Cr.**

(49)—*Murder case—Death sentence—Imposition of fine in addition—Award of compensation to deceased's heirs—Practice of Punjab Chief Court.*—In addition to a sentence of death, the Sessions Judge sentenced the accused to a fine, and directed that, if the fine is realised, it should be paid to the deceased's heirs. *Held*, that this subsidiary order was not sustainable, (1) as no evidence was taken to show that the accused could pay the fines imposed; (2) an order of compensation to the nearest heirs without specifying who those heirs may be was not a sufficient compliance with the law; and (3) the usual practice of the Chief Court has been to avoid imposition of fines where death sentences have been given. CHUHA v. CROWN, **18 P.R. 1913, Cr.=14 Cr. L J. 522 =20 Ind. Cas. 1002=41 P.W.R. 1913, Cr.** (17 P.R. 1898, 57 P.R. 1905, *R.*)

Murder—*continued.*

(50)—*Murder—Wife-murder—Deterrent sentence—Necessity for.*—Wife-murder is so common an offence in Sind that it is necessary that deterrent sentences should be passed in all such cases, even where the provocation is that the wife was found in adultery. CROWN v. KADIRBUX *wd* DILU, **5 S L.R. 256=15 Ind. Cas. 807=13 Cr. L.J. 535.**

(51)—*Penal Code, s.* 300 (4)—*Grave and sudden provocation—Sudden fight — Sentence.*—Where the accused received a kick from the woman with whom he used to have criminal intercourse on his declining to continue it, and he, therefore, struck a blow on her heart and throttled her till she ceased breathing, *held*, that the accused was guilty of murder, as there was no grave and sudden provocation and as the case did not come within excep. 4. But there was provocation enough for commuting the death sentence. CROWN v. SUNUNDUR, **4 P.R. 1872, Cr.**

(52)—*Case not coming within any of the exceptions to s.* 300—*Sentence.*—Where the Chief Court did not find that the accused's case came within any of the exceptions mentioned in s. 300, it altered the lower Court's sentence of seven years' rigorous imprisonment to transportation for life, finding the accused guilty of murder. CROWN v. GHOLAM MOHAMED, **11 P.R. 1871, Cr.**

(53)—*Exception to s.* 300 *not clearly proved—Sentence.*—Where one F picked up a quarrel with the deceased upon an inoffensive remark made by the latter and after the passing of a few words between them, F held the deceased's arm, down by his side, and the accused inflicted a stab, which caused the death of the deceased, *held* that the accused was guilty of murder. MAHOMED KHAN v. CROWN, **12 P.R. 1869, Cr.**

(54)—*Absence of direct evidence of murder—Inference from circumstances — Sentence.*—Where there was no direct evidence of murder, but the accused confessed that he had burnt the body of the deceased after her natural death, *held*, that, under the circumstances of the case, there were sufficient grounds to infer that the accused killed the deceased, and that the death sentence should, therefore, be confirmed. CROWN v. BUNAN, **13 P.R. 1869, Cr.**

(55)—*Murder of deceased while found intriguing with another woman—State of society—Culpable homicide.— Sentence, commutation of.*—Where the three accused murdered their cousin who had supplanted one of them in an intrigue with a woman, *held*, that having regard to the state of society at the place where the act was committed, the sentence of death should be commuted. CROWN v. FUZL, **2 P.R. 1867, Cr.**

Murder—*continued.*

(56)—*Act done without premeditation—Absence of sudden provocation—Culvable homicide—Sentence, commutation of.*—The accused, on receiving information that his sister and her paramour were sleeping together in the latter's cattle enclosure, went there armed with a hatchet and killed them both. He stated in his defence that he lost all self-control on seeing them together. *Held*, that, although there was no sudden provocation, the act of the accused was not premeditated and that, therefore, the sentence of death should be commuted. CROWN v. MOHOMED, **107 P.R. 1866, Cr.**

(57)—*Intoxication of accused--Sentence.*—The intoxication of the accused, while he was committing murder, may be properly taken into consideration on the question whether the act was premeditated or done only from a sudden impulse. But voluntary drunkenness cannot be pleaded as an excuse for a crime. CROWN v. BOODH DASS, **41 P.R. 1866, Cr.**

(58)—*Sentence of death—Drunkenness—Intention.*—The fact that the accused was drunk may be considered in deciding what intention the accused had at the time he committed a particular offence. NGA THET HNIN v. QUEEN-EMPRESS, **L.B.R. 1893—1900, 550** (L.B.R. 1893—1900, 512, *F.*)

(59)—*Cases of deliberate murder, duty of Court to impose sentence of death in.*—If there is no reasonable doubt that an accused person committed murder, he should be convicted of murder, and, if the case was of such a nature as to deserve the sentence of death, such sentence ought to be imposed. Consequently, Judges must not shrink from doing their duty, however painful it may be, of passing capital sentences in cases where they are convinced, beyond reasonable doubt, that such a deliberate murder has been committed as to necessitate the award of capital sentence. KING-EMPEROR v. NGA TUN, **3 L B.R. 163.** (11 W.R. Cr. 20, *R.*)

(60) *Death sentence, normal in cases of murder—Extenuating circumstances—Burman tendency to use knife—Premeditation or deliberate intention to kill, absence of—Penal Code, ss.* 300, *cl.* (4) 302, *and* 86—*Crim. Pro. Code* (1898), *s.* 367 (5).—S. 367, sub-s. (5), Crim. Pro. Code, contemplates the passing of a sentence of death as the ordinary rule in cases punishable with death, and the passing of any other sentence as the exception. On a conviction for murder, a sentence of death should ordinarily be passed unless there are extenuating circumstances. In considering whether there are extenuating circumstances, not only the circumstances of the particular case, but the conditions of the country and the habits of the people may fitly be taken into account. In Burma, where knives are freely used on the slightest occasion, it will be unsafe to lay down, as a general rule, that mere absence of premeditation or deliberate intent to kill is a good ground for abstaining from passing a capital sentence in a case where a knife is used. To justify the passing of a sentence of transportation for life in cases of murder, the Judge should find that there are really extenuating circumstances, not merely an absence of aggravating circumstances. The extreme sentence is the normal sentence; the mitigated sentence is the exception. It is not for the Judge to ask himself whether there are reasons for imposing the penalty of death, but whether there are reasons for abstaining from doing so. *Per Irwin, J.*—When a Sessions Judge has any doubt whether a sentence of death should be passed or not, he should pass a sentence of death. CROWN v. THA SIN, **1 L.B.R. 216.** (L.B.R. 1872—1892, 271, L.B.R. 1872—1892, 459, L B.R. 1893—1900, 112, L.B.R. 1893—1900, 550, *R.*) [*R.*, 13 Cr. L.J. 864 = 17 Ind. Cas. 800 = 5 Bur. L.T. 193 = 6 L.B.R. 100.]

(61)—*Stabbing in vital part—Intention—Sentence of death normal—Penal Code, s.* 300 (3).—Any act of stabbing into what are ordinarily considered to be vital parts of the body *prima facie* falls within s. 300 (3), Penal Code. The intention with which such an act is done must be gathered from the act itself, and, if a person strikes another in a vital part with a cutting instrument, it must be held that the striker's intention is to cause such bodily injury as is sufficient in the ordinary course of nature to cause death On a conviction for murder, a sentence of death is the normal sentence contemplated by the Legislature, and to justify a lesser sentence, there must be extenuating circumstances in the case. The ruling in 1 L.B.R. 216 does not fetter Sessions Judges in the free and reasonable exercise of their discretion in awarding capital sentence within judicial limits. HAMID v. KING-EMPEROR, **2 L.B R. 63.** (L.B.R. 1872—1892, 300, *partly Diss.*; L.B.R. 1872—1892, 459, *R.*) [*R.*, 15 Cr. L.J. 513 = 24 Ind. Cas. 601.]

(62)—*Penal Code, s.* 302—*Sentence--Youthful offender.*—It is not true that Magistrates and Judges should only consider the nature of the offence and not at all the nature of the offender. The Court might, therefore, properly take into consideration the youth of the accused in passing a capital sentence. NGA KYA MYIN v. QUEEN-EMPRESS, **U.B.R. 1892—1896, Vol. I, 209.** [*F.*, 12 Cr. L.J. 448 = 11 Ind. Cas. 792 = U.B.R. 1911, 87.]

(63)—*Running a muck—Punishment.*—Where a quiet, peaceable man, suddenly and without the least motive or provocation, runs-a-muck against all around him, his case is different from an ordinary case of deliberate murder deserving of the extreme penalty. QUEEN v. BISHONATH BUNNEEA, **8 W R Cr. 53.**

(64)—*Penal Code, s.* 300—*Servant assisting master in committing murder—Liability of servant.*—Where the accused, a menial servant, being ordered to attend his masters, when they had announced their intention of committing murder, accompanied them with the intention of rendering such assistance as might be required of him, and his masters entered the house and killed the deceased, the servant

Murder—*continued.*

standing at the door of his house, *held* that the accused was guilty of murder. *In re* GOLLA SANYASI, **1 Weir 296.**

(65)—*Penal Code, s.* 300—*Murder*—Corpus delicti—*Grave and sudden provocation.*—The recovery and identification of a murdered man's body are not absolutely essential even for a capital sentence. The mere fact that a man, who, having found another sleeping with his wife, killed him on the spot, called aloud at the time for assistance, did not necessarily indicate that he had not acted under grave and sudden provocation. If, however, in such a case, having called his servants to his assistance, he had compelled them to hold his wife's paramour, while he deliberately proceeded to kill him, he would not be entitled to the same amount of consideration, and his crime would properly fall under the category of murder. EMPRESS v. ROGI, **A.W.N. 1881, 112.**

(66)—Corpus delicti.—It is not imperatively necessary, in order to justify a conviction for murder, that the "*corpus delicti*" should be forthcoming. EMPRESS OF INDIA v. BHAGIRATH, **3 A. 383.** [*F.*, 1 A.W.N. 112.]

(67)—Corpus delicti.—*Held* that, before a person can be convicted of murder, it must be proved beyond reasonable doubt, that murder has been perpetrated and that a veritable *corpus delicti* exists. GHULAM HUSSAIN v. EMPRESS, **P.L.R. 1900, p. 54, Cr.**

(68)—*Proof of* corpus delicti.—Where the whole proof of the *corpus delicti* consists of uncorroborated statements of the accused, great caution is required in placing reliance upon them. BIRU v. EMPRESS, **15 P.R. 1890, Cr.**

(69)—*Non-discovery of the corpse of deceased.*—There is no rule of law that no person should be convicted of murder, unless the body of the murdered person has been discovered. MEHR KHAN v. EMPRESS, **6 P.R. 1886, Cr.** [*R.*, 6 P.R. 1900, Cr.]

(70)—*Charge of murder — Dead body not forthcoming — Strongest evidence essential.*—Though a charge of murder can sometimes be sustained without proof of the finding of the dead body, the strongest possible evidence, as to the fact of the murder, is required when the dead body is not forthcoming. ADU SHIKDAR v. QUEEN-EMPRESS, **11 C. 635.**

(71)—*Penal Code, s.* 302—*Murder—Body not found—Sentence of death.*—The fact that the murdered body was not found is no reason for not passing a sentence of death when the offence of murder is clearly proved. EMPRESS v. SEDHU, **A.W.N. 1882, 160.** (3 A. 383, *F.*)

(72)—*Presumption of death—Throwing into river — Non-appearance afterwards.*—Where a man was struck on the head in a boat with a heavy paddle and knocked overboard in a large river in the height of the rains and had never been heard of since, a conviction of murder was upheld. QUEEN v. POORUSOOLAH SIKDHAR, **7 W.R. Cr. 14.**

Murder—*continued.*

(73)—*Murder — Body not actually found—Sentences.*—A Judge is right in convicting the prisoner of the murder of the deceased which was effected according to the prisoner's own confession, by pushing her out of a boat at night, and if the body is not actually found the judge exercised a proper discretion in not passing sentence of death. QUEEN v. BUDDURUDDIN, **11 W.R. Cr. 20.**

(74)—*Penal Code, ss.* 302, 396—*Dacoity accompanied with murder—Constructive murder.*—The common object of an assembly was to commit a dacoity, and there was a general purpose to resist all opposers even, if necessary, to the point of death. This assembly did actually commit dacoity, and when retreating on the advent of villagers in superior force, one of its members shot and killed one of the villagers. *Held* that, as the murder was committed in effecting a safe retreat, and as the retreat was not so separated by time or space from the offence which formed the common object of the assembly, it was a continuation of the dacoity, and the murder must be taken to have been committed in prosecution of the common object of the assembly. *Per Candy, J.*—It cannot be laid down as a general rule that the members of a band of dacoits have the common object of escaping scot-free just as surely as they have the common object of committing dacoity, and that therefore all are guilty of murder, if murder is committed by one in an attempt to escape scot-free. Circumstances can be easily imagined in which it would be obviously unjust to fasten on all the murder committed by one of the escaping band. QUEEN-EMPRESS v. SAKHARAM KHANDU, **2 Bom. L.R. 325.**

(75) — *Murder in committing dacoity.*—If murder is committed in committing a dacoity every one of the persons concerned in the dacoity is liable to be punished with death. QUEEN v. RUCHEE AHEN, **2 W.R. Cr. 39.**

(76)—*Act by which death is caused occurring in dacoity—Penal Code, s.* 300.—If the act, by which death is caused, does not in itself constitute the crime of murder, it does not constitute murder because it is coupled with dacoity. QUEEN v. RAM COOMAR CHUNG, **1 Ind. Jur. O. S. 108.**

(77)—*Penal Code, s.* 496—*Murder by one of the dacoits—Liability of other dacoits.*—If any one of the dacoits who conjointly commit dacoity, commits murder, in so committing dacoity, all of them are responsible for that one's act, and should be punished as such, and it is not necessary for the prosecution to prove that the others expected that murder would be committed. EMPEROR v. GIRYA LAXMAPPA, **6 Bom. L.R. 248 = 1 Cr L.J. 258.**

(78)—*Murder by a dacoit—Liability of other dacoits.*—Where a dacoit commits murder in the progress and in pursuance of the commission of dacoity, all the other dacoits participating in the dacoity, though they may not have

Murder—*continued.*

participated in the murder, may be guilty of an offence under s. 396. CHITTU v. EMPRESS, **4 P.R. 1900, Cr.**

(79)—*Penal Code, ss.* 34, 302 *and* 323—*Persons assaulting the deceased—Death caused by the blow given by one of them—Liability of others to be convicted for murder.*—Three persons assailed the deceased and beat him severely. One of them gave a blow on the head which fractured the skull resulting in his death. All three were convicted of causing death of the deceased and were sentenced to transportation for life. *Held*, on appeal, that, in the absence of proof that all the prisoners had a common intention to inflict injury likely to cause death, only the person who had struck the fatal blow could be convicted of murder and that the other accused would be guilty of grievous hurt only. QUEEN-EMPRESS v. DINA BAIDYA, **19 M. 483 = 1 Weir 298.** [*F.*, 29 A. 282 = 4 A.L.J. 207 = A.W.N. 1907, 51 = 5 Cr.L.J. 130, U.B.R. 1907, 3rd Qr., Penal Code, 5 = 14 Bur. L.R. 264 ; *Rel.*, 14 Cr. L.J. 241 = 19 Ind. Cas. 497 = 16 O.C. 19; *R.*, 15 Cr. L.J. 192 = 22 Ind. Cas. 768, 21 Ind. Cas. 663 = 11 A.L.J. 804 = 14 Cr. L.J. 615 = 35 A. 506, 7 Cr. L.J. 205.]

(80)—*Penal Code, s.* 300—*Gang committing a murder—Liability of individual members.*—Individual members of a gang, which had committed murder, cannot be convicted of murder by the mere fact of their presence when the murder was committed, unless it is shown that the common object of the gang was to commit murder and that the members did anything in furtherance of such common object. *In re* WANSURAPU BALADU, **1 Weir 296.**

(81)—*Grievous hurt, Murder arising from—Inseparable acts.*—In order to convict a person of murder arising out of grievous hurt, it is indispensable that the death should be clearly and directly connected with the act of violence, not merely by a chain of causes and effects, but by such direct influence as is calculated to produce the effect without the intervention of any considerable change of circumstances. QUEEN v. MAHOMED HOSSAIN, **W.R. 1864, Cr. 31.**

(82)—*Attempt to murder—Grievous hurt—Wound caused with consent—Penal Code, s.* 87.—Where the accused inflicted wounds on his mother as the result of a conspiracy to impute the offence to a faction opposed to them, and the mother died after some days, after having recovered in the meanwhile, not in consequence of the wounds which were not severe, *held* that neither the offence of attempt to commit murder nor that of grievous hurt had been committed, and that the prisoner could not be convicted of hurt, since the wounds were inflicted with the consent of deceased (s. 87, I.P.C.). REG v. MUHAMMAD AMANJI, **8 B.H. C. Cr. 110.**

(83)—*Mere presence at murder.—Murder.*—The mere presence at a murder, without previous concert or approval of the deed, does not constitute the guilt of murder. CROWN v. KUNHYA, **10 P.R. 1868, Cr.**

(84)—*Common object—Two or more persons combining in injuring another—Liability for acts done in furtherance of—Natural and probable results of the acts done—Penal Code, s.* 34 —*Punishment for murder—Penal Code, s.* 302. —S. 34 renders punishable all persons engaged in a common criminal intent for any act done in the furtherance of the common intention. It seems framed to meet a case in which it may be difficult to distinguish between the acts of the individual members of a party or to prove exactly what part was taken by each of them. When three men assault and beat another man with such violence that one blow causes extravasation of blood on the brain and fells him to the ground, while another blow fractures two of his ribs, the assailants must be presumed to have intended to cause such bodily injury as they know to be likely to cause the death of the person assaulted. It being a matter of common knowledge that such assaults frequently cause death, they must be held to know that they are likely by those acts to cause death. *Per Fox, J.*—If two or more persons combine in injuring another in such a manner that each person, engaged in causing the injury, must have known that the result of such injury may be the death of the injured person, it is no answer on the part of any one of them to liability for the consequences of causing the death, to allege, and perhaps prove that his individual act did not cause the death, and that, by his individual act, he cannot be held to have intended death. Every one of them must be taken to have intended the probable and natural results of the combination of acts in which he joined. Where the acts of the combination proved are blows causing severe bodily injury, sufficient in the ordinary course of nature to cause death, each of the accused taking part in the combination is guilty of murder. PO SEIN v. KING-EMPEROR, **1 L.B.R. 233.** (21 A. 263, 19 M. 483, 4 W.R. Cr. 35, 1 B. 342, L.B.R. 1893--1900, 112, 3 A. 776, *R.*) [*R.*, 7 Cr. L.J. 205, U.B.R. 1907, Penal Code, 5.]

(85)—*Penal Code, ss.* 201, 302—*Evidence Act (I of* 1872), *s.* 29—*Murder—A person murdered by two—Effect of doubt as to which of the two committed murder—Inadmissibility of evidence of discovery made by two persons together—Duty of prosecution to call all witnesses—Practice—Impropriety of introducing private opinion of a person in judgment—Concealing body of murdered person.*—Where it is shown that one of two persons must have murdered a deceased person, but it is not clear which, both must be acquitted. Where two persons together are taken to point out murdered bodies or stolen property, etc., the evidence of joint discovery under s. 29 of Act I of 1872 becomes altogether inadmissible againt both, unless it is conclusively established which of the two made the discovery. Concealing or otherwise disposing of

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the body of a murdered person amounts to causing disappearance of evidence, and is punishable under s. 201, Penal Code. It is clearly the duty of the prosecution to put in the box all persons having special knowledge of relevant facts. It is quite illegal and improper for a Judge to introduce into his judgment any person's opinion privately given to him, and he commits a very grave judicial impropriety, if his judgment has in any way been influenced by the said opinion either as to conviction or sentence. MUZAMMAL v. EMPEROR, **3 Ind. Cas. 622 = 8 P.W.R. 1909, Cr. = 10 Cr. L.J. 321.**

(86)—*Penal Code, s.* 300—*Murder—Proof.*—Where one is charged with the murder of another, three facts have to be established:—First of all, that the person alleged to be murdered is dead; secondly, that he died by the means alleged on the part of the prosecution; and thirdly, that the accused intentionally took that part in causing the death which is attributed to him by the prosecution. EMPEROR v. ANANDA BHAU, **7 Bom. L.R. 985 = 3 Cr. L. J. 85.**

(87)—*Evidence to justify conviction for murder—Duty of Judge.*—In a trial for murder, the Judge who convicts must do so on a degree of moral certainty as to the guilt of the accused, which, in his opinion, will justify him in passing the extreme sentence of the law. If he is not so morally certain of the guilt of the accused as to pass such a sentence, he is bound to acquit. EMPRESS v. MURIT RAI, **6 C.P.L R. Cr. 3.**

(88)—*Murder—Circumstantial evidence—Unsatisfactory evidence of the identification of body.*—*Held*, that a conviction of murder cannot be sustained where the only circumstantial evidence against the accused was that the deceased was seized by the accused and the husband of the deceased in the road, placed on a camel, carried towards a canal in which her body was afterwards found completely dismembered; especially when the evidence of identification of the body is unsatisfactory and there is no direct evidence connecting the accused with the commission of the crime. CHUHAR SINGH v. CROWN, **40 P.W.R. 1914, Cr. = 16 Cr.L.J. 89 = 26 Ind. Cas. 1001.**

(89)—*Murder—Circumstantial evidence—No direct evidence—Conviction.*—In a case of murder when there is no direct evidence and the prosecution case is based purely on circumstantial evidence, such considerations would be entitled to weight if the question were between this and an alternative explanation of the deceased's death, or if there were ground for suspicion of any person other than the accused. Where the evidence points to the accused alone and admits of no reasonable doubt the accused can rightly be convicted. MUHAMMAD KHASIM v. EMPEROR, **1914 M.W.N. 718 = 16 Cr. L.J. 195.**

(90)—*Murder—Circumstantial evidence.*—The Chief Court declined to confirm a capital sentence, but passed the minor sentence, in a case

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where the conviction rested merely on circumstantial evidence. CROWN v. MEER KHAN, **3 P.R. 1867, Cr.**

(91)—*Murder—Circumstantial evidence.*—To prove circumstantial evidence, four things are essential:—(1) That the circumstances from which the conclusion is to be drawn should be fully established; (2) that all the facts should be consistent with the hypothesis; (3) that the circumstances should be of a conclusive nature and tendency, and (4) that the circumstances should, to a moral certainty, actually exclude every hypothesis but the one proposed to be proved. EMPRESS v. HOSH NAK, **A.W.N. 1881, 139.**

(92)—*Charge of murder—Single witness—Corroboration of his evidence—Conviction illegal and set aside.*—Where a person was convicted on a charge of murder, on the evidence of a single witness, which was once before discredited, and which now remained uncorroborated, the guilt of the accused is not proved beyond reasonable doubt and he is entitled to an acquittal. NARAYANA MUDALY v. EMPEROR, **1911, 2 W.M.N. 6 = 12 Cr. L.J. 488 = 12 Ind. Cas. 96.**

(93)—*Charge of murder—Complaint to the Police—Evidence of prosecution witnesses—Contradictory.*—Where the evidence in support of a charge of murder consists of a complaint to the Police immediately after the occurrence, and a number of witnesses for the prosecution (relatives of the deceased) and where there is considerable difference between the story narrated in the said complaint and the evidence of such witnesses, and also where it appears that these discrepancies are not merely minor ones but on material points, and where it further appears that it is not possible to believe either story, considerable doubt arises as to whether the prosecution has established the case against the accused, and they are entitled to the benefit of that doubt. TELI KHAJA HUSSAIN SAHIB v. EMPEROR, **1911, 2 M.W.N. 14 = 12 Cr. L.J. 497 = 12 Ind. Cas. 217.**

(94)—*Practice—Witness improving on his former statement—Evidence—Colouring matter of blood on cloths and nail parings of an accused—Murder.*—*Held*, that it is very unsafe to rely upon a witness who materially improves on his former statement. *Held*, also, that, in the absence of reasonable proof of guilt, the presence of colouring matter of blood on certain articles of clothing of a person accused of murder or of mammalian blood on his nail parings is not of much consequence and can be explained in various ways. NADIR and RAM v. CROWN, **43 P.W.R. 1914, Cr. = 16 Cr. L J. 75 = 26 Ind. Cas. 667.**

(95)—*Penal Code, ss.* 300 *and* 304—*Death caused by infliction of bodily injury—What must be proved for conviction for murder.*—In certain cases of injuries, such as wounds caused by blunt instruments, resulting in death, to support a conviction for murder, it must be proved that bodily injury was intended to be inflicted and that the bodily injury *intended* to

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be inflicted was sufficient, in the ordinary course of nature, to cause death. *In re* MUVVALA KONDAIYA. **1 Weir 300.**

(96)—*Penal Code, s. 302—Evidence—Probabilities — Acquittal.*—Where the evidence against an accused person convicted of the murder of a woman was that of a girl of 15 and a boy of 13 years, who deposed to having seen the accused throw the deceased down more than once, and who did not, for a long time after the event, say a word about it to anybody to whom they would have naturally reported it, had it been true, *held*, that the evidence was most improbable and was not free from reasonable suspicion, and that the accused should, therefore, be acquitted. *In re* ERIKALA SUBBADU, **2 M.L.T. 496 = 7 Cr. L.J. 216.**

(97)—*Presumption as to murder from possession of the jewels of the murdered—Evidence of a girl of 10 years requires corroboration, when she had made previous inconsistent statements.*—The accused were convicted of murder of a little girl, the only direct evidence being that of another little girl aged 10 years, who had been given one of the jewels taken from the murdered, and threatened not to reveal the matter, and she consequently had made previous inconsistent statements. *Held*, that the evidence of the little girl was sufficiently corroborated by the recovery of the jewels from the accused. *Per Benson, Offg. C.J.*—Unexplained possession of the jewellery of the murdered child, shortly after the murder, taken with the other circumstances of the case, is good evidence of the murder. *In re* BOTCHA RAMUDU, **6 M.L.T. 123 = 4 Ind. Cas. 1051 = 11 Cr. L.J. 157.**

(98)—*Murder—Proof necessary where jewels of the murdered in possession of accused—Motive.*—If it is proved that a person was found, soon after the murder of another person, in possession of property which was on the person of the latter when last seen alive, an inference might be drawn in some circumstances that he obtained possession of the property by the murder of the deceased; but it is essential, to justify the inference, that there is satisfactory proof that the property was in fact in the possession of the deceased when last seen alive. The absence of a reasonable motive for the murder is a most weighty circumstance in favour of the accused MOYILA KURMIAH v. EMPEROR, **1913 M.W.N. 145 = 18 Ind. Cas. 337 = 14 Cr. L.J. 49.**

(99)—*Charge of murder—Village Munsif's report silent as to the murderer—Jewels worn by deceased missing and not accounted for—Motive for murder very slight—Conviction bad.*—Where the evidence against a person convicted of murder consists only of a statement made by a brother of the deceased that he saw him run away after the commission of the offence and where against that evidence there is a strong array of circumstantial evidence in favour of the accused, *e.g.*, omission of his name in the first report, the missing jewels not being traced out, the accused not absconding after the alleged offence, a reasonable doubt arises, the benefit of which must be given to the accused. SUNDARA GOUNDEN v. EMPEROR, **1911, 2 M.W.N. 373 = 12 Ind. Cas. 577 = 12 Cr. L.J. 551.**

(100)—*Charge of murder—Confession of a co-accused—Evidence of an accomplice—Corroboration.*—In a charge of murder against three accused, it was sought to use as evidence against them (*a*) a confession made by one accused against the others, (*b*) the evidence of a witness taken as an approver. In regard to (*a*), the confession did not implicate but it exculpated the accused himself, and in respect of (*b*), the fact used as corroboration was that the deceased was seen alive with the accused just before the murder. *Held*, (1) that as the accused exculpated himself, the confession is not evidence against the others, (2) that, as the fact sought to be used as corroboration took place before the commission of the offence, there is no corroboration, (3) that a statement withdrawn cannot be used as evidence against the person withdrawing it. MURE VENKATA REDDI v. IRAGAKKAGARI NAGI REDDI, **1911, 2 M.W.N. 375 = 12 Cr. L.J. 562.**

(101)—*Motive or ill-will, Proof of.*—Proof of motive or previous ill-will is not necessary to sustain a conviction for murder. QUEEN v. JAICHAND MUNDLE, **7 W.R. Cr. 60.**

(102)—*Motive, Proof of.*—The evidence as to the motive of a prisoner should be of the strictest kind. QUEEN v. ZUHIR, **10 W.R. Cr. 11.**

(103)—*Absence of intention to kill—Indication of intention by acts.*—It is not murder, if a person kills another without intending to take his life, and if the acts done are not such as conclusively indicate an intention to cause such injury as was likely to cause death. QUEEN v. SHEIKH SOLIM, **5 W.R. Cr. 41.**

(104)—*Intention to kill another person.*—A person striking another with a highly lethal weapon like a sharp *dao*, and inflicting such dangerous injuries as the medical report shows there to have been, must be considered to have known that such injuries were likely to cause death. So where a prisoner had probably no intention of striking his child, his killing the child by a blow intended for the mother, would be culpable homicide amounting to murder and punishable under s. 301, Penal Code. QUEEN v. PHOMONEE AHUN, **8 W.R. Cr. 78.**

(105)—*Penal Code, s. 300—Guilty intention or knowledge—Duty of Court.*—In a case of murder, it is for the Court to consider whether the whole case does not disclose circumstances which negative the existence of a guilty intention or knowledge, which is a constituent part of the offence of culpable homicide. JEHANGEER KHAN v. CROWN, **22 P.R. 1868, Cr.**

(106)—*Knowledge of likelihood to cause death—Intention—Penal Code, s. 300, cl. 4 and s. 314.*—Where a poisonous drug was administered to a woman to procure miscarriage and

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death resulted, and it was not proved that the accused knew that the drug would be likely to cause death, etc., they were acquitted of murder and convicted of an offence under s. 314 of the Penal Code. QUEEN v. KALACHAND GOPE, **10 W.R. Cr. 59.**

(107)—*Penal Code, s.* 300 (1) *and* (2)—*Murder—Intention to cause death or bodily injury likely to cause death—Attack of a violent and determined character—Causing severe injuries and ruptures of the spleen in a healthy condition.*—Where A and his party attacked B, a strongly built man of about thirty-five years of age, in a violent and determined manner, inflicting not less than sixteen wounds on his body and causing severe ruptures of his spleen which was in a healthy condition, and so caused his death, *held*, these facts leave no doubt that A and his party who attacked B either intended to cause B's death, or that they attacked him in such a brutal manner, regardless of the consequences, well knowing that they would be likely to cause his death, and that the offence committed by A and his party therefore amounted to murder. ELEM MOLLA v. EMPEROR, **37 C. 315 = 6 Ind. Cas. 921 = 11 Cr. L.J. 417.**

(108)—*Violent blow on the head—Repetition of blows on the head—Intention—Penal Code, s.* 300.—A man's intention can only be gathered from his acts. Death from a blow or blows on the head is probably, as a rule, associated by people unskilled in medical science only with the breaking of the skull. Ignorance of the actual causes which may bring about another's death in consequence of a blow cannot affect the question of the striker's knowledge and intention when striking the blow. If actual knowledge and experience do not do so, instinct at least tells every man that to hit another human being any violent blow on the head may possibly result, or is likely to result, or will probably result, in serious injury to the person struck; but knowledge, belief or expectation of the amount of injury that may be caused must depend upon what is used in inflicting the blow, and the force with which the blow is delivered. A man is presumed by law to intend the ordinary and natural as well as the necessary consequences of his acts. Every man giving another a very violent blow on the head with his fist must be taken to know that the result of his blow *may be*, and even is *likely to be*, injury to the other, sufficient to kill him, but, unless it must be taken that ordinary knowledge, experience or instinct tell a man that such a result is an ordinary and, therefore, a probable consequence of so striking another man, the striker's act would not amount to a greater crime than culpable homicide, for, at most, it would be an act done with the knowledge that he was only likely to cause death, and an intention to cause more than he knew was likely, could not be imputed to him, unless there was further evidence showing what his actual intention was. Every man must be taken to know that, if he repeats violent blows with anything substantial and hard on another man's head, he will probably either kill the man, or cause him such injury such as is sufficient, in the ordinary course of nature, to cause death. This repetition of the blow takes the present case beyond the limits of culpable homicide, into those of murder. SHWE HLA U v. KING-EMPEROR, **2 L.B.R. 125 = 1 Cr. L.J. 184.** [*R.*, 7 Cr. L.J. 205.]

(109)—*I.P.C.*, ss. 300, 304—*Murder—Blows on the head of the deceased with intention to cause injury likely to cause, but not sufficient in the ordinary course of nature to cause death—Conviction sustainable only under s.* 304.—The appellant has been convicted of murder on a finding by a Sessions Judge that he had caused the death of the deceased by an act which, he must have known, was likely to cause death, though it was probable that he had no intention of causing the death itself. *Held*, on appeal, that, on the findings of the lower Court, the conviction of the offence of murder was not justified. On the finding which corresponded to the words "the act is done with the knowledge that it is likely to cause death" in s. 304 of the I. P. Code, the conviction should have been of culpable homicide not amounting to murder. The accused struck the blow with a piece of wood picked up on the spur of the moment, during a heated altercation. The circumstances do not warrant the conclusion that the accused actually intended to kill the deceased, nor does the act itself call for such a conclusion. The decision of the question whether the act of the accused amounts to murder or not must rest upon whether he must be held to have intended to cause bodily injury sufficient in the ordinary course of nature to cause death, or whether he only intended to cause such bodily injury as was likely to cause death. Under the circumstances, the second clause of s. 300 has no application and the decision must be based on a consideration of the third clause of that section. The lower Court not having found that the appellant intended to cause such bodily injury as was sufficient in the ordinary course of nature to cause death, he must be acquitted of the charge of murder and should be found guilty of culpable homicide not amounting to murder under s. 304, I.P. Code, inasmuch as he culpably caused the death of the deceased by an act done with the intention of causing such bodily injury as was likely to cause death. SHWE EIN v. KING-EMPEROR, **3 L.B.R. 122 = 3 Cr. L.J. 355.** (1 B. 342, B.L.R. Sup. Vol. 443, F.B., 2 L.B.R. 125, *R.*) [*Appr. & F.*, 12 Cr. L.J. 524 = 12 Ind. Cas. 292 = 4 Bur. L.T. 253; *R.*, 7 Cr. L.J. 205, 9 Cr. L.J. 5 = 4 L.B. R. 306, 9 Cr. L.J. 364 = 4 L.B.R. 367, 10 Cr.L. J. 359 = 3 Ind. Cas. 710 = 5 L.B.R. 80, 15 Cr. L.J. 513 = 24 Ind. Cas. 601, 4 L.B.R. 132.]

(110)—*Penal Code, s.* 300 (2)—*Intention of causing such bodily injury, as offender knows to be likely to cause the death of the person injured —Culpable homicide—Grave and sudden provocation — Breach of etiquette.*—The second clause of s. 300, only applies in special cases in

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which, the person injured was in a condition or in a state of health in which an injury which would not ordinarily cause death, would cause his or hers, and the person who caused the injury knew, when inflicting such an injury, that, owing to the condition or state of health of the person he was about to inflict the injury to, he would be likely to cause the person's death. A mere breach of etiquette cannot be held to constitute grave and sudden provocation excusing a person losing all power of self-control. NGA MAUNG v. KING-EMPEROR, **4 L.B.R. 132 = 7 Cr. L.J. 410.**

(111)—*Penal Code, s. 300—Intention of causing bodily injury sufficient to cause death—Death resulting therefrom—Murder.*—When an act is done with the intention of causing bodily injury and that injury is sufficient, in the ordinary course of nature, to cause death and it does actually cause death, the act is murder, although the person who committed the act may not have known that it was likely to cause death. *In the matter of* RAJA DRIBYA SINGH, **1 J.G. 59.**

(112)—*Intention—Blow with knowledge of likelihood of causing death—Absence of intention to kill.*—Where a Judge acquits a prisoner of intention to kill, but admits that the prisoner struck the deceased with a highly lethal weapon with the knowledge that the act was such as was likely to cause death, the conviction should be for murder and not culpable homicide not amounting to murder. QUEEN v. SOBEEL, MAHEE **5 W.R. Cr. 32.**

(113)—*Intention—Beating with knowledge of likelihood of causing death.—Held* by the majority that, when four men beat another at intervals, and so severely that death ensues from the injuries received, they must be presumed to have known that by such acts they were likely to cause death, that, moreover, when these acts were done when there was no grave or sudden provocation, or no sudden fight or quarrel, the offence which they have committed is murder, and that the offence of murder is not reduced to culpable homicide not amounting to murder by the absence of intention to cause death. QUEEN v. POOSHOO, **4 W.R. Cr. 33.**

(114)—*Penal Code, ss. 299, 300—Grave and sudden provocation, plea of—Duty of Judge and jury.*—In a trial for murder, where grave and sudden provocation causing a loss of the power of self-control is suggested for the defence, it is the duty of the Judge, as it clearly set forth in s. 299, Crim. Pro. Code, to explain the distinction between murder and culpable homicide, and the jury, as Judges of the facts, have to decide the issue about sufficient provocation. The fact that the accused was angry at his wife's resistance to the act of sexual intercourse is not such a provocation as would make his causing her death an offence less grave than murder. Her denial of a charge of adultery is not sufficient to constitute grave provocation; and the irritable or revengeful state of mind caused by mere jealous suspicions is not a fact which makes the homicide less than murder. QUEEN-EMPRESS v. DADABHAI, **Rat. Un. Cr. C. 766 = Cr. Rg. 30 of 1895.**

(115)—*Crim. Pro. Code (Act X of 1882), s. 271—Plea of guilty—Murder—Culpable homicide, conviction for—Validity of conviction—Grave and sudden provocation.*—Where there is a clear *prima facie* case of murder, the Sessions Judge cannot, on a plea of guilty by the accused, convict him of culpable homicide not amounting to murder, while there is no proof adduced of grave and sudden provocation alleged by the accused. QUEEN-EMPRESS v. MALHARI, **Rat. Un. Cr. C. 410 = Cr. Rg. 76 of 1888.**

(116)—*Murder case—Record of confession, how to be made.*—In grave cases such as murder, the record of a confession, among other records should be in plain and legible writing. QUEEN-EMPRESS v. RAGHAPPA, **Rat. Un. Cr. C. 837 = Cr. Rg. 50 of 1896.**

(117)—*Murder—Nature of wounds likely to cause death—No vital part injured—Conviction of murder—Confession made to zaildar—Confession nominally to third party—Presence of police—Inadmissibility—S. 25, Evidence Act.*—Where the nature of the wounds and their number are such that it is a fair presumption that the accused who inflicted them intended to cause the death of the deceased or to cause him such injuries as he knew would be likely to cause death, the accused cannot be held to be not guilty of murder because he was clever enough to avoid injuring a vital part of the body. A promise held out by a Zaildar whose duty it is to help the police in the investigation of offences is a promise made by a person in authority within the meaning of s. 24, Evidence Act, and a confession made in consequence of such a promise is inadmissible. A confession nominally made to a third party, for instance, to a Zaildar, in the presence of the police and after the arrival of the Thanedar who at the time of the confession was sitting a few yards off, is also inadmissible in evidence under s. 25, Evidence Act. KUTAB ALI v. CROWN, **14 P. R. 1911, Cr. = 12 Ind. Cas. 973 = 12 Cr. L.J. 597.**

(118)—*Doubt as to the guilt of the accused.*—In this case, the accused, who were convicted of murder, were acquitted by the Chief Court on the ground that the evidence did not exclude every reasonable hypothesis but that of the guilt of the accused. CROWN v. GULAB, **5 P. R. 1872, Cr.** [*R.*, 11 P.W.R. 1911, Cr. = 7 P. L.R. 1911 = 9 Ind. Cas. 400 = 12 Cr. L.J. 69.]

(119)—*Murder committed to throw blame on others.*—Where the prisoner killed his sister and hurt himself with the intention of throwing the blame on a faction opposed to that to which he belonged, *held* that he was guilty of murder. REG. v. MUHAMMAD VALLI, **8 B. H.C. Cr. 109.**

(120)—*Death remotely due to exposure—Murder—Penal Code, s. 317.*—Where a child does

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not die on account of the exposure except in a remote degree, the mother that exposed the child would not be guilty of murder, but only of an offence under s. 317, Penal Code which contemplates cases in which death is caused from cold or from some other result of exposure. QUEEN v. KHODABUX FAKER, **10 W.R. Cr. 52.**

(121)—*Penal Code, ss.* 302, 324—*Murder.*—A quarrel took place in the precincts of a Thakurdwara between the first accused and the deceased about a pigeon. They were ordered out of the precincts of the place. The first accused at once ran away to his house, while the deceased walked slowly away. The deceased had got to the door of a *shiwala* about 150 yards from the Thakurdwara when the accused suddenly returned from his house armed with a long and heavy *lathi* and ran after the deceased who at once ran into the *shiwala.* He followed the deceased into the place and struck him a blow on the head which felled him to the ground. The first accused was followed by his father and by his uncle, armed with light *lathis*, and all three then struck several blows at the fallen deceased. *Held* that the first accused was guilty of murder, and the other accused were guilty under s. 324, I.P.C. EMPRESS v. RAM PRASAD, **A.W.N. 1883, 231.**

(122)—*Penal Code, s.* 304—*Beating wife in good faith for driving devil—Death caused thereby.*—Where a man beats his wife in good faith, under a mistaken idea that by so doing the devil of which she is possessed would go away, and the wife subsequently dies from the after-effects of the beating, he cannot be convicted of murder or of any minor offence, since what he did was done in ignorance and in good faith. QUEEN-EMPRESS v. DHONDI, **Rat. Un. Cr. C. 785.**

(123)—*Administration of poisonous substance in the belief that it is a mere charm.*—In cases where persons are charged with causing death with a poisonous substance supplied by a third person, and where the defence is that it was sought and administered as merely a charm, the Court should not infer merely from the fact that the substance administered was a deadly poison, that the nature and properties of the substance were known to the person who administered it. The guilty knowledge or intent must be established whether ignorance of the nature and properties of the substance administered is pleaded or not, and when it is pleaded, it cannot be ignored. MUSST. SULTAN v. EMPRESS, **35 P.R. 1884, Cr.**

(124)—*I.P.C., s.* 302—*Murder of wife—Unfounded suspicion as to wife's chastity—Grounds for not passing death sentence.*—Where an accused person was found to have murdered his wife under a mistaken impression that she was unchaste to him, the High Court set aside the sentence of death passed on him, and sentenced him to transportation for life. EMPEROR v. DINA BANDHU MOITRA, **8 C.W.N. 218 = 1 Cr. L.J. 62.**

Murder—*continued.*

(125)—*Penal Code, ss.* 111, 113, 302—*Abetment of murder.*—Two persons were holding the deceased with the intention of beating him when another came and beat him so heavily that he died in consequence. It was not shown that the two persons above referred to intended to cause death or knew that their act was likely to cause death. *Held*, that they could not be convicted of abetment of murder. QUEEN-EMPRESS v. MUNNA, **A.W.N. 1892, 233.**

(126)—*One prisoner striking by order of the other—Principal—Murder.*—Where a blow is struck by one prisoner in the presence of, and by the order of the other both are principals in the transaction; and where two persons join in beating a man, and he dies, it is not necessary to ascertain exactly what the effect of each blow was. QUEEN v. MAHAMED ASGER, **23 W.R. Cr. 11.**

(127)—*Death resulting from injuries inflicted—Duty of Magistrates—Committal to Sessions Court.*—In cases where death appears to have resulted from injuries voluntarily inflicted by the party accused, Magistrates ought to be very careful not to take it upon themselves to absolve the accused from the graver charge and convict them of hurt or grievous hurt only, unless they are quite clear that there is no sufficient evidence to warrant a commitment to the Sessions for murder or culpable homicide not amounting to murder. CRIMINAL CIRCULAR, NO. 9 OF 1869, **12 W.R. Cr. Cir. 7.**

(128)—*Penal Code, ss.* 299, 300—*Accused disarmed—Accused subsequently arming himself and striking in the dark.*—The accused, being wrested of his *tathi*, in his attempt to strike the deceased with it, armed himself, subsequently, with a sword, and struck in the dark, which resulted in the death of the deceased by the wounds caused by the sword. *Held* (*by Jackson and Ainslie, JJ.*)—The accused was guilty of murder. *Held* (*by Cunningham, J.*)—The accused was guilty of only culpable homicide. *In the matter of* BEJADHUR RAI, **2 C.L.R. 211.**

(129)—*Murder.*—Case where a father first sacrificed his son because wealth had not accompanied his son's birth and subsequently had his own throat cut as a protest against his deity's injustice. QUEEN v. BISHENDHAREE KAHAR, **7 W.R. Cr. 64.**

(130)—*I.P.C., ss.* 300 *and* 302—*Form of charge—Denial of exceptions, when necessary—Crim. Pro. Code* (1861), *ss.* 243 *and* 237.—Charges for culpable homicide amounting to murder, an offence defined in s. 300, Penal Code, and punishable under s. 302, should be drawn up in the form prescribed by s. 243 of the Crim. Pro. Code, 1861. The denial of the existence of special exceptions in accordance with s. 237, Crim. Pro. Code, is necessary only in charges regarding offences punishable under ss. 136, 323, 324, 325 and 326, Penal Code. CRIMINAL CIRCULAR NO. 5 OF 28TH MARCH 1866, **5 W.R. Cr. Cir. 2.**

Murder—*continued.*

(131)—*Speedy disposal of cases of murder before the commencement of the vacation.*—All Sessions Judges should make arrangements for trying, as far as possible, at the commencement of their Sessions, all cases in which murder is one of the offences charged, as it is important that the orders of the High Court, in all cases in which capital sentences have been passed, should be obtained and communicated to the Sessions Court before the commencement of the vacation. CRIMINAL CIRCULAR, NO. 10 OF 1867, **8 W.R. Cr. Cir. 5.**

(132)—*Penal Code*, s. 302.—Murder is excluded from the exception in s. 94, I.P.C., as to acts done under compulsion of threats causing apprehension of instant death. NGA AUNG BWIN v. QUEEN-EMPRESS, **U.B.R. 1892—1896, Vol. I, 201.**

(133)—*Penal Code*, ss. 299, 308—*Applicability of exceptions to s.* 300.—Where a Court finds that an act causing death was done merely with the knowledge that the doer was likely by such act to cause death, as the act does not come within s. 300, there is nothing upon which the exception to s. 300, can operate. ATTRA v. QUEEN-EMPRESS, **9 P.R. 1891, Cr.** (27 P.R. 1883, Cr., 32 P.R. 1887, Cr., *R.*)

(134)—*Penal Code*, s. 300 (4)—"*Without any excuse,*" *term explained.*—The words "without any excuse" in s. 300, para. 4, mean "in the absence of any exculpatory circumstances," other than some of those circumstances mentioned in the five exceptions to s. 300. In arriving at a decision on the point, the Court should be guided by a sound and rational judgment. BAKHU RAM v. EMPRESS, **40 P.R. 1887, Cr.** (32 P.R. 1887, *R.*)

(135)—*Penal Code*, s. 300, *cl.* 4—*Applicability.*—The question whether the accused, who is charged with murder under cl. 4, committed the act charged against him, without any excuse for incurring the risk there mentioned, is for the jury to decide. The proper way of putting the question to the jury is, whether the accused committed the act without any excuse, and not whether there was not any excuse for committing the act. Clause 4 applies to those cases in which the accused, not intending to cause death or to cause such bodily injury as is likely to cause death, has nevertheless caused death by an act known to be so imminently dangerous that death will most probably be the result and committed with wholly inexcusable recklessness of the probable result. EMPRESS v. TREMBEL, **47 P.R. 1887, Cr.**

(136)—*Penal Code*, ss. 300, 302—*Applicability of cl.* 4 *of s.* 300.—Where, in a general quarrel between the accused and the deceased on account of an irrigation channel being stopped, some abuses passed on both sides, but not such as to cause grave and sudden provocation, within the meaning of excep. 1 to s. 300, I.P.C., and the accused struck the deceased, who was unarmed, a fatal blow on the head with a spade which fractured the skull, *held*, that the case did not fall under cl. 4 of s. 300, but under cl. 3. (*Per Powell, J.*) :—Where cl. 4 of s. 300 is applicable at all, it is (1) after negativing the application of all the previous clauses, and (2) or on a double finding of facts (*a*) that the act was one of extraordinary recklessness, and (*b*) that the act was wholly inexcusable. The exceptions to s. 300 are equally applicable to cl. 4 as to the other clauses. The intention mentioned in s. 300 does not require some previous design or forethought of murder. The intention spoken of is actual intention, the existing intention of the moment, and is proved by or inferred from, the acts of the accused and the circumstances of the case irrespective of the question of the applicability of any of the exceptions to the section. (*Per Plowden, J.*) :—The fourth clause of s. 300 is not applicable to a person who does the fatal act with the intention of causing death, or the intention of causing such bodily injury as is likely to cause death. GHUFAR v. EMPRESS, **62 P.R. 1887, Cr.**

(137)—*A conviction for murder.*—A prisoner who taking advantage of an incident which occurred in what till then had been a fair fight, struck his opponent, and knocked him over should not have been found guilty of murder. QUEEN v. KEWUL DOSAD, **W.R. 1864, Cr. 36.**

(138)—*Penal Code*, s. 300, *cls.* 2, 3—*Murder.*—Two persons quarrelled when in a drunken state, and one of them ran to his house 30 yards distant, and came back with a pestle and struck the other a violent blow on the left temple, and killed him. *Held*, that the offence fell within cls. 2 & 3, s. 300 of the Penal Code. QUEEN v. DASSER BHOOYAN, **8 W.R. Cr. 71.**

See ABANDONMENT OF CHILDREN, 10 W. R. Cr. 52, 23 P.R. 1866, Cr.

See ABETMENT, Rat. Un. Cr. C. 207, L B. R. 1893—1900, 269.

Abetment of, by impossible means—Sorcery —*See* ABETMENT, 10 B.H.C. 75.

Abetment of—*See* ABETMENT, W.R. 1864, Cr. 12.

See ACCOMPLICE—ACCOMPLICE EVIDENCE —NECESSITY FOR CORROBORATION, 5 W.R. Cr. 59.

See CHARGE—GENERAL, 1 W.R Cr. Letters, 9, 13.

See CHARGE—FORM OF CHARGE, 5 W R Rec. Ref. 1.

And culpable homicide not amounting to murder—*See* CHARGE TO JURY—MISDIRECTION, 9 W.R. Cr. 51.

See CHARGE TO JURY—MISDIRECTION, 1 Bom. L.R. 784, 20 B. 215.

Murder — Evidence purely circumstantial —Sentence of death or transportation for life—Legality—Age of accused also to be taken into account in imposing sentence—*See* CIRCUMSTANTIAL EVIDENCE, 16 M.L.T. 535.

Murder—*continued.*

See CONFESSION — MISCELLANEOUS, 4 Bom. L.R. 425.

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See CORPUS DELICTI, 6 P.R. 1900, Cr. = P. L.R. 1900, 54, Cr.

Offence of abduction from lawful guardianship in order to commit murder, whether an offence "minor" to that of murder—*See* CRIM. PRO. CODE, 1898, ss. 162, 238, 2 Weir 302.

See DACOITY, 17 A. 86 = A.W.N. 1895, 12 A.W.N. 1906, 47 = 3 Cr. L.J. 294, 1 Weir 447, 16 A. 437 = A.W.N. 1894, 178.

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See EVIDENCE ACT, 1872, s. 33, 3 B. 334.

See GRIEVOUS HURT, 3A. 776.

See INSANITY, 14 B. 564.

See JOINDER OF CHARGES—MISJOINDER OF CHARGES, 1 L.B.R. 361.

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See JURISDICTION OF CRIMINAL COURTS—GENERAL, 2 A. 281, F.B., 5 C.P.L.R. Cr. 48.

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See KIDNAPPING, 1 S.L.R. 104, Cr. = 8 Cr. L.J. 361.

Whether triable by a Deputy Commissioner?—*See* MAGISTRATE, JURISDICTION OF—COMMITMENT TO SESSIONS COURT, 5 C.P.L.R. Cr. 38.

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See PENAL CODE, ss. 34, 149, 12 C.L.R. 233.

See PENAL CODE, ss. 34, 302, 326, 13 C.W. N. 680 = 36 C. 659 = 2 Ind. Cas. 841 = 10 Cr. L.J. 186.

See PENAL CODE, ss. 37, 302, 325, 11 A.L.J. 804 = 35 A. 506.

Accomplice in murder cases—Doing an act under threat of death—Effect—*See* PENAL CODE, ss. 39, 94, 1912 M.W.N. 1103 = 19 Ind. Cas. 207 = 14 Cr. L.J. 207.

See PENAL CODE, ss. 84 and 302, 10 C.W. N. 725 = 3 Cr. L.J. 469.

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See PENAL CODE, ss. 114, 149, 302, 2 C.W. N. 49.

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Offence of—Magistrate when to commit accused—*See* PENAL CODE, ss. 142, 299, 302, 304, 325, 366, 12 P.W.R. 1911, Cr. = 193 P L.R. 1911 = 12 Cr. L.J. 393 = 11 Ind. Cas. 577.

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See PENAL CODE, s. 202, L.B.R. 1893—1900, 382.

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See PLEA OF GUILTY, 5 C. 826.

See PRACTICE AND PROCEDURE, 8 Bom. L.R. 240 = 3 Cr. L.J. 337.

See PRIVATE DEFENCE, RIGHT OF, 8 C.L.J. 561 = 9 Cr. L.J. 32.

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See REFERENCE TO HIGH COURT, 1 B. 639.

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See SENTENCE—TRANSPORTATION, 11 C. W.N. 904 = 6 Cr. L.J. 154.

By way of retaliation—*See* SENTENCE—TRANSPORTATION, 6 W.R. Cr. 46.

See UNLAWFUL ASSEMBLY, 22 C. 805, 3 C. L.R. 49.

See VERDICT OF JURY, Rat. Un. Cr. C. 982 = Cr. Rg. 44 of 1898.

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See COUNTERFEITING COIN, A.W.N. 1903, 115.

See PENAL CODE, ss. 28, 230, 235, 47 P.L. R. 1903.

See PENAL CODE, ss. 230, 235, 1 P.R. 1903, Cr.

Muscat Order in Council.

(1)—*Jurisdiction of Bombay High Court.*—The High Court at Bombay has no criminal revisional jurisdiction over the proceedings of Her Majesty's Consul within the dominions of the Sultan of Muscat. *In re* RATTANSEE PURSHOTTEM, 24 **B. 471 = 1 Bom. L.R. 840.**

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Prohibition by police of, in private houses—*See* BOM. ACT VII OF 1867, s. 27, 9 B.H.C. A.C.J. 153.

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See PUBLIC NUISANCE, 11 Bom. L.R. 372 =2 Ind. Cas. 494.

Mustard Oil.

Sale of adulterated—*See* BEN. ACT II OF 1888, s. 364, 3 C.W.N. 66.

Mutiny.

Amnesty proclaimed by Government after mutiny, effect of—*See* PENAL CODE, ss. 320 and 411. S.C. 190, Oudh.

Mutta Marriage.

See MAINTENANCE, 8 C. 736=11 C.L.R. 237.

Mysore.

European British subjects in—Offence not punishable with death or transportation for life—*See* EUROPEAN BRITISH SUBJECT, 5 M. 33=1 Weir 7.

See JUDICIAL COMMISSIONER OF MYSORE, 5 M. 33=1 Weir 7.

See JURISDICTION OF CRIMINAL COURTS —GENERAL, 6 M.H.C. App. 3.

Mysore Police.

If public servants—*See* PENAL CODE, s. 353, 1 Weir 342.

Naib Nazir.

See NAZIR.

See ACT VIII OF 1873, s. 45, 27 A. 499=A. W.N. 1905, 74=2 A.L J. 219=2 Cr.L.J. 183.

Narwadari Tenures (Bhagdari) Act.

See BOM. ACT V OF 1862.

Native Articles of War.

See ACT XXIX OF 1861.

Native Indian Subject.

Of Her Majesty—Offence committed outside British India — Want of Political Agent's certificate—*See* JURISDICTION OF CRIMINAL COURTS—GENERAL, 11 P.R. 1899, Cr.

See JURISDICTION OF CRIMINAL COURTS—JURISDICTION OVER NATIVES, 16 B. 178.

Of Her Majesty in Siam — Jurisdiction of British Courts—*See* SESSIONS JUDGE—JURISDICTION OF, Rat. Un. Cr. C. 773=Cr. Rg. 37 of 1895.

Native Labourers, Emigration of, Act.

See ACT XIII OF 1864.

Native Labourers, Transport of, Act.

See BEN. ACT III OF 1863.

See BEN. ACT VI OF 1865.

Native Passenger Ships Act.

See ACT XII OF 1870.

Natives.

See JURISDICTION OF CRIMINAL COURTS —JURISDICTION OVER NATIVES.

Native States.

See FOREIGN TERRITORY, OFFENCES COMMITTED IN.

(1)—*Bailiff whether can be sent to Baroda for arrest—Criminal jail.*—The High Court at Bombay can send a special bailiff for arresting a person in Baroda station which is within British territory. A person arrested for contempt of Court is liable to be lodged in a Criminal jail. HARIVALLABHADAS KALLIAN DAS v. UTTAM CHAND MANICK CHAND, **7 B.H C. O.C J. 172.** [*R.*, 8 B.H C.O.C J. 236.]

See ACT I OF 1849, Rat. Un. Cr. C. 35.

Validity of warrant issued by Political Agent of, against British Indian subject—*See* ACT XXI OF 1879, ss. 1, 11, 12, 18, 5 O.C. 55.

European British subjects in—*See* ACT XXI OF 1879, s 8, 9 B. 333.

See ACT III OF 1900, s. 40, 7 Bom. L.R. 566 =2 Cr.L.J. 504.

Liquor manufactured in—*See* BOM. ACT V OF 1878, ss. 2 (8), 43 (*a*), 1 Bom. L.R. 158.

Importation of *Bhang* in Native State—No cession of territory—*See* BOM. ACT V OF 1878, ss. 6, 43 (*a*) (*f*), 5 Bom. L.R. 873.

See BOM. ACT V OF 1878, ss. 9, 43, Rat. Un. Cr. C. 313=Cr. Rg. 67 of 1886.

Importing of *bhang* into British territory—Receipt in a Railway Station in Native State, ceded to the Government of India—*See* BOM. ACT III OF 1886, ss. 6, 43 (*a*), (*b*), 5 Bom. L.R. 873.

Jurisdiction to arrest persons along the line of the railway in the Hyderabad State for offence committed in British India—*See* ARREST, 6 P.R. 1897, Cr. (P.C.), *on appeal from* 1 P.R. 1896, Cr.

See CHARGE—GENERAL, 17 B. 369.

Confession made before a Judicial Officer in a Native State—*See* CONFESSION—CONFESSION —CONFESSIONS TO MAGISTRATES, ETC., 12 A. 595=A.W.N. 1890, 199, 8 P.R. 1907, Cr.=33 P.W.R. 1907, Cr.=46 P.L.R. 1908=6 Cr. L.J. 377, 22 B. 235.

Bond for good behaviour—Conviction for receiving stolen property in—Forfeiture—Nature of offence—Proof of commission — Necessary—*See* CRIM.PRO.CODE, 1898, s. 110, 28 P.R. 1910, Cr =45 P.W.R. 1910=8 Ind.Cas. 383=11 Cr. L.J. 635=199 P.L.R. 1910.

Arrest in—of its subject without intervention of that state—*See* CRIM. PRO. CODE, 1898, ss. 177, 252, 6 P.R. 1899, Cr.

Offence committed in—S. 181 (2) if applicable to—Political agent's certificate—Necessity for—*See* CRIM. PRO. CODE, 1898, ss. 181 (2), 188 and 12, 5 S.L.R. 266=15 Ind. Cas. 802=13 Cr. L.J. 530.

Native States—*concluded.*

Native Indian subjects committing offences outside British India—Jurisdiction of British Courts—*See* CRIM. PRO. CODE, 1898, s. 188, 13 B. 147.

See CRIM. PRO. CODE, 1898, s. 503, A.W.N. 1896, 106.

See ENTICING AWAY MARRIED WOMAN, 21 P.L.R. 1902.

See EUROPEAN BRITISH SUBJECT, 8 B.H.C. Cr. 92.

Confiscation by Independent Chief—Cognizance by English Courts—Proof of confiscation —*See* FORFEITURE OF PROPERTY, 14 W.R. 218.

European British subject in — *See* HIGH COURT, JURISDICTION OF—GENERAL, 9 B. 288, F.B.

Offence committed in British India—Subsequent transfer of territory to an independent Native State— Jurisdiction—*See* JURISDICTION—GENERAL, 8 A.L.J. 630 = 11 Ind. Cas. 585 = 33 A. 578 = 12 Cr. L.J. 401.

Order of appellate Court in British India directing re-trial—Passed after Benares State was formed—Whether valid—*See* JURISDICTION—GENERAL, 8 A.L.J. 705 = 11 Ind. Cas. 1006 = 12 Cr. L J. 470.

See JURISDICTION—GENERAL, 9 A.L J. 51 = 13 Ind. Cas. 921 = 34 A. 118 = 13 Cr. L.J. 169.

Dacoity committed in Native State—Retention of property in British territory—Jurisdiction of British Court—*See* JURISDICTION OF BRITISH COURT, 1 B. 50.

Native Indian subject of Her Majesty committing offences in Native State—*See* JURISDICTION OF CRIMINAL COURTS—JURISDICTION OVER NATIVES, 16 B. 178.

Offence committed in—Arrest in British district—Jurisdiction—*See* MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION, Rat. Un. Cr. 97 = Cr. Rg. 18-11-1875.

See NOTICE, 7 B.H.C.O.C.J. 172.

See PENAL CODE, ss. 1, 2, 75, 1 Weir 40.

Previous conviction in a—Whether can be taken into consideration in awarding enhanced punishment—*See* PENAL CODE, s. 75, 17 P.R. 1913, Cr. = 14 Cr L.J. 527 = 20 Ind. Cas. 1007 = 42 P.W.R. 1913, Cr. = 329 P.L.R 1913.

Abduction—Acts amounting to—Committal in Native State—Trial in British Indian Courts —No jurisdiction—*See* PENAL CODE, ss. 362, 366, 4, 7 S.L R. 128 = 15 Cr. L J. 511 = 24 Ind. Cas. 599.

See POLITICAL AGENT, 12 Bom. L.R 667.

See THEFT—MISCELLANEOUS, 10 B. 186.

See WARRANT OF ARREST, 1 B. 340.

Native Subject.

Mode of commitment of European British subject and—together charged with an offence —*See* COMMITMENT TO SESSIONS COURT, 5 W.R. Cr. Cir. 1.

Natra Marriage.

See ADULTERY, 2 B.H.C. 117, 5 B.H.C. Cr. 17.

Nazir.

(1)—*Penal Code, s. 409—Naib Nazir, whether a public servant.*—The Naib Nazir is a public servant within the meaning of s. 409, and not merely the private servant of the Nazir. QUEEN v. MUHAMOOD HOSSEIN, 2 **N.W.P. 298.**

(2)—*Liability of Nazir—Avoidance of responsibility.*—A Nazir being the head of an important department is and must be solely responsible for the truth of what he reports or admits. Hence he cannot be permitted to avoid responsibility by urging that his *mohurrir* deceived him. QUEEN v. TOFUZZAL ALI, **7 W.R. Cr. 73.**

Delegating the authority to execute a warrant to peon—Obstruction—Civ. Pro. Code, s. 251—*See* ACT VII OF 1870, ss. 22, 20, 22 C. 596.

See ACT VIII OF 1873, s. 45, 27 A. 499 = 2 A.L J. 219 = A.W.N. 1905, 74 = 2 Cr. L.J. 183.

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 5 C.L.R. 200.

See PENAL CODE, ss. 23, 186, 22 C. 759.

Warrant of arrest addressed to—*See* PENAL CODE, s. 172, 4 N.W.P. 97.

See SANCTION TO PROSECUTE—REVOCATION OF SANCTION, 7 C.W.N. 423.

Negligence.

See PENAL CODE, s. 304-A.

See RASH AND NEGLIGENT ACT, CAUSING DEATH BY.

See RASH DRIVING.

(1)—*Using fire-arms negligently — Rigorous imprisonment and fine for such negligence—Awarding fine to deceased's widow—Crim. Pro. Code* (1882), *s.* 545.—A person handling loaded fire-arms, when other people are nigh, is bound to use proper care and caution, *i.e.*, such reasonable precaution as a prudent man would use when handling such weapons and such as would make it improbable that any harm would arise to others. Negligence on his part would, therefore, be criminal. Rigorous imprisonment is not a proper punishment for a man who, through a momentary forgetfulness of which any one might be guilty, causes the death of another. Simple imprisonment or fine alone would be ample punishment. An order awarding the fine in this case to the widow and child of the deceased was held to be illegal, as they could neither be complainants nor persons injured within the meaning of s. 545, Crim. Pro. Code. EMPRESS v. AJMERSING, **5 C.P.L.R. 45, Cr.** (7 B.H.C. Cr. 73, *R.*)

(2)—Personal injury intentionally caused is neither a rash nor negligent act. KING-EMPEROR v. NGA SHWE LU, **U.B.R. 1904, 1st Qr., Penal Code 6 = 1 Cr. L J. 557.** (U.B.R. 1897—1901, Vol. I, 314, 1 L.B R. 259, *R.*)

(3)—*Pony negligently tied up in bazaar.*—S. 289, Penal Code, refers not only to small

Negligence—*continued.*

animals but to any animal. Hence, it is competent to a Magistrate to fine the owner of a pony which had been tied negligently and which was running about loose in a crowded bazaar, thereby endangering the lives and limbs of persons. *In the case of* CHAND MANAL, **19 W.R. Cr. 1.**

(4)—*Negligent conduct regarding animal in possession.*—Where a bull let loose by the accused's father was ordered to be shot on its becoming vicious, *held*, that the accused who claimed the bull could not be convicted under s. 289, I.P.C., as it could not be said that the animal was in his possession. EMPRESS v. FATTA, **32 P.R. 1889, Cr.**

(5)—*Negligent conduct with respect to animal in possession—Penal Code, s.* 289.—Where a Hindu set at large, in accordance with his religious usage, a young bull, which, after a considerable time, became dangerous, *held*, that he could not be convicted under s. 289, I.P.C. KING-EMPEROR v. SHAMBU DIAL, **5 P.R. 1904, Cr. = 87 P.L.R. 1904 = 1 Cr. L J. 501.** (8 A. 51, *R.*)

(6)—*Negligent conduct regarding poisonous substance—Penal Code, s.* 284.—It is sufficient to sustain a conviction under s. 284. I.P C, that a person in possession of a poisonous substance should have negligently omitted to take such order with it as is sufficient to guard against any probable danger to human life from poisonous substances. The gist of the offence is culpable negligence, and the fact that a person has the custody of any dangerous substance suffices by itself to impose upon him the duty of being careful. It is not necessary to constitute an offence that the negligent omission punishable under the section should be followed by any disastrous consequences. EMPRESS v. HOSSEIN BEG, **16 P.R. 1882, Cr.**

Of Railway servant—*See* ACT IV OF 1879, ss. 101 and 29, A.W N. 1890, 171.

See ACT IX OF 1890, s. 101, 11 C.W.N. 173 = 5 Cr. L.J. 16.

Reckless or negligent driving—Rule of the road—*See* BOM. ACT II OF 1904, s. 2, 13 Bom. L.R. 126.

See CHEATING—GENERAL, 11 B. 59.

See CULPABLE HOMICIDE, 11 W.R. Cr. 3.

See PENAL CODE, ss. 79, 80, 292, expl. (1), 304-A, L.B.R. 1893—1900, 221

See PENAL CODE, s. 223, 7 A.L.J. 907 = 11 Cr. L J. 478 = 7 Ind. Cas. 411.

See PENAL CODE, ss. 268, 269, 24 C. 494 = 1 C.W N. 274.

See PENAL CODE, s. 269, 7 M. 276 = 1 Weir 226.

Rash navigation of a launch—Running into a boat at anchor in itself *prima facie* evidence of —*See* PENAL CODE, s. 280, 12 Cr. L.J. 582 = 12 Ind. Cas 846 = 4 Bur. L.T. 140.

Rash and negligent act, proof and degree of — Contributory negligence, how far is an

Negligence—*concluded.*

element for consideration—Evidence, consideration of, by the High Court in revision—*See* PENAL CODE, s. 280, 15 C.W.N. 835 = 12 Cr. L.J. 362 = 11 Ind. Cas. 130 = 14 C.L.J. 656.

See PENAL CODE, s. 285, L.B.R. 1872—1892, 337.

See PENAL CODE, s. 286, 8 M. 421 = 1 Weir 233 = 9 Ind. Jur. 463.

See PENAL CODE, ss. 286, 337, A.W.N 1906, 91 = 3 Cr. L.J. 363 = 3 A.L.J. 332 = 28 A. 464.

Negligence with respect to animals—*See* PENAL CODE, s. 289, 1 Weir 237 = 3 M.H.C. App. 33.

Negligent Driving.

See BOM. ACT II OF 1904, s. 2, 13 Bom. L. R. 126 = 9 Ind. Cas. 945 = 12 Cr. L.J. 167.

See MASTER AND SERVANT, 12 Cr. L J. 89 = 15 C.W N. 390 = 9 Ind. Cas. 480 = 13 C.L.J. 335 = 38 C, 415.

Nepal.

Evidence taken on commission in Nepal —Admissibility—*See* EVIDENCE—GENERAL, 7 C.W.N. 635.

Newspaper.

Opening of a, by a person employed in the Post Office—*See* ACT XIV OF 1866, s. 48, 19 W.R. Cr. 4.

See ACT XXV OF 1867, 16 M. 443 = 3 M.L.J. 201 = 1 Weir 862.

Comment on pending proceedings—*See* CONTEMPT OF COURT, 14 Bom. L.R. 231 = 15 Ind. Cas. 93 = 13 Cr. L.J. 461 = 1 Bom. Cr. C. 106.

Rule issued against editor, printer, publisher without naming them, on application of private party, if to be discharged—*See* CONTEMPT OF COURT, 15 C.W.N. 771.

Distinct offences—Joint trial—Defamatory resolutions—Transmission of resolutions to a —*See* CRIM. PRO. CODE, 1898, ss. 233, 239, 11 Cr. L.J. 135 = 5 Ind. Cas. 436 = 7 M.L.T. 127.

Newspaper article ambiguous—Interpretation—*See* DEFAMATION, 15 Cr. L.J. 566 = 24 Ind. Cas. 974.

See DEFAMATION, 3 A. 342 = 15 B. 296, 1 C.W.N. 465 = 4 B. 298.

Defamation in—Good faith—*See* DEFAMATION, Rat. Un. Cr. C. 769 = Cr. Rg. 34 of 1895.

Presumptions as to genuineness, printing and publication of—*See* LIBEL, 10 M.L.T. 506 = (1911) 2 M W.N. 576 = 12 Ind. Cas. 961 = 12 Cr.L.J. 585 = 36 M. 457.

Intention of Editor and Publisher—Contribution to the paper, admissibility of, to know intention—*See* PENAL CODE, s. 124-A, 22 B. 112.

See PENAL CODE, s. 124-A, 8 Ind. Cas. 531 = 15 C.W.N. 141.

Newspapers Incitements to Offences Act.

See ACT VII OF 1908.

(1)—*Act* VII *of* 1908, *ss.* 2, 3 — *Pallichitra*, '*Newspaper*' — *Crim. Pro. Code*, *s.* 429 —*Opinion of third Judge.—Per Mookerjee, J.*—Where the Judges composing the Court of appeal are equally divided in opinion upon the question of the guilt of an accused person, though upon certain aspects of the case they may be agreed, the case of the accused is, under s. 429, Crim. Pro. Code, laid before a third Judge, whose duty it is to consider the whole case and all the points involved, and it will be according to the opinion of such Judge that the judgment will follow. The term 'Newspaper' in Act VII of 1908 involves the idea of periodicity, as also the fact that what is contained in the paper is public news or comment thereon. A monthly magazine and critical review, which in one particular issue contains sentences or paragraphs which may by stretch of language be deemed to contain public news, is not a 'newspaper' within the Act. *Per Harington and Mookerjee, JJ.*—On a consideration of the poem, it was not one which contained an incitement to murder or to an offence under the Explosive Substances Act or to an act of violence. *Per Harington and Teunon, JJ.*—A paper which manifestly contains an item of public news is 'Newspaper' within the Act. SARAT CHANDRA MITTER v. KING-EMPEROR, **12 C.L.J. 294=7 Ind. Cas. 641=15 C.W.N. 18=11 Cr. L.J. 515.**

New Trial.

See FRESH TRIAL.

See FURTHER ENQUIRY.

See CHARGE TO JURY—GENERAL, 29 C. 782=6 C.W.N. 553.

See CHARGE TO JURY—MISDIRECTION, 9 W.R. Cr. 51.

Nikka Marriage.

See BIGAMY, 19 C. 627, 6 W.R. Cr. 60.

See MAHOMEDAN LAW—MARRIAGE, 18 W. R. Cr. 28.

Nipple.

Possession of gunbarrel and—*See* ACT XI OF 1878, s. 419 (*f*), 7 M. 70=1 Weir 658.

Non-cognizable Offence.

(1)—*Crim. Pro. Code* (*Act* X *of* 1872), *ss.* 110, 146—*Third class Magistrate—Non-cognisable offence—Investigation.*—A third class Magistrate can order the Police to investigate a non-cognizable offence, when there is a complaint pending before him, but not otherwise. KHANDESH MAGISTRATES' LETTER NO. 3197, **Rat. Un. Cr. C. 77.**

See COMPLAINT—PROCEDURE ON RECEIPT OF COMPLINTS, Rat. Un Cr. C. 79=Cr. Rg. 27-11-1873.

See POLICE INVESTIGATION, Rat.Un.Cr. C. 488=Cr. Rg. 57 of 1889.

Non-joinder.

See JOINDER OF CHARGES.

See JOINDER OF PARTIES.

Object of the s. 145, Crim.Pro.Code—Circumstances under which the section becomes applicable, High Court's powers—Duty of Magistrate—*See* CRIM. PRO. CODE, 1898, s. 145, 28 C. 446=5 C W.N. 428.

Non-Regulation Province.

See DEPUTY COMMISSIONER, 16 W.R. Cr. 1.

Northern India Canal and Drainage Act.

See ACT VIII OF 1873.

Northern India Ferries Act.

See ACT XVII OF 1878.

N.W.P. Acts.

See ACTS—U.P. ACTS.

Notes of Evidence.

See EVIDENCE—ADMISSIBILITY OF EVIDENCE, 1 C. 354.

Notice.

See CRIM. PRO. CODE, 1898, s. 112.

See FURTHER ENQUIRY.

See JUDICIAL NOTICE.

See SANCTION TO PROSECUTE—NOTICE OF SANCTION.

See SECURITY TO KEEP THE PEACE—SUMMONS TO SHOW CAUSE, FORM AND NATURE OF, NOTICE, ETC.

See TRANSFER OF CRIMINAL CASES—GROUNDS FOR TRANSFER—NOTICE.

(1)—"*Notice*," *meaning of.*—*Notice* is the warning to a party to a *lis* to enable him to resist a possible result, that is to say, not mere information that that which is threatened will, or may possibly, happen in a matter, in which he is concerned, but also, that he can avoid such result if he takes proper measures to do so. QUEEN-EMPRESS v. POHPI, **13 A. 171=A.W. N. 1891, 48.**

(2)—*Criminal proceedings against accused—Necessity for notice.*—An order affecting the accused in a criminal matter cannot be made without giving him notice and thereby enabling him to appear and show cause against it, if possible. CHUNDI CHURN BHUTTACHARJEA v. HEM CHUNDER BANERJEA, **10 C. 207.**

(3)—*Crim. Pro. Code* (1882), *ss.* 68 *and* 437 —*Order for further enquiry—Notice.*—When a person accused of an offence under s. 324, I.P.C., was discharged by a Deputy Magistrate, and the District Magistrate directed further enquiry before him, without calling upon the accused to show cause why a further enquiry should not be made, and only summons, in the terms of s. 68, Crim. Pro. Code, was issued to him, *held*, that the proceedings of the Magistrate were irregular. QUEEN-EMPRESS v. HASNU, **6 A. 367=A.W.N. 1884, 130.**

Notice—*continued.*

(4)—*Crim. Pro. Code,* s. 195 (*b*)—*Initiation of prosecution under s.* 211, *I.P.C., without notice.*—Under s. 211, I.P.C., it is not necessary that the person charged should be given notice of the charge made against him, and the District Magistrate does not act without jurisdiction if no notice is given in passing an order to institute a case under the section. EMPEROR v. TABARAK ZAMAN KHAN, **30 A. 52 = A.W.N. 1907, 288 = 4 A.L J.** 790 = **6 Cr. L. J. 396.** (8 A. 38, 29 A. 587, 33 C. 31, *D.*) [*R.*, 5 A.L.J. 74 = A.W.N. 1908, 45.]

(5)—*Crim. Pro. Code* (1898), *ss.* 107, 110 *and* 112—*Notice issued to accused under s.* 112 *to enable Magistrate to proceed under s* 110 (*e*)—*S.* 110 *found inapplicable—Necessity for fresh notice before Magistrate proceeds under s.* 107—*Effect of omission to give fresh notice.*—Where a Magistrate finds that s. 110, with reference to which notice under s. 112 had been issued, is inapplicable to a case, he ought not to proceed to deal with the case as one under s. 107, without first issuing a fresh notice under s. 112, with reference to the altered view of the circumstances. The notice issued with reference to s. 110 (*e*) cannot be held to be sufficient, as a preliminary to the Magistrate making an order under s. 107. The facts necessary to be proved, in order to make the accused liable under s. 110 (*e*) are different from those necessary to be proved, in order to make him liable under s. 107, and the party proceeded against should have due notice of the fact, on which the Magistrate proposes to proceed against him. The omission to issue such fresh notice is a non-compliance with an express provision of the law rendering the subsequent proceedings invalid. KRISHNASAWMI THATHACHARI v. VANAMAMALAI BHASHIAKAR, **30 M. 282 = 2 M.L.T. 183 = 5 Cr. L.J. 397.** [*R.*, 3 Ind. Cas. 774 = 11 Bom. L.R. 740.]

(6)—*Bail bonds—Reasonable notice of day of appearance.*—Where the condition of the bail-bonds given by the defendants and of the security-bond given by their surety is that the defendants should appear when required to answer the charge made against them, they are entitled to reasonable notice of the time at which the defendants will be required to attend. HIGH COURT PROCEEDINGS, 13TH APRIL 1869, **4 M.H.C. App. 45.**

(7)—*Crim. Pro. Code* (1872), *s.* 530—*Form of notice under the section.*—Though the section prescribes no particular mode of giving notice, the language of the section indicates that the notice shall be to known individuals, and not in the form of a general citation or public proclamation. *In the matter of the petition of* KUNUND NARAIN BHOOP, **4 C. 650 = 3 C.L.R. 551.**

(8)—*Service of notice in Baroda with consent of Gaikwar.*—Service of notice in Baroda territory with the Gaikwar's previous assent is valid service, when the parties so served, were already presented by counsel in the British Court, and when the only object of the service beyond territory was to secure personal service. HARIVALLABHDAS KALLIANDAS v. UTTAM CHAND MANICK CHAND, **7 B.H.C. O.C.J. 172.** [*R.*, 8 B.H.C. O.C.J. 236.]

(9)—*Crim. Pro. Code* (1872), *s.* 279—*Notice of date of hearing of appeal.*—The District Magistrate directed that an appeal should be heard in the month of January, the date for the hearing of the appeal being omitted. The appeal was taken up on the 6th January and dismissed, without the appellant having received any information as to when his appeal was to be heard. *Held* that the dismissal was not proper and that the appeal should be re-heard on a date fixed. EMPRESS v. WAZIR KHAN, **A. W.N. 1881, 46.**

(10)—*Crim. Pro. Code* (*Act* X *of* 1872), *s.* 154—*Substituted service on accused.*—Before the Court could proceed to hear an appeal in which notice has not been personally served on the accused, the person who is interested in the service of notice should put in an affidavit stating the grounds for substituted service. EMPRESS v. SUNDAR, **A.W.N. 1882, 170.**

See ACT X OF 1875, s. 147, 1 C. 356.

Of sale of arms by Nazir of Court in execution of decree, to District Magistrate or Police officer—*See* ACT XI OF 1878, s. 1, cl. (*b*) and s. 5, 9 B. 518.

Of action—Suit against Municipal Commissioners—*See* BEN. ACT III OF 1864, s. 77, 7 W.R. 92.

To remove wall, on whom to be served—*See* BEN. ACT III OF 1884, ss. 202, 218, 2 C. L.J. 226 = 2 Cr. L. J. 613.

See BEN. ACT III OF 1884, ss. 224, 246, 26 C. 811 = 3 C.W.N. 508.

See BEN. ACT III OF 1884, ss. 243, 244, 267, 10 C.L.J. 16 = 10 Cr. L.J. 191 = 2 Ind. Cas. 939.

See BEN. ACT III OF 1899, ss. 372, 383 and 449 (1), 12 C.W.N. 271 = 7 Cr. L.J. 110 = 7 C. L.J. 243.

See BEN. ACT III OF 1899, cl. 18, ss. 559, 561 (*b*), 631, 10 C.L.J. 623 = 14 C.W.N. 614 = 4 Ind. Cas. 259 = 10 Cr. L.J. 522 = 37 C. 545.

See BOM. ACT VII OF 1867, s. 42, Rat. Un. Cr. C. 486 = Cr. Rg. 51 of 1889.

Re-building on old foundations without, to Municipality—*See* BOM. ACT VI OF 1873, s. 33, Rat. Un. Cr. C. 402 = Cr. Rg. 63 of 1888.

See BOM. ACT VI OF 1873, ss. 39 and 74, Rat. Un. Cr. C. 973 = Cr. Rg. 28 of 1898.

Over-crowding of a house—Notice to abate over-crowding—Owner to be served with the—*See* BOM. ACT III OF 1888, s. 379-A, 13 Bom. L.R. 640 = 11 Ind. Cas. 995 = 12 Cr. L.J. 459.

See BOM. ACT III OF 1901, ss. 131, 135, 155, 9 Bom. L.R. 247 = 5 Cr.L.J. 252.

See BOM. ACT IV OF 1902, ss. 28 and 129, 7 Bom. L.R. 161.

Notice—*continued.*

See BUR. ACT V OF 1880, ss. 2, 17, 18, 4 L. B.R. 153=7 Cr.L.J. 462.

Of demand of house-tax—Omission to fill up a column in house register—*See* MAD. ACT V OF 1884, ss. 155, 60, 21 M. 296=1 Weir 135.

See PUN. ACT XX OF 1891, ss. 128, 169, 92, 18 P.R. 1908, Cr.

See APPEAL—GENERAL, 3 L.B.R. 283=5 Cr.L.J. 420, Rat. Un. Cr. C. 869=Cr. Rg. 40 of 1896.

Change of place of hearing of appeal—To accused or his pleader—*See* APPEAL—GENERAL, 7 P.R. 1891, Cr.

To appellant of day of hearing of appeal—*See* APPEAL—APPEAL, PRACTICE AND PROCEDURE, 10 C.L.R. 57.

See CANTONMENT CODE, 1899, ss. 79 and 96, 4 A.L.J. 694=A.W.N. 1907, 275=6 Cr.L.J. 348.

See CANTONMENT CODE, 1899, ss. 94, 104, 23 P.R. 1905, Cr.=168 P.L.R. 1905=3 Cr.L.J. 301.

See CANTONMENT CODE, 1899, ss. 94, 104, 240, 1 P.R. 1906, Cr.=48 P.L.R. 1906=3 Cr.L. J. 346.

See CANTONMENT CODE, 1899, ss. 94, 104, 291, 3 P.R. 1907, Cr.=5 Cr.L.J. 493=47 P.L.R. 1907.

See CANTONMENT CODE, 1899, s. 283, 9 P.R. 1909, Cr.

Additional charges against accused without previous notice to him—*See* CHARGE—ADDITION OF CHARGE, 8 C. 195.

See COMMITMENT TO SESSIONS COURT, Rat. Un. Cr. C. 899.

See COMPENSATION—GENERAL, 5 M.L.T. 262=9 Cr. L.J. 150=19 M.L.J. 130=1 Ind. Cas. 79, 33 M. 89, 2 S.L.R. 4, Cr.=10 Cr. L.J. 220.

See COMPENSATION—TO ACCUSED, 29 M. 187=3 Cr. L.J. 452.

See COMPLAINT — DISMISSAL OF COMPLAINT, 11 O.C. 261.

See CRIM. PRO. CODE, 1898, ss. 62, 143, 190, 191 and 528 (3), 35 P.W.R. 1909, Cr.=3 P.R. 1910, Cr.

Final order to give security and notice to be consistent—*See* CRIM. PRO. CODE, 1898, ss. 112 and 118, 26 M. 471=2 Weir 56.

See CRIM. PRO. CODE, 1898, s. 144, 13 C.W. N. 195=5 M.L.T. 96.

See CRIM. PRO. CODE, 1898, s. 145, 8 C.W. N. 76, 8 C.W.N. 719.

See CRIM. PRO. CODE, 1898, s. 145 (3) (4), 30 C. 155=6 C.W.N. 737, F.B.

See CRIM. PRO. CODE, 1898, s. 147, 21 C. 727.

See CRIM. PRO. CODE, 1898, s. 148, 28 C. 302=5 C.W.N. 291.

Notice—*concluded.*

Revision of order passed under s. 203, Crim. Pro. Code—Notice to opposite party not necessary—*See* CRIM. PRO. CODE, 1898, s. 203, 13 O.C. 289=8 Ind. Cas. 371=11 Cr. L.J. 629.

See CRIM. PRO. CODE, 1898, ss. 367, 369, 421, 422, 423, 5 N.L.R. 76=9 Cr. L.J. 553=2 Ind. Cas. 247.

To parties—Order directing commitment—*See* CRIM. PRO. CODE, 1898, ss. 436, 438, 1 C.L.R. 93.

See CRIM. PRO. CODE, 1898, s. 437, 10 B. 131, 1 Bom. L.R. 222, 101 P.L.R. 1902, 13 C. P.L.R. Cr. 189, 2 O.C. 363, 20 A. 339=A.W.N. 1898, 60.

Want of notice, an irregularity—*See* CRIM. PRO. CODE, 1898, ss. 476, 537, 10 A.L.J. 247=13 Cr. L.J. 707=16 Ind. Cas. 515.

See CRIM. PRO. CODE, 1898, s. 515, U.B.R. 1892—1896, Vol. I, 75.

Restoration to possession—Time when order to be made—Whether to be made simultaneously with order of conviction—To accused if necessary—*See* CRIM. PRO. CODE, 1898, s. 522, 14 Cr. L.J. 172=19 Ind. Cas. 172.

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 2 C.L.J. 241=2 Cr.L. J. 618=33 C. 68, F.B.=9 C.W.N. 1046, 24 C. 757, 105 P.L.R. 1909, 5 M.L.T. 103=19 M.L. J. 18=9 Cr. L.J. 565=2 Ind. Cas. 310.

See HIGH COURT, JURISDICTION OF—REVISIONAL POWERS OF HIGH COURT, 10 C. 268.

See LOCAL INSPECTION, 1 C.L.R. 143.

See NUISANCE UNDER CRIM. PRO. CODE, 18 M.L.J. 216=3 M.L.T. 403=31 M. 280=8 Cr. L.J. 151, 16 C. 9, 2 C.W.N. 747, 8 M.H.C. App. 9.

Absconding in order to avoid being served with a summons, notice or order—*See* PENAL CODE, s. 172, 2 C.L.J. 625=3 Cr. L.J. 117.

See PENAL CODE, s. 172, 4 N.W.P. 97.

See PENAL CODE, s. 174, 6 C.W.N. 927.

See PENAL CODE, s. 188, 12 M. 475=1 Weir 144.

See BOM. REG. XII OF 1827, s. 27, 7 Bom. L.R. 459.

See RESTORATION OF PROPERTY, 13 Bom. L.R. 131.

See SANCTION TO PROSECUTE—CONDITIONS REQUISITE FOR GRANT OF SANCTION, ETC. 2 P.W.R. 1909, Cr.=9 Cr.L.J. 152=37 P.L.R. 1909=1 Ind. Cas. 93.

See SECURITY FOR GOOD BEHAVIOUR, 7 O.C. 113.

See SECURITY PROCEEDINGS, 17 M.L.J. 438=6 Cr. L.J. 332.

See TRANSFER OF CRIMINAL CASES — TRANSFER BY OTHER COURTS, 8 C. 393=10 C.L.R. 239, 6 M.L.T. 14=9 Cr. L.J. 407=1 Ind. Cas. 889.

See WITHDRAWAL OF CASE, 1 L.B.R. 139.

Notice to Quit.

See EJECTMENT, SUIT FOR, 4 C. 339.

Notice to show Cause.

Order of transfer—Necessity for issue of—*See* CRIM. PRO. CODE, 1898, s. 528, 5 S.L.R. 190 = 13 Ind. Cas. 224 = 13 Cr. L.J. 32.

Notification.

No. 58, dated the 26th January 1897—*See* ACT VII OF 1878, s. 32, 55 P.L.R. 1901.

Noxious Food.

What amounts to—*See* PENAL CODE, s. 273, 6 Bom. L.R. 520.

Nuisance.

See ABATEMENT OF NUISANCE.

See JURY UNDER NUISANCE SECTIONS OF CRIM. PRO. CODE.

See PUBLIC NUISANCE.

Local—Jurisdiction of Magistrate—*See* ACT XVIII OF 1850, 2 B.H.C. 384.

See BEN. ACT III OF 1864, ss. 65, 66, 20 W. R. Cr. 64 = 12 B.L.R. App. 2.

See BEN. ACT III OF 1899, ss. 632, 449, 14 C.W.N. 637.

See GAMBLING, 16 P.R. 1867, Cr.

Nuisance under Crim. Pro. Code.

See CRIM. PRO. CODE, 1898, ss. 133—143.

See JURY.

See PUBLIC NUISANCE.

(1)—*Crim. Pro. Code, ss.* 133 *and* 137—*Conditional order under s.* 133—*Obstruction to public way*—Bona fide *claim of title—Duty of Magistrate*—When a person, against whom the conditional order under s. 133 has been made, appears, and, in showing cause, raises the question of title, the Magistrate has, in the first place, to find whether the obstruction complained of is in a public way; and in the second place, he has to find, if his finding on the first question be in the affirmative, whether the dispute as to title is a *bona fide* dispute. Where, without deciding that the obstruction complained of was in a public way, the Magistrate decided that such claim was a *bona fide* one, and directed the party to institute a Civil suit within 15 days, in order to establish his claim and stayed proceedings in the meantime, *held*, the Magistrate was wrong in making such an order. MUKUNDA LAL DEY v. HARIBOLE SAHA, **2 C.W N. 554.** (15 C. 564, 17 C. 562, *R.*)

(2)—*Crim. Pro. Code* (1882), s. 133, *unconditional order under, illegality of.*—An order under s. 133 of the Crim. Pro. Code must not be unconditional, but must appoint a time and place for the person to appear before the Magistrate to have the order set aside or modified. EMPRESS v. BROJOKANTO ROY CHOWDHRI, **9 C. 637.**

(3)—*Crim. Pro. Code* (1882), ss. 134, 143, 144—*Sch.* V, *Form* 20—*Magistrate, powers of, to deal with public nuisance—Order* ex parte.—A

Nuisance under Crim. Pro. Code—*continued.*

Magistrate's powers to deal with public nuisances are contained in Chaps. X and XI of the Code. It is only in emergent cases, to which Chap. XI applies, that an order may be made *ex parte*, and any exception is allowed to the general rule that it shall be directed to a particular individual. In such cases, the order may be directed to "the public generally when frequenting or visiting a particular place"; but this provision has no applicability to an order directed to a portion of the community, and has no concern with the public generally, frequenting or visiting a particular place. QUEEN-EMPRESS v. JOKHU, **8 A. 99 = A W.N. 1886, 27,**

(4)—*Jurisdiction of Joint Magistrate—Crim. Pro. Code, s* 308.—The Magistrate of a District can alone hold proceedings in a case (such as the removal of a thatched house) under s. 308 of the Code of Criminal Procedure and not the Joint Magistrate while in charge of the District Magistrate's office. *In re* GRISH CHUNDER CHUCKRAVARTY, **15 W.R Cr. 36.** [*R.*, 16 W.R. Cr. 69.]

(5)—*Removal of obstruction — Crim. Pro. Code* (1861), s. 308—*Joint Magistrate in charge of division.*—A Joint Magistrate in charge of a division of a District may originate proceedings, under s. 308 of the Code of Criminal Procedure, for the removal of obstructions. *In the case of* PUNCHANUN BOSE, **15 W.R Cr. 41.**

(6)—*Assistant Magistrate, power of—Crim. Pro. Code* (1861), *ss.* 62, 308—*Penal Code*, s. 188.—An Assistant Magistrate, as he came within the definition of the term of "any Magistrate," was competent to pass an order under s 62 of the Crim. Pro. Code, 1861, which contemplated circumstances under which an immediate order is urgently required, and in this respect differed from s. 308 of that enactment, and that it should be read alone with s. 188 of the Penal Code. GOVERNMENT v. MAHOMED BUKSH, **1 Agra 23, Cr.** [*R.*, 10 A. 587, 17 A. 518.]

(7)—*Order by Magistrate under s* 518 *of the Crim. Pro. Code of* 1872, *limit of—Effect of order without jurisdiction.*—Though an order by a Magistrate, under s. 518 of the Crim. Pro. Code of 1872, may interfere with the legal rights of individuals, such interference must be limited, with respect to the period of its operation, as much as possible, so as only to allow the Magistrate to hold a full and sufficient enquiry into the circumstances and, after determination of whether the prohibited act is within or in excess of the legal right of the person forbidden to do it, to deal with the case, if necessary, under other provisions of the Code. —*Per Ainslie, J.* [*R.*, Rat Un. Cr. C. 967.] No subsequent correspondence or explanation would make an order by a Magistrate, passed without jurisdiction, a good one. ABDOOL v. LUCKY NARIAN MUNDUL, **5 C. 132.**

(8)—*Prevention of nuisance by public—Crim. Pro. Code* (1861), s. 308.—S. 308 of the Crim. Pro. Code, 1861, does not apply where a private

Nuisance under Crim. Pro. Code—*continued.*

individual charges the public with committing a nuisance in the exercise of an admitted right. BECHARAM GHOROOEE v. BOISTUBNATH BHOOYAN, **14 W.R. 177.** [*Ap.*, 19 M. 464.]

(9)—*Necessity for notice.*—Ordinarily, in proceedings under s. 144, Crim. Pro. Code, 1882, notice should be issued upon the persons against whom the order is made. It is only in the case of emergency or where the circumstances do not admit of the service of notice in due time, that service of notice is dispensed with. MAHAMADDI MOLLAH v. EMPRESS, **2 C.W.N. 747.**

(10)—*Crim. Pro. Code* (1861), *s.* 62—*Notice under the section, form of.*—Under s. 62 of the Code of 1861, the direction to abstain from doing a certain act should be addressed to a particular person or particular persons and not to the public generally, and with reference to a particular occasion alone, and not for a continuance. HIGH COURT PROCEEDINGS, 17TH AUG. 1875, **8 M.H.C. App. 9.**

(11)—*Crim. Pro. Code* (1898), *ss.* 131, 133, 136 *and* 140—*Penal Code, s.* 188—*Failure to comply with or to object to the order—Necessity for notice under s.* 140 *of the Crim. Pro. Code.*—Whenever the time fixed in the order under s. 133, has been allowed, by the person, against whom that order is made, to pass without compliance with the order or protest against it, the liability to punishment attaches at once to that person. Such person may be proceeded against under s. 188 of the Penal Code without a necessity for a further notice, provided for in s. 140 of the Crim. Pro. Code requiring him to comply with the order within a certain time. *In re* ALUVALA GURUVIAH, **18 M.L.J. 216=3 M.L.T. 403=31 M. 280=8 Cr. L.J. 151.**

(12)—*Crim. Pro. Code*, 1861, *s.* 62—*Procedure—Notice to show cause.*—A Magistrate is not competent to pass an order under s. 62, Crim. Pro. Code, 1861, without first issuing a rule to show cause why the order should not be passed, and taking any evidence which the defendant may adduce. *In re* RAI LUCHMEEPUT SINGH, **14 W.R. Cr. 17.**

(13)—*Opportunity to show cause should be given.*—Before a Magistrate of a District can order the removal of an obstruction from a thoroughfare under s. 308, Crim. Pro. Code, he must give the person causing the obstruction an opportunity of appearing and showing cause against the order, or of referring the matter to a jury. CROWN v. BABUR MULL, **26 P.R. 1867, Cr.**

(14)—*Prohibiting order—Procedure—Rule to show cause.*—Under s. 62 of the Code of Criminal Procedure, a Magistrate cannot pass a prohibitory order without having previously issued a rule to show cause why the order should not be passed. QUEEN v. RAI LACHMIPAT SINGH, **5 B.L.R. Ap. 81=14 W.R. Cr. 17**; *In re* KALIDAS BHUTTACHARJEE, **5 B.L.R. Ap. 82,** Note; KALIDAS BHUTTACHARJEE v. MOHENDRONATH CHATTERJEE, **12 W.R. Cr. 40**; COLLECTOR OF HOOGHLY v. TARAKNATH MUKHOPADHYA, **7 B.L.R. 449=16 W.R. 63.**

(15)—*Opportunity to show cause—Crim. Pro. Code* (*Act* XXV *of* 1861), *Ch.* XX, *ss.* 308, 315—*Order of Magistrate.*—A Magistrate does not act legally under Ch. XX, if he does not first call on the person with whose property he proposes to interfere to appear and show cause. COLLECTOR OF HOOGHLY v. TARAK NATH MUKHOPADHYA, **7 B.L.R. 449=16 W.R. Cr. 63.** [*Ap.*, 9 B.H.C. 160, F.B.; *Appl.*, 12 A. 115.] *See, also, In re* KALIDAS BHUTTACHARJEE, **5 B.L.R. App. 82,** Note; QUEEN v. RAI LACHMIPAT SINGH, **5 B.L.R. App. 81=14 W.R. Cr. 17.**

(16)—*Opportunity to show cause—Crim. Pro. Code* (1872), *ss.* 521, 525, 528.—An order by a Magistrate under s. 521, Act X of 1872, for the removal of a nuisance does not become absolute, until an opportunity is given to the person affected by it to show cause why the order should not be carried into effect. No order can be made under s. 528 of the Code unless there is imminent danger or fear of injury of a serious kind to the public involved in the case. QUEEN v. BROJENDRO LALL, **21 W.R. Cr. 86.**

(17)—*Appearance of party to show cause—Crim. Pro. Code* (*Act* XXV *of* 1861), *s.* 308—*Order made without recording evidence.*—Where the Magistrate, on the report of the Civil Surgeon of the District, passed an order under s. 308, Act XXV of 1861, that the defendants should appear and show cause why certain tanneries should not be removed as being a nuisance and injurious to health, and after the defendants had shown cause, the Magistrate went himself to the place and thereupon made his former order absolute, the High Court on an objection that the order was not legal, it having been made without recording legal evidence, refused to interfere. QUEEN v. ALA BUKSH, **7 B.L.R. 482, Note=12 W.R. Cr. 24.**

(18)—*Crim. Pro. Code* (1898), *ss.* 133, 137—*Order to show cause—Accused appearing—Starting proceedings.*—When a person ordered to show cause under s. 133, Crim. Pro. Code, appears and shows cause, the Magistrate is bound to take evidence as in a summons case, *i e.*, the complainant has to start proceedings by adducing evidence, and then the party showing cause may produce his own evidence, if so advised. When this has been done, but not before, the Magistrate can make the conditional order absolute, if he finds sufficient reason for doing so. HINGU v. KING-EMPEROR, **6 A.L.J. 685=3 Ind. Cas. 482=31 A. 453=10 Cr. L.J. 297.** [*R.*, 11 A.L.J. 931.]

(19)—*Appearance of party to show cause—Crim. Pro. Code* (1861), *ss.* 308, 404—*Thoroughfare—Obstruction, removal of — Powers of Magistrate.*—Where, in a proceeding before a Magistrate, under s. 308 of the Code of Criminal Procedure, for the removal of an obstruction from a thoroughfare or public place, the

accused appears and shows cause, it is the duty of the Magistrate to inquire whether there is a thoroughfare or public place, and whether there is an obstruction. If the Magistrate makes the inquiry upon evidence before him, he does not act without jurisdiction, or in excess of jurisdiction. The High Court cannot set aside his order except for an error in law, or an excess of jurisdiction. It is not a ground for interference that the Magistrate has come to an erroneous decision upon the evidence. ANGELO v. CARGILL, 9 **B.L R. 417=18 W.R. Cr. 41.**

(20)—*Crim. Pro. Code* (1882), *s.* 133—*Conditional order under the section—Omission to appear to show cause against the order, effect of—Crim. Pro. Code* (1882), *s.* 136, *object of.*—Although under s. 133, the conditional order can only be made against a person owning, possessing, or exercising control over the property according to the information before the Magistrate, yet, when the Magistrate accepts the information and bases a conditional order upon it, and when the party against whom the order is made, neither does the act commanded, nor takes action to vacate the order, the *ex parte* information becomes conclusive evidence and the omission becomes penal and subjects the party concerned to the penalty prescribed by s. 188, Penal Code. The provisions of s. 136 are stringent, because the intention is to create facilities for conditional orders, which Magistrates are authorised to pass under Ch. X in order to prevent danger to the public, becoming final without needless delay, and thereby promptly to ensure public safety. QUEEN-EMPRESS v. NARAYANA, **12 M. 475=1 Weir 144=2 Weir 64.**

(21)—*Order calling on party to appear and show cause—Crim. Pro. Code* (1861), s. 308—*Removal of nuisance—Filling up tank.*—A Magistrate's power with reference to a tank is, by s. 308, Crim. Pro. Code, 1861, limited to getting it fenced in ; but if the tank is injurious to the community, he may under that section treat it as a public nuisance, and have it filled up. *In the case of* BISTOO CHUNDER CHUKERBUTTY, **10 W.R. Cr. 27.**

(22)—*Crim. Pro. Code, s.* 308 (=s. 133 *of the Code of* 1898)—*Removal of a public nuisance—Procedure.*—For the purpose of removing a nuisance, a Magistrate is bound to proceed under s. 308 and the following sections of Ch. XX of Crim. Pro. Code, 1861, and is not competent to pass a summary order to the police to do so. QUEEN v. DAMODUR DASS, **2 N.W.P. 452.**

(23)—*Crim.Pro.Code* (1898), *s.* 133—*Proceedings under—Rights of the person proceeded against.*—The procedure prescribed by s. 133 *et seq.* of the Crim. Pro. Code, confers on the person called on to submit to it, the right to claim a jury, and generally provides for the ascertainment of right, as well as for the actual removal of the obstruction. EMPEROR v. ABDUL, **9 Bom. L R. 30=8 Cr. L J. 97.** [*R.*, 34 M. 547 =11 Cr. L.J. 708=8 Ind. Cas. 757=9 M.L.T. 103=1910, M.W.N. 727.]

(24)—*Procedure—Rules in Criminal Code—Crim. Pro. Code* (1861), *s.* 308.—Where a Magistrate has commenced proceedings under s. 308 of the Code of Criminal Procedure, he cannot proceed otherwise than in conformity with the rules laid down in Ch. XX of the Code. QUEEN v. PITTI SINGH, **8 W.R. Cr. 37.** [*R.*, 14 W.R. Cr. 46.]

(25)—*Crim. Pro. Code* (1898), *ss.* 133, 137 —*Compromise—Arbitration—Order made without evidence, not validated by consent.*—An order under s. 133, Crim. Pro. Code, made upon no legal evidence and based upon information gathered at a local enquiry, is illegal, though the parties may have consented to such an irregular procedure. The provisions of s. 137 are mandatory, and no waiver on the part of the petitioners can confer on the Magistrate authority to act in a manner not prescribed by the Legislature. UPENDRA NATH MANDAL v. RAMPAL, **10 C L J. 482=11 Cr. L.J. 1=4 Ind. Cas. 436.** (13 C.W.N. 367, *Appl.*)

(26)—*Question referred to jury on agreement of parties—Effect.*—*Held* that the agreement of the accused to the appointment of a jury to try the case against them in no way deprived them of their legal rights, or affected the fact that the advisability of discontinuing the alleged nuisance, which had been referred to the jury, should not have been so referred. HADJEE MUZUR ALI v. GUNDOWREE SAHOO, **25 W. R. Cr. 72.**

(27)—*Crim. Pro. Code* (1861), *Ch.* XX *and ss.* 308, 313, 434—*Public nuisances—Discretion of Magistrates—Jury—Compelling exercise of its functions—Instructions to jury—Penal Code, s.* 188.—The framers of Ch. XX of the Code, evidently contemplated that considerations of justice and equity should form the rule of a Magistrate's conduct in dealing with alleged nuisances or unlawful obstructions. The exercise of the summary powers provided by the chapter requires both experience and discretion in a Magistrate, and a careful consideration of the rights of property. No provision has been made in the Code for compelling the attendance of the jurors, or for securing the correct performance by them of the functions entrusted to them ; and thus important rights of property are left in a measure dependent on the caprice and activity or inactivity of private persons. The Legislature apparently relied on the sense of justice and the discretion of the District Magistrate to remedy any failure of duty on the part of the jury either by an extension of time fixed for their decision, or by a further re-consideration of the subject. For the exercise of the very summary and arbitrary dealing with the rights of property under the chapter, the Legislature has, for the protection of the owners of property provided

Nuisance under Crim. Pro. Code—*continued.*

two checks:—(1) The report of the majority of a jury composed of not less than five members; (2) where no report shall have been made within the proper period, an appeal to the conscience and discretion of the District Magistrate. The Magistrate should give instructions to the jury as to what they should do. The petitioner, being called upon by the District Magistrate to remove a building on the ground that it was an unlawful obstruction, applied for a jury. The jury were appointed, two of them by the petitioner and the other three, including the President, by the Magistrate, and were directed to send the report within fifteen days. No instructions being given to any of them as to what they were to do, they took different views of how their duty was to be performed, some thinking it was by a separate report from each, and others that it was optional to send a separate or joint report; and one only that the report was to be joint. All the jurors except one personally visited the locality. The two jurors appointed by the petitioner sent in their reports in time, two others after expiry of the time fixed, and the fifth did not send any report at all. The four reports were unanimous in finding that the building was not on a high road at all. After the receipt of the reports, the Magistrate ordered the petitioner to pull down the building, as the juror had made no report within the time prescribed. The petitioner showed cause under s. 313, but without effect, and the order was repeated. The Sessions Judge, on the petitioner's application, called upon the Magistrate to forward all the papers and proceedings in order that the legality of the orders might be determined. The Magistrate questioned the Sessions Judge's authority to interfere, and without waiting for any reply, from the Sessions Judge, tried and convicted the petitioner under s. 188, I.P.C., for the disobedience of the Magistrate's order. *Held* that the Magistrate ought at once to have complied with the precept of the Sessions Judge, under s. 434, and that, pending the investigation by the Sessions Judge, the Magistrate was not warranted in convicting and imprisoning the petitioner for disobeying an order, the legality of which was then properly under the consideration of the appellate Court. *Held*, further, that the petitioner had shown sufficient reason that it would not be reasonable and proper to carry out the original order and that whatever had been defective in the proceedings of the jury had not been caused by any act of the petitioner or of his nominees. REG. v. DALSUKRAM HARIBHAI, **2 B H.C. 384.** [*R.*, 9 B.H.C. 160, Rat. Un. Cr. C. 460.]

(28)—*Crim. Pro. Code* (1898), *ss.* 133, 135, 137 *and* 141—*Conditional order under s.* 133—*Application to show cause and also for the appointment of a jury—Illegality—Jury failing to do their duty Magistrate's power to make order absolute without taking evidence.*—The party against whom a conditional order under s. 133, Crim. Pro. Code, is made, cannot both show cause against the order and ask for the

Nuisance under Crim. Pro. Code—*continued.*

appointment of a jury. S. 135, Crim. Pro. Code, gives the person against whom the conditional order is made the right to adopt either of these alternatives. If he adopts the former alternative, the Magistrate is bound to take action under s. 137, and if he adopts the second alternative, then the Magistrate is bound to take action under s. 138. Both ss. 137 and 138 are imperative in their terms. The Magistrate has no discretion in the matter. Where the petitioners against whom a conditional order under s. 133, Crim. Pro. Code, was made, applied to the Magistrate for showing cause against the order and also for the appointment of a jury, but in the end elected to proceed with the application for the appointment of a jury, but the jury failing to submit their verdict within the ample time granted them by the Magistrate, the Magistrate proceeded under s. 141 to make the order absolute. *Held*, the Magistrate was justified in making the order absolute without taking evidence under s. 137, the petitioners not having taken any action, after the jury had failed to perform their duty, to move the Magistrate for taking evidence in their behalf. *Semble.*—The petitioners might have been allowed, after the jury had failed to perform their duty, to revert to their application for showing cause and to adduce evidence, if they had moved the Magistrate for that purpose. KISHORI LAL PANDRI v. EMPEROR, **13 C W.N. 367=4 Ind. Cas. 72=10 Cr. L.J. 494.** [*R.*, 10 C.L.J. 482=11 Cr. L.J. 1=4 Ind Cas. 436.]

(29)—*Procedure after decision by jury — Crim. Pro. Code* (1872), *ss.* 523, 526—*Order of Magistrate after decision of jury.*—Where a Magistrate, on the application of the party called on, referred a question as to whether a pathway was a thoroughfare or not for the consideration of a jury, *held* that he was bound to make an order upon the report of the jury by whose decision he must be guided as required by s. 526 of the Code. NYAN v. SHER ALI, 22 **W.R. Cr. 86.**

(30)—*Crim Pro. Code* (1882), *ss.* 133, 137 *and* 140—*Power of Second Class Magistrate to make an order absolute under s.* 137 *and an order under s.* 140.—Where a Sub-Divisional Magistrate made a conditional order under s. 133, requiring certain persons to remove obstructions in a public way, or to appear before a Second Class Magistrate and to move to have the order set aside, and the Second Class Magistrate, on such persons appearing and producing evidence, made the order absolute under s. 137 and issued a notice under s. 140 requiring the abatement of the nuisance, *held*, that the order was not illegal although, as a rule, it was undesirable for a First Class Magistrate to call on the officer, who had to report on a nuisance in his administrative capacity, to decide judicially whether it was a nuisance or not. *In re* NARASIMHA, **9 M. 201=2 Weir 60=10 Ind. Jur. 185.** [*F.*, 25 C. 278, 2 Weir 61.]

(31)—*Crim. Pro. Code* (1898), *ss.* 133 *and* 139—*Jury—Finding—Inconsistency — Magistrate*

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bound to make order absolute—Jurisdiction.—A Magistrate cannot decline to act on the findings of the jury or a majority of them under s. 139, Crim. Pro. Code, on the ground that it involved an inconsistency; if the finding is that the order of the Magistrate is reasonable and proper, the Magistrate must make the order absolute. It is not necessary, in order to give jurisdiction to the Magistrate under s. 133 of the Code, that the way should be one which is generally used by the public. All that the section requires is that the way should be one which is or may be lawfully used by the public. HRIDAY CHANDRA DAS v. SHIB CHANDRA GOSWAMI, **10 Cr. L J. 210 = 3 Ind. Cas. 7.**

(32)—*Ground necessary for order.*—Before a prohibitory order under s. 518 can be made, there ought to be information or evidence before the Magistrate that the act prohibited was likely to cause a riot or affray, and that the stoppage of that act would prevent such riot or affray. GOSHAIN LUCHMUN PERSHAD POOREE v. POHOOP NARAIN POOREE, **24 W. R. Cr. 30.** [*R.*, 9 A. 452.]

(33)—*Crim. Pro. Code* (1898), *ss.* 133, 556—*Magistrate—Personal interest—Public capacity.*—X, as Chairman of a Local Board, issued notice upon A, to remove an obstruction upon an alleged public highway, which A claimed as his private property. X, upon facts brought to his knowledge, overruled the objection. X subsequently, in his capacity as Sub-Divisional officer, took proceedings against A under s. 133 of the Code, and made an order against him. *Held*, that X had acted without jurisdiction in contravention of s. 556 of the Code. RAJANI KANTA PANJA v. EMPEROR, **10 C L J. 484 = 4 Ind. Cas. 437 = 11 Cr. L.J. 2.** (5 A.L.J. 357, *R.*)

(34)—*Crim. Pro. Code* (1898), *ss.* 144 *and* 145—*Dispute between members of family regarding right to properties—Competency of Magistrate to determine their shares—Order under s.* 144—*Duty of Magistrate.*—Where there was a dispute between the parties, who were related to one another, regarding their rights to certain property, which was claimed on the one hand to be joint in certain shares, and on the other hand to exclusively belong to the other party, and no proceeding under s. 145 of the Code was taken, nor was there any thing to show that there was any probability of a breach of the peace, *held*, that an order by the Magistrate prohibiting the applicant from ploughing more than twelve annas of the land could not properly fall within s. 144, for an order, under that section, could only be passed on some emergency and would have effect only for two months, and that, as the order in question would have effect and was intended to have effect, until the parties went to the Civil Court to settle their disputes, and as no emergency was even suggested, the order was entirely without any authority of law, and should, therefore, be set aside. It is not because private parties or members of the same family dispute regarding their respective rights to land or crops, that a Magistrate is called upon to interfere. If he has good reason to believe that such dispute is likely to cause a breach of the peace, the law enables him to ascertain and maintain actual possession under s. 145. But he could not in such a case, if the parties are Mahomedans, determine their rights under Mahomedan Law. Such questions should be left to the Civil Courts. The proper course for a Magistrate to take, when it is shown that members of the same family are inclined to break the peace, is to bind them all over to keep the peace. DAIMULLA TALUKDAR v. MAHARULLA TALUKDAR, **27 C. 918.**

(35)—*Crim. Pro. Code* (1882), *s.* 133—*Illegal order under the section, disobedience of—Penal Code, s.* 188.—The disobedience of a general order under s. 133, Crim. Pro. Code, prohibiting the public in general, from frequenting the roads and paths of a certain village between certain hours, is not punishable under s. 188, I.P.C. *In the matter of* KOMUL KISTO BONICK, **12 C L.R. 231.**

(36)—*Crim. Pro.Code, s.* 133, *inquiry under.*—The enquiry contemplated by s. 133 of the Crim. Pro. Code, 1882, is an enquiry into the existence or non-existence of the obstruction complained of,—not an enquiry into disputed questions of title, so that where, upon an application to remove an obstruction, a *bona fide* question of title was raised, *held*, the case was one for a Civil Court. ASKAR MEA v. SABDAR MEA. **12 C. 137.** [*F.*, 22 B. 988, 12 C. 696, Rat. Un. Cr. C. 378, 4 Bom. L.R. 687, 15 Cr. L.J. 515 = 19 C. L.J. 631 = 24 Ind. Cas. 603 = 18 C.W.N. 1148; *R.*, 17 C. 562, 2 Bom. Cr.C. 13 = 15 Bom. L.R. 57; *D.*, 9 M. 463.]

(37)—*Crim. Pro. Code, s.* 133, *inquiry under.*—The inquiry contemplated, under s. 133, is an enquiry into the existence or non-existence of the obstruction complained of. It is not an enquiry into disputed questions of title. The claim of title, must, in order that it should be allowed to be determined by the Civil Court, be *bona fide* and not a mere pretence to oust jurisdiction, and it is for the Magistrate to say, whether the claim be *bona fide* or a mere pretence. Where, in proceedings under s. 133, Crim. Pro. Code, for the purpose of compelling the removal of an obstruction in a public way, a *bona fide* question as to the way being a public one is raised, such question is one for the Civil Court to decide. QUEEN EMPRESS v. BISSESSUR SAHU, **17 C. 562.** [*F.*, 22 B 988, 15 Cr. L.J. 515 = 19 C.L.J. 631 = 18 C.W.N. 1148 = 24 Ind. Cas. 603; *R.*, 31 C. 979 = 9 C.W.N. 72, 2 Bom. Cr. C. 13 = 15 Bom. L.R. 57.]

(38)—*Crim. Pro. Code* (1898), *s.* 133—*Scope of section.*—S. 133 is applicable only to physical obstruction or nuisance which is capable of being removed. In order that any object should be capable of being removed it must be a physical obstacle, and it must be actually *in situ.* There are no words in that section prohibiting future obstruction. The section could

Nuisance under Crim. Pro. Code—*continued.*

not be made use of to put a stop to and to prohibit certain objectionable accompaniments to ceremonies practised by a religious sect to the discomfort and annoyance of the majority of their fellow townsmen. KING-EMPEROR v. FAIZAL HUSSAIN, **A.W.N. 1901, 126.**

(39)—*Crim. Pro. Code* (1882), *s.* 133, *cl.* 3 —*Scope.*—Cl. 3 of s. 133 deals only with trades, which are in themselves injurious to health, and not with those, which are in themselves innocent, but, in the course of which, the manager commits a public nuisance. Keeping a house of public entertainment is not an unhealthy trade. MRS. BOREIRO v. EMPRESS, **47 P.R. 1888, Cr.** [*R.*, 12 Cr. L.J. 146=9 Ind. Cas. 891=117 P.L.R. 1911=20 P.W.R. 1911 ; *D.*, 2 P.R. 1900, Cr.]

(40)—*Crim. Pro. Code* (1882), *s.* 133, *cl.* 3—*Scope.* — Cultivating maize within a short distance from town is not an injurious occupation within the meaning of cl. 3, s. 133, Crim. Pro. Code. MOTI SHAH v. CROWN, **39 P.R. 1889, Cr.**

(41)—*Crim. Pro. Code*, (1882), *ss.* 133—137—*Scope of.*—The powers embodied in ss. 133 to 137 of the Code, 1882, with regard to obstruction of public ways are not to be exercised, where there is a *bona fide* dispute as to the existence of the public right. No order can, therefore, be made under the sections, until the public right has been established by proper legal proceedings. LAL MIAH v. NAZIR KHALASHI, **12 C. 696.** [*F.*, 15 Cr. L.J. 515=19 C.L.J. 631 =24 Ind. Cas. 603 ; *R.*, 17 C. 562].

(42)—*Crim. Pro. Code* (1882), *s.* 133—*Proper order under the section.*—S. 133, Crim. Pro. Code, empowers a Magistrate under certain grave circumstances to direct certain nuisances to be abated, and in its last clause gives an exhaustive list of the matters respecting which the Magistrate is empowered to pass orders under that section. But an order to refrain from drinking the water of a certain well and to prevent others from drinking that water is not an order within the purview of s. 133, Crim. Pro. Code. QUEEN-EMPRESS v. SHEOAMBAR LAL, **A.W.N. 1893, 145.**

(43)—*Crim. Pro. Code* (1882), *s.* 133—*Dangerous building.*—In order to justify the taking of action under s. 133, Crim. Pro. Code, the state of the building should be dangerous *in presenti*, not *in futuro.* MUSSAMMAT RAJAWAN v. EMPRESS, **5 P.R. 1890, Cr.**

(44)—*Crim. Pro. Code* (1882), *ss.* 133, 138—*Magistrate's power to veto juror*—Bona fide *dispute as to the subject-matter of complaint.*—A Magistrate cannot veto the appointment, as juror, of a person nominated by the applicant; he should not also appoint as jurors the friends and supporters of the person, at whose instance the proceedings under the chapter are taken. Where the matter is already the subject of a civil suit, a Magistrate cannot make use of his powers under the section, except on proof of urgency or imminent danger to the public interests. MIR IMAM ABDUL AZIZ v. EMPRESS, **4 P.R. 1897, Cr.** [*R.*, 12 C.W.N. 70].

(45)—*Crim. Pro. Code, ss.* 133, 137—Bona fide *dispute — Jurisdiction of Magistrate.* — A Magistrate has no jurisdiction under s. 133, Crim. Pro. Code, 1898, where a *bona fide* dispute exists as to whether the place where the obstruction is made is public or private property. At the same time, the Magistrate has power to enquire and determine whether or not the objection is a *bona fide* one. *In re* MAHA RANA SHRI JASWATSANGJI FATESANGJI, **22 B. 988.** [*R.*, 4 Bom.L.R. 687, 2 P.R. 1903, Cr.]

(46)—*Crim. Pro. Code, ss.* 133—137—Bona fide *dispute.*—When, in the course of proceedings under ss. 133 and 137 of the Crim. Pro. Code, 1898, a claim of ownership is set up by the petitioner, the Magistrate has to see whether it is a *bona fide* claim on the part of the maker, or is a mere pretence to oust his jurisdiction. In the latter case, the jurisdiction will not be ousted ; but in the former case the Magistrate's proper course is to stay his hand and to allow the dispute to be settled in the Civil Courts. The question is not whether the claim is established to the Magistrate's satisfaction, but whether it is advanced in good faith and is supported by *prima facie* respectable evidence. *In re* MUSE BAGAS ABHERAM, **10 Bom. L.R. 563=8 Cr. L J. 33.** (15 C. 564, *F* ; 9 Bom. L. R. 401, *R.*) [*R.*, 2 Bom. Cr. Cas. 13=15 Bom. L.R. 57.]

(47)—*Crim. Pro. Code* (1898), *s.* 133—*Dispute regarding bund between two proprietors*—Bona fide *question of title.*—A dispute between the proprietors of two villages regarding a bund constructed by the proprietors of one of them, which had the effect of preventing the water flowing through a backwater of a river, in which the general public was not at all concerned, cannot be disposed of under s. 133, Crim. Pro. Code. In the proceedings under s. 133, Crim. Pro. Code, it is necessary for a Magistrate to determine whether the denial of the public character of the property, obstruction of which has been alleged, is a *bona fide* objection or not, and, unless he holds the objection to be not *bona fide*, the matter should be left to the determination of a Civil Court. MURAD v. EMPEROR, **2 P R. 1903, Cr.** (15 C. 564, 17 C. 562, 22 B. 988, 11 C. 52, 6 P.R. 1887, Cr., 26 C. 869, *R.*) [*R.*, 13 Cr. L.J. 594=16 Ind. Cas. 162=25 P.W.R. 1912, Cr.]

(48)—*Crim. Pro. Code* (1898), *s.* 133—*Obstruction to highway*—Bona fide *claim of title.*—Where, in a proceeding under s. 133, Crim. Pro. Code, the defendant appears and objects that the pathway, which he is said to have obstructed, has no existence and that there is no right of way open to the public over the land belonging to him, the Magistrate should determine the matter himself before taking further action ; and it is not a matter which can be properly considered by a jury. BUDHAI NATH v. NIL MAHANTO, **4 C.W.N. 596.**

Nuisance under Crim. Pro. Code—*continued.*

(49)—*Crim. Pro. Code* (1898), *s.* 133—Bona fide *claim of right—Competency of the Magistrate to decide whether the claim is barred by limitation.*—In a proceeding under s. 133, Crim Pro. Code, the petitioner raised a claim of proprietary right to the land in dispute, and the Magistrate came to the conclusion that, if the petitioner had any right, it was barred by limitation. He however stayed the passing of final order for one month, in order to allow the petitioner an opportunity of establishing his right by a civil suit, and, subsequently, more than two months after the expiration of that period, made his order absolute. *Held*, that the order of Magistrate under s. 133, Crim. Pro. Code, was bad in law. The Magistrate should have refrained from exercising jurisdiction, when a *bona fide* claim to the land was raised, and he was not competent to decide whether the claim was barred by limitation. KAMINI KUMAR BISWAS v. EMPEROR, **35 C. 283 = 7 C.L.J. 188 = 12 C W.N. 267 = 7 Cr. L.J. 105.** [*R*., 13 Cr. L.J. 594 = 16 Ind. Cas. 162 = 25 P.W.R. 1912, Cr.]

(50)— *Crim. Pro. Code* (1882), *s.* 138—*Nomination of jury under the section—Magistrate's duty—Claim of title*—Bona fides *of claim.*—The section requires the Magistrate to nominate the foreman and one-half of the remaining members of the jury, which it is his duty to appoint when the occation arises. On the nomination of those members of the jury, the nomination of whom devolves upon the Magistrate, it is his duty to exercise his own independent discretion, and not merely to accept persons, who may be put forward by the party opposed to the applicant. A jury nominated in violation of the rule is not a legally constituted jury and is incapable of making a legally binding award. (16 W R Cr. 23, 21 W. R. C. 43, *F.*) Where in a proceeding under s. 133 and the following sections, a *bona fide* claim of right is raised, it is the duty of the Magistrate, to satisfy himself as to the *bona fides* of the claim, before he can proceed further. UPENDRA NATH BHUTTACHARJEE v. KHITISH CHANDRA BHUTTACHARJEE, **23 C. 499.** (15 C. 564, 17 C. 562, *Appr.*) [*R.*, 2 Weir 61.]

(51)—*Crim. Pro. Code* (1882), *ss.* 133 *and* 137 —*Conditional order by a Sub-Divisional Magistrate—Reference to second class Magistrate*—Bona fide *question of title—Magistrate, jurisdiction of—Public nuisance—Long enjoyment*—Bona fide *dispute.*—S 137 does not require that the Magistrate, who is to hear the objections of a person against whom an order under s. 133 is made, must be the Magistrate by whom the original order was made. The section clearly authorises that the case may be referred to a Magistrate of the second class. Therefore a Magistrate of the second class, to whom a Sub-Division Magistrate refers a case in which he has made an order under s. 133, may, after hearing the objection and taking evidence, pass an order under s. 137. When a question of title is *bona fide* raised, the Magistrate ought not to make an order under ss. 133 and 137, but should allow an opportunity for the determination of the question by a Civil Court. The claim of title must, however, be *bona fide* and not a mere pretence to oust jurisdiction; and it is for the Magistrate to say whether the claim is a *bona fide* one or not. [*R.*, 20 A.W.N. 204, 31 C. 979 = 9 C.W.N. 72, 10 C.W.N. 845.] Although no length of enjoyment can legalise a public nuisance, yet, such fact may tend to show that the dispute was a *bona fide* dispute of title such as should have the effect of ousting the Magistrate of his jurisdiction under ss. 133 and 137. Therefore, the Magistrate is bound to see whether the fact of such long possession has not given, to the objection of the person enjoying, the same character of a *bona fide* dispute as to title. PREONATH DEY v. GOBORDHONE MALO, **25 C. 278.** (9 M. 201, *Appr.*; 15 C. 564, 17 C. 562, 7 B.L.R. 499, *R.*) [*Rel. on*, 18 C.W. N. 1086]

(52)—*Public Nuisance—Obstruction to roadway—Existence of* bona fide *dispute as to right of way.*—Where in a proceeding which purported to relate to the removal of an obstruction under s. 133 of the Crim. Pro. Code, it appeared that the accused had closed a roadway over which there was a dispute as to a right of way, *held* that the above section was not applicable to cases like the present where there was a *bona fide* dispute as to whether there ever was a public road in the place in question. EMPRESS v. PREM SINGH, **6 P.R. 1887, Cr.**

(53)—*Crim. Pro. Code* (1882), *ss.* 133, 137—*Public nuisance, what amounts to.*—*Per Tremlett, J.*—The provisions of Ch. X, Crim. Pro. Code, should be worked so as not to become themselves a nuisance to the community at large. Although every man is bound to use his own property that it may not work legal damage or harm to his neighbour, yet, on the other hand, no one has a right to interfere with the free and full enjoyment by another of his property, except on clear and absolute proof that such use of it by him is producing such legal damage or harm, and, therefore, a lawful and necessary trade, such as tanning should not be meddled with, unless it is proved that it is injurious to the health or physical comfort of the community. SHADI v. EMPRESS, **17 P.R. 1883, Cr.** [*R.*, 12 Cr. L.J. 146 = 9 Ind. Cas. 891 = 117 P.L.R 1911, 20 P.W.R. 1911, Cr.; *D.*, 2 P.R 1900, Cr.]

(54)—*Crim. Pro. Code* (1882), *ss.* 133, 138—*Application for appointment of a jury.*—Where an application is made for the appointment of a jury, the Magistrate is bound, under the provisions of s. 138, to empanel a Jury. GAINDE RAI v. EMPRESS, **19 P.R. 1887, Cr.**

(55)—*Crim. Pro. Code* (1898), *s.* 133—*Encroachment on unmetalled portion of Government road.*—A person who has built a wall which encroaches upon the unmetalled portion of a Government road might be properly proceeded against under s. 133, Crim Pro. Code. QUEEN-EMPRESS v. UMRAO, **A W.N. 1901, 25.**

Nuisance under Crim. Pro. Code—*continued.*

(56)—*Crim. Pro. Code* (*Act* V *of* 1898), *ss.* 133, 135, 137—*Necessity for evidence.*—It is incumbent on a Magistrate, where objection is made to an order to abate a nuisance, under s. 137 of the Crim. Pro. Code, to take evidence before making the order absolute, whether the objector is present or not on the date of hearing. The Magistrate, in a proceeding to abate a nuisance, should ask the objector to state definitely which of the alternative courses set forth in s. 135, cl. (*b*) of the Crim. Pro. Code he chooses to adopt. QUEEN-EMPRESS v. KHUSHALI, **A.W.N. 1900, 204.**

(57)—*Crim. Pro. Code* (*Act* V *of* 1898), *s.* 133—*Nuisance—Order to construct new drain.*—S 133 of the Crim. Pro. Code does not empower a Magistrate to order the construction of a new drain. BISHU NATH v. QUEEN-EMPRESS, **A.W.N. 1900, 138.**

(58)—*Crim. Pro. Code* (*Act* X *of* 1882), *s.* 144—*Public nuisance—Jurisdiction of Civil Court.*—A Civil Court has jurisdiction to entertain a suit to restrain defendant from allowing dirty water to flow from his house into the public street opposite to his (plaintiff's) house. BABU LAL v. PARBATI, **A.W.N. 1884, 74.** (3 C. 20, *R.*)

(59)—*Suit to remove nuisance from public thoroughfare without first applying to Magistrate.*—It is competent to a person to bring an action in the Civil Court for obtaining an order for the removal of a building erected on a portion of waste land belonging in common to all the houses in a street or upon a road, provided he is injured by it, without in the first instance applying to the Magistrate for its removal. JINA RANCHHOD v. JODHA GHELLA, **1 B.H.C. 1.** [*Not F.*, 1 A. 249.]

(60)—*Penal Code, s.* 188—*Crim. Pro. Code* (*Act* X *of* 1882), *Ch.* X, *ss.* 133, 136—*Conditional order.*—Where the conditional order required to be issued under Ch. X of the Crim. Pro. Code was not served on the person charged with nuisance, no conviction under s. 188 of the Penal Code is sustainable. EMPRESS v. RAMESHAR, **A.W.N. 1885, 266.**

(61)—*Crim. Pro. Code* (*Act* XXV *of* 1861), *ss.* 308, 404—*Judicial proceeding—Civil suit—Injunction.*—An order made by a Magistrate under s. 308 of the Crim. Pro. Code, is not a judicial proceeding within the meaning of s. 404. If a Magistrate makes an illegal order, purporting to be under s. 308 of the Code but not being in accordance with the section, he is liable to be sued in a Civil Court, and the latter can grant an injunction restraining the execution of the order. ASHBURNER v. KESHAV *valad* TUKU PATIL, **4 B.H.C.A.C.J. 150.** [*Overruled*, Rat. Un. Cr. Cas. 59, F.B.; *R.*, 12 A. 115, 9 B.H.C. 160, 7 B.L.R. 449=16 W.R. 63.]

(62)—*Order in disputes as to land—Crim. Pro. Code* (1861), *s.* 62.—S. 62 of the Code of Criminal Procedure does not apply to disputes 'connected with lands,' but refers

Nuisance under Crim. Pro. Code—*continued.*

specially to nuisances and other similar matters in which immediate action is necessary, in order to avoid a risk of illegal consequences. RAJBULLUB ADDHYA v. GOBINDO CHUNDER MOITRO, **12 W.R. Cr. 66=4 B.L.R.A. Cr. 4.**

(63)—*Crim. Pro. Code* (1861), *s.* 62—*Recall of order—Order made within jurisdiction.*—A Magistrate, who, without taking any evidence, but merely relying on the report of a police officer, passed an order, under s. 62, Crim. Pro. Code, 1861, changing the days on which a haut was *held*, is justified in recalling his first order, when, after hearing the evidence he finds that there was no reason to apprehend a breach of the peace. MOHUN SIRDAR v. OBHOY CHURN MOOKOPADYAH, **13 W R. Cr. 72.**

(64)—*Ground for making order—Crim. Pro. Code* (XXV *of* 1861), *s.* 62—*Act* X *of* 1872, *s.* 518—*Power of Magistrate — Procedure—Report of police.*—There is nothing in s. 62, Crim. Pro. Code, 1861, to justify a Magistrate in making an order under that section on the mere report of a police officer. QUEEN v. BHYRO DAYAL SINGH, **3 B.L.R.A.Cr. 4=11 W.R. Cr. 46.**

(65)—*Order to prevent breach of the peace—Crim. Pro. Code* (1861), *ss.* 62, 318.—An order issued by a Magistrate under s. 62 of the Code of Criminal Procedure, whereby a breach of the peace was prevented, need not have been supplemented by a proceeding under s. 318. *In re* LUTEEF HOSSEIN, **10 W.R. Cr. 1.**

(66)—*Order made on dismissal of complaint—Crim. Pro. Code* (1861), *ss.* 62, 308.—Where a Magistrate dismissed a complaint under s. 308 of the Code of Criminal Procedure, 1861, it was *held* that it was competent for him to pass an order under s. 62 of that Code in the same case, provided he called on the defendant to show cause why s. 62 should not be applied. KALIDASS BHUTTACHARJEE v. MOHENDRO NATH CHATTERJEE, **12 W.R.Cr. 40=5 B.L.R. App. 82, note.**

(67)—*Nuisance in thoroughfare or public place—Power of Magistrate—Crim. Pro. Code* (1872), *s.* 521.—It is only from a thoroughfare or public place that under s. 521 a Magistrate is at liberty to direct a nuisance to be removed. *In re* SHAH SOOJAUT HOSSEIN, **22 W.R. Cr. 19.** (25 W.R.Cr. 4.)

(68)—*Obstruction of thoroughfare—Crim. Pro. Code* (1861), *s.* 308.—In the case of a complaint, under s. 308 of the Code of Criminal Procedure, for the removal of an obstruction from a thoroughfare, a Magistrate should first inquire if the road is a public one or not. If he finds in the affirmative, he has jurisdiction to proceed; if in the negative, he should with hold his hand and abstain from carrying out the order for the removal of the obstruction. *In re* BECHARAM BHUTTACHARJEE, **15 W.R.Cr. 67.** [*F.*, 5 C. 875.]

(69)—*Crim. Pro. Code* (1861), *ss.* 308, 320—*Right of way — Obstruction — Jurisdiction.*—

Nuisance under Crim. Pro. Code—*continued.*

Where a road though a private one, is used by a certain class of the public, a Deputy Magistrate has jurisdiction to make an order under s. 308, Crim. Pro. Code, 1861. TARINEE CHURN SHAH v. BONOMALI NAG, **19 W.R. Cr. 33.**

(70)—*Order for removal of obstruction—Crim. Pro. Code*, 1872, ss. 518, 521.—Where a Magistrate passes an order apparently under s 518, of the Crim. Pro. Code, 1872, for removing an obstruction from a passage, not on any of the grounds set forth in s. 518, it is illegal and the proper procedure is to take action under s. 521 of that Code. *In re* BRINDABUN DUTT, **21 W.R. Cr. 24.**

(71)—*Penal Code*, ss. 268, 283 *and* 290—*Obstruction to public street.*—The public is entitled to the use of the full width of the public street, however wide it may be. Whoever appropriates any part of the street by building over it infringes the right of the public *quoad* the part built over. The act must necessarily cause obstruction to persons, who may have occasion to use their public right over the part encroached upon. It falls within the definition of a " public nuisance " in s. 268, Penal Code, and is, therefore, punishable under s. 290. QUEEN EMPRESS v. VIRAPPA CHETTI, **20 M. 433=1 Weir 238.** [*D.*, 10 A.L.J. 362=13 Cr. L.J. 830=17 Ind. Cas. 574.]

(72)—*Crim. Pro. Code* (1872), ss. 521, 523 (ss. 133, 139 *of the Code of* 1898)—*Order for removal of obstruction to a public way.*—Where an order for the removal of a public nuisance was objected to on the grounds that the removal was ordered to be done within ten days of the date of the order, and that the nuisance had been existing on the same spot for many years, *held*, that the time, which should be allowed for the removal of a public nuisance, was a matter within the discretion of the Magistrate and that no man could, by enjoyment, acquire a prescriptive right to commit a public nuisance. *In re* SHEIK MOHIDIN, **2 Weir 59.**

(73)—*Crim. Pro. Code* (1882), s. 133—*Obstruction to public thoroughfare—Previous orders, when bar to a subsequent enquiry.*—Where an application, under s. 133 of the Code, for the removal of an obstruction in a public thoroughfare, was rejected after a personal local inspection, without any evidence being taken, and the parties referred to a civil suit, and a second application during the pendency of the civil suit was refused on the ground of such pendency, *held* that neither of the two orders could operate as a bar for the enquiry of a third application, made in respect of the same matter, after the decision in the civil suit declaring the way a public thoroughfare, as there had been no judicial enquiry at all in the case of either of the two orders. MAKHAN LAL SAHA v. MAKHAN CHORA SAHA, **11 C. 271.**

(74)—*Removal of obstruction from pathway—Jurisdiction of Magistrate—Functions of jury under s.* 523, *Crim.Pro.Code* (1872)—*Reference to jury after improper order by Magistrate—Cancellation of appointment of one of the Jurors.*—In order to give a Magistrate jurisdiction to direct the removal of an unlawful obstruction from a thoroughfare or public place under the Crim. Pro. Code, 1872, it must be first found by him that the place so obstructed is a thoroughfare or public place. [*Dist.*, 8 C.L.R. 399; *R.*, 15 C. 564.] A jury appointed under s 523 of the Crim. Pro. Code (of 1872) could only try whether the Magistrate's order to remove the obstruction to a thoroughfare is *reasonable and proper*; they cannot determine the rights of parties in property and decide whether the way or place obstructed is public or private property. Where, therefore, a Magistrate through a mistaken view of the law, makes such an order without finding that the way is a thoroughfare and refers it to a jury, the jury would be met by the *bona fide* objection that the way is private property rendering them powerless to proceed and the Magistrate should stay proceedings, and take action under s. 532 of the Crim. Pro. Code (of 1872) or refer the complaining party to a Civil Court. (21 W.R. Cr. 64, 15 W.R. Cr. 67 and 25 W.R. Cr. 4 and Weir's Criminal Rulings, pp. 304 and 305.) *Obiter.*—A Magistrate should not, at the instance of one party, and behind the back of the other party, cancel the appointment of one of the jurors, even though such juror was his own nominee. *In the matter of the petition of* CHUNDER NATH SEN, **5 C. 875 =6 C.L.R. 379.**

(75)—*Private road with right of way over it—Crim. Pro. Code* (1861), s. 311, et seq.—*Held*, that s. 311 of the Code of Criminal Procedure and the other sections of Ch. XX of that Code referred to public thoroughfares and not to private ones over which a right of way had been established. GOOROO CHURN GOON v. GUNGA GOBIND CHATTERJEE, **8 W.R. 268.**

(76)—*Crim. Pro. Code*, ss. 133, 137—*Obstruction to highway—Claim of title*—Bona fides *of the claim—Jurisdiction of Magistrate—Claim of title, when to be raised.*—A Magistrate proceeding under ss. 133-137 of the Code ought not, when a *bona fide* claim of title is set up, to proceed to make an order, but should allow the party setting up such a claim to substantiate it, if he can do so, by civil proceedings. The claim of title must, however, in order that it should be allowed to have this effect, be *bona fide*, and not a mere pretence to oust jurisdiction, and it is for the Magistrate to say whether the claim is *bona fide* or a mere pretence; where he decides against its *bona fides*, he must state his reasons for his decision. Such a *bona fide* claim of title must be raised at or before the hearing and not afterwards. LUCKHEE NARAIN BANERJEE v. RAM KUMAR MUKHERJEE, **15 C 564.** (5 C. 875=6 C L R. 379, 15 C. 560, 6 C 291=7 C.L.R. 433, 30 L. T. 601, *R.*) [*F.*, 17 C. 562, 23 C. 499, 25 C. 278, 3 C.W.N. 345, 7 C.W.N. 117, 8 C.W.N. 143, 10 C.W.N. 845=4 Cr. L.J. 42, L.B.R. 1872—

Nuisance under Crim. Pro. Code—*continued.*

1892, 530, 15 Cr. L.J. 259=7 Bur. L.T. 23=23 Ind. Cas. 467; *Appl.*, 22 B. 988; *R.*, 15 B. 344, 2 C.W.N. 554, 18 C.W.N. 1086, 12 C.W.N. 267, 2 Weir 61, 2 P.R. 1903, Cr., 8 Cr. L.J. 33=10 Bom. L.R. 563; *D.*, 6 C.W.N. 886.]

(77)—*Crim. Pro. Code, s.* 133—*Specific Relief Act* (*I of* 1877), *s.* 42—*Claim of private right by plaintiff over land—Claim of public right by defendants—Cause of action—Parties—Persons claiming public right are alone necessary parties—Civ. Pro. Code* (*Act* XIV *of* 1882), *s.* 30—*Irregularity in not recording formal order.*—Where the plaintiff claims a private right upon a certain land, over which a public right of way is claimed by the defendants, who initiated proceedings under s. 133, Crim. Pro. Code, and there has been an order by the Magistrate upon the plaintiff to remove certain structure which the Magistrate found to be an obstruction upon the alleged public right of way: *Held*, that, as a cloud had been thrown upon his title by the proceedings under s. 133, Crim. Pro. Code, the plaintiff had a cause of action to bring a suit for declaration of his title: *Held*, also, that the plaintiff had a right to bring the suit against the defendants alone without impleading any other member of the public. Where notices under s. 30 of the Civ. Pro. Code, 1882, were issued one year before the trial, mentioning the defendants and other residents of the neighbouring villages, and the defendants put in written statement after the service of the notices, and adduced evidence in support of the public right of way, the notices must be considered to be definite enough, and the simple fact that a particular person was not directed by an express order of the Court before the trial, as authorised to defend the suit, did not affect the result of the case. SHEIKH EKHAR ALI v. ANU MANJHI, **6 Ind. Cas. 46.**

(78)—*Crim. Pro. Code* (*Act* X *of* 1882), *ss.* 133, 134, 135, 136 *and* 137—*Public way*—Bona fide *dispute as to the existence of the right—Jurisdiction of Magistrate*—The powers embodied in ss. 133 to 137 of the Code, with regard to obstruction of public ways, are not to be exercised where there is a *bona fide* dispute as to the exercise of the public right. No order can, therefore, be made under the sections, until the public right has been established by proper legal proceedings, civil or criminal. BASARUDDIN BHUIAH v. BAHA RALI, **11 C. 8.** [*F.*, 12 C. 137, 12 C. 696, Rat Un. Cr. C. 378, 22 B. 988, 4 Bom L.R. 687; *R.*, 17 C. 562, 2 Bom. L.R. 818, 2 Bom. Cr. C. 13=15 Bom. L.R. 57; *D.*, 9 M. 463.]

(79)—*Crim. Pro Code* (1898), *ss.* 133, 138—*Obstruction to public way—Appointment of jury—Question of the way being a public way—Procedure to be followed by jury—Value of verdict of jury appointed.*—Where, at the request of a person upon whom a notice has been served under s. 133, a jury is appointed under s. 138, it is within the competency of the jury to decide as to the validity of an objection that the way alleged to have been obstructed is not a public way. It is not for the Magistrate to decide whether such an objection is raised *bona fide*, before referring it to the jury. There is no special procedure laid down by the Code to be adopted by a jury appointed under s. 138 in coming to a finding on the questions submitted to them. A person who has applied for a jury is bound by the verdict of the jury, and cannot afterwards raise such a plea as that the obstruction was caused in the exercise of a *bona fide* claim of right. EMPEROR v. RAM BILAS, **30 A. 364=A.W.N. 1908, 151=8 Cr. L.J. 1=5 A. L.J. 488.** (26 C. 869, *N F.*; 18 A. 158, *R.*; A.W.N. (1900), 180, *F*).

(80)—*Order as to future obstruction—Crim. Pro. Code* (1872), *ss.* 521 *and* 526.—Magistrate has no power to direct what is to be done in the case of any future obstruction. KASHI CHUNDER CHUCKERBUTTY v. YAR MAHOMED, **21 W.R. Cr. 10.**

(81)—*Order to prevent obstruction—Crim. Pro. Code* (*Act* XXV *of* 1861), *ss.* 62 *and* 308—*Act* X *of* 1872, *ss.* 518 *and* 521.—When a case falls both under s. 62 and under s. 308 of the Crim. Pro. Code, the order of the Magistrate ought not to be absolute in the first instance. He should give the defendant an opportunity to show cause against the order. *Semble.*—Whether a case comes under either of these two sections or under both, the order of the Magistrate ought to contain a clear statement of the facts upon the basis of which the Magistrate has made the order. *In the matter of* HARIMOHAN MALO; QUEEN v. JAYAKRISHNA MOOKERJEE, **1 B.L.R. A. Cr. 20=10 W.R. Cr. 53.**

(82)—*Crim. Pro. Code, ss.* 133, 137 *and* 437—*Complaint of illegal obstruction of public way*—"*Offence*"—*Power of superior Court to direct further enquiry—Conditional order under s.* 133, *Crim. Pro. Code, how made absolute.*—Under s. 437, it is only in the case of offences that a superior Court is entitled to direct further enquiry. A complaint for illegal obstruction of a public thoroughfare is not a complaint of an offence, and therefore the provisions of s. 437 do not apply to such complaint. Before a conditional order under s. 133 can be made absolute under s. 137 the Magistrate is bound to take evidence in the presence of the opposite party, and to satisfy himself that the alleged way is a public thoroughfare, and his conditional order is reasonable and proper. The report or other information which the Magistrate has received, on such evidence which he might have taken before making the conditional order, is no evidence against the opposite party, the proceedings under s. 133 being entirely *ex parte.* SRINATH ROY v. AINADDI HALDER, **24 C. 395=1 C.W.N. 217.** [*F.*, 31 A. 453=6 A.L.J. 685=3 Ind. Cas. 482=10 Cr. L.J. 297, 147 P.L.R. 1901; *Appl.*, 42 P.R. 1905, Cr.=131 P.L.R. 1905; *R.*, 15 Bom. L.R. 57=2 Bom. Cr. C. 13, 149 P.L.R. 1905=33 P.R. 1905, Cr., 17 C.P.L.R. 127, 2 L.B.R. 80.]

Nuisance under Crim. Pro. Code—*continued.*

(83)—*Crim. Pro. Code, s.* 133—*Excavations near public place.*—Under s. 133, Crim. Pro. Code, a Magistrate can order excavations adjacent to a way which is or may be lawfully used by the public, or to any public place, to be fenced. He cannot order them to be filled up. *In re* SULEMANJI GULAM HUSEN, **22 B. 714.**

(84)—*Penal Code, s.* 289--*Prohibiting of cattle straying.*—An order by a Magistrate prohibiting the straying of cattle within certain local limits is not an order within the meaning of s. 62 of the Code of Criminal Procedure. There can be no conviction for disobedience of such order under s. 289 of the Penal Code. QUEEN v. MOZAFAR KHALIFA, **9 B.L.R. Ap. 36=18 W. R. Cr. 21.**

(85)—*Trespass by cattle—Penal Code, s.* 188. —A Magistrate issued an order warning owners of cattle that they should take proper care of them; and that, in case of disobedience or neglect, they would be punished according to law, and did punish them for disobedience under s. 188 of the Penal Code. *Held* that the Magistrate was not competent, under s. 62 of the Code of Criminal Procedure, 1861, to pass such an order. The order contemplated under that section is in the nature of an injunction, and such an order passed by a Magistrate would not be legal. The conviction under s. 188 of the Penal Code was, therefore, illegal. *In the matter of* AMIRADDI, **3 B L.R.A Cr. 45=12 W. R. Cr. 36.**

(86)—*Dispute as to interest in land—Question for Civil Court—Crim. Pro. Code,* (1861), *s.* 62. —The purchaser of an interest in land at a sale in execution of a decree obtained an order for possession under ss. 263 or 264, Act VIII of 1859, and a dispute arose between him and another person who had some interest in the land, as to what passed under the sale certificate. Without ascertaining the rights of the parties, the Magistrate made certain orders, the effect of which was to exclude the auction-purchaser for sometime from exercising the right alleged to have passed to him under the purchase. *Held* that the Magistrate ought to have made no order at all with reference to the property, leaving it to the parties to determine their rights in the Civil Court, and that he had ample power under the section to do what was necessary to prevent a breach of the peace. SHEIKH LALOO v. ADAM SIRCAR, **17 W.R. Cr. 37** [*D.*, 18 W.R. Cr. 22.]

(87)—*Order to remove stacked timber—Crim. Pro Code* (1861), *s.* 62—*Illegal order.*—A complaint was made by A that timber belonging to his master, which had been cut and stacked in a certain place, had been removed by B. B said that the timber was cut, not by A's master but by himself, and that he had stacked it in a place where he always put his timber. *Held* that the Magistrate could not proceed under s. 62 of the Code of Criminal Procedure, 1861, but was bound to try the charge brought against B. and either restore the timber to A or leave it where it was, according to the result of the investigation. KARTICK CHUNDER BAL v. CHUNDER NATH CHUCKERBUTTY, **15 W.R. Cr. 56.**

(88)—*Order to cut down trees as being a nuisance—Removal of nuisance—Power of Magistrate.*—Under s. 62 of the Code of Criminal Procedure, 1861, a Magistrate has no power to issue an order *ex parte* to cut down trees on the representation of a party supported by the report of the police that the existence of the trees was a nuisance. QUEEN v. RAM CHANDRA MOOKERJEE, **5 B L.R. 131=13 W.R. Cr. 72.**

(89)—*Crim. Pro. Code, s.* 144—*Order directing a minor not to allow his servant to go to a certain village.*—An order purporting to have been made under s. 144 to the effect that a minor should not go to a certain village or allow any of his servants, relation or friends to go there is an order of the most indefinite character, and the Magistrate is not competent to make such an order against a minor and hold him responsible for the acts of other persons. GOLAM MAHAMAD *alias* ALAMGIR KHAN CHOWDHRY v. BHUBAN MOHAN MOITRA, **2 C.W.N. 422.** [*R.*, 34 C. 897=6 C.L.J. 186=11 C.W.N. 942=6 Cr. L J. 194.]

(90)—*Order under s.* 518, *Crim. Pro. Code* (1872)—*Order to close a* hat.—In a case in which the Magistrate passed an order under s. 518, Crim. Pro. Code, for closing a *hat* on the ground that it was only a mile apart from another *hat* and a breach of the peace was not unlikely, the Sessions Judge recommended that the order should be set aside, s. 518 applying only where a breach of the peace was imminent. *Held* that, under expl. 2, s. 518, the order could be made in all cases upon such information as satisfied the Magistrate, and that the order was one which he had power to make. BHOLANATH BOSE v. KOMURUDDIN, **20 W.R Cr. 53.** [*App.*, 21 W.R.Cr. 22; *Con.*, 22 W.R.Cr. 24.]

(91)—*Crim. Pro. Code (Act* XXV *of* 1861), *s.* 62—*Act* X *of* 1872, *s.* 518—*Rival* hats—*Power of Magistrate.*—A Magistrate has power, under s. 62, Act XXV of 1861, to prohibit a particular landholder from holding a *hat* on a particular spot on a particular day, at least for a temporary period, if he is satisfied upon reasonable grounds that the order is likely to prevent, or tends to prevent, a riot or an affray. *In the matter of the petition of* BYKUNTRAM SHAHA ROY, **10 B.L R. F B. 434=18 W R.Cr. 47,** *Overruling* SHEEB CHUNDER BHUTTACHARJEE v. SAADUT ALI KHAN, **4 W.R. Cr. 12.**

(92)—*Rival* hats—*Crim. Pro. Code* (1861), *s.* 62.—When two *hats* or markets were held on the same day on adjacent pieces of land, and it was shown to lead to riots and affray and annoyance to persons lawfully employed in their usual avocations, an order by the Magistrate, under s. 62, prohibiting the parties from holding the *hats* on the same day, was held to

Nuisance under Crim. Pro. Code—*continued.*

be a proper order under s. 62, Act XXV of 1861. QUEEN v. KALIKA PRASAD, **8 B L.R. Ap. 82, Note = 11 W.R. Cr. 5.**

(93)—*Order as to holding of* hat *or market—Rival* hats—*Act* XXV *of* 1861, s. 404—*Judicial order—Power of revision by High Court.*—An order of a Magistrate under s. 62, Crim. Pro. Code, 1861, *e.g.*, prohibiting one of two rival proprietors of two different *hats* from holding his *hat* on certain days of the week in order to prevent obstruction, annoyance, and injury was held not to be a judicial order, and was, therefore, not open to revision by the High Court under s. 404, Crim. Pro. Code. QUEEN v. ABBAS ALI CHOWDHRY, **6 B L R. F.B. 74 = 14 W R. Cr 46.** [*R.*, 5 C. 7, F.B.] *See, also,* LALLA MITTERJEET SINGH v. RAJCOOMAR SIRCAR, **18 W.R. Cr. 22.**

(94)—*Rival* hats.— Where a Magistrate, without hearing the petitioner or giving him an opportunity of being heard, and simply on the foundation of a police officer's report, directed the petitioner to abstain from holding a *hat* upon his land on a certain day, because another party had long been accustomed to hold a *hat* on his land adjacent to the petitioner's *hat* on the day following that on which the petitioner held his *hat*, it was held that his order passed under s. 518 was *ultra vires*, the police officer's report being vague and insufficient, and a private interest of this kind not affording a ground for making an order under s. 518 or any other order under the Crim. Pro. Code. BANEE MADHUB GHOSE v. WOOMA NATH ROY CHOWDHRY, **21 W R Cr. 26.** KALI NARAIN ROY CHOWDHRY v. ABDOOL GUFFOOR KHAN, **22 W.R. Cr. 24.** [*Ap.* 22 W.R. Cr. 24 ; *F.*, 23 W.R. Cr. 34, 19 C. 127.]

(95)—*Crim. Pro. Code* (1882), ss. 134, 144—*Order prohibiting holding* hat—*Mode of serving notice of order—Omission to follow it—Effect—Disobeying order of public servant—Penal Code, s.* 188.- The terms of s. 134 of the Crim. Pro. Code and the notification issued under the section by the Government, as to the mode of serving an order under s. 144 of the Code, are directory, and ought to be followed. It is an irregularity when they are not followed; but it does not follow that the order is a nullity in consequence. When the order is duly made and promulgated, although not strictly in accordance with the terms of the law, and has been brought to the actual knowledge of the person sought to be affected by it, that is sufficient to bring the case under s. 188 of the Penal Code. Before a person can be convicted, under s. 188 of the Penal Code, for breach of an order, it must be shown that the order clearly and unequivocably prohibits the thing which he is said to have done. An order under s. 144 of the Crim. Pro. Code, prohibiting the holding of a new *hat* on the days on which an old-established *hat* was being held, was held, under the circumstances of the case, to mean holding as owner or manager, but would not cover persons frequenting as buyers or sellers. Therefore persons who exposed goods as traders on one of the prohibited days would not be guilty of an offence under s. 188 of the Penal Code. PARBUTTY CHARAN AICH v. QUEEN-EMPRESS, **16 C 9.** [*R.*, 31 C. 990 = 8 C.W.N. 781, 1 S.L.R. 50 = 8 Cr. L.J. 170.]

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(96)—*Crim. Pro. Code* (1872), s. 518—*Removal of* haut *to a distance—Jurisdiction of Magistrates—Powers of High Court.*—An order, for the removal of one of two rival *hauts* to such a distance elsewhere, as to render it of no use to the owner, is an order in excess of jurisdiction, and the High Court has the power to set aside the order. SHURUT CHUNDER BANERJEE v. BAMA CHURN MOOKERJEE, **4 C.L.R. 410.** (4 C.L.R. 309, *R.*) [*F.*, 19 C. 127.]

(97)—*Crim. Pro. Code, s.* 144—*Order to remove huts from a certain locality.*—Where a certain Zemindar had, under leases entered into between them and certain prostitutes, settled them upon one portion of their property, *held*, that the Magistrate was not competent to make an order directing them to remove the huts within twenty four hours to the other side of the railway line, on the ground that the persons visiting those prostitutes would have to cross the railway line endangering thereby their lives. *In the matter of petition of* BIRESHWAR BASU MAJUMDAR, **2 C.W.N. 70.**

(98)—*Crim Pro. Code* (1861), *s.* 62—*Order for removal of house in dilapidated condition and a building erected on public ground.*—An order for the removal of a house in a dangerous and dilapidated condition cannot be made under s. 62 of the Code, as it falls with in the special provisions of Ch. XX (s. 308) relating to local nuisances. An order for removal of a building, improperly erected without leave in a plot of ground required to be kept unoccupied for common purposes, cannot be made under s. 62. HIGH COURT PROCEEDINGS, 12TH FEBRUARY, 1869, **4 M.H.C. App. 34.**

(99)—*Procession in public streets—Persons assembled for religious worship.*—In affording special protection to the persons assembled for religious worship or religious ceremonies, the law points to congregational rather than to private worship, and it may be fairly required of congregations that they should inform the authorities of the hours at which they customarily assemble, in order that the rights of other persons may not be unduly curtailed. The law recognising the right to the undisturbed performance of public worship has not extended it to mere private worship, such as may take place in a mosque at all hours of the day. SUNDARAM CHETTY v. QUEEN, **6 M. 203, F.B. = 2 Weir 77.**

(100)—*Powers of Magistrate for preservation of public peace—Order directing music to be stopped in a procession.*—For the preservation of the public peace, a Magistrate has a special authority, *i.e.*, authority limited to certain occasions. His first duty is to secure to every person the enjoyment of his right under the

Nuisance under Crim. Pro. Code—*continued.*

law, and. by measures of precaution to deter those who seek to invade the rights of others; but if he apprehends that the lawful exercise of a right may lead to civil tumult, and he doubts whether he has available a sufficient force to repress such tumult, or to render it innocuous, regard for the public welfare is allowed to override temporarily the private right, and the Magistrate is authorised to interdict its exercise. The duration of this authority in the Magistrate is co-extensive with the emergency that justifies the exercise of the authority. If persons passing in procession attended by music pass a place in which others are assembed and engaged in public worship which the music would tend to disturb, it is the duty of the persons composing the procession to refrain from such disturbance; but assemblies for purpose of worship not being held in any place at all hours for the day, a Magistrate is not competent to direct that persons should not at any time pass along a high road in the neighbourhood of a recognized place of worship attended by music. MUTHIALU CHETTI v. BABUN SAIB, **2 M. 140 = 2 Weir 68.** [*F.*, 34 M. 92 = 7 M.L.T. 430 = 6 Ind. Cas. 774 = 11 Cr. L. J. 400 = 2 Weir 94; *Appl.*, 5 M. 304 = 2 Weir 70; *R*, 18 B. 693, 26 M. 554 = 1 Weir 260, 32 M. 478 = 1 Ind. Cas. 716 = 19 M.L.J. 617, 21 M.L.J. 57, Rat. Un. Cr. C. 708.]

(101)—*Order prohibiting use of musical instrument—Crim. Pro Code* (1861), *s.* 62.—A Magistrate cannot, under s. 62 of the Code of Criminal Procedure, in general terms forbid two parties to use any musical instrument in the neighbourhood of each other's house, though he may forbid their doing so for the purpose of mutual annoyance. *In re* RAM CHUNDER GEER GOSSAIN, **6 W.R. Cr. 40.**

(102)—*Notice by Magistrate prohibiting traffic on Railway level-crossings.*—A notice issued by a District Magistrate professedly under cl. 6 of s. 19 of Reg. XII of 1827, prohibiting general traffic on level-crossings laid for the purpose of accommodating villages, is illegal as not coming within the scope of the section. *In re* PROHIBITORY NOTICE UNDER REG. XII OF 1827, s. 19, cl. 6, **8 B H.C. Cr. 23.**

(103)—*Crim. Pro. Code* (1882), *ss.* 133, 137 —*Order under s.* 137, *basis of—Order for removal of privy without taking evidence.*—Where a person against whom a notice under s. 133, Crim. Pro. Code, has been issued, appears to show cause, it becomes, thereupon, the duty of the Magistrate under s. 137, to take evidence as the basis of the order he has to make. An order passed by a Magistrate for the removal of a privy without taking any evidence, and acting solely upon his own opinion that the structure was a nuisance, was held to be illegal and *ultra vires*. *In the matter of the petition of* MAHA DAJI SADASHIV TILAK, **11 B. 373 = Rat. Un. Cr. C. 320.**

(104)—*Crim. Pro. Code, s.* 133—*Privy kept in bad condition—Abatement of nuisance.*—Where a privy is allowed to remain in such a condition as to be a nuisance to passers-by lawfully using a public place or way, proceedings to cause the nuisance to be abated can be instituted under Ch. X, Crim. Pro. Code. But s. 133 does not empower a Magistrate to order a privy to be removed because it was only recently made in any locality. *In re* BALAJI NARAYAN CHITALE, **4 Bom. L.R. 882.**

(105)—*Private slaughter-house—Crim. Pro. Code* (1872), *s.* 521.—The slaughter of cattle within a private and high walled enclosure and not in a thoroughfare or public place, though shocking to the feelings of Hindus, could not be properly regarded as a nuisance under s. 521. HADJEE MUZHUR ALI v. GUNDOWREE SAHOO, **23 W.R. Cr. 72.**

(106)—*Crim. Pro. Code* (1861), *s.* 308—*Slaughter house.*—Where the condition and the conduct of an old-established slaughter-house were an offensive nuisance and dangerous to the health of the neighbours; but not in a worse condition than at any time since its establishment; and where the occupiers, when summoned, did not ask for a jury under s. 310, Crim. Pro. Code, *held* the Magistrate was justified in suppressing the "trade or occupation" under s. 308, Crim. Pro. Code. MUNICIPAL COMMISSIONERS OF THE SUBURBS OF CALCUTTA v. MAHOMED ALI. **7 B.L R. 499 = 16 W.R. Cr. 6.** [*R.*, 25 C. 278.]

(107)—*Slaughter-house—Order prohibiting—Crim Pro. Code* (1861), *s.* 308—*Power of High Court to interfere with order.*—When a Magistrate, under s. 308, Crim. Pro. Code, has ordered the suppression of a trade or occupation as a nuisance and injurious to the health of the community, the High Court will not interfere, unless they find either that there was no reasonable evidence before the Magistrate of the trade being injurious to the health and comfort of the community, or that the cause shown was such as ought to have satisfied the Magistrate that his order for suppressing the trade was not reasonable and proper. The Court take the findings of fact by the Magistrate to be correct, unless they see that there is not, on the record, any evidence to warrant such findings. MUNICIPAL COMMISSIONER FOR THE SUBURBS OF CALCUTTA v. AMANAT ALI, **7 B.L.R. 516.**

(108)—*Killing of cows by Mahomedans.*—It is the legal right of every person to make such use of his own property, as he may think fit,—provided that, in doing so, he does not cause real injury to others or offend against the law,—even though he may thereby hurt the susceptibilities of others. Where the District Magistrate had ordered the Mahomedans of a village, not to kill anywhere in the village, and the Mahomedans sued for a declaration of their right and an injunction, *held*, that the right claimed was one to which they were legally entitled, irrespective of custom and were entitled to a declaration of such right. Slaughter of cattle could only be prohibited, where it amounted to a public nuisance and was obnoxious to the rules and regulations lawfully

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promulgated for observance, and not when it was calculated to irritate the religious susceptibilities of a class or community. SHAHBAZ KHAN v. UMRAO PURI, 30 **A. 181 = A.W.N. 1908, 64 = 5 A.L.J. 147 = 7 Cr. L.J. 381.** (7 M. 590, 12 B 437, 10 A. 44, 10 A. 150, 17 C. 852, 25 W.R. Cr. 72, *R.*) [*R.*, 32 A. 571 = 7 A.L.J. 649 = 11 Cr. L.J. 355 = 6 Ind. Cas. 454.]

(109)—*Dispute between Hindus and Mahomedans regarding a cook-shop.*—Where, on a dispute between Hindus and Mahomedans regarding a cook-shop established by the latter, the Magistrate appointed a committee of respectable Hindus and Mahomedans, and in conjunction with them issued a set of rules including rules for the management of a Hindu temple and a Mahomedan mosque in the neighbourhood, *held*, that the Magistrate was not competent to promulgate such rules, and should have confined himself to deciding whether the shop complained of was a nuisance or not. ASSA NAND v. HOOSEIN BUKSH, **15 P.R. 1868, Cr.**

(110)—*Order prohibiting cremation in certain place—Crim. Pro. Code* (1872), *s.* 521.—An application to have it declared that a certain place could be used for cremation purposes would not come under Act X of 1872, s. 521. GUDADHUR KAMILA v. BAIDA NATH JANA, **24 W.R. Cr. 6.**

(111)—*Nuisance caused by tank—Crim. Pro. Code* (1861), s. 308 — *Removal of tank* —The order of a Magistrate under s. 308, Code of Criminal Procedure, should confine itself to the removal of the nuisance complained of. In the case of a tank, the Magistrate has no power to order the proprietor to excavate it, who ought to have the discretion allowed him as to the way in which he will remove the nuisance caused by the tank. If a Magistrate is obliged to direct its excavation, the actual expenditure of the excavation ought alone to be charged against the proprietor, at whose disposition the soil taken out by the excavation must be placed. *In the case of* PAUL DASS, **10 W.R. Cr. 51.**

(112)—*Order to destroy tank—Obstruction to enjoyment of public rights.*—The defendant had made a tank in the bed of a *khal* by throwing two bunds across it, and on complaint to the Magistrate, he, finding that the tank had been in existence only for about six years, passed an order under s. 62, Act XXV of 1861, directing the defendant to destroy the bunds, on the ground that they were an obstruction to the enjoyment of the river by the public in the rainy season; and that the bunds interfered with the drainage of the country and tended to the injury of the crops and of the inhabitants. The High Court held that s. 62 did not authorize the passing of such an order. QUEEN v. SHEIKH GOLAM DARBESH, **1 B.L.R.S.N. 27 = 10 W.R. Cr. 36.**

(113)—*Dispute as to right to water.*—In a case th a dispute as to the right to the use of water, ofe Magistrate should not proceed as for a nuisance under Ch. XX, Crim. Pro Code, 1861. QUEEN v. MADHO CHURN, **13 W.R. Cr. 51.** [*App.*, 24 W.R. Cr. 15.]

(114)—*Obstruction of drain— Crim. Pro. Code* (1861), *s.* 308 —The obstruction of a drain, into which the sewage of the complainant's premises fell, does not fall either under s. 308 or s. 320 of the Code of Criminal Procedure, but is matter for a civil suit and injunction. *In re* TROYLUKHONATH BOSE, **5 W.R. Cr. 58.**

(115)—*Order to close drain—Crim. Pro. Code* (1861), *ss.* 62, 308—*Power of Magistrate—Order not in writing.*—The accused was fined by a Magistrate for not having closed a drain in pursuance of the verbal order of the Magistrate. *Held* that the Magistrate should have proceeded under Ch. XX, Act XXV of 1861, inasmuch as the nuisance was not one from which immediate danger was apprehended, and not under s. 62, which empowered the Magistrate to put an immediate determination to the continuance thereof. A written order not having been given, the procedure was faulty, and therefore quashed. Only Magistrates of a District or division can act under Ch. XX, s. 308. GOVERNMENT v. CHOONEELALL, **2 Agra Cr. 1.**

(116)—*Crim. Pro. Code* (1882), *ss.* 133, 137—*Magistrate—Jurisdiction—Bund across channel in one's own land.*—S. 133 of the Crim. Pro. Code does not apply to an alleged user by a man of his own property so as to cause injury to the property of another, and a Magistrate has no jurisdiction to prohibit such user under the section. Such conditional order being illegal, the order absolute under s. 137 confirming it is also inoperative. *In re* JASVANTSINGJI, **Rat. Un. Cr. C. 516 = Cr. Rg. 39 of 1890.**

(117)—*Order not to collect cesses—Crim. Pro. Code* (1861), *s.* 62.—A Magistrate has no power to pass an order, under s. 62 of the Code of Criminal Procedure, directing a certain person to abstain from a certain act, or to take order with certain property, unless he is satisfied that such direction on his part is likely to prevent, or tends to prevent, a riot or an affray; nor can he pass an order under that section, calling upon a person to enter into recognizances not to collect certain cesses. LUCHMIPUT SINGH v. RAUTMUL, **14 W.R. Cr. 3.**

(118)—*Order for removal of prostitute—Crim. Pro. Code*, 1872, *s.* 521.—If a prostitute behaves orderly and quietly and creates no open scandal by riotous living, a Magistrate cannot remove her from her dwelling house, on the ground of her bad character. NUNDO KUMAREE PESHAGUR v. ANUND MOHUN GOOHO THAKURTA, **24 W.R. Cr. 68.**

(119)—*Crim. Pro. Code* (*Act* X *of* 1882), *s.* 133—*Forge—Sparks—Proper orders.*—Where a Sub-Divisional Magistrate apprehends danger to a cotton factory from the sparks issuing out of a neighbouring forge, the proper order to be passed is not to have the forge removed, but to

Nuisance under Crim. Pro. Code—*continued.*

alter its construction so that sparks might not issue out of it into the open air. *In re* LAHANU, **Rat. Un Cr. C. 872 = Cr. Rg. 46 of 1896.**

(120)—*Crim. Pro. Code* (1882), *ss.* 144 *and* 435—*Dispute regarding the possession of temple between trustees—Validity of order under s.* 144 —*Revisional powers of High Court.*—Where, on a contest having arisen between persons appointed as trustees of a temple in the place of dismissed trustees and the latter regarding the possession of the temple, the Magistrate made an order under s. 144 being of opinion that a breach of the peace was imminent, *held*, that the order of the Magistrate was an order made within his jurisdiction, and that the High Court had no power to interfere with an order passed with jurisdiction under s. 144, Crim. Pro. Code. PALANIAPPA CHETTI v. DORASAMI AIYYAR, **18 M. 402 = 2 Weir 91.** [*R.*, 8 Cr. L.J. 170 = 1 S.L.R. 50, Cr.]

(121)—*Crim. Pro. Code* (1882), s. 144 *and* 435—*Purchase of property through Court—Illegal order under s.* 144—*Revisional powers of High Court—Property situate beyond Magistrate's jurisdiction.*—Where a person, purchasing some property in execution of a mortgage decree, is put in possession of the same, a Magistrate is not competent, under s. 144, to order the purchaser or any of his subordinates to refrain from entering upon the lands and the properties. When an order, purporting to be made under s. 144 of the Code, does not properly come within the scope of that section, the High Court's powers of revision is not ousted by the provision in the last part of s. 435. [*F.*, 26 C. 188; *R.*, 21 A. 391, 5 O.C. 1, 4 L.B. R. 75 = 6 Cr. L.J. 291.] No order, under s. 144, can be made by a Magistrate when the property is situated outside the local limits of his jurisdiction. ROOP LAL DASS v. DAVID MANOOK, **2 C.W.N. 572.** (19 C. 127, 1 C.L.R. 58, *F.*)

(122)—*Crim. Pro. Code* (1861), *ss.* 297, 518—*Illegal order under the section— Revisional powers of High Court.*—An order under s. 518, Crim. Pro. Code, directing a zemindar to change the days on which he holds his market, not on any particular or special occasion, but for an indefinite period, is not an order made in the course of any judicial proceeding, and the High Court is not competent to revise the order under the provisions of s. 297. *In re* MOKUT SINGH, **6 N.W.P. 16.**

(123)—*Crim. Pro. Code* (1872), *Chs.* XXXIX *and* XL—*Dispute concerning possession of land and building—High Court's revisional powers.*—In a dispute concerning the right to possession of lands and buildings, a Magistrate, when it appears to him that there is an apprehension of a collision of the two parties in which a breach of the peace of a serious character is imminent, may proceed under Ch. XXXIX instead of adopting the procedure prescribed by Ch. XL [*F.*, 18 M. 402 = 2 Weir 91; *R.*, Rat. Un. Cr. C. 708.] Orders properly passed under Ch. XXXIX are not revisable by the High Court, as such orders are expressly declared to be not judicial proceedings, which alone are revisable under s. 297 of the Code. Under s. 15 of the Charter Act all that the High Court can do is to see that the Magistrate had jurisdiction to pass the order under s. 518, Crim. Pro. Code, 1872. If he had, there is no power of interference. ELAVARISU VANAMAMALAI RAMANUJA JEEYARSWAMI v. VANAMAMALAI RAMANUJA JEEYAR, **3 M. 354 = 2 Weir 90 = 6 Ind. Jur. 29.** [*R.*, 19 M. 18 = 5 M.L.J. 249.]

Nuisance under Crim. Pro. Code—*continued.*

(124)—*Crim. Pro. Code* (1872), *s.* 521—*Order under the section—Interference by High Court, in revision.*—The fact of the Magistrate taking action under s. 521 is *prima facie* sufficient to show that he considered the *locus in quo* to be a thoroughfare or public place. If no objection is made to that finding, and if the jury finds the order to be reasonable and proper, the High Court will not interfere. *In the matter of* IMANDI KHAN, **8 C.L R. 399.**

(125)—*Crim. Pro. Code* (1872), *ss.* 518 *and* 520—*Revision — Judicial proceedings.* — The existence of the circumstances mentioned in expl. I, is a condition precedent to the action of a Magistrate, under s. 518, Code of Criminal Procedure. If the matter is one which cannot properly be dealt with under s. 518, it does not fall within that section, and being a judicial proceeding is not protected by s. 520 from the action of a Court of Revision under s. 297. *In the matter of* KRISHNA MOHUN BYSACK, **1 C.L.R. 58.** [*F.*, 19 C. 127, 2 C.W.N. 572.]

(126)—*Crim. Pro. Code* (1882), *s.* 144—*Orders not properly within the scope of the section—Revisional powers of the High Court—Orders regulating boat traffic at a landing place—Legality.*—An order regulating the boat traffic at a certain landing place, on the ground that the overcrowding of boats was dangerous to the health of the residents of the town, is not an order authorized by s. 144, Crim. Pro. Code, 1882. The mere fact that an order purports to be made under s. 144 does not prevent the High Court from interfering with it, in revision, if the order is one that cannot be made under that section. QUEEN-EMPRESS v. PRATAB CHUNDER GHOSE, **25 C. 852 = 2 C.W.N. 593.** (16 C. 80, 19 C. 127, *F.*) [*F.*, 26 C. 188, 15 Cr. L.J. 513 = 24 Ind. Cas. 601; *R.*, 21 A. 391 = 19 A.W.N. 138, 12 Bom. L.R. 1029 = 11 Cr. L. J. 705 = 8 Ind. Cas. 747, 14 Cr. L.J. 589 = 21 Ind. Cas. 381 = 25 M. L.J. 370.]

(127)—*Nuisance in public place—Necessity for proof of—Crim. Pro. Code* (1872), *s.* 521.—In a prosecution under s. 521, Crim. Pro. Code, it is necessary to show that the act complained of is a nuisance, and that it was committed in a thoroughfare or public place. HADJEE MUZHUR ALI v. GUNDOWREE SAHOO, **25 W.R. Cr. 72.**

See BOM. ACT IV OF 1890, s. 48 (*b*), 19 B. 737.

Nuisance under Crim. Pro. Code—*concluded*

See CRIM PRO. CODE, 1898, s. 144, 2 Weir 66=5 M.H.C. App. 19, 10 A. 115=A.W.N. 1888, 25.

See CRIM. PRO. CODE, 1898, ss. 144, 145, 146, 19 C. 127.

See CRIM. PRO. CODE, 1898, ss. 144, 426, 439 (1) to (4), 440, 8 C. 580=11 C.L.R. 414.

See CRIM. PRO. CODE, 1898, s. 386, 4 M.H. C. App. 67.

See REVISION—GENERAL PRINCIPLES, 19 C. 127.

Nuisance under Penal Code.

See PENAL CODE, ss. 268—294.

See PUBLIC NUISANCE.

(1)—*Penal Code, ss.* 268, 290 — *Public nuisance—Annoyance, nature of—What constitutes nuisance.*—The accused, on the occasion of his giving a dinner-party cut up the meat that was to be cooked for the dinner in the verandah of his house, and so exposed it to the sight of persons passing along the road, among whom were some Jains whose temple was near the house. They complained to the Magistrate that, by this act, the accused "had made the air offensive and created an annoying sight." The Magistrate, without finding that the meat was in an offensive state, convicted the accused, on the ground that he had done an act by which several persons, being Jains, were much annoyed, it being a well-known fact, that they had great repugnance to the killing of animals of every sort. *Held*, that, as there was no real damage or injury alleged to have been caused to the public or to the people in general dwelling in the vicinity, but merely an annoyance to those Jains passing along the road, it was a case of private rather than of public nuisance and, therefore, not one falling within the purview of the Criminal law. The annoyance, moreover, such as it was, neither did nor could cause any sensible or real damage. It was an annoyance merely by reason of its hurting the feelings of the Jains, who had a repugnance to the killing of animals. It was, therefore, of the nature of a sentimental grievance, which would be felt only by persons holding certain views as to the killing of animals. The accused was, therefore, not guilty under s. 290, I.P.C. [*F.*, Rat. Un. Cr. C. 903; *R.*, A.W.N. 1908, 64=30 A. 181=5 A.L.J. 147.] In order to constitute a nuisance, there must be "not merely a nominal, but such a sensible and real damage, as a sensible person would find injurious." QUEEN-EMPRESS v. BYRAMJI EDALJI, **12 B. 437.** (7 M. 590, *R*.)

(2)—*Penal Code*, s. 290—*Public nuisance, what constitutes.*—In order to constitute an offence under s. 290, I.P.C., it is not necessary that the alleged nuisance should emit smell injurious to health; it is sufficient if they are offensive to the sense. Where the manager of a bone mill permitted a large stock of bones to remain uncovered in the open air for a long time so as to become rotten and to emit a smell

Nuisance under Penal Code—*continued.*

noxious to people living in or passing by the vicinity, *held*, that he was not doing an act which he was entitled to do in carrying on his trade in a reasonable way, and was therefore guilty of committing a public nuisance. BERCKEFELD v. EMPEROR, **34 C. 73=5 C L. J. 40=5 Cr. L J. 45.** (2 C. & P. 485, *Appr.*) [*R.*, 12 Cr. L.J. 146=9 Ind. Cas. 891=117 P. L.R. 1911, 20 P.W.R. 1911, Cr.]

(3)—*Public nuisance, what amounts to.*—An act or illegal omission causing injury which affects only the owners of one property, but not a number of persons will not amount to a public nuisance. *Quære.*—Whether an act or illegal omission causing injury or annoyance common only to landholders in the neighbourhood, could be held to constitute a "nuisance" to the public or the people in general, in the vicinity. *In re* THORNOTTI MADATHIL POKER, **1 Weir 29=1 Weir 495.**

(4)—*Penal Code, ss.* 268, 283 *and* 290—*Scope of ss.* 283 *and* 290—*Public nuisance—Obstruction to tidal navigable river.*—S. 283 contemplates an injury to some particular person; but s. 290 provides for cases in which there is no special punishment provided for a public nuisance; and a person guilty of a public nuisance of any kind may be punished under s. 290. An obstruction to a tidal navigable river by placing a bamboo dam across the river for the purpose of fishing, although leaving a narrow opening for the passage of boats, but kept closed otherwise, is a public nuisance under s. 268 of the Code. Although s. 283 of the Code may not apply to such a case, the accused is punishable under s. 290. *In the matter of the petition of* UMESH CHANDRA KAR, **14 C. 656.** [*Diss.*, 20 C. 665; *R.*, 1 Weir 232; *D.*, 13 Cr. L.J. 830=17 Ind. Cas. 574= 10 A.L.J. 362.]

(5)—*Encroachment on tidal navigable river —Public nuisance—Penal Code, s.* 290.—The mere fact of an encroachment on a tidal navigable river does not, necessarily, amount to a public nuisance so as to render the person causing the obstruction liable to punishment under s. 290 of the Penal Code. There must be some evidence that such encroachment causes one of the results mentioned in s. 268. Where it was shown that *jags* were erected only on the silted side of a tidal navigable river and that they did not obstruct the ordinary navigation of the river, *held*, that there could be no conviction either under s. 283 or s. 290 of the Penal Code. JAGAL DAS DALAL v. QUEEN-EMPRESS, **20 C. 665.** (14 C. 656, *Cons., & Commented on.*)

(6)—*Penal Code, s.* 188—*Order prohibiting collection of rent—Disobedience to such order —Conviction—Legality.*—In a dispute regarding the collection of rents, an order prohibiting the same till such time as the right and title of both the parties be established by order of a competent Court, is not a proper order. A conviction, under s. 188, for disobedience of

Nuisance under Penal Code—*continued.*

such an order is not proper. PROSONNO COOMAR CHATTERJEE v. EMPRESS, **8 C.L.R. 231.** [*F.*, 19 C. 127.]

(7)—*Penal Code, ss.* 43 *and* 290—*Omission to fence a well open to highway.*—The omission to fence a well in private premises at a distance of only eight yards from the highway, and open to it is not "illegal" as defined by s. 43, Penal Code, and does not, therefore, constitute a public nuisance. QUEEN v. ANTHONY UDAYAN, **6 M. 280 = 1 Weir 245 = 7 Ind. Jur. 247.**

(8)—*Penal Code, ss.*268, 290—*Public nuisance, what constitutes—Erection of temporary shed during Muharram for purpose of worshipping religious symbol.*—It is obvious from the language of s. 268, that it was not intended to apply to acts or omissions calculated to offend the sentiments of a class. The scope of the section is to protect the people or public in general, as distinguished from the members of a sect, from injury, danger, or annoyance in the neighbourhood of places where they dwell or occupy property, or when they have occasion to use a public right. [*R.*, 13 C.P.L.R. 92.] Where the Mahomedan inhabitants of a village erected, during the Muharram festival, a pandal on a piece of waste land belonging to the village and placed in it an image, *held*, that their act would not amount to a public nuisance on the mere ground that they were likely to cause serious annoyance to the Hindu inhabitants of the village. MUTTUMIRA v. QUEEN-EMPRESS, **7 M. 590 = 1 Weir 246.** [*F.*, 12 B. 437 ; *R.*, 10 A. 44, 30 A. 181 = 5 A.L.J. 147 = A.W.N. 1908, 64 (65) = 7 Cr. L.J. 381. 13 C P.L.R. 92.]

(9)—*Penal Code, ss.* 268, 290—*Public nuisance—Slaughter of cattle.*—If a person wilfully slaughters cattle in a public street so that the groans and blood of the poor beasts could be heard and seen by the passers-by, he would be punishable under s. 290, I.P.C. Where the accused, Mahomedans, killed two cows, for religious purposes, in their compound, before sunrise, and the killing of one of the cows was seen by a Hindu, who chose that day, and at an unusually early hour, to pay a visit to his Mahomedan acquaintances, *held* that, under the circumstances, the accused had not committed public nuisance under s. 268, I.P.C. QUEEN EMPRESS v. ZAKIUDDIN, **10 A. 44 = A.W N. 1887, 232.** [*R* , 30 A. 181 = 5 A.L.J. 147 = A.W.N. 1908, 64 = 7 Cr. L.J. 381.]

(10)—*Penal Code, s.* 290—*Establishment of a butcher's shop.*—The mere establishment of a butcher's shop is not an indictable nuisance under s. 290, I P.C. EESA v. KEEMO, **18 P. R. 1867, Cr.** [*R.*, 18 P.R. 1868, Cr.]

(11)—*Penal Code, s.* 290—*Public nuisance—Cremation of dead bodies—Crim. Pro. Code* (1882), *s.* 143 — *Power of Magistrate to prohibit what was lawful.*—When persons, entitled to use a particular spot for the communal purpose of cremation, use it for that purpose in a manner neither unusual nor calculated to aggravate the inconveniences

Nuisance under Penal Code—*continued.*

necessarily incident to such an act, as it is generally performed in this country, it must be admitted that he does what is perfectly lawful. Such an act done, not only in the exercise of a right of which the people of this country are generally very tenacious, but also in the discharge of a serious duty, would not amount to a public nuisance punishable under s. 290 of the Penal Code. [*R.*, 25 M. 118 ; *Expl.*, 25 C. 425.] Under s. 143, Crim. Pro. Code, 1882, no Magistrate can prohibit what was lawful before the date of his order and thereby make such an otherwise legal act, committed after the date of order, punishable as a nuisance under the Indian Penal Code. He is only empowered to enjoin a person from repeating or continuing only a public nuisance as defined in the Indian Penal Code. QUEEN-EMPRESS v. SAMINADHA PILLAI, **19 M 464 = 1 Weir 247 = 2 Weir 65 = 1 Weir 144 = 6 M.L. J. 181.**

(12)—*Penal Code, ss.* 268, 290—*Soliciting for purposes of prostitution in a public road—Public nuisance* —Where three prostitutes in a public road solicited a passer-by to go with them for the purposes of prostitution, *held*, that this act did not amount to a public nuisance within the meaning of s. 268, I.P C. QUEEN-EMPRESS v. NANNI, **22 A. 113 = A.W.N. 1899, 215.**

(13)—*Penal Code, s.* 290—*Public nuisance—Prostitute visiting a bungalow.*—Where the allegations against the accused were that she, a prostitute, visited a dak bungalow on three occasions, being so requested by a person staying there, but it was not shown that she was guilty of any impropriety of speech, or gesture or act, or that she had occasioned annoyance to the public generally, or to any persons who, in the exercise of their public right, were lodging in the bungalow, *held*, that the accused was not guilty of any offence under s. 290 I.P.C. QUEEN v. MUSSAMAT BEGUM, **2 N.W.P. 349.** [*Appr.*, Rat Un. Cr. C. 765.]

(14)—*Public nuisance—Special Law—Cattle Trespass Act,* III *of* 1857—*S.* 290, *Penal Code.*—Under s. 290 of the Penal Code, injury, danger, or annoyance must be shown to have been caused to the enjoyment of property or to the exercise of a public right on the part of a portion of the community or of any particular class of people. The existence of a special law to meet a particular offence, *viz.*, cattle trespass, is no bar to the punishment of the offenders under the Penal Code, if an offence, which could have been rightly punished under the Penal Code, is proved. ONOORAM v. LAMESSOR; WEBSTER v. KEENA, **9 W.R. Cr. 70.** (6 W.R. Cr. 71, *F.*)

(15)—*Omission to keep ponies from straying—Penal Code, s.* 290.—Where a person omits to keep his ponies from straying, he does not commit public nuisance punishable under s. 290 of the Penal Code. JOYNATH MUNDUL v. JAMUL SHEIKH, **6 W.R. Cr. 71.**

(16)—*Penal Code, s.* 269—*Spreading infection—Accumulation of filth and manure.*—Allowing

Nuisance under Penal Code—*continued.*

accumulation of filth and manure by certain villagers in their village could not be construed into an act likely to spread the infection of dangerous disease within the meaning of s. 269, I.P.C. CROWN v. BUTA SINGH, **25 P.R. 1872, Cr.**

(17)—*Penal Code, s. 268—Illegal omission to make sanitary arrangements.*—Where the *lambardars*, who were used to make sanitary arrangements on the occasion of the holding of a fair at a certain village, were found to have omitted to make the arrangement on a certain year, *held*, that they could not be convicted of an offence under s. 268, I.P.C. CROWN v. GUJ SINGH, **11 P.R. 1875, Cr.**

(18)—*Penal Code, s. 269—Leaving plague shed and travelling by rail against order.*—Where a person, who was removed to a plague shed along with a plague patient from a plague-stricken house, left the shed against orders and travelled by rail to another place, *held*, that he was rightly convicted under s. 269, I.P.C., as he had sufficient reason to believe that his act was dangerous and likely to spread the infection of a dangerous disease. EMPEROR v. NIADAR MAL, **22 P.R. 1902, Cr.** (24 C. 494, 7 M. 276, 14 B. 147, *D.*)

(19)—*Penal Code, s. 273—Sale of noxious food.*—Where the accused sold *atta* at the rate of 18 seers per rupee, whereas its ordinary price being 15 seers per rupee, informing the purchaser that it was sold cheap, because it was "bad" or of inferior quality, *held*, that the accused was not liable to be convicted under s. 273, I.P.C. CROWN v. GUNESHA, **15 P.R. 1873 Cr.**

(20)—*Penal Code, ss. 290, 504—Exclusion of complainants from caste privilege and use of wells.*—Where certain Hindus, refused to have any social intercourse with certain Hindu *sonars* of the village and excluded them from the use of the wells, *held*, that they were not guilty of any offence under s. 290, or s. 504, I.P.C. RAM DITTA v. KIRPA SINGH, **3 P.R. 1883, Cr.**

(21)—*Penal Code, s. 268—Enclosing* shamilat *land.*—The making of *baras*, or enclosures, on *shamilat* land comprised in the *goora* of the village is not punishable under s. 268, without proof that such *baras* are a public nuisance. In order to constitute a public nuisance, the particular way in which the obstruction has been caused must be definitely proved. LAL SINGH v. EMPRESS, **8 P.R. 1896, Cr.**

(22)—*Penal Code, s. 268—Working rice-husking machine, throughout the whole night.*—The working of rice-husking machines throughout the whole night in a residential quarter being injurious to the comforts of the neighbourhood is a public nuisance within the meaning of s. 268, I.P.C. PHIRAYA LAL v. EMPEROR, **9 P.R. 1904, Cr. = 69 P.L.R. 1904 = 1 Cr. L.J. 512.**

(23)—*Penal Code, s. 291—Previous conviction and order to desist.*—To sustain a conviction for committing a public nuisance, it must be proved that there was a previous conviction for an offence and an order by a public servant to desist from continuing such nuisance. *In the matter of* MOHESH CHUNDER, **20 W.R. Cr. 55.**

(24)—*Crim. Pro. Code* (1882), *s. 144—Proper order under section—Penal Code, s. 188.*—The power of a Magistrate, under s. 144, Crim. Pro. Code, 1882, is confined to the direction to a particular person to abstain from acts of a certain character, or to the public generally to abstain from similar acts when frequenting a particular place. Where, owing to the prevalence of cholera, the District Magistrate of Broach issued a notification in the form of a proclamation, under s. 144, Crim. Pro. Code, forbidding the public in general to give caste-dinners in that city, and the accused who gave a dinner in a private house to about four hundred or five hundred persons, was prosecuted and convicted under s. 188, I.P.C., *held* that the order, both in its substance and in its manner of publication, was illegal as being beyond the powers conferred by s. 144. It was not directed to a particular person, nor to the public when frequenting a particular place, nor was it served on any person individually. The conviction and sentence should therefore be reversed. QUEEN-EMPRESS v. LAKHMIDAS MAKANDAS, **14 B. 165.** [*R.*, 24 B. 527, A.W.N. 1897, 50.]

(25)—*Penal Code, s. 291 — Repeating or continuing a public nuisance — Crim. Pro. Code* (1882), *s.* 143.—To support a conviction under *s.* 291, I.P.C., there must be proof of an injunction to the persons charged individually against repeating the same public nuisance. It must be shown that they had on some previous occasion committed the particular nuisance, had been enjoined not to repeat or continue it, and had repeated or continued it. S. 143, Crim. Pro. Code, authorizes a Magistrate to order or enjoin a person against continuing or repeating a public nuisance. It is the infringement of the order or injunction that is punishable under s. 291, I.P.C., and it is clear that what is contemplated is an order to a particular person. QUEEN-EMPRESS v. JOKHU, **8 A. 99 = A.W.N. 1886, 27.**

(26)—*Prescriptive right.*—Length of enjoyment cannot legalize a public nuisance. MUNICIPAL COMMISSIONER OF THE SUBURBS OF CALCUTTA v. MAHOMED ALI, **7 B.L.R. 499 = 16 W.R.C.R. 6.** [*R.*, 25 C. 278.]

Nuisance—Miscellaneous.

(1)—*Miscellaneous cases—Order forbidding nuisance—Power of Magistrate—Towns Improvement Act* (XXVI *of* 1850).—*Held* that a Magistrate, as the President of a Municipal Committee, had no power to issue an order forbidding as a nuisance an act not included in the rules passed under Act XXVI of 1850. GOVERNMENT v. SHAM SOONDER, **1 Agra 34, Cr.**

Nuisance—Miscellaneous—*concluded.*

See BOM. ACT VII OF 1867, s. 31, Rat. Un. Cr. C. 134=Cr. Rg. 8-4-1878.

See BOM. ACT III OF 1901, ss. 131, 135, 155, 9 Bom. L.R. 247=5 Cr. L.J. 252.

See C.P. ACT XVIII OF 1889, s. 97, 6 C.P. L.R. Cr. 32.

See SENTENCE—IMPRISONMENT—IMPRISONMENT IN DEFAULT OF PAYMENT OF FINE, ETC., 5 M. 157.

See UNLAWFUL ASSEMBLY, 1 Weir 58=5 M.H.C. App. 6.

Oath.

(1)—*When Magistrate can swear persons.*—A Magistrate should not put persons on oath, unless he is satisfied of his authority so to do, for it may be an oppression. QUEEN-EMPRESS v. SHIDLINGAPPA, **Rat. Un. Cr. C. 844 =Cr. Rg. 13 of 1896.**

(2)—*Penal Code, s. 193—Giving false evidence —Non-judicial proceeding—Oath.* — A proceeding conducted by the District Magistrate to discover who the writers were of a scandalous letter against a former Magistrate is not a judicial proceeding, an oath should not be administered to any one who is examined in such proceeding. A conviction for giving false evidence in such proceeding is not punishable under s. 193 of the Penal Code. REG. v. JIBHAI VAJA, **11 B.H.C. 11.**

Whether binds legal practitioner to speak truth—*See* ACT XVIII OF 1879, 6 M. 252=1 Weir 116=1 Weir 156=1 Weir 785=7 Ind. Jur. 247.

Power of Municipal Commissioners to administer oath—*See* BEN. ACT III OF 1864, ss. 6, 79, 19 W.R. 309.

See CRIM. PRO. CODE, 1898, s. 96, 7 Ind. Cas. 895=8 M.L.T. 416=1910 M.W.N. 818=11 Cr. L.J. 535.

See CRIM. PRO. CODE, 1898, ss. 155, 156, 164, 190, 476, 8 Bom. L.R. 589=4 Cr. L.J. 183.

Examination of accused on—*See* CRIM. PRO. CODE, 1898, s. 476, 8 Bom. L.R. 587=4 Cr. L.J. 165.

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 7 B.L R. 324, Note=11 W.R. Cr. 36.

Statement made on—before Magistrate—*See* FALSE EVIDENCE, 16 M. 421=1 Weir 175.

Alternative charges—False statement before an investigating police officer and before a Magistrate on oath—Penal Code, s. 193—Contradictory statements—*See* FALSE EVIDENCE, 23 M. 544, Foot-note=1 Weir 166.

See FALSE EVIDENCE, 7 C.L.R. 536.

See JOINDER OF CHARGES—WHEN LEGAL, 7 C.L.J. 63=35 C. 161=7 Cr. L.J 95.

See MAGISTRATE, JURISDICTION OF—MISCELLANEOUS, A.W.N, 1885, 264.

See PENAL CODE, ss. 114, 161, Rat. Un. Cr. C. 844=Cr. Rg. 13 of 1896.

Oath—*concluded.*

See PRACTICE AND PROCEDURE, 28 B. 479 =6 Bom. L.R. 324.

See MAD. REG. IV OF 1816, s. 15, 11 M. 375=2 Weir 163.

Evidence not taken on—*See* REVISION—MATTERS PERTAINING TO EVIDENCE, 20 W. R. Cr. 55.

See SANCTION TO PROSECUTE—NATURE AND FORM OF SANCTION, 7 C.L.J. 49=7 Cr. L.J. 10=35 C. 141=2 M.L.T. 500.

Omission to administer oath to interpreter, effect of—*See* SANCTION TO PROSECUTE — NOTICE OF SANCTION, 9 C.L.J. 690=13 C.W. N. 942=10 Cr. L.J. 150=36 C. 808=2 Ind. Cas. 697.

See SECURITY FOR GOOD BEHAVIOUR, 21 P.L.R. 1904=27 P.R. 1903, Cr.

See SOLEMN AFFIRMATION, 1 W.R. Cr. Letters 13.

Oaths Act.

See ACT V OF 1840.

See ACT VI OF 1872.

See ACT X OF 1873.

Obiter Dictum.

Meaning of.—Meaning and scope of the term, '*obiter dictum*,' pointed out. BARINDRA KUMAR GHOSE v. EMPEROR, **37 C. 467=7 Ind. Cas. 359=14 C.W.N. 1114=11 Cr. L.J. 453.**

Obscene Advertisement.

Through post cards—*See* ACT VI OF 1898, ss. 20, 61, 32 C. 247=2 Cr. L.J. 201.

Obscene Literature.

Publication—Test of obscenity—*See* PENAL CODE, s. 292, 15 Bom. L.R. 307=2 Bom. Cr. C. 58=19 Ind. Cas. 504=14 Cr. L.J. 248.

Obscene Pamphlet.

See PENAL CODE, s. 292, A.W.N. 1905, 203 =2 Cr. L.J. 520=28 A. 100.

Obscene Publication.

See PENAL CODE, ss. 292—294.

(1)—*Penal Code, s. 293— Obscene books—Crim. Pro. Code, 1872, s. 418.*—It cannot be held that a book cannot be an obscene book, because it only contains a single obscene passage. A person charged with selling and distributing obscene books pleaded that it was in defence of his Hindu religion, against the attacks of Mahomedans. He also urged that as the latter had vilified his religion, he, in prosecution of a religious controversy, made his attacks on the Moslem religion. *Held*, that it was the excessive obscenity of the books that took away the protection which might have otherwise been accorded to it. It was not sufficient for the accused to say his motives and objects were dictated by a laudable and honest desire to expose the errors and fallacies of the Moslem creed, and vindicate his own religion from the attacks of those who had assailed it,

Obscene Publication—*concluded.*

but it was his public conduct, that must be the test of his intention, and having done an unlawful act, it was no answer to say that he thought it was lawful. On the conviction of a person charged under s. 293, the Magistrate was not competent to order the destruction of the obscene books surrendered by him, under s. 418, Crim.Pro.Code. EMPRESS OF INDIA v. INDARMAN, **3 A. 837 = A.W.N. 1881, 94.** [*F.*, 39 C. 377 = 15 C.L.J. 151 = 13 Ind. Cas. 993 = 13 Cr. L.J. 177, 2 Bom. Cr. C. 58 = 15 Bom. L.R. 307; *D.*, L.B.R. 1893—1900, 579.]

(2)—*Penal Code*, ss. 292, 293—*Test of obscenity.*—In the interpretation of the word "obscene" in ss. 292, 293, I.P.C., the Courts may rightly follow *Reg* v. *Hicklin* (L.R. 3 Q.B. 360). "The test of obscenity," according to Lord Cockburn, is, whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences, and into whose hands a publication of the sort may fall. QUEEN-EMPRESS v. PARASHRAM YESHVANT, **20 B. 193.** [*F.*, 32 C. 247 = 2 Cr. L.J. 201; *R.*, 28 A. 100 = A.W.N. 1905, 203 = 2 Cr. L.J. 520.]

(3)—*Test of obscenity.*—The test of obscenity is whether the tendency of the matter is to deprave and corrupt minds of those who are open to immoral influences, and into whose hands the publication may fall. SARAT CHANDRA GHOSE v. KING-EMPEROR, **32 C. 247 = 2 Cr. L.J. 201.** (L.R. 3 Q.B. 360, 3 A. 837, 20 B. 193. *Rel.*)

(4)—*Liability of proprietor of printing press*—*Penal Code*, *s.* 292.—The proprietor of a printing press, who had entrusted the whole working of the press to an agent, is not liable to be punished under s. 292, I.P.C., for an obscene book printed in the press, unless it has been printed with his consent, knowledge or authority. MUMTAZ ALI v. EMPEROR, **35 P.R. 1905, Cr. = 171 P.L.R. 1905 = 2 Cr.L.J. 717.** (A.W.N. 1890, 175, *F.*; 18 P.R. 1889, Cr., *R.*)

Obscene Songs.

Dancing girls—Singing—Brothel—*See* BEN. ACT III OF 1906, s. 2, 6 C.L.J. 710 = 6 Cr. L.J. 423.

See PENAL CODE, s. 294, 4 B.H.C.Cr. 25.

Obscene Words.

Using obscene words—Omission to set out the words in evidence—*See* PENAL CODE, s. 294, 1 Weir 251.

Obscenity.

Test of—*See* PENAL CODE, s. 292, 15 Bom. L.R. 307 = 2 Bom. Cr. C. 58 = 19 Ind. Cas. 504 = 14 Cr. L.J. 248.

Obstructing Navigation.

Ben. Act V of 1864, s. 16—*Offence under*—*Obstructing the line of navigation.*—To render a person liable to punishment under s. 16, Act V (Bengal) of 1864, for obstructing the line of navigation of a Government canal, it must be shown that he wilfully obstructed the navigation. QUEEN v. KABIL MANJI, **2 B.L.R. A. Cr. 23 = 11 W.R. Cr. 18.**

Obstructing Public Road.

See NUISANCE UNDER CRIM. PRO. CODE.

See CANTONMENT CODE, 1899, s. 141, P.L.R. 1900, Cr., p. 52.

Obstructing Public Servant.

See PENAL CODE, s. 186.

(1)—*Penal Code*, s. 186—*Obstruction to search of house.*—A person objecting to the search of a house, without using force or threatening language, cannot be convicted of the offence of obstructing a public servant in the discharge of his public functions, under s. 186, I.P.C. QUEEN-EMPRESS v. GAVGAPPA, **2 Bom. L.R. 541.**

See PENAL CODE, ss. 225-B, 353, 28 C. 399 = 5 C.W.N. 413.

See SANCTION TO PROSECUTE, CONDITIONS REQUISITE FOR GRANT OF SANCTION, ETC., 31 C. 664.

Obstructing Right of Way.

See CRIM. PRO. CODE, 1898, s. 133.

See NUISANCE UNDER CRIM. PRO. CODE.

See NUISANCE UNDER PENAL CODE.

See PENAL CODE, ss. 186, 283, 290.

(1)—*Penal Code*, ss. 114 *and* 341—*Obstruction to right of way*—*Conviction for wrongful restraint*—*Power of Magistrate to order removal of obstruction*—*Crim. Pro. Code* (1898), s. 522.—*Held*, by the Full Bench (*Ameer Ali* and *Brett*, *JJ. dissenting*):—A Magistrate, while convicting an accused under ss. 341 and 114 of the Penal Code, for wrongfully restraining a person by the erection of a hut or by any similar acts of obstruction, cannot order that the hut or other means of obstruction should be removed. *Held*, by the Full Bench, that, as in the present case the offence was, on the finding, attended by criminal force and the complainant was dispossessed by reason of the obstruction complained of, the order of the Magistrate directing the removal of the obstruction should be maintained. *Held*, by *Ameer Ali* and *Brett*, *JJ.*, that a Magistrate has an inherent power to pass the order for removal of obstruction on conviction under s. 341, Penal Code, irrespective of the power under s. 522, Crim. Pro. Code. MOHINI MOHAN CHOWDHRY v. HARENDRA CHANDRA CHOWDHRY, **31 C. 691 = 8 C.W.N. 538, F.B. = 1 Cr. L.J. 463.** (5 C. W.N. 432, *Overruled.*)

(2)—*Proof of*—*Before prosecution*—*Measure of fine to be inflicted* — *Compensation*—*Penal Code*, s. 283—*Crim. Pro. Code*, s. 545.—It is necessary to prove a particular case of obstruction, before a prosecution under s. 283, Penal Code, for causing obstruction can be successful. A mere general allegation that the accused has, by erecting two posts made it impossible for carts to pass along an alleged road,

Obstructing Right of Way—*concluded.*

without any evidence that a particular cart or person has been obstructed is insufficient. A fine should be calculated according to the nature of the offence and the means of the offender, and not according to the expenses the complainant may reasonably or unreasonably incur on matters in some way connected with the offence. S. 545, Crim. Pro. Code, permits the Magistrate to order the whole or part of the fine recovered to be applied in defraying expenses properly incurred in the prosecution. MAUD ALLY v. QUEEN-EMPRESS, **1 L.B.R. 48.** (25 C. 275, *F.*)

Encroachment on a public street by raising pillars—Obstruction, removal of notice for—*See* BEN. ACT III OF 1899, cl. (18) of ss. 559, 561 (*b*), 631, 10 C.L.J. 623=14 C.W.N. 614=4 Ind. Cas. 259=10 Cr. L.J. 522=37 C. 545.

Obstruction.

Abuse, whether obstruction—*See* PENAL CODE, s. 186, 1 Weir 134=1 Weir 621.

Obstruction of Street.

Performance of music in a private place with the object of collecting crowd—*See* MAD. ACT V OF 1878, s. 71, cls. xi & xv, 14 M. 223=1 Weir 848.

Obstruction of Thoroughfare.

See NUISANCE UNDER CRIM. PRO. CODE.

See OBSTRUCTING RIGHT OF WAY.

Obstruction on Public Street.

See MAD. ACT V OF 1884, ss. 98, 100, 20 M. 1=1 Weir 140=1 Weir 797.

See PUN. ACT XX OF 1891, s. 164, 45 P.R. 1905, Cr.=189 P.L.R. 1905=3 Cr. L.J. 130.

See CANTONMENT CODE, 1899, Rule 141 (*d*), 5 Bom. L.R. 741.

Obstructions in Fairways Act.

See ACT XVI OF 1881.

Obstruction to Drain.

By tree blown down—*See* BEN. ACT III OF 1864, s. 57, 3 W.R. Cr. 33.

Removal—Limitation—*See* BEN. ACT III OF 1884, ss. 218, 353, 1 C.W.N. 492.

Obstruction to Highway.

See CRIM. PRO. CODE, 1898, s. 133, 28 A. 98=A.W.N. 1905, 202=2 A.L.J. 599=2 Cr. L.J. 517.

Dispute regarding a bund—Competency of Magistrate to order its removal—*See* CRIM. PRO. CODE, 1898, s. 147, 5 C.W.N. 67=28 C. 734.

When Magistrate can order removal of obstruction to right of way—*See* CRIM. PRO. CODE, 1898, s. 147, 5 C.W.N. 335.

Erection of building on public way—*See* JURISDICTION OF CRIMINAL COURTS—GENERAL, 11 W.R. 445.

See PENAL CODE, ss. 268, 290, A.W.N. 1906, 317=4 A.L.J. 44=4 Cr. L.J. 492.

See PENAL CODE, s. 283, 11 C.L.R. 462.

Obstruction to Public Thoroughfare.

See NUISANCE UNDER CRIM. PRO. CODE.

See OBSTRUCTING RIGHT OF WAY.

(1)—*Act V of* 1861, *s.* 34, *cl.* 5—*Obstruction to public thoroughfare.*—The construction of a shed for the purpose of selling goods cannot be held to be an offence under cl. 5, s. 34 of Act V of 1861, such a shed not being of the nature of a cow-shed, stable, or the like, to which the law refers. EMPRESS v. MURLI, **A.W.N. 1881, 61.**

See SECURITY TO KEEP THE PEACE—LIKELIHOOD OF BREACH OF THE PEACE, 13 P.R. 1889, Cr.

Occupant.

Right of—to be present at search—Denial of this right, effect of—*See* PENAL CODE, ss. 399, 402, 18 C.W.N. 498=41 C. 350=15 Cr. L.J. 385=23 Ind. Cas. 985.

Occupier.

See BEN. ACT III OF 1899, ss. 3, sub-s. (30), 408, 575, 622, sub-s. (3), 645, 14 Cr. L. J. 490=20 Ind. Cas. 746.

Occurrence Reports.

Public documents—Evidence Act, s. 74—Right of accused to copies before trial—*See* ACCUSED PERSON, 20 M. 189=2 Weir 763, F.B.=7 M.L.J. 167=2 Weir 120=2 Weir 142=2 Weir 144.

Police diaries and occurrence reports—Their evidentiary value—*See* CRIM. PRO. CODE, 1898, s. 172, 2 Weir 142.

Octroi Duties.

(1)—*Non-payment of Octroi — Absence of Municipal rules.*—Evasion of octroi is only an offence against Municipal rules; and, therefore, in a place where there are no rules in force under Act XV of 1867, the non-payment of octroi duty is not punishable. CROWN v. KALA SINGH, **24 P.R. 1872, Cr.**

On certain articles within Municipal limits—*See* BOM. ACT VI OF 1873, s. 84, 22 B. 843.

See PUN. ACT IV OF 1873, ss. 8, 14, 21, 43 P.R. 1888 Cr.

Offence.

See COGNISABLE OFFENCE.

See COMPOUNDING OFFENCE.

See CONTINUING OFFENCE.

See HIGH SEAS, OFFENCES COMMITTED IN.

See MUNICIPAL OFFENCE.

See RELIGION, OFFENCES RELATING TO.

See SENTENCE.

See UNNATURAL OFFENCE.

(1)—*Hoaxes and criminal acts, distinguished.*—As a general rule, there are many acts of deceit and folly which are criminal because of their dangerous results, and by no means to be excused as hoaxes. In discriminating between a hoax and mere deceits on one side, and

Offence—*continued.*

criminal offences on the other, the Courts ought to have regard to the general policy of the law. It is consistent with public policy that the state should be well served in all departments; it is the right and duty of the Government to secure fit men and to take precautions to prevent the offices being filled by the unfit. QUEEN-EMPRESS v. GANESH KHANDERAO, **13 B. 506.** [*R.*, 21 B. 517, Rat. Un. Cr. C. 564, Rat. Un. Cr. C. 792.]

(2)—*Penal Code*, *ss.* 109, 511--*Intention--Preparation—Attempt—Abetment.*—Mere intention not followed by an act cannot constitute an offence. An indirect preparation which does not amount to an act which can be held to be a commencement of the offence, does not constitute either a principal offence or an attempt or abetment of the same. QUEEN-EMPRESS v. BAKU, **24 B. 287 = 1 Bom. L.R. 678.**

(3)—*Offence—Meaning of.*--The word 'offence,' in s. 4 (*o*) of the Crim. Pro. Code includes an act, in respect of which a complaint may be made under s. 20, Cattle Trespass Act. *In the matter of* PONNUSAMI, **29 M. 517 = 5 Cr. L.J.** 86.

(4)—*Meaning of.*—The word 'offence' in the Whipping Act, 1864, is used in the same sense as in the Penal Code and denotes a thing made punishable by the Penal Code. QUEEN-EMPRESS v. NGA KYA GAING, **L.B.R. 1893——1900, 315.**

(5)—*Offence—What amounts to.*—Inability to give satisfactory account of oneself or want of ostensible means of subsistence does not amount to an offence. EMPEROR v. BUDDHU, **3 N.L.R. 51 = 5 Cr.L.J. 434.** [*R.*, 12 Cr. L.J. 60 = 8 Ind. Cas. 1181 = 6 N.L.R. 180.]

(6)—*Offence what amounts to.*—To oblige one's friend with invitations set upon gaol lithographic stones and struck off by gaol labour on Government paper is not a perfectly innocent act and can be readily distinguished from writing a private note on Government paper and sending it in a Government envelope. EMPRESS v. HANMANT RAO, **5 C.P.L.R. Cr.** 70.

(7)—*Civil or Criminal liability for an act depending upon intention—Duty of Criminal Courts.*—In cases where the civil or criminal liability for an act depends upon the intention of the person doing it, Criminal Courts ought not to enforce the institution of complaints in Criminal Courts, unless the act is clearly a criminal wrong. GULZAR v. EMPRESS, **50 P.R. 1887, Cr.**

(8)—*Breach of Excise Act provisions, if an offence—Penal Code, s.* 201.—A breach of the provisions of the Excise Act not being punished with so much as six months' imprisonment is not an offence within the meaning of s. 201, Penal Code. CROWN v. LA PYU, **1 L.B.R. 308.**

(9)—*Application under s.* 107, *Crim. Pro. Code.*—An application to take proceedings under s. 107, Crim. Pro. Code, 1882, is not an accusation of an offence. HAZARI MAL v. MEMAN MAL, **16 P.R. 1893, Cr.**

See ACT III of 1857, s. 14, 8 B.H.C. Cr. 22.

Illegal seizure of cattle, if an—*See* ACT I OF 1871, ss. 20, 21, 22, 23, L.B.R. 1872-1892, 515.

See ACT XXI OF 1879, s. 6, 26 M. 607 = 1 Weir 13 = 1 Weir 757.

See BUR. ACT III OF 1898, s. 163, L.B.R. 1893—1900, 628.

See U.P. ACT I OF 1895, 2 A.L.J. 411 = 2 Cr. L.J. 352.

See CRIM. PRO. CODE, 1898, s. 195 (1) (c), 12 Bom. L.R. 383 = 6 Ind. Cas. 529 = 11 Cr. L.J. 368.

See CRIM. PRO. CODE, 1898, s. 198, Colm. Dig. Cr. 28 of 1875.

What it includes—*See* EVIDENCE ACT, 1872, s. 122, 10 P.R. 1914, Cr. = 261 P.L.R. 1914 = 15 Cr. L.J. 613 = 25 Ind. Cas. 525.

See JURISDICTION OF CRIMINAL COURTS—JURISDICTION OVER NATIVES, 16 B. 178, 2 A. 218, F.B.

Person required to furnish security whether one charged with offence—*See* SECURITY TO KEEP THE PEACE—EVIDENCE AND PROCEDURE, 9 A. 452 = A.W.N. 1887, 111.

Offence before Penal Code came into Operation.

(1)—*Bom. Reg.* XIV *of* 1827, *s.* 1, *cl.* 1, *art.* 7—*Scope.*—Where the accused mortgaged a house which he had previously mortgaged to another, the claims of the prior mortgagee not having been satisfied at the date of the second mortgage, *held* that the case did not fall under the provisions of Bom. Reg. XIV of 1827. REG. v. ANAJI *valad* GOVINDRAM, **1 B.H.C. 93.**

(2)—*Forgery—Procedure in case of forgery.*—*Held* that in a case of filing a forged *vakalutnāmah* in a Civil Court before January 1st, 1862, the prosecution could only proceed by way of commitment by a Magistrate on the complaint of the party aggrieved. QUEEN v. ENAYET HOSSEIN, **5 W.R.Cr. 43.**

See ACT XVII OF 1862, 2 C. 225.

See ACT XVII OF 1862, ss. 1, 2, 4, 1 A. 599.

Offence committed in the High Seas.

See HIGH SEAS, OFFENCES COMMITTED IN.

See ACT IV OF 1880, 14 B. 227.

Offences against Special and Local Laws Act.

See MAD. ACT III OF 1865.

Offences, Howrah, Act.

See BEN. ACT XXI OF 1857.

Offences in Foreign States Act.

See ACT I OF 1849.

Offences, Newspapers Incitements to, Act.

See ACT VII OF 1908.

Offences on board British Ships on High Seas.

(1)—*Trial of British Seaman for offence committed on board a British ship on the high seas—Evidence taken on commission—Admissibility.*—Where a British Seaman charged with the murder of a fellow sailor on board a British ship on the high seas was tried by a Judge of the High Court, the Judge convicted and sentenced the prisoner, chiefly, on the evidence of the Captain and the Second Officer taken on commission by the Chief Presidency Magistrate. *Held*, on appeal, that the evidence so taken was admissible as against the prisoner. QUEEN-EMPRESS v. BARTON, **16 C.** 238. [*R.*, 24 C. 551.]

Offences relating to Documents.

See FALSE DOCUMENT.

See FALSE EVIDENCE.

See FORGERY.

See PENAL CODE, ss. 464 to 471.

(1)—*Penal Code, s.* 477—*Destruction of pottah.*—A pottah is a valuable security within the meaning of s. 477 of the Penal Code and to tear it up is destroying a valuable security. QUEEN v. NITTAR MUNDLE, **3 W.R. Cr. 38.**

Offence under Threat.

(1)—*Penal Code, s.* 94—*Proof requisite.*—To obtain the benefit of the exception allowed by s. 94 of the Penal Code, the prisoners must be shown to have been compelled to act as they did from apprehension that instant death would be the consequence of a refusal. QUEEN v. SONOO, **10 W.R. Cr. 48.**

Offender.

See ABSCONDING OFFENDER.

See HABITUAL OFFENDER.

See INSANE OFFENDER.

See JUVENILE OFFENDER.

See OLD OFFENDERS.

Offender, Harbouring an.

See PENAL CODE, ss. 212 to 214.

Offender, Screening an.

See PENAL CODE, ss. 212 to 214.

Offenders (Foreign), Fugitive, Act.

See ACT VII OF 1854.

Offensive Trade.

See BOM. ACT III OF 1867, r. 48, Rat. Un. Cr. C. 54 = Cr. Rg. 17-8-71.

See MAD. ACT III OF 1904, ss. 3 (8) and (22), 322 and 323, 4 M.L.T. 321.

Office of Karnam.

See MAD. REG. XXIX OF 1802.

Officer.

See JUDICIAL OFFICERS, LIABILITY OF.

See POLICE OFFICER.

See PUBLIC SERVANT.

Peon, whether an Abkari—*See* MAD. ACT I OF 1886, s. 62, 4 M.L.T. 107 = 18 M.L.J. 455.

Official Assignee.

Official Assignee—Not a Court—*See* CRIM. PRO. CODE, 1898, s. 195, 11 M.L.T. 391 = 14 Ind. Cas. 593 = 13 Cr.L.J. 241 = 1912 M.W.N. 536.

Official Public Book.

Whether evidence, of absence of entry—*See* EVIDENCE ACT, 1872, s. 35, 7 C.L.R. 356.

Official Register.

See PENAL CODE, s. 176, 10 O.C. 238 = 6 Cr. L. J. 301.

Official Secrets Act.

See ACT XV OF 1889.

Old Men.

Competency to be a witness of, and young children—*See* ACT X OF 1873, ss. 5, 6, 13, 11 A. 183 = A.W.N. 1889, 65.

Old Offenders.

(1)—*Crim. Pro. Code, s.* 348—*Procedure.*—Old offenders should ordinarily be charged before a First Class Magistrate. *In re* MARI NAICKEN, **2 Weir 422.**

See CRIM. PRO. CODE, 1898, s. 438 (1), Rat. Un. Cr. C. 704 = Cr. Rg. 35 of 1894.

Omission.

See ILLEGAL OMISSION.

See ACT X OF 1873, ss. 5, 67, 11 C.P.L. Cr. 16.

See EVIDENCE ACT, 1872, s. 118, 11 C.P L. R. Cr. 16.

Onus of Proof.

See BURDEN OF PROOF.

Opium.

(1)—*Illegal possession of* Beinchi (*or* pyaungchi), *when an offence.*—*Beinchi* or (*pyaungchi*) is now included in the definition of opium in r. I of the rules under the Opium Act, 1878. A registered consumer may therefore possess *Beinchi*, provided that the total weight of opium including *Beinchi* does not exceed three tolas. KING-EMPEROR v. ON BU, **4 L.B.R. 132** = **7 Cr. L.J. 410.** (L.B.R. 1872-1892, 617, *Overruled.*)

See CRIM. PRO. CODE, 1898, s. 109, L.B.R. 1872—1892, 246.

Opium Act.

See ACT XIII OF 1857.

See ACT I OF 1878.

Opium and Spirits, Duty on.

See BOM. REG. XXI OF 1827.

Order.

See ILLEGAL ORDER.

Absconding in order to avoid being served with a summons, notice or order—*See* PENAL CODE, s. 172, 2 C.L.J. 625 = 3 Cr. L.J. 117.

Order for Costs.

See CRIM. PRO. CODE, 1898, s. 148 (3), 9 C.W.N. 887 = 1 C.L.J. 331 = 2 Cr. L.J. 408.

Order in Council.

See AFRICA ORDER IN COUNCIL, 1889, 1892, 1893.

See MUSCAT ORDER IN COUNCIL.

See ZANZIBAR ORDER IN COUNCIL.

(1)—*St.* 6 *and* 7 *Vict.*, *c.* 94—*St.* 28 *and* 29 *Vict.*, *c.* 116—*St.* 29 *and* 30 *Vict.*, *c.* 87—*Order in Council of 9th August* 1866—*Person accused of having committed murder at Zanzibar—Case sent for trial to Bombay — Jurisdiction of Bombay High Court.*— The High Court of Bombay can try a prisoner charged with having committed a murder at Zanzibar, and sent by the British Consul there, to Bombay. EMPRESS v. DOSSAJI GULAM HUSEIN, **3 B. 334.**

Ordinance VI of 1914 (Commercial intercourse with enemies).

(1)—*S.* 3—*s.* 5, *cl.* (7), *Royal Proclamation prohibiting trade with enemy—Elements necessary to constitute offence—'Trading in,' meaning of, if necessarily involves handling of goods—'Destined for an enemy country,' meaning of—Penal proclamation, construction of—Principal and agent—Liability of principal for acts of agent—Conviction of abetment in appeal when charge framed for substantive offence only, propriety of.*—The accused was tried on three charges under s. 3 of Ordinance VI of 1914 for having contravened the provisions of s. 5, cl. 7, of the Royal Proclamation of the 9th September 1914, relating to trading with the enemy and convicted on the first and third charges and acquitted on the second. The accused was a member of a firm carrying on business in mica of which he was in charge. The firm had an agent at Genoa in Italy. The first charge was that he had traded in mica destined for a German firm in Germany and the third was that he had supplied to the agent in Italy a quantity of mica for and by way of transmission to a German firm. The mica, which formed the subject-matter of the first charge, had been shipped from India before the outbreak of the war but war having broken out the ship did not proceed beyond London. The accused instructed a London firm to take delivery of the mica which this firm did and this firm sold the goods and paid for them. It appeared that export of mica from England to an enemy country had been forbidden prior to the 14th October 1914, on which date the Ordinance was passed, and owing to such prohibition the mica in question was, after its arrival in London, incapable of being sent to Germany. The prosecution relied on certain correspondence between the accused and the agent in Italy to show that, with the authority of the accused, his agent had entered into an arrangement with a German Company under which the mica was to be transferred to them who were to pay for it and were awaiting its arrival, and but for the prohibition of the export of mica from England it would have been delivered to the enemy. The mica which formed the subject-matter of the third charge had also been shipped from India before the war but subsequently it was sold to a German

Ordinance VI of 1914 (Commercial intercourse with enemies)—*continued.*

firm by the agent in Europe without any instructions from the accused. *Held*—That the accused was liable for the act of his agent and was rightly convicted on the third charge. *Held, per Woodroffe* and *Greaves, JJ.* (*Beachcroft, J., differing*) —That the goods forming the subject-matter of the first charge were not on or after the date of the Ordinance destined for an enemy country and the conviction on that charge could not be sustained. That, assuming that the High Court had jurisdiction to entertain in appeal a charge of abetment of supplying goods to an enemy although no such charge was originally framed against the accused, this was not, under the circumstances, a case in which the Court should do so. *Per Greaves, J.*—Sub-cl. 7 of s. 5 of the Royal Proclamation of the 9th September 1914 deals only with goods actually in existence or capable of ascertainment and there must be an actual dealing with the goods themselves or with the documents of title thereto to constitute an offence under the third part of sub-cl. 7. The mere intention or desire to get goods for the enemy does not constitute an offence under the third part or sub-cl. 7 unless there are goods in existence or capable of coming into existence. To constitute an offence, there must be (*a*) definite ascertained goods in existence or goods capable of ascertainment which can be dealt with by the person accused, (*b*) they must be goods destined for the enemy or coming from the enemy, (*c*) there must be actual dealing in these goods. *Beachcroft, J.*—The term 'trade' in cl. (5), s. 7, does not necessarily involve handling of goods and the offence of trading may be complete without it. S. 5, cl. 7, has in view not only direct but also indirect means of supply. It contemplates four distinct acts any one of which may form closely or remotely part of the process of supply to an enemy or receipt from an enemy. The first is supply to or receipt from the enemy himself, the second is supply to an intermediary for transmission to the enemy, the third is the dealing in goods which are to be sent to the enemy or which have come from the enemy, the fourth is the carrying of goods to the enemy or from him. The terms of the section are wide enough to include trading between persons neither of whom is an enemy if the goods are intended to be sent to an enemy and also the case when one of the parties trading is an enemy. The term "trading" includes any commercial transaction between parties which has for its object the transfer of goods by purchase, sale, barter, or exchange. It is not necessary that goods should in fact pass. The term trading cannot be limited to cases where one of the parties is actually in physical possession of the goods. That in the present case the mere accident that the accused could not actually get the goods to his agent in Europe did not alter the fact that he was trading in them. The accused offered to an enemy firm goods which he thought he was in a position to send to them and he did all he could to get to them. This was trading.

Ordinance VI of 1914 (Commercial intercourse with enemies)—*continued.*

The phrase ' destined for an enemy ' cannot refer to the destination before the trading takes place but to what will be the destination as the result of the trading or after it has taken place. In the present case the accused in trading in the goods in question which formed the subject-matter of the first charge intended that they should go to Germany and the purchasing Company intended the same. The offence of the accused was therefore complete. *Woodroffe, J.* —' Destined ' means ' going to ' that is, ' on the way to an enemy country ' but when used in connection with the word ' trading ' it is not limited to that sense but is equivalent to the term ' intended for.' *Greaves, J.*—The Royal Proclamation is a penal proclamation and it must be construed strictly and the conviction of the accused can only be upheld if he be shewn to have actually and in fact done one of the acts thereby forbidden and it is not sufficient for the prosecution to show that he so acted as to show himself willing to do any of the acts forbidden by the Proclamation, and unless he in fact actually did one of the acts or possibly aided or abetted any such act, the accused cannot be convicted thereunder. *Woodroffe, J.*—The Ordinance is not retrospective and the only facts at which the Court could look for the purpose of establishing the offence with which the accused was charged were such as took place after it was enacted. The other facts were only relevant as establishing the circumstances under which it was alleged that it became possible to do the act constituting the offence, unless they also amounted to ratification of acts done and directions given prior to the date of the publication of the Ordinance. *Greaves, J.*—That ordinarily a person is not criminally liable for an act or omission unless he has himself committed or omitted the act or authorised or known of or shut his eyes to the commission or omission, and the condition of mind of an agent is not imputed to the master or principal so as to make him criminally liable, and a master is not criminally liable merely because his agent commits a wrongful act. But in cases where a particular intent or state of mind is not of the essence of the offence, the acts or defaults of an agent in the ordinary course of his employment may make the master or principal criminally liable, although he was not aware of such acts or defaults and even when they were against his orders. To constitute an offence punishable under the Proclamation a particular intent or state of mind is not necessary. It is sufficient to constitute an offence by the principal that the act has been committed by the agent even though not expressly authorised by the principal. *Beachcroft and Greaves, JJ.*—The nature of the instructions given by the accused, warning his agent against the sale of the goods to the enemy, could not affect his liability for acts done by the agent and forbidden by the Proclamation, but only affected the punishment to be awarded. *Beachcroft, J.*—That even if the charge for the substantive offence failed, the accused could in appeal be convicted of abetment of supply of goods to an enemy although no such charge was originally framed against him. That instigation constituting abetment is not limited to the person from whom the proposal first comes and the fact that in this case the proposal to sell goods to the enemy came to the accused from his agent could not affect his liability. *Greaves, J.*—It is doubtful whether a conviction for an offence can be altered in appeal into a conviction for abetment of that offence. *Woodroffe, J.*—It is not a universal rule that in no case can there be a conviction for abetment when the charge was only for the principal offence. It is in the discretion of the Court whether it should allow fresh charges being tried in appeal. INDRA CHAND v. KING-EMPEROR, **19 C.W.N. 1239.**

Ostensible Means of Livelihood.

Playing ring game if—*See* CRIM. PRO. CODE, 1898, ss. 109, 118, 17 C.W.N. 883 = 40 C. 702 = 14 Cr.L.J. 452 = 20 Ind. Cas. 612.

Oudh Acts.

See ACTS—U. P. ACTS.

Out-ports Landing and Shipping Fees Act.

See MAD. ACT III OF 1885.

Overseer.

Of the Public Works Department not a public servant lawfully empowered to promulgate an order—*See* PENAL CODE, ss. 188, 430, 8 Ind. Cas. 302 = 1910 M.W.N. 616 = 9 M.L.T. 42.

Owner.

Bustee land—Debutter property—Shebait not in possession, if an—*See* BEN. ACT III OF 1899, ss. 3 (32), 408, 574, 575, 17 C.W.N. 1084 = 21 Ind. Cas. 169 = 14 Cr.L.J. 569.

Ownership.

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY.

See POSSESSION.

See TITLE.

(1)—*Ownership and possession.*—Ownership and possession of immoveable property are not so easily separated as ownership and possession of moveable property. KING-EMPEROR v. NAWTARA SINGH, **U.B.R. 1904, 1st Qr., Penal Code, 7 = 1 Cr. L.J. 558.** (U.B.R. 1897—1901, 137, L.B.R. 1903, 65, *R.*)

Questions of—between Government and private persons—*See* JURISDICTION OF CIVIL COURTS, 28 M. 304 = 2 Cr. L.J. 754.

Money entrusted to broker—Broker to bear all loss—Trustee—Agent—*See* PENAL CODE, s. 405, 15 Cr. L.J. 452 = 24 Ind. Cas. 332 = 7 Bur. L.T. 209, F.B.

Panchayat.

Refusal to serve as member of—*See* ACT VII OF 1878, s. 78, 22 B. 769.

Panchayat—*concluded.*

Confession to a panchayat, admissibility of —*See* CONFESSION—CONFESSIONS OBTAINED BY INDUCEMENT, THREAT, ETC., 4 A. 46=9 C.W.N. 474=2 Cr. L.J. 255.

Defamatory statement made before Panchayat—Privilege—*See* DEFAMATION, 7 M. 36=1 Weir 610.

Confession made after inducement from a member of the—*See* EVIDENCE ACT, 1872, s. 24, 4 Bom. L.R. 785.

Confession made before a—*See* EVIDENCE ACT, 1872, s. 24, 11 C.W.N. 904=6 Cr. L.J. 154.

Panchayats, disputed Boundaries.

See MAD. REG. XII OF 1816.

Panchnama.

See BOM. ACT IV OF 1890, ss. 52 (2), 65, 22 B. 970.

Search-list — Relevancy — Evidence — *See* CRIM. PRO. CODE, 1898, ss. 164, 103, 5 S.L.R 31=12 Ind. Cas. 209=12 Cr. L.J. 489.

See EVIDENCE—GENERAL, 7 Bom. L.R. 978=3 Cr. L.J. 41.

Statement of accused contained in—Admissibility — *See* EVIDENCE—NON-ADMISSIBILITY IN EVIDENCE, 13 Bom. L.R. 499=11 Ind. Cas. 613=12 Cr. L.J. 429.

Paper-currency, Act.

See ACT XX OF 1882.

Pardanashin Woman.

See CRIM. PRO. CODE, 1898, s. 503—*See* WOMEN.

(1)—*Evidence of* 'ghosha' *women, when to be taken.*—The evidence of *ghosha* women should only be taken in cases where the ends of justice cannot be otherwise attained. The Court must adjourn to some place where she can come, and examine her behind a *purdah* in the presence of the accused, the Judge taking such precautions as he can to secure her identity. HIGH COURT PROCEEDINGS, 12TH SEPTEMBER 1862, **2 Weir 432.**

(2)—Purdanashin *women*—Ghosha *women, examination of — Duty of Court to afford facilities—Examination near Court in house secured by witness—Practice.*—*Ghosha* women, who are cited by parties as witnesses, need not be compelled to attend Court for the purpose. If the witness secures a house or room near the Court house, her evidence may be recorded there, regard being had to *Ghosha* being preserved. *In re* MAN BHOY, **12 Cr. L.J. 501=12 Ind. Cas 221.** (24 C. 551, *R.*)

(3)—*Examination of* pardanashin *lady, when and where to be conducted.*—Although there is no provision in the Crim. Pro. Code which protects *pardanashin* ladies from appearing in a Court of justice, nevertheless, it is very undesirable to compel the attendance of such persons. But it would be weakness to surrender as a general principle to be adopted in all cases that *pardanashin* ladies whose evidence

Pardanashin Woman—*continued.*

is required in criminal trials are to be allowed to compel the Court to examine them at some other place than the Court house itself. If it becomes imperatively necessary to take the evidence of a *pardanashin* lady, the Magistrate should make arrangements so as to take her evidence either in an empty Court room in the presence of himself, the accused and his pleader and the pleader for the prosecution, if there be any, or, if no empty Court-room is available, in his own private room, or some other room in the Court building. *In the matter of the petition of* BASANT BIBI, **12 A. 69=A.W.N. 1889, 202.** (15 C. 775, 5 A. 92, *R.*) [*R.*, 24 C. 551, 168 P.L.R. 1903=19 P.R. 1903, Cr.]

(4)—Pardah *woman—Her personal appearance when to be dispensed with—Issue of summons in warrant case—Magistrate's power to cancel warrant and substitute summons—Personal appearance when to be enforced—Crim. Pro. Code, ss.* 75 (2), 205 *and* 353.—*Held*, that, unless and until a Magistrate has good reason to believe that there is a strong likelihood of the charge being proved, an accused, if she be really a *pardah* woman of good position, should not ordinarily be compelled to appear in person in the first instance. *Held* also, that, although a case may be one in which a warrant may be issued in the first instance, it is not necessary for the Magistrate to do so and that, under s. 75 (2) of the Code of Criminal Procedure, he is at full liberty to cancel at any time a warrant and substitute a summons. *Held further*, that, if a Magistrate sees fit to issue a summons, he can act under s. 205, Crim. Pro. Code, and dispense with the personal appearance of the accused, until he considers that the case has reached a stage at which the presence of the accused is necessary, when he can compel it by proper process. MUSSAMMAT PREM KUAR v. MAI SHAM NATH, **20 P.W.R. 1908, Cr.=8 Cr. L.J. 454.** (6 A. 59, 21 C. 588, *F.*)

(5)—*Crim. Pro. Code* (1882), *ss.* 204 *and* 205 —*Warrant case—Personal attendance*—Pardanashin *woman—Discretion of Court.*—A Magistrate can, under s. 204 of the Code, exercise his discretion in a warrant case and issue a summons instead of a warrant. According to s. 205, whenever a Magistrate issues a summons, he may if he sees reason to do so, dispense with the personal attendance of the accused and permit him to appear by his pleader. A Magistrate may, therefore, if he has reasons to do so, dispense with the personal attendance of a *pardanashin* woman charged with defamation. BASUMOTI ADHIKARINI v. BUDRAM KALITA, **21 C. 588.** [*R.*, 19 P.R 1903, Cr.=168 P.L.R. 1903, 8 Cr. L.J. 454=20 P.W.R 1908, Cr.]

(6)—*Exemption from attendance—Crim. Pro. Code* (*Act* V *of* 1898), *s.* 506—*Commission for examination of witnesses* —Though *pardanashin* women and ladies, who lead a life of seclusion, cannot claim, as a matter of course, to be examined on Commission, the Court should issue Commission for their examination, in

Pardanashin Woman—*continued.*

cases where their presence in Court is not absolutely necessary. CROWN v. CHATRANBAI, **9 Cr. L.J. 249 = 1 S.L.R. 5, Cr.**

(7)—*Right to be examined on commission.*—A *pardanashin* lady has a right, as a witness in a criminal case, to be exempted from personal attendance at Court and to be examined on commission. *In the matter of* HURRO SOONDERY CHOWDHRAIN, **4 C. 20 = 3 C.L.R. 93** [*R.*, 24 C. 551 ; *Disappr.*, 5 A. 92.]

(8)—*Commission—Issue of, for examination of witnesses*—Pardanashin *woman—Issue of commission or examination in chambers—Proper course.*—In suitable cases, the District Magistrate has power to issue a commission for the examination of witnesses. In the case of *pardanashin* women cited as witnesses, the better course would probably be for the Magistrate to examine them in chambers after making proper provision for maintaining their *parda.* IMPERATOR v. MEWARAM, **4 S.L.R. 257 = 11 Ind. Cas. 582 = 12 Cr. L.J 398.**

(9)—*Crim. Pro. Code* (1882), s. 205—Pardanashin *woman as accused person—Personal attendance.*—Where *pardanashin* women are accused of an offence, the Magistrate may, on their application, dispense with their personal attendance and allow them to appear in Court by their pleaders, until he has before him some legal and satisfactory evidence indicative of some or all of them having committed a breach of criminal law, when it will be time enough to require them to appear personally. *In the matter of the petition of* RAHIM BIBI, **6 A. 59 = A.W.N. 1883, 207.** [*R.*, 20 P.W.R. 1908, Cr.]

(10)—*Privileges of, as witnesses—Attendance in Court.*—Privileges of *pardanashin* ladies when attending Court in palanquins as witnesses considered. The general rule is that the lady should be admitted into Court in her palanquin, and give her evidence in it, after being properly identified. QUEEN v. JOHN BLESSINGTON ROBERTS, **1 B.L.R. S.N. 5.**

(11)—*Examination of—Mode of.*—A *pardanashin* lady, a witness in a case, was placed in a passage screened from the direct view of the Court, which, however, sat close by ; her voice was perfectly audible. A sworn interpreter, who was a member of the family, was so stationed that he could see the lady all the time. The prisoner did not raise any objection at the hearing to this procedure. *Held*, that the provisions of s. 353, Crim. Pro. Code, had been complied with. HASSAN KHAN v. EMPRESS, **41 P R. 1887, Cr.** [*Appr.*, 19 P.R. 1903, Cr.]

(12)—*Attendance in Court.*—The Court will extend the privileges of *parda* to women who, though not *parda*, are not accustomed generally to appear before the public. KISTOMOHUN MOOKERJEE v. ADERMONY DABEE, **2 Hyde 88.**

(13)—*Irregularity in mode of examination prejudicing the accused.*—The complainants being *pardanashin* ladies, the Magistrate took their depositions in their abode in the presence of the accused ; but the latter had no opportunity of cross-examining the ladies as they were in a shut-up room. *Held*, that the Magistrate's procedure was unusual and uncalled for, and that the accused was prejudiced by the way in which the complainant's examination was taken. In such a case, the Magistrate should have called upon the complainants to make their charge through some one who knew the facts. *In re* JUDOO NUNDON LALL, **24 W.R. Cr. 22.**

(14)—*Attendance in Court—Identification.*—Where a *pardanashin* woman can be examined in Court in a *palki* or otherwise on a proper identification, there should be no examination by commission. NUSRUT BANOO v. MAHOMED SAYEM, **18 W.R. 230.**

Complaint by—Duty of Magistrate—Whether complainant may be examined by Commission—*See* CRIM PRO. CODE, 1898, ss. 192, 200, 503, 15 Cr.L.J. 348 = 23 Ind. Cas. 700 = 18 C. W.N. 1020.

See CRIM. PRO. CODE 1898, ss. 200 and 488, S.C. 142, Oudh.

See CRIM. PRO.CODE, 1898, ss. 205, 438 and 489, 5 P.W.R. 1909, Cr. = 9 Cr. L.J. 158 = 1 Ind. Cas. 101.

Placed on trial — Dispensing with their personal attendance in Court—*See* CRIM. PRO. CODE, 1898, ss. 205, 526, 17 C.W.N. 1248.

See EVIDENCE ACT, 1872, s. 33, 2 Weir 755 = 4 M.H.C. App. 15.

See MAINTENANCE, 19 P.R. 1903, Cr. = 168 P.L R. 1903.

See REVISION—MATTERS PERTAINING TO EVIDENCE, 24 C. 551 = 1 C.W.N. 333.

See WRONGFUL RESTRAINT, 24 C. 885.

Pardon.

See ACCOMPLICE.

See ACCUSED PERSON.

See APPROVER.

See COMMITMENT TO SESSIONS COURT.

See CONFESSION.

See CRIM. PRO. CODE 1898, ss. 337 to 339.

(1)—*Promise of indemnity and pardon — Legality.*—Where, in a case of bribery, the *Mamlatdar*, who tried the case, promised indemnity and refund of money to the persons who subscribed for the fund for bribing the public servant, if they would depose to what they knew, *held*, that there was no authority, except the Legislature, competent, in time of quiet when the Courts are open, to suspend the ordinary operation of the law of crimes or disabilities. Under the Crim. Pro. Code, judicial pardons can be tendered only in certain cases and by officers of a rank higher than the *Mamlatdars.* The pardon is offered on condition only of a full and true disclosure of which the Court is the Judge. It is very possible that in some of these cases, the Magistrates may have been perplexed by the difficulty of ascertaining the truth where there is evidence of

Pardon—*continued*.

general corruption ; but this difficulty is not a reason for straining any law of evidence, or for promising indemnities without the limitation which the Legislature has found expedient. Honest objects may not be attained by breaking the law. QUEEN-EMPRESS v. CHAGAN DAYARAM, **14 B. 331.** [*R*., 19 B. 363, 35 M. 247 = 13 Cr L.J. 305 = 14 Ind. Cas. 849 = 22 M. L.J. 490 = 11 M.L.T. Sup. 1 = 1912 M.W.N. 207, 13 Cr. L.J. 352 = 14 Ind. Cas. 896 = 12 M. L.T. 1 = 1912 M.W.N. 549, Rat. Un. Cr. C. 776, Rat. Un., Cr. 795.]

(2)—*Crim. Pro. Code* (1872), s. 349—*Tender of pardon—Breach of conditions.*—The accused accepted the tender of a pardon from the committing Magistrate, and gave evidence, before the Sessions Court, but as the Sessions Judge and the assessors considered that he had wilfully concealed essential facts, the Sessions Judge at once ordered him to be placed in the dock and convicted him on his own plea of guilty. *Held* that the conviction was illegal and must be quashed, as the Sessions Judge was not competent to take cognizance of the offences without a commitment as directed under s. 349. QUEEN-EMPRESS v. KUSHYA ; QUEEN-EMPRESS v. VITHALBHAT, **Rat. Un. Cr. C. 119 = Cr. Rg. 31-1-1877.**

(3)—*Crim. Pro. Code* (1882), *s.* 338—*Scope.*—The word "supposed" in s. 338, Crim. Pro. Code, only excludes those who have been actually convicted and, therefore, the tender of a pardon to a person or persons who had pleaded guilty but were not convicted, is not prohibited under the section. QUEEN-EMPRESS v. BHAGYA, **Rat. Un. Cr. C. 750.**

(4)—*Crim. Pro. Code* (1882), *ss.* 337, 529—*Power of Magistrate to tender pardon.*—While a case of dacoity was being enquired into by the Magistrate of Muttra, one of the accused presented himself before the Magistrate of the neighbouring District of Etah and managed to obtain a pardon from that Magistrate. He pleaded this in bar of his conviction by the Magistrate of Muttra. *Held*, that, as the Magistrate of Etah was not the Magistrate before whom the offence of dacoity was under enquiry, and as he was not one of the other persons mentioned in s. 337, he was not competent to tender the pardon and his action was not covered by s. 529. QUEEN-EMPRESS v. CHIDDA, **20 A. 40 = A.W.N. 1897, 173.** [*D*., 5 A.L J. 691 = A.W.N. 1908, 259 = 8 Cr. L.J. 445]

(5)—*Case triable by District Magistrate as well as Sessions Judge—Magistrate empowered to tender pardon—Crim. Pro. Code* (1882), *s.* 337.—A Magistrate in Lower Burma can tender pardon to a person accused of the offence of dacoity, which is triable by the District Magistrate as well as by the Sessions Court. THA DUNG E v. QUEEN-EMPRESS, **L.B.R. 1872-1892, 586.**

(6)—*Crim. Pro. Code* (1882), *ss.* 337 *and* 338—*Pardon by Sessions Judge, when not tenderable—Tender of pardon, in what cases illegal.*

Pardon—*continued*.

—In respect of an offence not "triable exclusively by a Court of Session," a Sessions Judge is not competent to tender a pardon. QUEEN-EMPRESS v. SADHEE KASAL, **10 C. 936.** [*F*., 10 M.L.J. 147, F.B. : *R*., L.B.R. 1893-1900, 642.]

(7)—*Tender of pardon in what cases illegal.*—The tender of pardon to a person charged with an offence not exclusively triable by a Court of Sessions is not warranted by s. 337, Crim. Pro. Code, and is illegal. NABI BUKSH v. EMPEROR, **12 P.R. 1902, Cr. = 100 P.L.R. 1902.** (38 P.R. 1887, Cr., 1 B. 610, 2 A 260, 10 B. 190, *R*.; 16 B. 661 = 10 C.L.R. 553, *D*.) [*F*., 9 P.R. 1906, Cr.; *R*., 21 P.R. 1904, Cr.; *D*., 8 P.R. 1904, Cr.]

(8)—*Tender of—Illegal trial.*—At the commencement of a trial upon a capital charge, the Sessions Judge tendered a pardon to C, one of the three accused, which was accepted, but after hearing a few words of the statement of C, the Judge withdrew the tender and put C back into the dock and tried him with the other two accused. *Held*, that the Code of Criminal Procedure does not contemplate such withdrawal of a tender of pardon, and that the trial of C was, therefore, under the circumstances, illegal and must be set aside. CHOKHE v. KING-EMPEROR, **6 O.C. 236.**

(9)—*Crim. Pro. Code* (1898), *s.* 339—*Approver—Withdrawal of pardon after examination of some witnesses for the prosecution—Committal to Sessions.*—An order committing a person to take his trial at the Court of Sessions is an order which is passed to his prejudice, and the evidence upon which such an order is made must be the evidence of witnesses whom the accused person has had an opportunity of cross-examining. Where an order withdrawing the pardon of a person and directing that he should be treated as an accused person was made after some, at least, of the evidence in the enquiry preliminary to commitment had been taken, and as regards the evidence it was admitted that he had no opportunity of cross-examining, *held*, that he should not be committed along with the other accused to the Sessions. *Held*, further, that he could be tried by the Sessions Judge along with the other prisoners, if he was committed to the Sessions in time, and that it was not necessary that he should be tried separately. QUEEN-EMPRESS v. BRIJ NARAINMIAN, **20 A. 529 = A.W.N. 1898, 152.** (14 A. 336, 14 A. 502, *R*.) [*F*., 29 A. 24 = 3 A.L.J. 615 = A.W.N. 1906, 258 ; *R*., 24 M. 321, 5 A.L.J. 691 = A.W.N. 1908, 259 = 8 Cr. L.J. 445, 3 Ind. Cas. 922 = 10 Cr. L.J. 418 = 5 N. L.R. 134, U.B.R. 1907, 4th Qr., Cr. P.C. p. 7 = 14 Bur. L.R. 306 = 7 Cr. L.J. 245.]

(10)—*Crim. Pro. Code* (1898), *s.* 337—*Oral sanction of District Magistrate—Pardon—Legal—Statement on oath of approver—Admissible against him when pardon forfeited—Joint trial—Irregularity.*—There is no provision of law in the Crim. Pro. Code which lays down that an approver to whom a pardon has

Pardon—*continued.*

been tendered, and who does not fulfil the conditions on which the pardon was tendered, cannot be tried at the same trial with the other accused. Where, therefore, an approver whose pardon was forfeited was tried along with the other accused, *held*, that the joint trial did not vitiate the proceedings. The provisions of s. 337 of the Code are very salutary provisions, the neglect of which may lead to difficulties. But where a confession was made before a Magistrate, who, with the oral sanction of the District Magistrate, tendered, the accused confessing his guilt, a pardon which was accepted but which was subsequently withdrawn, *held*, that the statement made by such an approver on oath could be used in evidence against him when he was subsequently tried. *Held*, further, that the tender of pardon, although irregular, was legal. SULTAN KHAN AND OTHERS v. KING-EMPEROR, **5 A.L.J. 691=A.W.N. 1908, 259 =8 Cr. L.J. 445.** (20 A. 40, *D.*)

(11)—*Crim. Pro. Code* (1898), *s.* 339—*Approver, trial of—Pardon, plea of—Full and true disclosure, not a condition precedent to pardon—Procedure—Onus of proof—When pardon is forfeited— Effect of withdrawal of pardon.*—Under s. 339, Crim. Pro. Code, 1898, there is no necessity for withdrawal of the pardon and such withdrawal has no effect. After the approver has given his evidence, the prosecution can proceed against him if they choose, and he can plead pardon in bar of the trial. The use of the word "forfeited" in s. 339, Crim. Pro. Code, shows that the approver's failure to make a full and true disclosure is a condition for subsequent determining or forfeiting the pardon. It is for the prosecution to prove that the pardon has been forfeited. The transaction is one of the utmost good faith, and the approver commits a breach of the condition, if he fails to make a full and true disclosure throughout. Where a pardon has been tendered, and the approver is afterwards put on trial, he should be asked if he relies on it, and if he says "yes," which is a plea of pardon, the issue as to the pardon should be tried first. The law as to pardon discussed and traced. KULLAN v. EMPEROR, **32 M. 179=9 Cr. L.J. 571 =2 Ind. Cas. 343.** (24 M. 321, *Cons.*; 14 A. 336, *Foll.*; 27 C. 137, 25 B. 675, 30 B. 611, *Foll.*) [*Appr.*, 11 Cr. L.J. 702=8 Ind. Cas. 721=37 C. 845=15 C.W.N. 25; *R.*, 33 M. 514 =7 M.L.T. 121=5 Ind. Cas. 831=M.W.N. 1910, 5, 11 Cr. L.J. 254.]

(12)—*Crim. Pro. Code, ss.* 337 (2) *and* 339—*Accused accepting pardon—Examination of accused—Refusal to testify—Commitment when to be quashed.*—An accused accepting a pardon must under s. 337 (2) be examined and then dealt with under s. 339 if necessary. But he ought not to be put back into the dock, when he showed an intention of not giving the evidence which he had led the prosecution to expect. A prisoner to whom a pardon has been tendered should, if tried at all, be tried separately and after the trial of the other accused is

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over. Where the result of putting him back into the dock is that the statement which he has made as an accused person can be taken into consideration against the other accused, and this statement has proved to be in effect the same as that which he was expected to make when a pardon was tendered him, the commitment of all the accused must be quashed and fresh inquiry held at which the accused who was pardoned should be examined as required by s. 337 (2) of the Code. *In re* ARUNACHELLAM, **3 M.L.T. 407=31 M. 272=8 Cr. L.J. 153.**

(13)—*Crim. Pro. Code* (1898), *s.* 337—*Power to withdraw pardon.*—*Held*, that the District Magistrate trying the case is competent to withdraw a pardon granted to the accused by the additional Magistrate during the course of the enquiry. EMPEROR v. ABDU SHAH, **149 P. L.R. 1901.** (1 P.R. 1898, Cr., 19 P.R. 1901, Cr., 24 C. 492, Cr., *R.*)

(14)—*Grant of pardon to be taken on ample grounds—Hope of pardon and of becoming an approver—Withdrawal of pardon.*—The grant of a pardon to a man, who implicates himself and others in a murder, is not a mere incident in a case to be lightly agreed to as a means of saving further trouble, but is a serious step to be taken only on ample grounds and with a clear recognition of the risk which it involves of allowing an offender to escape just punishment at the expense of possibly innocent men. Without any certainty that the facts of a crime could not otherwise be ascertained, the too common course of trying to induce suspected men to bid against each other as to who should make the fullest disclosures in the hope of obtaining a pardon and being allowed to turn an approver should not be encouraged. Where the circumstances justify that step, the withdrawal of pardon is an equally serious measure, the necessity for which cannot ordinarily be determined until the trial has been completely held. GHULAM MAHOMED v. CROWN, **4 P.R. 1903, Cr.=52 P.L.R. 1903.** [*R.*, 41 P.R. 1905, Cr.]

(15)—*Crim. Pro. Code* (1898), *s.* 337—*Approver—Tender of pardon—Breach of conditions of—Commitment and trial with co-accused—Legality—Procedure to be followed.*—*Held*, that no action can be taken against a person, who has accepted a pardon, for breach of the conditions on which the pardon was tendered, until after the case in the Court of Sessions is concluded. The proper procedure to be followed in his case would be to detain him in custody till the trial of his co-accused in the Court of Session is concluded, and to begin thereafter proceedings *de novo* against him. EMPEROR v. MOHAN, **5 N.L.R. 134=3 Ind. Cas. 922=10 Cr. L.J. 418.** (13 C.P.L.R. 123, *F.*)

(16)—*Tender of conditional pardon—Breach of conditions.*—A person, who has accepted a pardon, can only be proceeded against for a breach of the condition on which the pardon was tendered after the conclusion of the Sessions

Pardon—*continued.*

trial. EMPRESS v. PAWAN, **13 C.P.L.R. Cr. 123.** (23 B. 493, 27 C. 137, 14 A. 336, *R.*) [*F.*, 10 Cr. L.J. 418 = 3 Ind. Cas. 928 = 5 N. L.R. 134.]

(17)—*Crim. Pro. Code* (1898), *ss.* 337 *and* 339—*Evidence given by approver in preliminary inquiry—Revocation of pardon—Necessity for examining approver in the Sessions—Impropriety of putting the approver for trial in the same proceedings with his co-accused.*—An accused person, who accepts a pardon, forfeits his pardon by wilfully concealing a material fact or by giving false evidence. If this is clearly shown to be the case, after the accused has given evidence in the preliminary inquiry, it is not necessary that he should be examined as a witness in the Sessions Court; and, consequently, his incriminating statement may be used against him, although he has not been so examined. To commit the approver for trial on evidence taken before he was put back into the dock, without re-examining the witnesses, or giving him an opportunity of cross-examining them, is an irregularity that is calculated to prejudice the accused. The proper course, in taking action against an approver, is to take no proceedings against him till after his co-accused have been tried. It is not proper to put an approver back into the dock and to convict him for trial in the same proceeding with his co-accused. DGA PO HNAN v. KING EMPEROR, **U.B.R. 1907, 4th Qr. Crim. Pro. Code 7 = 7 Cr. L.J. 245 = 14 Bur. L.R. 306.** (14 A. 336, 502, 20 A. 529, 23 B. 493, 25 B. 675, 24 M. 321, *R.*) [*R.*, 20 Ind. Cas. 225 = 7 L.B.R. 1 = 14 Cr.L.J. 401.]

(18)—*Crim. Pro. Code (Act* V *of* 1898), *s.* 339—*Pardon tendered by District Magistrate and accepted by approver—Sessions Judge ordering commitment of approver on his retracting his statement—Legality of commitment.*—In a case triable exclusively by the Court of Sessions, an approver was offered a pardon on condition of his making a true statement of the facts of the case. The approver accepted the pardon and made a statement which he afterwards retracted. The Sessions Judge trying the case ordered the approver to be committed to the Court of Sessions for not fulfilling the condition on which the pardon was granted. It was contended that the pardon could be withdrawn by the District Magistrate only and therefore the commitment by order of the Sessions Judge was illegal. *Held*, that the contention had no force. The Sessions Judge was competent to order the approver to be committed to the Court of Session, when he was of opinion that he had forfeited the pardon. No withdrawal of pardon is necessary before the approver is ordered to be tried for the original offence in respect of which the pardon was granted. CROWN v. KADU, **176 P L.R. 1905 = 31 P R. 1904, Cr. = 1 Cr. L.J. 1082.**

(19)—*Crim. Pro. Code (Act* XXV *of* 1861), *s.* 209—*Bom. Act* III *of* 1866—*Gaming—Tender of pardon by Magistrate.*—A Magistrate has no jurisdiction to tender a pardon in a case to be tried by himself. S. 209 of the Crim. Pro. Code permits such tender only in cases triable by a Court of Sessions. REG v. REMEDIOS, **3 B. H.C. Cr. 59.** [*R.*, 2 A. 260, 33 C. 1353 = 4 Cr. L.J. 145 = 10 C.W.N. 962 = 25 M. 247 = 22 M. L.J. 390 = 11 M.L.T. 1 = M.W.N. 1912, 207; *D.*, 16 B. 661.]

(20)—*Accomplice making statement after tender of pardon without knowing that pardon had been withdrawn—Admissibility—Evidence Act, s.* 25.—Any statement made by an accomplice, while in police custody as a suspect, in consequence of a tender of pardon by an Assistant Commissioner acting in his executive capacity, though professing to act under s. 337, Crim. Pro. Code, was held to be inadmissible against him; nor would any further statement made by him in any stage of the proceeding, be admissible, so long as it did not appear that he had realized that the tender of pardon had been finally withdrawn. BAIDULLA v. EMPRESS, **10 P.R. 1895, Cr.**

(21)—*Approver—Withdrawal of pardon—Subsequent trial—Plea of not guilty.*—Strictest faith should be kept with an approver and his mere failure to secure the conviction of an accomplice does not justify the withdrawal of the pardon and the trial of the approver. In a subsequent trial of the approver to whom a pardon had been tendered and had been withdrawn, it is open to him to plead "not guilty" on the ground that he has made a full and true disclosure. HABIBULLA v. EMPRESS, **15 P. R. 1895, Cr.** (6 P.R. 1889, Cr. F.B., *R.*)

(22)—*Tender of—Jurisdiction—Crim. Pro. Code, s.* 337.—The words "triable exclusively by a Court of Sessions," mean an offence shown in the schedule as so triable. A charge under s. 395, Penal Code, does not cease to be an offence "triable exclusively by a Court of Sessions," merely because the charge is triable by, and in fact had been tried by a District Magistrate, under s. 30, Crim. Pro. Code, 1882. BHALLU SINGH v. EMPRESS, **3 P.R. 1897, Cr.**

(23)—*Crim. Pro. Code* (1882), *ss.* 337, 339—"*The offence under enquiry,*" *term explained.*—The word "enquiry" is meant to include everything done in a case by a Magistrate, whether the case has been challaned or not. Therefore, when a case has been reported to a Magistrate by the Police and he is asked to tender a pardon and does so, there is an "enquiry" within the meaning of s. 337, Crim. Pro. Code. BHALLU SINGH v. EMPRESS, **3 P.R. 1897, Cr.**

(24)—*Crim. Pro. Code* (1882), *s.* 337, *cl.* 4—*Scope of the clause.*—The disqualification created by the last para of s. 337 applies only to that Magistrate before whom the suspected person is brought face to face, and who attempts to induce him by promise of pardon to make a full and true disclosure, the examination referred to in the said paragraph being the one made on the tender of the pardon and directly resulting from it, and not the

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examination of the approvers in the course of the trial. QUEEN-EMPRESS v. BATERA, 3 **P.R. 1898, Cr.**

(25)—*Withdrawal—Magistrate granti g pardon having no power to grant it—Crim. Pro. Code* (1882), *ss.* 337, 339, 537.—The mode in which a pardon has to be withdrawn is not provided for in s. 339. The Magistrate or Court that could have placed the person accepting the tender of pardon on his trial in the first instance, is competent to do so, if such Magistrate or Court considers that the conditions of the pardon have not been fulfilled. In such a trial, he should plead his pardon first, and if it is proved that it has been granted, he is entitled to an acquittal, unless it is proved that he has wilfully coucealed material facts or has given false evidence. The fact that the Magistrate tendering a pardon has no jurisdiction to tender it does not vitiate the trial, when the pardon has been tendered and accepted. TABAN v EMPRESS, **1 P.R. 1898, Cr.** [*F.*, 30 P.W.R. 1908, Cr. = 14 P.R. 1908, Cr.]

(26)—*By whom to be withdrawn.*—The withdrawal of the pardon should emanate from the authority which granted it. Where a pardon has been granted by the District Magistrate, the pardon should be withdrawn by the District Magistrate and not by a first Class Magistrate enquiring into the offence. CROWN v. MANNA SINGH, **19 P.R. 1901, Cr.** (24 C. 492, *F.*) [*Dist.*, 149 P.L.R. 1901, 31 P.R. 1904, Cr.]

(27)—*When to be withdrawn.*—A pardon tendered by a Magistrate should not be withdrawn, unless there is clear judicial proof that the statement made by the witness is false. HARGALAL v. EMPEROR, **24 P.R. 1902, Cr. = 136 P.L R. 1902.** (5 P.R. 1899, Cr., *R.*) [*R.*, 4 P.R 1903 Cr.; *Dis.*, 41 P.R. 1905, Cr.; *Doubted*, 31 P.R. 1904, Cr.]

(28)—*Forfeiture of—Crim. Pro. Code* (1898), *s.* 339.—The pardon granted to an approver cannot be withdrawn, unless the prosecution proves the breach of the conditions, and trifling discrepancies elicited in cross-examination do not justify the forfeitnre of the pardon. KANWAR SINGH v. EMPEROR, **34 P.R. 1902, Cr. = 126 P.L.R. 1902.** (15 P.R. 1895, Cr., 1 P. R. 1898, Cr., *R.*) [*R.*, 41 P.R. 1905, Cr.]

(29)—*Crim. Pro. Code* (1898), *s* 339—*Forfeiture of pardon and subsequent trial of approver.*—There can be no such thing, under the present Code, as the cancellation or the withdrawal of a pardon once tendered and accepted ; but under s. 339, such a pardon can be forfeited by a person who had accepted tender of it, if, either by wilfully concealing anything essential or by giving false evidence, he did not comply with the conditions on which the tender has been made, and he may be tried for the offence in respect of which the pardon has been tendered only if the pardon had been so forfeited. The question, therefore, whether the previous pardon to the accused had been forfeited by him is to be tried as a preliminary issue and decided by the Court, before which he is put on his trial, and, until it is disposed of against the accused, he cannot be tried and convicted for the offence for which he received pardon. BAHADUR v. EMPEROR, **59 P.R 1905, Cr. = 40 P.L R. 1906 = 3 Cr.L.J. 342.** (6 P.R. 1889, Cr., 31 P.R. 1904, *F.*)

Pardon—*concluded.*

(30)—*Tender of pardon—Power of Magistrate—Witness.*—A Magistrate is competent to tender a pardon to any person. QUEEN v. CHUNDEE CHURN BANERJEE, **6 W.R. Cr. 94.**

(31)—*Application for pardon for political offence.*—An application for pardon or mitigation of punishment for a political offence should be made to the Executive Government. QUEEN v. SAJOWPA, **7 W.R. Cr. 64.**

(32)—*Application for pardon—Prisoner duly convicted—Fresh evidence sufficient for acquittal—Procedure.*—Where a prisoner has been duly convicted of a criminal offence, and afterwards there turns up fresh evidence, which would, in the opinion of the Judge, if it had been available at the trial, have produced an acquittal, the proper course to take is not to acquit the prisoner, but to apply to the proper authority for a pardon. REG v. HART, **1 Ind. Jur. N. S. 333.** NUSSUR ALI v. MR. G. HART, **6 W.R. Cr. 42** (*a*).

(33)—*Prisoner— Witness — Procedure.*—Procedure as to tendering a pardon to a prisoner before examining him as a witness, discussed. QUEEN v. GAGALU MAMALU, **4 B.L.R. Ap. 50 = 12 W.R. Cr. 80.** [*R.*, 19 B. 749 ; *F.*, 4 C.W.N. 196.]

(34)—*Crim. Pro. Code* (1861), *s.* 210—*Procedure.*—*Held* that a Sessions Judge was not competent before the trial to instruct a Magistrate to tender a pardon under s. 210 of the Crim. Pro. Code. *In the matter of* NISTARINEE DEBIA, **7 W.R. Cr. 78.**

(35)—*Accomplice – Pardon—Procedure.*—An accomplice in a case not exclusively triable by a Court of Sessions cannot be pardoned by a Magistrate. *In re a reference from* COMMISSIONER AND SUPERINTENDENT OF RAWALPINDI, **7 P.R. 1873, Cr.**

(36)—*Tender of pardon—Record of reasons.*—Magistrates should record their reasons for the conditional pardon tendered by them to the prisoners tried by them. CROWN v. MANA SING, **113 P.R. 1866, Cr.**

Statement under promise of—*See* EVIDENCE—GENERAL, 8 W.R. Cr. 53.

See FALSE EVIDENCE, 10 B. 190.

See IRREGULARITY, 20 A. 40 = A.W.N. 1897, 173.

Tender of pardon after close of defence—*See* PRACTICE AND PROCEDURE, A.W.N. 1884, 147.

Part-heard Case.

One Magistrate succeeding another—Procedure of succeeding Magistrate—Right of accused—*See* CRIM. PRO. CODE, 1898, s. 350, 2 L.B.R. 17.

Transfer of, to another Magistrate—Right of accused to have witnesses recalled and reheard —*See* TRANSFER OF CRIMINAL CASES—MISCELLANEOUS CASES, 1 L.B.R. 287.

Parties.

See JOINDER OF PARTIES.

See MISJOINDER OF PARTIES.

Convenience of, and witnesses—Grounds of transfer—*See* TRANSFER OF CRIMINAL CASES —GROUNDS FOR TRANSFER—NOTICE, 4 S. L.R. 42.

Partition.

See BEN. ACT III OF 1899, ss. 632, 449, 14 C.W.N. 637.

Partition of Estates Act.

See BEN. ACT VIII OF 1876.

Partition Suit.

Declaration that property is joint order under s. 145, Crim. Pro. Code when to be made—*See* CRIM. PRO. CODE, 1898, s. 145, 8 C.W.N. 485.

Partner.

See CRIMINAL BREACH OF TRUST, 9 W.R. Cr. 37.

Partnership.

Sale of adulterated food by partner—Liability of co-partner—*See* BEN. ACT III OF 1899, ss. 495 507, 574, 16 C.W.N. 455=14 Ind. Cas. 205=13 Cr. L.J. 205=39 C. 682.

Dissolution of—*See* ADULTERY, 5 B.L.R. 109.

See CRIMINAL MISAPPROPRIATION, 6 Bom. L.R. 553=10 P.R. 1903, Cr.

Property—Claims of exclusive possession by a partner, as manager—*See* CRIM. PRO. CODE, 1898, s. 145, 32 C. 249=8 C.W.N. 885.

Forging of firm's name by partner—*See* FORGERY, 6 Bom. L.R. 553.

Falsification of accounts by partner appointed as Manager—*See* PENAL CODE, s. 477-A, 6 Bom. L.R. 553.

Partnership Property.

(1)—*Criminal breach of trust—Removal of partnership property—Penal Code, s.* 424.—A partner, who fraudulently removes partnership property, is guilty of an offence under s. 424, Penal Code. QUEEN v. GOUR BENODE DUTT, **13 B.L.R. 308**, Note=**21 W.R. Cr.** 10. [*Ap.*, 21 W.R. Cr. 59.]

(2)—*Criminal misappropriation — Misappropriation of partnership property—Penal Code*, s. 405.—A partner, who dishonestly misappropriates or converts to his own use any of the partnership property with which he is entrusted, or which he has dominion over, is guilty of

Partnership Property—*concluded.*

an offence under s. 405 of the Penal Code. QUEEN v. OKHOY COOMAR SHAW, **13 B.L.R. F.B. 307=21 W.R. Cr. 59.**

(3)—*Theft—Fraudulent removal of partnership property — Penal Code*, ss 378, 405 *and* 424—*Criminal misappropriation and breach of trust.*—K. the servant of A, and others, partners, was coming out of the Small Cause Court with some books belonging to the partnership shop, when A took them from him and kept them, saying they were his, and refused to give them up. The Magistrate found A guilty of theft under s. 378. *Held* that the conviction could not be sustained; that the possession of K was the possession of A and the partners, and A could not, therefore, be convicted of theft. KIANUDDIN v. ALLAH BAKSH, **6 B.L.R. Ap. 133=13 B.L.R. 310, Note=15 W.R. Cr. 51.**

Party to Proceeding.

Recognized agent if.—A recognized agent is not a "party to the proceeding" within the meaning of s. 195(c), Crim. Pro. Code. FATIMA BEE BEE v. RAMAN CHETTY, **12 Cr. L.J. 87 =8 Ind. Cas. 1202.**

Passenger.

Meaning of — Railway Act (IX *of* 1890), s. 118 (2)—*Person travelling on foot-board of a Railway carriage while train is in motion whether a passenger.*—The accused travelled on the foot-board of a carriage in a Railway train while in motion, talking something to a passenger in the carriage, and after several yards, from the station, he jumped down and escaped rather badly. He was convicted and sentenced to pay a fine. The question for decision was whether he was a passenger within the meaning of the Railway Act, 1890. *Held* that the accused was a passenger by the train. He, no doubt, had no ticket, and was a trespassing passenger, but by remaining on the foot-board after the train had started, he made himself a passenger. MURDIN MUHAMMAD v. EMPEROR, **31 P.R. 1905, Cr.=2 Cr. L. J. 711=146 P.L.R. 1905.**

Passenger Ship, Native Act.

See ACT XII OF 1870.

Patel.

Police patel, not a Criminal Court.— A Police patel is not a Criminal Court. IMPERATRIX v. IRBASAPA, **4 B. 479.**

Pathway.

See CRIM. PRO. CODE, 1898, ss. 144, 147, 2 Weir 65=3 M.H.C. App. 23.

Dispute land—thereon—Possession of disputed land found with one party—Order directing pathways to remain intact and remainder of disputed land to remain in possession of successful party—Jurisdiction to make such order—*See* CRIM. PRO CODE, 1898, s. 145, 17 C.W.N. 793=14 Cr. L.J. 391=20 Ind. Cas. 215.

Private dispute as to—*See* DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 19 W.R. Cr. 6.

Patience

Necessity of, in the discharge of judicial functions—*See* SENTENCE — IMPRISONMENT —IMPRISONMENT IN DEFAULT OF PAYMENT OF FINE, ETC., L.B.R. 1872—1892, 364.

Pat Marriage.

In the Central Provinces — *See* PENAL CODE, s. 494, 12 C.P.L.R. Cr. 19.

Patni Taluqs.

See BEN. REG. VIII OF 1819.

Patta.

Holder of a tree—if an occupier of land—*See* MAD. ACT V OF 1882, s. 6, 12 M. 203 = 1 Weir 758, F.B.

See MAD. ACT V OF 1882, ss. 6, 10, 16, and 21, 12 M. 226 = 1 Weir 761.

Patwari.

Patwari making unauthorized entries in Revenue Registers—Offence— Intention— *See* PENAL CODE, ss. 24, 464, 466, 477-A, 25 P.R. 1914, Cr.

Pawn.

Taking of a medal from a sepoy—*See* ST. 44 AND 45 VIC., C. 58, s. 156, 10 M. 108 = 1 Weir 668.

See THEFT—THINGS WHICH MAY BE THE SUBJECT OF THEFT, U.B.R. 1892—1896, Vol. I, 232.

Pawnee.

Right to goods obtained fraudulently—*See* CRIM. PRO. CODE (1898), s. 517, 12 Cr. L J. 88 = 8 Ind. Cas. 1204.

Peace.

See BREACH OF THE PEACE.

See JUSTICE OF THE PEACE.

See SECURITY TO KEEP THE PEACE.

Peacock.

See THEFT—THINGS WHICH MAY BE THE SUBJECT OF THEFT, A.W.N. 1897, 41.

Pecuniary Fitness.

Bad livelihood—Sureties, fitness of—of the surety, whether the only test—*See* SECURITY PROCEEDINGS, 14 C.W.N. 666 = 37 C. 446.

Pecuniary Interest.

Of magistrate—*See* MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION.

Penal Code (Act XLV of 1860).

[REP. IN PT., ACT XIV OF 1870 ; ACT X OF 1882 ; ACT XIII OF 1889 ; (IN SINDH FRONTIER), REG. V OF 1872, S. 11. REP. IN PT. AND AM.,—ACT VIII OF 1882 ; ACT XII OF 1891 ; AM., ACT XXVII OF 1870 ; ACT XIX OF 1872 ; ACT X OF 1873, S 15 ; ACT X OF 1886, SS. 21 TO 24 (1) ; AM., ACT XIV OF 1887, S. 79 ; ACT I OF 1889, S. 9 ; ACT IV OF 1889, S. 3 ; ACT IX OF 1890, S. 149 ; ACT X OF 1891, S. 1 ; ACT III OF 1894, SS. 5 TO 8; ACT III OF 1895, SS. 1 TO 4 ; ACT VI OF 1896 ; ACT IV OF 1898 ; ACT XII OF 1899, S. 2, (AS TO ALLAHABAD UNIVERSITY), ACT XVIII OF 1887, S. 18

Penal Code (Act XLV of 1860)—*continued.*

(2)—SUPPLEMENTED, ACT VI OF 1864 ; (IN PUNJAB FRONTIER DISTRICTS AND THE N. W. FRONTIER PROVINCE), REG. III OF 1901, SS. 6, 12, 13, 29, 30, 61 ; (IN UPPER BURMA), ACT XIII OF 1898, S. 4 (*b*); APPLIED TO OFFENCES COMMITTED BEFORE THE 1ST JANUARY, 1862—(IN THE PUNJAB), ACT IV OF 1872, S. 39 ; (IN AJMERE MERWARA), REG. III OF 1877, S. 29. DECLARED IN FORCE IN THE SONTHAL PARGANAS, REG. III OF 1872, S. 3, AS AMENDED BY REG. III OF 1899, S. 3 (IN THE ANGUL DISTRICT), REG. I OF 1894, S. 3; IN THE CHITTAGONG HILL-TRACTS, REG. I OF 1900, S. 4; IN THE ARAKAN HILL DISTRICT, REG. IX OF 1874, S. 3 ; IN UPPER BURMA (EXCEPT THE SHAN STATES), ACT XIII OF 1898, S. 4 ; IN KACHIN HILL-TRACTS AS REGARDS HILL-TRIBES (WITH MODIFICATION), REG. I OF 1895, S. 3 ; IN CERTAIN TRACTS IN THE CHIN HILLS (WITH MODIFICATIONS), REG. OF 1896, S. 3 ; IN BRITISH BALUCHISTAN, REG. I OF 1890, S. 3.]

See OFFENCES BEFORE PENAL CODE CAME INTO OPERATION.

(1)—*Applicability of the Code to an offence committed before its passing.*—The Penal Code does not apply to an offence committed before the day on which the Penal Code came into force, and in such cases no section of the Penal Code should form part of the charge. **1 W.R. Cr. Letters, 10.**

(2)—And Criminal Procedure Code to be read with Act VI of 1864—*See* ACT VI OF 1864, s. 2, 15 W.R. Cr. 89 = 7 B.L.R. F.B. 165.

(3)—Assumption of absence of general or special exceptions in a charge for offence—*See* CHARGE—GENERAL, 4 C. 124 = 3 C.L.R. 122.

——S. 1.

(4)—S. 1—*Operation of criminal law without regard to personal law of parties.*—There is no provision of law by which parties of any sect have a right to be exempted from the operation of the criminal law applicable to all the subjects of the King. EMPEROR v. MAHABIR SINGH, **25 A. 31 = A.W.N. 1902, 173.**

(5)—*Ss.* 1, 2 *and* 75—*Previous conviction of an offence in a foreign territory.*—As Mysore is not a part of the "territories which are or may become vested in Her Majesty by the Statutes 21 and 22 Vic., C. 106" (Penal Code, ss. 1 and 2), a conviction in that State cannot be proved in British India, under s. 75, Penal Code, merely because the Mysore State has adopted the Indian Penal Code. *In re* VENKATAI SHETTY, **1 Weir 40.**

——S. 2.

(6)—S. 2—*See* No. 5, *supra.*

(7)—*Ss.* 2, 499, 500—*Crim. Pro. Code*, s. 528—*Defamatory statement in application for transfer—Bad faith—English Common Law doctrine of absolute privilege—I.P.C., if exhaustive—*

Penal Code (Act XLV of 1860)—*continued.*

Voluntary statement made by an accused, statement of a witness made under compulsion, distinction between—Effect of case-law in Bengal—Codification of existing law and introduction of Foreign law — Applicability of the English Common Law to the Indian Mofussil—Effect of s. 2, I.P.C.—Where the petitioner, in an application filed before the District Magistrate for the transfer of a case brought against him by the servant of one Mr. M, stated that Mr. M. had brought to Court the Manager of the Moghul Factory who was the trying Magistrate's tenant, and had had a private talk with the trying Magistrate and that he apprehended that this was done to put pressure on the trying Magistrate and to induce him to convict the petitioner; and it was found that this was all pure invention. *Held*, that the assertion clearly amounted to an accusation against Mr. M that he had attempted to corrupt justice, and it cannot be gainsaid that it was defamatory and made in bad faith. Both on principle and authority in Bengal, there is no absolute privilege for such a statement. The English Common Law doctrine of absolute privilege is not the law in this Country (13 Cr. L.J. 275, *Diss.*) If it is wrong to assume that, in codifying existing law, the Legislature intended to leave it unaltered unless that intention is expressly stated. it would be more and not less wrong to assume that, in introducing a Foreign law into a country, the Legislature intended to introduce the whole of it unless the contrary is expressly stated (L.R. 1891, A.C. 107, *Cons.*) The Indian Penal Code declares the law in respect of defamation and it must be regarded as exhaustive on the point (6 C.W.N. 825 = 29 C. 707, *R.*) If a defamatory statement does not come within the exceptions specified in s. 499, Penal Code, it is not privileged (14 W.R.Cr. 27, 23 C. 867, 5 C.W.N. 293, *Rel. on*; 11 B.L.R. 321, 15 C. 264, 27 C. 262, 38 C. 880, *D.*) What is or is not an actionable wrong has to be gathered from the case-law and considerations of justice, equity and good conscience, which would have no application if actionable wrongs had been defined by statute. A voluntary statement made by an accused is different from a statement made by a witness who is compelled to answer the questions put to him. (5 C.W.N. 293, 9 C.W.N. 911 = 32 C. 756, *R.*) Applicability of the English Common Law to the Indian Mofussil considered—Effect of s. 2, Penal Code, *considered* KORI SINGH v. KING-EMPEROR, **17 C W.N. 297 = 14 Cr. L.J. 100 = 18 Ind. Cas. 660 = 40 C. 433.** [*R.*, 17 C.W.N, 449.]

——**S. 3.**

(8)—S. 3—*See* CRIM. PRO. CODE, 1898, s. 181 (4), 121 P. L.R. 1901 = 1 P.R. 1900, Cr.

(9)—Ss. 3, 395—*See* ACT XXI OF 1879, 37 P.R. 1881, Cr.

——**S. 4.**

(10)—*S. 4—High Seas, murder by a British Indian on a British vessel bound for Calcutta—Jurisdiction of Calcutta High Court, Criminal Sessions—Substantive law applicable, English or British India—S. 684, Merchant Shipping Act (57 and 58 Vict., c. 60)—S. 3, Colonial Act (37 and 38 Vict., c. 27).*—The High Court of Calcutta, as the Court of Criminal Sessions, has jurisdiction, under s. 684 of the Merchant Shipping Act (57 and 58 Vict., c. 60), to try a British Indian who is charged with committing murder on a British vessel in the Red Sea when the accused has been brought to Calcutta, no matter how he may have been brought there. When the offence was committed in the High Seas, the substantive law applicable to the case is the English law. The fact that the accused is a British Indian does not make any difference in the applicability of the English substantive law. (14 B. 227, *Diss.*) S. 3 of the Colonial Act (37 and 38 Vict., c. 27) does not deal with the trial of case but with the sentence after conviction, the statute adapting the local machinery for punishment to the English definition of crime. It is possible to give s. 4 of the Penal Code a construction which is not inconsistent with the English Statute, but in any case it could not affect the specific Statute of Parliament. EMPEROR v. SALIMULLA, **16 C.W.N. 471 = 39 C. 487 = 14 Ind. Cas. 598 = 13 Cr. L.J 246.**

(10-*a*)—S. 4—*See* No. 2303, *infra.*

(11)—*Ss. 4, 34, 107—Foreign territory—Cambay—Conspiracy at Cambay—Abetment of forgery — Forgery committed accordingly in British India—Trial for abetment in British Indian Court—Jurisdiction—Place of trial—Offence continued and completed in British India though initiated in foreign territory—Abetment.* The accused, who lived at Cambay, a Native State, conspired with his partner A. at Cambay, to get a valuable security forged by a professional forger at Umreth, a place within British territory. To facilitate forgery, the accused sent a *Khata*-book with A, who proceeded to Umreth and had the document forged there accordingly. The accused was committed for trial to the Sessions Court on a charge of abetment of forgery of a valuable security (ss. 467 and 109, Penal Code). The Sessions Judge, being of opinion that the British Court had no jurisdiction to try the accused, referred the case to the High Court for an order quashing the commitment. *Held*, that the British Court had jurisdiction to try the accused, inasmuch as his offence was not wholly committed within Cambay territory, but, having been initiated there, was continued and completed within British territory. Where a foreigner in foreign territory initiates an offence which is completed within British territory, he is, if found within British territory, liable to be tried by the British Court within whose jurisdiction the offence was completed. S. 34, Penal Code, not only provides for liability to punishment, but also for subjection of a conspirator, who is not within the jurisdiction of the Court where the act conspired is committed to its jurisdiction. EMPEROR v. CHHOTALAL BARBAR, **14 Bom. L.R. 147 = 14 Ind. Cas. 970 = 13 Cr. L.J. 426 = 1 Bom. Cr. C. 88 = 36 B. 524.**

Penal Code (Act XLV of 1860)—*continued.*

(12)—*Ss. 4, 40, 121, 411—Offence punishable with imprisonment — Offence committed in Native State.—Held,* (1) (*a*) having regard to ss. 4, 40 of the Indian Penal Code, that the phrase "*offence* punishable with imprisonment, wherever it may be committed" found in s. 121, Crim. Pro. Code, must cover an offence under s. 411, Indian Penal Code, in a Native State; and (*b*) the terms of the Bond in Form XI, Sch. V, Crim. Pro. Code, are fully met, if the offence is committed against a British Subject; accordingly, (2) that a security bond under s. 110, Crim. Pro. Code, can be forfeited, when, but not unless and until, there is *proof of the commission* of an offence in a Native State, against a British Subject. CROWN v. DEWA SINGH, **28 P.R. 1910, Cr.=199 P.L.R. 1910=46 P.W.R. 1910, Cr.=8 Ind. Cas. 383=11 Cr. L.J. 635.**

——**S. 5.**

(13)—*S. 5—Offence both under the Code and under some special law—Punishment under the Penal Code, validity of.*—S. 5 of the Penal Code declares that no special or local law shall be affected by the enactment of the Code. It by no means renders unpunishable under the Penal Code an act which is an offence within its definition, because, it is also punishable by some special law. HIGH COURT PROCEEDINGS, 17TH MAY, 1865, **1 Weir 26.**

——**S. 7.**

(14)—Ss. 7, 20, 466—*See* CRIM. PRO. CODE, 1898, ss. 4 (*h*), 337 (4), 13 Cr. L.J. 588=15 Ind. Cas. 1004.

——**S. 10.**

(15)—*Ss.* 10, 352, 354—*Assault—Assault on a girl of six with intent to outrage her modesty.*—The accused took a girl of six years to his room, where he made her lie down and he lay on her. The girl immediately screamed and ran away. For this act, the accused was convicted and sentenced under s. 352, and not under s. 354, of the Penal Code, on the ground that the girl was too young to have any modesty: *Held*, that the act of the accused was punishable under s. 354, for the girl, though young, was a 'woman' as defined by s. 10 of the Code. EMPEROR v. TATIA MAHADEV, **14 Bom. L.R. 961=1 Bom. Cr. C. 205=13 Cr. L. J. 858=17 Ind. Cas. 794.**

——**S. 11.**

(16)—*Ss.* 11, 34, 294-*A—Committee of club—Person—"Keeps," meaning of—Common object—Liability of members—Purpose, double, effect of—Official acts — Presumption—Government, Collector assessing income-tax, whether—Assessing income-tax, whether tantamount to authorization—' Not authorised,' meaning of—Exception—*Onus *of proof—Evidence Act, ss.* 105, 114 *—Proposal—Drawing list, whether proposal.*—The members of the Committee of a club who exercise full control over club matters, inclusive of the premises, 'keep' the premises of the club within the meaning of that expression as used in s. 294-A, Penal Code. Where a house is kept open for a double purpose, *viz.*, as an honest social club for those who do not desire to play as well as for the purpose of gamingfor those who desire to play, it is a house opened and kept for the purpose of gaming, and it is not necessary to show that the house is used exclusively for the purpose of drawing a lottery. (1884, 13 Q.B.D. 505=53 L.J.M.C. 16=15 Cox. C.C. 486=49 J P. 20=50 L.T. 808, *F.*) Where the common object is the keeping of a place for the purpose of drawing a lottery not authorized by Government, all who engage in such an object are individually guilty and can be prosecuted jointly or severally. The presumption is that official acts are regularly performed. A Collector who is a Revenue officer is not authorized to sanction a lottery, nor would the mere act of taking income-tax from the club on the profits of the lotteries constitute authorization. The words 'not authorized' in s. 294-A, Penal Code, mean no more and no less than 'unless authorized, or not having been authorized or without authority,' and are in the nature of an exception or proviso, and under s. 105 of the Evidence Act, the burden of proof lies on the accused to show that the lottery was authorized by Government. (2 B. & Ald. 40=106 Eng. Rep. 578, 1907, 1 K.B.D. 64=79 L J.K.B. 81= 96 L.T. 197=71 J.P. 30=23 T.L.R. 53=51 S.J. 50, *F.*; 1902, 1 K.B.D. 540=71 L.J. K.B. 211=66 J.P. 217=50 W.R. 286=86 L.T. 202=18 T.L.R. 284=20 Cox C.C. 156, *D.*) A drawing list which set out on the first page the list of the winners drawn on a certain day in the month of May, and on its back contained the description. "The sweep for June is now open. It will close on the 20th June 1913. Settling day 23rd June 1913. All tickets must be taken in the name of a member, etc.," was *held* to be a proposal within the meaning of s. 294-A, Penal Code. EMPEROR v. A.J. COOKE, **15 Cr. L.J. 243=23 Ind Cas. 195=7 Bur. L T. 187=7 L.B.R. 319.**

——**S. 17.**

(17)—Ss. 17, 21 and 186—*See* PUBLIC SERVANT, 26 C. 158=3 C.W.N. 115.

(18)—*Ss.* 17, 124-*A and* 153-*A—Charge not setting out what portions of speech of accused fall under ss.* 124-*A and* 153-*A, respectively—Whether such charge defective—Construction of speech, alleged to be seditious.*—Where a charge was contended to be defective because it did not set out what portions of the speech of an accused person, charged under ss. 124-A and 153-A, Indian Penal Code, were within the provisions of s. 124-A, and what were within those of s. 153-A, Indian Penal Code, *held* that it was *not* defective, as the whole speech was set out, that the true intent should be arrived at only by a consideration of the whole speech; and that, therefore, it was not easy to see what further information the accused could properly require. Where an accused person exhorted his audience that what was to be aimed at was the retirement of all foreigners, necessarily

Penal Code (Act XLV of 1860)—*continued.*

including in this, the non-trading one-fourth persons authorised by law to administer executive Government, *held*, that it was not possible to regard the speech as giving expression only to a legitimate aspiration, which it was legitimate to commend for the public acceptance, and to reconcile it with loyalty to the Government as established by law in British India, or regard it as other than an attempt to excite disaffection towards the Government. *In re* V.C. CHIDAMBARAM PILLAI, **5 M.L.T. 24 = 19 M.L.J. 81 = 9 Cr. L.J. 140 = 1 Ind. Cas. 42.**

——**S. 20.**

(19)—S. 20—*See* No. 14, *supra.*

——**S. 21.**

See PUBLIC SERVANT.

(20)—*S.* 21—*Goods clerk.*—Under Ch. IX of the Penal Code, the term "public servant" includes also a goods clerk. QUEEN-EMPRESS v. ZAKARIA, **9 P.R. 1898, Cr.**

(21)—*S.* 21—*Convict Warders and Overseers —Whether such officers are public servants within section.*—Convict Warders and Overseers are public servants within the meaning of s. 21, Indian Penal Code. KING-EMPEROR v. MUHAMMADA, **22 P.R. 1908, Cr. = 9 Cr. L.J. 90.** (7 W.R. 99 Cr., *R.*)

(22)—S. 21—*See* ACT V OF 1861, 3 C.L.J. 475 = 10 C.W.N. 727 = 3 Cr. L.J. 420.

(23)—S. 21—*See* No. 17, *supra and* No. 754, *infra.*

(24)—*S.* 21 (*b*)—*Reports by a person to whom any dispute is referred.*—To bring a case within sub-s. 6 of s. 21, there must be some cause or matter existing in dispute or controversy, in regard to which a competent public authority is desirous of a report to enable it to deal with the matter in dispute between the parties. Where a person was asked by the Municipal Commissioner merely to report if, in carrying out the directions of the commissioners, he found any person objecting, *held* that such a report was not a report within the meaning of sub-s. 21, Penal Code, as his authority to report would have no effective existence until some one prevented his carrying out his directions. EMPRESS v. DEBI DIN, **A.W.N. 1886, 295.**

(25)—*S.* 21 (10)—*Local Board Road Sircar, whether a public servant.*—A Local Board Road Sircar is not a public servant within the meaning of s. 21. ADDAITA BHUIA v. KALI DAS DE, **12 C.W.N. 96 = 6 Cr. L.J. 393.**

(26)—Ss. 21 (9), 29—*See* PUBLIC SERVANT, 28 C. 344 = 4 C.W.N. 798.

(27)—Ss. 21, 99—*See* PUBLIC SERVANT, 26 A. 542 = A.W.N. 1904, 104.

(28)—*Ss.* 21 *and* 161—*Clerk appointed by a Sub-Registrar, whether a public servant — Conviction of such clerk for taking illegal gratification, whether legal—Registration Act,* III *of* 1877, *ss.* 6 *to* 14, 69 *and* 84.—A clerk appointed by a Sub-Registrar and paid out of the allowance given to the Sub-Registrar calculated on the number of documents registered is not a public servant within the meaning of s. 21 of the Penal Code. He cannot, therefore, be convicted of the offence of taking an illegal gratification. BHAGWATI SAHAI v. EMPEROR, **32 C. 664 = 2 Cr. L.J. 312.**

(29)—Ss. 21, 161—*See* PUBLIC SERVANT, 21 A. 127 = A.W.N. 1898, 205.

(30)—*Ss.* 21 (9), 161—*Stamp-vendor appointed under Act* X *of* 1862 *after Act* XVIII *of* 1869 *was passed.*—A person appointed as a stamp-vendor under the rules framed under Act X of 1862 after it had been repealed and substituted by Act XVIII of 1869, and not under the latter Act, is not a public servant within the meaning of s. 21 (9) of the Penal Code. He cannot therefore be convicted, under s. 161 of the Penal Code, of receiving more than his legal remuneration for sale of stamps. REG. v. KALYANRAY, **Rat. Un. Cr. C. 36 = Cr. Rg. 28-7-1870.**

(31)—Ss. 21, 183, 186—*See* PUBLIC SERVANT, 1 Weir 28 = 1 Weir 128.

(32)—*Ss.* 21 *and* 186—*Public servant—Clerk in the cess-collection department of a District Municipality—Obstruction to the public servant.*—A clerk in the cess-collection department of the District Municipality, constituted under the Bombay District Municipalities Act (Bombay Act III of 1901), is a "public servant," within the meaning of s. 21 (10) of the I.P.C., 1860). To offer any obstruction to him is punishable under s. 186 of the Code. EMPEROR v. BABULAL KANAIYALAL, **10 Bom. L.R. 761 = 33 B. 213 = 8 Cr. L.J. 269 = 1 Ind. Cas. 869.**

(33)—Ss. 21 and 186—*See* PUBLIC SERVANT, 1 Weir 27 = 1 Weir 129.

(34)—Ss. 21 (2), 223—*See* PUBLIC SERVANT, Rat. Un. Cr. C. 388 = Cr. Rg. 40 of 1888.

(35)—Ss. 21 and 352—*See* PUBLIC SERVANT, 7 M. 17 = 1 Weir 27.

(36)—*Ss.* 21, 353—*Forest Act* (VII *of* 1878), *s.* 78—Malguzar, *duty of—Public servant — Assault.*—The assaulting of a *malguzar*, who was holding an enquiry in the matter of damage done to a Government Forest, is not an offence under s. 353 of the Indian Penal Code, because the holding of such inquiry is not one of the legitimate duties of the *malguzar*. MEHARBAN SINGH v. EMPEROR, **9 Ind. Cas. 669 = 12 Cr. L.J. 112.**

(37)—*Ss.* 21 *and* 434—*Arbitrator in proceedings under s.* 145, *Crim. Pro. Code—Stay of proceedings — Arbitrator raising land-marks—Destruction of them.*—An application was made by the parties to a proceeding under s. 145 to the effect that they were willing to refer the question of the land in dispute to an arbitrator. Thereupon the Magistrate stayed the proceedings under s. 145. The arbitrator erected, for the purpose of defining the boundary, certain pillars. These were destroyed by the accused

Penal Code (Act XLV of 1860)—*continued.*

and they were convicted under s. 434, Penal Code, for having destroyed a landmark fixed by the authority of a public servant. *Held*, that the conviction should be set aside as the arbitrator so appointed was not a public servant authorised to put up the boundary pillars. SUNDAR MAJHI v. EMPEROR, **30 C. 1084.**

——S. 22.

(38)—*S. 22—Property—Papers forming part of the record of a criminal case.*—Papers, constituting part of the record in a criminal case, are property within the meaning of s. 22, Penal Code, and may be the subject of theft. RAMASWAMI AIYAR v. VAITHILINGA MUDALI, **1 Weir 28.**

(39)—Ss. 22, 30, 378—*See* THEFT—THINGS WHICH MAY BE THE SUBJECT OF THEFT, Rat. Un. Cr. C. 43=Cr. Rg. 8—12—1870.

(40)—Ss. 22, 378 — *See* THEFT—THINGS WHICH MAY BE THE SUBJECT OF THEFT, 15 B. 702.

(41)—*Ss.* 22, 378 *and* 379—*Dishonest taking away of earth.*—Where an accused person dug up and immediately carried away, without any authority or right, several cart loads of earth, part of unassessed lands of a village, *held*, that the accused was not guilty of theft. QUEEN-EMPRESS v. KOTAYYA, **10 M. 255=1 Weir 413.** (4 M. 228, *R.*) [*Overruled*, 27 M. 531=14 M.L.J. 155=1 Weir 417; *Diss.*, 15 B. 702.]

(42)—*Ss.* 22 *and* 379—*Moveable property—Stones quarried from the earth and removed—Theft.*—S. 22 of the Penal Code does not except "earth and things attached to the earth" but "land and things attached to the earth." "Land" and "earth" are not synonymous, and there is a wide distinction between "earth" and "the earth." "Earth may be severed from "the earth" and attached to it again. When "earth" is severed from "the earth," it becomes moveable property. Any part of "the earth," whether it be stones or sand or clay or any other component, when severed from "the earth" is moveable property and capable of being the subject of theft. So a person who quarries and carries away stones from the land of another commits theft. SURI VENKATAPPAYYA SASTRI v MADULA VENKANNA, **27 M. 531=1 Weir 417=14 M L.J. 155, F.B.=1 Weir 29.** (10 M. 255, *Overruled.*)

——S. 23.

(43)—*S.* 23—*Meaning of the term "defraud."*—The term "defraud" as used in s. 23 of the Code is not limited in its meaning to deprivation of property. QUEEN-EMPRESS v. ABBAS ALI, **25 C. 512=1 C.W.N. 255.** (19 C. 380, *Over.*) [*F.*, 28 M. 90=1 Weir 538 A; *R.*, 28 A. 358=3 A.L.J. 149=A.W.N. 1906, 48=3 Cr. L.J. 249, 38 C. 75=12 C.L.J. 277=14 C.W.N. 1076=11 Cr. L J. 505=7 Ind. Cas. 629, 5 C. W.N. 897, 10 P.R. 1902, Cr.=75 P.L.R. 1902.]

(43-*a*)—S. 23—*See* Nos. 2880, 3048, *infra.*

(44)—Ss. 23, 24, 378—*See* THEFT—THINGS WHICH MAY BE THE SUBJECT OF THEFT, 22 C. 1017.

Penal Code (Act XLV of 1860)—*continued.*

(45)—*Ss.* 23, 186—*Nazir delegating the execution of warrant of arrest to a peon—Public servant—Obstruction.*—A nazir of a Civil Court can delegate the execution of a warrant of arrest to a Civil Court peon and the peon acting in that capacity is a public servant within the meaning of s. 21 (4), Penal Code. A person obstructing the peon in the execution of the warrant of arrest is guilty of an offence under s. 186 of the Code. *Quære.*—Whether the escape of a prisoner from arrest is obstructing a public servant within the meaning of s. 186, Penal Code. SHEO PROGASH TEWARI v. BHOOP NARAIN PROSAD PATHAK, **22 C. 759.** (22 C. 596, *F.*) [*R.*, 40 C. 849=17 C.W.N. 941=19 Ind. Cas. 706=14 Cr. L.J. 274.]

(46)—Ss. 23, 378—*See* THEFT—GENERAL—WHAT CONSTITUTES THEFT, 25 C. 416=2 C.W.N. 347.

(47)—*Ss.* 23, 379, 411—*Theft—Stolen property, receipt of—Guilty knowledge—Wrongful gain—Wrongful loss—Intention, Criminal.*—The accused produced a Choukidar's birth register in a Court to prove the date of birth of a certain person and stated that the book was lent to him by the Choukidar. The Choukidar however denied this and the accused was tried and convicted of the offence under s. 411, I.P.C. *Held*, that the conviction was illegal:—assuming that the facts were as found by the Magistrate, the accused had not committed any offence. A register of the kind in question had no intrinsic value, and even if the accused person took it, it could not be supposed for a moment that he took it in order to gain the money value of the paper of which it was made, and, there was no attempt to achieve a wrongful gain or to cause wrongful loss within the meaning of s. 23, I.P.C. The fact that he produced the register in a Court showed that there was no guilty knowledge on the part of the accused. CHUNI v. CROWN, **57 P.L.R. 1914=19 P.W.R. 1914, Cr.=15 Cr. L.J. 522=24 Ind. Cas. 834.**

(48)—*Ss.* 23, 411, 408, 114—*Master and servant—Misappropriation of currency notes—Exchange into notes of other description—Gambling—Receipt by winner—'Unlawful means'—Stolen property—Conviction under s. 411—Legality.* — A misappropriated a Rs. 1,000 currency note entrusted to him by his master. He changed it for another currency note of Rs. 500 and five Rs. 100 currency notes. He lost them in gambling. The winners M. & S. won and received the notes. M. did not know A previously, but S knew him for 5 or 6 years as a gambler. Some of the notes were recovered in the matting of the roof of M's house and the rest were similarly recovered from S's house. *Held*, that M & S received the currency notes dishonestly, that is, with the intention of causing wrongful loss or, in other words, loss by unlawful means to the true owner. It was not the gambling which was the 'unlawful means,' but the conduct of the servant of the true owner. The exchanged currency notes became stolen property when paid in satisfaction of the

Penal Code (Act XLV of 1860)—*continued.*

gambling debt. *Held*, that M & S might have been convicted of abetment of breach of trust under ss. 408 and 114, I.P.C., and were rightly convicted under s. 411, I.P.C. IMPERATOR v. MOWLABUX *wd.* KHOWAJBUX, **4 S.L.R. 159 = 11 Cr.L.J. 730 = 8 Ind. Cas. 929.**

(49)—*Ss.* 23, 415—*Wrongful gain and wrongful loss—Acting fraudulently or dishonestly.*—The accused was in charge of a mare belonging to C., who had given it to him for sale. One L made an offer for the mare and insisted on the offer being communicated to the owner. The accused showed L a telegram which the latter understood to have come from C refusing the offer. He thereupon raised the offer and purchased the mare. Subsequently he instituted these proceedings against the accused on the ground that deception was practised on him, but, when he was examined, stated that he would have paid the same price had he known that the mare belonged to the accused. *Held*, that no wrongful loss was caused to L within the meaning of s. 23, Penal Code, by reason of the fact that he was induced to bid up to what he considered to be the full value of the mare. *Held* also that, by merely placing before L the telegram which purported to have been received from C, the accused could not be said to have acted fraudulently. G. W. DICK v. KING-EMPEROR, **12 A.L.J. 1258 = 26 Ind.Cas. 641 = 16 Cr.L.J. 49.**

(50)—*Ss.* 23 *and* 430—*Closing water course—Diminution of supply of water for agricultural purposes—Mischief — Wrongful loss.*—Accused closed a water-course without obtaining permission to do so, thereby preventing water from finding its way to certain fields below the place where he closed it. He was convicted of an offence under s. 430. *Held*, the conviction was bad, the combined operation of ss. 425 and 430 being that, in order to constitute an offence under s. 430, there should be on the part of the accused an intent to cause or knowledge that he was likely to cause, wrongful loss or damage to the public or to any person. Wrongful loss would be loss caused by unlawful means of property to which the person is legally entitled. There being nothing on record to show that the complainant had any legal right to the water intercepted by the accused, one of the elements of wrongful loss was non-existent. TUN AUNG v. KING-EMPEROR, **4 L.B. R. 149 = 7 Cr. L.J. 448.**

(51)—Ss. 23, 463 to 471—*See* FORGERY, 25 C. 512 = 1 C.W.N. 255, F.B.

——**S. 24.**

See FRAUD.

See INTENTION.

(51-*a*)—S. 24—*See* No. 44, *supra* and Nos. 2803 and 3048, *infra.*

(52)—*Ss.* 24 *and* 25—*Construction of the sections—Intention.*—In construing the sections, the primary and not the remote intention of the accused must be looked at. QUEEN-EMPRESS v. HARADHAN *alias* RAKHAL DASS GHOSH, **19 C. 380.** (8 A. 653, *R.*)

(53)—*Ss.* 24, 25—*Intention.*—Of two probable intentions, the one immediate and more probable, and the other remote and less probable, the Court should not attribute to the accused the remoter intention. QUEEN-EMPRESS v. GIRDHARI LAL, **8 A. 653 = A.W.N. 1886, 264.** [*R.*, 19 C. 380.]

(54)—*Ss.* 24, 25, 464, 471—*Forgery, interpolation of the name of a person as an attesting witness if—False document, ingredients of—Material part of document, if altered—Dishonestly and fraudulently.*—Where the accused, after the execution and registration of a document which was not required by law to be attested, added his name to the document as an attesting witness. *Held*, (by *Mookerjee, J.*, agreeing with *Harrington, J.*, *Teunon, J.*, *dissenting*)—That the accused was not guilty of an offence under s. 471; that the accused, by the insertion of his name as an attesting witness, cannot be held to have done the act either dishonestly or fraudulently within the meaning of these words as defined in ss. 24 and 25, Penal Code. The word "fraudulently" defined. The interpolation of the name of a person as an attesting witness to a document not required by law to be attested, subsequent to its execution and registration, is not an alteration of the document in a material part. SURENDRA NATH GHOSH v. EMPEROR, **14 C.W.N. 1076 = 12 C.L.J. 277 = 7 Ind. Cas. 629 = 11 Cr. L.J. 505 = 38 C. 75.**

(55)—Ss. 24, 25, 465—*See* FORGERY, 5 A. 221.

(56)—Ss. 24, 25, 471—*See* FORGERY, 7 A. 403, 7 A. 459.

(57)—Ss. 24, 147, 391—*See* DACOITY, 15 A. 22 = A.W.N. 1892, 220.

(58)—*Ss.* 24, 378—*Assertion of claim of right—Want of due care and attention.*—Where a person removes a tree under an honest belief that it belongs to him, but where, in doing so, he betrays want of due care and attention, that is, good faith, in ascertaining the ownership of the same, he can be convicted of the offence of theft. *Per Aston, J.*—Where a dishonest intention, as defined in s. 24, Penal Code, is established, it makes no difference in the prisoner's guilt for the offence of theft, that his act was not intended to procure any personal benefit to himself. There is a manifest difference between a mere assertion of a claim of property or right and a *bona fide* belief in such a claim. The mere assertion of a claim of right is not in itself a sufficient plea. EMPEROR v. SABALSING, **4 Bom. L.R. 936.** (2 A. 101, 15 B. 344, 15 W.R. 47, Cr., *R.*)

(59)—*Ss.* 24, 379—*Acting "dishonestly"—Tenant cutting trees on* jirayati *land after execution of* Kadapa—*Theft—Landlord's intent—Madras Estates Land Act* (I *of* 1908), *s.* 12.—A tenant cutting trees standing on his own *jirayati* land and for which he has executed a *kadapa*, which gives the landlord only a claim for compensation for trees so cut, cannot be said to be acting "dishonestly" within the

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meaning of s. 24 of the Penal Code and is not guilty of theft, and the provisions of s. 12 of the Madras Estates Land Act do not apply. REDDI YERRANNA v. EMPEROR, **15 Cr. L.J. 586 = 25 Ind. Cas. 338 = 1 L.W. 528.**

(60)—Ss. 24, 379—*See* THEFT—GENERAL—WHAT CONSTITUTES THEFT, 27 C. 501 = 4 C.W.N. 480.

(61)—*Ss.* 24, 406—*Servant adulterating liquor and selling at the same price as unadulterated liquor—Appropriation of profits.*—The accused, the servant of a liquor contractor, was entrusted with a certain quantity of liquor, by his master to sell. For selling liquor, he received a certain quantity of it for himself. For the remainder he was to account to his master, with whom he made a legal contract that he would not adulterate it with water before selling it. In violation of that contract, he mixed water with liquor, and, so increasing its quantity, sold the increased quantity at the same rate per gallon as was chargeable for unadulterated liquor, and appropriated the profits to his own use. *Held* that, having thus gained by unlawful means, money to which he was not legally entitled, he acted dishonestly within the meaning of s. 24, I.P.C., and was guilty of the offence of criminal breach of trust under s. 406 of the Code. QUEEN-EMPRESS v. JAMSETJI, **Rat. Un. Cr. C. 395 = Cr. Rg. 53 of 1888.**

(62)— *Ss.* 24, 420 — *Dishonestly obtaining lottery prize—Wrongful gain—Wrongful loss—Crim. Pro. Code, ss.* 517, 545—*Compensation—Refund—Revision.*—A person, who by falsely pretending to be the winner of a lottery prize, dishonestly induces the lottery officials to pay the prize to him does not cause "wrongful loss" to the rightful winner of the prize but causes a "wrongful gain" to himself by obtaining by false pretence what he is "not legally entitled" to and, therefore, he acts "dishonestly" within the meaning of s. 24, Penal Code. Where a complainant cannot recover substantial compensation in a Civil Court, compensation cannot be awarded to him under cl. (*b*) of s. 545, Crim. Pro. Code, but a sum may be awarded to him under cl. (*a*) of the section to defray the expenses of the prosecution. The Chief Court, in the exercise of its revisional power, ordered, under s. 517, Crim. Pro. Code, the appellant, who had received money by false pretence from the lottery officials, to refund the money to the lottery officials, and directed the Magistrate to recover it in the manner provided for the recovery of fine. NGA THA VIN v. EMPEROR, **15 Cr. L.J. 535 = 24 Ind. Cas. 963.**

(63)—*Ss.* 24, 464, 466, 477-*A—Essentials of offences under—Patwari making unauthorised entries in Revenue Registers—Offence—Intention.*—The accused, a Patwari, was charged with having made unauthorized entries in the *Khatauni partal* book and *Jamabandi* in regard to the status of certain donees of land. The effect of those entries was to show the donees as *malkan qabza, i.e.*, as proprietors of their holding merely without any share in the *shamilat*, whereas previously they were shown as full proprietors. The deed under which those persons acquired their rights made no mention of the *shamilat* and it was a moot point of law as to whether a deed of gift not specifying the *shamilat* rights as going with the area gifted does or does not carry with it the rights in the *shamilat*. It was also found that the accused acted *bona fide* though in disregard of the Revenue Rules. *Held*, that it was not shown that the making of the entries was likely to deprive the donees of any right to which they were entitled or that he made the entries with intent to defraud or dishonestly within the meaning of s. 24, I.P.C. In other words there was no finding that he made a false document as defined in s. 464 or that he fraudulently altered any book or register within the meaning of s. 477-A, and that his conviction under those sections cannot be sustained. MUHAMMAD SIRDAR v. CROWN, **25 P.R. 1914, Cr. = 16 Cr. L.J. 19 = 26 Ind. Cas. 323 = 35 P.W.R. 1915, Cr. = 209 P.L.R. 1915.**

(64)—*Ss.* 24, 471—*Production of a forged bond in a suit.*—The word 'fraudulently' denotes an intention to deceive. Although the act of an accused person, in producing a forged bond in a suit instituted by him, is proved not to be dishonest, yet it may be fraudulent, when it is done with the intention to make the Court believe that he was entitled to recover money upon the basis of that document. KEDAR NATH CHATTERJEE v. KING-EMPEROR, **5 C.W.N. 897.** [*R.*, 32 P.L.R. 1907 = 1 P.R. 1907, Cr.]

——**S. 25.**

(65)—S. 25—*See* Nos. 52 to 56, *supra* and Nos. 2803, 3048, *infra.*

(66)—Ss. 25 463, 464—*See* FORGERY, 22 C. 313, L.B.R. 1893—1900, 266.

(67)—Ss. 25, 474—False certificate for purposes of employment in Government service—*See* FORGERY, 2 P.R. 1895, Cr.

——**S. 27.**

(68)—S. 27—What proof necessary to raise presumption—Possession of wife or mistress—Effect—*See* ACT XII OF 1896, ss. 48, 53, 97 P.L.R. 1914 = 15 Cr. L.J. 172 = 25 P.W.R. 1914, Cr. = 22 Ind. Cas. 748 = 20 P.R. 1914, Cr.

(69)—Ss. 27, 141 — Servant's possession whether master's—Use of force—Assertion of right—Not legalised—*See* ACT IX OF 1890, ss. 3, cl. (4), 122, 138, 1914 M.W.N. 124 = 15 Cr. L.J. 225 = 23 Ind. Cas. 177.

——**S. 28.**

(70)—*Ss.* 28, 195, 232, 235—*Counterfeiting coin—Abetment—Crim. Pro. Code, s.* 237 (1) —*Charge—Conviction under different sections of the Penal Code.*—The accused were charged under ss. 232 and 235, Penal Code, for being found coining false rupees. It was found that coining at the time of the arrest of the accused was not done for the purpose of making gain by passing false coin off on the public as good ones, but for the purpose of getting them

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secretly into the house of the enemies of the accused against whom they were making to the Police a false charge of theft accompanied by a request for house search. They were acquitted of the offence under s. 232, Penal Code, on the ground that they were not counterfeiting coin as defined in s. 28, Penal Code, but convicted of offences under ss. 235 and 195-107 of the Penal Code. *Held*, that s. 235, Penal Code, was also not applicable to the case. On appeal the Court altered the conviction under ss. 195-107 to one under s. 195, I.P.C., for there was no abetment. That conviction under s. 195 was permissible although the section was not mentioned in the charge. LAL CHAND v. THE CROWN, **43 P.L.R. 1912 = 17 P.W.R. 1912, Cr. = 14 Ind. Cas. 604 = 13 Cr. L.J. 252.**

(71)—*Ss.* 28, 230, 235 *as amended by Act* VI *of* 1896—*Queen's coin—Murshedabad rupees.*—The effect of the second part of s. 235 of the Penal Code is to substitute the words "Queen's coin" for the word 'coin' in the first part of the section. A person in possession of dies intended for counterfeiting East India Company's issue of Murshedabad rupees is guilty of the offence under s. 235 of the Penal Code. BANIAN v. THE EMPEROR OF INDIA, **47 P.L.R. 1903 = 1 P.R. 1903, Cr.**

(72)—*Ss.* 28, 231 *and* 239—*Presumption of guilty intention—Counterfeiting current coin.*—When the coins counterfeited are such imitations of the genuine coin as might deceive people on account of the resemblance, the presumption referred to in s. 28, excep. 2, I.P. C. arises. EMPEROR v. QADIR BAKHSH, **4 A.L.J. 776 = 30 A. 93 = A.W.N. 1907, 289 = 3 M.L.T. 56 = 6 Cr.L.J. 395.**

(73)—*Ss.* 28, 478, 486—*Trade mark, meaning of—Counterfeiting, what amounts to.*—The trade-mark alleged to be counterfeited was that of a company who were the manufacturers of a kind of tooth-powder sold in boxes. It appeared that, apart from two points of difference, the imitation of the whole design was most marked and complete. *Held*—that the expression "trade mark" as defined in s. 478 must not be confined to the trade-mark of the complainants registered in England, but must include the whole design on the top of the box and the black label pasted round the side. That the case clearly came within the definition of "counterfeit" in s. 28, I.P.C. NILMONEY NAG v. DURGA PADA BANERJI, **19 C.W.N. 957.**

——S. 29.

(74)—S. 29—*See* No. 26, *supra* and No. 3048, *infra.*

——S. 30.

(75)—*S.* 30—*Valuable security.*—An account stated in which a balance is admitted to be due in the hand-writing of the prisoner is a valuable security. *In re* KAPALAVAYA SARAYA, **2 M.H.C. 247.**

(76)—S. 30—*See* No. 39, *supra.*

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——S. 32.

(77)—*Ss.* 32 *and* 426—*Mischief—Cattle straying on another's field.*—S. 32 provides that in every part of the Code, except where a contrary intention appears from the context, words which refer to acts done extend also to illegal omission. Therefore, the owners of cattle who, knowing their animals to be not properly provided with fodder and accustomed to stray in search of food, intentionally omit to secure their cattle, or neglect to take reasonable precautions for their care and custody, may be liable to be convicted of mischief under s. 426 of the Penal Code. *In re* THORNOTTI MADATHIL POKER, **1 Weir 29 = 1 Weir 495.**

——S. 33.

(78)—S. 33—*See* BOM. ACT V OF 1878, s. 45, Rat. Un. Cr. C. 284 = Cr. Rg. 19 of 1886.

——S. 34.

(79)—*S.* 34—*A person being present on a lawful occasion—Unpremeditated acts.*—The mere circumstance of a person being present on a lawful occasion does not raise a presumption of that person's complicity in an offence then committed. QUEEN-EMPRESS v. MAGANLAL, **14 B. 115.**

(80)—*S.* 34—*Implicating persons not parties to the act.*—Unpremeditated acts done by a private individual, and which go beyond the object and intention of the original offence, should not implicate persons who take no part in that particular act. EMPRESS v. DHARAM RAI, **A.W.N. 1887, 236.** [*R.*, 35 A. 506 = 11 A.L.J. 804 = 14 Cr. L.J. 616 = 21 Ind. Cas. 663.]

(81)—*S.* 34—*Common intention to cover act done by all the several persons.*—It is a necessary condition to make a person liable under s. 34 of the Indian Penal Code, that the "common intention" must cover the act done by all the several persons. NGA TUN BAW v. KING-EMPEROR, **U.B.R. 1907, 3rd Qr. Penal Code, 5 = 7 Cr. L.J. 205 = 14 Bur. L.R. 264.** (U.B.R. 1904—1906, 1, Penal Code 33, 1 L.B.R. 233, 2 L.B. R. 125, 3 L.B.R. 122, 19 M. 483, *R.*)

(82)—S. 34—*See* CRIM. PRO. CODE, 1898, s. 297, 11 Cr. L.J., 15 = 4 Ind. Cas. 608 = 3 S. L.R. 125, Cr.

(83)—S. 34—*See* Nos. 11, 16, *supra* and Nos. 1919, 1924, 2155, 2243, *infra.*

(84)—*Ss.* 34, 99, 100, 148, 304—Onus *of proof—Fatal assault—Private defence.*—The right of private defence is a restricted right and s. 100, Penal Code, has to be read subject to the provisions of s. 99. (35 C. 103, *F.*) Where the husband and other relations of a girl assaulted a man while he was in the very act of violating her: *Held*, that the case came within s. 100 as qualified by s. 99, Penal Code. A person who was violating a girl was beaten by the appellants inside her bedroom, but it did not appear what the nature of the injuries inflicted by them was; he rushed out of the room and was beaten by ten men on the

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corridor, and was then beaten to death by a large number of men in the Court-yard, but it could not be found upon the evidence that the appellants took part in the assault upon the man after he had escaped from the room: *Held*, that the facts made out did not place on the appellants any burden of proof. That, assuming that, when one man takes away the life of another, the *onus* is on him to prove the circumstances which justify his act in law, the facts stated above did not raise any question of *onus*. (8 C.W.N. 714, *Cited.*) The essence of s. 34, Penal Code, is common intention, as the presence of a common object is requisite to establish a case under s. 148, Penal Code. Where, therefore, it could not be found upon the evidence that the appellants dealt the fatal blow or took part in the assault which resulted in death, they could not be held to be guilty by operation of s. 34 or s. 148, Penal Code. JHAKRI CHAMAR v. KING-EMPEROR, 16 C.L. J. 440=17 Ind. Cas. 1001=13 Cr. L.J. 905. (24 C. 686, *Relied on*; 35 C. 368, 24 W.R. Cr. 5, *D.*)

(85)—*Ss.* 34, 107—*Crim. Pro. Code, ss.* 206, 439—*Quashing of proceedings—Verdict of not guilty on charge of conspiracy in favour of co-accused at previous trial—Effect on accused in supplementary trial on charge under s.* 307, *read with s.* 34, *I.P.C.—Recalling of warrant after acquittal of co-accused—Jurisdiction of District Magistrate to issue fresh warrant on same materials—Verdict of jury—Repugnancy in, effect of, in Indian law—Opinion of Judge and jury, weight to be attached to—S.* 34, *I.P.C.—Necessary elements in.*—In a previous trial two persons were tried for having conspired with one B (against whom a warrant had been issued but who was not before the Court) and two others named and others unknown, to kill one M or to cause grievous hurt to him. They were acquitted by the unanimous verdict of the jury whereupon the warrant against B was recalled, but subsequently the District Magistrate issued a fresh warrant against B and proceedings were started against him, under s. 307 read with s. 34, I.P.C. *Held, (on an application by B for the quashing of the proceedings).*—That the District Magistrate had jurisdiction to take cognizance of the case and issue fresh warrant without further materials or enquiry, if he was of opinion that the evidence brought the accused within the purview of the law. As to the contention that the case for the prosecution in the previous trial being one of conspiracy between the accused then before the Court and the present accused and that charge having failed, the present proceeding could not go on: *held*, agreeing with the view expressed in *Romesh Chandra Banerjee* v. *Emperor* (18 C.W.N. 498)—That the repugnancy in the verdict of a jury in India is not in itself sufficient to justify the quashing of a conviction; and the technicalities which are borrowed from the English Law, and founded on ideas as to the sacred character of a verdict by a jury whose findings of fact are unknown, cannot be imported so as to give to verdicts of juries in India a character which by the express provisions of law does not attach to them. Where two of the accused at the previous trial were acquitted by the Judge agreeing with the jury on account of the evidence of their identification being weak. *Held*—that this did not affect the evidence of identification of the present accused even by the same witnesses, as the question of his identification was not before the jury at that trial. That, in the circumstances, where the Judge had expressed a clear opinion and the jury had expressed none, the High Court ought not to interfere with the ordinary course of justice by quashing the proceedings against the present accused. In this country the opinion of the Judge is to be weighed by the High Court in exactly the same balance as the opinion of the jury. S. 34, I P.C., does not involve abetment and therefore does not imply any conspiracy and does not require proof that any particular accused was responsible for the commission of the actual offence and the present proceeding under ss. 307-34, I.P.C., could not be quashed on the ground that there was no suggestion at any stage of previous trial that any particular accused was responsible for the offence. MANINDRA CHANDRA GHOSE v. KING-EMPEROR, 18 C.W.N. 580=15 Cr. L J. 402=41 C. 754=23 Ind. Cas. 1002.

(86)—*Ss.* 34, 111, 149, 395—*Murder—Criminal liability of several persons for the Act of one—Abetment—Common object—Co-operation.*—When several persons are charged with murder on the ground that the murder was a probable consequence of an act abetted by them, or because the murder was committed by means of several acts, and the accused intentionally co-operated in the commission of the murder by doing any one of those acts, or because the murder was committed in furtherance or prosecution of the common object or intention of all the accused, the law applicable is to be found, not in s. 34, which covers the case of a single act done by several persons, but in ss. 34, 111, 149, Penal Code. If criminal liability for the offence of murder does not attach to the companions of the actual murderer, or to those who are alleged to have abetted the murder or to have intentionally co-operated in committing it under these sections, then the murder becomes an independent offence for which the actual murderer's companions are not liable, unless they are made by some special provision such as that enacted in s. 395 (dacoity with murder). HAKIM ALI v. QUEEN-EMPRESS, L.B R 1893—1900, 150.

(87)—*Ss.* 34, 114—*Common object.*—Where a fight ensued between one party on their way to a police station to prefer a complaint, and another party who attempted by force to prevent their doing so, *held* that the former party had a right of private defence, that only those of them who exceeded the limits of such right were liable, and that neither s. 34 nor

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s. 114 was applicable to the other members of the party. QUEEN-EMPRESS v. FATEH SINGH, **A.W.N. 1896, 149.**

(88)—*Ss.* 34, 114—*Abettor when deemed as principal—Common intention.*—S. 114 enacts that a person shall, in certain circumstances, be deemed to have committed, not abetment, but the principal offence. But s. 114 does not apply, where the accused, if absent, would not have been liable to be punished as an abettor. Where the third and fourth accused held the complainant, while the first and second speared him, the spearing must be held to have been done in pursuance of the common intention of those four persons, and the third and fourth accused are guilty of voluntarily causing hurt with a spear, not under s. 114, but under s. 34. KING-EMPEROR v. PHA LAUNG, **3 L.B.R. 264 = 5 Cr. L.J. 414.**

(89)—Ss. 34 and 114—*See* BEN. ACT VII OF 1878, s. 53, 29 C. 496.

(90)—*Ss.* 34, 141, 142, 147, 149—*Unlawful assembly—Riot—Common object — Conduct—Presumption—Crim. Pro. Code* (*Act* V *of* 1898), *ss.* 233, 235, 239—*Riotous mob—Same transaction—Joint trial—Evidence of good character—Political offence.*—*Per Benson and Munro, JJ.* —In the absence of evidence or reasons to the contrary it is permissible to presume that the common object of a riotous mob is that indicated by their conduct, and that they entertained from the beginning the common object indicated by their conduct throughout their proceedings. The proceedings of a riotous mob, which from first to last showed a continuity of purpose and of action and were united by a close proximity in time, form one transaction within the meaning of ss. 235 and 239, Crim. Pro. Code, so as to render all the rioters liable to be tried at the same trial for the acts done by each of them. *Per Benson, J.* —The presumption from the evidence of good character, education and good family connection of an accused person cannot be pressed too far in the case of offences originating in extreme political feeling. The negative evidence of the witnesses, who say that they did not see the accused doing any thing, cannot outweigh the positive evidence of those who prove the acts done by him. *Per Sankaran Nair, J.*—The essence of the offence defined in s. 141, Indian Penal Code, is the common unlawful purpose and an accused person cannot be convicted if the common object proved is different from the common object in the charge or for which he has been tried. Persons to be tried jointly for an offence under s. 142, Indian Penal Code, must have been associated from the first in the series of acts which form the same transaction *In re* LOGANATHAIYAR, **11 Cr. L J. 30 = 4 Ind. Cas. 700 = 6 M.L.T. 17.**

(91)—*Ss.* 34, 147, 149, 325—*Crim. Pro. Code, ss.* 221, 222, 238—*Charge under s.* 325, *I.P.C., read with s.* 149, *I.P.C.—Conviction under s.* 325, *I.P.C., if legal—S.* 34, *I.P.C., when applicable.*—Where the accused were charged and convicted by the Magistrate under s. 147, I.P.C., and s. 325 read with s. 149, I.P.C., and the Sessions Judge in appeal set aside the conviction under s. 147, I.P.C., and altered the conviction under s. 325 read with s. 149, I.P.C., to one under s. 325, I.P.C. *Held*—when a person is charged by implication under s. 149, I.P.C., he cannot be convicted of the substantive offence. When a Court draws up a charge under s. 325 read with s. 149, I.P.C., it clearly intimates to the accused persons that they did not cause grievous hurt to anybody themselves, but that they are guilty by implication of such offence, inasmuch as somebody else in prosecution of the common object of the riot in which they were engaged did cause such grievous hurt. When these accused persons are acquitted of rioting, obviously all the offences which they are said to have committed by implication disappear, and the defence cannot be called upon to answer to the specific act of causing grievous hurt, simply because it may have appeared in the evidence. S. 34, I.P.C., can only come into operation when there is a substantive charge. The considerations which govern s. 34, I.P.C., are entirely different from and in many respects the opposite of those which govern s. 149, I.P.C. REAZUDDI v. KING-EMPEROR, **16 C.W.N. 1077 = 15 Ind. Cas. 646 = 13 Cr. L.J. 302.** [*F.*, 41 C. 662 = 18 C. W.N. 668 = 15 Cr. L.J. 155 = 22 Ind. Cas. 731.]

(92)—*Ss.* 34 *and* 149—*Distinction between the sections—Constructive murder.*—The only distinction between s. 34 and s. 149, is that the latter section refer to an assembly of five or more persons, while s. 34 has no limitation as to the number of persons who may have been acting in pursuance of the common intention. NIBARAN CHANDRA ROY v. KING-EMPEROR, **11 C.W.N. 1085 = 6 Cr. L.J. 304.**

(93)—*Ss.* 34, 149—*Constructive murder.*—It may be a question whether a person constructively guilty of murder under s. 34 could be said to have committed the offence of murder within the meaning of s. 149, so as to make the other prisoners, by a double construction, guilty of murder. JHUBBOO MAHTON v. EMPRESS, **12 C.L.R. 233.**

(94)—*Ss.* 34, 302—*Deceased struck by hatchet by one accused—Another accused subsequently striking him—Murder—No common intention to commit.*—Where one accused struck the deceased with a stick after he had fallen from the blows with the hatchet inflicted by another accused. *Held*, that it does not necessarily follow that the former had a common intention with the latter to commit murder. IMPERATOR v. VAHIAL, **5 S.L.R. 247 = 15 Ind. Cas. 810 = 13 Cr. L.J. 538.** (36 C. 659, *R.*)

(95)—Ss. 34, 302—*See* MURDER, 1 L.B.R. 233.

(96)—*Ss.* 34, 302, 304, 323, 326—*Assault causing death—Joint and several responsibility of assailant—Evidence as to who struck the fatal blow—Common intention not inferred from a fatal blow by one of the several assailants*—

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Persons causing bodily injury, guilt of—Common intention—Premeditated and unpremeditated acts, difference between.—Per *Rafique, A.J.C.*—There are usually three classes of cases of fatal assault where the question of the joint responsibility of the several assailants arises, *viz.*, (1) where several persons join in the assaults and inflict numerous injuries and the cumulative effect of all or some of the injuries is to cause death; (2) where several persons commit the assault and inflict minor injuries but one of them deals a fatal blow and there is evidence of the latter's guilt; and (3) where several persons beat a man and inflict minor injuries on him but one of the assailants deals a fatal blow and the evidence leaves it in doubt as to who struck the fatal blow. *Held*, that in the first case all the assailants are responsible for the fatal assault; in the second case the person who is shown by the evidence to have dealt the fatal blow is alone responsible and in the third case none of the assailants is responsible for the fatal blow. (24 W.R. 5, 19 M. 483, 29 A. 282, *R.*) *Held further*, that the dealing of one fatal stroke by one of the several assailants cannot form the basis of a valid inference that the common intention of all the assailants was to murder the person attacked. [Per *Lindsay*, (*Officiating*) *J.C.*] *Held* that, where the acts of a combination of persons proved are blows causing severe bodily injury sufficient in the ordinary course of nature to cause death, each of the accused persons taking part in such combination is guilty of murder. Per *Kanhaiya Lal, A.J.C.*—Where persons go with the intention to prosecute a common object, each and every one becomes responsible for the acts of each and every other in execution and furtherance of their common purpose. But a distinction has to be drawn between unpremeditated acts done by a particular individual which go beyond the object and intention of the original offence and premeditated acts of the parties as shown by their conduct during the affair. KING-EMPEROR v. MAHABIRT, 16 O.C. 19 = 19 Ind. Cas. 497 = 14 Cr. L.J. 241.

(97)—Ss. 34, 302 and 323—*See* MURDER, 19 M. 483 = 1 Weir 298.

(98)—*Ss.* 34, 302 *and* 326—*Offence, whether under ss.* 302, 34, *I.P.C., or under s.* 326—*Murder or grievous hurt—Which of two persons gave the fatal blow not proved—Dying declaration—Proof—Petition of complaint treated as a dying declaration—Evidence Act* (I *of* 1872), *ss.* 32 (1) *and* 91.—A petition of complaint may be admissible in evidence as a dying declaration of the complainant under s. 32 (1), Evidence Act. When a dying declaration is recorded by a Magistrate, the writing itself is not evidence, but the precise statement made by the deceased must be proved by the Magistrate who recorded the statement or some one who heard it. S. 91 of the Evidence Act does not apply to such a document. Where it was found that two of the accused struck the deceased several blows inflicting severe injuries, one of which was the cause of death, but it was not proved who struck the fatal blow; *held*, under the circumstances of the case, none of the accused could be convicted of murder by the operation of s. 34, I.P.C., but each of them should be convicted under s. 326, I.P.C. GOURIDAS NAMASUDRA v. EMPEROR, 36 C. 659 = 13 C.W.N. 680 = 10 Cr. L.J. 186 = 2 Ind. Cas. 841. (8 C. 211, 6 C.W.N. 72, *F.*) [*R.*, 13 Cr. L.J. 538 = 15 Ind. Cas. 810 = 5 S.L.R. 247, 18 C.W.N. 723, 19 Ind. Cas. 497 = 16 O.C. 19; *D.*, 35 A. 506 = 11 A.L.J. 804.]

(99)—*Ss.* 34, 302, 326—*Common intention.*—The appellant and his companions went together to strike the deceased. The appellant was found to have inflicted only one injury out of three, all of which were contused wounds caused by blunt weapons. One was on the left eye and was slight; the second on the nose and dangerous to life but could be cured; and the 3rd on the parietal bone which fractured the skull was necessarily fatal. The appellant stated that he inflicted one blow with a light cane. *Held*, that it would not be safe to assume that the common act intended by all the assailants was more than to cause grievous hurt. NGA BA E v. KING-EMPEROR, 15 Cr. L.J. 484 = 24 Ind. Cas. 572 = 7 Bur. L.T. 71.

(100)—*Ss.* 34, 323 *and* 325—*Criminal act done by several persons in furtherance of common intention.*—For the application of s. 34, Penal Code, a furtherance of a common design is a condition precedent for convicting each of the persons who take part in the commission of a crime, and the mere fact that several persons took part in a crime, in the absence of a common intention, is not sufficient to convict them of that crime. In a case, therefore, where several persons joined together in striking another, but there was no evidence to show that the common intention of all was to cause grievous hurt, the conviction of all of them for the same offence would be bad in law. DHIAN SINGH v. KING-EMPEROR, 9 A.L.J. 180 = 13 Cr. L.J. 265 = 14 Ind. Cas. 649. [*Diss.*, 35 A. 560 = 11 A.L.J. 926 = 14 Cr. L.J. 685 = 21 Ind. Cas. 1005; *D.*, 35 A. 506 = 11 A.L.J. 804 = 21 Ind. Cas. 663 = 14 Cr. L.J. 615.]

(101)—Ss. 34, 392, 394, 395, 397—*See* DACOITY, 3 O.C. 263.

(102)—*Ss.* 34 *and* 397—*Enhanced punishment awarded to all accused—Hurt by only one.*—S. 397 of the Penal Code is applicable not only to one of the accused who actually used the deadly weapon by which hurt was caused, but to all the accused whose object was to commit robbery, where the hurt is caused in furtherance of the common intention. REG. v. DEOJI KERU, Rat. Un. Cr. C. 65 = Cr. Rg. 1-8-1872.

(103)—Ss. 34, 397—*See* DACOITY, 21 A. 263 = A.W.N. 1899, 76.

——**S. 35.**

(104)—*Ss.* 35, 71, 380 *and* 457—*Separate sentence for separate offences in respect of the same transaction.*—Where a Magistrate convicted

Penal Code (Act XLV of 1860)—*continued.*

certain accused persons under ss. 457, 380, I.P. Code, of two separate offences in respect of the same transaction and sentenced to different terms of imprisonment and to a whipping, *held* that the sentences were not illegal and that apart from the question of legality or illegality, it is generally most convenient, in cases of this kind, to "concentrate the conviction and sentence on the gravest offence proved;" that the sentences of imprisonment passed could not be said to be excessive; but that the sentence of whipping was illegal, because on the occasion of his previous conviction, the prisoner was convicted of an offence other than either of those of which he was convicted. EMPRESS v. BALASUR GANDA, **8 C.P.L.R. Cr. 7.** (10 B. 493, 2 A. 644, *F.*)

——**S. 37.**

(104-*a*)—S. 37—*See* No. 1920, *infra.*

(105)—Ss. 37, 111, 149, 396—*See* DACOITY, L.B.R. 1893—1900, 194.

(106)—*Ss.* 37, 302, 325—*Murder—A number of persons acting in concert—Assault by* lathis *by all of them—Death caused by a number of blows—Attack, single and indivisible—Liability of each for murder.*—Where a number of persons, acting in8 concert with one another, caused death by beating the deceased with *lathis*, and the attack by them was a single and indivisible thing, *held* that all of them must be taken to have intended to cause death or to have had every reason to know that the probable result of their joint act would be death, and each of them was equally guilty of murder. KING-EMPEROR v. RAM NEWAZ, **11 A.L.J. 804=35 A. 506=14 Cr. L.J. 615=21 Ind. Cas. 663.**

——**S. 38.**

(107)—*S.* 38—*Criminal act by several persons—Separate offences.*—Where, in a quarrel, one accused person hit the deceased with a stick and another with an axe and the latter caused death and there was no proof of common intention, *held* that the latter was guilty of culpable homicide while the former was only guilty of grievous hurt. EMPRESS v. INDAR, **A.W.N. 1882, 23.**

(108)—*Ss.* 38, 442 *and* 457—Dalan *whether a building.*—A *dalan* or entrance was surrounded by a wall in which there were two doorways, but without doors, which was used for the custody of property, was held to be a building within the meaning of ss. 380, 442. A person entering a *dalan* at night for the purpose of committing theft is liable to be convicted under s. 457, I.P.C. DAD v. CROWN, **10 P.R. 1879, Cr.**

——**S. 39.**

(109)—S. 39—*See* RELIGION, OFFENCES RELATING TO, 23 C. 60.

(110)—*Ss.* 39 *and* 94—*Accomplice in murder cases—Doing an act under threat of death—Voluntary.*—Where one A was induced by threats of death to do an act to enable the accused to commit a murder, he cannot claim

Penal Code (Act XLV of 1860)—*continued.*

the benefit of s. 94, Penal Code. It does not apply to cases of murder, and A is an accomplice.—Where A intentionlly aided the murderers by calling the deceased and bringing him into their power, his action cannot be said to be '*voluntary*' within the meaning of s. 39, Penal Code. KILLIKYATARA BOMMA v. EMPEROR, **1912 M.W.N. 1108=19 Ind. Cas. 207=14 Cr. L.J. 207.**

——**S. 40.**

(111)—S. 40—*See* No. 12, *supra*, and *see* Nos. 297, 298, 1341 and 3127, *infra.*

(112) Ss. 40, 41—Meaning of 'Special Laws,'—Abetment—Punishment of whipping when may be awarded—*See* ACT IV OF 1909, ss. 3, 4, 5, 7 L.B.R. 63=22 Ind. Cas. 147.

(113)—Ss. 40, 64—*See* BOM. ACT III OF 1867, ss. 13 and 14, Rat. Un. Cr. C. 221.

(114)—Ss. 40, 64—*See* BOM. ACT VI OF 1873, s. 84, 18 B. 400.

(115)—Ss. 40 and 65—*See* BOM. ACT XXXI OF 1850, s. 3, 5 B.H.C. Cr. 61.

(116)—Ss. 40 and 67—Imprisonment in default of payment of fine—*See* ACT I OF 1871, s. 22, L.B.R. 1872—1892, 429.

(117)—Ss. 40, 67—*See* BUR. ACT XIX OF 1881, s. 36, L.B.R. 1872—1892, 410.

(118)—Ss. 40, 72—Alternative charges for offences under the Penal Code and Special Laws not permissible—*See* CRIM. PRO. CODE, 1898, s. 236, 10 Ind. Cas. 168=12 Cr. L.J. 224=5 S. L.R. 16.

(119)—Ss. 40, 109—*See* ACT I OF 1879, s. 61, A.W.N. 1883, 145.

(120)—*Ss.* 40 *and* 114—*Applicability of latter section to special laws.*—S. 114 of the Penal Code is, by s. 40 as amended, extended to offences under special laws, such as the Excise Act. KESHWAR LAL SHAHA v. GIRISH CHUNDER DUTT, **29 C. 496.**

(121)—Ss. 40, 224, 225—*See* ESCAPE FROM LAWFUL CUSTODY, 7 A. 67.

(122)—*Ss.* 40, 224, 225-*B*—*Arrest under N.W.P. Land Revenue Act,* XIX *of* 1873, *s.* 152—*Escape from custody.*—A defaulter in payment of Government revenue, who was arrested by a Tahsildar's order under s. 152 of the N.W.P. Land Revenue Act and who escapes from custody, is guilty of an offence under s. 225-B of the Penal Code and not under s. 224, since he has not been apprehended for an offence as defined in s. 40. QUEEN-EMPRESS v. AKBAR SINGH, **A.W.N. 1890, 2.**

——**S. 41.**

(123)—S. 41—*See* No. 112, *supra.*

——**S. 42.**

(124) S. 42—*See* ACT III OF 1909, ss. 17, 103, 12 Bom. L.R. 750=7 Ind. Cas. 963=11 Cr. L.J. 548.

——**S. 43.**

(125)—Ss. 43, 176—*See* ILLEGAL OMISSION, 19 P.R. 1886, Cr.

Penal Code (Act XLV of 1860)—*continued.*

(126)—*Ss.* 43, 177—*Meaning of the term "legally bound"—Tahsildar sending a false "nil" return of lands.*—Where a Deputy Tahsildar stated in reply to an official question that he had no lands in a certain place and also made a false statement to the same effect before the Principal Assistant Collector, *held*, that he could not be convicted of an offence under s. 177, as he was not "legally bound" to furnish such information within the definition given in s. 43, Penal Code, although he was guilty of breach of a departmental order. QUEEN-EMPRESS v. APPAYYA, **14 M. 484 = 1 M.L.J. 741 = 1 Weir 109.** (4 M. 144, *Diss.*) [*F.*, 1 Weir 105; *R.*, 38 C. 368 = 12 Cr.L.J. 411 = 11 Ind. Cas. 595, 1 Weir 467.]

(127)—Ss. 43 and 290—*See* NUISANCE UNDER PENAL CODE, 6 M. 280 = 1 Weir 245 = 7 Ind. Jur. 247.

——S. 44.

(128)—*Ss.* 44, 285—"*Injury*" *defined.*—The term "injury as used in s. 285, I.P.C., includes any harm illegally caused to the property of any other person, and is not confined to injury to the person only. REG. v. NATHA LALA, **5 B.H.C. Cr. 67.**

(129)—Ss. 44 and 384—*See* MAD. ACT IV OF 1884, s. 284, 1 Weir 29 = 1 Weir 441.

(130)—Ss. 44, 503, 506—*See* CRIMINAL INTIMIDATION, 30 C. 418 = 7 C.W.N. 116.

——S. 48.

(131)—Ss. 48 and 64—*See* MAD. ACT XXIV OF 1859, s. 48, 3 M.H.C. App. 9.

——S. 52.

(131-*a*)—S. 52—*See* No. 3278, *infra.*

(132)—Ss. 52, 79, 99, 342—*See* WRONGFUL RESTRAINT, 12 B. 377.

(133)—Ss. 52, 79 and 304-A—*See* RASH AND NEGLIGENT ACT, CAUSING DEATH BY, 11 P.R. 1888, Cr.

(134)—Ss. 52, 79, 494, 497—*See* BIGAMY, 2 B.H.C. 117.

(135)—*Ss.* 52, 191 *and* 193—*Perjury—False verification—Statement made, believed to be true—"Good faith."*—A man cannot be convicted of perjury for having acted rashly and credulously and having failed to make reasonable enquiry with regard to the facts alleged by him to be true. It must be found that he made some statement which he knew or believed to be false or which he did not believe to be true. This finding should be arrived at independently of the definition of good faith in s. 52 of the Code. MOHAMMAD ISHAQ v. KING-EMPEROR, **12 A.L.J. 850 = 36 A. 362 = 15 Cr.L.J. 579 = 25 Ind. Cas. 331.**

(136)—*Ss.* 52, 499, *Exp.* 4, *Exceps.* 8 *and* 9—*Defamation—Lowering of character in estimation of others—Proof of—Good faith in making imputations—Serious allegations against a Mamlatdar—Application to Collector.*—The accused, in appealing against the levy of assessment by the complainant (a Mamlatdar) by sale of moveable property, alleged that the complainant acted towards him unjustly and spitefully, that in passing the order appealed against he was actuated by personal ill-will and malice towards him (accused), and had exercised his authority with a view to cause harassment and loss to the accused. The accused was convicted of the offence of defamation for making the statements he did. He having applied to the High Court, *Held*, by *Davar and Shah, JJ.*, that the accused had committed no offence, inasmuch as he was protected by Exceps. 8 and 9 to s. 499, Penal Code.—*Held*, by *Davar, J.*, that no offence of defamation was made out, in the absence of proof that the complainant was in fact thereby lowered in the estimation of others. *Held*, by *Heaton, J.* (dissenting), (1) that the case was not covered by any of the exceptions to s. 499, Penal Code, and (2) that the offence under the section was complete, since it was difficult to conceive why a serious allegation should be made in a written petition against a Mamlatdar unless it was intended to harm the officer's reputation. Per *Davar, J.*—"It is not sufficient for a complainant merely to say that the allegations he complains of have harmed or are likely to harm or were intended to harm his reputation in the estimation of others. He must *prove* this before he can obtain a conviction. It is not sufficient for a complainant merely to assert that the allegations against him have caused him annoyance, harassment or mental worry. It is not sufficient for him merely to raise a presumption that such imputations may lower him or may lower his moral or intellectual character in the estimation of others, or that they may in the estimation of others lower his character in respect of his calling, or may lower his credit. These are matters that must be proved."—Per *Heaton, J.*—"To attribute personal spite to a Mamlatdar in the performance of his duties is a very grave imputation. A person who imputes such a thing to a Mamlatdar must be taken to intend harm to his reputation."—"Exp. 4 to s. 499 like the other three merely describes the quality or nature of the imputation and not its actual effects." "It does not constitute 'good faith' necessarily that the person making the imputation believed it to be true. 'Due care and attention' implies genuine effort to reach the truth and not the ready acceptance of an ill-natured belief." EMPEROR v. ANAND RAO BALKRISHNA RANGNEKAR, **17 Bom. L.R. 82 = 3 Bom. Cr. C. 15 = 16 Cr. L.J. 177 = 27 Ind. Cas. 657.**

——S. 53.

See SENTENCE.

(137)—S. 53—*See* HIGH SEAS, OFFENCES COMMITTED IN, 1 B.L.R. O. Cr. 1.

(138)—Ss. 53, 88 and 304-A—*See* CULPABLE HOMICIDE, 14 C. 566.

——S. 56.

See PENAL SERVITUDE.
See SENTENCE.

Penal Code (Act XLV of 1860)—*continued*.

(139)—*S.* 56—*Penal servitude.*—The punishment of penal servitude is only applicable to Europeans and Americans. QUEEN-EMPRESS v. DINA BAIDYA, **19 M. 483=1 Weir 298.**

——**S. 57.**

See SENTENCE.

(140)—S. 57—*See* TRANSPORTATION FOR LIFE, L.B.R. 1893—1900, 13.

——**S. 59.**

See SENTENCE.

(141)—*S.* 59—*Transportation in lieu of rigorous imprisonment.*—Under the provisions of s. 59, Penal Code, a sentence of transportation can be awarded in lieu of rigorous imprisonment for a similar term. **1 W.R. Cr. Letters, 5.**

(142)—*S.* 59—*Transportation—Rigorous imprisonment.*—Transportation cannot be awarded generally without the application of s. 59, Penal Code. Under the provisions of that section, a sentence of rigorous imprisonment should first be passed and then commuted to one of transportation. **1 W.R. Cr. Letters, 10.**

(143)—*S.* 59—*Transportation, whether awardable under special or local law—Offences under Registration Act.*—S. 59 of the Penal Code does not apply to sentences passed under a local or special law, but only to offenders convicted under the Penal Code. Transportation for an offence, under the Registration Act, cannot, therefore, be made. MUTHURAMALINGAM v. QUEEN, **11 M.L.J. 127.**

(144)—*S.* 59—*Commutation of sentence of imprisonment to that of transportation, legality of—"In every case," meaning.*—The appellant, who was convicted of two acts of criminal breach of trust, was sentenced to four years' rigorous imprisonment on the first charge and to three years' rigorous imprisonment on the second charge. Under s. 59 of the Penal Code, the Magistrate directed that, in lieu of sentences of imprisonment, the appellant should suffer transportation for seven years. *Held*, that the commutation of two sentences of imprisonment amounting to seven years to one of transportation for seven years was illegal. The words "in every case" in s. 59 were construed as meaning "on any charge" or "for any offence." NGA MAIK v. KING-EMPEROR, **U.B.R. 1905, Penal Code, 11=2 Cr. L.J. 473.** (U.B.R. 1897—1901, 144, 8 W.R. 2, *R.*)

(144-*a*)—S. 59—*See* No. 2576, *infra*.

(145)—S. 59—*See* ACT XV OF 1862, s. 1, 9 W.R. Cr. 6=B.L.R. Sup. Vol. 869.

(146)—Ss. 59 and 75—*See* CRIM. PRO. CODE, 1898, s. 35, 7 C.P.L.R. Cr. 29.

(147)—*Ss.* 59, 75, 380—*Theft—Punishment—Four previous convictions— Sentence of transportation—Illegality—Proper course—Procedure under s. 59—Sentence of imprisonment—Transportation in lieu thereof.*—A sentence of transportation for 14 years passed upon a person found guilty of theft, after 4 previous convictions is illegal, as, under s. 75, I.P.C. (as amended by Act III of 1910), the Court, if it awards a sentence of transportation, must sentence the convict to transportation for life. (31 P.R. 1903 Cr, 1 A. 43 F.B., *R.*) The Court may, however, in lieu of such sentence, sentence the prisoner to a term of ten years' imprisonment and under the provisions of s. 59, I.P.C., it may, instead of awarding the sentence of imprisonment, sentence the offender to transportation for a term not less than seven years and not exceeding the term for which under the Code such offender is liable to imprisonment. MUHAMMAD SHARIF v. CROWN, **14 P.R. 1915, Cr.=16 Cr. L.J. 554=29 Ind. Cas. 826=29 P.W.R. 1915, Cr.**

(148)—Ss. 59, 307, 440—*See* SENTENCE—TRANSPORTATION, 4 L.B.R. 65=6 Cr. L.J. 290.

(149)—Ss. 59, 377—*See* SENTENCE—TRANSPORTATION, 1 A. 43, F.B.

(150)—Ss. 59 and 395—*See* SENTENCE—TRANSPORTATION, 14 P.L.R. 1904.

——**S. 61.**

See FORFEITURE OF PROPERTY.

See SENTENCE.

(151)—*S.*61—*Forfeiture of property—Sentence of forfeiture of property on accused persons having property of a small value should not be passed.*—Before passing orders as to forfeiture of property, the position and means of the accused should, along with other matters, be taken into consideration. JIWAN v. EMPEROR, **132 P.L.R. 1903=21 P.R. 1903, Cr.**

——**S. 62.**

See FORFEITURE OF PROPERTY.

See SENTENCE.

(152)—*S.* 62—*Forfeiture of property—Crimes against the State or affecting public safety.*—S. 62, Penal Code, dealing with forfeiture of property in respect of certain offenders, should generally be applied in cases of crimes against the State or affecting the safety of the public. GAYA PRASAD v. KING-EMPEROR, **12 A.L.J. 760=36 A. 395=15 Cr. L.J. 606=25 Ind. Cas. 518.**

(153)—Ss. 62, 406—*See* CRIMINAL BREACH OF TRUST, A.W.N. 1906, 259=3 A.L.J. 772=4 Cr. L.J. 371=29 A. 25.

——**S. 63.**

See SENTENCE.

(154)—*S.* 63— *Measure of punishment in imposition of fine.*—In imposing a fine, due proportion must be preserved with regard to the nature of the offence and the means of the offender. QUEEN-EMPRESS v. VENGALASAWMY, **U.B.R. 1897-1901, Vol. I, 244.** (7 W. R. Cr. 37, *R.*)

(155)—*S.* 63—*Fine.*—A fine should be fixed with due regard to the circumstances of the case in which it is imposed and the condition in life of the offender. CROWN v. SUBHAN, **18 P.R. 1878, Cr.** MOHANA v. EMPRESS, **20 P.R. 1895, Cr.**

Penal Code (Act XLV of 1860)—*continued.*

(156)—Ss. 63 to 70—*See* BUR. ACT III OF 1889, s. 13, L.B.R. 1893—1900, 141.

——**S. 64.**

See SENTENCE.

(157)—*S.* 64—*Applicability to Bombay Village Police Act, s.* 15—*Bombay General Clauses Act,* III *of* 1866, *s.* 12.—A village Police patel has no jurisdiction to sentence an accused person to confinement in default of payment of fine, s. 64, I.P.C., not being made applicable by the Bombay General Clauses Act to proceedings under the Bombay Village Police Act. EMPEROR v. PUNA LAXMAN BHIL, 6 **Bom. L.R. 357 = 1 Cr. L.J. 327.**

(158)—*S.* 64—*Act* VIII *of* 1882, *s.* 1.—S. 1 of Act VIII of 1882, extends s. 64 of the Penal Code to all local and special Acts, whether passed before or after the General Clauses Act, 1868, but does not extend it to General Acts of the Governor-General in Council passed prior to 1868. NGA THA GAUNG v. QUEEN-EMPRESS, **L.B.R. 1872—1892, 473.**

(159)—*S.* 64—*Imprisonment in default of payment of fine.*—An offence under a special law is not punishable with imprisonment in default of payment of fine under s. 64, I.P.C. The law does not require that imprisonment should be awarded in default of payment of fine. CROWN v. BENI PERSHAD, **30 P.R. 1878, Cr.**

(160)—S. 64—*See* ACT IX OF 1890, s. 113, Rat. Un. Cr. C. 871 = Cr. Rg. 43 of 1896.

(161)—S. 64—Offence under Calcutta Municipal Act whether falls within s. 64, I.P.C.—*See* BEN. ACT III OF 1899, ss. 374, 376, 631, 580, 15 C.W.N. 906 = 11 Ind. Cas. 143 = 12 Cr. L.J. 375..

(162)—S. 64—*See* BOM. ACT VIII OF 1867, s. 15, 6 Bom. L.R. 357.

(163)—S. 64—*See* MAD. ACT III OF 1864, ss. 21 and 22, 6 M.H.C. App. 40.

(164)—S. 64—*See* Nos. 113, 114, 131, and 156, *supra.*

(165)—Ss. 64 to 67—*See* ACT XIII OF 1889, s. 27, Rat. Un. Cr. C. 563 = Cr. Rg. 36 of 1891.

(166)—*Ss.* 64, 65, 294—*Sentence—Imprisonment in default of fine.*—The accused, who were husband and wife, were convicted of using obscene language in the public street, and were found guilty under s. 294, I.P.C., and sentenced to pay a fine of four annas each, or, in default, to suffer seven days' rigorous imprisonment each. *Held* that, if the accused were sufficiently punished by fines of four annas each, the alternative sentence of seven days' rigorous imprisonment was quite out of proportion to the requirements of the case. The Magistrate should take care that his sentences in default bear some reasonable proportion to the amount of the fine. QUEEN-EMPRESS v. NGA CHO, **L.B.R. 1872—1892, 353.**

Penal Code (Act XLV of 1860)—*continued.*

——**S. 65.**

See SENTENCE.

(167)—*S.* 65—*Applicability of.*—S. 65 of the Indian Penal Code does not apply to offences punishable with imprisonment or fine, but only to offences punishable with imprisonment as well as fine. QUEEN-EMPRESS v. NGA SON GAUNG, **L.B.R. 1872—1892, 486.**

(168)—*S.* 65—"*Imprisonment as well as fine*" — *Construction of.*—The words "imprisonment as well as fine," contained in s. 65, Penal Code, must be held to include "imprisonment *and* fine" and also "imprisonment *or* fine." QUEEN-EMPRESS v. NGA MYAING GYI, **L.B. R. 1893—1900, 494.** (1 A. 46, 10 M. 165, 2 Weir 26 = 10 M. 165, Note, L.B.R. 1872—1892, 482, *Overruled*).

(169)—S. 65—Illegal sentence—Limit of term of imprisonment in default of payment of fine —Necessity of patience in the discharge of judicial functions. QUEEN-EMPRESS v. KYUN BON AUNG, **L.B.R. 1872—1892, 364.**

(170)—S. 65—*See* ACT III OF 1867, s. 4, L.B.R. 1893—1900, 385.

(171)—S. 65—*See* BOM. ACT XXXI OF 1850, s. 3, 5 B.H.C. Cr. 61.

(172)—S. 65—*See* BOM. ACT V OF 1878, s. 43 (*c*), Rat. Un. Cr. C. 979 = Cr. Rg. 37 of 1898.

(173)—S. 65—*See* BUR. ACT I OF 1899, s. 12, U.B.R. 1897—1901, Vol. I, 221.

(174)—S. 65—*See* CRIM. PRO. CODE, 1898, s. 33, L.B.R. 1893—1900, 281, 1 A. 461, F.B.

(175)—S. 65—*See* Nos. 115, 156, 165 and 166, *supra* and *see* No. 744, *infra.*

(176)—*Ss.* 65 *and* 67—*Scope of the section—Imprisonment in default of payment of fine—Madras Town Nuisances Act* (III *of* 1889), s. 3 (10).—S. 67, Penal Code, refers solely to the cases in which the offence is punishable with fine only. It does not apply to cases where the offence is punishable either with imprisonment and fine or with imprisonment or fine. To the latter class of cases, s. 65 applies and the imprisonment in default of payment of fine cannot exceed one-fourth of the maximum term of imprisonment provided for the offence. An offence under s. 3 (10), Act III of 1889, is liable to fine not exceeding Rs. 50 or to imprisonment of either description not exceeding eight days. In default of payment of fine, the maximum term of imprisonment that can be awarded is, under s. 65, Penal Code, only two days. QUEEN-EMPRESS v. YAKOOB SAHIB, **22 M. 238 = 1 Weir 32.**

(177)—Ss. 65, 67—*See* BEN. ACT III OF 1863, 10 W.R. Cr. 30.

(178)—Ss. 65, 71—*See* ACT XII OF 1896, ss. 5, 30, U.B.R. 1892—1896, Vol. I, 93.

(179)—*Ss.* 65 *and* 75—*Imprisonment in default of fine.*—Punishment inflicted under s. 75 of the I.P.C., is not included in the punishment for non-payment of fine which "shall

Penal Code (Act XLV of 1860)—*continued.*

not exceed one-fourth of the term of imprisonment which is the maximum fixed for the offence." QUEEN-EMPRESS v. KALWA, **S.C. 175, Oudh.**

(180)—*Ss.* 65 *and* 188—*Imprisonment for default of payment of fine—Disobedience to order of public servant.*—A notice to the effect that tenants will not be liable to pay a *patwari* cess is not tantamount to an order directing the landholders to abstain from doing a certain act. Where, for an offence imprisonment as well as fine could be awarded, the term of imprisonment to which the accused will be liable in default of payment of fine must not exceed one-fourth of the maximum term of imprisonment awardable for the offence. QUEEN-EMPRESS v. KANDHAIA LAL, **S.C. 65 Oudh.**

——S. 66.

(181)—S. 66—*See* Nos. 156 and 165, *supra.*

——S. 67.

See SENTENCE.

(182)—*S.* 67—*Imprisonment in default of payment of fine—Stamp Act* I *of* 1876, *s.* 61.—S. 67, I.P.C., does not authorise a sentence of rigorous imprisonment in default of payment of fine in the case of a conviction under s. 61 of the Stamp Act. EMPRESS v. MURAD ALI, **40 P.R. 1880, Cr.**

(183)—S. 67—*See* Nos. 116, 117, 156, 165, 176 and 177, *supra.*

(184)—*Ss.* 67, 290, 291—*Conviction under s.* 290—*Imprisonment in default of payment of fine.*—The sentence of imprisonment awarded in default of payment of fine passed on a person sentenced under s. 290, I.P.C., should be simple and not rigorous. REG. v. SANTU *bin* LAKHAPPA KORE, **5 B.H.C. Cr. 45.**

——S. 68.

(185)—S. 68—*See* No. 156, *supra.*

——S. 69.

See SENTENCE.

(186)—*S.*69—*Imprisonment in default of payment—Part imprisonment suffered—Effect.*—Having undergone a portion of the alternative imprisonment provided for non-payment of fine does not discharge the person from payment of the proportionate portion of the fine. EMPRESS v. FANTHOME, **A.W.N. 1882, 85.**

(187)—S. 69—*See* No. 156, *supra.*

(188)—*Ss.* 69, 70—*Conviction under Act* XXXI *of* 1850, *s.* 3—*Remitting portion of imprisonment.*—A sentence of imprisonment in default of fine is illegal in a conviction under s. 3 of Act XXXI of 1850, since s. 69, I.P.C., applies only to convictions for offences under the Penal Code. Where a person convicted as above pays a portion only of the fine on the same day, *held* that, if s. 69 were applicable, he could not be released since the term of imprisonment already suffered was less than proportional to the portion of the fine unpaid. REG. v. MAYA DEVJEE, **Rat. Un. Cr. C. 40 = Cr. Rg. 15-9-1870.**

Penal Code (Act XLV of 1860)—*continued.*

——S. 70.

See SENTENCE.

(189)—*S.* 70—*Fine—Rules of Court of the* 14*th August,* 1897, *Rule* 60.—The fact of a Magistrate having written off a fine as irrecoverable is no bar to the realization thereof at any time within the period allowed by law, if it subsequently appears that the person from whom the fine was due has acquired the means of paying it. LATIF-UL-HASAN v. MUMTAZ ALI KHAN, **A.W.N. 1906, 275 = 3 A.L.J. 818 = 4 Cr.L.J. 404.**

(190)—S. 70—*See* ACT XXII OF 1881, s. 35, 17 P.R. 1889, Cr.

(191)—S. 70—*See* Nos. 156 and 188, *supra.*

——S. 71.

See SENTENCE.

(192)—*S.* 71—*One act—Two deaths—Sentence.*—Where a person caused the death of two persons by one rash and negligent act committed at the same time and place, he can be convicted for the offence as one act under s. 71 of the Penal Code. QUEEN-EMPRESS v. BALI *kom* NAGAPPA, **Rat. Un. Cr. C. 852 = Cr. Rg. 19 of 1896.**

(193)—*S.* 71—*Stealing cattle — Dacoity—Crim. Pro Code* (1882), *s.* 235—*Cumulative sentences.*—The prisoner at the same time and place stole some cattle which happened to belong to different owners. The Magistrate tried the act as constituting three offences, and on the prisoner's plea of guilty, sentenced him to one year's rigorous imprisonment on each, *Held,* that there was only one offence under s. 71, I.P.C. QUEEN-EMPRESS v. NGA PO, **L.B.R. 1872—1892, 168.**

(194)—*S.* 71—*Dacoity—Two persons robbed in one continuous transaction—Sentence.*—In this case the accused was convicted of dacoity in the house of a person in which the owner and another were living, and property belonging separately to the two persons was dacoited. The robbing of the two persons was one continuous transaction. Under s. 235, Crim. Pro. Code, cl. (1), the accused were rightly charged separately (1) with committing dacoity on the owner and (2) with committing dacoity on the stranger, but the Magistrate was barred by the first clause of s. 71, I.P.C., from punishing the accused for more than one of the offences charged. SAN NYUN v. QUEEN-EMPRESS, **L.B.R. 1872—1892, 440.**

(195)—*S.* 71—*Crim. Pro. Code, s.* 35—*Distilling and possessing spirits.*—Distilling spirits and possessing spirits obtained by such distillation are not distinct offences within the meaning of s. 35, Crim. Pro. Code, and a double sentence is prohibited by s. 71, I.P.C. KING-EMPEROR v. SAN DUN, **U.B.R. 1904, 1st Qr., Penal Code 1 = 1 Cr. L.J. 552.**

(196)—S. 71—*See* ACT XII OF 1896, ss. 45 and 51, 1 L.B.R. 33.

(197)—S. 71—*See* BUR. ACT I OF 1899, ss. 11 and 12, 4 L.B.R. 104 = 7 Cr. L.J. 76.

Penal Code (Act XLV of 1860)—*continued.*

(198)—S. 71—*See* BURDEN OF PROOF, Rat. Un. Cr. C. 820=Cr. Rg. 66 of 1895.

(199)—S. 71—*See* CRIM. PRO. CODE, 1898, s. 235, L.B.R. 1872—1892, 444, Rat. Un. Cr. C. 159=Cr. Rg. 10-3-1881.

(200)—*S. 71, paragraph 3—"Constitute an offence."*—The phrase "constitute an offence" as it occurs in the section, must be understood to refer to the definitions of the offences as enunciated in the Code itself, irrespective of the identity or non-identity whereby the several acts are proved. QUEEN-EMPRESS v. WAZIR JAN, **10 A. 58=A.W.N. 1887, 274.**

(201)—S. 71—*See* Nos. 104, 178, *supra and see* No. 1781, 2461, 2773, 2845, *infra.*

(202)—Ss. 71, 143, 147 and 353—*See* SENTENCE—CUMULATIVE AND SEPARATE SENTENCES, 12 C. 495.

(203)—*Ss. 71, 144, 379—Separate convictions for theft and an offence under s. 144, Penal Code.*—An offence under s. 144 is not one of which actual theft is a necessary ingredient. Therefore separate convictions for an offence under s. 144 and for theft could be awarded. HANSA PATHAK v. BANSI LAL DAS, **8 C.W.N. 519=1 Cr. L.J. 449.** (16 C. 442, *D.*)

(204)—*Ss. 71, 147, 149, 323, 332—Separate sentences for rioting and causing hurt—Offence of rioting not complete till hurt is caused—Public servant not acting in public capacity—Applicability of s. 332, Penal Code—Crim. Pro. Code, s. 408—Some members of unlawful assembly sentenced to various terms exceeding four years in aggregate—Appeal lies to the Chief Court—Appeal presented in Sessions Court—Duty of Sessions Judge to return appeal for presentation to proper Court—Power of Sessions Judge to report case to Chief Court.*—The appellants, five in number, drove off the cattle of certain canal officials. On their way to the cattle pound, they were overtaken by the owners who tried to rescue their cattle, but failing in this, gave up the idea of using violence and began to take down the names of the accused with a view to instituting legal proceedings against them. At this the accused got excited and attacked their pursuers, causing simple hurt to two of them. The accused were tried, convicted and sentenced as follows:—Two accused—(1) Two years under s. 147, Penal Code. (2) One year under ss. 323, 149, I.P.C. (3) Three years under ss. 322, 149, I.P.C. One accused—(1) The same as above in (1). (2) Six months under ss. 323, 149, I.P.C. (3) The same as above in (3). Two accused—(1) One year under s. 147, I.P.C. (2) Six months under ss. 323, 149, I.P.C. (3) 18 months under ss. 332, 149, I.P.C. An appeal was presented to the Sessions Judge who reported the case to the Chief Court: *Held,* (1) that the appeal lay to the Chief Court, and that the Sessions Judge, instead of reporting the case, should have returned the appeal petition for presentation to the Chief Court, (12 P.R. 1900, Cr.=P.L.R. 1900, p. 56, Cr. *F.*) (2) that, as an unlawful assembly becomes guilty of rioting when violence is used, and in this case the unlawful assembly rioted when two of the pursuers were attacked, the members of it cannot be convicted and sentenced separately for rioting and causing hurt: (4 P.R. 1901, Cr.=52 P.L.R. 1901, F.B., *F.*) (3) that s. 332, Penal Code, had no application to the case, inasmuch as the cattle were the private property of the Canal officials, who, in attempting their rescue, were acting as private individuals. HARDIT SINGH v. EMPEROR, **161 P.L.R. 1911=12 Cr. L.J. 236=10 Ind. Cas. 278.**

(205)—Ss. 71, 147, 149, 325—*See* SENTENCE—CUMULATIVE AND SEPARATE SENTENCES, 9 A. 645=A.W.N. 1887, 149.

(206)—Ss. 71, 147 and 325—*See* SENTENCE—CUMULATIVE AND SEPARATE SENTENCES, 52 P.L.R. 1901.

(207)—Ss. 71, 147, 325—Rioting and causing grievous hurt—*See* SENTENCE—CUMULATIVE AND SEPARATE SENTENCES, 8 P.R. 1895, Cr.

(208)—*Ss. 71, 147, 342—Separate sentences for rioting and wrongful confinement, validity of.*—Separate sentences for wrongful confinement and rioting are not, having regard to the provisions of s. 71, legal, when the common object of the unlawful assembly is the wrongful confinement of the complainant, and is the essential ingredient in the constitution of the offence under s. 147. ALIM SHEIKH v. SHAHAZADA SINGH BURKUNDAZ, **8 C.W.N. 483=1 Cr. L. J. 365.**

(209)—Ss. 71, 148, 149, 326—*See* SENTENCE—CUMULATIVE AND SEPARATE SENTENCES, 17 B. 260, F.B.

(210)—Ss. 71, 148, 332, 333—*See* SENTENCE—CUMULATIVE AND SEPARATE SENTENCES, 19 C. 105.

(211)—Ss. 71, 149, 324—*See* SENTENCE—CUMULATIVE AND SEPARATE SENTENCES, 16 C. 442, F.B.

(212)—*Ss. 71, 170, 171—Wearing a false garb and false personation.*—Where an accused person is convicted of wearing the garb of a Police Constable, under s. 171, I.P.C., and of personating by means of such garb a Police Constable, and, as such, ordering a person to be kept in custody under s. 170, I.P.C., *held* that only one sentence ought to be passed on him under s. 71, I.P.C. QUEEN-EMPRESS v. TUKARAM, **Rat. Un. Cr. C. 405=Cr. Rg. 67 of 1888.**

(213)—Ss. 71, 170, 383—*See* EXTORTION, 10 A. 58=A.W.N. 1887, 274.

(214)—Ss. 71, 177, 203—Prosecution under s. 203 withdrawn—Subsequent trial under s. 177 on same facts—Legality—Scope of s. 71—*See* CRIM. PRO. CODE, 1898, ss. 403, 494, 235, 236, 237, 35, 9 N.L.R. 26=18 Ind. Cas. 887=14 Cr.L.J. 135.

(215)—Ss. 71, 211, 193—*See* SENTENCE—CONCURRENT SENTENCES, 10 B. 254.

(216)—*Ss. 71, 224 and 225 — Unlawful assembly for rescuing a person from lawful*

Penal Code (Act XLV of 1860)—*continued.*

custody—Punishment for rioting under ss. 224 *and* 225 *of the Penal Code, legality of.*—Where the common object of the rioters was the rescue of the first accused from a lawful custody, *held*, that, although both the offences of rioting and rescuing from custody may have formed "parts of one transaction," each of the offences was several and distinct. The rioting was complete without the rescue, and the rescue and escape would be none the less an offence, even if there had been no rioting or causing of hurt. HIGH COURT PROCEEDINGS, 21ST FEB, 1894, NO 402, JUDICIAL, **1 Weir 34.**

(217)—*Ss.* 71, 224, 307, 379 *and* 392—*Attempt to murder—Robbery.*—A Court cannot legally pass sepatate sentences under ss. 307 and 392, I.P.C., with reference to the provisions of s. 71 of the same Code. EMPRESS v. HIRIA MAHAR, **8 C.P.L.R. Cr. 23.**

(218)—Ss. 71, 232, 235—*See* SENTENCE—CUMULATIVE AND SEPARATE SENTENCES, 111 P.L.R. 1904.

(219)—*Ss.* 71, 240, 243—*Separate convictions for possession of and uttering counterfeit coins.*—A person having four counterfeit coins in his possession, but uttering only one of them, cannot be separately convicted under s. 240, I.P.C., respecting the one coin, and under s. 243, regarding the possession of the other three, as an offence under s. 240 implies prior guilty possession. If such separation were allowable, there might be a conviction for the possession of each coin. The physical acts, though capable of separate existence and perception, coalesce when coincident in time and space and purpose. QUEEN-EMPRESS v. LAKSHIA, **Rat. Un. Cr. C. 202.**

(220)—*Ss.* 71, 326 *and* 397—*Imposition of sentence—Sessions case—Tendering of witnesses before the committing Magistrate for cross examination—Admission of previous evidence as exhibit, illegal—Charge to the jury—Presentation of evidence—Misdirection.*—The first clause of s. 71, Penal Code, precludes the imposition of separate sentences for the two offences in ss. 326 and 397. Grievous hurt forms an integral part of both the offences. Where a witness was examined before the committing Magistrate and was simply tendered for cross-examination and the evidence before the committing Magistrate was marked as exhibit in the Sessions Court, such procedure is illegal. Where, in a charge to the jury, the Sessions Judge erred in his presentation of the evidence relating to the accused and did not draw their attention to the fact that the prosecution failed to examine all the witnesses originally named by them, *held*, there was misdirection and a re-trial was ordered. KOTTAIGADU v. EMPEROR, **1915 M.W.N. 544** =30 **Ind. Cas. 439**=**16 Cr. L.J. 615.**

(221)—*Ss.* 71, 342, 352—*Separate sentences, not illegal under what circumstances.*—Where the petitioners are convicted under ss. 352 and 342 of the Code, and sentenced separately for each of the offences, the acts found against them

Penal Code (Act XLV of 1860)—*continued.*

being that they seized, dragged and pushed the complainant to a certain place, in order to punish him; *held*, that what the petitioners have been punished for is the whole series of acts, and that series of acts comes within the definition both of wrongful confinement and of using criminal force, and, accordingly, the case falls within the second paragraph of s. 71 of the Code. *Held*, further, that the infliction of separate punishments is not in violation of the law, provided that the aggregate punishment awarded is not in excess of what the Court could inflict for either of the offences. FAKIR KHAN v. KING-EMPEROR, **4 C.L.J. 90**=**4 Cr. L.J. 69.**

(222)—Ss. 71, 342 and 392—*See* ROBBERY, 1 Weir 445.

(223)—*Ss.* 71, 354, 506—*Double punishment for same offence.*—Where the accused was convicted and sentenced for the offences under ss. 354 and 506, Penal Code, to three months' rigorous imprisonment for each offence; *Held*, that the intimidation by throwing a knife formed part of the assault in this case; consequently the sentence under s. 506 was illegal and must be set aside. EMPEROR v. NGA LU NYUN, **12 Cr. L.J. 242**=**10 Ind. Cas. 771.**

(224)—*Ss.* 71, 364, 365, 383, 111 (*b*) *and* 387—*Abduction with intent to hold up to ransom—Intent to murder not necessary consequence—Wrongful confinement — Offences committed under ss.* 365, 383—*No separate sentences to be passed—Crim. Pro. Code, s.* 35, *Expl.*—Where a person was abducted by the accused in order that he might be held to ransom, and where it did not follow as a matter of course that he was in danger of being murdered. *Held* that a conviction under s 364, I.P.C., cannot stand, but that a conviction under s. 365, I.P.C., was justifiable, as, though the main object was to extort money, yet it necessarily followed that the abductors had the intent to secretly and wrongfully confine him. *Held* also, that s. 387, I.P.C., applied to the case. *Held* also, that, having regard to s. 71, I.P.C., and explanation to s. 35, Crim. Pro. Code, there cannot be separate sentences passed under both ss. 365 and 387, I.P.C. PO LAN v. KING-EMPEROR, **6 L.B.R. 160**=**19 Ind. Cas. 167**=**14 Cr. L.J. 167** =**6 Bur. L.T. 77.** (1 L.B.R. 33, *F.*)

(225)—*Ss.* 71, 379—*Theft of buffaloes—Charge—Cumulative sentence.*—In this case the accused, at one and the same time, stole eight buffaloes that were grazing together on an open grazing ground. It turned out that six of the animals belonged to one owner and two to another. The District Magistrate accordingly convicted the accused on two charges (i) that of stealing six buffaloes belonging to A and (ii) that of stealing two buffaloes belonging to B, and sentenced him to two years' rigorous imprisonment on each charge, or to four years' rigorous imprisonment altogether. *Held* that only one offence had been committed, and there could be only one sentence passed on the accused. *Held*, also, that the Magistrate should have charged the accused with one charge of

Penal Code (Act XLV of 1860)—*continued.*

stealing eight buffaloes belonging to A and B— SAN HLA v. QUEEN-EMPRESS, **L.B.R. 1872—1892, 475.** (L.B.R. 1872—1892, 440, 444, *F.*)

(226)—Ss. 71, 379, 147, 149—*See* SENTENCE—CUMULATIVE AND SEPARATE SENTENCES, 3 C.W.N. 761.

(227)—Ss. 71, 379 and 215—*See* SENTENCE—CUMULATIVE AND SEPARATE SENTENCES, 1 L.B.R. 203.

(228)—*Ss.* 71, 379 *and* 457—*Theft and lurking house trespass—Double conviction.*—If the offence committed by a prisoner is made up of parts, lurking house-trespass and theft, a double conviction is illegal. **Book Cir. 2 of 1864, Oudh.**

(229)—*Ss.* 71, 380 *and* 457—*House-breaking by night and theft—Sentence.*—When the accused was convicted of "house-breaking by night in order to steal and of theft," and was sentenced to one year's rigorous imprisonment for house-breaking under s. 457 and to 30 stripes under s. 380, *held*, the sentence under s. 380 was illegal under s. 71, I.P.C., which provides that, where anything which is an offence, is made up of parts, any of which parts is itself an offence, the offender shall not be visited with the punishment for more than one of such of his offences unless it be so expressly provided. The substantive offence was house-breaking by night with the intention of committing theft, which is an offence punishable under the last clause of s. 457. It has been repeatedly held that, where the offences are parts of the same continuous transaction, such as house-breaking and theft, the offender should not be punished for both separately. QUEEN-EMPRESS v. NGO PRU, **L.B.R. 1872—1892, 390.** (9 B. 172, 1 B. 214, 2 A. 644, *F.*)

(230)—Ss. 71, 380, 457—*See* JOINDER OF CHARGES—WHEN LEGAL, Rat. Un. Cr. C. 228=Cr. Rg. 6 of 1886.

(231)—Ss. 71, 380, 457—*See* SENTENCE—CUMULATIVE AND SEPARATE SENTENCES, 23 B. 706=1 Bom. L.R. 142, F.B.

(232)—Ss. 71, 380, 457—*See* SENTENCE—POWERS OF APPELLATE COURT—MITIGATION, 1 B.H.C. Cr. 87.

(233)—*Ss.* 71 *and* 394—*Robbery with grievous hurt—Cumulative sentence.*—The accused robbed a man of some money and other property on the high road and, in doing so, inflicted grievous hurt with a *da*. The District Magistrate convicted the accused on two charges: (1) of robbery with causing hurt, (2) causing grievous hurt with a dangerous weapon and sentenced him to seven years' rigorous imprisonment on each charge. *Held* that the accused having committed only one offence could not, having regard to s. 71, I.P.C., be sentenced to imprisonment for two offences, each of which was only a part of the single offence committed. NGA TUN BYAUNG v. QUEEN-EMPRESS, **L.B.R. 1872—1892, 476.**

(234)—*Ss.* 71, 406, 417—*Crim. Pro. Code* (1882), *s.* 235—*Criminal breach of trust—Criminal misappropriation—Cheating.*—Where a *kyedangyi*, who had no authority to collect capitation tax, collected the tax from three separate tax payers, leading them to believe that he had authority from the *thugyi* to collect, and where after collection he paid over to the *thugyi* only a portion of his collections from each tax-payer and dishonestly misappropriated the remainder, it was held that he could not be punished for three separate offences of criminal breach of trust under s. 406, I.P.C., in the absence of any evidence to show that there were three separate and distinct acts of misappropriation, but that the accused might have been punished for three separate offences of cheating under s. 417, Penal Code. QUEEN-EMPRESS v. NGA SHWE THI, **L.B.R. 1872—1892, 492.**

(235)—Ss. 71, 415, 420—*See* SENTENCE—CUMULATIVE AND SEPARATE SENTENCES, Rat. Un. Cr. C. 506=Cr. Rg. 20 of 1890.

(236)—*Ss.* 71, 420, 465, 511—*Attempt to cheat by means of forged telegram—Indian Telegraph Act,* XIII *of* 1885, *s.* 29—*Separate punishments.*—Where, with the object of ultimately obtaining payment to the sender of a large sum of money to which he was not entitled, a false telegram was despatched under a fictitious name addressed to the person under whose authority the claim, if just, might have been discharged, *held* that the sender of such telegram might be properly convicted of an offence under s. 29, Act XIII of 1885, as well as of an attempt to cheat under s. 420, read with s. 511, and possibly also of forgery under s. 465; but that, at all events, as regards the two former offences, s. 71, I.P.C., applied, and he could not be punished for more than one such offence. EMPEROR v. SOHAN LAL, **A.W.N. 1903, 26.**

(237)—Ss. 71, 457, 380—*See* SENTENCE—CUMULATIVE AND SEPARATE SENTENCES, 10 B. 493.

—— S. 72.

See SENTENCE.

(238)—S. 72—*See* FALSE EVIDENCE, Rat. Un Cr. C. 336=Cr. Rg. 26 of 1887.

(239)—S. 72—*See* MURDER, 11 P.R. 1887, Cr.

(240)—S. 72—*See* No. 118, *supra*, and Nos 1265 and 2768, *infra*.

(241)—*Ss.* 72, 302 *and* 201—*Conviction in the alternative, one offence being murder—Sentence.*—When an accused person is convicted in the alternative, one of the offences of which he might be guilty being murder, punishable under s. 302 of the Indian Penal Code, s. 72 so far overrides s. 302 as to admit, in such a case, of a less punishment than transportation for life being inflicted. EMPEROR v. SAHEB SINGH, **A.W.N. 1906, 93**=3 Cr. L.J. 364.

(242)—*Ss.* 72, 302, 201—*Crim. Pro. Code, ss.* 236, 367 (3)—*Doubt as to guilt of accused in regard to one of the offences—Alternative convictions—Legality—Benefit of doubt to be given.*—The provisions of s. 72, I.P.C., and of ss. 236 and 367 (3), Crim. Pro. Code, apply only

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to cases where the *actual facts* are established, but there is a doubt as to the application of the *law* to the proved facts. But where the doubt in the mind of the Judge was not whether, upon the facts which were held to be proved, the accused's act fell within the purview of s. 302 or of s. 201, I.P.C., but whether there was sufficient proof that the accused had *in fact* committed the murder of the deceased, or had merely been guilty of causing evidence of the commission of that murder to disappear, in such a case, an alternative conviction for both offences is not contemplated by law. *Held*, under the circumstances, that the proper course would be to give the accused the benefit of doubt and acquit him of the offence of murder. PARTAPA v. CROWN, **11 P.R. 1913, Cr. = 14 Cr. L.J. 664 = 21 Ind. Cas. 904 = 271 P.L.R. 1914.** (11 P.R. 1887, Cr., 7 N.W.P. 137, 21 C. 955, *F.*)

——S. 73.

See SENTENCE.

(243)—*S.* 73—*Scope of.*—This section does not provide for imprisonment for a term of one year. If the imprisonment does not exceed one year, solitary confinement for more than two months cannot be awarded. POLICE v. MANIA, **Colm. Dig. Cr. 11 of 1873.**

(244)—*S.* 73—*Solitary confinement.*—Where the accused had been sentenced to four years' rigorous imprisonment, of which three months were to be solitary confinement, and, on another conviction, on the same day a like sentence was passed upon them and they were thus made to undergo six months' solitary confinement, *held* that, though this sentence was not illegal, yet it was opposed to the intention of s. 73, I.P.C., to accumulate sentences of solitary confinement, just as it would be wrong to pass several sentences of whipping amounting to thirty stripes each, on convictions had in different trials held at the same time. EMPRESS v. RATIRAM, **5 C.P.L.R. Cr. 23.**

(245)—*S.* 73—*Solitary confinement.*—The above section provides for no more than three months' solitary confinement whatever the length of the sentence. Hence, cumulative sentences of solitary confinement are contrary to the intention of s. 73 of the Penal Code. CRIMINAL REVISION CASE NO. 1695 OF 1892, **U.B.R. 1892—1896, Vol. I, 146.** [*R.*, 14 Bur. L. R. 186, 7 Cr. L.J. 212, U.B.R. 1907, Whipping 1.]

(246)—*S.* 73—*Period of solitary confinement.*—The intention of s. 73 is that a term of three months is the maximum period of solitary confinement that can be judicially awarded in a continuous period of imprisonment. QUEEN-EMPRESS v. NGA KAING, **U.B.R. 1897—1901, Vol. I, 247.** (U.B.R. 1892—1896, Vol. I, 146, L.B.R. 1896, p. 213, *R.*) [*R.*, 14 Bur. L.R. 186, 7 Cr. L.J. 212, U.B.R. 1907, Whipping 1.]

(247)—*S.* 73—*Solitary confinement in lieu of fine.*—Solitary confinement cannot be awarded as part of a sentence of imprisonment in lieu of fine. EMPRESS v. JAMDAD, **53 P.R. 1887, Cr.** *See also* CROWN v. JITA, **26 P.R. 1873, Cr.**

(248)—*S.* 73—*Solitary confinement for more than three months in simultaneous convictions, legality of.*—On one and the same day, an accused person was convicted of offences under ss. 411 and 379 of the Code and sentenced to terms of imprisonment including solitary confinement for three months and one month respectively. *Held*, following the rule that not more than three months, of consecutive terms of imprisonment should be passed in solitary confinement, the Court set aside the solitary confinement for one month. ABDULLA JAN v. KING-EMPEROR, **37 P.R. 1905, Cr. = 141 P. L.R. 1905 = 2 Cr. L.J. 707.**

(249)—S. 73—*See* ACT VI OF 1864, s. 2, 14 P.R. 1899, Cr.

(250)—Ss. 73, 420, 496—*See* SENTENCE—SOLITARY CONFINEMENT, 7 P.R. 1897, Cr.

——S.—75.

See PREVIOUS CONVICTION.

See SENTENCE—ENHANCEMENT OF SENTENCE.

See SENTENCE—POWERS OF APPELLATE COURT.

See SENTENCE—SENTENCE AFTER PREVIOUS CONVICTION.

(251)—*S.* 75—*Sentence.*—The accused was convicted by the Sessions Court on a charge of having committed theft, having been formerly convicted of an offence punishable under Ch. XVII, I.P.C., with imprisonment for three years and upwards, and was sentenced under ss. 379 and 75 to transportation for ten years. *Held* that the sentence was illegal, as the Sessions Judge had no power to order transportation for ten years. His only alternatives were transportation for life or double the amount of imprisonment provided by s. 379, that is, six years. EMPRESS v. KHUNWA, **A.W.N. 1883, 225.**

(252)—*S.* 75—*Second conviction.*—In a second conviction, a Magistrate cannot lawfully pass a sentence of more than double the amount of punishment, which might be passed on a prisoner for a first conviction of theft. QUEEN-EMPRESS v. PITAMBAR *alias* DURGAD, **S.C. 79, Oudh.**

(253)—*S.* 75—*Enhanced punishment.*—If an accused, who has been convicted of an offence punishable under Ch. XII or Ch. XVII of the Penal Code with imprisonment for a period of three years and upwards, is subsequently convicted of *an attempt* to commit any such offence, he is not liable to the enhanced punishment provided by s. 75, I.P.C. EMPEROR v. RAMNATH BHOI, **14 C.P.L.R. 72.** (5 B. 140, 14 C. 357, 17 A. 120, *R.*)

(254)—*S.* 75—*Previous conviction—Habitual offender—Sentence.*—The accused stole two bullocks at the same time from a grazing ground, the bullocks belonging to different

Penal Code (Act XLV of 1860)—*continued.*

owners. For stealing one of these, he was tried separately and sentenced to two years' imprisonment by one Magistrate ; for stealing the second bullock, he was now sentenced by another Magistrate to five years' imprisonment. He thus got seven years' imprisonment for what was practically one act of theft. *Held*, that the sentence passed in the second case was excessive as the accused was not an habitual offender, as there was only one previous conviction against him. The sentence was accordingly reduced to one year's rigorous imprisonment. NGA PAN THIN v. QUEEN-EMPRESS, **L.B.R. 1872—1892, 291.**

(255)—*S. 75—Crim. Pro. Code, Ch.* XXII—*Summary procedure.*—The summary procedure laid down in Ch. XXII, Code of Criminal Procedure, 1882, is not adapted to the trial of offences to which s. 75, I.P.C., applies. QUEEN-EMPRESS v. KA LU, **L.B.R. 1872—1892, 386.**

(256)—*S. 75—Conviction for three offences of the same kind at one trial—Sentence.*—When an accused is tried and convicted at one trial for three offences of the same kind committed within the year, he should not be sentenced to a higher punishment for each offence than he should have received, had he been tried for that offence alone, s. 75, I.P.C., being inapplicable to such cases. NGA OK GYE v. QUEEN-EMPRESS, **L.B.R. 1872—1892, 449.**

(257)—*S. 75—Previous conviction—Enhancement of sentence.*—If an accused is convicted of an offence under the Penal Code, a previous order under s. 118 of the Code of Criminal Procedure, requiring him to give security for good behaviour cannot be taken into consideration for the purpose of enhancing the sentence. QUEEN-EMPRESS v. PO WIN, **L.B.R. 1872—1892, 490.**

(258)—*S. 75—Previous conviction under Penal Code, in a foreign State—Penal Code, s. 75.*—Where a person has been previously convicted of theft in a foreign State, which has adopted the Penal Code, *held* that s. 75, I.P.C., does not apply to such a case. MUHAMMAD YAR v. EMPRESS, **2 P.R. 1884, Cr.** [*R.*, 11 Cr. L.J. 635=8 Ind. Cas. 383=28 P.R. 1910, Cr.=45 P.W.R. 1910=199 P.L.R. 1910.]

(259)—*S. 75, as amended by Act* III *of* 1910 —*Offence under Ch.* XVII, *I.P.C.—Previous conviction in a Native State whether can be taken into consideration in awarding enhanced punishment.*—In order to impose an enhanced sentence upon the accused, a previous conviction by a Court in a Native State cannot be taken into consideration, where it is not clear that the Court in the Native State was acting under the general or special authority of the Governor-General in Council or of any Local Government. BAHAWAL v. KING-EMPEROR, **17 P. R. 1913, Cr.=14 Cr. L.J. 527=20 Ind. Cas. 1007=42 P.W.R. 1913, Cr.=329 P.L.R. 1913.**

(260)—*S. 75—Offence punishable under Ch.* XII *or Ch.* XVII *committed after a previous conviction—Power to fine under s. 75.*—S. 75 of the Penal Code contains no power to fine for an offence punishable under Ch. XII or Ch. XVII, when such offence is committed after a previous conviction of an offence punishable under one of those chapters. NGA TUN THA v. QUEEN-EMPRESS, **1 L.B.R. 57.**

(261)—*S. 75—Punishment on a fifth conviction.*—A sentence of seven years' transportation on a fifth conviction for an offence of theft is not excessive. NGA KAN THA v. QUEEN-EMPRESS, **U.B.R. 1892—1896, Vol. I, 147.**

(262)—*S. 75—Two convictions for theft—Third conviction for attempt to convict theft—Sentence.*—A person who had been twice before convicted of theft, was again convicted of an attempt to commit theft, and sentenced to five years' rigorous imprisonment. *Held*, that s. 75 of the Penal Code was inapplicable since the latter offence was not one punishable under Ch. XVII of that Code or with imprisonment for three years. EMPRESS v. RUSTAM, **A.W. N. 1882, 178.**

(263)—*S. 75—Previous conviction—Form of charge.*—A charge alleging a previous conviction, which makes the accused liable for enhanced punishment under s. 75, Penal Code, need not specify the extent of the former punishment. HIGH COURT PROCEEDINGS, 17TH APRIL 1868, **4 M.H.C. App. 11.**

(264)—*S. 75—Charge—Previous convictions not set out distinctly in the charge-sheet, effect of—Material omission—Enhanced punishment.*—It is a part of the duty of the Courts to draw charge-sheets accurately, and where they fail to do this, the persons convicted are entitled to the benefit of any material omission. Where enhanced sentences are contemplated under s. 75, Indian Penal Code, a separate head of charge must be distinctly drawn with this object. Where this was not done, the Court reduced the enhanced punishment awarded under s. 75, Penal Code, though there was some reference to previous convictions in the statement of the accused recorded on the reverse of the charge-sheets. DUNGRI v. EMPEROR, **139 P.L.R. 1911=10 Ind. Cas. 241=12 Cr. L.J. 233=40 P.W.R. 1911, Cr.**

(265)—S. 75—Inapplicability of the section to offences punishable under s. 511, Penal Code—*See* ACT VI OF 1864, L.B.R. 1872—1892, 531.

(266)—S. 75—*See* ACT VI OF 1864, s. 3, 8 C.P.L.R. Cr. 17.

(267)—S. 75—*See* BUR. ACT III OF 1889, s. 7, L.B.R 1872—1892, 549.

(268)—S. 75—*See* ATTEMPT, 27 P.R. 1872, Cr., 21 W.R. Cr. 35, Cr.

(269)—S. 75—*See* CHARGE—GENERAL, 9 M. 284=2 Weir 266.

(270)—S. 75—*See* CRIM. PRO. CODE, 1898, s. 32, L.B.R. 1893—1900, 78.

(271)—S. 75—*See* CRIM. PRO. CODE, 1898, s. 221, 2 Weir 265.

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(272)—S. 75—*See* CRIM. PRO. CODE, 1898, s. 565, 12 Bom. L.R. 901 = 8 Ind. Cas. 623.

(273)—S. 75—*See* EVIDENCE ACT, 1872, s. 54, L.B R. 1893—1900, 93.

(274)—S. 75—Enhancing punishment—Relevancy of previous conviction—*See* EVIDENCE ACT, 1872, ss. 54, 165, 16 Bom. L.R. 934 = 2 Bom. Cr. C. 252.

(275)—S. 75—*See* BUR. REG. XIV OF 1887, s. 6, U.B R. 1897—1901, Vol. I, 388.

(276)—S. 75—*See* Nos. 5, 146, 147 and 179, *supra*, and No. 2506, *infra*.

(277)—*Ss.* 75 *and* 379—*Summary trial—Punishment.*—A sentence combining imprisonment and whipping cannot be passed on a summary trial, but only when there is a previous conviction. EMPRESS v. ANTIA MAHAR, **12 C.P.L.R. Cr. 7.**

(278)—*Ss.* 75 *and* 379—*Separate sentence—Crim. Pro. Code* (1882), s. 35.—Where a person who was convicted of theft was sentenced by a second-class Magistrate to undergo six months' rigorous imprisonment, and to further imprisonment for six months under s. 75, I.P.C., on account of his previous conviction, *held* that the Magistrate had no power to sentence under s. 75 making the total sentence exceed six months. QUEEN EMPRESS v. GULAB, **Rat. Un. Cr. C. 688** = Cr. Rg. 9 of **1894.**

(279)—*Ss.* 75, 379—*Crim. Pro. Code, s.* 565—*Previous conviction—Subsequent conviction for technical theft —Held*, that, whether a person is found technically guilty of theft, it is absurd to treat this offence more seriously with reference to s. 75, I.P.C., or to make his conviction of such a trifling offence the occasion for a long period of Police supervision under s. 565, Crim. Pro. Code. The sentence of 7 years' rigorous imprisonment was reduced to six months, and the order under s. 565, Crim. Pro. Code. was also set aside. JOWAHIR SINGH v. CROWN, **3 P. W.R. 1914, Cr = 4 P L R. 1914 = 15 Cr. L.J. 183 = 22 Ind. Cas. 759.**

(280)—Ss. 75 and 379—Maximum period of imprisonment—*See* CRIM. PRO. CODE, 1898, ss. 30 and 34, Colm. Dig. Cr. 62 of 1876.

(281)—*Ss.* 75, 403, 411—*Possession of animals which had strayed away—Nature of offence committed—Applicability of s. 75, Penal Code.*—Where a person retains in his custody animals which had strayed away from a grazing ground, and there is no evidence to show that he stole them, he is guilty of an offence under s. 403, and not s. 411 of the Penal Code. S. 75 of the Penal Code does not apply to the case of a person with previous convictions under Ch. XVII of the Code who is found guilty of an offence under s. 403. CHANDARIA v. EMPEROR, **12 Cr. L J. 439 = 11 Ind. Cas. 623 = 36 P.W.R. 1911, Cr. = 235 P.L.R. 1911.**

(282)—*Ss.* 75 *and* 417—*Enhanced sentence for a subsequent conviction under s.* 417.—Where a person, who has been previously convicted is charged and convicted subsequently, under s. 417, *held*, that he is not liable to enhanced sentence under s. 75, as the offence under s. 417, is not punishable with three years' imprisonment or upwards. CROWN v. JODH SINGH, **19 P.R. 1889, Cr.**

(283)—*Ss.* 75, 457, 511—*Separate punishments—Legality.*—Where a person was convicted of an offence under s. 457 read with s. 511 of the Penal Code and sentenced to two years' rigorous imprisonment, and the Magistrate, finding that the accused had a previous conviction, added a separate sentence under s. 75, *held*, that no separate sentence could be passed under s. 75, but that the punishment for the substantive offence could only be enhanced. EMPEROR v. MAULA KHAN, **A.W.N. 1907, 178 = 6 Cr. L.J. 7.**

(284)—*Ss.* 75, 511—*Offence under s.* 511—*Applicability of s.* 75.—The offence under s. 511, being punishable under Ch. XXIII, and not under Ch. XVII, or Ch. XVII, I.P.C., s. 75 I.P.C., does not apply. EMPRESS v. BEHARI **A.W.N. 1886, 255.**

(285)—*Ss.* 75, 511—*Scope and application of.*—S. 75 does not apply to cases which are confined to s. 511. The offences which come under s. 511 must be punished entirely irrespective of s. 75. QUEEN-EMPRESS v. BHAROSA, **17 A. 123 = A.W.N. 1895, 23.** (17 A. 120 = A.W.N. 1895, 22, *Appr.*) [*F.*, 14 P.R. 1906, Cr. = 12 P. L.R. 1907 = 15 P.W.R. 1907, Cr. = 5 Cr. L.J. 85; *R.*, 10 Bom. L.R. 26 = 7 Cr. L J. 32 = 3 M L.T. 122.]

(286)—*Ss.* 75, 511—*Enhancement of punishment after previous conviction for similar offences—Attempt.*—S. 75 is not applicable to cases in which a previous conviction of an attempt has been had; and there is no reason for applying the section to cases in which the previous conviction was of a complete offence, not of an attempt, and the charge on which the prisoner is being tried is of an attempt. There is authority for holding that s. 75 does not apply, where either the previous conviction for the charge, on which the prisoner is being tried, is of an attempt other than an attempt made punishable otherwise than by s. 511. JHAMMAN LAL v. KING-EMPEROR, **14 P.R. 1906, Cr. = 12 P.L.R. 1907 = 15 P.W R. 1907, Cr. = 5 Cr. L.J. 85.** (17 A. 121, 123, *F.*)

——**S. 76.**

(287)—*S.* 76—*Act done by accused under the orders of superior officer—Evidence Act* (I of 1872), *s.* 105 — *Presumption — Pleadings.*—Where an accused person has raised pleas inconsistent with the defence which would bring his case within one of the general exceptions in the Indian Penal Code, he cannot, in appeal, set up a case, upon the evidence taken at his trial, that his act came within such general exceptions; the circumstances which would bring the case of an accused person within any of the general exceptions in the Indian Penal Code can and may be proved from the evidence given for the prosecution or to be found elsewhere in the record. In the absence of such

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evidence, the Court is not competent to assume the existence of those circumstances, more particularly when the pleas taken are inconsistent with the assumption that such circumstances might have existed, or that doubt may arise in consequence of such assumption and the accused ought to be given the benefit of the doubt. KING-EMPEROR v. WAJID HUSAIN, **7 A L.J. 438 = 32 A. 451 = 11 Cr. L J. 374 = 6 Ind. Cas. 589.**

(288)—S. 76—*See* POLICE, L.B.R. 1872—1892, 164.

—— S. 77.

(289)—Ss. 77, 499 and 500—*See* DEFAMATION, 4 P.W.R. 1910, Cr.

—— S. 78.

(290)—S. 78—*See* ARREST, 3 W. R. Cr. 53.

(291)—Ss. 78, 79 and 349—*See* WRONGFUL CONFINEMENT, 4 L.B.R. 253 = 8 Cr. L.J. 68.

—— S. 79.

(292)—*S. 79—Mistake of fact as a defence to a criminal charge.*—When an act is *prima facie* innocent and proper, unless certain circumstances co-exist, then the ignorance of such circumstances is an answer to a criminal charge. Thus, for instance, on a charge against a carrier for carrying game sent by an unqualified person, or against a person for sending vitriol, not properly marked as such, it is in each case a sufficient answer to show that the accused was ignorant that he was in fact carrying game or sending vitriol. *In re* KANDAN, **1 Weir 40.**

(293)—*S. 79—Ignorance of law.*—Although ignorance of law does not excuse a person, who does an act, which is an offence irrespectively of any guilty knowledge on the part of the alleged offender, yet when, to constitute the offence, it must be shown that there was a certain knowledge, the offence is not committed by one, who acts without that knowledge, and it is immaterial whether the absence of the knowledge required to constitute the offence proceeded from ignorance of law or ignorance of fact. For, though ignorance of law is no ground of defence, it is evidence of mental condition. HIGH COURT PROCEEDINGS, 16TH AUGUST 1881, NO. 1607, **1 Weir 40 = 1 Weir 74.**

(294)—S. 79—*See* MAD. ACT I OF 1886, s. 64, 1 Weir 40.

(295)—S. 79—*See* POLICE OFFICER, 10 W. R. Cr. 20.

(296)—S. 79—*See* Nos. 132, 134 and 291, *supra*, and Nos. 1018 and 2419, *infra*

(297)—*Ss. 79, 40—Applicability to offence under Forest Act—Accused's belief that he was justified in his act—Effect.*—The principle of s. 79, Penal Code, should not be applied to an offence created by the Forest Act for the protection of the Government revenue and of property belonging to Government. S 79 itself cannot apply, as the definition of offence in s. 40, I.P.C., covers only a 'thing made punishable' by the Penal Code, except when the word is used in certain section which do not include s. 79.

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The belief of the accused that he was justified in his act cannot exculpate him from punishment for any of the offences created by s. 21 of the Madras Forest Act. *In re* LEWIS, **15 M. L.T. 124 = 15 Cr. L.J. 171 = 22 Ind. Cas. 747 = 38 M. 773.** (9 M.L.T. 216, *F.*; 14 Bom. L.R. 365, *Diss.*)

(298)—*Ss. 79, 40 and 114—Indian Forest Act (VII of 1878), s. 32 (a), (b), (c)—Protected forest—Quarrying stones under orders of Public Works Department.*—The accused, a contractor engaged by the Public Works Department, quarried stones required for a public road, from a place which was pointed out to him by the officers of that department. The place in question was in a protected forest and no permission was taken of the Forest Department for quarrying. The accused was, under these circumstances, convicted of an offence under s. 32, cls. (*a*), (*b*) and (*c*) of the Indian Forest Act, read with ss. 40 and 114, Penal Code:—*Held*, reversing the conviction and sentence, that the accused was entitled to the protection of s. 79, Penal Code. EMPEROR v. KASSIM ISUB SAB, **14 Bom. L.R. 365 = 15 Ind Cas. 802 = 13 Cr. L J. 530 = 1 Bom. Cr. C. 128.** [*Diss.*, 15 M.L.T. 124 = 15 Cr. L J. 171 = 22 Ind. Cas. 747.]

(299)—*Ss. 79, 80, 292, expln. (i), 304-A—Rash and negligent acts, essence of criminality in—Absence of proper care and caution.*—The law sets bounds to the extent to which human life might be endangered by mistakes arising from timidity so excessive as to become inexcusable when a little ordinary precaution would prevent such mistakes arising. This restriction is enforced by enjoining proper care and caution as a duty of citizenship when there is time for the exercise of caution to verify the grounds of fear. It is the absence of such proper care and caution, as is referred to in s. 80, Penal Code, which is the essence of criminality in those rash and negligent acts which are made punishable under the various sections of the Penal Code of which s. 304-A is one. NGA SHWE v. QUEEN-EMPRESS, **L.B.R. 1893—1900, 221.**

(300)—Ss. 79 and 99—*See* PRIVATE DEFENCE, RIGHT OF, 1 Weir 344.

(301)—Ss. 79, 114, 342—*See* WRONGFUL CONFINEMENT, 30 C. 95 = 6 C.W.N, 511.

(302)—*Ss. 79 and 170—Village Revenue Officer exercising powers of Village Magistrate in the latter's absence.*—Where a Village Revenue Officer, in the absence of Village Magistrate, caused a woman, who was violent and abusive, to be brought before him and sentenced her to be imprisoned for five hours, believing that he was, in the absence of the Village Magistrate, entitled to exercise the latter's powers, *held*, that the Village Revenue Officer was not guilty of an offence under s. 170. HIGH COURT PROCEEDINGS, 16TH AUGUST, 1881, NO. 1607, **1 Weir 40 = 1 Weir 74.**

(303)—Ss. 79, 341—*See* WRONGFUL RESTRAINT, 24 C. 885, Rat. Un. Cr. C. 451 = Cr. Rg. 10 of 1889.

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——S. 80.

(304)—*S.* 80—*Plea of accident*—Onus *on accused—Criminal case--Motive for committing offence—Crim. Pro. Code—Written statement filed by accused—S.* 342 —*Examination of accused by Court.*--Per *Chitty, J.*—If the accused puts forward a substantive defence of accident within the purview of s. 80, I.P.C., it is incumbent upon him to prove it. Where the evidence as to the deed is sufficiently convincing, it is immaterial to consider with what motive it was done. Per *Beachcroft, J.*—There is no provision in the Code of Criminal Procedure for the making of a written statement by an accused in the Sessions Court, and the practice of refusing to answer questions and of putting in a written statement is a pernicious one. KING-EMPEROR v. DWIJENDRA CHANDRA MUKERJEE, **19 C. W.N. 1043.**

(305)—S. 80—*See* No. 299, *supra.*

(306)—*Ss.* 80, 88, 325 *and* 376—*Sexual intercourse with a girl of twelve with her consent--Grievous hurt.*—Where a person has sexual intercourse with a girl of a little over twelve years of age, with her consent and thereby causes grievous hurt to her, he commits an offence under s. 325, I.P.C., and is not protected by s. 80 or s. 88 of the same Code. EMPRESS v. MOHAMMAD MIYAN, **12 C.P.L.R.Cr. 11.**

(307)—Ss. 80, 99, 101—Assault upon a public servant conveying person arrested with sufficient authority—*See* PRIVATE DEFENCE, RIGHT OF, 5 P.R. 1901, Cr.

(308)—*Ss.* 80, 304-*A*—*Shooting—Accident.*—Two men, the accused and the deceased, went into a jungle shikaring porcupines. They agreed to take up certain positions in the jungle and lie in wait for game. This was done. After a while, the accused heard a rustle, and believing it was a porcupine, fired in that direction. The shot, however, reached his companion and caused his death. The Magistrate convicted the accused under s. 304-A, Indian Penal Code. *Held*, reversing the conviction and sentence, that the accused was protected by s. 80, Indian Penal Code, the affair being a pure accident; and that the fact that he was shooting with an unlicensed gun would not affect his immunity under the section. KING-EMPEROR v. TIMMAPPA, **3 Bom. L.R. 678.**

——S. 81.

(309)—S. 81—*See* INOCULATION, L.B.R. 1893—1900, 545.

(310)—*Ss.* 81 *and* 279—*Punishment—Sentence of one day's simple imprisonment—Rash driving—Offence triable under Special Act—Bombay Motor-Vehicles Act* (*Bombay Act*, II *of* 1904).—Per *Jenkins, C.J.*—"The purpose of inflicting one day's simple imprisonment is to exercise clemency towards an accused, and, so, it is ordinarily passed where imprisonment is the only punishment allowed by law, and the Court sees, in the circumstances of the case, grounds for passing the lightest possible sentence. In practice, the person on whom it is passed is not placed in prison, but is, to all intents and purposes, as free as though the sentence had not been passed." Per *Aston, J.*—"Where there has been special legislature for a particular type of offence, the maximum punishment provided in such special Act for that particular offence may be accepted as an appropriate maximum." "Though the punishment for rash and negligent driving to the public danger, provided by s. 279 of the Code, is greater, the more general provisions of the Code are calculated to remind the Magistrate, when the prosecution is under that Code, and the danger is alleged to have been caused, by rash and negligent driving, that it is not only on the part of the drivers of vehicles that the Code enforces the civil duty of circumspection, from the neglect of which the improbability of culpable negligence arises." EMPEROR v. BAYNE, **8 Bom. L.R. 414=3 Cr. L.J. 494.**

(311)—*Ss.* 81, 323—*Act done for the prevention of greater harm.*—The accused, a sepoy in a native infantry regiment, with other sepoys, was stationed by his officer with orders to keep clear a space in front of a burning house and not to allow any one not in uniform to intrude on that space. The police under the city chief constable were also engaged at the fire, and on some of them coming round from the rear to the front of the house they found themselves warned off by the sentries. A fracas between the soldiers and the police ensued, during which the chief constable was kicked by the accused. The accused was charged under s. 323, I.P.C. It was found that the police did attempt to force the guard, that the chief constable was not in uniform and that the accused had no knowledge who he was. It was not alleged that the kick was unnecessarily violent. *Held* that, as the accused did not know the official character of the chief constable, and as such ignorance was a mistake of fact, and not of law, the kick was justified under s. 81, I.P.C., as having been given in good faith for the purpose of preventing much greater harm, the looting of the house or the spreading of the fire. QUEEN-EMPRESS v. BOSTAN *valad* FATTEKHAN, **17 B. 626.**

(312)—*Ss.* 81, 328—*Gist of offence under s.* 328.—In order to constitute an offence under s. 328, I.P.C., it is not necessary that the hurt should be caused to any particular person intended or that the person injured or likely to be injured should have been previously known. Where the accused, with the object of punishing or detecting the stealers of his toddy, mixed a poisonous drug with it, supposing that they might drink it, caused injury to certain persons who purchased it from an unknown vendor, *held* that the accused was guilty of an offence under s. 328, as he must have known it to be likely that it might be drunk by others, and that they would suffer in consequence. *Held*, further that the case did not come within the provisions of s. 81, I.P.C.,

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which would apply only to acts done without any criminal intention to cause harm. REG. v. DHANIA DAJI, **5 B H.C.Cr. 59.**

——S. 82.

(312-*a*)—S. 82—*See* No. 1551, *infra.*

(313)—*Ss.* 82, 83, 354, 376—*Rape by boy of tender age—Presumption of English Law.*—A boy of tender age was charged with the offence of rape on the person of a little girl. The Judge found him guilty but was doubtful as to whether a boy of tender age could be said to be guilty of that offence. *Held* that the presumption of English Law, against the possibility of the offence of rape by a boy under 14, did not apply to India and the question was one of fact only. KING-EMPEROR v. PARAS RAM DUBE, **13 A.L.J. 254=37 A. 187=16 Cr. L.J. 322=28 Ind. Cas. 658.**

——S. 83.

(314)—*S.* 83—*Accused under twelve years—Duty of Magistrate.*—Where an accused person is under twelve years, the Magistrate should, under s. 83, find that the accused has attained sufficient maturity of understanding to judge of the nature and consequences of his act. QUEEN-EMPRESS v. MAKIMUDDIN, **27 C. 133.**

(315)—*S.* 83—*Child between seven and twelve years, presumption in favour of—Attainment of sufficient maturity of understanding—Proof of, necessary for conviction.*—Under s. 83, a child between seven and twelve years of age cannot be held guilty of an offence with respect to any act, unless it is shown that the child had attained sufficient maturity of understanding to judge of the nature and consequences of that act. Where it was only proved that a girl picked up a button and gave it to her mother, *held,* the fact does not in itself show that she knew that she was doing anything wrong, and no offence had been made out. *In re* MARIMUTHU, **5 M. L.T. 296=9 Cr. L.J. 392=1 Ind. Cas. 807.**

(316)—*S.* 83.—"*Consequences of his conduct*" *meaning of.*—The "consequences of his conduct" referred to in s. 83, Penal Code, are not the penal consequences to the offender, but the natural consequences which flow from a voluntary act. QUEEN v. LUKHINI AGRADANINI, **22 W.R. Cr. 27.**

(317)—*S.* 83—*Capacity of a child to do wrong, how to be measured.*—In construing s. 83, the capacity of doing what is wrong is not so much to be measured by years, as by the strength of the offender's understanding and judgment. Such a degree of malice may be disclosed by the circumstances of a case as to justify the application of the maxim *malitia supplet aetatem.* QUEEN v. AIMONA, **1 W.R. Cr. 43.**

(318)—S. 83—*See* No. 313, *supra.*

(319)—Ss. 83 and 411—*See* STOLEN PROPERTY, 6 M. 373=1 Weir 469.

(320)—Ss. 83, 495—*See* BIGAMY, Rat. Un. Cr. C. 876=Cr. Rg. 55 of 1896.

Penal Code (Act XLV of 1860)—*continued.*

——S. 84.

See ACCUSED PERSON.

See INSANITY.

See LUNACY.

See UNSOUNDNESS OF MIND.

(321)—*S.* 84—*Unsoundness of mind as a ground of non-liability.*—S. 84 of the Code requires that the unsoundness of mind, in order to be a valid ground of non-liability, must be such as would make the accused incapable of knowing the nature of the act, or that he is doing what is contrary to law. And it is for the defence to make out this ground of non-liability. The mere fact that a person accused of murder had been of unsound mind for some time before the murder and was *not quite of sound mind* after the murder, would not be sufficient to exonerate the accused from responsibility for the crime. QUEEN-EMPRESS v. RAZAI MIA, **22 C. 817.** [*F.*, 23 C. 604 ; *R.*, 17 C.P.L.R. 113, 11 Cr. L J. 105=4 Ind. Cas. 985=16 P.W.R. 1909, Cr=94 P.L.R. 1909=6 M.L.T. 101.]

(322)—*S.* 84—*Unsoundness of mind, what kind of, affords exemption from liability.*—The provisions of s. 84, which are in substance the same as those laid down in the answers of the Judges to the questions put to them by the House of Lords in McNaghten's case, show that it is only unsoundness of mind which materially impairs the cognitive faculty of the mind that can form a ground of exemption from criminal responsibility, the nature and the extent of the unsoundness of mind required being such as would make the offender incapable of knowing the nature of the act, or that he is doing what is wrong or contrary to law. A person subject to insane impules is not entitled to exemption from criminal liability, if his cognitive faculties are left unimpared. *Quære.*—Whether s. 84 ought to be extended to cases in which insanity affects the emotions and will. QUEEN-EMPRESS v. KADAR NASYER SHAH, **23 C. 604.** [*F.*, 4 Ind. Cas. 985=16 P.W.R. 1909, Cr.=94 P.L.R. 1909=6 M L.T. 101=11 Cr. L.J. 105; *R.*, 28 C. 613=5 C.W.N. 665, L.B.R. 1893-1900, 249, 17 C.P.L.R. 113, 14 Cr. L.J. 81=18 Ind. Cas. 641=15 O.C. 321.]

(323)—*S.* 84—*Unsoundness of mind—Delusion.*—Where the accused cut his wife's throat in a brutal manner, without any rational motive, and was captured at once without any attempt on his part to escape or resist arrest, and where the evidence disclosed that the accused had definite delusions as to dangers that threatened his wife and that he was of unsound mind at the time of the occurrence, *held,* that the facts on the record proved that the unsoundness of his mind prevented his knowing the nature of the act and its wrongfulness and the accused was therefore entitled to an acquittal under s. 84, I.P.C. DIL GAZI v. EMPEROR, **34 C. 686=6 Cr. L.J. 233.** [*R.*, 14 Cr. L.J. 81=18 Ind. Cas. 641=15 O.C. 321.]

Penal Code (Act XLV of 1860)—*continued.*

(324)—*S.* 84—*Insanity, plea of—Evidence—Examination of expert on appeal—Crim. Pro. Code, Act* V *of* 1898, *s.* 528—*Letter written by expert who left country before his examination by Court.*—It is only unsoundness of mind, which materially impairs the cognitive faculties of the mind, that can form a ground of exemption from criminal responsibility, the nature and the extent of the unsoundness of mind required being such as would make the offender incapable of knowing the nature of the act, or that he is doing what is wrong or contrary to law. The test of insanity as viewed from a legal point does not coincide with the medical idea, and in many cases a man, who is, in the opinion of the medical experts of unsound mind, cannot claim the benefit of s. 84 of the Penal Code. In this case, the Chief Court found the plea of insanity to a charge of murder not established, but, having regard to the diseased condition of the accused's mind and the absolutely motiveless nature of the offence, sent up the record to H.H. the Lieutenant-Governor, with a recommendation that the case be dealt with under s. 401 of the Crim. Pro. Code. CHAJU MAL v. KING-EMPEROR OF INDIA, **94 P.L R. 1909 = 6 M.L. T. 101. = 16 P.W.R. 1909, Cr. = 4 Ind. Cas. 985 = 11 Cr. L.J. 105.** (23 C. 604, *R.*)

(325)—*S.* 84—*Burden of proof.*—The *onus* of proving the defence afforded by s. 84, I.P.C., rests on the prisoner. QUEEN-EMPRESS v. IRAPA, **Rat. Un. Cr. C. 818 = Cr. Rg. 64 of 1895.**

(326)—*S.* 84—*Scope of the section—Burden of proof—Crim. Pro. Code, ss.* 469, 470, 471.—A claim for relief under s. 84 must necessarily be a defence against an admitted or assumed act which, but for the existence of legal insanity, would be punishable as an offence. It must therefore always be expressly pleaded by the accused. No accused person can, therefore, be discharged simply because, when or if he committed the act, he was insane. Ss. 469, 470 and 471, Crim. Pro. Code, lay down the proper procedure in such cases. EMPEROR v. KATTY KISAN, **17 C.P.L.R. 113 = 1 Cr. L.J. 854.** [*R.*, 13 Cr. L.J. 164 = 13 Ind. Cas. 916 = 7 N.L.R. 185.]

(327)—*S.* 84—"*Knowing the nature of the Act,*" *meaning of—Person subject to delusions, Liability of—Opinion of lay persons on question of sanity, value of.*—On the morning of Sunday, the 9th October, 1910, the wife of the accused-appellant was found lying murdered in her house. Going out of the house the accused met a Police constable and told him what had happened. The latter took him to the Police Station where he made a report in which he said—"To-day in the morning I asked my wife to give me water......She did not give it to me. I abused her and she also abused me. I got enraged and struck her with a gandasa and a knife. She died. The gandasa and the knife, are at the house." The same day a Magistrate recorded the statement of the accused in which he added that his wife had an amour with his father, that on Friday or Thursday at night he saw his father lying with his wife and that he kept peace at the time, but his angry passions continued all along. Five days after the occurrence the accused was examined by the Civil Surgeon who kept him under medical observation from 14th October to 8th November, 1910, and came to the conclusion that he was insane and incapable of making his defence and that the chief insane symptoms were mutterings, delusions and insomnia, but he could not say whether the offence was committed during a lucid interval. Since then the accused, on the recommendation of the Civil Surgeon, was confined in a lunatic asylum for about a year and 8 months prior to his trial. It was proved from the evidence and the fact was not denied on behalf of the accused that he did kill his wife. The accused's statement about his wife's amour with his father was obviously untrue as the father was 70 or 75 years old and wife was 8 months advanced in pregnancy. It was also established that for 3 or 3½ years prior to the occurrence the accused had suffered at intervals from fits of mental unsoundness in the course of which he was subject to delusions. *Held*, by the Court [*Piggot, J.C., and Stuart, A.C.J.*] on the evidence that the accused had failed to establish that he had acted under a *bona fide* delusion existing at the time of the commission of the offence or that his mental unsoundness was such that he did not know at the time that he was doing what was contrary to law. *Held also*, that the fact that the accused was of unsound mind on the date of occurrence was not sufficient to entitle him to a verdict of acquittal under s. 84, Penal Code. The burden lies on the accused to satisfy the Court that his unsoundness of mind was of such a nature and degree that by reason thereof he was incapable of knowing the nature of the act, or of knowing that he was doing what was either wrong or contrary to law. The words "knowing the nature of the act," in s. 84 Penal Code, have nothing to do with the appreciation of its moral quality or the forming of a correct estimate as to its legal consequence. Per *Stuart, A.J.C.*—*Held*, that, even if the accused had believed that his wife had committed adultery on a previous occasion, his delusion to that effect could not constitute grave and sudden provocation.—Per *Kanhaiya Lal, A.J.C. dissentient*):—*Held*, that the conduct of the accused subsequent to the commission of the offence and the fact that the accused delivered some of the strokes over the deceased's face, nose and ears together with the medical evidence and the evidence of previous insanity establish that the offence was committed in a fit of insanity when his mind was deranged by an insane delusion and when he was mentally unable to understand the legal or moral nature of the act he was doing. *Held further*, that the effect of s. 84, Penal Code, is to prescribe that a man, who is by reason of unsoundness of mind prevented from controlling his own conduct and deprived of the power of passing a rational judgment on the moral character of the act he meant to do, cannot be legally responsible for the act. If a

Penal Code (Act XLV of 1860)—*continued.*

man suffers under a partial delusion only and is sane in other respects, he must be dealt with as if the facts with respect to which the delusion existed were real. *Held also*, that the opinion of lay persons on the question of sanity is not of much value, particularly when their attention was not specifically directed to it. MUHAMMAD HUSAIN v. KING-EMPEROR, **15 O.C. 321 = 18 Ind. Cas. 641 = 14 Cr. L.J. 81.**

(328)—*S.* 84—*Unsoundness of mind—Mental derangement falling short of unsoundness—Murder — Lesser penalty — Youth ordinarily extenuating circumstance.*— The law requires that a man shall be held responsible for his acts although he may be suffering from mental derangement in cases where that mental derangement falls short of the unsoundness of mind described in s. 84 of the Penal Code. On proof of such mental derangement in a murderer, the lesser sentence may be passed. Ordinarily youth is itself an extenuating circumstance, but it does not mean that, in every case of murder, where the accused is under a certain age, the lesser penalty must be awarded. NGA KAN HLA v. EMPEROR, **U.B.R. 1914, 3rd Qr., 28 = 26 Ind. Cas. 1007 = 16 Cr.L.J. 95.**

(329)—S. 84—*See* CRIM. PRO. CODE, 1898, s. 401, 23 C. 604.

(329-*a*)—S. 84—*See* No. 339, *infra.*

(330)—*Ss.* 84, 85—*Committing crime under the influence of* ganja— *Criminality.*—If a person is of unsound mind, he is to be judged by the ordinary rules in regard to insanity, no matter whether the insanity arose from disease of the brain or from persistent indulgence in intoxicating drugs or liquor. Where a person commits a crime under the influence of *ganja*, the Court, in estimating his criminal responsibility, must distinguish between intoxication simulating insanity, caused by a bout or repeated bouts of *ganja* smoking, and unsoundness of mind within the meaning of s. 84, I.P. C., induced by excessive use of the drug. Enormity or apparent purposelessness of the crime itself without any further evidence cannot be relied on to establish insanity, and the fact that the Court does not know the motive does not prove that there was no motive. VITHOO v. EMPEROR, **7 N.L.R. 185 = 13 Ind. Cas. 916 = 13 Cr. L.J. 164.** (29 C. 493, 17 C.P L.R. 113, A.W.N. 1906, 193, 14 B. 564, 10 B.512, 12 M. 459, 14 Cox C.C. 563, 1 Hall 32, *Cons.*)

(331)—Ss. 84, 99—*See* INSANITY, Rat. Un. Cr. C. 229.

(332)—*Ss.* 84 *and* 302—*Insanity induced by taking intoxicating drugs.* — A person who, though of unsound mind, knows that, in killing another, he is committing a wrongful act, is not entitled to the benefit of s. 84 of the Code. Persons, who are in fact insane, whether they have become so from persistent indulgence in intoxicating drugs or from brain disease, must be judged by the ordinary rules of law affecting insane persons. EMPEROR v. HARKA, **A.W.N. 1906, 193 = 3 A.L.J. 463 = 4 Cr. L.J. 88.** [*R.*, 7 N.L.R. 185.]

Penal Code (Act XLV of 1860)—*continued.*

(333)—*Ss.* 84 *and* 302—*Murder—Insanity, signs and* indicia *of melancholic homicidal mania—Incapability of knowing illegal nature of act.*—The prisoner, who was charged with committing murder, was a young man of weak intellect, and the motive actuating the offence was trivial and inadequate. As soon as he had killed his uncle by hacking him on the head and neck with a sword, the prisoner rushed about, brandishing his weapon and shouting "Victory to Kali." He attempted to strike other persons, including his own father. When the paroxysm had passed off during the police enquiry, the prisoner appeared to be rational, but immediately afterwards, he developed aphasia, attempted to commit suicide and was undoubtedly insane from that time for a period of five years : *Held*, that the above are the signs and *indicia* of insanity as expressed in works on the subject of Medical Jurisprudence, and that the prisoner was suffering from a fit of melancholic homicidal mania at the time he hacked the deceased with the sword and was, by reason of unsoundness of mind, incapable of knowing that he was doing an act which was wrong or contrary to law, and, therefore, he was not guilty of murder. SHIBO KOERI v. EMPEROR, **10 C.W.N 725 = 3 Cr. L.J. 469.** [*R.*, 14 Cr. L.J. 81 = 18 Ind. Cas. 641 = 15 O.C. 321.]

(334)—*Ss.* 84, 304—*Beating to exorcise evil spirits—Death.*—Where the accused severely beat a woman under 18 years of age with sticks for exorcising a spirit out of her, with the consent of the woman and her father, and such beating resulted in her death, *held* that the accused were guilty of culpable homicide under the last clause of s. 304 of the Penal Code, and not of murder, and that they were not entitled to the benefit of s. 84 or s. 88. QUEEN-EMPRESS v. JAMALUDIN, **Rat Un. Cr. C. 603.** (5 W.R. 7, Cr., 3 B.L.R. 25, 5 C. 357, 14 C. 566, 1 B. 342, *R.*)

(335)—*Ss.* 84, 307, 471—*Unsoundness of mind —Proof—Evidence.*—The accused was convicted for an offence, under s. 307 of the Penal Code. It was found from the evidence for the prosecution that he was known as "Mad Nga Pyan ;" that immediately before he committed the offence he was noticed by persons to be in one of his mad fits, that he was under a delusion that the Phongyi whom he attacked was keeping his sisters and daughters in the monastery, that he confessed to the investigating officer and the headman, that he discontinued the attack when he was asked to do so and that the act was utterly unprovoked and motiveless. *Held*, that, under these circumstances, the accused was at the time of committing the offence incapable, by reason of unsoundness of mind, of knowing the nature of the act or that it was wrong or contrary to law. NGA PYAN v. EMPEROR, **13 Cr.L.J. 49 = 13 Ind. Cas. 385 = 4 Bur. L.T. 267.**

(336)—*Ss.* 84, 324, 326—*Meaning of "unsoundness of mind" in s.* 84—*Drinking intoxicating liquor—Walking 2 miles in the sun—Blow on*

the head — Loss of self-control — Temporary dementia — Burden of proof.—Accused drank liquor, then had a walk of 2 miles in the sun and reached a village, where one P hit him on the head with a stick. Accused pursued P to a certain place, but not finding P there, accused cut and wounded 5 women with a *da.* Accused pleaded that he was not responsible for his actions and that his case was covered by s. 84, I.P.C. *Held,* that the above circumstances were not sufficient to bring the case within s. 84, I.P.C., and that the assault on the women was really the outcome of disappointed rage. The term "unsoundness of mind" cannot be construed so widely as to cover the loss of self-control following a hostile blow on the head. The conviction of the accused under ss. 236 and 324, I.P.C., was upheld. MAUNG GYI v. KING-EMPEROR, **7 L.B.R. 13 = 20 Ind. Cas. 411 = 14 Cr. L.J. 427.**

——**S. 85.**

(337)—S. 85—*See* No. 330, *supra.*

(338)—*Ss.* 85, 86—*Voluntary drunkenness—Intention.*—Where an act done is not an offence unless done with a particular intention, it is permissible to consider voluntary drunkenness in determining whether the accused had that intention. J.M. v. KING-EMPEROR, **U.B.R. 1910, 2nd Qr., 17 = 8 Ind. Cas. 469 = 11 Cr.L.J. 659.** (8 W.R. Cr. 71, W.R. 1864, Cr. 24, 2 L. B.R. 204, 16 Cox. C. C. 306, S.J.L. B. 650, *R.*) [*R.*, 13 Cr. L.J. 864 = 17 Ind. Cas. 800 = 5 Bur. L.T. 193 = 6 L B R 100, 13 Cr. L.J. 471 = 15 Ind. Cas. 311 = U.B.R. 1911, I, 105, 12 Ind. Cas. 85 = 4 Bur. L.T. 221 = 12 Cr. L.J. 477. 12 Ind. Cas. 292 = 4 Bur. L.T. 253 = 12 Cr. L.J. 524.]

(339)—*Ss.* 85, 86, 84—*Voluntary or involuntary intoxication—Effect on criminality—Proof of motive—Duty of prosecution—Intention whether a presumption of law or fact.*—Where the acts proved are themselves sufficient to establish the offence, relieving the prosecution of the responsibility of proving intention, proof of motive is not called for. But where there are circumstances which have any bearing on the degree of the criminality involved, it is certainly the duty of the prosecution to bring them forward, whether they tell for or against the accused. Voluntary drunkenness is never an excuse for crime. The fact that a man was drunk makes no difference, *per se,* to the question of his criminal liability. *Involuntary* drunkenness, as a ground of exemption, is treated in just the same way as insanity under s. 84, Penal Code. Therefore it would be no ground of excuse for crime to plead merely that accused was involuntarily drunk. It must be shewn that he was so drunk that he did not know (1) the nature of the act or (2) that it was wrong, or (3) that it was contrary to law. But though neither voluntary drunkenness nor involuntary drunkenness which does not involve one or other of the three states of mind mentioned in s. 85, Penal Code, are excuses for crimes committed, under their influence, yet the fact of drunkenness may alter the nature of the *legal offence* committed, though it is no excuse for the *act.* This occurs where an essential of the crime is the presence of some *particular* knowledge or intention. Intention is sometimes a presumption of law; sometimes it is a mere fact to be proved like any other fact. WARIS ALI v. EMPEROR, **7 N.L. R. 180 = 13 Cr. L.J. 167 = 13 Ind. Cas. 919.** (2 Lewin C. C. 144, 7 Car. and P. 297, 817, 11 F. and F. 90, 8 Car and P. 546, W.R. 1864, 24 Cr., 8 B.L.R. App. 21, *R.*)

(340)—Ss. 85, 86, 302—*See* EVIDENCE—DYING DECLARATION, 4 P.W.R. 1909, Cr. = 9 Cr. L.J. 156 = 1 Ind. Cas. 100.

(341))—*Ss.* 85, 86, 387, 398—*Drunkenness—Particular knowledge or intention necessary to constitute offence—Imputation of knowledge to voluntary drunkard — Intention—Burden of proof—Presumption—English law—Extortion —Attempt at robbery.*—The general presumption of law is that a man is taken to intend the ordinary and natural consequences of his acts; if a drunken man relies on his drunkenness as absolving him from a crime, he must show that his mind was so affected by the drink he had taken, that he was incapable of forming the intention necessary to constitute the offence charged against him. The effect of the omission to make any express provision, in s. 86 of the Penal Code, regarding the intention which is to be attributed to a voluntary drunkard committing an act, which is an offence when done with a particular or *specified* intent, is that the question of intention is left to be dealt with on the general principles of law, which are the same both in India and in England. The drunkenness of an accused person at the time he committed the act charged as an offence may be and should be taken into consideration on the question whether he did the act with the intention necessary to constitute the offence charged. The law does not require that the intention, which would be ascribed to a sober man in connection with an act, must necessarily be ascribed to a drunken man who does the same act. S. 86 of the Penal Code gives the drunken man the knowledge of the sober man when judging of his action, but does not give him the same intention; it does not render him liable to be dealt with as if he had the same intent. A went up into B's house having a *dah* in one hand. He called out to B that, if B did not give him money, he would cut B and his wife. B and his wife were in an inner room, the door of which was closed against A. A kicked at it and slashed it with his *dah* but the door did not give way. A then went to the door of another room; he kicked at it and slashed it but when the door opened, A fell down. Meanwhile B and his wife had fled through the back part of the house. B assembled a number of villagers but when they approached the house, A fled away. He was, subsequently, found in his father's house in a drowsy condition. A was charged with having attempted to commit robbery armed with a

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deadly weapon. It was ascertained that A had been drinking *toddy* before the commission of the offence. His defence was that he was drunk and did not know what he did. He was convicted under s. 398 of the Penal Code : *Held* (1) that A was not so drunk as to be incapable of forming in his mind the dishonest intention necessary to constitute the offence of extortion in case his demands had been acceded to; (2) that A was guilty of an offence under s. 387 of the Penal Code; (3) that as, at the time A uttered his threat to B and his wife, the latter were inside a room, the door of which was shut against A, who could not get at them, it was doubtful whether the conditions necessary to constitute the offence of an attempt at robbery were fulfilled in the case, and that A should have the benefit of this doubt. *Per Hartnoll, J.*—To form an intention, a man must necessarily have the requisite knowledge to do so; but, if he has certain knowledge, he must, to form an intention, go a step further than having such knowledge.—*Per Young, J.*—In most cases, intention has to be inferred from the nature of the acts done and from all the circumstances of the case. If a drunkard, by reason of his drunkenness, does not know the nature of his act, he cannot be presumed to have intended the consequences of that act. Therefore in cases where an act is not an offence at all unless it is done intentionally, drunkenness is an excuse. A drunkard is often fully conscious of what he is doing and what are the natural consequences of his acts. If he fails to prove that, owing to his intoxication, he had not the same knowledge in relation to the offence as he would have had if sober, then s. 86 will not apply at all, and an intention will be presumed or not, just as it would be in the case of a sober man. NGA TUN BAW v. EMPEROR, **6 L.B.R. 100 = 5 Bur. L.T. 193 = 17 Ind. Cas. 800 = 13 Cr. L.J. 864, F.B.**

—— S. 86.

(342)—S. 86—*See* Nos. 338, 339, 340, 341, *supra.*

(343)—*Ss.* 86 *and* 300—*Whether any presumption, directly relating to intention, established by s. 86—Import of s. 86—Injury not certain, though likely, to cause death—Method of inferring accused's intention—Murder.*—An accused person cut his grandfather on the head with a heavy chopper, slicing off a bit of the frontal bone and cutting the brain. The wounded man subsequently died of the effects resulting from the injury caused by the chopper. The deceased's life was in danger from the first, but the injury was not *certain* to cause death. *Held, per Irwin, C.J. and Hartnoll, J. (Ormond, J., dissenting)* that, in the present case, the accused's intention should be inferred from his act, but not solely from the consequences of that act; that the result of cutting a man on the head with a heavy chopper being generally death, the accused must be taken to have known that that is the natural consequence of such an act, and that he must, therefore, be presumed to have intended to

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cause death. S. 86 of the Indian Penal Code does not establish any presumption of law relating directly to intention, but it binds the Court to treat the accused as having the same knowledge as he would have had, if he had been sober, and intention in this case is an inference from knowledge. PO TU v. KING-EMPEROR, **4 L.B.R. 306 = 9 Cr. L.J. 5.** [*R.*, 9 Cr. L.J. 364 = 4 L.B.R. 367.]

(344)—Ss. 86, 300 (4) and 302—*See* MURDER, 1 L.B.R. 216.

(345)—*Ss.* 86, 302, 304—*Effect of drunkenness—Knowledge—Intent.*—*Per Ayling, J.*—S. 86, I.P.C., makes it clear that ordinary drunkenness makes no difference to the knowledge with which a man is credited. If the accused knew what the natural consequences of his act were, he must be presumed to have intended to cause them. *Per Tyabji, J.*—It is true that s. 86 lays down that in certain cases an intoxicated person shall be liable to be dealt with "as if he had the same knowledge as he would have had if he had not been intoxicated." But it does not provide that the intoxicated person shall be dealt with as if he had the same *intent.* S 86 creates an artificial rule for the effect of evidence and the significance of facts. The section must be read as it is and should be construed strictly. *Re* MANDRU GADABA, **38 M. 479 = 30 Ind. Cas. 451 = 16 Cr. L.J. 627.**

—— S. 87.

(346)—S. 87—*See* MURDER, 8 B.H.C. Cr. 110.

(347)—*Ss.* 87-90, 304, 304-*A*, 336—*Culpable homicide not amounting to murder.*—S. 304-A causing death by rash or negligent act not amounting to culpable homicide—S. 336—Doing an act so rashly or negligently as to endanger human life—Ss. 87 90, consent to suffer harm—Consent given under a misconception of fact—Death caused by the bite of a venomous snake received by deceased's own act through the alleged instigation of a snake-charmer. QUEEN-EMPRESS v. NGA PO KYIN, **U.B R. 1897—1901, Vol. 1, 298.** (12 W.R. Cr. 7, 5 C. 351, *R.*)

(348)—*Ss.* 87, 90, 304—*Death caused by consent under misconception of fact—Intention or knowledge of accused.*—The deceased, a middle aged man, believed himself to have been rendered *da*-proof by charms and asked the accused to try a *da* on his right arm. The accused believed in the pretence of the deceased and inflicted a blow with a *da* with moderate force, with the result that the arteries were cut and the deceased bled to death. *Held*, setting aside the conviction under s. 304, Penal Code, that the case was governed by ss. 87 and 90, Penal Code, and that the accused had no intention of causing death or grievous hurt and that he might not even have known that his act was likely to cause any such result. NGWA SHWE KIN v. EMPEROR, **16 Cr. L.J. 581 = 30 Ind. Cas. 133.**

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——**S. 88.**

(349)—S. 88—*See* CRIM. PRO. CODE (1898), ss. 133, 137, 140, 11 C.L.J. 114.

(350)—S. 88—*See* Nos. 138, 306, 347, *supra.*

—— **S. 89.**

(351)—S. 89—*See* No. 347, *supra.*

—— **S. 90.**

(352)—S. 90—*See* Nos. 347, 348, *supra.*

(353)—*Ss.* 90, 366—*Gist of the offence of kidnapping—Consent obtained on misrepresentation—Effect—Scope of expression "under misconception of fact" in s. 90, I.P.C.—Misrepresentation as to intention of a person is a misrepresentation of fact within s. 3, Evidence Act—Consent obtained by coercion or fraud—Effect in Civil and Criminal law.*—The offence of kidnapping consist in taking or enticing a minor out of the keeping of the lawful guardian of such minor without the consent of such guardian. If a minor is taken with the consent of the guardian and subsequently married improperly without the consent of the guardian to any person, such improper marriage would not by itself amount to kidnapping. The expression "under a misconception of fact" in s. 90, I.P.C., is broad enough to include all cases where the consent is obtained by misrepresentation; the misrepresentation should be regarded as leading to a misconception of the fact with reference to which the consent is given. A misrepresentation as to the intention of a person is a misrepresentation of a fact. (Evidence Act, s. 3, *Ill.* (*d*)). Although, in cases, of contracts, a consent obtained by coercion or fraud is only voidable by the party affected by it, the effect of s. 90, Penal Code, is that such consent cannot, under the criminal law, be availed of to justify what would otherwise be an offence. *Re* N. JALADU, **36 M. 453 = 22 Ind. Cas. 168 = 15 Cr. L.J. 24**, (1842 Car. and M. 254, *R.*)

——**S. 94.**

(354)—*S.* 94—*Doctrine of necessity and compulsion.*—S. 94, I.P.C., is the only law which allows the doer of a crime to plead necessity as a defence. In order that the doctrine may be applicable, there must be a reasonable fear, at the very time, of instant death. The Indian law about compulsion and necessity as a justification of an act otherwise criminal, is based on the law of England. The law does not, where there is no fear of instant death, require the Courts to discuss the philosophy of free will, or determine whether the person who bribes to secure some advantage to himself is a victim of extortion or feels helpless or not. Except in mitigation of penalty, this sort of language is rather rhetoric than relevant argument. Therefore witnesses, who, in order to avoid a pecuniary injury or personal molestation, had given bribes to a public servant, should be treated as accomplices. QUEEN-EMPRESS v. MAGAN LAL, **14 B. 115.** [*R.*, 19 B. 51, 19 B. 363, 20 B. 215, 20 B. 394, 21 B. 588, 26 M. 1 = 2 Weir 531, Rat. Un. Cr. C. 564, Rat. Un. Cr. C. 720, Rat. Un. Cr. C. 740, Rat. Un. C. 746.]

(355)—*S.* 94—*Scope.*—Even to freedom to tell falsehoods under official coercion, s. 194. I.P.C., applies. QUEEN-EMPRESS v. KAZIGOWDA, **19 B. 51.** (10 W.R. Cr. 48, 14 B. 115, *R.*)

(356)—S. 94—*See* No. 110, *supra.*

——**S. 95.**

(357)—*S.* 95—*Section, when applicable.*—S. 95 will have no application, unless the act in question amounted to an offence under the Code, but for the operation of that section. EMPEROR v. PREO NATH CHOWDHRY, **29 C. 489.**

(358)—*S.* 95—*Theft of property worth three pies.*—S. 95, I.P.C., is not applicable to a case where the accused is charged with the offence of theft, in respect of three pies worth of dung cakes and mangoes. QUEEN-EMPRESS v. RAMCHORE, **Rat. Un. Cr. C. 400 = Cr. Rg. 61 of 1888.**

(359)—*S.* 95—*Scope of the section.*—S. 95, Penal Code, was only intended to provide for those cases which fall within the letter, but not within the spirit, of the law. The tearing up by a person of an account in his own handwriting and signed by him, showing advances made by the complainant, repayments made by the accused and the balance due by him to the complainant, the accused having just made a payment far short of the amount actually due, cannot be considered to be an act to which s. 95, Penal Code, applies. QUEEN-EMPRESS v. RAMASAMI, **12 M. 148 = 1 Weir 553 = 1 Weir 29.**

(360)—*S.* 95—*Applicability of, where the act charged does not amount to an offence—S.* 120 (*a*), *Railways Act, commission of offence under—Release of convicted person with a warning—Procedure.*—The accused was found drunk in a Railway Station, which was an offence punishable under s. 120 (*a*) of the Railways Act. He pleaded guilty and the Magistrate let him off with a warning. *Held*, that s. 95 of the Penal Code was inapplicable in this case, inasmuch as the act charged against the accused person amounted to an offence under s. 120 (*a*) of the Railways Act. S. 562 of the Crim. Pro. Code applies only where a person is convicted of one of certain offences punishable under the Penal Code and to an offence under the Railways Act. EMPEROR v. JOHN SCOTT, **1 N.L.R. 139 = 1 Cr. L.J. 751.** [*R.*, 7 Cr. L.J. 319 = 4 N.L.R. 18.]

(361)—*S.* 95—*Theft of pods of no value.*—*Held* that, as the pods, with the theft of which the accused was charged, were taken from a tree on Government ground and were of no value to Government, not being made use of for any purpose, s. 95, I.P.C., applied and that the conviction should therefore be set aside. REG. v. KASYA *bin* RAVJI, **5 B.H.C. Cr. 35.** [*R.*, A.W.N. 1881, 100; *D.*, Rat. Un. Cr. Cas. 908.]

Penal Code (Act XLV of 1860)—*continued.*

(362)—*Ss.* 95, 144—*Slight harm—Deadly weapon*—Lathi—*Trumpery quarrel.*—A *lathi* in itself is not a deadly weapon, unless and until it is used on the head or on some vital part of a person. Two parties collected outside their respective houses and apparently challenged each other, but nothing happened: *Held*, that this was a trumpery quarrel covered by s. 95 of the I.P.C. PARMA SINGH v. EMPEROR, **12 Cr. L.J. 103=9 Ind. Cas. 586.**

(363)—*Ss.* 95 *and* 298—*Wounding religious feeling of Muhammadans*—Jhatka *meat—No intention to injure feelings but for livelihood—Trial by a Muhammadan Magistrate who is personally interested—Crim. Pro. Code, ss.* 144, 439 *and* 556.—*Held*, that a person by killing a goat by *Jhatka* process and exposing its flesh for sale in the presence of Muhammadans, commits no offence. Muhammadan religious feelings are not wounded by slaughter of goats by *Jhatka* and exposing the carcase outside or selling its flesh inside a shop, as Muhammadans do not reverence goats. Even if it were intended to cause harm and insult to some Muhammadans by so doing, that harm is so slight that no person of ordinary sense and temper would complain of it, and s. 95, Penal Code, applies. *Held*, also, that a Muhammadan Magistrate, whose order for the closing of a *Jhatka* shop by a person has been set at defiance by the accused, ought not to try the complaint on behalf of other Muhammadans against such person, especially when the dispute had been magnified into one of a religious nature and the religious feelings of Muhammadans are supposed to be outraged. *Held*, further, that a Magistrate of the 2nd Class has no authority to issue an order for the closing, under s. 144, Crim. Pro. Code, of a *Jhatka* shop. KIRPA SINGH v. CROWN, **26 P.W.R. 1912, Cr.=16 Ind. Cas. 169=13 Cr. L.J. 601.**

(364)—Ss. 95, 319—*See* HURT, 24 W.R. Cr. 67.

(365)—*Ss.* 95, 352—*Act causing slight harm.*—The complainant, a young woman, was going with an earthen jar through a public thoroughfare, to fill water at a well, after sunrise, when the accused who was standing, leaning against his *lathi*, caught hold of the complainant's hand which prevented her from going in the direction in which she was going. It was also alleged that the accused had also solicited her to commit adultery with him. The Magistrate, finding the latter part of the charge unproved, convicted the accused under s. 352, I.P.C. The Sessions Judge being of opinion that the complainant was a woman of an exceedingly questionable character and behaviour who did not offer the slightest resistance to the accused, and that no offence had therefore been committed, referred the case to the High Court. *Held*, that though there was evidence to sustain a charge of criminal force under s. 352, I.P.C., the principle of s. 95, I.P.C., applied to the act of the accused in this case as it was a mere piece of foolish and vulgar chaff, which

Penal Code (Act XLV of 1860)—*continued.*

seriously to treat as a crime would be absurd. EMPRESS v. HAIRON MISR, **A.W.N. 1887, 73.**

(366)—*Ss.* 95, 379, 426 *and* 427—*Cutting of small branches of no appreciable value for the sake of leaves.*—The mere cutting of a few small branches of no appreciable value for the sake of the leaves from a large tree, which is not practically injured at all by the operation, scarcely calls for punishment as theft and comes under s. 95, Penal Code. On the other hand, there might be similar cases in which substantial punishment would be appropriate, as, for example where wanton and reckless damage was caused. There might again be cases in which, though the act of taking the branches in itself caused harm so slight that no person of ordinary temper or sense would complain of it, the person who did it would be properly punishable for same other offence. Every case of this kind must be considered on its own merits. EMPRESS v. MAHOMED KHAN, **8 C.P.L.R.Cr. 15.**

(367)—*Ss.* 95, 403—*Act causing slight harm.*—An accused person charged with criminal misappropriation for having removed a semi-decayed branch of a tree overhanging the roof of his house, alleged that the tree belonged to him, which was found against him. From the evidence of his witnesses it appeared that he had removed the branch because, from its position over the roof of his house, it incommoded him. *Held* that the element of dishonesty was wanting in the acts and intention of the accused, and a prosecution was barred by the provisions of s. 95, I.P.C. EMPRESS v. JIWA RAM, **A.W.N. 1881, 100.**

(368)—Ss. 95, 405—*See* CRIMINAL BREACH OF TRUST, 27 A. 28=A.W.N. 1904, 153.

(369)—*Ss.* 95, 425—*Mischief—Slight harm.*—Where a person was convicted of mischief for having removed earth of no appreciable value from the complainant's land though the complainant said during the trial that he did not wish to proceed with the prosecution, *held* that the case fell within s. 95 of the Penal Code and that the conviction was to be set aside. EMPRESS v. GULZARI LAL, **A.W.N. 1882, 229.**

(370)—*Ss.* 95, 500—*Kulabrashta—How far defamatory—Crim. Pro. Code, ss.* 435, 439—*Further enquiry*—The term "*Kulabrashta*," *i.e.*, prostitute's son used in a book is *prima facie* defamatory and does not fall under s. 95. I. P. C. and whether it refers to a particular individual, *i.e.*, complainant or not, is a question to be determined on evidence, and when no evidence is taken on the point except a statement by the accused and complainant when other evidence is available, the enquiry is defective, and the lower Court must be directed to make further enquiry into the matter. RAMANUJA CHARIAR v. PRATHIVATHI BAYANKARAM, **(1911) 2 M.W.N. 8=10 M.L.T. 96=12 Cr. L.J. 497=12 Ind. Cas. 217.**

(371)—*Ss.* 95, 504, 355—*Acts causing slight harm—Abuse—Ejecting a trespasser from the pleader's room after warning*—The complainant

Penal Code (Act XLV of 1860)—*continued.*

who was not a pleader, intruded into the pleader's room at Belgaum, in order to see a pleader. The accused, a pleader, objected to the complainant's presence in the room and had read out to him one of the rules which required an outsider to withdraw from the room if his presence was objected to. The complainant refused to leave the room and set resolutely down The accused went to him and put him out of the room. The complainant again returned to the room when the accused used him an abusive epithet. Shortly after the incident the accused made ample apology to the complainant for what had occurred. On these facts the accused was convicted for offences under ss. 355 and 504, Penal Code. The accused having appealed: *Held*, (1) that no offence was committed under s. 355. since the complainant's intention in remaining in the pleader's room, after his presence was objected to, was to annoy the accused, and the accused did not exceed his rights in putting the trespasser out of the room; (2) that, as to the second charge, the accused was within the protection allowed by s. 95. regard being had to the circumstances of provocation in which the words were uttered, and to the frank and sincere apology which immediately followed their use. EMPEROR v. MORE BALVANT MARATHE, **15 Bom. L.R. 1039 = 2 Bom. Cr. C. 168 = 15 Cr. L.J. 14 = 22 Ind. Cas. 158.**

——**S. 96.**

See PRIVATE DEFENCE, RIGHT OF.

(372)—Ss. 96 to 106, 147, 149 and 325—*See* PRIVATE DEFENCE, RIGHT OF, 35 C. 443 = 8 Cr. L.J. 54.

(373)—Ss. 96, 97, 99, 100, 304—*See* PRIVATE DEFENCE, RIGHT OF, 13 C.W.N. 1180.

(374)—Ss. 96, 147—*See* PRIVATE DEFENCE, RIGHT OF, 24 A. 143 = A.W.N. 1901, 193.

——**S. 97.**

See PRIVATE DEFENCE, RIGHT OF.

(375)—*S.* 97 (2)—*Right of private defence—Limits of.*—The law allows every person to use reasonable force to defend his possessions from a trespasser. But when the property has been taken possession of by another, however wrongful it might be, the person dispossessed would not be entitled to take the law into his own hands and forcibly recover possession. CROWN v. GULSHAH, **6 S.L.R. 121 = 17 Ind. Cas. 78 = 13 Cr. L.J. 766.**

(376)—S. 97—*See* Nos. 372, 373, *supra.*

(377)—Ss. 97, 99—House-search by Police—General search—Search for specific article—Criminal trespass—Private defence—*See* CRIM. PRO. CODE, 1898, ss. 435, 437, 165, 94, 16 C. W.N. 1078 = 17 Ind. Cas. 76 = 13 Cr. L.J. 764.

(378)—*Ss.* 97, 99, 102, 323, 334, 351, 352—*Assault — Hurt — Provocation— Grave and sudden—Provocation caused by untrue statement of accused—Dangerous weapon—Lathi—Walking cane-stick four feet long and one inch thick, whether dangerous weapon.*—The petitioner was a "Tilla Babu" of a certain tea garden in charge of outdoor work under the complainant, the Assistant Manager. One morning the Assistant Manager taxed the petitioner with not having gone the previous day to Tilla No. 10, and told him that the work there had been badly done, but the petitioner replied that he did go. The Assistant Manager did not believe that and, being annoyed, said to the petitioner, "you bugger, you did not go there." The petitioner said "Don't abuse me in the presence of the coolies." The Assistant Manager, the complainant, then called out "*chop raho.*" The petitioner then retorted "you *chop raho.*" At this the complainant, raising his fist, took a step forward towards him and said that, if the petitioner spoke to the complainant in that manner, he (the complainant) would strike the petitioner. The petitioner, who had an umbrella and a walking cane-stick with him, dropped his umbrella and, holding the stick with both hands struck the complainant, hitting him on the right elbow, which the latter had held up to ward off the blow. This blow was succeeded, while the two men were facing each other, by two others on the right hand and the right wrist bone. On receiving the third blow, the complainant turned his back on the assailant and was running away, when the latter laid another blow on him knocking his hat off, and after this fourth blow when the complainant was continuing to run back, he was again struck on the head and was knocked unconscious. He was, however, able to go to work the following day. The petitioner was convicted under s. 324, Penal Code, and sentenced to one year's rigorous imprisonment and a fine of Rs. 200. On appeal, the sentence was reduced to eight months and the fine was remitted: *Held by Imam, J.*—That the petitioner, who belonged to the *bhadralog* class, fully understood the meaning of the abusive word employed by the complainant and which in itself constituted grave and sudden provocation; that the blows that were struck by the petitioner, so long as the two were facing each other, were clearly within the exercise of the petitioner's right of private defence against the act of the complainant in raising his fist at the petitioner and taking a step forward with the threat of striking him, which was clearly an assault; that in dealing the fourth and fifth blows, which were given when the complainant was running away, the petitioner exceeded his right; that an ordinary walking cane, four feet long and one inch thick, was not a dangerous weapon and that the punishment ought to have been a light one: *Held by Chapman, J.*—That the petitioner made an untrue statement to his master, the complainant, that the petitioner did not understand the meaning of the offensive word used by the complainant; that the provocation in the present case was neither grave nor sudden; and that provocation could in every case be taken into consideration in the matter of sentence. *Per Curiam.*—The sentence was reduced to

Penal Code (Act XLV of 1860)—*continued.*

the term already undergone by the petitioner. BANKU BEHARI DUTTA v. EMPEROR, **14 Cr. L.J. 442=20 Ind. Cas. 602.**

(379)—Ss. 97, 99, 104—*See* CULPABLE HOMICIDE, 12 W.R. Cr. 15.

(380)—*Ss.* 97, 101, 354—*Outraging woman's modesty—Lover pulling woman by hair and hand—Private defence—Right of third person to prevent assault—Acquittal—Interference—High Court—Erroneous interpretation of law.*—The fact that A is in love with B and is jealous of C does not authorise him to pull B's hair and hand. An assault of this kind made in the presence of several persons is calculated to outrage the woman's modesty and is punishable under s. 354 of the Penal Code. A person, who sees a woman being assaulted in the manner described in ss. 97 and 101 of the Penal Code, is justified in going to her assistance and even in cutting another person with a *da* if the latter interferes to prevent him. An erroneous interpretation of law to the effect that a man claiming to be the lover of a woman is entitled to pull her by the hair and hand is alone sufficient to justify interference with an order of acquittal. MI HIA SO v. NGA THAN, **13 Cr.L.J. 53=13 Ind. Cas. 389=4 Bur. L.T. 268.** (U.B.R. 1897—1901, I, 104, *Rel.*)

(381)—Ss. 97, 103, 104, 105, 141, 147—*See* RIOTING, 16 C. 206.

(382)—*Ss.* 97, 147, 149 *and* 325—*Right of private defence of property.*—If the party of the accused were rightfully in possession of land sought to be dispossessed by the complainants, and if they took such precautions and used such violence as they thought were required to protect themselves, against the aggression on the part of the complainant's party, they could not rightly be held to be members of an unlawful assembly. PACHKAURI v. QUEEN-EMPRESS, **24 C. 686=1 C.W.N. 423.** (14 B. 441, 19 W.R. Cr. 66, 23 W.R. Cr. 25, *F.*; 16 C. 206, *D.*) [*Diss.*, 24 A. 143=A.W.N. 1901, 193; *F.*, 33 C. 295=2 C.L.J. 516, 41 C. 43=14 Cr.L.J. 380 =20 Ind. Cas. 140; *R.*, 26 C. 574, 35 C. 103= 7 Cr.L.J. 123, 35 C. 443=8 Cr.L.J. 54, 35 C. 368=12 C.W.N. 384=7 C.L.J. 359=3 M.L.T. 385=7 Cr.L.J. 256, 16 C.L.J. 440=17 Ind. Cas. 1001=13 Cr.L.J. 905, U.B.R. 1905, 2nd Qr., Penal Code, 21; *D.*, 21 A. 122.]

(383)—*Ss.* 97, 300, 302—*Provocation—Blow inflicted by deceased in self-defence—Knowledge — Intention — Presumption — Punishment — Accused intoxicated.*—A B and C had been drinking together and were all more or less intoxicated. A pressed C to drink more and, on his refusing, A got angry and drew a clasp knife on C. B, the deceased, interfered and, after vainly remonstrating with A, hit him with a branch of a tree on the head. Getting incensed at this, A inflicted on B a fatal blow: *Held*, that, as the deceased hit the appellant with the sole object of preventing him from stabbing C, in exercise of the right of private defence as laid down in s. 97, Penal Code, this provocation will not bring the appellant's act under the first exception to s. 300, Penal Code. But as the effect of the blow given by B, on a man already inflamed with drink, would be to deprive him of self-control, this circumstance may properly be taken into account in awarding punishment under s. 302. In the majority of cases, the question of intention is merely a question of knowledge, and, it must be assumed that a man intends the natural or necessary consequences of his own acts. The accused must be assumed to have known that bodily injury, sufficient in the ordinary course of nature to cause death, would be the consequence of stabbing with a knife in the back. And if the accused is assumed to have acted with this knowledge, he must necessarily be assumed to have had the intention, since, assuming the knowledge, the law will allow no other explanation of the act to be given. NYO HLA AUNG v. EMPEROR, **12 Cr. L.J. 477=12 Ind. Cas. 85.** (U.B.R. 1910, 17, 8 Ind. Cas. 469=11 Cr. L.J. 659, *D.*)

(384)—*Ss.* 97, et seq 304—*Causing death by rash act—Right of private defence—Crim. Pro. Code* (*Act* V *of* 1898), *ss.* 46, 59—*Right of arrest.*—The accused was watching his field, the grain of which had, on previous occasions, been stolen; he saw a thief cutting corn in it, and gave chase. The thief ran his head against a tree and fell. The accused hit him recklessly with a stick while on the ground, and fractured his skull in two places, causing death. The thief when he fled did not carry any corn with him. *Held*, that the right of private defence of property and the right of arrest provided by s. 59, read with s. 46 of the Code of Criminal Procedure, were exceeded by the accused, who must have known that he was likely to cause death, and that he was guilty of an offence under s. 304, Penal Code. BAG *alias* BAGI v. EMPEROR, **2 P.L.R. 1903=29 P.R. 1902, Cr.**

——S. 98.

(385)—*S.* 98—*Tree on tenant's holding—Severance by wind's action*—Malguzar *trying to remove the tree—Obstruction by tenants—* Malguzar *using trivial force in defence of his rights over it—No offence—Right of private defence—Existence of.*—Where a tenant did not object to the *Malguzar* entering upon the land, but to the removal of a tree growing thereon after its severance from the ground by the action of the wind and where the *Malguzar* used force not more than what is justified by law, to protect his rights over the tree, *held*, that the *Malguzar* did not commit any offence. The *Malguzar* as owner of the tree had, under s. 98 of the Penal Code, a right of private defence against the tenant, when the latter attempted to remove the tree by cutting it and stocking with a view to appropriating it for himself. The act of the tenant would amount to theft, though, if put on his trial, he would have been acquitted on the ground that he had no dishonest intention, he having acted under a *bona fide* claim of right. PUDU v. EMPEROR, **10 N.L.R. 38= 15 Cr.L.J. 352=23 Ind. Cas. 704.**

(386)—S. 98—*See* No. 372, *supra.*

Penal Code (Act XLV of 1860)—*continued.*

——S. 99.

See PRIVATE DEFENCE, RIGHT OF.

(387)—*S.* 99—*Scope of the section.*—S. 99 has no application to a case where the initial proceeding, and the power under which any public servant purports to act, are altogether without jurisdiction. QUEEN-EMPRESS v. JOGENDRA NATH MUKERJEE, **24 C. 320 = 1 C.W.N. 154.** [*R.*, 9 C.W.N. 125 = 14 Cr. L.J. 512 = 38 P.W.R. 1913 = 20 Ind. Cas. 992 = 325 P.L.R. 1913.]

(388)—*S.* 99—*Act of public servant—Right of self-defence.*—Where an act, however irregular or illegal it may be, is an act of a public servant acting in good faith under colour of his office, no person has a right of self defence under s. 99 of the Penal Code, against such an act, if there is no apprehension of death or of grievous hurt. QUEEN-EMPRESS v. POOMALAI UDAYAN, **21 M. 296 = 1 Weir 135.**

(389)—*S.* 99—*Right of defence of property—Evidence Act, s.* 105.—A Court ought not to set up, on behalf of persons accused before it, a defence that they were acting in the exercise of the right of private defence of property, which defence the accused themselves did not set up. EMPEROR v. GULLU, **A.W.N. 1904, 113 = 1 Cr. L.J. 427.** (20 A. 459, 21 A. 122, 24 A. 143, *R.*)

(390)—*S.* 99—*Right of private defence*—Onus—*Even if not set up accused may be acquitted on evidence.*—It is for the party setting up the right of private defence, to prove that he was within the exception stated in the Code. Even if the accused did not specifically plead private defence, he may be acquitted if the evidence showed that he was acting in self-defence. VEERANA NADAN v. EMPEROR, **1912 M.W.N. 404 = 11 M.L.T. 251 = 15 Ind. Cas. 310 = 13 Cr. L.J. 470.**

(391)—S. 99—*See* ARREST, 7 P.R. 1869, Cr.

(392)—S. 99—*See* CRIM. PRO. CODE, 1898, s. 165, sub-s. (3), 6 C.L.J. 753 = 6 Cr. L.J. 439.

(393)—S. 99 (1)—*See* MAD. ACT IV OF 1884, ss. 274 and 277, 1 Weir 752.

(394)—S. 99—*See* Nos. 27, 84, 132, 300, 307, 331, 372, 373, 377, 378, 379, *supra and see* Nos. 591, 1018, 2181, *infra.*

(395)—*Ss.* 99, 100—*Right of private defence of person—Plea need not be set up when shewn by circumstances—Right when to be exercised—Persons aiding in such defence, whether commit offence.*—If the circumstances show that the right of private defence was legitimately exercised, the Court should take it into consideration even though self-defence was not specifically pleaded (15 Ind. Cas. 310 = 1912 M.W.N. 404 = 13 Cr. L.J. 470 = 11 M.L.T. 251, *R.*) Where danger to the person of the accused was imminent and where the evidence shews that he had no time to seek the aid of the public authorities :—*Held* that he was entitled to use all force necessary to repel the attack, even to the extent of firing a gun at his assailants. Such acts for repelling the attack do not amount to a criminal offence, nor are the persons aiding him in such acts, guilty of being members of an unlawful assembly. *In re* PACHAI GOUNDEN, **15 Cr. L.J. 710 = 26 Ind. Cas. 158.** (20 Ind. Cas. 140 = 14 Cr. L.J. 380 = 41 C. 43, 24 C. 686 = 1 C.W.N. 423, 4 Ind. Cas. 19 = 36 C. 865 = 13 C.W.N. 80 = 10 Cr. L.J. 471, *F.*)

(396)—Ss. 99, 100, 147 and 148—*See* PRIVATE DEFENCE, RIGHT OF, 12 C.W.N. 384 = 7 C.L.J. 359 = 7 Cr. L.J. 256 = 35 C. 368 = 3 M.L.T. 385.

(397)—*Ss.* 99, 100 304 — *Right of private defence of person and property, when arises—Party in possession—Attempt to dispossess—Use of force—Death caused—Liability of party in possession.*—*Per Wallis, J.*—When some people, though in peaceful and lawful possession of property, go armed and, on their opponents appearing, stab some of them to death and inflict injuries on others, they are required to discharge the *onus* which the law throws on them of showing that they acted in self-defence and inflicted no more injuries than were necessary for this purpose. *Per Sadasiva Iyer, J.*—Where the right of private defence of property exists, it is difficult to distinguish between the right of private defence of property and the right of private defence of the person in cases where the prosecution party comes upon the land in possession of the accused not only to deprive them of their property but also to violently attack them if they tried to defend their possession by force. Where, therefore, the prosecution party comes with the war cries of " Kobali " and ' Konu ' and armed with sticks capable of causing grievous hurts, the right of private defence of person arises almost simultaneously with the right of private defence of property, and the accused party is justified even in causing the death of the members of their opponents' party till the latter party gives up the fight. *Per Ayling, J.*—Where the accused were in possession of the disputed land and the affray originated from the prosecution party trespassing upon it and obstructing the accused party from ploughing it, the accused's party is entitled to defend their land and their bodies against any violence used by the prosecution party, but it extends to the right of causing death only when exercised against such an assault as may reasonably cause the apprehension that death or grievous hurt will otherwise be the result. *In re* PONTHALA NARISI REDDI, **15 Cr. L.J. 447 = 24 Ind. Cas. 327.**

(398)—Ss. 99, 101, 104 and 147—*See* PRIVATE DEFENCE, RIGHT OF, 35 C. 103 = 7 Cr. L.J. 123.

(399)—*Ss.* 99, 105, 147, 378—*Orderly of Deputy Commissioner*, chaprasis, *etc.*, *forcible seizure of bullocks by, not* bona fide *act of public servant as such—Private defence, right of exercise and continuance of—Theft—Bullocks, seizure and recovery of—Crim. Pro. Code, s.* 342—

Penal Code (Act XLV of 1860)—*continued.*

Examination of accused before completion of prosecution evidence, contrary to law and unfair to accused.—Some country carts containing the camp luggage of a Deputy Commissioner were on their way in charge of an orderly, a constable and some *chaprasis.* While on their way one of the carts struck in a rut and the orderly and the *chaprasis* took hold of the bullocks of the accused against their will, yoked them to the cart and dragged it out of the rut. The accused then forcibly unyoked their bullocks and took them away. They were convicted and sentenced under s. 147, Penal Code. *Held*, that the orderly and his companions could not be regarded under s. 99, Penal Code, as public servants, acting in good faith under the colour of their office, and the accused were justified in their action by the right of private defence. *Held*, also, that the act of the orderly and his companions technically amounted to theft under s. 378, Penal Code, and the right of private defence of the accused continued under s. 105, Penal Code, till the recovery of the bullocks and did not cease with the yoking of the bullocks to the cart. (15 B. 344, *R.*) The examination of the accused generally on the case, before the examination of the prosecution witnesses is completed, is contrary to law and unfair to the accused. RAM HARAKH v. EMPEROR, **15 Cr. L.J. 436 = 24 Ind. Cas. 172.**

(400)—Ss. 99, 141 and 147—*See* RIOTING, 1 Weir 44 = 1 Weir 56 = 8 M.H.C. App. 11.

(401)—*Ss.* 99, 141, 425—*Illegal act by co-owner—Abatement—Private defence.*—Certain co-owners were doing what, in the enjoyment of the common property as between the parties, had been decided by a competent Court to be illegal, *viz.*, erecting a platform, which the Court had forbidden. Thereupon the co-owners, without violence, or unnecessary force, and with no breach of the peace, abated the nuisance by pulling down certain bamboos of which the structure, so far as the building had gone, consisted. *Held*, that the accused did not form an unlawful assembly, as they were only exercising a legal right of self-defence. *In the matter of* RAJCOOMAR SINGH, **2 C.L.R. 62.**

(402)—Ss. 99, 143, 183—*See* ABSCONDING OFFENDER, 29 C. 417 = 6 C.W.N. 680.

(403)—*Ss.* 99, 147—*Execution of illegal order of Magistrate by the Police—Attachment of crops by police—Right of private defence of property.*—Though a Magistrate's order to the police to take charge of paddy pending proceedings under s. 145 may not have been legal, yet, when the police, in pursuance of the order, proposed to guard it, *held*, that the act of the police did not justify recourse to armed violence, especially as the police acted in an open and straight forward manner, simply announcing what the orders they had received were. BHOLA MAHTO v. EMPEROR, **9 C.W.N. 125 = 2 Cr. L.J. 13.** (6 C.W.N. 680 = 29 C. 417, 24 C. 320, 5 C.W.N. 391, 6 C.W.N. 164, *R.*)

(404)—*Ss.* 99, 147—*Right of private defence—Rioting—Trespass—Wrongful possession for 14 hours—Repelling trespass by force if any offence.*—Where the opposite party erected some huts stealthily at night, on a plot of land of which the petitioners were in peaceful possession, and it was alleged that the opposite party were in possession of the land for about 14 hours, and the petitioners, at break of day, on coming to know of this, took the earliest opportunity to exercise their own right of private defence, and came to the spot armed to turn out the opposite party who were found by them still engaged in erecting more huts, and there was a free fight between the parties, and the petitioners did not inflict more hurt than was necessary for defending themselves. *Held*, that the petitioners were not guilty of rioting, and that, in the circumstances of the case, the petitioner, had no time to have recourse to the public authorities, and they were entitled to their right of private defence. CHANDULLA SHEIKH v. KING-EMPEROR, **18 C.W.N. 275 = 15 Cr. L. J. 209 = 22 Ind. Cas. 993.**

(405)—Ss. 99, 147, 148, 326—*See* PRIVATE DEFENCE, RIGHT OF, 36 C. 296.

(406)—*Ss.* 99, 147, 225-*B*, 332, 323—*Crim. Pro. Code, s.* 100—*Search-warrant—Irregular Resistance—Right of private defence.*—In a search-warrant under s. 100 of the Crim. Pro. Code, the name and designation of the Police officer or other person who was to execute the warrant was inadvertently omitted. The warrant was made over to the Assistant Court Inspector, who, by an endorsement, sent it to the Sub-Inspector of the *thana* and not to the officer for the time being in charge of the *thana*. When the warrant reached the *thana*, the Sub-Inspector was temporarily absent, and the head-constable, who was for the time being in charge of the *thana*, proceeded to execute the warrant. The woman searched for was found and apprehended with a view to producing her in Court in accordance with the warrant. The accused, however, who were 14 in number, took possession of the woman by force, and in the fight which took place the Police officer received injuries. *Held*, that the accused could not be held to be protected by a right of private defence. They could not be convicted under ss. 225-B and 332 of the Code, but if the prosecution could establish that hurt was caused and that the causing of hurt was a common object of the accused, they would be liable to punishment under s. 147, Penal Code; or if it were found that hurt was caused by less than five persons, the persons who caused hurt would be liable to punishment under s. 323, Penal Code. EMPEROR v. GAMAN, **14 Cr. L J. 142 = 18 Ind. Cas. 894 = 156 P.L.R. 1913 = 16 P.R. 1913, Cr. = 20 P.W.R. 1913, Cr.**

(407)—*Ss.* 99, 147, 323, 332—*Arrest by Police Constable, not acting in the discharge of his duties, but under colour of his office—"Lawful discharge of his duty," meaning of.*—A Magistrate had issued a warrant under s. 110 for the arrest of a person, and the warrant was addressed and sent to the officer in charge of a particular *thana* for execution. After being

Penal Code (Act XLV of 1860)—*continued.*

copied at the *thana*, the original warrant was made over to a particular constable for execution. When that constable had left the *thana* to execute it, it was ascertained that the person to be arrested was in a different village. Thereupon the officer who was temporarily in charge of the *thana* wrote on the back of a copy of the warrant the names of some other constables whom he ordered orally to proceed to the village where the person was and to arrest him. They were, in arresting him, attacked by the accused, and that person was rescued. *Held*, that the police officers were not acting under an order in writing made under s. 56 of the Code of Criminal Procedure, 1882, and that they were not in the discharge of their duties at the time when they were assualted and that the case did not come within s. 332, I.P.C., but inasmuch as the constables acted in good faith and under colour of their office, the accused were guilty under ss. 147 and 323, I.P.C., read with s. 99, I.P.C. [*F.*, 28 C. 411 = 5 C.W.N. 134 ; *D.*, 24 C. 324.] The words "in discharge of his duty" mean that the officer has a duty to discharge and is discharging it at the particular time. They cannot mean that the officer is acting under colour of his office. QUEEN-EMPRESS v. DALIP, **18 A. 246 = A.W.N. 1896, 48.** [*Rel. on*, 16 C.L J. 264 = 16 Ind. Cas. 246 ; *R.*, 36 A. 6 = 11 A.L J. 957 = 15 Cr. L.J. 179 = 22 Ind. Cas. 755, 14 Cr. L.J. 142 = 18 Ind. Cas. 894 = 16 P.R. 1913, Cr. = 155 P.L.R. 1913 = 20 P.W.R. 1913 ; *D.*, 24 C. 324, 11 Cr. L.J. 221 = 6 Ind. Cas. 12 = 7 M.L.T. 386, 11 Cr. L.J. 423 = 6 Ind. Cas. 956 = 18 P R. 1910, Cr = 104 P.L.R. 1910 = 32 P.W.R. 1910, Cr.]

(408)—Ss. 99, 147, 353 - *See* BEN. ACT VII OF 1878, ss. 4, 40, 75 , 24 C. 324 = 1 C.W.N. 233.

(409)—*Ss.* 99, 186—*Illegal act of public servant—Obstruction—Act* III *of* 1876 (*Bombay*).—Where the accused obstructed a surveyor who was sent by the Collector to measure off rice land in the possession of the accused and to give possession of it to the decree-holder in a suit brought against the accused in the *Mam latdar's* Court under Bombay Act, III of 1876, *held* that, as the Collector had no authority to issue such order to the surveyor, the latter, acting under the Collector's orders, was not therefore discharging a public function, and that the act of the accused could not, therefore, be an offence under s. 186, I.P.C. The surveyor was not protected by either paragraph of s. 99, for though he was acting under the direction of the Collector, still the Collector's order was so entirely *ultra vires* as to leave no room for the operation of the section. [*F.*, 22 C. 286, 10 P.R. 1905, Cr. = 68 P.L.R. 1905 = 2 Cr. L.J. 64 ; *R.*, 21 M. 78 = 1 Weir 123, 24 C. 320, 10 Bom. L.R. 761 ; *D*, 21 M. 296 = 1 Weir 136.] The protection given by the section to a public officer does not extend to an officer whose act is altogether illegal. QUEEN-EMPRESS v. TULSIRAM, **13 B. 168 = Rat Un. Cr. C. 380** = Cr. Rg. 33 of 1888 [*R.*, 14 Cr. L.J. 512 = 20 Ind. Cas. 992 = 325 P.L.R. 1913 = 38 P.W.R. 1913.]

Penal Code (Act XLV of 1860)—*continued.*

(410)—Ss. 99 and 186—*See* PRIVATE DEFENCE, RIGHT OF, 2 C.P.L.R. 73.

(411)—Ss. 99, 186 and 353—*See* MAD. ACT V OF 1884, ss. 77, 78, 81, 94 and 163, 21 M. 296 = 1 Weir 135.

(412)—*Ss.* 99, 323, 493, 498—*Chaps.* XIX, XXI, *Crim. Pro. Code*, ss. 190 (*a*) *and* (*c*), 195, 299—*Reg.* XI *of* 1806, *r.* 8—*Cognizance of offence upon complaint of person other than the one affected by offence—Bullock carts, forcible seizure of, by Tahsil peons, how far valid—Private defence, right of, when exercisable.*—Where a complaint was filed mentioning that the complainant and his companion were beaten by the accused, and the Court finding that the accused had beaten the companion, though not the complainant, fined the accused : *Held*, that the Court was perfectly justified in taking cognizance of the offence against the companion, although he himself did not institute the prosecution. (13 B. 600, 18 A. 465 = A.W.N. 1896, 177, *R.*) Where certain Tahsil peons forcibly seized for military purposes a bullock cart not let on hire, and a souffle ensued and one of the peons was hurt by the cartman. *Held*, that the latter acted in the exercise of his right of private defence, because the peons had no legal authority to take the cart in their charge by criminal force and without his consent, and thus their act being one not done under colour of their office, s. 99, Penal Code, could be of no avail to them. PERSHADI PASI v. BALJIT SINGH, **14 Cr. L.J. 409 = 20 Ind. Cas. 233.**

(413)—*Ss.* 99, 352—*Preventing by force coolie running away—Self-defence.*—When the accused, a coolie, was charged under s. 352 of the Penal Code with using force to a peon in the *mamlatdar's* office, who prevented his running away from service, *held*, that no offence was committed, since the accused had a right to defend himself from the illegal act of the peon in wrongfully restraining him. QUEEN-EMPRESS v. GANPATI, **Rat. Un. Cr. C. 605 = Cr. Rg. 23 of 1892.**

(414)—*Ss.* 99, 353—*Warrant under s.* 251, *Crim. Pro. Code* (1882)—*Defect in form—Resistance to execution whether justifiable.*—A warrant issued for the arrest of a debtor, under the provisions of s. 251, Civ. Pro. Code, 1882, was signed with initials only of the *Munsarim* of the Court, and was sealed with the seal of the Court, and delivered to the proper officer for execution. *Held*, that the resistance to the officer would, although the warrant was signed only with the initials, amount to a resistance to a public servant in the execution of his duty as such, and that the person resisting had no right of private defence, under s. 99, as the act resisted was done or attempted to be done by a public servant acting in *good faith* under colour of his office, though that act may not be strictly justifiable by law. QUEEN-EMPRESS v. JANKI PRASAD, **8 A. 293 = A W.N. 1886, 106.** [*R*, 6 C.W.N. 845, 31 C. 424.]

(415)—*Ss.* 99 *and* 353—*Assaulting ublic servant in the execution of his duty—Vaccinator*

Penal Code (Act XLV of 1860)—*continued.*

attempting to vaccinate a child forcibly—Right of private defence.—A vaccinator attempted, against the wishes of the child's father, to vaccinate a child, the son, of one Bahal. Bahal and some of his relations intervened and assaulted the vaccinator, but did not do him any particular harm. *Held*, that the child's father and other relations were perfectly justified in interfering, and, under the circumstances could not be said to have acted in excess of their right of private defence. EMPEROR v. BAHAL, **A W N. 1906, 98=3 A.L J 327=3 Cr, L.J. 363=28 A. 481.** (3 C.W.N. 627, *F.*)

(416)—*Ss.* 99 *and* 353—*Assaulting vaccinator taking lymph from the arm of a person objecting to it.*—As a vaccinator cannot insist upon taking lymph from the arm of any person objecting to it, an attempt by him to take the lymph, notwithstanding the objection, is unlawful, and resistance to such attempt will not amount to an offence under s. 353. MANGOBIND MUCHI v. EMPRESS, **3 C.W.N. 627.** [*F.*, 28 A. 481=3 A.L.J. 327=A.W.N. 1906, 98; *R.*, 28 C. 411=5 C.W.N. 134.]

(417)—*Ss.* 99, 353—*Assault on public servant —Right of private defence of property—Power of Executive and Revenue Officers to require owners of transport to supply such transport.*—A Tahsildar deputed his peon by a written order to procure some camels for the camp of the Settlement Officer. When the peon attempted to seize the petitioner's camels, the latter assaulted the former and prevented him from seizing the camels. *Held*, that the petitioner committed no offence. The words "duty as such public servant," in s. 353, Penal Code, mean duty imposed by law on such public servant, and do not include acts done in good faith under colour of his office by such public servant. The law imposes no duty on any revenue official to seize animals belonging to private individuals for purposes of camp transport, and gives them no power to forcibly seize such animals. Executive Officers are not entitled to require owners of such transport to supply it; nor are the owners declining to supply such transport guilty of an offence by the mere fact of refusal. And if, in protecting his property against an illegal seizure, the owner assaults the official making such seizure, he is protected by law provided he does not exceed the limits laid down in Chap. IV, Penal Code. The words "public servant acting in good faith under colour of his office, though that act may not be strictly justifiable by law" in s. 99, Penal Code, have no application to a case where the initial proceedings and the power under which a public servant purports to act are altogether without jurisdiction and are *ultra vires.* ASA v. CROWN, **38 P.W R 1913, Cr.=14 Cr. L J. 512=20 Ind. Cas. 992=325 P.L.R. 1913.** (24 C. 320=1 C.W.N. 154, 13 B. 168, 9 B. 558, *R.*)

(418)—*Ss.* 99, 353—*Assault—Public servant acting under colour of office and in good faith—Right of private defence* —Where the petitioner was convicted under s. 353, I.P.C., of having assaulted a Civil Court peon when executing a writ of delivery of possession of a share in a tank by ordering some fishermen to cast their nets in the tank and catch fish for the decree-holder as provided in the writ; *held* that, whatever mistake there might be in the procedure of the Munsif in giving the direction in the writ, the petitioner had no right of private defence under s. 99, I.P.C., against the peon who was a public servant acting under colour of his office and in good faith. PREO LAL MUKERJEE v. KING-EMPEROR, **18 C.W.N. 548=15 Cr. L.J. 427=24 Ind Cas. 163.**

(419)—Ss. 99 and 353—*See* ASSAULT, 3 C. W.N. 627.

—**S. 100.**

See PRIVATE DEFENCE, RIGHT OF.

(420)—S. 100—*See* Nos. 84, 372, 373, 395, 396 and 397, *supra.*

(421)—Ss. 100, 201—*See* PRIVATE DEFENCE, RIGHT OF, Rat. Un. Cr. C. 867.

—**S. 101.**

(422)—S. 101— *See* CHARGE—FORM OF CHARGE, 51 P.L.R. 1901.

(423)—S. 101—*See* Nos. 307, 372, 380 and 398, *supra.*

—**S. 102.**

(424)—S. 102—*See* Nos. 372 and 378, *supra.*

—**S. 103.**

(425)—S. 103—*See* Nos. 372 and 381, *supra.*

—**S. 104.**

See PRIVATE DEFENCE, RIGHT OF.

(426)—S. 104—*See* Nos. 372, 379, 381 and 398, *supra.*

(427)—*Ss.* 104, 105, 147, 325—*Possession of land delivered by Civil Court to master of accused—Accused cultivating land—Opposition by complainants — Right of private defence—Rioting—Possession, enjoying not enforcing.*—Possession of the disputed land was obtained by the master of the accused through the Civil Court. The accused went upon the land to cultivate it. The complainants' party obstructed them and a fight ensued in which persons of both the parties were more or less injured: *Held*, that the accused went upon the land, not with a view to interfere with another's right, but to maintain a right which had been given them by the Civil Court; that they were not enforcing a right, but maintaining or enjoying a right; that they were justified in repelling the attack upon them by persons who had no right to obstruct them; that they had a right of private defence and were not guilty of rioting. FATEH SINGH v. EMPEROR, **14 Cr. L.J 380=20 Ind. Cas. 140=41 C. 43.** [*R.*, 15 Cr. L.J. 447=24 Ind. Cas. 327.]

(428)—*Ss.* 104, 353, 442—*See* CRIMINAL TRESPASS, 27 M. 52=1 Weir 529 and 346=13 M.L.J. 285.

(429)—Ss. 104 and 504—*See* CRIM. PRO. CODE, 1898, s. 258, 11 C.L.J. 113.

Penal Code (Act XLV of 1860)—*continued.*

——S. 105.

See PRIVATE DEFENCE, RIGHT OF.

(430)—S. 105—*See* Nos. 372, 381, 399 and 427, *supra.*

(431)—*Ss.* 105 (2), 141, 143 *and* 447—*Stolen property—Common ground—Entry by number of persons for recovery — Trespass — Unlawful assembly—Right of private defence.*—Though a person may have temporary possession of a common plot of ground, or a part thereof, so as to make a criminal trespass thereon possible, yet, any thief, who places stolen rice crops on a thrashing floor common to a village, cannot by that act be said to be in legal possession of the floor; and an entry thereon by any body, let alone the true owner, to deprive the thief of such stolen property could not in law amount to a trespass. Where, in such a case, an accused person, entered the thrashing floor with a number of persons and carried away his crops, *held*, that his object, in assembling the persons, being the recovery of his stolen grain, was lawful, and that, therefore, the assembly did not constitute an unlawful assembly. Immoveable property cannot be made the subject of theft, and cannot be stolen property however illegally and clandestinely it may have been seized. The right of private defence, while it exists in all other cases for the purpose of *prevention* of the offences named, in the particular case of *theft* the right continues for the recovery of the property even after the theft has been accomplished. Where a person whose property has been stolen finds the thief or the property, he is not bound to put off the capture of the thief or the property, until he can find assistance from public authority. JARHA CHAMAR v. SURIT RAM, **3 N.L.R. 177 = 7 Cr. L.J. 49.**

(432)—*Ss.* 105, 403, 411, 304, 325, 141—*Property dishonestly acquired under ss.* 403, 411—*Right of private defence—Members of an unlawful assembly—Death caused by some of them only —Punishment.*—The Penal Code does not give any right of private defence of property in regard to which an offence under s. 403 or 411, I.P.C., has been committed. (36 C. 296, 7 Cr.L.J. 49, *D.*) In this case 26 persons were convicted under s. 304, Part II, I.P.C., read with s. 149, of culpable homicide. A and B were the only 2 persons among them who actually struck the deceased. *Held*, under the circumstances, that all the 26 persons constituted an unlawful assembly within the meaning of s. 141, I.P.C., but that all of them could not be convicted of culpable homicide under s. 304, I.P.C., as it could not be said that that offence was committed in prosecution of the common object of the unlawful assembly, nor was it such as the members of that assembly knew to be likely to be committed in prosecution of that object. *Held*, also that all of them were guilty of rioting. As regards A and B, it was proved that they attacked the deceased, but that the deceased received only one blow on the head, and there was no evidence to show which of these 2 persons gave him that blow. *Held*, that neither of these 2 persons could be convicted of an offence under s. 304, I.P.C. (29 A. 282, *F.*), but that, when they attacked him, they intended or knew that they were likely to cause him grievous hurt and they were therefore guilty of an offence under s. 325, I.P.C., and the other 24 persons were guilty of an offence under s. 147, I.P.C. AGRA v. CROWN, **37 P.R. 1914, Cr. = 16 Cr.L.J. 209 = 27 Ind. Cas. 833 = 219 P.L.R. 1915.**

——S. 106

(433)—S. 106—*See* No. 372, *supra.*

——S. 107.

See ABETMENT.

(434)—*S.* 107—*Abetment—Evidence.*—At a trial on a charge of abetment of dacoity, it was proved that the accused was present when the dacoity was planned, that it was from his huts that the dacoits set out, and that it was to his hut, that they returned with their booty. *Held*, that the accused was properly convicted of abetment of dacoity. EMPEROR v. SHAM LAL, **A.W.N. 1903, 2.**

(435)—*S.* 107—*Instigation by means of a letter sent by post—Jurisdiction.* — Where a person sends a letter to another through the post inviting him to the commission of a criminal offence, he is guilty of the offence of abetment as soon as the letter is received by, and the contents become known to, the addressee, and is triable at the place where the letter is received. QUEEN-EMPRESS v. SHEO DIAL MAL, **16 A. 389 = A.W.N. 1894, 135.** [*Diss.*, 23 C. 39; *F.*, 2 C.W.N. 606; *R.*, 36 B. 524 = 14 Bom. L.R. 147 = 13 Cr. L.J. 426 = 14 Ind. Cas. 970, A.W.N. 1898, 33.]

(436)—*S.* 107—*Responsibility of proprietor of newspaper or editor publishing defamatory article.*—The proprietor of a newspaper was convicted of abetting, under s. 107, Penal Code, the publication of a defamatory article by the editor of such paper, by illegally omitting to scrutinize the article. *Held* that, where the editor was not an editor merely in name but one appointed in good faith and is relied upon for his honesty and ability, it would be unreasonable to hold the proprietor bound to scrutinize the articles that were daily to appear and that there was no illegal omission; *held* further that, even if there was illegal omission leading to the publication of the defamatory article, this of itself would be insufficient for a conviction of abetting the offence of defamation, as it should further be proved that, by such illegal omission, the proprietor intentionally abetted the publication of the article knowing or having reason to believe it to be defamatory. PUNDIT MOKAND RAM v. EMPRESS, **12 P.R. 1883, Cr.** [*R.*, 8 P.R. 1891, Cr.]

(437)—*S.* 107.—Act done by several persons in furtherance of common intention. EMPRESS v. DHARAM RAI, **A.W.N. 1887, 236.**

(438)—S. 107—*See* ACT I OF 1879, s. 61, 8 A. 18 = A.W.N. 1885, 317.

(439)—S. 107—*See* Nos. 11, and 85, *supra,* and No. 462, *infra.*

Penal Code (Act XLV of 1860)—*continued.*

(440)—*Ss.* 107 *and* 109—*Abetment by omission—Bombay Motor Vehicles Act (Bom. Act* II *of* 1904), *ss.* 9 *and* 13—*Infringement of rules —Master and servant.*—It is not an abetment of the offence for the master to omit to give information to his servant, unless the omission were illegal, that is to say, in disobedience of an obligation imposed upon him by law. EMPEROR v. COOVERJI NASARWANJI, **9 Bom. L.R. 161=5 Cr. L.J. 176.**

(441)—*Ss.* 107, 109, 379, 382, 393—*Abetment of conspiracy—Attempt to commit robbery.*—On a charge of abetment of conspiracy, it is necessary to prove, and it ought, therefore, to be alleged, not only that the person charged, engaged with one or more other person or persons in a conspiracy for the commission of an offence (specifying the offence), but also that some act or illegal omission (specifying the act or omission) took place in pursuance of that conspiracy and in order to the commission of the said offence. Where certain foreigners, found concealed fully armed, in a deserted house, were charged generally with the intention of stealing Government camels grazing in the village, or such property as they might be able to catch hold of and were committed by the Commissioner under s. 393, altering the conviction by Deputy Commissioner under ss. 109 and 382, I.P.C., *held,* that the conviction could not be sustained. Per *Smyth, J.*—The mere assembling of a number of persons together with a general intention of committing theft and not for the purpose of committing a specific theft or theft of specific property cannot be considered to amount to the abetment of an offence of theft. There must be a design to commit a specific offence before a person can be held guilty of the abetment of such offence by having conspired with others to commit it. Per *Elsmie, J.*—The conviction is sustainable as the case clearly comes within the meaning of s. 107, I.P.C. Per *Plowden, J.*—Although a charge against several persons of engaging in a conspiracy to commit an offence of a particular kind, as opportunity should offer, within a determinate area, would not be bad as being too vague, yet the conviction in this case is not sustainable, as it could not be said positively that the purpose of the accused was theft, or that they came into British territory in pursuance of a conspiracy to commit theft there. SHER ALI v. EMPRESS, **18 P.R. 1879. Cr.** [*R.*, 9 P.R. 1880, Cr.]

(442)—*Ss.* 107, 114, 330 *and* 348—*Abetment by Village Magistrate of offences punishable under ss.* 330 *and* 348.—Where a Village Magistrate was present at the beating and the wrongful confinement, by a police constable, of a person suspected of having committed theft and it was proved that the Village Magistrate actually encouraged the ill-treatment by the constable, *held,* that, though the Village Magistrate may not have been bound to report the commission of the offences, under s. 45 (*c*), Crim. Pro. Code, 1882, they being bailable offences, he was guilty of abetting the offences punishable under ss. 330 and 348, Penal Code, inasmuch as the offences were "cognisable" offences and as the Village Magistrate was not a simple spectator but also encouraged the police constable in the commission of the offence. *In re* KRISHNA SHETTI, *In re* GOPALA, **1 Weir 50.**

(443)— Ss. 107 and 116 — *See* POLICE OFFICER, 20 B. 394.

(444)—*Ss.* 107 (3), 121, 121-A—*Waging war —Abetment—Failure to report plot—Conspirator forming intention to leave conspiracy—Crim. Pro. Code, s.* 44.—Cl. 3 of s. 107 of the Penal Code relates only to intentional aiding. Where it is not proved that accused's intention in omitting to report a plot, under s. 44 of the Crim. Pro. Code, was with a view to aiding the waging of war, the accused cannot be convicted of the offence of abetment of waging war. If a conspirator has formed the intention to leave a conspiracy and ceases to be a conspirator by his own act and intention when the other conspirators wage war, he cannot be held guilty under s. 121 of the Penal Code. GOMAN SAYA v. EMPEROR, **6 Bur. L.T. 153=21 Ind. Cas. 658 =14 Cr. L.J. 610.**

(445)—*Ss.* 107 *and* 143 — *Abetment — Sympathy with an assembly.*—The mere fact that persons of influence, being aware of the objects of an unlawful assembly, deliberately absented themselves from the locality, would not make them guilty of "instigation" within the meaning of s. 107 or abetment of an offence under s. 143, I.P.C. ETIM ALI MAJUMDAR v. EMPRESS, **4 C.W.N. 500.**

(446)—Ss. 107, 218—*See* FALSE EVIDENCE, 7 N.W.P. 134.

(447)—*Ss.* 107, 306—*Abetment of suicide—Facts constituting.*—One R having died, his widow declared her intention to commit *Sati.* The accused remonstrated but she was quite determined and did not give way. They, thereupon, sent word to the Police but before their arrival they took the body to the burning *ghat.* The evidence was that the deceased having shown certain miracles they were overawed by her threats to curse them and did what she ordered them to do, they prepared the funeral pyre, placed her husband's body over it, did not use any force to prevent her from sitting on the pyre and supplied her *ghee* which she poured over the pyre and herself. They, however, refused to give her any fire, whereupon she prayed with her hands towards Heaven and the pyre burst into flames. *Held* that the facts proved against the accused amounted to an offence of abetment of suicide within the meaning of s. 306, Penal Code. RAM DIAL v. KING-EMPEROR, **11 A.L.J. 997=14 Cr.L.J. 634=21 Ind. Cas. 682=36 A. 26.**

(448)—Ss. 107, 306—*See* ABETMENT, 3 N.W.P. 316.

(449)—*Ss.* 107 *and* 330—*Lending house and facilitating commission of offence*—A person who lends a house to a police officer for investigating a complaint of theft preferred by himself, with

Penal Code (Act XLV of 1860)—*continued.*

the knowledge that the house was to be used for torturing persons suspected of complicity in the offence, and who is also present at such torturing, can be convicted of abetment (under s. 107, expl. 2) of an offence under s. 330 of the Penal Code. EMPRESS v. FAIYAZ HUSAIN, **A.W.N. 1896, 194.**

(450)—Ss. 107, 330—*See* ABETMENT, A.W. N. 1896, 194.

(451)—*Ss.* 107 *and* 372—*Abetment of an offence under s.* 372, *I.P.C.*—*Accused being witnesses to the transaction.*—A prostitute purchased a child for the purposes of prostitution; at her request, the first accused wrote a document evidencing the sale, and the other three accused attested the document; all the four were present when the child was handed over to the prostitute, and the latter put into the hands of the first accused the price of the child, which money he handed over to the child's mother. *Held*, that there was no evidence that the accused did anything to facilitate the commission of the offence and that they were not guilty of intentionally aiding the sale. *In re* BONDILI SANKARA SINGH, **1 Weir 47.**

——S. 108.

See ABETMENT.

(452)—*S.* 108—*Abetment — Intention.*—To constitute a man the abettor of a crime committed by another, it must be clearly established that both intended to commit or further the same crime. REG. v. HAMAL, **Rat. Un. Cr. C. 93 = Cr. Rg. 47 of 1875.**

(453)—S 108—*See* ACT XII OF 1896, s 49, 55 P R. 1905, Cr. = 20¹ P L R. 1905 = 3 Cr. L. J. 135.

(454)—S. 108, expl. (4)—*See* EVIDENCE ACT, 1872, s. 30, S.C. 143, Oudh.

(454-*a*)—S. 108—*See* No. 462, *infra.*

(455)—Ss. 108, 109 and 511—*See* ATTEMPT, 20 P.R. 1885, Cr.

(456)—*S.* 108, *expl.* (3), *illus.* (*d*), *and s.* 379—*Sale of tree belonging to third person*—*Abetment of theft.*—Where the accused sold to another trees which in fact and to his knowledge, though not to the knowledge of the vendee, belonged to a third person, with the intention that they should be cut down and taken away by his vendee, *held* that the accused had committed the offence of abetment of theft. QUEEN-EMPRESS v. RAM CHARAN, **A.W.N. 1898, 147.**

(457)—Ss. 108-A, 109, 372, 511 — *See* ATTEMPT, 24 B. 287 = 1 Bom. L.R. 678.

——S. 109.

See ABETMENT.

(458)—*S.* 109—*Abetment by omission*—*Bombay Motor Vehicles Act* (*Bom. Act* II *of* 1904), *s.* 12—*Rules under the Act*—*Omission of the owner to give information of the rules to the driver.*—Abetment by omission is punishable, only if the omission is an illegal omission. The owner of a motor car cannot, therefore, be held guilty of abetment, in merely omitting to give informaton to his employees, as to the rules framed under the Bombay Motor Vehicles Act, 1904. EMPEROR v. COOVERJI NASARWANJI, **9 Bom. L R. 159 = 5 Cr. L.J. 173.**

(459)—*S.* 109—*Conspiracy under English and Indian Laws.*—Under the Indian Criminal Law, conspiracy, except in certain cases, is a mere species of abetment, when an act or an illegal omission takes place in pursuance of the conspiracy, and amounts to a distinct offence for each distinct offence abetted by the conspiracy. But, under the English Law, the agreement or combination to do an unlawful thing by unlawful means amounts, in itself, to a criminal offence. The Penal Code follows the English Law of conspiracy only in a few exceptional cases, which are made punishable under ss. 311, 400, 402 and 121-A of the Penal Code. In these cases, whether an act is done or not, or an offence committed in furtherance of the conspiracy, the conspirator is punishable and he can also be punished separately for every offence committed in furtherance of the conspiracy. In all other cases, conspiracy is only one species of "abetment of an offence" and stands on the same footing as abetment by "intentional aiding." KING-EMPEROR v. THERUMALAI REDDI, **24 M. 523 = 2 Weir 340.** [*R.*, 8 Cr. L.J. 393, 13 Cr. L.J. 39 = 16 C.W.N. 69 = 13 Ind. Cas. 279, 11 O.C. 328.]

(460)—S. 109—*See* SANCTION TO PROSECUTE—CONDITIONS REQUISITE FOR GRANT OF SANCTION, ETC., 20 M. 8.

(461)—S. 109—*See* Nos. 119, 440, 441, 455 and 457, *supra* and *see* Nos 755, 1266, 1524, 1695, 1919, 1921, 2155, 2350, 2455, 2577, 2598, 3081 and 3108, *infra.*

(462)—*Ss.* 109, 108 *and* 107—*Conspiracy*—*Crim. Pro. Code, ss.* 233 *and* 234.—*Held* by *White, C.J.*, *Shephard* and *Boddam, JJ.*—A count charging for conspiracy is not bad in law because, in the averment of acts done, it alleges acts which might themselves be charged as substantive offences. So long as one engagement or conspiracy is alleged and that only is the distinct offence charged, the count does not offend against the provisions of the Crim. Pro. Code, because other offences are averred as acts done in pursuance of the conspiracy. In laying a charge of conspiracy by abetment, the number of overt acts which can be alleged is not restricted to three. *Held* by *Davies*, *Benson* and *Moore, JJ.*—A conspiracy is a mere species of abetment, and every time the commission of that offence is abetted, a separate offence of the abetment of that offence is committed and a separate charge lies. It will be an evasion of law to allow a wholesale clubbing of a number of separate offences under a single charge of abetment. Each offence abetted makes a separate offence of abetment and more than one of such offences can be tried together only under the provisions of ss. 234 and 235, Crim. Pro. Code. The other points decided by the Full Bench in this

Penal Code (Act XLV of 1860)—*continued.*

case have been overruled by the Privy Council in 25 M. 61, P.C. N. A. SUBRAHMANIA v. QUEEN-EMPRESS, **10 M.L.J. 147, F B.**

(463)—*Ss.* 109 *and* 110—*Abetment, where the person abetted does the act with different intention.*—In this case, during a wrangle, A called for a knife, which B gave him, and the former stabbed and killed the deceased. *Held* that it was highly improbable, under the circumstances in evidence, that B intended, when he gave the knife, that it should be employed for the purpose of causing death or even grievous hurt and that consequently a conviction under ss. 304 and 109, I.P.C., could not be upheld. MI NGWE NYUN v. QUEEN-EMPRESS, **U.B.R. 1897—1901, Vol. I, 249.** (6 A. 491, 7 W.R. Cr. 97, 12 W.R. Cr. 52, *R.*)

(464)—*Ss.* 109 *and* 111—*Murder—Abetment.*—The accused accompanied his brother who was taking a child to murder it. After accompanying him for a while, he refused to go further along with him, but, at the same time, though knowing full well that the child was being taken to be murdered, he made no attempt to take the child back with him, and the child was subsequently murdered. *Held* that, under ss. 109 and 111, the accused was guilty of murder. QUEEN-EMPRESS v. SADU, **Rat. Un. Cr. C. 207.**

(465)—*Ss.* 109 *and* 114—*Cumulative charges of abetment of offence as well as the commission of the very offence.*—A man cannot be charged as an abettor by conspiracy as well as a perpetrator of the offence abetted cumulatively. KING-EMPEROR v. THERUMALAI REDDI, **24 M. 523 = 2 Weir 340.**

(466)—*Ss.* 109, 114—*Abettor present when offence is committed.*—*Held* that to bring a prisoner within s. 114 of the Penal Code, it is necessary first to make out the circumstances which constitute abetment, so that, if absent, the person charged with abetment, would have been liable to be punished as an abettor, and then to show that he was also present when the offence was committed. Instigation, engaging in a conspiracy and intentionally aiding by an Act or illegal omission make a person an abettor, even though he is not present when the offence, the commission of which he has instigated, conspired to effect, or intentionally aided by an act or illegal omission, is committed, and if he is present, though merely as a spectator, he is punishable as a principal under s. 114. *Held*, further, that when no conspiracy, instigation or act or illegal omission is proved and the abetment consists only of participation in the actual commission of the offence, s. 109 is the section applicable. ABDULLA KHAN v. QUEEN EMPRESS, **5 P L.R. 1900, Cr. = 15 P.R. 1899, Cr.**

(467)—*Ss.* 109, 114 *and* 124-*A*—*Offences punishable under—Evidence of speeches throwing light on object of conspiracy—S.* 10, *Evidence Act—Authority for prosecution—Sufficiency.*—" Swaraj. "—The Offences of which the accused was convicted were three offences of abetment of the uttering of seditious words.

Penal Code (Act XLV of 1860)—*continued.*

He was not present on the last occasion of such uttering, but was present on the other two and had been convicted on one charge of an offence under ss. 109 and 124-A, Penal Code, and on two charges of offences under ss. 124-A and 114, Penal Code. The first objection to the conviction was that the complaint of abetment was not made by order or under the authority of the Government. *Held*, that the order of the Government (that complaints are to be presented alleging the commission of offences punishable under the sections stated in the Government order) was intended to cover all offences punishable under the stated sections, and committed in connection with the delivery of those speeches. The complaint was undoubtedly made by the authorized person, under colour of his authority, which was wide enough to cover it, if the offences complained of were offences punishable under the stated sections of the Penal Code. If a person, being punishable as an abettor by conspiracy, is present when his accomplice, in pursuance of the conspiracy, makes a speech, which constitutes an offence punishable under s. 124-A, he is to be deemed to have committed an offence under s. 124-A. He is constructively a principal and is to be punished as such. S. 114, Penal Code, does not provide any punishment. The offence of abetment *plus* presence on the occasion of the crime abetted is constructively the offence abetted, and is punishable as such and not as abetment. If C engaged with S in a conspiracy to excite disaffection towards the Government, and if, in pursuance of that conspiracy and in order to the exciting of disaffection, an act 'took place,' then C is guilty of the abetment of the excitement of disaffection (s. 107, Penal Code). The speeches of C are admissible in evidence to prove the object of the conspiracy. Where an agreement exists, in pursuance of which speeches were made by two parties to the agreement, and the remaining question is what was the object of that agreement, what was the 'thing' for the doing of which that agreement was made, there is no better evidence short of a reasonable and credible statement of objects and reasons by the parties or witnesses on their behalf, than that afforded by their sayings and doings in pursuance of the agreement. In all the speeches of C, there was no word of dissent from S's cult of "absolute *Swaraj.*" "*Swaraj*" through "*boycott*" is the burden of the speeches and the "*swaraj*" aimed at clearly involves the departure of all foreigners from India. Statements made in speeches, for the seditious nature of which the accused are charged, may be admissible for other purposes, as for instance under s. 10, Evidence Act. *In re* V. O. CHIDAMBARAM PILLAI, **5 M.L.T. 16 = 32 M. 3 = 9 Cr. L.J. 130 = 1 Ind. Cas 36.**

(468)—Ss. 109, 114, 467—*See* FORGERY, 25 C. 207 = 1 C W.N. 681.

(469)—Ss. 109, 115, 148, 302—*See* ABETMENT, 19 B. 105.

(470)—Ss. 109, 115, 148, 302—*See* JURISDICTION OF CRIMINAL COURTS—GENERAL, 19 B. 105.

Penal Code (Act XLV of 1860) *—continued.*

(471)—Ss. 109, 116, 363—*See* KIDNAPPING, 1 M. 173 = 1 Weir 353.

(472)—Ss. 109, 147, 323, 325—*See* SENTENCE—CUMULATIVE AND SEPARATE SENTENCES, 16 C. 725.

(473)—*Ss.* 109, 193, 201, 511—*Instigating witnesses to give false evidence.*—Where a person having reason to believe that a person has committed an offence under s. 457 of the Penal Code, instigates the complainant and witnesses in the case to make statements known by him to be false, *held* that no offence under s. 201 was committed but only one under ss. 109 and 193 of the Penal Code. QUEEN-EMPRESS v. ROWJI, **Rat. Un. Cr. C. 632 = Cr. Rg. 1 of 1893.**

(474)—*Ss.* 109, 195—*Crim. Pro. Code, Act X of* 1872, *s.* 458—*Same offence.*—The abetment of an offence is not the same offence as that abetted within the meaning of s. 458 of the Crim. Pro. Code, 1872. EMPRESS v. PIARI LAL, **A.W.N. 1882, 64.**

(475)—Ss. 109, 211—*See* ABETMENT, 7 C.W. N. 556.

(476)—*Ss.* 109, 240, 243—*Making over counterfeit Queen's coins for being changed into good money.*—Where a person in possession of counterfeit Queen's coins delivered some of them to another with a view to their being changed for good money, *held* that the latter would be properly convicted under s. 240, read with s. 109 instead of under s. 243, I.P.C. PROSUNNO KUMAR DAS v. EMPEROR, **8 C.W. N. 717 = 31 C. 1007 = 1 Cr. L.J. 714.**

(477)—*Ss.* 109, 280 *and* 304-*A*—*Offences under—Conviction.*—In this case the second accused was convicted by the Sub-Divisional Magistrate of offences under s. 280, I.P.C. (rash and negligent navigation), and s. 304-A (causing death by a rash and negligent act); and the first accused was convicted of abetment of those offences. On appeal the Sessions Judge confirmed the conviction—The first accused filed a revision petition to the High Court. *Held*, that, as the second accused was only a servant acting under the directions, of the first accused, his conviction could not be sustained; and it was accordingly set aside, though he had not filed any revision petition. *Held* further, that, in the circumstances, the conviction of the first accused for the abetment of the said offences cannot stand: and he was directed to be re-tried for an offence under s. 304-A, I.P.C. SANGLI NADAN v. EMPEROR, **1911, 2 M.W.N. 170 = 12 Cr. L.J. 495 = 12 Ind. Cas. 215.**

(478)—*Ss.* 109, 290—*Person in possession of a house allowing persons to gamble in his house and thereby causing annoyance to the public.*—Although the mere act of gambling in a private house is not *per se* a public nuisance, yet where it is shown that the neighbours are greatly annoyed by the noise which the gamblers frequenting the house make, that they quarrel and fight in the public street, and that the people are afraid to go out at night or to pass the house for fear of being assaulted, a lessee of the house, although he does not engage the house for the purpose of letting it out as a gambling house, is liable to be convicted for abetting a public nuisance. QUEEN-EMPRESS v. THANDAVARAYUDU, **14 M. 364 = 1 Weir 241.**

(479)—Ss. 109, 302—*See* CONFESSION—MISCELLANEOUS, 4 Bom. L.R. 425.

(480)—*Ss.* 109, 352—*Inducing others to beat without taking part—Abetment.*—A person who merely says "beat" but does not take any part himself, can only be convicted of abetment of an offence under s. 352 of the Penal Code. *In re* MIR HYDER SAHEB, **16 Cr.L.J. 456 = 29 Ind. Cas. 88.**

(481)—Ss. 109 and 363—*See* CONSPIRACY, 4 C.W.N. 528.

(482)—Ss. 109, 363—*See* KIDNAPPING, 8 C. 969 = 11 C.L.R. 6.

(483)—Ss. 109 and 366—*See* ABETMENT, 8 P.R. 1894, Cr.

(484)—*Ss.* 109, 379—*Theft, conviction for—Modification of conviction by appellate Court into one of abetment—Illegality.*—Where a person has been convicted under s. 379, Penal Code, of theft, it is not competent for an appellate Court, while finding the accused to be not guilty of theft, to modify the conviction into one of abetment of theft. SINGARAVELU PILLAY v. EMPEROR, **13 Cr. L.J. 203 = 14 Ind. Cas. 203.** (33 M. 264, 7 M.L.T. 79, 20 M.L.J. 84, 5 Ind. Cas. 145, 11 Cr. L.J. 49, *F.*)

(485)—*Ss.* 109, 379—*Theft—Accused not convicted of theft—Whether can be convicted for abetment of theft.*—Where an accused person is charged with and convicted only for theft, it is illegal for the appellate Court, while quashing the conviction for theft, to alter the conviction into one for abetment of theft under ss. 379, 109, Penal CODE. *In re* VARAYAL KRISHNAN NAIR, **13 Cr. L.J. 223 = 14 Ind. Cas. 319.**

(486)—Ss. 109, 379. 411, 415, 420, 463, 467—*See* CRIM. PRO. CODE, 1898, ss. 179, 222, 235 to 239, 531, 537, 18 P.W.R. 1908, Cr. = 8 Cr. L. J. 75.

(487)—Ss. 109 and 409—*See* ACT VI OF 1882, 16 A. 88 = A.W.N. 1894, 23.

(488)—*Ss.*109, 415, 418—*Cheating by furnishing false balance-sheet.*—Where the Directors, the Manager and the Accountant of a Bank, intending to defraud the share-holders, knowingly put forward false balance-sheets so that depositors were induced to allow their money to remain in deposit, *held*, that they were guilty of cheating under s. 418, I.P.C. If they acted together to put forward a false balance-sheet, they were guilty of abetment by conspiracy to cheat. QUEEN-EMPRESS v. MOSS, **16 A. 88 = A.W.N. 1894, 23.** [*R.*, 13 Cr. L.J. 269 = 14 Ind. Cas. 653 = 3 Bur. L.T. 11 = 6 L.B.R. 46, 13 Cr. L.J. 888 = 17 Ind. Cas. 824 = 5 Bur. L.T. 143 = 6 L.B.R. 62.]

Penal Code (Act XLV of 1860)—*continued.*

(489)—*Ss.* 109, 417, 467, 468, 471 *and* 511—*Forgery—Using as genuine a forged document—Cheating—Crim. Pro Code* (1898), *s.* 423—*Misjoinder of charges—Registration Act* (III of 1877), *s.* 82.—Where the case against an accused person was that he had executed a *kobala* for the sale of certain property to a purchaser, the registration endorsement of which was alleged to be forged, and had subsequently purported to mortgage the same property to the same purchaser by a registered mortgage-bond, which was also alleged to be a forgery, and on the footing of which he had tried to raise a loan from a Loan Office, and the accused was charged and tried in one trial on charges, firstly, with regard to the *kobala* under ss. 467 and 467/109 and 468 and 468/109, secondly, with regard to the mortgage-bond and in dealing with the same, under s. 82 of the Indian Registration Act, and ss. 467, 467/109, 471 and 511 and was convicted under s. 467/109, I.P.C., of forging the mortgage-bond, and s. 511, of attempting to cheat the Loan Office and under s. 471 for using as genuine the mortgage-bond knowing it to be forged, *held*, that there had been a misjoinder of charges as the alleged forgery of the *kobala* and the presentation of the forged mortgage-bond to the Loan Office could not be stated to be parts of the same transaction. BIRENDRA LAL BHADURI v. EMPEROR, **30 C. 822 = 7 C. W.N. 639.** [*D.*, 11 C.W.N. 715.]

(490)—Ss. 109, 466, 471—*See* FORGERY, 26 P.R. 1901, Cr.

(491)—*Ss.* 109, 469, 471—*Forgery—Abettor—Conviction of abettor for using forged document as genuine, legality of.*—An abettor of the forgery of a document cannot be convicted of the offence of using it as genuine. *In re* AUTHOOR VALAPPIL SYED AHMAD MUSALIAR, **15 Cr. L J. 568 = 24 Ind. Cas. 976.** (23 A. 84, 26 P.R. 1901, Cr., *F.*)

(492)—*Ss.* 109, 494—*Abetment of bigamy.*—Mere consent to be present at an illegal marriage or presence therein will not constitute abetment of an offence under s. 494, I.P.C., unless the consent of any of the persons present was necessary for the performance of the marriage ceremony. Nor would the grant of accommodation in a house for a marriage, which could equally well be celebrated elsewhere, be such an act towards facilitating the marriage as would constitute abetment. EMPRESS v. UMI, **6 B. 126.** [*R.*, 19 B. 363.]

(493)—*Ss.* 109 *and* 494—*Abetment—Bigamy—Mahomedan Law.*—To establish a charge of abetment, the accused must be proved either to have instigated or aided some *other* person, or to have conspired with *another* for the commission of an offence. Therefore, a Mahomedan guardian of a married female infant, who, during her husband's lifetime, causes a marriage ceremony to be performed in her name, with another man, but without her taking any part in the transaction, does not commit the offence of abetment of bigamy, because, in doing the act, he is the sole actor, and the act, though illegal, is not, if done by *one* person alone, an offence provided for by the Penal Code. An act of the above description ought to be properly decided by a Civil Court instead of being the subject of a criminal prosecution. EMPRESS v. ABDOOL KURREEM, **4 C. 10 = 3 C L.R. 81.** [*D.*, 6 C.W.N. 343.]

(494)—Ss. 109, 494—*See* BIGAMY, 6 C.W.N. 343.

(495)—*Ss.* 109, 497—*Adultery—Jurisdiction of Sessions Court.*—The Sessions Court has jurisdiction to try the offences of adultery and abetment of adultery. The omission in col. 8 of sch. II of the Crim. Pro. Code of 1882, of the Sessions Court in respect of this offence, is only accidental. EMPRESS v. MANSUKH, **A. W.N. 1888, 235.**

(496)—Ss. 109, 511—*See* OFFENCE, 24 B. 287 = 1 Bom. L.R. 678.

——S. 110.

See ABETMENT.

(497)—S. 110—*See* No. 463, *supra.*

(498)—Ss. 110, 149, 300—*See* GRIEVOUS HURT, Rat. Un. Cr. C. 14.

——S. 111.

See ABETMENT.

(499)—*S.* 111—*Abetment—Guilty knowledge of abettor—Presumption.*—If one man instigates another to perpetrate a particular crime, and that other, in pursuance of such instigation, not only perpetrates that crime, but, in the course of doing so, commits another crime in furtherance of it, the former is criminally responsible as an abettor for the latter crime, if it is one which, as a reasonable man, he must, at the time of the instigation, have known would, in the ordinary course of things, probably have to be committed in order to carry out the original crime. The test, in such cases, must always be whether, having regard to the immediate object of the instigation or conspiracy, the act done by the principal is one which according to ordinary experience and common sense, the abettor must have forseen as probable. The determination of this question as to the state of a man's mind at a particular moment, must always necessarily be a matter of serious difficulty, and conclusions should not be formed without the most anxious and careful scrutiny of all the facts. QUEEN-EMPRESS v. MATHURA DASS, **6 A. 491 = A.W.N. 1884, 251.** [*R.*, 11 A.L J. 997, U.B.R. 1897—1901, Vol. I, 249.]

(500)—*S.* 111—*Murder—Abetment.*—The accused accompanied his brother who was taking a child to murder it. After accompanying him for a while, he refused to go further along with him, but, at the same time, though knowing fully that the child was being taken to be murdered, he made no attempt to take the child back with him, and the child was subsequently murdered. *Held* that, under

Penal Code (Act XLV of 1860)—*continued.*

ss. 109 and 111, the accused was guilty of murder. QUEEN-EMPRESS v. SADU, **Rat. Un. Cr. C. 207.**

(501)—S. 111—*See* Nos. 86, 105, 224 and 464, *supra.*

(502)—Ss. 111, 113, 302—*See* MURDER, A. W.N. 1892, 233.

(502-*a*)—S. 113.

(503)—S. 113—*See* No. 502, *supra.*

—— S. 114.

See ABETMENT.

(504)—*S.* 114—*Effect.*—The effect of s. 114 of the Indian Penal Code is that, if a man is present at the commission of an offence, he is to be deemed to have committed it, not that he has committed it. EMPEROR v. KASHIA ANTOO, **10 Bom. L R. 26 = 7 Cr. L.J. 32 = 3 M. L.T. 122.** (31 B. 480, *R.*)

(505)—*S.* 114—*Applicability of the section.*—S. 114 will not apply, unless the person present abetting the offence would, if absent, have been guilty of abetment. KESHWAR LAL SHAHA v. GIRISHCHANDER DUTT, **29 C. 496.**

(506)—*S.* 114—*Application of section*—S. 114 of the Penal Code only applies where, the abetment having been made before-hand, the abettor is also present when the offence abetted is subsequently committed. THE MYA v. KING-EMPEROR, **4 L.B.R. 271 = 8 Cr.L.J. 472.**

(507)—*S.* 114 —*Construction of.*—S. 114, Penal Code, simply provides for the punishment of what the English Law calls principals in the second degree. A person present, abetting an offence, is deemed to have committed the offence, though he does not in fact do so any more than a principal in the second degree. The meaning of the section is that, if the nature of the act done constitutes abetment, then, if present, the abettor is deemed to have committed the offence, though, in point of fact another, actually committed it. HIGH COURT PROCEEDINGS, 8TH MARCH, 1869, NO. 459, **1 Weir 49 = 4M.H.C. App. 37.**

(508)—*S.* 114—*Abetment of offence, evidence necessary to establish.*—The mere presence as an abettor of any person would not, under the terms of s. 114, render him liable for the offence committed. To bring an accused person within s. 114 of the Penal Code, it is necessary, first, to make out the circumstances which constitute abetment, so that, if absent, he would have been liable to be punished as an abettor, and then, to show that he was also present when the offence was committed. ABHI MISSER v. LACHMI NARAIN, **27 C. 566 = 4 C.W.N. 546.** (7 W.R. Cr. 49, *Relied on*; 2 C.W.N. 49, *Expl.*) [*F.*, 8 C.W.N. 519.]

(509)—*S.* 114—*Offence under section—Proof of abetment.*—In order to bring a prisoner within s. 114, Penal Code, it is necessary first to make out the circumstances which constitute abetment, so that, "if absent," he would have been "liable to be punished as an abettor," and then to show that he was also present when the offence was committed. QUEEN v. MUSST. NIRUNI, **7 W.R. 49, Cr.**

(510)—*S.* 114—*Accused present at commission of offence—Abetment.*—If a person facilitates the commission of an offence and is also present at the said commission, he is to be charged with the principal offence and not with abetment of the same. REG. v. CHIMA, **8 B.H.C. Cr. 164.**

(511)—*S.* 114—*Accused present at commission of offence—Knowledge—Abetment.*—To be present and be aware that an offence is about to be committed does not constitute abetment unless the person thus present holds some position of rank or influence such that his countenancing what takes place may, under the circumstances, be held a direct encouragement or unless some specific duty of prevention rests on him which he leaves unfulfilled, in such wise that he may be safely taken as having joined in a conspiracy for the perpetration of the offence. QUEEN-EMPRESS v. LAKSHMI, **Rat. Un. Cr. C. 303 = Cr. Rg. 51 of 1886.**

(512)—*S.* 114—*Presence at commission of offence.*—An abettor, when present at the commission of an offence, is punishable as a principal. EMPRESS v. NIRGHI GOND, **11 C. P.L.R. 2, Cr.**

(513)—*S.* 114, *continuance of abetment of abettor charged under.*—Where an abettor of a crime is, on account of his presence at its commission, to be charged under s. 114 of the Penal Code as principal, his abetment must continue down to the time of the commission of the offence. REG. v. AMRITA GOVINDA, **10 B.H. C. 497.**

(514)—S. 114—*See* CONFESSION—CONFESSIONS TO MAGISTRATES — ADMISSIBILITY, 10 B.H.C. 497.

(515)—S. 114—*See* Nos. 48, 87, 88, 89, 120, 298, 301, 442 and 465 to 468, *supra*, and *see* Nos. 695, 1705 and 1919, 2155, 2176, 2243, *infra.*

(516)—*Ss.* 114, 144—*Instigation to join an unlawful assembly—Subsequent joining of the assembly by the instigator.*—Where a person instigates another to join an unlawful assembly armed with a deadly weapon, and afterwards joins it himself, he may be liable to be punished under s. 144, read with s. 114, even though he is not himself armed with a deadly weapon. SRI HARI SHOME v. LAL KHAN, **5 C.W.N. 250.**

(517)—*Ss.* 114, 147, 353—*Resisting a public servant, while executing a warrant.*—In the absence of any evidence as to the terms of a warrant either by the production of the original or by secondary evidence, a conviction for resisting a public servant in executing the warrant cannot stand. A conviction for rioting, based upon a charge, which does not specify the common object of the assembly charged with rioting is improper. CHUNDER COOMAR SEN v. QUEEN-EMPRESS, **3 C.W.N. 605.** [*F.*, 33 C. 295 = 2 C.L.J. 516 = 3 Cr. L.J. 153; *D.*, 28 C. 411 = 5 C.W.N. 134; *R.*, 3 L.B.R. 128.]

Penal Code (Act XLV of 1860)—*continued.*

(518) —*Ss.* 114, 149, 302 – *Constructive murder—Abetment.*—Where the accused were present standing without doing anything in a place where murder was committed, and they did not leave the place from which they started with the actual perpetrators of the deed, nor did they share any common object with them, but they were only armed with lathis and did nothing to prevent the murder, *held*, that they cannot be convicted of constructive murder under s. 302 read with s. 149, but they should be convicted of constructive murder under s. 302 read with s. 114. QUEEN-EMPRESS v. CHATRADHARI GOALA, **2 C.W.N. 49.** [*Expl.*, 27 C. 566.]

(519)—*Ss.* 114 *and* 161—*Abetment—Oath—Accomplice, deposition of—Magistrate.*—Mere presence at the commission of an offence is not an abetment of it, if the person present has no authority to interfere. When a police constable makes an arrest in a village, the Crim. Pro. Code applies to it, and the responsibility is of the constable and not of the Police patel, who has no power to interfere. A Magistrate should not put persons on oath unless he is satisfied of his authority so to do, for it may be an oppression. A conviction based on the totally uncorroborated story of an accomplice is bad in law. Where a person makes one statement when questioned on oath before a process to compel his appearance is issued, and makes a different statement in his defence when put at the trial, he cannot on this fact alone be convicted under ss. 114 and 161, Penal Code. The burden of proof in such a case lies on the prosecution and the proper material for judgment is the testimony as to what specific acts the accused did and what particular words he used. QUEEN-EMPRESS v. SHIDLINGAPPA, **Rat. Un. Cr. C. 844 = Cr. Rg. 12 of 1896.**

(520)—*Ss.* 114, 199, 466—*Accused identifying person personating another before Mahomedan Marriage Registrar.*—Where the accused identified a person who personated another, a husband, before the Mahomedan Registrar of Marriages, and obtained the registration of the husband's divorce from his wife, *held*, that the accused was not guilty of an offence under s. 199, I.P.C., inasmuch as the Registrar was not bound or authorised by law to receive his statement in evidence, but that he might be guilty of an offence under s. 466 and s. 114, if he knew that the man personated was not the real man, or at least had no knowledge whether he was or not. YASIN SHEIKH v. EMPEROR, **9 C.W.N. 69 = 2 Cr. L J. 8.**

(521)—*Penal Code*, ss. 114, 211 — *Accused charging another with assault — Offence of abetment of assault established—False charge, conviction for, maintainability of.*—The accused charged another with having assaulted him and knocked out his tooth. The accused was charged under s. 211, I P.C., after the dismissal of this complaint. The Judge found that, although the person charged with assaulting him did not himself assault the accused, he had instigated his servants to do so, and was present at the occurrence. *Held* that, under the circumstances, the complaint brought by the accused could not be said to have been false. EMPRESS v. MINDAI LAL, **A.W.N. 1883, 39.**

(522)—*Ss.* 114, 302—*Abetment—S.* 114, *if applied when abettor present—Duty of prosecution to call all available eye witnesses—Purpose of criminal trial—Duty of Public Prosecutor.*—One R was charged with having committed murder of one B by being present and abetting one M in striking and thereby killing him. The allegation was that R gave orders to M to strike B who was thereupon hit on the head with a *lathi*. R was convicted under s. 302, read with s. 114, I.P.C. In the course of the trial, two persons who were admittedly eye-witnesses to the occurrence were not called as witnesses by the prosecution either in the committing Magistrate's or the Sessions Courts. *Held*, that the conviction of R for murder under s. 302/114, I.P.C , could not stand for the simple reason that the only abetment charged necessarily required the presence of R, while to come within s. 114 the abetment must be complete apart from the presence of the abettor. That the purpose of a criminal trial is not to support, at all costs, a theory, but to investigate the offence and to determine the guilt or innocence of the accused, and the duty of a Public Prosecutor is to represent not the Police but the Crown and this duty should be discharged by him fairly and fearlessly and with a full sense of the responsibility that attaches to his position. The guilt or innocence of the accused is to be determined by the tribunals appointed by law and not according to the tastes of any one else. That it was undoubtedly the duty of the Public Prosecutor in a capital case to have placed before the Trial Court that the testimony of all available eye-witnesses. (1838, 8 C. and P. 606, 609, *R.*) Mistake in the report *In re Dhunno Kazi*, 8 C. 121 pointed out. RAM RANJAN RAY v. KING-EMPEROR, **19 C.W.N. 28 = 42 C. 422 = 27 Ind Cas. 554 = 16 Cr L J. 170.**

(523)—Ss. 114, 302 —*See* CONFESSION—RETRACTED CONFESSIONS, 11 C.L.J. 273.

(524)—Ss. 114 and 341—*See* OBSTRUCTING RIGHT OF WAY, 31 C. 691 = 8 C.W.N. 538, F.B.

(525)—*Ss.* 114, 406—*Criminal breach of trust — Principal offence charged — Abetment — Conviction for—When valid.*—Entrustment of the property to the accused should be proved to sustain a conviction for criminal breach of trust. S. 114, I.P.C., would apply only where the act, at the doing of which abettor was present, would itself amount to an offence. It cannot be laid down as an inflexible rule that an accused cannot be convicted of the abetment of an offence when he is charged only of the principal offence. (11 B H.C. 210. *D.*; 33 M 264, *Expl.*) Where, on the facts, accused may be charged with the principal offence and abetment, he may be convicted of abetment, though only

Penal Code (Act XLV of 1860)—*continued*

charged with the principal offence. VEDITHA SUBBAYYA v. EMPEROR, 1912 M.W.N. 725 = 13 Cr. L J. 453 = 12 M.L T. 203 = 15 Ind. Cas. 85 = 23 M.L.J. 722.

——S. 115.

(526)—S. 115—*See* Nos. 469 and 470, *supra.*

——S. 116.

(527)—S. 116—*See* ABETMENT, 9 P.R. 1884, Cr.

(528)—S. 116—*See* BEN. ACT IV OF 1866, s. 26, 1 B.L.R. O. Cr. 39.

(529)—S. 116—*See* Nos. 443 and 471 *supra* and *see* Nos. 756, 757, 1174 and 1455, 2305, 2682, 2846, *infra.*

(530)—Ss. 116, 193—*See* SANCTION TO PROSECUTE—MISCELLANEOUS CASES, 26 C. 359.

(531)—Ss. 116, 232, 241 and 420 — *See* CHEATING—GENERAL, 9 P.R. 1884, Cr.

(532)—Ss. 116 and 302—*See* ATTEMPT, 24 P.R. 1882, Cr.

——S. 118.

(533)—Ss. 118, 176—*See* INFORMATION OF COMMISSION OF OFFENCE, 1 Agra Cr. 37.

——S. 121.

See WAGING WAR AGAINST THE QUEEN.

(534)—*S.* 121—*Evidence Act, s.* 78—*Waging war against Queen—Sanction, proof of—Crim. Pro. Code* (1882), s. 196.—In a trial, for waging war against the Queen, the sanction of the Local Government, required by s. 196, Crim. Pro. Code, must be strictly proved in the manner laid down in s. 78 of the Evidence Act; the identity of the prisoner with the person named in the sanction must be established by independent evidence. It would not be enough that the prosecution of the accused has been sanctioned, unless it is shown by independent evidence that the individual sought to be prosecuted and the individual in respect of whom sanction has been granted are the same individual. AUNG DO v. QUEEN-EMPRESS, **L.B.R. 1872—1892, 389.**

(535)—*S.* 121—*Waging war against the Queen—Principle and measure of punishment.*—In this case, the accused were concerned with others in a conspiracy for waging war against the Queen, in the carrying of which into effect, death was caused to one of the Queen's soldiers and severe wounds to one of Her Military officers, while serveral others of Her subjects were wounded, one of them endangered in life. *Held* that the conviction of all the appellants was correct and the capital sentence passed upon them appropriate to the circumstances. NGA KAING v. QUEEN-EMPRESS, **U B.R. 1897—1901, Vol. I, 252.**

(536)—S. 121—*See* COMMITMENT TO SESSIONS COURT, 16 P.R. 1890, Cr.

(537)—S. 121—*See* FORFEITURE OF PROPERTY, 8 B.L.R. 83 = 17 W.R. 80, Cr.

(538)—S. 121—*See* Nos. 12 and 444, *supra.*

Penal Code (Act XLV of 1860)—*continued.*

(539)—*Ss.* 121, 121-*A*, 123 — *Joint trial of several accused on different charges.*—Where the several persons were charged under ss. 121, 121-A, 123, I.P.C., and where the charge merely purported to place before the Court different aspects of the same transaction, *held* that the joint trial of the several accused on different charges was not bad for multifariousness. BARINDRA KUMAR GHOSE v. EMPEROR, **37 C. 467 = 14 C.W.N. 1114 = 7 Ind. Cas. 359 = 11 Cr. L J. 453.**

(540)—Ss. 121, 122, 124-A—*See* CONFISCATION, 34 C. 986 = 11 C.W.N. 1046 = 6 C.L.J. 754 = 6 Cr. L.J. 293.

(541)—*Ss.* 121, 124-*A*—*Waging war against the King—Abetment of waging war—Incitement to wage war.*—The accused published a book of poems, wherein a spirit of blood-thirstiness and murderous eagerness directed against the Government and "white" rulers ran through the poems; the urgency of taking up the sword was conveyed in unambiguous language; and an appeal of blood-thirsty incitement was made to the people to take up the sword, from secret societies, and adopt guerrilla warfare for the purpose of rooting out "the demon" of foreign rule. *Held*, that the poems conveyed to readers an instigation to wage war; and that the offence of abetting the waging of war, punishable under s. 121, Penal Code, was committed. *Per Chandavarkar, J.*—Under the English Law, mere words spoken or written, however wicked and abominable, if they do not relate to any act or design then actually on foot against the life of the King, or the levying of a war against him, and in the contemplation of the speaker, do not amount to treason. Under the Indian Penal Code, the waging or levying of war and the abetting of it are put upon the same footing by s. 121. That is, the abetting of the waging of war is under the Code as much an offence of treason as the waging of war itself. According to the general law as to abetment (s. 108, expln. 2), to constitute the offence of abetment, it is not necessary that the act abetted should be committed or that the effect requisite to constitute the offence should be caused. This applies to the abetment of the waging of war against the King, as much as to the abetment of any other offence under the Code. The only difference created between the former offence and other offences is that, while, under the general law as to abetment, a distinction is made, for the purposes of punishment, between abetment which has succeeded and abetment which has failed s. 121 does away with that distinction so far as the offence of waging war is concerned, and deals equally with an abettor whose instigation has led to a war and one whose instigation has taken no effect whatever. *Per Heaton, J.*—So long as a man only tries to inflame feeling, to excite a state of mind, he is not guilty of anything more than sedition. It is only when he definitely and clearly incites to action that he is guilty of instigating and therefore of abetting the waging of war. The term 'instigation,' as

Penal Code (Act XLV of 1860)—*continued.*

used in s. 107, Penal Code, may be an instigation of an unknown person. The term 'abet' in s. 121 of the Code does not mean something less than that word as used in s. 107 (see s. 7 of the Code). The abetment contemplated by s. 121 need not be abetment of some war in progress, there may be, and usually is; instigation of rebellion before rebellion actually begins; instigation of this kind is abetting waging war against the king. EMPEROR v. GANESH DAMODAUR SAVAKAR, **12 Bom. L.R. 105=5 Ind. Cas. 854=34 B. 394=11 Cr. L.J. 264.**

(542)—*Ss.* 121, 147—*Conspiracy to overthrow Government—Attack on officers—Waging war—Riot.*—Where there was a conspiracy to overthrow the Britsh Government in Burma, and the conspirators attacked and *fought* the Township Officer's party which had come to arrest them: *Held*, that the attack constituted the act of waging war; it was not riot but the culminating act of a deeply laid plot to overthrow the Government of the country. PAN THIN v. EMPEROR, **14 Cr. L.J. 514=20 Ind. Cas. 994=6 Bur. L.T. 146.**

——**S. 121-A.**

See WAGING WAR AGAINST THE QUEEN.

(543)—*S.* 121-A—*Conspiracy—Form of commitment — Accused charged with conspiring with persons known and unknown — Certain accused not named in petition of complaint made with sanction of Local Government, but named in sanction itself—Jurisdiction to try—Crim. Pro. Code* (*Act* V *of* 1898), *ss.* 4, *cl.* (*h*), 196.—Where a commitment order charges the accused on trial with conspiracy, within the meaning of s. 121-A of the Penal Code, with persons "known and unknown:" *Held*, that the charge cannot be maintained without the persons who are known being definitely named. Where the complainant has omitted to name an accused person, in his petition of complaint made with the sanction of the Local Government to prosecute for offences falling within ss. 121-A, 122 and 123 of the Penal Code: *Held*, that the accused not so named stands discharged from the trial initiated on such a complaint, even though his name appears in the sanction authorising the complaint. The subsequent application before the trying Magistrate for the issue of process against such an accused does not amount to a complaint against him within the meaning of s. 4, cl. (*h*) of the Crim. Pro. Code. Under the aforesaid circumstances, proceedings cannot be held to have been duly instituted against the accused person under s. 196 of the said Code, and the defect cannot be subsequently remedied in course of the trial. EMPEROR v. LALIT MOHAN CHAKRAVARTY, **15 C.W.N. 98=8 Ind. Cas. 1059=12 Cr. L.J. 2=38 C. 559.** [*R.*, 37 B. 658=2 Bom. Cr. C. 101=15 Bom. L.R. 694=20 Ind. Cas. 613, 35 M. 247=22 M.L.J. 490=11 M.L.T. Sup. 1=1912 M.W.N. 207=13 Cr. L.J. 305=14 Ind. Cas. 849, 35 M. 397=13 Cr. L.J. 352=14 Ind. Cas. 896=12 M.L.T. 1=1912 M.W.N. 549, 2 Bom. Cr. C. 143=15 Bom. L.R. 975, 13 Cr. L.J. 352, 15 C.L.J. 517=16 C.W.N. 1105=13 Cr. L.J. 609=16 Ind Cas. 257.]

(544)—*S.* 121-*A*—*Conspiracy to wage war against the King—Ingredients of the offence—Government sanction, object of—Offences alleged to have been committed to pursuance of conspiracy, when not brought home to any member by evidence, if may be regarded as limbs of the conspiracy—To prove such offences, if separate trials preferable—Conspiracy, persons charged with same, if may be found guilty of different conspiracies—Act* XIV *of* 1908 (*Criminal Law Amendment Act*), *procedure under, its object and applicability to such cases - Accused kept in prison for months without legal aid whilst evidence being accumulated against them during Magisterial enquiry, if contemplated by the Act—Despairing letter written by prisoner in such circumstances, if admission of guilt—Previous trials for specific offences, some subsequently alleged as parts of conspiracy—Acquittal, discharge, conviction at previous trials, effect of—Discharged persons prosecuted without further evidence and withholding favourable evidence—Accomplices' evidence, value and admissibility of —Character of accomplice—Corroboration, from untainted source, both as to crime and identity of each accused—Confession of co-accused, value as evidence against others—Evidence Act* (*I of* 1872), *ss.* 21 *and* 30—*Confession retracted, as evidence against co-accused—Admission, if embraces confession — Statement recorded by police-officer prior to making confession if not produced, adverse inference—Accused offering to confess, propriety of police-officer recording statement before taking to Magistrate to record confession—Identification by persons kept with the accused—Photographing under-trial prisoners by the Police, propriety of —"Verification" of confession, value and utility of—Incriminating articles, which are, and which not, circumstances of possession—Conduct, evidence of, value of, when other evidence insufficient, and when evidence sufficient —House-search, incriminating articles found at, possession, proof of—Association for* lathi *play, music, games and sports, if evidence of conspiracy — Humane or kindly acts on the part of any, whether to be used against him.* — The requirement of law that complaint under s. 121-A of the Penal Code should not be made without special authority from Government is no doubt due in part to the fact that a charge framed in terms of that section is calculated to produce an impression that a political situation of the gravest character has arisen. The provisions of the law, however, are comprehensive and no formidable elements either in men or means are required to satisfy the definition of a conspiracy to wage war. No act or illegal omission is necessary for such a conspiracy, the mere agreement of two or more being sufficient. The determination of the Court in any case that a conspiracy to wage war has been established may not therefore necessarily imply the existence of a serious means to the constitution or the stability of constituted authority

in India. Where several persons are charged with the same conspiracy, it is a legal impossibility that some should be found guilty of one conspiracy and some of another. Any accused not shown to be a member of the conspiracy charged is entitled to demand an acquittal, however bad his record may be and however much he may be suspected of this or that offence. Associations for music, gymnastic exercises, and *lathi* play amongst young men living in the same village or attending the same school, or ordinary incidents of village or school life, and could hardly with propriety be proved as forming elements in any alleged scheme of conspiracy to wage war against the King-Emperor, and all the more so when they are shown to have been accompanied by a complete absence of secrecy and rather by a courting of publicity. Forty-six persons having been charged with conspiracy in terms of s. 121-A, Penal Code, it was alleged that, for the ends of that conspiracy, arms and ammunitions had been collected, certain police officers and an informer murdered, attempts made to seduce troops from their allegiance, and, dacoities attempted or committed to obtain funds for the purpose of the conspiracy; several of the accused had already been separately tried for one or other of these offences and convicted, acquitted or discharged. *Held*—that, where there was a judgment of acquittal, the guilt of the accused in respect of the offence of which he was acquitted was not open to further question or discussion at this trial. (2 K.B. 389, *R.*) That the convictions also, so far as they went, were similarly conclusive. The course adopted by the prosecution in this case, which necessitated the hearing of the same evidence over again for offences of which some of the accused had been already convicted before, is not to be commended. Where some of the accused were once previously charged with a particular dacoity and were discharged after magisterial enquiry, the Magistrate recording his reasons for holding that there were not sufficient grounds for committing the accused for trial, but no steps were then taken to have the order of discharge set aside, and at the present trial held more than three years after, the same accused were charged with conspiracy, alleging that the said dacoity was a limb of the conspiracy, but no further evidence was given, and on the contrary some evidence favourable to the accused which had been adduced at the former trial was not placed before the Court at the present trial, and such evidence as was given appeared to be open to a comment: *Held* that, in the circumstances mentioned above, the accused must be held to be not guilty. Where offences complete in themselves were not tried as such, but were thrown into the present trial as being parts of the alleged conspiracy: *Held*—that they should have been made the subjects of separate trials; that, if the evidence at the disposal of the prosecution was insufficient to secure a conviction for the crimes committed, it would not serve to secure a conviction for a conspiracy, the proof of which really rested on the establishment of those crimes. The application of the procedure of Act XIV of 1908, which was intended "to provide for the more speedy trial of certain offences," to a case of this kind, which resulted in the detention in custody of the accused for many months without any access to legal advice, could hardly have been contemplated at the passing of the Act. The rule that the evidence of accomplices or approvers must be corroborated, not only as to the crime but also as to the identity of each one of the accused, and that the corroboration must ordinarily proceed from an untainted source, is no technical rule, but one founded on the long judicial experience. The true effect of the language used in s. 30 of the Evidence Act, is that the Court can only treat a confession as lending assurance to other evidence against a co-accused, so that a conviction on the confession of a co-accused alone would be bad in law. Moreover, under that section, that only can be taken into consideration against a co-accused, which is a confession in the true sense, of the offence for which the persons are then being jointly tried. It was particularly unsafe to use the confessions in this case against the co-accused as they had been retracted. (28 C. 687, 690, *R.*) Witnesses narrating false stories sometimes over-do their parts and fall into inconsistencies, and the fraudulent character of the evidence becomes apparent. The statements of the approvers and the confessions in this case were not worthy of credit on the following amongst other grounds:—The character of the persons making the statements; the fact that the approvers, though they had expressed their readiness to confess, were not immediately placed before the Magistrate but were taken to the investigating police-officer who recorded their statements, and the prosecution, when called upon to produce the statements thus recorded, were unable to do so; that the confessions appeared to have been made after the confessing accused had been in police custody for some time; that successive statements made by the same persons showed a development of the story to fit in with the prosecution case and were found to be contradictory in material particulars; and that many of the statements could not be reconciled with fact admitted or proved byond doubt. "Verification proceedings" held in connection with the confessions and the statements of the approvers did not add to their value. Such proceedings cannot be regarded as corroboration, and are open to criticism in other respects. One of the approvers who was also required to identify the accused in the Magistrate's Court had some days previously been removed from another jail to where the accused were detained and was allowed to eat and bathe with them. The under-trial prisoners appeared also to have been photographed in jail by the police. No satisfactory explanation of the former course or justification for the latter having been furnished on behalf of the Crown. *Held*—that such action was calculated to discredit the methods employed in the case. Evidence of conduct

alleged to amount to an admission of guilt on the part of an accused is unnecessary where the evidence without it is sufficient. Where this is insufficient, inferences from conduct are not of sufficient weight to give any conclusive effect to other proof. In order to bring responsibility home to an accused, in respect of incriminating articles found at the search of a house in which he lived jointly with others, facts must be proved to show his possession of those articles. EMPEROR v. NONI GOPAL GUPTA, **15 C.W.N. 593=10 Ind. Cas 582=12 Cr. L.J. 286=38 C. 569.** [*R.*, 37 B. 658=2 Bom. Cr. C. 101=15 Bom. L.R. 694=20 Ind. Cas. 613, 35 M. 247=13 Cr. L.J. 305=14 Ind. Cas. 849=22 M.L.J. 490=11 M.L.T. Sup. 1=1912 M.W.N. 207, 35 M. 397=13 Cr. L.J. 352=14 Ind. Cas. 896=12 M.L.T. 1=1912 M.W. N. 549, 2 Bom. Cr. C. 143=15 Bom. L.R. 975, 15 C.L.J. 517=16 C.W N. 1105=13 Cr. L.J. 609=16 Ind. Cas. 257.]

(545)—*S.* 121-*A*—*Evidence Act*, *ss.* 25, 30, 114 (*Ills.*), 133 *and* 157—*Crim. Pro. Code*, *ss* 157 *and* 162—*Approver's evidence—Necessity for corroboration—Kind of corroboration required—Admissibility of previous statements to Police Inspector—Corroborative value of such statements—"Legally competent to investigate," meaning of—Whether an officer of the C.I.D. "legally competent to investigate."*—*White, C.J. and Ayling, J.*—The essence of an offence under s. 121-A of the Penal Code is the agreement to do all or any of the unlawful acts mentioned in the section. It is not necessary that any act or illegal omission should take place in pursuance of the agreement. The view that a Court cannot act on the evidence of an accomplice, unless it is corroborated, is not the law either of England or of India. As regards India, the substantive enactment is to be found in s. 133 of the Evidence Act. S. 114 deals with presumptions of fact, and the illustration would seem to mean that a presumption of fact may be drawn, having regard to the facts of a particular case, that the uncorroborated evidence of an accomplice in that case is untrue. The High Courts in this country have always professed, as a matter of practice rather than of law, to act upon the principles established in England. Just as in England the Judge has no power to withdraw a case from the Jury on the ground that there is no corroboration, so in India, where a Court is the Judge of fact as well as of law, the Court as the Judge of fact is not precluded from considering the question whether the unsupported evidence of an accomplice is true or not. In a case where the Court is both Judge and Jury, it has to direct itself thus:—"Consider the evidence of the approver, always bear in mind that it is tainted evidence, scrutinise it with the utmost care and accept it with the greatest caution. Then if you believe it, act on it, even if there is no corroboration in the strict sense of the word. If you do not believe it, reject it." The character of corroborative evidence required to lead a Court to believe an approver's testimony, and what are "material particulars" in the illustration to s. 114, must depend entirely upon the nature of the charge and the facts of the particular case. Previous statements of an accomplice can be regarded as corroborative of the evidence given by him at the trial (11 B. H.C. 196, 10 C. 970, *Diss.*) The words "before any authority legally competent to investigate the fact" in s. 157, Evidence Act, are quite general, and there is no reason why they should be restricted to Police officers and to "investigations" in the technical sense in which the word is used in the Code of Criminal Procedure. Further the words "legally competent" do not mean only competent under some express provision of law. The competency of the authority for the purpose of s. 157, Evidence Act, appears to be a question of fact, or at any rate a mixed question of law and fact to be determined with reference to the facts of the particular case. Even if the provisions of the Crim. Pro. Code apply, the 'local area' of an officer of the C.I.D., is the Presidency of Madras, and he is therefore competent to investigate the case under s. 156, Crim. Pro. Code. The statements of the approvers to the Police Inspector, though inculpatory and confessional in their nature, are not inadmissible in evidence under s. 25 of the Evidence Act, when it is not sought to use them against the persons making them. S. 25 does not preclude them from being given as evidence of a fact which goes to show that the statements of the approvers at the trial were true—(*S. Nair, J.*, also *concurring*):—The objection that statements to Police officers cannot be given in evidence under s. 162 of the Crim. Pro. Code, fails. The section only means that the written record of such statements shall not be used as evidence. *Quære*:—Whether the confession of a co-accused, before it can be taken into consideration under s. 30, must be sufficient, if it stood alone, to justify the conviction of the party making it. (2 A. 444, 7 A. 646, *Doubted*). *Sankaran Nair, J.*—As to the necessity of corroboration, according to the English law, the presumption must first be drawn that the evidence of an accomplice is untrustworthy. All the Courts in England are agreed that a conviction by a Jury on the uncorroborated testimony, when the Judge has not cautioned them against accepting it, must be set aside. In England, therefore, the law is that a prisoner is not to be convicted "*except under very special circumstances* upon the uncorroborated testimony of an accomplice." In this country we are governed by the Indian Evidence Act which embodies the rules of English Law in this point; and the presumption must first be drawn that the evidence of an accomplice is unreliable and exceptional circumstances must be proved to justify its acceptance. S. 114 is intended to get rid of any artificial rules of the effect of evidence and to give them the effect of presumptions or maxims. The illustrations here given are for the most part such rules of evidence as are treated as presumptions of law; the Act converts them into maxims or presumptions to be drawn by the Court. The Courts, save in exceptional circumstances, are bound

Penal Code (Act XLV of 1860)—*continued.*

first to draw the presumption as indicated by the section. The law is the same as in England and is rightly laid down in the Indian cases. The conclusions to be drawn therefore are that:—(1) The question is not whether a conviction based on the uncorroborated testimony of an accomplice is legal, but whether there is a presumption that such testimony cannot be accepted without corroboration: (2) A person should not be convicted except under "very special circumstances" upon the uncorroborated testimony of an accomplice: (3) "The Special circumstances" are that the grounds on which an accomplice's evidence has been held to be untrustworthy did not either exist in the case or did not exist in their full strength; that there are countervailing considerations of greater weight which diminish or entirely get rid of the weight due to such presumptions: (4) In cases tried by a jury, they have to be advised by the Judge of what has been above referred to. The corroboration required must be of some incident which will raise an inference of *guilt* on the *accused.* Before the statement of an accused person can be taken into consideration against his co-accused under s. 30, Evidence Act, it must amount to a confession; there must be an admission of guilt of the person making it, or facts must be stated from which his guilt may be inferred. A previous statement by the accomplice himself or a statement by another accomplice is not the corroboration required under the rule. The statements of approvers to the Police Inspector, being really confessions, are inadmissible in evidence against the accused under s. 25 of the Evidence Act. Oral evidence of what a person stated to a Police witness is not precluded by s. 162, Crim. Pro. Code. Ss. 157 to 167, Crim. Pro. Code, leave no doubt that the Police officer entitled to investigate an offence are the Police officers referred to in the Crim. Pro. Code, *i.e.*, the Station House officer or his superior officer within the limits of the local area of his jurisdiction. Therefore an inspector of the C.I.D. who is not one of such officers is not 'legally competent to investigate,' and so his evidence is not admissible under s. 156, Evidence Act. The power to investigate must be given to him by law. Whether any authority is legally competent to investigate the fact or not, is not a question of fact or a mixed question of fact or law. KING-EMPEROR v. NILAKANTA, **1912 M.W.N 207 = 13 Cr.L.J. 305 = 22 M.L.J. 490 = 11 M.L.T. Sup. 1 = 35 M. 247 = 14 Ind. Cas. 849.**

(546)—S. 121-A—Acquittal on charge of conspiracy under—Subsequent trial of others on identical charge—Evidence in latter trial of what acquitted prisoner had said or done, if admissible—*See* ACQUITTAL, 15 C.W.N. 646 = 11 Ind. Cas. 580 = 12 Cr. L.J. 396.

(547)—S. 121-A.—*See* Nos. 444 and 539, *supra.*

(548)—*Ss.* 121-*A* 122 *and* 123 — *Offences against the State—Conspiracy to wage war against the Queen.*—The evidence of accomplices, who were made witnesses without tender of pardon, cannot be rejected as a whole as inadmissible in evidence. It is admissible in evidence; only great caution should be taken in dealing with it. Further, it requires some corroboration by independent evidence. But when once the existence of the conspiracy is established, the sayings and doings of conspirators, though in the absence of each other, are evidence against fellow conspirators, according to s. 10 of the Evidence Act. SAYA KYE v. QUEEN-EMPRESS, **U.B. R. 1892—1896, Vol. I, 148.** (1 B. 610, L.B.R. 1872—1892, 246, 8 W.R.Cr. 44, 11 W.R.Cr. 21, *R.*)

(549)—*Ss.* 121-*A*, 123—*Waging war, conspiracy to commit offence of—Legal office,* de facto *holder of, acts of*—De facto *officer, pre-requisites of*—De facto *doctrine—Sanction by* de facto *officer—Crim. Pro. Code,* ss. 196, 204—*Sanction, validity of—Indictment or information for conspiracy, what to contain—Statute employing broad and comprehensive language descriptive of general nature of offence—Complaint, what to contain—Jurisdiction — Proceedings, legality of—Proceedings void* ab initio—*Crim. Pro. Code, s.* 537 (*a*)—*Penal Code, ss.* 121-*A.* 123. *charges under, if can be legally joined——Charges, withdrawal of, if permissible—Court's inherent power to mould procedure—Documents, admissibility of—Book of objectionable character, presence of—Seditious literature, presence of—Conspiracy, criminality of—Overt acts, criminality of—Acts of person, admissibility of, as against other persons—Accomplice and spy—Conspiracy, how proved—Associations when said to be connected—Conspirator, acts of one, when evidence against others.—Per Mookerjee, J.*—The acts of one, who, although not the *de jure* holder of a legal office, was actually in possession of it under some colour of title or under such conditions as indicated the acquiescence of the public in his actions, could not be collaterally impeached in any proceedings in which such person was not a party. (1693-1701, I, Ld. Rayn, 658, 1805, 6 East 359, *R*) The two fundamental pre-requisites to the existence of a *de facto* officer are: (*a*) the possession of the office and the performance of the duties attached to it, and (*b*) colour of title, that is, apparent right to the office and acquiescence in the possession of it by the public. The *de facto* doctrine was introduced into the law as a matter of policy and necessity, to protect the interest of the public and the individual, where those interests were involved in the official acts of persons exercising the duties of an office without being lawful officers. The doctrine in fact is necessary to maintain the supremacy of the law and to preserve peace and order in the community at large. *Per Curiam.*—Where the sanction under s. 196 of the Code of Criminal Procedure was granted by the *de facto* Local Government and the cognizance of the case was taken by the *de facto* Sessions Judge, it was not open to a party to question collaterally the legality of the conviction upon the allegation that the Local Government was irregularly

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constituted and the Sessions Judge irregularly appointed. Where the persons to be prosecuted were named and the sections under which they were alleged to have committed offences, as also the period of their activity, were specified, the mere circumstances that those persons were not described as members of the revolutionary society, the existence whereof was sought to be established at the trial, did not affect the validity of the sanction. *Per Mookerjee, J.*—In accordance with the general rule in criminal prosecutions, an indictment or information for conspiracy must contain a statement of the facts relied upon as constituting the offence, in ordinary and concise language, with as much certainty as the nature of the case will admit. If the statute employs broad and comprehensive language descriptive of the general nature of the offence denounced, the complaint should embody a particular statement of the facts and circumstances. *Per Curiam.*—If the Court has acted without jurisdiction, the legality of the proceedings cannot be sustained. *Per Harington, J.*—To make the whole proceedings void *ab initio*, it is necessary for the accused to show that there was no complaint before the Magistrate and the Magistrate had no other course but to refuse issue of process on the ground that he had no jurisdiction under the law to issue such a process. It is not enough to say that the materials which the Magistrate had before him were meagre or even insufficient, for if the Magistrate had jurisdiction to issue process, the trial would be perfectly regular even if the Magistrate had exercised that jurisdiction on insufficient materials. (15 C.W.N. 98, *D.*) *Per Curiam.*—Where the sufficiency or legality of the complaint was not brought up to the High Court for consideration before the completion of the trial in the subordinate Courts, but, on the basis of the complaint, the enquiry proceeded before the Magistrate and, after commitment by him, the Sessions Judge elaborately tried the case with the aid of assessors, it was no longer competent to the accused to invite the High Court to set aside the convictions on the ground that the complaint was materially defective. A case of this description is completely covered by cl. (*a*) of s. 537 of the Code of Criminal Procedure. An application for withdrawal of charges to which exception has been taken can be allowed, and the Court has inherent power to make an appropriate order. *Per Mookerjee, J.*—Both civil and criminal Courts have inherent power to mould the procedure, subject to the statutory provisions applicable to the matter in hand, to enable them to discharge their functions as Courts of Justice. Lathi play, standing alone, must be treated as evidence of a conspiracy to wage war. In order to make the documents, (*a*) found at the premises of the Association, and (*b*) found in the possession of individual accused persons when their residences were searched, admissible, one of three conditions has to be satisfied, *viz.*, (1) a document may be proved to be in the handwriting of an accused person, by comparison with an admitted or proved specimen of his handwriting, in the light of the testimony of expert witnesses; (2) a document may be proved to be in the possession of an accused person; (3) a document may be admissible as falling within the scope of s. 10 of the Evidence Act. The mere circumstance that a book of an objectionable character is present in the library of an individual or of an association does not necessarily justify the inference that the teachings of the book are approved and adopted by persons who have access to it. The presence of seditious literature indicating violent hatred and animosity towards British Government and containing inspirating calls to arms for the subversion by force of British rule and for the destruction of the "oppressor" written by members of the association, is an important element furnishing a clue to their tendencies and designs. The criminality of the conspiracy is distinct from and independent of the criminality of the overt acts. When persons have been taken into custody and are in a condition which makes it impossible for them to act in aid or furtherance of the conspiracy, that is, when so far as they are concerned, the conspiracy has come to an end, the acts of persons, who were members of the conspiracy and who are still free to act in pursuance thereof, are not admissible as against them; these acts can no longer be deemed the acts of co-conspirators. There is a distinction between persons who enter into a conspiracy for the sole purpose of detecting and betraying it, and others who concur fully in the criminal designs for a time and join in their accomplishment, till, from alarm or from some other cause, they turn upon their former associates and give information against them. These latter persons may be truly called accomplices. There is not on the part of such persons an original purpose of discovering the secret designs of the conspirators and of disclosing them for the benefit of the public, which is the vital element in the class of cases. The fact that, out of fear or repentance persons subsequently transform themselves into spies and informers, does not render corroboration unnecessary, and the corroboration which is needed is of the same extent and character as in the case of accomplices. The prosecution is not obliged to prove that the persons accused actually met and laid their heads together and after a formal consultation came to an express agreement to do evil. On the contrary, if the facts as proved are such that the jury as reasonable men can say there was a common design and the prisoners were acting in concert to do what is wrong, that is evidence from which the jury may suppose that a conspiracy was actually formed. (1858, 7 Cox. C. 442, *F.*) It is from this point of view that overt acts may properly be looked to as evidence of the existence of a concerted intention; indeed, the conspiracy is usually closely bound up with the overt acts, because in many cases it is only by means of the overt acts that the existence of the conspiracy can be

made out. But the criminality of the conspiracy is independent of the criminality of the overt acts. In order to connect one association with another, it has to be established that there was an agreement, which is the gist of conspiracy, between the members of the parent society and the alleged branch. Such inference may be justified by the surrounding circumstances. It is not necessary to establish by direct evidence that the accused persons did enter into an agreement to conspire. The criminality of the conspiracy lies in the concerted intention, and once reasonable grounds are made out for belief in the existence of the conspiracy amongst the accused, the acts of each conspirator in furtherance of its object are evidence against each of the others; and this, whether such acts were done before or after his entry into the combination, in his presence, or in his absence. PULIN BEHARY v. KING-EMPEROR, **15 C.L.J. 517=16 Ind. Cas. 257=13 Cr. L.J. 609=16 C.W.N. 1105.** [*R.*, 18 Ind. Cas. 149=17 C.W.N. 238=16 C. L.J. 467=14 Cr. L.J. 5.]

(550)—Ss. 121-A, 169, 311, 400, 401, 402—*See* ABETMENT, 24 M. 523=2 Weir 340.

——S. 122.

(551)—S. 122—*See* Nos. 540, 548, *supra.*

——S. 123.

(552)—S. 123 — *See* Nos. 539, 548, 549, *supra.*

——S. 124-A.

See SEDITION.

(553)—*S.* 124-*A* — *Terms "disaffection," "disapprobation," explained.*—Any one who, by any of the means referred to in the section excites or attempts to excite feelings of hatred, dislike, ill-will, enmity or hostility towards the Government established by law in British India, excites or attempts to excite, as the case may be, feelings of "disaffection" as that term is used in s. 124-A, no matter how guardedly he may attempt to conceal his real object. It is obvious that feelings of hatred, dislike, ill-will, enmity or hostility towards the Government must be inconsistent with and incompatible with a disposition to render obedience to the lawful authority of the Government and to support that lawful authority against unlawful attempts to subvert or resist it. The word "disaffection" in s. 124-A is "disloyalty." The ordinary meaning of disaffection in the section, having regard to the evils at which s. 124-A strikes is not varied by the explanation contained in the section. The intention of a speaker, writer or publisher may be inferred from the particular speech, article or letter considered in conjunction with what such speaker, writer or publisher has said, written or published on another or other occasions. Where it is ascertained that the intention of the speaker, writer or publisher was to excite feelings of disaffection to the Government established by law in British India, it is immaterial whether or not the words spoken, written or published, could have the effect of exciting such feelings of disaffection, and it is immaterial whether the words were true or were false, and, except on the question of punishment, or in a case in which the speaker, writer or publisher is charged with having excited such feelings of disaffection, it is immaterial whether or not the words did in fact excite such feelings or disaffection. QUEEN-EMPRESS v. AMBA PRASAD, **20 A. 55, F.B.=A.W.N. 1898, 1.** [*F.*, 10 Bom. L.R. 848=8 Cr. L.J. 281; *R.*, 38 C. 253=15 C.W.N. 141=11 Cr. L.J. 667=8 Ind. Cas. 531, 32 M. 3=5 M. L.T. 1=9 Cr. L.J. 106=1 Ind. Cas. 22.]

(554)—*S.* 124-*A* — *Section explained.*—*Per Farran, C.J* —The meaning of the explanation to s. 124-A is that a loyal subject who disapproves of Government measures is not to be deemed disloyal or disaffected on that account, if, notwithstanding his disapprobation of such measures, he is ready to obey and support Government. If he is at heart loyal, he is not disaffected, merely because he disapprobates certain measures of Government. The converse proposition does not appear to be true or deducible from the explanation, namely, that a subject who is ready to obey Government and support its lawful authority is necessarily loyal or well affected. He may be a rebel at heart though for the time being prepared to obey and support Government. It consequently follows that the publication of a libel exciting disaffection against Government itself—the constitution established by law—may be an offence, though the libel may insist upon the desirability or expediency of obeying and supporting Government. The ordinary meaning of the term disaffection is not varied by the explanation. *Per Parsons, J.*—The word "disaffection" cannot be construed to mean the absence or the contrary of affection or love, that is to say, dislike or hatred; but must be taken to be employed in its special sense as signifying political alienation or discontent, that is to say, a feeling of disloyalty to the Government or existing power, which tends to a disposition not to obey but resist and attempt to subvert the Government or power. To make or attempt to make a person disaffected, that is, to excite or attempt to excite in his mind a feeling of disloyalty to Government, or to create or attempt to create in his mind a disposition to disobey, to resist the authority of or to subvert the existing Government, is the act under s. 124-A declared an offence. *Per Ranade, J.*—Disaffection is a positive political distemper, and not a mere absence or negation of love. It is a positive feeling of aversion which is akin to disloyalty, a defiant insubordination to authority, or when it is not defiant, it secretly seeks to alienate the people, and weaken the bond of allegiance, and prepossesses the minds of the people with avowed or secret animosity to Government, a feeling which tends to bring the Government into hatred or contempt by imputing base or

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corrupt motives to it, makes men indisposed to obey or support the laws of the realm, and promotes discontent and public disorder. QUEEN-EMPRESS v. RAMACHANDRA NARAYAN, 22 B. 152, F.B. [*R.*, 34 C. 991=6 C.L.J. 699=10 C.W.N. 105=6 Cr. L.J. 20.]

(555)—*S.* 124-*A*— *Disaffection— Dis-approbation—Meaning.*—Disaffection means a feeling contrary to affection, in other words dislike or hatred. Disapprobation means simply disapproval. It is quite possible to disapprove of a man's sentiment or action and yet to like him. If a person uses either spoken or written words calculated to create in the minds of the persons, to whom they are addressed, a disposition not to obey the lawful authority of the Government, or to subvert or resist that authority, if and when occasion should arise, and if he does so with the intention of creating such a disposition in his hearers or readers, he will be guilty of the offence of attempting to excite disaffection within the meaning of the section, though no disturbance is brought about by his words or any feeling of disaffection, in fact, produced by them. It is sufficient for the purposes of the section that the words used are calculated to excite feelings of ill-will against the Government and to hold it up to the hatred and contempt of the people, and that they were used with the intention to create such feeling. QUEEN-EMPRESS v. JOGENDRA CHUNDER GHOSE, 19 C. 35. [*F.*, 32 M. 3=9 Cr.L.J. 108 =1 Ind. Cas. 22=5 M.L.T. 1, 15 O.C. 45=15 Ind. Cas. 189; *R.*, 20 A. 55, 32 M. 384=9 Cr. L.J. 456=2 Ind. Cas. 33=5 M.L.T. 393, 10 Bom. L.R. 848=8 Cr. L.J. 281, 11 Cr. L.J. 667 =8 Ind. Cas. 531, 9 Cr. L.J. 506=5 M.L.T. 415, 2 Ind. Cas. 193.]

(556)—*S.* 124-*A explained—Scope of section —Admissibility of contributions to the paper to know intention of editor and publisher.*—Disaffection means simply the absence of affection. It means hatred, enmity, dislike, hostility, contempt, and every form of ill-will towards the Government. "Disloyalty" is perhaps the best general term comprehending every possible form of bad feeling towards the Government. The amount or the intensity of the disaffection is absolutely immaterial except perhaps in dealing with the question of punishment. It is also absolutely immaterial whether any feelings of disaffection have been excited or not by the publication in question. The section places on absolutely the same footing the successful exciting of feelings of disaffection and the unsuccessful attempt to excite them. The offence consists in exciting or attempting to excite in others certain bad feelings towards the Government. It is not the exciting or attempting to excite mutiny or rebellion or any sort of actual disturbance, great or small. The section, as plainly as possible, makes the exciting or attempting to excite certain feelings, and not the inducing or attempting to induce to any course of action such as rebellion or forcible resistance, the test of guilt. Lastly, the authority or institution against which it is an offence to excite or attempt to excite feelings, of disaffection is "the Government established by law in British India." It means British rule and its representatives as such—the existing political system as distinguished from any particular set of administrators. [*R.*, 14 P.W.R. 1907, Cr.=10 P.R. 1907, Cr.=5 Cr. L.J. 439=2 M.L.T. 272, 34 C. 991=6 C.L.J. 699=10 C.W.N. 1050=6 Cr. L.J. 20, 10 Bom. L.R. 848, 5 M.L.T. 393=9 Cr. L.J. 456=2 Ind. Cas. 33=32 M. 384; *D.*, 1 P.R. 1905, Cr.= 99 P.L.R. 1905=2 Cr. L.J. 37.] The explanation to the section applies only to cases which can fairly and reasonably be construed as "the making of comments on the measures of Government." It does not apply to any writing which consists not merely of comments upon Government measures, but of attacks upon the Government itself, its existence, its essential characteristics, its motives, or its feelings towards the people, but the first clause applies to such a case. Further, the comments should be with the intention of exciting only "such a disapprobation of the measures of the Government as is compatible with a disposition to render obedience to the lawful authority of the Government against unlawful attempts to subvert or resist that authority." While disaffection means the absence of affection or enmity, disapprobation means simply disapproval. It is quite possible to like or be loyal to any one, whether an individual or a Government, and at the same time to disapprove strongly of his or its measures. The object of the explanation is to protect honest journalism and *bona fide* criticism of public measures and institutions with a view to their improvement, and to the remedying of grievances and abuses, and to distinguish this from attempts, whether open or disguised, to make the people hate their rulers. As in cases of defamation, the proprietor and publisher of a newspaper would be liable under s. 124-A, for articles or letters published by him, though purporting to be signed by outsiders, to show his intention and *animus*, as well as articles purporting to represent the views of the paper. It is of course open to the accused to put in any contributions of a different tendency which he may have published, and so to show that those put in by the Crown do not express his intention. QUEEN-EMPRESS v. BAL GANGADHAR TILAK, 22 B. 112.

(557)—*S.* 124-*A*—*Sedition — Ingredients of the offence.*—Changes in policy and changes in measures are liable to criticism, and to criticise and urge objections to them is a special right of a free press in a free country. But, any effort, which aims at impairing the confidence with which the public is entitled to look to Government, and at producing an unwillingness to accept the intervention and protection of the Government, for the purposes for which Governments exist, is within the mischief contemplated by s. 124 of the Code, even though there be no intention to excite a rising or actual

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violence of any kind. EMPEROR v. BHASKAR BALVANT BHOBATKAR, **8 Bom. L.R. 421=30 B. 421=4 Cr. L.J. 1**. [*Not Appr.*, 1 Ind. Cas. 280; *R.*, 11 Bom. L.R. 177, 9 Cr. L.J. 284, 8 Cr. L.J. 215=1 S.L.R. 91, Cr.]

(558)—*S. 124-A—Privilege—Proceedings of Court of Justice—Printing Presses and Newspapers Act* (XXV *of* 1867), *s.* 7—*Declaration by Printer—Liability of Printer.*—A newspaper was prosecuted for sedition. One article only was put in at the trial. The prosecution intended to rely upon other articles also in support of their case and had them translated, and the translation supplied to the accused, in that case. They were, however, never brought upon the record in that case. Where these translations were reprinted by another newspaper, *held*, that the re-publication was not of any proceedings of a Court of Justice, and not, therefore, privileged. In a case like this, the Court shall look into the state of the country and judge whether the re-publication was *bona fide* or not. The person who subscribes to the declaration under the Printing Presses and Newspapers Act must be presumed, under s. 7, to be cognizant of all that he was printing and publishing, and in the absence of any evidence to the contrary, his liability in the matter cannot be gainsaid. APURBA KRISHNA BOSE v. EMPEROR, **35 C. 141=2 M.L.T. 500=7 Cr. L.J. 10=7 C.L.J. 49.**

(559)—*S. 124-A—Reasonable criticism of action of Government—Whether such criticism is sedition—Incitement to insurrection—Effect—Seditious articles in same journal, not forming subject of charge, relevant to show intention—Act* XXV *of* 1867, *s.* 7—*Liability of printer or publisher for seditious matter appearing in his newspaper.*—Where the articles in a newspaper, referred to in the charges against its printer, contain a reasonable criticism of the action of Government in a particular matter, without attempting to create hatred, or contempt of Government, then the accused is not guilty, under s. 124-A of the Penal Code; but, preaching war and an invitation to the people to rise against the Government of the country and to take steps for entering into revolution fall within that section. Articles taken from the same issue of the paper, other than those which form the subject of the charge for which the prisoner is being tried at the time, are relevant to show the style of the paper and the intention of the person, who printed and published the articles forming the subject of the charge. S. 7 of Act XXV of 1867, which applies both to civil and criminal proceedings, makes the printer or publisher responsible for whatever may appear in a newspaper, whoever may be the writer of the articles in it; and, therefore, a prosecution may proceed against the printer, unless he can prove absence from the newspaper office in good faith and without knowledge that the seditious articles would be published during his absence. But it is not absence in good faith for a printer, to go away knowing very well what is going to happen in his absence, and for the purpose of shirking his liability. EMPEROR v. PHANENDRA NATH MITTER, **35 C. 945=8 Cr. L.J. 438.** (22 B. 112, *Diss.*; 9 M. 387, *Appr.*) [*R.*, 32 M. 3=5 M.L.T. 1=1 Ind. Cas. 22=9 Cr. L.J. 108.]

(560)—*S. 124-A—Crim. Pro. Code, ss.* 221, 222, 223, 225, 537—*Form of charge—" Words " spoken—Whether to be set out, if so, whether in language spoken—Substance of ' words ' spoken only set out—Irregularity—Indian Evidence Act, ss.* 159, 160—*Notes of speeches—Admissibility in evidence.—Held, per Benson and Wallis, JJ.* (*Sankaran Nair, J., dissenting*), that, if an offence under s. 124-A of the Indian Penal Code, is committed by means of words spoken, the requirements of the law are satisfied if the charge gives such a description of the words used as is reasonably sufficient to enable the accused to know the matter with which he is charged, that is, if the charge states the words used with *substantial*, though not absolute, accuracy. Even if the words, or the substance of the words used, are not entered at all in the charge, this will amount only to an irregularity and will not afford ground for reversing a conviction unless the accused has, in fact, been misled by the omission, and it has occasioned a failure of justice. (S. 225, Crim. Pro. Code). *Held*, also, that, as respects charges, the Courts are governed in this country by the provisions of the Code of Criminal Procedure which are not, and do not purport to be, an exact reproduction of the English rules as to indictments, and indeed were expressly framed in such a manner as to give no room for merely technical objections not going to the merits of the case. *Held, per Benson, J.*, that the gist of the offence under s. 124-A of the Indian Penal Code, is the bringing or attempting to bring into hatred or contempt or the exciting or attempting to excite disaffection towards His Majesty or Government established by British India. The opening words of the law in section," whoever by words, either spoken or written, or by signs, or by visible representation or otherwise " merely indicate the various means by which the offence may be committed. The concluding words " or otherwise " indicate the universality of the means by which the offence may be committed. The whole sentence might have been shortly expressed by saying " whoever *by any means* brings, etc. " Words of any kind are by no means a necessary element of the offence. It may be committed without any words being spoken or uttered. *Held per Wallis, J.*, that, under s. 221 (3) of the Code of Criminal Procedure, as the law does not give offences under ss. 124-A and 153-A, any specific name, so much of the definition of the offence must be stated as to give the accused notice of the matter with which he is charged. Then, under s. 222, the charge must contain particulars as to the time and place of the alleged offence, and, under s. 223, when the offence is such that the particulars mentioned in ss. 221 and 222 do not give the accused sufficient notice of the matter with which he is charged, the

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charge shall contain such particulars of the manner in which the offence was committed as will be sufficient for that purpose. *Held, per Wallis, J.*, that it would be best to set out the words which it is intended to prove, as nearly as possible, but, so long as the substance of the words is set out, there is nothing in the Indian Law that requires that the words set out should be proved *verbatim et literatum.* (*Contra, per Sankaran Nair, J.*, see *infra.*) *Held*, also, *per Wallis, J.*, that if the charge is in English, and the words uttered in Tamil, there is nothing in the Indian Law requiring that the actual words should be set out in Tamil. (*Per Sankaran Nair, J., contra*, see below). *Held, per Sankaran Nair, J.*—Where the charge under s. 124-A, Indian Penal Code, is for exciting disaffection or bringing His Majesty into hatred, the culpability consists in the disastrous consequences brought about by the words of the accused and the charge need not set out the words nor need the words themselves be proved, as the gist of the offence in that case would be exciting disaffection, not the uttering of seditious words, and the speaker may be guilty even though his words may be innocent or uttered in a sense different from that in which they were understood by the audience. But where the charge is for attempting to create disaffection, the facts to be proved by the prosecution are entirely different. The section shows that a person must speak or write certain words and by such words *attempt* ......and to judge whether the words are seditious, it is essential that the words themselves used by the speaker must be proved ; otherwise it would be impossible for him to know what he is to defend. Therefore, in that case, as the words written or spoken are the gist of the offence, they ought to be set out in the charge, and those words themselves, whether set out or not, must be proved. Attempt implies intention. It is not enough, therefore, that a person writes certain words. He may write a seditious pamphlet and keep it locked up in his drawer. He has not thereby committed an offence. Similarly, it is not enough that he entertains an intention to excite disaffection, to bring him within the scope of the section The offence constituted by it requires an act coupled with a distinct intention. A man's intention must be gathered from the words used by him, not by what others rightly or wrongly understood him to mean. *Held*, also, *per Sankaran Nair, J.*, that, whether the words spoken are seditious or not, is a matter of law to be determined by the Judge and should not be left to the judgment of witnesses ; and, for the Court to judge whether the words are seditious, it is essential that the words themselves alleged to have been used ought to be set out in the charge and must be proved. If the words be not in the English language, it must be set out in the spoken language *verbatim* with an English translation. *Held*, also, *per Sankaran Nair, J.*, that, though it may not be necessary to prove all the words or passages set out in the charge

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to obtain a conviction, it will be sufficient that the words proved amount to an offence. *Held*, also, that, in a charge for uttering seditious words, such words may be indicated at least with reasonable certainty in the charge ; the accused must be informed of such words ; and such words, or some of them that would show the guilt, must be proved. This question has nothing to do with the charge itself. What are the facts to be proved to secure a conviction is a very different question from whether the accused has sufficient notice of those facts necessary to be proved against him. In the latter case, an omission to state the particulars which ought to be stated in the charge will not be treated as material, unless it has occasioned a failure of justice. The English rule as to what ought to be set forth in the indictment is modified in India by ss. 225 and 537, Crim. Pro. Code ; but the provisions as to what ought to be contained in a charge, have nothing to do with the question, what are the facts to be proved to constitute the offence ; and, to convict a person for attempting to excite disaffection, the words themselves must be proved. *Held*, further, *per Sankaran Nair, J.*, that external evidence may be offered to prove the intention or the meaning of the language which forms the subject of the charge. *Held, per Sankaran Nair, J.*, that under s. 159 of the Indian Evidence Act, it is not necessary that the witness must be sure, that what was reduced to writing by him is a correct record. It is enough if, on reading it, the true facts are recalled to his memory. But if he does not actually recollect himself what the appellant said, if the words are not recalled to his memory, then the notes may be admitted under s. 160, Evidence Act, if he is sure that the facts were correctly recorded in the notes. If the words have not been correctly recorded, but only the writer's impressions of those words are recorded, then the notes will be inadmissible under s. 160, Evidence Act. *In re* MYLAPORE KRISHNASAMI, **5 M.L.T. 393 = 9 Cr. L J. 456 = 32 M. 384 = 2 Ind. Cas. 33.**

(561)—*S. 124-A—Sedition — Articles in a newspaper—Absence of evidence to prove authorship—Evidence of authority, whether admissible—Act* XXV *of* 1867 (*Printing Presses and Newspapers Act*), *s.* 7—*Declaration under — Effect—Presumption as to proprietor's liability —Lord Campbell's Act.* 6 *and* 7 *Vic., c.* 90—*Applicability in India—Nature of the liability of a newspaper proprietor—Evidence—Articles other than the one which is the subject of charge —Seditious character—Admissibility to prove.* —Though Act XXV of 1867 has nothing to do with the liability of the proprietor, yet, the fact that a person makes a statutory declaration under s. 7 of that Act raises a presumption of his liability as printer and publisher, and when he does not rebut the presumption, his liability is conclusively established. When there is no evidence to prove the authorship of a seditious article, evidence may be admitted to show that the article was published under the authority of the accused, so as to render him

criminally liable. Strictly speaking, the publication of a seditious article in a newspaper is not ordinarily the work of either the writer alone or of the proprietor alone or of the editor alone, or even of all the three together. The maxim *qui facit per alium facit per se* applies, and the publication is held to be the act of the person or persons who authorised it, and the grant of the authority may be proved by direct evidence, or as a reasonable inference from the conduct of the parties and all the surrounding circumstances. In each case, it is a pure question of fact, to be proved like any other fact by direct evidence or as a reasonable inference from facts proved or admitted, and considered in relation to all the circumstances of the particular case. *Held*, that, although Lord Campbell's Act, 6 and 7 Vic., c. 90, is not in force in India, the principles embodied in the provisions of that Act are applicable in construing the law as laid down in the Indian Penal Code, the object of that Act having been to bring the law into harmony with general principles. *Held*, that, though it is open to the Court to presume that the proprietor of a newspaper, who, from his very position as such, has the control of the paper, authorised the publication of a seditious article, yet the propriety of making such a presumption would depend upon circumstances. It would be obviously improper in the case of an absentee proprietor, or in the case of a large paper with a separate editor responsible for the selection and publication. HARI SARVOTHAMA RAO v. EMPEROR, **5 M.L.T. 415 = 9 Cr. L.J. 506 = 32 M. 338 = 2 Ind. Cas. 193.**

(562)—*S.* 124-*A*—*Act* XXV *of* 1867 (*Press*), *s.* 4—*Declaration made under the Act—Effect of the declaration—The declarant taking no part in the management of the press—Publication of a seditious book at the press—The declarant having no knowledge of the sedition and having no intention to publish it—Penal Code* (*Act* XLV *of* 1860), *s.* 124-*A*—*Sedition—Intention.*—The accused had made a declaration, under s. 4 of the Press Act (XXV of 1867), that he was the owner of a certain press called the "Atmaram Press." The management of the press was carried on by another person who looked after the whole concern. At this press was printed a bulky book which purported to be one devoted to metaphysics and philosophy and was styled "Ekashloki Gita." It also contained seditious matter at long and varied intervals and interspersed with discussions of religious matters. The accused took no part in the management of the press; nor did it appear that he had read the book or acquainted himself with the nature of it. He was charged with the offence made punishable under s. 124-A, Penal Code, and convicted of the same. On appeal:—*Held* by *Chandavarkar, J.*—that the cumulative effect of the surrounding circumstances was such as to make it as probable that the accused had not read the book as that he had known its seditious object; and that the evidence having thus been evenly balanced and equivocal, a reasonable doubt arose as to the guilt of the accused, the benefit of which must be given to him. *Held* by *Heaton, J.*, that it was impossible to convict the accused under s. 124-A, Penal Code, unless it was found that he had an intention of exciting disaffection, and that the evidence fell very far short of proving the intention. *Per Chandavarkar, J.*—A declaration made under s. 4 of the Press Act, 1867, is intended by the legislature to have a certain effect, namely, that of fastening responsibility or the conduct of the press on the person declaring in respect of matters where public interests are involved. Therefore, when a book complained of as seditious or libellous is printed in a press, the Court performing the functions of a jury may presume that the owner had a hand in the printing and was aware of the contents and character of the book. But whether such a presumption is warranted in any individual case must depend upon its own facts and circumstances. The presumption, however, is not conclusive, it is not one of law but of fact, and it is open to the accused to rebut it. The object of making a declaration under s. 4 is to create a sense of responsibility, so that, if any public mischief occurs owing to any action or conduct of the press, the law can at once know who must *prima facie* be held responsible for it. At the same time, the Courts should be careful to draw no inference of guilt against the declarant from the mere fact of declaration, but must consider the surrounding circumstances and probabilities to enable them to arrive at a conclusion whether the declarant had a hand in the printing and publishing so as to bring him within the operation of s. 124-A, Penal Code, where the charge is under that section. *Per Heaton, J.*—An attempt to do a thing must necessarily involve some intention; for a man cannot be said to attempt to do that which he has absolutely no knowledge of doing and no intention to do. EMPEROR v. SHANKAR SHRIKRISHNA DEV, **12 Bom. L.R. 675 = 7 Ind. Cas. 937 = 11 Cr. L.J. 546.**

(563)—*S.* 124-*A*—*Offence under.*—In a charge under s. 124-A, I.P.C., the question to be determined is, whether there was an agreement between two or more of the accused to do all or any of the unlawful acts charged. The fact that the purpose was not immediate, if it be a fact, would only be material in so far as it might bring the matter within the saving operation of s. 95, I.P.C. Though, to establish the charge of conspiracy, there must be agreement, there need not be proof of direct meeting or combination, nor need the parties be brought into each other's presence; the agreement may be inferred from circumstances raising a presumption of a common concerted plan to carry out the unlawful design. It is not necessary that all should have joined in the scheme from the first; those who come in at a later stage are equally guilty, provided that the agreement be proved. BARINDRA KUMAR GHOSE v. EMPEROR, **37 C. 467 = 14 C.W.N. 1114 = 7 Ind. Cas. 359 = 11 Cr. L.J. 453.**

(564)—*S.* 124-*A*—*Offence under.*—The printer of a newspaper is guilty of an offence under

s. 124-A of the Indian Penal Code when the newspaper printed by him contains seditious matter. As the section now stands, the offence is independent of intention. Under s. 7 of Act XXV of 1867, a printer must be held to be printer of every portion of every periodical work, whereof the title shall correspond with the title of the periodical mentioned in his declaration, unless the contrary is proved. The words "unless the contrary is proved" allude to the fact that he is the printer, for, he might have ceased to be so, and do not refer merely to temporary absence during which his work might be carried on by subordinates. RAM NATH v. CROWN, **69 P.L.R. 1905 = 1 P.R. 1905, Cr. = 2 Cr. L.J. 31.**

(565)—*S. 124-A—Proof of publication of seditious matter—What amounts to attempt to commit sedition.*—If the manuscript of a seditious libel be proved to be in the handwriting of the accused, and it be also proved to have been printed and published, this is evidence to show that it was published by the accused, although there be no evidence given to show that the printing and publication was by the direction of the accused (1839, 9 C. & P. 462, *F.*) Nor is it necessary to prove the actual posting, in order to establish the fact of publication of seditious matter transmitted through post. S. 124A. I.P.C., includes an attempt in the definition of the offence of sedition. Attempts do not imply success. The fact of the accused making manuscript copies of seditious printed articles and posting them, with a covering letter requesting the addressee and others to circulate the same amongst others, when the packet was intercepted by another person and never reached the addressee, amounts only to an attempt of an offence under s. 124-A, I.P.C. SURENDRA NARAYAN ADHICARY v. EMPEROR, **39 C. 522 = 16 Ind. Cas. 327 = 13 Cr. L.J. 679.**

(566)—*S. 124-A—Sedition—Publication*—28 *and* 29 *Vict.*, c. 18—*Evidence Act*, *s.* 45, *Illus.* (c)—*Expert evidence—Its admissibility—Comparison out of Court.*—Sending a seditious matter by post addressed not to a private individual but to the representative of a large number of men (*e.g.*, captain of a school) amounts to publication if it is opened by anybody. The one thing required for the admission of the evidence of an expert witness as to handwriting is that the writing with which the comparison is made should be proved beyond question of doubt to be that of the person alleged. The evidence of an expert in handwriting is inadmissible, if there is no comparison with proved or admitted handwriting in open Court in the presence of the party affected. SURESH CHANDRA SANYAL v. THE KING-EMPEROR, **16 C.W.N. 812 = 39 C. 606 = 13 Cr. L J. 289 = 14 Ind. Cas. 753.** (2 Foster and Finlason's Nisi Prius. Rep. 24, 1660, 4 E. & F. 490, 1865, *R.*, 22 W.R. 272, *F.*)

(567)—*S. 124-A—Sedition — Newspaper — Printer—Fair comment—Admissibility in evidence of articles other than one complained of—Evidence Act* (*I of* 1872), *s.* 15—*Journalist not expected to write with precision.*—In order to use other articles than that complained of as seditious for the purpose of showing the meaning of certain expressions used in the article complained of and also to show the intention of the writer, it is necessary to show who the writer was and that all the articles produced were by the same hand. The writer may be guilty of exciting or attempting to excite feelings of "disaffection", as that term is used in s. 124-A of the Penal Code, no matter how guardedly he may attempt to conceal his real object, but the printer and publisher cannot be punished if the concealed object is not established by evidence on the record. (20 A. 55. *Rel.*) A man may comment upon any measure or act of Government, whether legislative or executive, and freely express his opinion upon it. He may express the strongest condemnation of such measures and he may do so severely, and even unreasonably, perversely, or unfairly. So long as he confines himself to that, he will be protected by the explanation. But if he goes beyond, and, whether in the course of comments upon measures or not, holds up the Government itself to the hatred of his readers—as for instance, by attributing to it every sort of evil and misfortune suffered by the people, for dwelling on its foreign origin and character, or imputing to it base motives or accusing it of hostility or indifference to the people—then he is guilty under s. 124-A and the explanation will not save him (22 B. 112, *Rel.*) A writer in a newspaper called upon the Nationalist Party to "once more assume their legitimate place in the struggle for Indian liberties:" *Held*, that the use of the word "liberties" in the plural would not *prima facie* point to liberation of the country from foreign rule, but to certain specific liberties, and that the words were not seditious. A writer is entitled to express his opinion on the Reform Scheme, and the mere fact that he states that the scheme is not a genuine reform or not a genuine measure of constitutional progress, cannot be seditious. A writer wrote the following in a newspaper : "We shall not break the law and, therefore, we need not fear the law. But, if a corrupt police unscrupulous officials or a partial judiciary make use of the honourable publicity of our political methods to harass the men who stand in front by illegal ukases suborned and perjured evidence or unjust decision ; shall we shrink from the toll that we have to pay on our march to freedom" : *Held*, that these words did not fall within s. 124-A of the Penal Code. There is no harm in a writer stating that, if his association, which he believes to be a lawful one, is suppressed, the proclamation suppressing it will be arbitrary. A statement that the Reform Scheme is monstrous and misbegotten, because it is not founded upon democratic principles, is not by itself one that exceeds fair and reasonable comment. A journalist is not expected to write with the accuracy and precision of a lawyer or a man of science ; he may do himself injustice by hasty expression of keeping with the general character

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and tendency of the articles. A journalist wrote: "Until these demands are granted we shall use the pressure of that refusal of co-operation which is termed passive resistance. The Swadeshi-Boycott movement still moves by its own impetus. We must free our social and economic development from the incubus of the litigious resort to the ruinously expensive British Court. *Held* that the words were not seditious. MON MOHAN v. EMPEROR, **8 Ind. Cas. 531 = 15 C.W.N. 141 = 11 Cr. L.J. 667.**

(568)—S. 124-A—*See* COMPLAINT, PROCEDURE ON RECEIPT OF COMPLAINTS, 5 M.L.T. 1 = 32 M. 3 = 9 Cr. L.J. 108 = 1 Ind. Cas. 22.

(569)—S. 124-A—*See* SANCTION TO PROSECUTE—NATURE AND FORM OF SANCTION, 7 C.L.J. 49 = 7 Cr. L.J. 10 = 35 C. 141 = 2 M.L.T. 500.

(570)—S. 124-A—*See* SECURITY FOR GOOD BEHAVIOUR, 34 C. 991 = 6 C.L.J. 699 = 11 C.W.N. 1050 = 6 Cr. L.J. 297.

(571)—S. 124-A—*See* Nos. 18, 467, 540, 541, *supra.*

(572)—*Ss.* 124-*A and* 131—*Sedition—Intention — Attempt — Confiscation of press not allowed—Presumption of Hindu family being joint—S.* 517, *Crim. Pro. Code* (1898).—Where P in the issue of "India" (a Vernacular weekly newspaper) of 25th April, 1907, published an article headed "The British Government's Native Forces, *Bande Mataram*," and which purported to be a letter from a sympathiser of native soldiers to their address, and calculated to seduce the soldiers of the Indian army from their allegiance and their duty to His Majesty the King-Emperor of India, and D abetted the same by printing the article at his press. *Held*, that the accused were rightly convicted under ss. 124-A and 131 of the Penal Code, and that publishing broad-cast some 3,000 copies of the letter which was bound to reach them, is clearly an act amounting to an attempt and, *held also*, that the intention mentioned in the above sections is to be deduced from the terms of the seditious article, editorial comments, and previous writings on the subject. *Held further*, that, in the case of conviction under the above sections, a press used for printing a seditious article cannot be confiscated under s. 517 of the Crim. Pro. Code, 1898. *Remark.*—In determining the ownership of the press, it was pointed out, that, in the absence of evidence of partition, where the members of a Hindu family live and eat together, the presumption, according to the Hindu Law, is that the family is joint and the property standing in the name of one of them belongs to them all jointly. PINDI DAS v. KING-EMPEROR, **37 P.W.R. 1907, Cr. = 6 Cr. L.J. 411.** (8 C.W.N. 887, 11 C.W.N. 1046, 4 P.L.R. 1904, *F.*)

(573)—*Ss.* 124-*A*, 153—*Same pamphlet—Different passages—Distinct offences under two sections—S.* 71, *I.P.C.—Separate conviction under each section — Legality — Crim. Pro. Code, s.* 196—*Order stating facts—Non-specification of sections of Penal Code—Sufficiency.*—Where separate convictions and sentences were passed upon three persons on the charge of attempting to promote feelings of hatred between different classes of His Majesty's subjects, and where it was contended that this charge did not comprise a distinct offence but was included in the charge of attempting to excite disaffection against the Government established by law in British India, *held* that the offence of attempting to promote feelings of hatred between the different classes of His Majesty's subjects was distinct from and not a necessary ingredient in the offence of exciting disaffection against the Government established by law in India. It is not necessary for the charges to specify distinct passages in the pamphlet which were alleged to constitute the offence of attempting to promote feelings of hatred, and the distinct passages which were alleged to constitute the offence of attempting to excite disaffection. It is sufficient to allege generally that the pamphlet constitutes an attempt to promote feelings of hatred and also to excite disaffection. The two offences, though committed by means of the same pamphlet, are distinct ones and do not come within the terms of s. 71, I.P.C. So long as the matter of complaint is made sufficiently clear in the order, no specification of the particular section of the Penal Code appears to be required by s. 196, Crim. Pro. Code. IMPERATOR v. VIRUMAL BEGRAJ, **4 S.L.R. 55 = 8 Ind. Cas. 203 = 11 Cr. L.J. 583.**

(574)—*Ss.* 124-A, 153, 153-A *and* 505—*Difference between ss.* 124 *and* 153-A—*Definition of attempt—Promoting feelings of enmity or hatred—Englishmen and Indians, two separate classes.*—On 8th December, 1899, one Rafat Ali, a police constable, died from laceration of the brain and hæmorrage, caused by a violent blow on the back of the head, which was due to a fall from a horse. The issue of the "Punjabee" newspaper, dated 11th April, 1906, contained two paragraphs headed respectively:—"How misunderstandings occur" and "A deliberate murder." The first paragraph refers to two cases of oppressions alleged to have occurred at Rawalpindi, and observes that the "Telegraph" newspaper wants the Viceroy to order an inquiry into these cases. The paragraph thus proceeds:—"Has the 'telegraph' then such a great confidence in the panacea of enquiry? And are instances of man-slaughter, yea! even of deliberate murders of Indians, at the hands of European officers, so rare in India that our contemporary should be ready to pin his trust to the impartiality of an inquiry? How many poor Indians have been mercilessly launched into eternity in the past, for being mistaken for bears, monkeys, or for having so-called enlarged spleens?" The second runs as follows:—"As to deliberate murders, unpremeditated, of course, of Indians, by irate, irascible, officers, instances though rare, are not wanting. Only the other day, two European Officers, of a district not very far from Lahore, went out shooting on horseback,

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with a mounted orderly. Amongst other denizens of the forest, which fell to their gun shots, was a boar......As soon as the animal was despatched, they asked their mounted orderly to carry the carcase secured to his saddle. The man, who was a follower of the Prophet, however, instead of complying with the orders of the *Hazoors*, refused point blank to do their bidding, or even to touch the unclean animal......He (one of the *Sahibs*) aimed at the poor Indian (who cared more for the faith that was in him, his *deen*, than even the favour of his official), and shot him dead without compunction or remorse. The gentleman alleged to have murdered Rafat Ali is Mr. R. D. Spencer, who was at the time District Superintendent of Police at Gujranwala. *Held*, that both the Proprietor, who is also the publisher and the editor of the "Punjabee," consciously intended to promote enmity and hatred on the part of Indians towards Europeans, by publishing the above articles, and have been rightly convicted of an offence under s. 153-A, Indian Penal Code, and that they are not saved by the explanation to the section. *Held*, also, that, for purposes of the section, Englishmen and Indians constitute two separate classes. *Held*, by *Reid, J.*—(1) That s. 153-A is not more ancillary to s. 153, than s. 124-A to s. 124, I.P.C., and pointed out the difference between s. 124-A and s. 153-A. (2) That, where there is an intention, and something is done with the object of effecting the result intended, there is an attempt. (3) That, whether the feelings which exist are of indifference or of friendship or of enmity or hatred, anything, which tends to convert the two former into enmity or hatred, or to increase the enmity or hatred, promotes feelings of enmity or hatred. JASWANT RAI v. KING-EMPEROR, **14 P.W.R. 1907, Cr.**=5 **Cr. L.J. 439**=**2 M.L.T. 272**=**10 P.R. 1907, Cr.** (22 B. 139, *F. & B.*)

(575)—*Ss.* 124-A, 153-A—*Sedition—Intention—Attempt—Crim. Pro. Code (Act* V *of* 1898), *ss.* 233, 234 *and* 235—*Joinder of charges—Special jury, application for.*—The essence of the crime of sedition consists in the intention with which the language is used. But this intention must be judged primarily by the language itself. Intention for this purpose is really no more than meaning. When a man is charged in respect of anything he has written or said, the meaning of what he said or wrote must be taken to be his meaning, and that meaning is what his language would be understood to mean by the people to whom it is addressed. Expls. 2 and 3 to s. 124-A, Indian Penal Code, are intended to protect criticism of Government measures, and of administrative and executive action of Government, and they give a perfect freedom to journalists, to publicists, to orators and public speakers, to discuss the measures and administrative acts of Government, to disapprove of them, to attack them, and to use forcible and strong language if necessary, and to do everything legitimate and honest in bringing before the public or the

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Government, the fact that their measures or their actions are disapproved by a section of the public, or by that particular speaker or journalist. But no publicist, journalist, or speaker has any right to attribute dishonest or immoral motives to Government. Criticism, though harsh and uncompromising, must be free from the taint of language which is likely to arouse, or calculated to engender feelings of enmity, hatred, or disloyalty against Government. A man is supposed to attempt something which would be the natural and reasonable consequences of his act. If he fails, he does not fail because he did not attempt, but he fails from other causes. Whether he fails or whether he succeeds, the law says no attempt should be made to excite feelings of hatred, contempt, or disaffection. In judging articles which are charged as seditious, due allowance should be made for oriental modes of thought and expression, and for high-flown or classical language. S. 153-A, Indian Penal Code, means that no subject of the Crown is entitled to write or say or do anything whereby the feelings of one class of His Majesty's subjects will be inflamed against another class of his subjects. The accused was charged under s. 124-A, Indian Penal Code, in respect of one article, and separately charged under ss. 124-A and 153-A, Indian Penal Code, in respect of another article. *Held* that he could be tried at one trial on both the charges. EMPEROR v. BAL GANGADHAR TILAK, **10 Bom. L.R. 848**=**8 Cr. L.J. 281.** [*R.*, 11 Cr. L.J. 583=8 Ind. Cas. 203=4 S.L.R. 55; *R.*, 33 B. 221=10 Bom. L.R. 973=9 Cr. L.J. 226=4 M.L.T. 450.]

(576)—*Ss.* 124-*A*, 153-*A*—*Imputations of bribery against ministerial officers of the Law Courts and the police and of Government's neglect to inquire into such abuses—Inveighing against Hindus and Mahomedans alike—Effect—Conviction and separate sentences under s.* 124-*A, and* 153-*A passed on same trial—Appeal—Ss.* 35 (3), 408 (*c*), *Crim. Pro. Code.*—Where an article imputes wholesale bribery to the ministerial officers of the Courts and to the lower officers of the Police force, and expresses grave doubts as to whether Government ever enquires into the truth of the grievances as it is occupied so much with investigations of boycott, dacoity and seditious matters, etc., and it is published when sedition is rife and the minds of people are under excitement, it may have the effect of making people think that the Government is not doing its duty and is not therefore a good Government, and goes beyond fair comment and is punishable under s. 124-A.—If a particular article is charged as being seditious on the ground that it says more than appears on the face of it, it is the duty of the prosecution to show that it has in fact the guilty meaning or intention attributed to it. The writer of an article inveighed both against 'Babus' (Hindus) and 'Meahs' (Mahomedans) as professing brotherhood with and robbing the poor Mahomedan ryots, and referred to the alleged conduct of the missionaries towards their converts only by way of illustration:

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Held that the article was not intended to create enmity between the missionaries and any other subjects of the King, and that there was no such deliberate attempt to incite one class against another, as to be punishable under s. 153-A of the Code. *Held* that, as the prisoner was convicted under s. 124-A, I.P.C., and sentenced to two years rigorous imprisonment under that section, and also under s. 153-A, I.P.C., and sentenced to one year's rigorous imprisonment under that section, the aggregate sentence of three years should be considered as one sentence for the purpose of appeal, and as s. 408, proviso (c), Crim. Pro. Code, provides that a person convicted under s. 124-A has an appeal direct to the High Court, it is a reasonable inference that the appeal against the single sentence of three years under both the sections should lie to the High Court. JOY CHANDRA SARKAR v. EMPEROR, **38 C. 214=12 Cr. L.J. 348=10 Ind. Cas. 948.** [*R.*, 38 C. 227=10 Ind. Cas. 954.]

——S. 131.

(577)—S. 131—*See* LIBEL, 14 C.W.N. 713=37 C. 760=6 Ind. Cas. 81.

(578)—S. 131—*See* No. 572, *supra*.

——S. 141.

See RIOTING.

See UNLAWFUL ASSEMBLY.

(579)—*S.* 141—*Offences against Public Tranquillity—Assembly to enforce a right, whether unlawful.*—The intention indicated by heading of Ch. VIII, in which s. 141 is inserted, was to constitute certain acts, which endangered the public peace, into offences against Public Tranquillity, but it does not follow from it either that a person may do what he is entitled to do or prevent another from doing what he is not entitled to do by means of criminal force or by show of criminal force. In construing s. 141, regard must be had not only to the general intention deducible from the heading of the chapter, but also to the specific mode in which the legislature intended to carry out the intention. The word in cl. 4 " to enforce a right or supposed right " show that it is perfectly immaterial, whether the act which one seeks to prevent by the use of criminal force is legal or illegal, the test of criminality being the determination to use criminal force and act otherwise than in due course of law so as to threaten the public peace. QUEEN-EMPRESS v. TIRAKADU, **14 M. 126=1 Weir 59.** [*R.*, 35 C. 103=7 Cr. L.J. 123, U.B.R. 1905, 2nd Qr., Penal Code, 21.]

(580)— *S.* 141—*Riot — Appeal rejected — Directions to Deputy Commissioner.*—In this case the Deputy Commissioner was requested to be more careful to observe the definition of the offence of rioting as laid down in s. 141, I.P.C., which he seemed to have overlooked. CROWN v. MAHUMDOO, **9 P.R. 1866, Cr.**

(581)—*S.* 141, *cl.* 2—*Scope of the clause.*—S. 141, cl. 2, cannot have the effect of making an assembly of persons an unlawful assembly, if the object with which they assembled was a perfectly legal one. UMA CHARAN SINGH v. EMPEROR, **29 C. 244=6 C.W.N. 164.**

(582)—*S.* 141, *cl.* (4)—*Unlawful assembly—Maintenance of existing peaceful possession with or without title—Enforcement of right by person out of possession.*—Where certain persons were merely acting in maintenance of an existing peaceful possession, no matter whether the possession was with or without title, *held*, that they could not be said to have been enforcing any right or supposed right and, therefore, could not be held to form an unlawful assembly within the meaning of s. 141, cl. (4), Penal Code. *Held further*, that a person who is out of possession, if he has the right, must enforce it in the way prescribed by law and cannot be permitted to vindicate it by the use of criminal force. SARABDAWN SINGH v. KING-EMPEROR, **17 O.C. 21=23 Ind. Cas. 184=15 Cr. L.J. 232.**

(583)—S. 141—*See* Nos. 69, 90, 381, 400, 401, 431, 432, *supra* and *see* No. 710, *infra*.

(584)—*Ss.* 141, 143—*Unlawful assembly, what constitutes.*—In this case, it was held that there was not sufficient ground for the conclusion that the common object of the accused was to effect their object by force, or show of force, and that, consequently, they did not constitute an unlawful assembly. ISMAIL v. QUEEN-EMPRESS, **U.B.R. 1897—1901, Vol. 1, 259.** (16 C. 206, *R.*)

(585) — Ss. 141, 143 — *See* GAMBLING, 1 Weir 53.

(586)—Ss. 141 and 143—*See* PRIVATE DEFENCE, RIGHT OF, 1 Weir 64, 14 M. 126=1 Weir 59.

(587)—*Ss.* 141, 143, 148, 326—*Rioting—Maintaining a right, lawful common object—'Enforcing a right,' meaning of.*—The complainant's party without the permission of the petitioners constructed a dam across a pyne exclusively belonging to the petitioners, who had obtained an injunction from the Civil Court restraining the complainant's party from interfering with the petitioners in their use and occupation of the pyne. The petitioners in attempting to cut the dam were opposed by the complainant's party, two of whom were struck by the petitioners, and the petitioners were convicted of rioting and of causing grievous hurt. *Held*, that, after the Civil Court decree and injunction, the petitioners could not be held to be " enforcing a right " within the meaning of s. 141 (4), and the presence of the complainant's party in opposing the petitioners was a criminal trespass which entitled the petitioners to a right of private defence. The phrase 'to enforce a right' can only apply when the party claiming the right has not possession over the subject of the right, and therein lies the distinction between 'enforcing a right' and " maintaining a right." A party in possession is entitled to resist and repel an aggression, and his action in so doing would be

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in the maintenance of his right. RAMNANDAN PROSAD SINGH v. EMPEROR, **17 C.W.N. 1132 = 14 Cr. L J. 463 = 20 Ind. Cas. 623.**

(588)—Ss. 141, 143 and 341—*See* RIOTING, 5 M.L.T. 85 = 2 Ind. Cas. 613.

(589)—Ss. 141, 144 and 352—*See* UNLAWFUL ASSEMBLY, 24 M. 124 = 1 Weir 53.

(590)—*Ss.* 141, 147 *and* 325—*Warrant of attachment of moveable property issued by Civil Court—Lawful warrant—Civ. Pro. Code* (1882), *sch.* 4, *Form No.* 136—*Rioting in resisting the execution of the warrant.*—A warrant, issued by the Civil Court for the seizure of moveable property of the judgment-debtor, when it is general in its terms, and does not authorise the seizure of the goods of the judgment-debtors, nor does it purport to give the peon authority to enter into the house of the judgment-debtor for the purpose of attaching their property, is not a warrant which can be legally executed, against the judgment-debtor. Therefore a resistance to the execution of such a warrant does not render persons liable to conviction under s. 147, but when the right of resistance is exceeded and a severe injury, not called for, is inflicted, the person who inflicts such injury may be convicted under s. 325. UMA CHARAN SINGH v. EMPEROR, **29 C. 244 = 6 C.W.N. 164.**

(591)—*Ss.* 141 (*fourth*), 149 *and* 99—*Rioting—Accused in possession of land—Common object to retain peaceful possession—Entry by others—Affray—Use of force by accused—Injuries caused—No offence committed—Resistance to aggressor—Whether offence under s.* 149—*Scope of s.* 141.—While the 1st accused and his party, who were entitled to enter upon the land and to reap the crop, were in possession of the land and were reaping the crops, the complainant's party came upon the scene to remonstrate and (presumably also) to prevent them from reaping the crop, with the result that there was an affray in which persons on both sides were injured. *Held* that, from the mere fact that the accused went to the land prepared to overcome any resistance, their common object could not be said to come within the purview of s. 141 (fourth), I.P.C. Scope of s. 141 (fourth), I.P.C., discussed. *Held* also that, under the circumstances of the case, neither the first accused nor any of the other accused committed any criminal offence by the mere entry on the land. The accused, having effected a peaceable entry on to the land and being in possession of land and crop to which they were legally entitled, had a good right, subject to the restrictions contained in s 99, I.P.C., to prevent the complainant's party from entering forcibly on to the land and carrying away the crops. It is no offence under s. 149, I.P.C., to resist an aggressor unless the aggression be in execution of law or of some legal process. LASHKARI KHAN *walad* RAJO KHAN v. THE CROWN, **8 S.L.R. 343 = 16 Cr.L.J. 536 = 29 Ind. Cas. 664.**

(592)—*Ss.* 141, 150 *and* 157—*Harbouring persons hired for unlawful assembly—Proof of unlawful assembly.*—S. 157 is of wider application than s. 150. It provides for an occurrence that may happen and makes the harbouring, or receiving or assembling of persons, who are likely to be engaged in any unlawful assembly, an offence. Here also, as in s. 150, the law contemplates the imminence of an unlawful assembly and the proof of facts which would go to constitute an unlawful assembly. A finding that "what the accused has been doing is collecting and harbouring men for the purpose of committing a riot, should he find it his interest to do so" is not, in the absence of proof, that there has been any unlawful assembly composed of the persons alleged to have been hired by the accused and in the course of which some offence has been committed for which the accused would be responsible equally with those who were members of that unlawful assembly, sufficient to warrant a conviction either under s. 150 or under s. 157 of the Code. RAM LOCHAN SARCAR v. QUEEN-EMPRESS, **29 C. 214 = 6 C.W.N. 143.**

(593)—*Ss.* 141 (5), 186—*Unlawful assembly—Use of criminal force.*—The mere use of criminal force or show of criminal force to any person to take possession of any property, is not sufficient to bring the case within the clause, unless some criminal intent is proved against the person so using force or making a show of force. Where a District Board decided to replace a bridge across a *khal*, which was out of repair, by means of a road, with pipes passing underneath for the flow of water, and the owners of the bed of the *khal* objected to the laying of the pipes on the ground that it would obstruct the flow of water in the *khal* and removed the pipes placed there, *held*, that the conviction of owners under ss. 143 and 186 was bad. ADDEITA BHUIA v. KALI DAS DE, **12 C.W.N. 96 = 6 Cr. L J. 393.**

——S. 142.

(594)—S. 142—*See* NO. 90, *supra* and *See* No. 2217, *infra*.

(595)—*Ss.* 142, 299, 302, 304, 325, 366—*Abduction—Carrying off a woman by force—Murder — Magistrate when to commit — His incompetency to apply a minor offence—Damaging remarks against witnesses—Chief Court's power to expunge them on revision—Evidence of a woman of loose character—Crim. Pro. Code* (*Act* V *of* 1898), *s.* 439.—*Held*, that :—(1) Carrying off a woman by force is not an offence under s. 366, Penal Code, if there is no evidence that the intention was to marry her against her will or to enforce her to illicit intercourse or that it was known to be likely that anything of the sort would result. Mere abduction without criminal intent of some specified kind is not recognized as an offence in the Penal Code. (2) When a raid is made on a man's house at night, and he is violently beaten and he sustains very serious injuries including the fracture of several ribs one of which pierces one of his lungs, with the result that he dies shortly afterwards, the persons concerned in the raid are responsible, in the absence of any *prima facie* extenuating

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circumstances, for the offence of murder. In such a case, if there is sufficient reliable evidence against the accused, it is the duty of the Magistrate to commit them on a charge of murder, leaving the Sessions Court to determine whether ss. 302 or 304, Penal Code, or any other section, applied. (3) In the case of a serious offence, it is not safe to rely upon the testimony of a woman of loose character, when there is no sufficient reliable evidence to corroborate her. (4) Damaging remarks against the character of a witness cannot be made without sufficient trustworthy proof on the record and without further hearing his explanation to the suspicions raised against him. The High Court can, or the Revision side, expunge such like remarks from the judgment of a subordinate Court, if there is no justification for moving them. NABA v. CROWN, **12 P.W.R. 1911, Cr. = 193 P.L.R. 1911 = 12 Cr. L.J. 393 = 11 Ind. Cas. 577.**

——S. 143.

See RIOTING.

See UNLAWFUL ASSEMBLY.

(596)—*S.* 143, *conviction under.*— Where there is no evidence that any of the accused entered into or upon the property with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, they cannot be convicted of an offence under s. 143, I.P.C. EMPRESS v. BIDHI, **A.W.N. 1886, 254.**

(597)—*S.* 143—*Dispute among joint owners —Unlawful assembly with armed men.*—Where one of the parties entitled to joint possession is out of possession, he has no right under the law to attempt to take forcible possession or to take forcible possession after assembling a number of armed men and going to the place, and thereby intimidating the people in possession. BEPIN BEHARI GUHA v. PRANAKUL MAJUMDAR, **11 C.W.N. 176 = 5 Cr. L.J. 19.** [*R.*, 7 C.L.J. 359 = 12 C.W.N. 384 = 35 C. 368 = 3 M.L.T. 385 = 7 Cr. L.J. 256.]

(598)—*S.* 143—*Resistance to the taking of property in possession of the accused.*—Where the accused was in possession of a receptacle containing paddy contributions and the complainant endeavoured to take possession of the paddy forcibly with his servants, but was resisted by the first accused, the complainant's party receiving some blows, *held* that no offence was committed. KING-EMPEROR v. AYYA ANNASAMY AIYAR, **25 M. 624 = 1 Weir 65 = 12 M.L.J. 403.**

(599)—*S.* 143—*Revision—Persons passing by the village of their enemies—Attack by the villagers — Power to quash conviction under s.* 562 *of the Crim. Pro. Code —Held*, that, persons, by simply passing close to the village of their enemies, cannot be convicted under s. 143, I.P.C. *Held*, also that, on revision side, the High Court has power to quash conviction of the accused who have been dealt with by the appellate Court under s. 562, Crim. Pro. Code, even if the convicts have not moved the High Court to exercise that power. RADA KISHEN v. CROWN, **7 P.W.R. 1912, Cr. = 67 P.L.R. 1912 = 15 Ind. Cas. 316 = 13 Cr. L.J. 476.**

(600)—S. 143—*See* DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 5 C.W.N. 368.

(601)—S. 143—*See* SECURITY TO KEEP THE PEACE ON CONVICTION, 25 C. 315 = 7 Cr. L.J. 392, 26 C. 576, 27 C. 983 = 4 C.W.N. 795.

(602)—S. 143—*See* Nos. 202, 402, 431, 445, 584 to 588, *supra and* No. 1342, 2456, 2457, 2898 *infra.*

(603)—Ss. 143, 144—*See* CRIMINAL PROCEEDINGS, 4 C. 18 = 3 C.L.R. 44.

(604)—Ss. 143, 147—*See* REVISION—RETRIAL, 5 P.R. 1887, Cr.

(605)—*Ss.* 143, 147, 149—*Rioting—Description by specific name, whether legal—Further particulars—Court's discretion—Common object —Not stated in charge—Evidence to show common object — Charge in case under s.* 149—*Statement of common object necessary—Crim. Pro. Code, s.* 350—*Trial held partly by another Magistrate, as first Magistrate holding trial in part unable to take up case, being occupied in other work—Trial by second Magistrate, whether legal.*—The offence of rioting can be legally described by its specific name, and the question whether any further particulars are necessary under s. 223 of the Crim. Pro. Code must be a question of discretion according to the circumstances of each case. In cases of rioting, the common object should be stated in the charge, but an omission to do so under ss. 143 and 147, Penal Code, would not vitiate a conviction if there was evidence on the record to show it. (21 C. 827, *F.*) But, as a matter of law, it is otherwise with a charge under s. 149, Penal Code. There is no specific name of the offence and the fact that any offence is committed in prosecution of the common object is of the essence of the case and there could be no conviction for any offence committed with a different common object. It is, therefore, obligatory to set out the common object in a charge under s. 149, unless it has been already specified in the main charge under s. 147. Where the common object was to assault with *lathis* and to cause hurt, there could not be separate sentences for what is practically one offence. The word "succeeded" in s. 350 of the Crim. Pro. Code should not be construed in a narrow sense. The words "ceases to exercise jurisdiction *therein*" mean "in the inquiry or trial" and not "in a particular post" (12 A. 66, *Not Appr.*) A Deputy Magistrate heard a case in part. On the next day of hearing, he was occupied in some other work, and the District Magistrate, upon the application of the Counsel for the accused, appointed another Magistrate to try the case. The entire case for the defence, including the cross-examination of the witnesses for the prosecution, was held before the second Magistrate. *Held*, that the trial by the second Magistrate was not illegal. KUDRUTULLAH v. EMPEROR, **13 Cr. L.J. 218 = 14 Ind. Cas. 314 = 39 C. 781.**

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(606)—Ss. 143, 174, 186—*See* WITNESS—MISCELLANEOUS CASES, 24 C. 320=1 C.W.N. 154.

(607)—Ss. 143, 186—*See* BEN. ACT VIII OF 1885, s. 123, 30 C. 285.

(608)—Ss. 143 and 186—*See* CRIM. PRO. CODE, 1898, ss. 4 and 195, 30 C. 285

(609)—Ss. 143, 253—*See* SENTENCE—CUMULATIVE AND SEPARATE SENTENCES, 16 W.R. Cr. 70.

(610)—*Ss.* 143 *and* 341—*Unlawful assembly—Presence in a sandy tract, not explained—Common object, presumption of—Mere stoppage of bullocks and carts without stopping persons, whether amounts to 'using criminal force.'*—Where a number of persons assemble in a sandy tract used for planting casuarina and there is nothing to show that they were there by chance or for any purpose other than that of assisting, if necessary, such of the members of the assembly as commit an offence by overt acts *held*, that a common object can be presumed. Mere obstruction to carts and bullocks passing by a particular road, without interfering with the free passage of persons by the same, does not amount to the offence of using criminal force under s. 341, I P.C. KOMBOLA CURAVADU v. YERAGATTIPALLI KRISHNA REDDY, **2 L.W. 185=1915 M.W.N. 203=16 Cr. L.J. 176=27 Ind. Cas. 560.** (19 Ind. Cas. 177, 1 Weir 341, *F.*)

(611)—Ss. 143, 341—*See* WRONGFUL RESTRAINT, 5 C.W.N. 215.

(612)— Ss. 143, 353 — *See* UNLAWFUL ASSEMBLY, 7 N.W.P. 209.

(613)—*Ss.* 143, 378 *and* 379—*Unlawful assembly—Removal of crops sown by another.*—Where the accused carried away paddy sown by the complainant and alleged that the land on which the paddy was sown was theirs, *held*, that even, if they were owners of the land, they did not act in good faith in removing the crop and were, therefore, guilty of offences under ss. 143 and 379. JAGAT CHANDRA ROY v. RAKHAL CHANDRA ROY, **4 C.W.N. 190.** (3 C. W.N. 332, *D.*)

(614)— Ss. 143, 379 — *See* CHARGE — GENERAL, 29 C. 481=6 C.W.N. 599.

(615)—Ss. 143, 379—*See* CHARGE—ALTERATION OF CHARGE, 27 C. 660.

(616)—Ss. 143, 379—*See* CRIM. PRO CODE, 1898, s. 106, 8 C.W.N. 517.

(617)—Ss. 143 and 379—*See* THEFT—THINGS IN RESPECT OF WHICH THE OFFENCE OF THEFT CANNOT BE COMMITTED, 4 C.W.N. 345.

(618)—*Ss.* 143 *and* 426—*Cutting a channel across one's own land into a jhil in possession of another.*—Where the servants of the owner of a land adjoining a jhil in the possession of another person cut a channel from it and let out water and fish from the jhil thereby, *held*, that, though they had the right to make the cutting on their master's land, it did not follow that they had a right to extend the cutting beyond and through the bank of the jhil, which, with the jhil itself and the land underneath the water, was in the possession of the complainant, and the conviction of the servants under ss. 143 and 426 could not be set aside. SHOSHI BHUSHAN BOSE v. GOBIND CHANDRA ROY, **7 C.W.N. 663.**

(619)—*Ss.* 143, 447—*Unlawful assembly and criminal trespass*—Bona fide *belief in the existence of right to land and assertion of such right.*—In consequence of a dispute between two landlords, the disputed property was attached under s. 146, Crim. Pro. Code, in a proceeding under s. 145, Crim. Pro. Code, and a Receiver appointed, but the Magistrate appointing the Receiver omitted to give any direction as regards the management of the property. There was a dispute between the tenants on both sides as regards the grazing rights over the property, but it appeared that the Zemindar of the petitioners gave them the grazing rights over the land and they objected to the tenant of the rival Zemindar ploughing up a portion of the land over which they alleged they had grazing rights, under colour of a lease from the Receiver. The petitioners were convicted under ss. 143, 447, I.P.C. *Held*—that the petitioners could not be convicted of criminal trespass when they were asserting a right which had never been declared against them, which they *bona fide* believed they had, and, for the same reason they could not be said to have formed an unlawful assembly, because they went and protested against the land being ploughed up. REAJADDIN MOLLA v. KING-EMPEROR, **18 C.W.N. 1245=15 Cr.L.J. 725=26 Ind. Cas. 173.**

——S. 144.

(620)—S. 144—*See* SECURITY TO KEEP THE PEACE ON CONVICTION, 3 P.R. 1890, Cr.

(621)—S. 144—*See* Nos. 203, 362, 516, 589, 603, *supra.*

(622)—Ss. 144, 148 — *See* SENTENCE—CUMULATIVE AND SEPARATE SENTENCES, 9 W.R. Cr. 5.

——S. 145.

(623)—Ss. 145, 148, 149, 304, 325, 352—*See* CULPABLE HOMICIDE NOT AMOUNTING TO MURDER, 8 P.R. 1892, Cr.

——S. 146.

See RIOTING.

See UNLAWFUL ASSEMBLY.

(624)—Ss. 146, 147, 149, 325—*See* SENTENCE—CUMULATIVE AND SEPARATE SENTENCES, 6 A. 121.

——S. 147.

See RIOTING.

See UNLAWFUL ASSEMBLY.

(625)—*S.* 147—*Rioting—Common object of unlawful assembly.*—A person cannot be properly convicted of rioting, if the charge does not declare what was the common object of the

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assembly by which the riot was committed. CHUNDER COOMAR SEN v. QUEEN-EMPRESS, 3 C.W.N. 605.

(626)—*S.* 147—*Accused defending themselves.*—Where the accused were simply defending themselves against the attack made upon them by the opposite party, *held*, that they were not guilty of an offence under s. 147. EMPRESS v. BIDHI, **A.W.N. 1886, 254.**

(627)—*S.* 147—*Riot—Common object—One trial.*—In the case of a riot and fight between two opposing factions, the members of each party cannot be tried together in one trial on a charge under s. 147, I.P.C. The reason is that the common object of the two factions is not the same. QUEEN-EMPRESS v. NGA SHWE YA, **L.B.R. 1872—1892, 275.** (8 W.R. Cr. 47, 9 W.R. Cr. 33, 6 C. 96, *F.*)

(628)—*S.* 147—*Resistance offered to police in making an arrest—Rioting.*—Where a large number of men assemble with the common object of assaulting or using criminal force to police officers and of resisting any action on the part of the police, and an unjustifiable assault takes place in the attempt of the police to make an arrest, which may not be lawful, the persons assembled may all be properly found guilty of rioting. RAMAN SINGH v. QUEEN-EMPRESS, **28 C. 411=5 C.W.N. 134.**

(629)—*S.* 147—*Essence of the offence under.*—The essence of the offence under s. 147 is that the public servant should exercise the power lawfully. IDU MANDAL v. EMPEROR, **6 C.L.J. 753=6 Cr. L.J. 439.**

(630)—*S.* 147—*Unlawful assembly—Absence of finding as regards its existence or common object--Conviction--Illegality.*—Where the existence of an unlawful assembly or its common object was not found as proved by the evidence, the accused could not be convicted for having committed an offence under s.147. I.P.C. *In re* CORRIPATI CHALAMIAH, **10 M.L.T. 115= 1911, 2 M.W.N. 97=12 Cr. L.J. 496.**

(631)—*S.* 147—*Civ. Pro. Code* (1908), *O.* XXI *r.* 25—*Warrant issued by Civil Court to bailiff—Bailiff, who is—Effect of endorsement by Nazir—Execution by peon beyond time fixed by Nazir but within date when warrant returnable —Peon's custody if lawful—Rescuing from such custody if offence.*—Where a warrant issued by a Civil Court was addressed "to the bailiff" and made returnable on the 30th August, and the Nazir of the Court endorsed it with a direction to a particular peon to execute it within the 25th August, and the peon executed it between the 25th and the 30th August: *Held* that the fact that the warrant is addressed to the bailiff shows that it is the person who actually makes the seizure who is authorized by it, namely, the peon, who thus derived his authority from the Court which issued the warrant and not from the Nazir who endorsed it, and the execution of the warrant by the peon subsequent to the date fixed by the Nazir and prior to that on which it was made returnable by Court was lawful, and the rescuing of property attached from his custody constituted an offence. *Per Coxe, J.*—The term 'bailiff' should not be confined to the Nazir. O. XXI, r. 25, of the Civ. Pro. Code, shows that the warrant is referred to the officer entrusted with the execution of process, and it is clear from the terms of that section that that officer is not the Nazir but it is the peon. SUBED ALI v. KING-EMPEROR, **17 C.W.N. 941=14 Cr. L.J. 274=19 Ind. Cas. 706.**

(632)—S. 147—*See* ABETMENT, 33 C. 1023 =10 C.W.N 890=4 Cr. L.J. 79.

(633)—S. 147—*See* CHARGE—GENERAL, 3 C.W.N. 605.

(634)—S. 147—*See* CRIM. PRO. CODE, 1898, ss. 423, 537, cl. (*a*), 33 C. 295=2 C.L.J. 516.

(635)—S. 147—Rioting over disputed possession of *chur*—Sentence—Finding of Settlement officer pronounced after issue of Rule considered by High Court in revising sentence—*See* CRIM. PRO. CODE, 1898, s. 439, 18 C.W.N. 646=15 Cr. L.J. 473=24 Ind. Cas. 561.

(636)—S. 147—*See* LOCAL INQUIRY, 14 C. W.N. 422=37 C. 340.

(637)—S. 147—*See* MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION, 11 P.R. 1907, Cr.=34 P.W.R. 1907, Cr.

(638)—S. 147—*See* MAGISTRATE, JURISDICTION OF—COMMITMENT TO SESSIONS COURT, 24 C. 429=1 C.W.N. 414.

(639)—S. 147—*See* SECURITY TO KEEP THE PEACE—ON CONVICTION, 11 C.W.N. 840 =6 Cr. L.J. 40.

(640)—S. 147—*See* Nos. 57, 90, 91, 202, 204, 205, 206, 207, 208, 226, 372, 374, 381, 382, 396, 398, 399, 400, 403, 404, 405, 406, 407, 408, 427, 472, 517, 542, 590, 604, 605, 624, *supra and* No. 1541, 2104, 2181, *infra.*

(641)—*Ss.* 147, 148—*Some members only armed.*—Where a number of persons some of whom only were armed with deadly weapons and others not, had been tried and convicted under s. 148 of the I.P.C., *held* that only those who were armed could be convicted under s. 148 and that the others could only be convicted under s. 147. QUEEN-EMPRESS v. RAM SARAN RAI, **A.W.N. 1899, 77.**

(642)—*Ss.* 147, 148, 332, 395—*Dacoity—Riot —Rescuing stolen property — Sentence—Benefit of doubt—Accused's name not mentioned at the earliest stage—Individual guilt—Crim. Pro. Code, s.* 30.—The accused attempted to rescue stolen cattle from the possession of the complainant and the police who accompanied him, and in rescuing caused grievous hurt to them. It was found that the conduct of the police on the occasion was ill-advised and tactless, for they were not content with taking off the stolen animal, but went to the length of carrying off two other animals also which they suspected on no reasonable grounds. Instead of their taking the ordinary course of making the Lambardars responsible for the two animals, they arbitrarily carried off all three animals

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and also took with them the boy who had been left in charge of the herd, showing utter indifference to the safety of a large number of animals that were in consequence left unattended. B, one of the accused, caused severe injuries to a person who was on very bad terms with him. L and T were armed with axes and the former gave the constable a blow in the head with an axe, a blow which caused no severe injury. M also assaulted the constable with a stick. The names of U and P accused were not shown in the very elaborate and carefully prepared letter which the Head Constable had sent immediately after the occurrence to the officer in charge of the Police station. There were other circumstances also which raised a doubt in their favour that they were implicated at a later stage in the offence, for they had been previously convicted of offences under Chap. XVII, Penal Code. *Held* that U and P must be given the benefit of the doubt and acquitted and released; that the other accused were technically guilty of dacoity, but taking into consideration the circumstances of the case, the proper course would have been to convict L and M of offences under s. 332, Penal Code, T of an offence under s. 148, Penal Code, and the remaining accused under s. 147, Penal Code, and that these offences could be tried by a Magistrate exercising powers under s. 30 of the Crim. Pro. Code; that the other accused were not responsible for the severe injuries caused by B on his enemy. UJAGAR SINGH v. CROWN, **223 P.L.R. 1912=41 P.W.R. 1912, Cr.**

(643)—Ss. 147, 149—*See* JURY, 6 C.L.J. 253 =6 Cr. L.J. 359.

(644)—Ss. 147, 149, 153—*See* ACT V OF 1861, ss. 17, 19, 28 C. 411=5 C.W.N. 134.

(645)—*Ss.* 147, 149, 323—*Rioting—Hurt—Accused to be charged separately — Minor offence, whether included in rioting.*—It cannot be said that any minor offence is included in s. 147, I.P.C. The use of criminal force is a necessary ingredient in that offence; but any particular kind of voluntary use of such criminal force may and should be separately charged either substantively against the individuals who committed the offence, or for the purpose of using s. 149 against all the rioters. KANTA NEYA v. EMPEROR, **12 Cr.L.J. 82=9 Ind. Cas. 455.**

(646)—*Ss.* 147, 149, 323—*Sentence—Separate sentences—Rioting and hurt—Accused taking individual part in assault.*—Separate sentences passed upon persons for the offences of rioting and hurt are not legal where it is found that such persons individually did not cause hurt, but were guilty of that offence under s. 149, I.P.C. (16 C. 442, F.B., *F.*) But where each of the accused took an individual part in the assault, separate sentences under ss. 147 and 323, I.P.C., would be legal (16 C. 725, 19 C. 105, *Rel.*) RAM ANGUTHA SINGH v. EMPEROR, **14 Cr. L.J. 66=18 Ind. Cas. 402=40 C. 511.**

(647)—Ss. 147, 149, 323, 325—*See* SENTENCE —CUMULATIVE AND SEPARATE SENTENCES, 31 P.R. 1894, Cr.

(648)—Ss. 147, 149, 325—*See* UNLAWFUL ASSEMBLY, A.W.N. 1896, 170.

(649)—Ss. 147, 149 and 326—*See* SENTENCE—CUMULATIVE AND SEPARATE SENTENCES, 8 C.W.N. 344.

(650)—*Ss.* 147, 296—*Causing disturbance to a religious procession—Right of members of a community to pass in procession along the public streets—Assaulting members of procession—Rioting—Common object.*—The members of a religious community or denomination have every right to pass through the King's Highway in procession for purposes of religious worship. Assaulting a religious procession with the common object of disturbing it, amounts to rioting. SENGODEN v. EMPEROR, **13 Cr. L.J. 534=15 Ind. Cas. 806.** (32 M. 478, 1 Ind. Cas. 716= 19 M.L.J. 617, 32 M. 527, 19 M.L.J. 467, 6 M.L.T. 285, 4 Ind. Cas. 870, *R.*)

(651)—*Ss.* 147, 299, 325—*Evidence Act—Dying declaration—Culpable homicide not amounting to murder—Evidence insufficient—Charge of grievous hurt—Sustained.*—Where a dying man, *after receiving extreme injunction,* makes declaration, it must be believed to be true and acted upon; where such declaration, shewed that, in the course of a riot, the accused armed with sticks (*the size of which is not known*, gave blows, which fell on the temple of the deceased, in consequence of which *he died four days after*, it must be inferred that the accused did not intend to cause death but only grievous hurt, and a conviction for this offence only can be sustained. PATTOM ASTHONY v. EMPEROR, **(1911) 2 M.W.N. 188=12 Ind. Cas. 296=12 Cr. L.J. 528.**

(652)—*Ss.* 147, 304—*Unlawful assembly—Death caused by blow given by one member—Absence of common object—Offence.*—Where the deceased was killed by a violent blow given by one of the accused, who was a member of an unlawful assembly, and where it was found that the beating of the accused with a stone was not in pursuance of the common object of all the accused: *Held*, that the person who dealt, the blow was guilty of an offence under s. 304, I.P.C., and the rest only of rioting under s. 147, I.P.C. RANGA KORAVAN v. EMPEROR, **9 M.L.T. 362=12 Cr. L.J. 124=9 Ind. Cas. 727=1911, 1 M.W.N. 130.**

(653)—*Ss.* 147 *and* 304—*Unreliable story for the prosecution—Reliance on defence evidence—Free fight—Death caused—Non-liability of accused—First report.*—The first report made by a person on the information received by him from another unknown person is obviously a mere hearsay, and consequently it is inadmissible in evidence and is of no use to either side. Where the story for the prosecution with the evidence in its support in unreliable. and reliance is principally placed upon the proof adduced by the defence which does not legally establish the guilt of the accused, their conviction cannot be

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maintained for the offence charged. Where in a case of free fight by exchanging stone missiles between the two parties death is caused of a person, but there is no conclusive proof by whom the act causing the death is done, none of them can be made liable for the offence committed. Accused persons cannot be convicted of rioting which is neither alleged by the prosecution nor proved by the evidence on either side. FATEH SHER v. CROWN, **35 P.W.R. 1913, Cr. = 318 P.L.R. 1913 = 21 Ind. Cas. 465 = 14 Cr.L.J. 593.**

(654)—*Ss.* 147, 304 *read with s.* 149—*Conviction upon a hypothetical state of facts, not suggested by the prosecution, how far sustainable—Hypothetical case.*—In cases of rioting, it often happens that the Court may consider that the story told by the prosecution is false in some of its details, but is nevertheless sufficient to prove the guilt of the accused; but it is not permissible to base a conviction upon a hypothetical state of facts, which is quite unsupported by evidence, which was never put forward by the prosecution and was never suggested to the accused as being the case they had to meet. BANGA HADUA v. KING-EMPEROR, **11 C.L.J. 270 = 11 Cr.L.J. 245 = 5 Ind. Cas. 771.** [*R.*, 40 C. 367 = 13 Cr.L.J. 821 = 17 Ind. Cas. 565.]

(655)—*S.* 147, *s.* 304 *read with s.* 149—*Prosecution evidence mostly disbelieved—Hypothetical case made by the Court—Propriety of conviction.*—Where the Sessions Judge discarded almost in their entirety the accounts of the occurrence given by the witnesses for the prosecution, and substituted a narrative of his own founded for the most part on surmise and conjecture, and the story of the origin of the occurrence and the course of events as re-constructed by the Sessions Judge were wholly inconsistent with the story told by the witnesses, and the appellants were convicted under s. 147 and s. 304 read with s. 149, I.P.C. *Held* that the conviction should be set aside. KALU KHALASHI v. KING-EMPEROR, **17 C.W.N. 538 = 19 Ind. Cas. 1002 = 14 Cr.L.J. 314.**

(656)—*Ss.* 147, 323—*Crim. Pro. Code, ss.* 236, 237—*S.* 237, *Crim. Pro. Code, when applies—Conviction of rioting without any charge under s.* 323, *I.P.C.—Conviction under s.* 323, *I.P.C. by appellate Court after setting aside conviction of rioting, legality of.*—The petitioners were convicted by the Magistrate, under s. 147, I.P.C. On appeal the Sessions Judge set aside the conviction and sentence under s. 147, I.P.C., and convicted the petitioners under s. 323, I.P.C. No charge had been framed against the petitioners under s. 323, I.P.C.—*Held*, that s. 237 has to be read with s. 236. If the facts of the case do not fall under s. 236, s. 237 has got no application. There was no charge framed against the petitioners for an offence of causing hurt and they had therefore no opportunity to defend themselves on this charge and the conviction and sentence must be set aside. GENU MANJHI v. KING EMPEROR, **18 C.W.N. 1276 = 15 Cr.L.J. 704 = 26 Ind. Cas. 152.**

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(657)—Ss. 147, 323—Conviction for offences under ss. 147, 353, Penal Code—Appellate Court confirming sentence and ordering security to keep-peace — Legality—*See* CRIM. PRO. CODE, 1898, s. 106 (3), 8 M.L.T. 291.

(658)—Ss. 147, 323—Rioting—Conviction for hurt—Common object of causing hurt to complainant—Conviction for causing hurt to another—Legality—*See* CRIM. PRO. CODE, 1898, ss. 233, 236, 535, 537, 13 Cr. L.J. 593 = 16 Ind. Cas. 161.

(659)—Ss. 147, 323—*See* JOINDER OF CHARGES—MISJOINDER OF CHARGES, 2 A. 139.

(660)—Ss. 147, 323—*See* RIOTING, 26 C. 574.

(661)—*Ss.* 147, 323, 325—*Charges against several persons—Single trial.*—It is altogether improper for a Magistrate to deal with a charge of riot against seven different persons in the same proceedings, and at one and the same time, when it is obvious on the face of the evidence that there could not be a "common object" animating all of them. Equally irregular is it for him to dispose of the case under ss. 325 and 323, against them in one trial. Such procedure is in contravention of the law and likely to produce hardship and embarrassment to the accused, while at the same time making investigation of the case more difficult and complicated. But, in this particular case, the High Court did not quash the Magistrate's proceedings, upon consideration of the evidence and the terms of the Magistrate's order which showed that he had carefully looked into the cases of the several prisoners individually, the course adopted not having prejudiced the accused in their defence. EMPRESS v. LOCHAN, **A.W.N. 1881, 28.** [*R.*, 9 A. 452.]

(662)—*Ss.* 147, 323, 353—*Conviction of rioting with common object of assault—Acquittal by appellate Court on charge of rioting and conviction of assault if proper—Necessity of finding against individual accused on charge of assault.*—The petitioners were charged under s. 147, I.P.C., the common object of the alleged unlawful assembly as stated in the charge being to assault the Police. No charge under s. 353 or s. 323 was framed. The Magistrate convicted the petitioners under s. 147, I.P.C. The Sessions Judge in appeal acquitted the petitioners of the offence of rioting and convicted them under s. 353, I.P.C., in respect of the assault committed upon the several Police officers. The Sessions Judge did not find which Police officer was assaulted by which petitioner: *Held*, that the Sessions Judge was wrong in convicting the petitioners of an offence under s. 353, I.P.C., the petitioners not having been called upon to answer any such charge. That, in the view taken by the Sessions Judge of the case, a finding as to which Police officer was assaulted by which petitioner was essential. HAR NARAN SARDAR v. THE EMPEROR, **18 C.W.N. 1274 = 16 Cr. L.J. 42 = 26 Ind. Cas. 634.**

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(663)—*Ss.* 147, 323 *and* 448—*Conviction by Magistrate of rioting—Appellate Court setting aside the conviction, but convicting for hurt and house trespass—Absence of charge regarding the latter offences—Validity of conviction—Crim. Pro. Code* (1898), *ss.* 232 *and* 423.—The accused were charged with, and convicted of, rioting under s. 147, Penal Code. On appeal, the Sessions Judge set aside the conviction under s. 147, but convicted the accused under ss. 448 and 323, Penal Code, of house-trespass and hurt, they having never been charged with those offences. *Held*, that the conviction under those sections should be set aside, as they were distinct and separate offences which should have formed the subject of separate charges, and that the accused had been prejudiced within the terms of s. 232, Crim. Pro. Code, by the omission of those charges. YAKUB ALI v. LETHU THAKUR, **30 C. 288.** [*R.*, 18 C.W.N. 1276, 11 Cr. L.J. 340=5 Ind. Cas. 974=7 M.L.T. 202, 22 Ind. Cas. 764=15 Cr. L.J. 188.]

(664)—Ss. 147, 324—*See* CONVICTION, 6 C. 718.

(665)—Ss. 147, 324—*See* CRIM. PRO. CODE, 1898, s. 235, 8 C.L.R. 390.

(666)—Ss. 147 and 324—*See* CRIM. PRO. CODE, 1898, s. 260, 22 M. 459=2 Weir 254.

(667)—*Ss.* 147, 324 *and* 149—*Separate terms of imprisonment, legality of.*—Where the applicants were convicted under s. 147 of being members of an unlawful assembly and under ss. 324, 149 by reason of hurt caused by one of them and were sentenced to separate terms of imprisonment in respect of both the offences, *held*, that the sentences were legal and no exception could be taken to them. MAHPAL SINGH v. KING-EMPEROR, **17 O.C 184=15 Cr. L J 625=25 Ind. Cas. 633.** (Oudh S.C. 125. A.W N 1885, 195, 17 B. 260, *R.*; 16 C. 442, 8 C.W.N. 305, *D.*)

(668)—*Ss.* 147, 325—*Unlawful assembly—Grievous hurt—Liability.*—Per *Broadhurst, J.*—A member of an unlawful assembly, some members of which have caused grievous hurt, can be legally punished for the offence of rioting as well as for the offence of causing grievous hurt. QUEEN-EMPRESS v. PERSHAD, **7 A. 414=A.W.N. 1885, 105.** [*R.*, 7 A. 757, F.B., 9 A. 645, 16 C. 442, F.B., 19 C. 105.]

(669)—*Ss.* 147, 325—*Rioting—Hurt—Grievous hurt—Separate convictions.*—Where rioting is completely proved, and over and above that, the commission of another offence, either hurt or grievous hurt is also proved, separate convictions and separate sentences for each will be proper. *In the matter of* BHAGWANDIN SINGH, **S C. 125, Oudh.** (A.W.N. 1885, 195, *F.*) [*R.*, 17 O.C. 184=15 Cr. L J. 625=25 Ind. Cas. 633.]

(670)—Ss. 147, 325—*See* RIOTING, 24 A. 298=A.W.N. 1902, 58.

(671)—*Ss.* 147, 327—*Separate convictions.*—*Quære* :—It is doubtful whether separate convictions under ss. 147 and 327, I.P.C., are legal. *In re* JABDAR KAZI, **8 C.L.R. 390.**

(672)—*Ss.* 147 *and* 332—*Rioting—Lahore riot case—Separate sentence under them not allowed—Framing and joinder of charges—Omission to state time, place, and common object when fatal—Revisional powers of the Chief Court to go into facts and evidence—Crim. Pro. Code, ss.* 221, 222, 223, 225, 227, 232, 233, 234 *and* 439.—*Held*, that in a trial for rioting, the charge is bound to state the common object of the assembly, and if it does not, the omission is not fatal to the conviction, if the accused have in no way been prejudiced ; but where, as in this case, it is shown that omission to state in the charge of rioting, the time and place and the common object, has prejudiced the accused in their defence, the conviction is liable to be set aside. *Held also*, that where an offence forms an ingredient of the offence of rioting, the rioters cannot be punished both for rioting and the other offence ; so where the common object of an unlawful assembly was to assault the police officers in discharging their duty, and hurt was actually caused to some of them, separate sentences under ss. 147 and 332, I.P.C., were disallowed and sentence under s. 332, I.P.C., only was maintained. GOWARDHAN DAS v. KING-EMPEROR, **38 P.W.R. 1907, Cr.=6 Cr. L.J. 446.** (11 C. 106, 22 C. 276, 9 C.W.N. 599, *F.*; 10 C.W.N. 32=33 C. 292, *R.*)

(673)—*Ss.* 147 *and* 332—*Resistance to the execution of a warrant—Warrant under s.* 100, *Crim. Pro. Code, legality of, when drawn up on a printed form under s.* 98.—There being no printed form for search-warrants under s. 100, Crim. Pro. Code, printed forms issued under s. 98 are always used with the necessary modifications for that purpose. When a warrant under s. 100, Crim. Pro. Code, was drawn up on a printed form for use under s. 98 Crim. Pro. Code, and the warrant was snatched away and destroyed by the persons accused of resisting the execution of the warrant. *Held*, that, as the accused destroyed the warrant, it must be presumed that the warrant under s. 100 was properly drawn up on a form under s. 98, Crim. Pro. Code, with the necessary modifications. That the error, if any, in the warrant, supposing that the necessary modifications had not been made, would be one of form only. GURAMEAH v. KING-EMPEROR, **16 C.W.N. 336=13 Ind. Cas. 1002=13 Cr. L.J 186.** (6 C.L.J. 127, *D.*)

(674)—*Ss.* 147, 332—*Revision—Discrepant evidence—Riot—Crim. Pro.Code, s.* 439 —*Held*, that, where a public servant receives a blow from a stick while trying to quiet the riot, but the evidence to show who actually struck it is discrepant, it is not lawful to frame a separate charge under s. 332, Penal Code, against any one of the rioters in particular. SUNDAR SINGH v. CROWN, **14 P.W.R 1912, Cr.=111 P.L.R. 1912=15 Ind. Cas. 92=13 Cr. L.J. 460.**

(675)—Ss. 147, 332—*See* CRIM. PRO. CODE, 1898, ss. 100, 98, 552, 39 C. 403.

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(676)—Ss. 147, 349—Meaning of 'criminal force'—Rioting with the common object of causing violence to inanimate object—Applicability of s. 522, Crim. Pro. Code—*See* CRIM. PRO. CODE, s. 522, 18 C.W.N. 1150=15 Cr. L. J. 720=26 Ind. Cas. 168.

(677)—*Ss.* 147 *and* 353—*Separate sentences.*—Separate sentences under s. 147 and under s. 353 should not be passed, when the common object of the unlawful assembly committing the riot was the offence under s. 353. HRIDOY MONDAL v. JAGANANDA DAS, **4 C.W.N. 245.** (16 C. 442, *F.*)

(678)—*Ss.* 147, 353—*Resistance to execution of warrant or attachment—Non-production of warrant at trial.*—Where a warrant of attachment, under which a Nazir acted, was not produced before the Court, nor was secondary evidence given, after proper steps taken to produce the original had failed, to show its contents, *held*, that the accused could not be convicted under ss. 147, 353 for assaulting or using criminal force to the Nazir or for the abetment of the offence under s. 353. TAFAZZUL AHMED CHOWDHRY v. QUEEN-EMPRESS **26 C. 630.** [*D.*, 18 P.R. 1910, Cr.=104 P.L.R. 1910=32 P.W.R. 1910, Cr.=11 Cr. L.J. 423=6 Ind. Cas. 956.]

(679)—Ss. 147, 353—Rioting—Separate sentence—*See* BEN. ACT V OF 1909, s. 67, 15 Cr. L.J. 251=23 Ind. Cas. 203=41 C. 836=18 C. W.N. 918.

(680)—Ss. 147 and 353—*See* SENTENCE, CUMULATIVE AND SEPARATE SENTENCES, 3 C.W N. 174.

(681)—Ss. 147 and 366—*See* UNLAWFUL ASSEMBLY, 2 S L.R. 6, Cr.=10 Cr. L.J. 208.

(682)—*Ss.* 147, 379—*Single sentence for both the offences under—Acquittal by appellate Court of one of the offences—No reduction of sentence—Enhancement of sentence — Procedure.*—Where a second class Magistrate convicted an accused under ss. 147 and 379, I.P.C., but passed only a single sentence for both the offences, and the appellate Court acquitted him of the offence under s. 379, but maintained the sentence in its entirety, this amounts to an enhancement of the sentence passed on the offence, the conviction for which alone is maintained. In such cases, some reduction of sentence by the appellate Court must be made, unless the Court thinks that the sentence ought not to be reduced, in which case, it should refer the matter to the High Court for enhancement of the sentence. PARAMASIVA PILLAY v. EMPEROR, **1 M L.T. 403=5 Cr. L J. 88=30 M. 48.**

(683)—*Ss.* 147 *and* 379—*Territorial jurisdiction of Criminal Court—Revision.*—Certain land on the north bank of the Sutlej was claimed as their respective property by one Haider of Montgomery District and one Sajawara of Bahawalpur State territory. Sajawara entered upon the land, cut down trees and crops and for this he was convicted by a Magistrate of the first class at Montgomery on two separate charges under ss. 379 and 147 of the Indian Penal Code. It was contended on revision (1) that the jurisdiction of the Montgomery Court was doubtful, as the Bahawalpur Court also claimed jurisdiction, and its claim had not been definitely rejected by the Government of India; and (2) that ownership of the complainant was disputed, and that, if the accused, who also claimed ownership and to be in possession through tenants, be wrong, he should not have been convicted for taking and removing what he honestly believed to be his own. It was proved that Haider and not Sajawara's tenants had cultivated the land which was found to be situated in the Montgomery District within the boundaries laid down by Mr. Kennedy, Deputy Commissioner of Montgomery, in 1893, which the Government of India had directed should be observed for the time being and the Montgomery Courts had been exercising jurisdiction over the tract of land in question. *Held* that, considering the position of the land, it was more reasonable to hold that jurisdiction, for the time being at all events, belonged to the Paramount State and that, if the Government of India comes to the decision to give the Bahawalpur State a footing on the north bank of the river, it would do so by cession rather than otherwise. It was not for the Chief Court in revision to go into questions of fact and the propriety of exercising jurisdiction was in this case substantially such a question. *Held*, also, that as the accused had resorted to force he had rendered himself liable to punishment under cl. 5 of s. 141 of the Indian Penal Code. SAJAWARA v. EMPEROR, **16 P.L.R. 1904=1 Cr. L.J. 94.**

(684)—Ss. 147, 379 — *See* CHARGE — ALTERATION OF CHARGE, 27 C. 990=5 C.W. N. 31.

(685)—Ss. 147, 379 — *See* SENTENCE—POWERS OF APPELLATE COURT—ENHANCEMENT, 30 M. 48=1 M.L.T. 403=5 Cr. L.J. 88.

(686)—*Ss.* 147, 447 — *Charge—Rioting—Common object, not trespass—Conviction of trespass, whether legal—Crim. Pro. Code, s.* 238 (2) — *Criminal trespass — Criminal intention.*—Where the accused were charged only under s. 147, Penal Code, and the common object stated in the charge was to take forcible possession of the complainant's land and to assault him, and they were convicted only under s. 447, Penal Code. *Held*, that the common object did not make out a case of trespass, as the criminal intention necessary to be made out in the case of a trespass was not established, and in the absence of any charge and complaint under s. 447, Penal Code, the conviction of the accused under s. 447 was illegal. If the common object constituting the unlawful assembly had been to commit criminal trespass, a conviction under s. 447 without a charge under that section might be legally valid under s. 238(2) of the Crim. Pro. Code, for in that case the offence of trespass would have been considered

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as a minor offence in comparison with that of rioting. ARIFF MUNCHI v. EMPEROR, **15 Cr. L.J. 188 = 22 Ind. Cas 764 = 18 C.W N.** 992. (23 W.R. Cr. 59, *F.*)

(687)—*Ss.* 147, 447—*Common object—Finding that common object was to prevent complainant from entering on his land—Conviction under s. 147, sustainability of—Powers of appellate Court—Enhancement of sentence of fine.*—Where the accused was convicted under ss. 147 and 447, I.P.C., and the common object of the accused was to prevent complainant from entering into possession of the land. *Held*, that the conviction under s. 147 was right. The appellate Court upheld the conviction under s. 147 and quashed that under s. 447. It increased the fine imposed on the accused from Rs. 20 to Rs. 30, adding the additional Rs. 10 as in lieu of the unexpired sentence of imprisonment passed by the trying Magistrate. *Held*, that the enhancement of fine was illegal, but the conviction under one section having been quashed, the sentence should have been reduced. *In re* KESIREDI PANASA RAMUDU, **8 Ind. Cas. 880 = 9 M.L T. 167 = 11 Cr. L.J. 727.**

(688)—Ss. 147, 447—*See* CRIM. PRO. CODE, 1898, s. 35, 8 C.W.N. 305.

—— **S. 148.**

See RIOTING.

See UNLAWFUL ASSEMBLY.

(689)—*S.* 148—Lathi, *whether a "deadly weapon."*—It is a question of fact to be decided in each case whether a *lathi* used in a rioting, or the *lathi* with which an injury is caused, is or is not a "deadly weapon." QUEEN-EMPRESS v. NATHU, **15 A. 19 = A.W.N. 1892, 158.**

(690)—*S.* 148—*Conviction under the section, when can be awarded.*—In order to convict a person under s. 148, it must be shown that each individual person charged was himself armed. HARENDRA CHANDRA SARKAR v. EMPEROR, **7 C.W.N. 512.** (22 C. 276, *F.*)

(691)—*S.* 148—*Rioting—Separate trial.*—In cases of rioting, the two parties must be separately tried, since each of them constitutes an assembly with a common object quite different from that of the other party. LAL TIRLOKI NATH SINGH v. QUEEN-EMPRESS, **S.C. 75 Oudh.**

(692)—S. 148—Rioting—Essentials of offence—*See* CRIM. PRO. CODE, 1898, ss. 423 (*b*), 237, 238, 10 M.L.T. 66 = 10 Ind. Cas. 372 = 21 M.L. J. 805 = 1911, 2 M.W.N. 106.

(693)—S. 148—*See* COMPOUNDING OFFENCE, 4 Bom. L R. 718.

(694)—S. 148—*See* Nos. 84, 209, 210, 396, 405, 469, 470, 587, 622, 623, 641, and 642, *supra*, and *see* No. 2141, *infra*.

(695)—Ss. 148, 114—*See* CRIM PRO. CODE, 1898, ss. 162, 172, 10 C.W.N. 890 = 4 Cr. L.J. 79 = 33 C. 1023.

(696)—*Ss.* 148 *and* 149—*Death caused by one person of one party—Common object—Nature of the offence.*—One of the members of party A, which attacked another party B, who were in occupation of certain land, with the object of driving them off the land by force, fired a gun at and killed one of the persons of party B, in consequence of a sudden and unexpected resistance offered by party B. The members composing party A were convicted of murder. *Held*, on a consideration of the evidence, that the persons composing party A other than the person who fired the gun could not be convicted of murder. The conviction was altered under the circumstances to one of rioting armed with a deadly weapon under s. 148, Penal Code. *In re* RAM PHUL SINGH, **2 J.G. 7.**

(697)—*Ss.* 148 *and* 149—*Rioting armed with deadly weapon—Liability of persons not so armed.*—If one of the members of an unlawful assembly is armed with a deadly weapon, or a weapon of offence, the other members of the assembly cannot be charged under s. 148. It is only the actual persons, who are so armed, who can be charged under the section. The only way in which one person can be made liable for the acts of another is under s. 149. SABIR v. QUEEN-EMPRESS, **22 C. 276.** [*R.*, 7 C W.N. 512; *D.*, 36 C. 158 = 8 C.L.J. 69 = 12 C. W.N. 944 = 8 Cr. L.J. 129 = 1 Ind. Cas. 794; *F.*, 16 Cr. L.J. 446 = 29 Ind. Cas. 78.]

(698)—*Ss.* 148, 149—*Members of unlawful assembly—Only one member possessed of gun—Persons not in possession of any gun, offence committed by—Several offences—Acquittal of some of them—Sentence, reduction of.*—Where, of the several persons charged with rioting armed with a deadly weapon, only one is proved to have been possessed of a gun, it is illegal to convict others who had no such dangerous weapon of an offence under s. 149, Penal Code. Where there has been an acquittal of the accused of some of the offences of which they were convicted, there must be a proportionate reduction in the sentences also. *In re* CHOITANO RANTO, **16 Cr. L.J. 446 = 29 Ind. Cas. 78.** (22 C. 276, *F.*)

(699)—Ss. 148, 149, 300 and 302—*See* CHARGE TO JURY—MISDIRECTION, 9 Bom. L.R. 153 = 5 Cr. L.J. 168.

(700)—*Ss.* 148, 149, 304—*Animal when can be property of pursuer—Unlawful assembly, a member of, lying unconscious from the outset, not charged with offence committed by others during his unconscious state.*—In order to render an animal *ferae naturae* the property of any person, there must be a complete capture, the result of which is to reduce the animal completely into possession. Mere pursuit short of capture will not do, and so long as it is possible for the animal to escape, it cannot be said that there is such a reduction into possession as makes the animal property of the pursuer. The mere fact of the accused's dog overtaking the animal and pulling it down does not preclude the possibility of escape so as to make the animal his property. Where it was found that G, a member of an unlawful assembly, was felled to the ground at the outset and was left lying

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unconscious on the spot where the fight started, while the remaining members of G's party pursued the persons, one of whom had knocked down G, and having overtaken them committed the offence of culpable homicide, *held*, that G who was lying unconscious could not be considered a member of the unlawful assembly at the time the offence of culpable homicide was committed and was, therefore, not liable to conviction on this charge. RAGHUNANDAN v. KING-EMPEROR, **15 O.C 183 = 15 Ind. Cas. 972 = 13 Cr. L.J. 556.**

(701)—Ss. 148, 149, 324—*See* SENTENCE—CUMULATIVE AND SEPARATE SENTENCES, 11 C. 349, 7 W.R. Cr. 60.

(702)—*Ss.* 148 *and* 152—*Unlawful assembly for obstructing police—Violence to police—Separate sentences under ss.* 148 *and* 152—*Validity.*—Where, in a Sessions case, the jury found that the common object of an unlawful assembly was to obstruct the police, and that the violence used to the police was the element which rendered the members of the unlawful assembly guilty of rioting, *held* that separate sentences could not be passed for rioting under s. 148 of the Penal Code, and for assaulting a public servant under s. 152 of the Code. FERASAT v. QUEEN-EMPRESS, **19 C. 105.**

(703)—Ss. 148, 304—*See* PRIVATE DEFENCE, RIGHT OF, 6 B.L.R. Ap. 9 = 14 W.R. Cr. 69.

(704)—*Ss.* 148, 323, 326, 326/149—*Rioting—Dispute regarding possession of land—Title with accused—Lawful common object—Propriety of conviction—Right of private defence—Hurt.*—Where the petitioners were convicted under ss. 148, 323, 326, 326/149, I.P.C., some under one, some under all of the sections, the riot relating to a dispute in respect of possession of a plot of land—and the Sessions Judge in appeal found that the occurrence did take place on the land in dispute and the accused took part in it, but that they were in fact entitled to and remove the crops grown on the disputed harvest land, but the District Magistrate in his explanation pointed out that the findings of the Judge were not in accordance with the weight of the evidence, the High Court refused to go behind the findings of the Sessions Judge, and *held* that the conviction under ss. 148, 326/149, I.P.C., could not stand; and so far as the offence under s. 323 was concerned, the accused did not, in the circumstances of the case, exceed their right of private defence. JHALKU TEWARI v. KING-EMPEROR, **17 C.W.N. 1081 = 14 Cr. L.J. 590 = 21 Ind. Cas. 382.**

(705)—*Ss.* 148, 326/149—*Rioting with deadly weapons—Grievous hurt—Private defence of person, right of—Findings, inconsistent—Rehearing—Rule, construction of—Revision — Law, question of—Jurisdiction.*—If the findings of an appellate Court are inconsistent with the conclusion arrived at by that Court, that would only be a ground for re-hearing of the appeal. The question whether there is a right of private defence is a matter which can be dealt with by the High Court as a pure point of law. When a person grows crops on a piece of land which another person cuts and carries away and stacks in a field of a third party without interruption and retires from the field and then the person growing the crops comes up in numbers armed with *lathis and gorasa* and other weapons, not to commit a premeditated riot but merely to take away the crops they are entitled to and not to use any force unless they are opposed or attacked, and, while so acting within their rights in collecting their own crops with a view to take them away, they are attacked by the party *of the person who stacked the crops*, who were also similarly armed, first, by clods of earth and, then, with spears, they have the right to defend their persons from an attack with clods and spears, an attack which reasonably causes apprehension that death will be the result, and to cause any injury short of death. BABURAM RAUT v. KING-EMPEROR, **17 C.L.J. 394 = 14 Cr. L.J. 295 = 19 Ind. Cas. 951.**

——**S. 149.**

See RIOTING.

See UNLAWFUL ASSEMBLY.

(706)—*S.* 149—*Scope.*—S. 149, I.P.C., is not intended to subject a member of an unlawful assembly to punishment for every offence which is committed by one of its members during the time they are engaged in the prosecution of the common object. In order to bring a case within the section, the act must be done with a view to accomplish the common object of the unlawful assembly, or it must be proved that the offence was one which the accused knew would be likely to be committed in prosecution of the common object. EMPEROR v. KRISHNARAO NARAYAN RAO, **5 Bom. L.R. 1023.**

(707)—*S.* 149—*Scope and object.*—The whole section analysed and explained. MADAT KHAN v. EMPRESS, **61 P.R. 1887, Cr.** [*R.*, 16 P.R. 1915, Cr.]

(708)—*S.* 149—"*Knew*"—*Meaning and scope of.*—The word 'knew' in s. 149, Penal Code, indicates a state of mind at the time of the commission of the offence, and not knowledge acquired in the light of subsequent events. IMPERATOR v. KHAMISO, **6 S.L.R. 101 = 17 Ind. Cas. 408 = 13 Cr. L J. 776.** (20 W.R. Cr. 5, *R.*)

(709)—S. 149—*See* Nos. 86, 90, 91, 92, 93, 105, 204, 205, 209, 211, 226, 372, 382, 498, 518, 591, 605, 623, 624, 643 to 649, 654, 655, 667, 696 to 701, 704, 705, *supra*, and Nos. 1922, 1923, 1924, 1969, 1970, 1971, 2140, 2265, *infra.*

(710)—*Ss.* 149, 141, 304 (2)—*Members of lawful assembly — One of them committing an offence—His companions not liable.*—M, W and N were ploughing the disputed field when the members of the complainant's party came up to interfere with them and to turn them out. M struck B (one of the complainant's party) on the head and thereby caused his death. M was convicted under s. 304 (2) and W and N were

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convicted of offence under s. 314 (2) read with s. 149, I.P.C. There was no finding that the common object of M, W and N was any of those specified in s. 141, I.P.C. On the contrary it was found that the members of the deceased's party were the aggressors, their object being to forcibly dispossess the other party of certain land. *Held*, under the circumstances, that M and his party were perfectly justified in exercising their right of private defence, and if M exceeded that right, he and he alone was guilty of any offence, but that s. 149, I.P.C., did not operate to make M's companions (W and N) equally guilty with him, as they were not at the time members of an unlawful assembly, and the conviction of W and N must therefore be set aside. MIHAN SINGH v. CROWN, **26 P.R. 1914, Cr. = 16 Cr. L J. 60 = 26 Ind. Cas. 652.**

(711)—*Ss.* 149, 302—*Party of men going out together heavily armed for committing dacoity—Stoppage on road—Some members firing at attacking party—Death of two among latter—Liability of each of the party for murder—Conviction— Legality — Charge under s.* 149—*Omission to set out common object—Irregularity—No substantial injustice—S.* 537, *Crim. Pro. Code.*—Where a party of men heavily armed set out together from a place for the purpose of committing dacoity, and where, being stopped on the road on suspicion, some of them fired at the persons who stopped them and killed two of the latter. *Held* that each member of the party was equally liable with the others for the murders which occurred as being a contingency for which they were prepared beforehand and which they knew to be likely to occur. The specific common object of a riot need not necessarily be set out in a charge including s. 149, I.P.C. (39 C. 781, *Not F.*) So far as concerns the form of the charges, s. 537, Crim. Pro. Code, amply covers all technical deficiencies in the charge. Unless an omission in the charge has occasioned a failure of justice, the proceedings are not vitiated and need not be set aside. Under the latter portion of s. 149, I.P.C., there must be an expectation founded upon facts known to all the members, amounting to something more than mere speculation. DHIAN SINGH v. CROWN, **16 P.R. 1915, Cr = 17 P.W. R. 1915. Cr.** (61 P.R. 1887, Cr., *R.*)

(712)—Ss. 149, 302—*See* UNLAWFUL ASSEMBLY, 22 C. 805.

(713)—*Ss.* 149, 302, 436—*Riot—Unlawful assembly—Common object.*—In the recent Kotappakonda riots in 1909, certains persons were killed, the police station was burnt down, and a constable was burnt to death under a heap of straw piled upon him and a number of accused were convicted for various offences. *Held* that there is no evidence that the first accused himself set fire to the police station, and he can only be found guilty on this count if it is held that the police station was set on fire in prosecution of the common object of the unlawful assembly, or that the members of the assembly knew that the police station was likely to be set on fire in prosecution of the common object. CHENNAPPAREDDI v. EMPEROR, **8 M.L.T. 326 = 8 Ind. Cas. 399 = 1910 M.W.N. 522 = 11 Cr. L J. 645.**

(714)—*Ss.* 149, 304 *and* 326—*Charge under s* 304 *read with s* 149—*Conviction for an offence under s.* 326.—The offence of causing grievous hurt under s 326 is not a minor offence, or an offence involved in the offence under s. 304, coupled with s. 149; therefore a person accused of and charged with the latter offence cannot, in the event of the charge not being sustainable, be convicted of an offence under s. 326. RAM SARUP RAI v. EMPEROR, **6 C.W.N. 98.** [*F.*, 34 C. 698 = 11 C.W.N. 666 = 5 Cr. L.J. 427.]

(715)—*Ss.* 149, 324—*Offence committed not in prosecution of a common object.*—Where a wound inflicted on a certain person cannot be regarded as the result of a common enterprise in which the accused were engaged, a conviction under s. 324, read with s. 149, is wrong. HARENDRA CHANDRA SARKAR v. EMPEROR, **7 C.W.N. 512.**

(716)—Ss. 149 and 325—*See* GRIEVOUS HURT, 27 C. 566 = 4 C.W.N. 546.

(717)—Ss. 149 and 325—*See* VERDICT OF JURY, 6 C.L.R. 349.

——S. 150.

(718)—S. 150—*See* No. 592, *supra*.

——S. 151.

See RIOTING.

See UNLAWFUL ASSEMBLY.

(719)—*S.* 151—*Burden of proof.*—The prosecution should prove that the assembly was in fact likely to cause a disturbance of the public peace. MURLIDHAR v. EMPRESS, **22 P.R. 1887, Cr.**

——S. 152.

See RIOTING.

See UNLAWFUL ASSEMBLY.

(720)—S. 152—*See* No. 702, *supra*.

(721)—*Ss.* 152, 332, 333—*Scope of the sections—Using violence upon police officers suppressing riot—Hurt caused by such violence—Separate sentences.*—S 152 contemplates an assault or obstruction to some particular public servant. Where, therefore, the charge against the accused, as framed, was merely to the effect that they assaulted and obstructed members of police force in the discharge of their duties, a conviction under the section would not be proper. Where members of an unlawful assembly inflicted hurt upon certain Police officers endeavouring to suppress a riot, and the hurt was due to the violence used towards the Police Officers, which violence constituted the essence of the offence under s. 152, *held*, that separate sentences could not be passed under s. 152 and ss. 332 and 333. FERASAT v. QUEEN-EMPRESS, **19 C. 105.** [*Rel. on*, 40 C. 511 = 14 Cr. L.J. 66 = 18 Ind. Cas. 402.]

Penal Code (Act XLV of 1860)—*continued.*

——**S. 153.**

See RIOTING.

See UNLAWFUL ASSEMBLY.

(722)—*S.* 153—*Disobedience to the orders of police regarding a procession—Police Act, s* 30. —Where certain persons taking part in a religious procession, gratuitously disobeyed the order of the police concerning the manner in which such procession was to be conducted, with the result that a riot was only averted by bringing armed police upon the scene, *held* that the persons concerned acted, though not malignantly, yet wantonly within the meaning of s. 153, I.P.C., and were properly convicted under that section. EMPEROR v. HUSAIN BAKHSH, **29 A. 569 = A.W.N. 1907, 171 = 6 Cr. L.J. 14.**

(723)—*S.* 153—*Gist of the offence.*—The mere chance of a provocation by an illegal act is sufficient to justify the conviction under s. 153. The section, moreover, requires that the provocation given by the commission of an illegal act must be given malignantly and wantonly. "Malignantly" implies a sort of general malice. QUEEN-EMPRESS v. KAHANJI, **18 B. 758.** [*R.*, 26 M. 554, F.B. = 1 Weir 270.]

(724)—*S.* 153, *offence under* —The offence under s. 153, I.P.C., requires that the offender should do something illegal, by doing which he malignantly or wantonly gives provocation to any person, intending or knowing it to be likely that such provocation will cause the offence of rioting to be committed. EMPRESS v. KHUSHAL SINGH, **A.W.N. 1886, 23.**

(725)—S. 153—*See* Nos. 573, 574 and 644, *supra.*

(726)—*Ss.* 153, 296—*Wantonly giving provocation with intent to cause riot—Disturbing a religious assembly* — 'Vadagalais' *forming separate* adhyabaga Ghoshti *from* 'Tengalais'—*User of public highway for religious purpose.*—A decree in a civil suit declared the exclusive right of *Tengalais* to the *Adhyabagam Miras* in a certain temple, one of the rights of that *Miras* being declared to be the exclusive right of reciting the usual Tamil *Prabhandham* in a certain temple and the shrines attached thereto. It also declared that the *Tengalais* were entitled to discharge the duties on all occasions on which the ceremony was performed as well as at the time of the processions, and at services in the temple and its shrines. The *Vadagalais* were restrained from interfering with the *Tengalais* in the recital of the *Mantrams* and *Prabhandham*, otherwise than as ordinary worshippers. Subsequently, a religious procession was being conducted along a public way. The *Tengalai Goshti* was reciting *Prabhandham* in front of the God. Behind the idol the *Vadagalais*, at the suggestion of the District Magistrate, formed a separate *Goshti* and recited a different *Prabhandham*. The *Vadagalais* were asked to refrain from doing so, but refused to do so. They were charged under s, 153 for wantonly giving provocation with intent to cause riot and under s 296 for disturbing a religious assembly. It was found that *Tengalais* could hear little or nothing of what the *Vadagalais* recited. *Held*, by the Full Bench (*dissenting* from *White, C J.* and *following Bhashyam Ayyangar, J.*) :—The *Vadagalais* had not committed any offence either under s. 153 or s. 296, as the acts of the *Vadagalais* were not in contravention of the decree, as they were not acting wantonly, or malignantly, or illegally and as they did not disturb the worship of *Tengalais*, they being at such a distance that the *Tengalais* could hear little or nothing of what was going on behind. Per *Bhashyam Ayyangar, J.*—Within the meaning of s. 296, no assembly can be lawfully engaged in the performance of a religious worship or religious ceremony on a highway unless it be established, or can be reasonably presumed that the dedication of the highway was subject to such restriction and user. Using the highway as a place of worship is not the legitimate user of it as a highway, *i.e.*, "for the purpose of using it in order to pass and re-pass or for any reasonable or usual mode of using the highway as a highway. Per *Subrahmania, Ayyar, J.*—Presumably the object of s. 296 is to secure freedom from molestation when people meet for the performance of acts which ordinarily take place in some quiet spot vested for the time being in the assembly exclusively; and one cannot but feel serious doubts as to whether the section was intended to secure to persons, who choose to engage in worship in an unquiet place open to all the public as a thoroughfare, the immunity from disturbance due to those who meet to worship in a church, a mosque, a temple or other place appropriate for such purpose. There is no peculiar right known to the law as a right of procession; though the law accords to members of a procession no recognition in their collective capacity, yet, the fact that a number of persons use a highway together for some common purpose does not detract in any way from such use being lawful; but as the circumstances attending a procession may, in consequence of their being inconsistent with the paramount idea of passage already referred to, be of such a character as to render the user by the processionists otherwise than lawlul. Per *Benson, J.*—No doubt a highway is primarily intended for the use of individuals passing and re-passing along it in pursuit of their ordinary avocations, but in every country, and especially in India, highways have, from time immemorial, been used for the passing and re-passing of processions as well as of individuals and there is nothing illegal in a procession or assembly engaged in worship while passing along a highway, any more than in an individual doing so. No doubt, if a religious, or any other procession, interferes with ordinary use of the highway by persons not members of the procession, it may be prohibited or controlled by the proper authorities, and no Court could convict a person under s. 296 on an allegation that he voluntarily disturbed a religious procession, if

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he could show that he was only using the road in the ordinary way and with due regard to the right of others equally entitled to use it. But, subject to such control and the rights of others entitled to use the high way, there is nothing illegal in a procession engaging in worship on a highway. VIJARAGHAVA CHARIAR v. EMPEROR, **26 M. 554=1 Weir 260=1 Weir 70=13 M L.J. 171.** [*F.*, 34 A. 78 =12 Cr. L.J 573=12 Ind. Cas. 37=8 A.L.J. 1150; *R.*, 10 Cr.L.J. 445=3 Ind Cas. 981=119 P.L R. 1909, 33 P.W.R. 1909, Cr.]

——S. 153-A.

(727)—S. 153-A—*See* CRIM. PRO. CODE, 1898, ss. 108 (*b*), 451, 12 Cr. L.J. 248=10 Ind. Cas. 789.

(728)—S. 153-A—*See* Nos. 18, 574, 575 and 576, *supra*.

——S. 154.

See RIOTING.

See UNLAWFUL ASSEMBLY.

(729)—*S.* 154—*Elements of the offence under —Owner or occupier liable even when ignorant of intention of agent or manager—Liability of landlord for acts of commission and omission of his agent.*—Knowledge on the part of the owner or occupier of the land of the acts or intentions of the agent is not an essential element of an offence under s. 154, and he may be convicted under the section, though he may be in entire ignorance of the acts of his agent or manager. Per *Rampini* and *Pratt, JJ.*—There is nothing in the terms of s. 154. which justifies the distinction between acts of omission and acts of commission on the part of the landlord's agent. There seems to be no ground for holding that s. 154 is intended to punish the landholder, when his agent has not rendered himself liable to the Criminal Law, and that, when the agent has done so, his liability is at an end. On the contrary, the provisions of s. 154 are intended to impose on non-resident land-holders and their agents the duty of maintaining public peace and preventing unlawful assemblies and riots, on their estates, and to render the former liable for any dereliction in the discharge of this duty. Per *Ameer Ali, J.*—An owner or occupier of land can only be liable under s. 154, for acts of omission or laches on the part of his agent and not for criminal acts committed by him. It would be straining the law to make the absentee owner, who has himself no knowledge of the occurrence, liable for not giving information of the riot that has taken place, if his agent takes part in it, and, as a rioter, actually taking part in it, does not, as a matter of course, give notice of it. It is the agent on the spot, who is primarily responsible for the duty of giving notice to the police, and his failure makes the owner liable for his neglect But a charge of neglect assumes that the agent is not directly concerned in the commission of the offence. If he is so concerned it ceases to be neglect; it is a substantive crime. KAZI ZEAMUDDIN AHMED v. QUEEN-EMPRESS, **28 C. 504=5 C.W.N. 771.** (12 A. 550, *F.*; 12 W.R, Cr. 75, 4 C.W.N. 691, 3 W.R. Cr. 54, 7 C.L.R. 289, *R.*) [*R.*, 8 C. W.N. 908, 12 Cr.L.J. 441=11 Ind. Cas. 785=7 N.L.R. 101, 8 O.C. 418.]

(730)—*S.* 154—*Owner or occupier of land on which an unlawful assembly is held, liability of.*—To sustain a conviction under s. 154, I.P.C., the following facts must be proved:—(1) that an unlawful assembly or riot has taken place on the land belonging to or occupied by the accused or in which he claims an interest; (2) that he, knowing that such offence is being or has been committed or having reason to believe that it is likely to be committed, did not give the earliest notice of it to the chief officer of the nearest police station; (3) in cases where he had reason to believe that it was about to be committed, that he did not use all lawful means in his power to prevent it; and that (4) in the event of its taking place, he did not use all lawful means in his power to disperse or suppress the riot or unlawful assembly. RAJA BHAGWAN BAKHSH v. KING-EMPEROR, **8 O.C. 418, B=3 Cr. L.J. 27.** (10 C. 338, *F*; 12 A. 550, 28 C. 504, 4 C.W.N. 691, *R.*)

(731)—*S.* 154, *responsibility under, test of—Sentence under, how the amount is to be determined.*—A certain *naib* of an estate got up a riot, in order to dispossess certain persons by force. Three ladies having interest in the estate did not themselves do or omit to do any of the things set out under s. 154, I.P.C., but they were responsible for the appointment of the officers under the estate; their adopted sons, although they took some share in the active management of the estate, were in no way responsible for the appointment of the *naib* who brought about the riot. On the conviction of the ladies and the adopted sons under s. 154, I.P.C. *Held*, that it was impossible to punish in every case under s. 154, I.P.C., every person who had any interest in the land. The responsibility must depend upon the fact of the person who caused the riot being himself the person who has an interest in the land or an agent or manager of such person. That the adopted sons could not be held guilty under s. 154, I P.C. That the liabilities of the ladies were joint, but the case against them being a criminal one, separate sentences should be passed against each of them. But in awarding punishment the extent of the responsibility of the estate should be kept in view, rather than the number of individuals who are responsible under s. 154, I.P.C. SIVA SUNDARI CHAUDHRANI v. KING-EMPEROR, **16 C.W.N. 768=14 Ind. Cas. 317=13 Cr. L J. 221=39 C 834.**

(732)—S. 154—*See* EVIDENCE—GENERAL, 6 B L.R. Ap. 83=15 W.R. Cr. 6.

(733)—*Ss.* 154, 155—*Prosecution under the sections, when to be instituted—Delay in instituting prosecution.*—The object of the sections is to impress upon the land-owners their responsibilities and obligations in respect of

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riots or unlawful assemblies committed under the circumstances mentioned in those sections, and, in order to attain the object in view, it is necessary that the prosecutions in respect of such offences should be instituted without delay, so as to be whole some warnings not only to the persons connected, but to others. A prosecution instituted more than two years after the riot or unlawful assembly was held to be stale and ill-advised. ESHAKMEAH v. EMPEROR, **7 C.W.N. 245.**

(734)—*Ss.* 154, 155—*Riot taking place long time ago—Discretion of crown to prosecute or not.*—It is a question for the Crown to determine whether a prosecution under s. 154 or s. 155, Penal Code, should be discontinued in view of the fact that the riots which gave rise to it occurred a long while ago. SARAT CHANDRA SHAH CHOWDHRY v. EMPEROR, **7 C.W.N. 301.**

(735)—*Ss.* 154, 155—*Liability of non-resident partner to be convicted under sections.*—A non-resident partner or co-sharer cannot be convicted in addition to the resident sharer under ss. 154, 155. Where there is no resident sharer, but only an agent or manager, the absentee owner might be held liable under some circumstances. *In the matter of* RADHA NATH CHOWDHRY, **7 C.L.R. 289.** [*R.*, 28 C. 504=5 C.W.N. 771, 8 C.W.N. 908.]

—S. 155.

See RIOTING.

See UNLAWFUL ASSEMBLY.

(736)—*S.* 155—*Liability of an absentee co-sharer not taking an active share in the management.*—An absentee co-sharer who takes an active part in the management of the property, is not liable to be convicted under s. 155, when there are other co-sharers, and when one of them has been convicted under the section. HARENDRA LAL ROY v. KING-EMPEROR, **8 C.W.N. 908=1 Cr. L.J. 866.**

(737)—*S.* 155—*Person not having property in land nor claiming interest therein if liable—Record of riot case if admissible.*—Where the petitioners were convicted under s. 155, I.P.C., and they had admittedly no property in the land in respect of which the riot took place, but their mother and the wife of one of them had interest therein, and the Sessions Judge in appeal, relying on the evidence that the petitioners demanded *kabuliyats* from tenants, found that they were claiming an interest in the land, although there was no evidence to prove that the petitioners demanded the *kabuliyats* for themselves: *Held*—that the finding that the petitioners were claiming an interest in the land could not be supported and the conviction under s. 155, I.P.C., must be set aside. That, in the case under s. 155, I P.C, the Magistrate should have excluded the record of the riot case. PRAMOTHA NATH ROY CHOWDHRY v. KING-EMPEROR, **17 C.W.N. 1247=15 Cr. L.J. 191=22 Ind. Cas. 767.**

(738)—S. 155—*See* Nos. 733, 734 and 735, *supra.*

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—S. 157.

(738-*a*)—S. 157—*See* No. 592, *supra.*

(739)—*Ss.* 157, 447—*Common object—Finding that common object was to prevent complainant from entering on his land—Conviction under s.* 147, *sustainability of—Powers of appellate Courts—Enhancement of sentence of fine.*—Where the accused was convicted under ss. 147, and 447, I.P.C., and the common object of the accused was to prevent complainant from entering into possession of the land: *Held*, that the conviction under s. 147 was right. The appellate Court upheld the conviction under s.147 and quashed that under s. 447. It increased the fine imposed on the accused from Rs. 20 to Rs. 30, adding the additional Rs. 10 as in lieu of unexpired sentence of imprisonment passed by the trying Magistrate. *Held*, that the enhancement of fine was illegal, but the conviction under one section having been quashed, the sentence should have been reduced. *In re* KESIREDDI PANASA RAMUDU, **8 Ind. Cas. 880=9 M.L.T. 167=11 Cr. L.J. 727.** (2 Weir 487, *R.*)

—S. 159.

See AFFRAY.

See RIOTING.

See UNLAWFUL ASSEMBLY.

(740)—*S.* 159—*Affray—Nature of evidence.*—The Court does not expect in an affray to find specific evidence as to acts of each fighter. General evidence as to the accused taking part in it will be sufficient. MOHER SHEIKH v. QUEEN-EMPRESS, **21 C. 392.**

(741)—*Ss.* 159, 160—*Affray.*—Conviction under s. 160, I.P.C., cannot stand without proof of disturbance of the public peace. EMPRESS v. MADAN MOHAN, **A.W.N. 1883, 197.**

—S. 160.

See AFFRAY.

See RIOTING.

See UNLAWFUL ASSEMBLY.

(742)—S. 160—*See* CRIM. PRO. CODE, 1898, ss. 244, 250, Rat. Un. Cr. C. 403=Cr. Rg. 64 of 1888.

(743)—S. 160—*See* No. 741, *supra*, and *see* No. 1972, *infra.*

(744)—*Ss.* 160, 65—*Imprisonment in default.*—The maximum substantive term of imprisonment awardable under s 160, I.P.C., being only one month, the maximum term of imprisonment in default of payment of fine, under s. 65, I.P.C., should be one-fourth of the maximum awardable for the offence. QUEEN-EMPRESS v. NGA CHET KYI, **L.B.R. 1872—1892, 333.**

(745)—Ss. 160 and 324—*See* HURT, 4 L.B.R. 237=7 Cr. L.J. 498.

—S. 161.

See BRIBERY.

See ILLEGAL GRATIFICATION.

See PUBLIC SERVANT.

Penal Code (Act XLV of 1860)—*continued.*

(746)—*S.* 161—*Attempt to obtain illegal gratification.*—A clerk in the Pension Department, in an interview with an applicant for pension, referred to the difficulties in the way of getting the full pension already sanctioned, and, after mentioning two cases in which increased pensions had been obtained through his influence, informed him that anything might be effected by *Karrawai, i.e.*, by giving and taking money, and, on the overture being rejected, concluded by declaring that he would rue and repent the rejection, *held*, that the offence of attempting to obtain a bribe had been committed. EMPRESS OF INDIA v. BALDEO SAHAI, **2 A. 253** [*Appr.*, 32 C. 292 = 9 C.W.N. 547.]

(747)—*S.* 161—*Proof of charge under the section.*—Under the above section, it is necessary to show that the offence, the instigation of which is the subject of the charge, has been committed. QUEEN v. NOTABUR NUNDY, **1 Ind. Jur. N.S. 43**

(748)—*S.* 161 *of the Penal Code, conviction of Poddar of Bank under, unsustainable—Taking money on behalf of Government.*—Where a sum of money was paid, on account of Government, into the Bank of Bengal (which carried on the treasury business of the Government), and a poddar of the Bank took a reward for his trouble, he could not be convicted under s. 161 of the Penal Code, as he was the servant of the Bank and took the money on its behalf, and not "on behalf of the Government." *In the matter of the petition of* MODUN MOHUN, **4 C. 376 = 2 Shome L.R. Cr. 13.**

(749)—*S.* 161—*Public servant taking illegal gratification—Bribery—" In the exercise of his official functions "—" As a motive or reward."*—The above section requires proof that an official has obtained as a motive or reward for official conduct, an illegal gratification for himself or another. That other may or may not be an official, and, therefore, may be wholly unconnected with the official conduct. The conduct which is contemplated as the consideration for the bribe must be that of the official obtaining it. To obtain a bribe as a motive or reward for another's conduct, does not fall within the section, though it may be an abetment of that offence or cheating. The performance of the act which is the consideration for the bribe is not essential. But it is essential that the bribe should be obtained "as a motive or reward." That phrase evidently means "on the understanding that the bribe is given in consideration of some official act or conduct." Such an understanding need not be proved by explicit evidence of any precise agreement It may be inferred from circumstances. EMPEROR v. BHAGWANDAS KANJI, **9 Bom. L.R. 331 = 31 B. 335 = 5 Cr. L.J. 309.**

(750)—S. 161—*See* EVIDENCE ACT, 1872, s. 91, 12 A.L.J. 306 = 36 A. 222 = 15 Cr. L.J. 569 = 25 Ind. Cas. 321.

(751)—S. 161—*See* EVIDENCE ACT, 1872, s. 114 (*b*), 10 C W.N. 669 = 3 Cr. L.J. 452 = 33 C. 649.

Penal Code (Act XLV of 1860)—*continued.*

(752)- S. 161—*See* SENTENCE—ENHANCEMENT OF SENTENCE, 2 S.L.R. 1, Cr. = 10 Cr. L.J. 217.

(753)—S. 161—*See* Nos. 28, 29, 30 and 519, *supra*, and *see* No. 1455 and 2847, *infra*.

(754)—*Ss* 161 *and* 21—*Illegal gratification, taking of, by a public servant—Public servant, unpaid apprentice, if a.*—An unpaid apprentice of Government is not a public servant within the meaning of s. 21, Penal Code. MAHENDRA PROSAD v. KING-EMPEROR, **15 C W.N. 319 = 9 Ind Cas. 698 = 12 Cr. L.J. 117.**

(755)—Ss. 161, 109—Illegal gratification—Abetment—Accomplice—Extortion—*See* NGA PU GAUNG v. QUEEN-EMPRESS, **U.B.R. 1897—1901, Vol. I, 263.**

(756)—*Ss.* 161 *and* 116—*Abetting the taking of an illegal gratification by a public servant.*—In a case where a public servant allowed the gratification to be delivered, but not in order to its acceptance, but merely for the purpose of having complete evidence of the transaction, it was held that, as the intention of the officer was not criminal, it was no offence under s. 110 of the Penal Code, but that it fell under s. 116. *Held*, also, that the offence fell under the second part of s. 116 as the gratification was offered to a Judge, whose duty it was, as a Judge, to prevent the commission of the offence of corruption of justice. RAGHUDATT SINGH v. QUEEN-EMPRESS, **U.B.R. 1892—1896, Vol. I, 154.**

(757)—*Ss.* 161, 116 *and* 214—*Abetment of public servant in accepting or obtaining an illegal gratification.*—It is an absolute absurdity to admit solicitation of a bribe by a third person, without the privity or the connivance of the public servant concerned as an excuse for giving a bribe to such public servant. Even if that public servant be corrupt and solicits a bribe directly or indirectly, the giving him the bribe is none the less an abetment of the offence. QUEEN-EMPRESS v. MA KA, **U B.R. 1892—1896, Vol. I, 158.**

(758)—*Ss* 161, 165—*Putwaree taking grain as consideration for showing favour.*—Where a putwaree took grain as consideration for showing favour to the giver in the discharge of his functions as putwaree, his conduct came under s. 161 rather than under s 165. QUEEN v. MUDS-OOD DEEN, **2 N.W P. 148.**

(759)—*Ss.* 161, 165—*Receiving illegal gratification partly on one day and partly on another day—Separate convictions, validity of.* Where a public servant was charged with the offence of receiving illegal gratification partly on one day and partly on another day for the same purpose, *held*, that the offence was a continuous one, and that the separate convictions for offences under ss. 161 and 165, I.P.C., were bad in law. JAGAT CHANDRA SARMA v. LAL CHAND DAS, **5 C.W.N. 332.**

(760)—Ss. 161, 165—Misjoinders of charges or offences under—*See* CRIM. PRO. CODE, 1898, ss. 35, 190, 196, 197, 200, 233, 239, 537 (*a*), 146 P.L.R. 1911 = 10 Ind. Cas. 156 = 12 Cr. L.J. 217 = 11 P.R. 1911, Cr. = 32 P.W.R. 1911.

Penal Code (Act XLV of 1860)—*continued.*

(761)—Ss. 161, 211—*See* ACT V OF 1861, ss. 5 and 36, 9 P.W.R. 1908, Cr.=7 Cr. L.J. 291.

(762)—*Ss.* 161, 304 *and* 330-*A—Murder—Causing death by negligent acts—Police officer—Bribe—Proof of—Causing hurt for restoring stolen property—Mode of weighing evidence—Expert medical opinion.*—S. 304 A of I.P.C. applies to acts which are not criminal in themselves, but are punishable by reason of death having been committed thereby. Conclusive evidence is required to establish a charge of bribe against a public servant or of his having committed an offence in discharge of his public duties. The individual credibility of witnesses is a very important factor in considering the value of the evidence on both sides. Expert medicial opinion as to the *post mortem* appearances observed by the Surgeon who has conducted the *post mortem* examination is relevant, and where it differs from the opinion of the latter, the benefit of doubt ought to be given to the accused. Where the witnesses for the prosecution belong to a village, a *Lambardar or the Zaildar* of which is an enemy of the accused, their evidence should be scrutinized with even more than usual care. MEHR ILAHI v. CROWN, **26 P.W.R. 1911, Cr.=12 Cr. L.J. 485=12 Ind. Cas. 93.**

(763)—*Ss.* 161, 384—*Extortion—Terror of Criminal charge—Injury—Burma Gambling Act* (I *of* 1899), *s.* 10—*Village headman, powers of—Lower Burma Village Act* (III *of* 1889), *ss.* 7, 8, 10, 28—*Abuse of powers.*—A village headman, finding certain persons setting cocks to fight near a public road, threatened them with a prosecution and subsequently took money as a consideration for not prosecuting them: *Held*, (1) that s. 161, Penal Code, was inapplicable and that the offence fell under s. 384 only; (2) that the act of the headman was not punishable under s. 10 of the Village Act, and, consequently, s. 28 did not apply. The terror of a criminal charge, whether true or false, amounts to a fear of injury, and though to threaten to use the process of law is lawful, to do so for the purpose of enforcing payment of money not legally due is unlawful, and such a threat made with such an object is a threat of injury sufficient to constitute the offence of extortion. A village headman is not empowered to arrest people whom he finds contravening s. 10 of the Burma Gambling Act. A headman is not bound under s. 7 of the Burma Village Act to communicate information respecting offences under s. 10 of the Burma Gambling Act, nor under s. 8 of the Village Act to investigate them. For an act to constitute an abuse of powers within the meaning of s. 10 of the Burma Village Act, it must have been done in the avowed exercsie of some power conferred by the Act or by the rules thereunder, but in doing it that power was exceeded, or was exercised in an improper manner, or under circumstances when it was not properly exercisable. EMPEROR v. NGA KAN THA, **14 Cr. L J. 413=20 Ind. Cas. 237=6 Bur. L.T. 92.**

Penal Code (Act XLV of 1860)—*continued.*

—S. 162.

See BRIBERY.

See ILLEGAL GRATIFICATION.

See PUBLIC SERVANT.

(764)—*S.* 162—*Taking bribes—Motive essential to constitute offence.*—Where it was simply found that a certain sum was handed to the accused to be delivered by him as bribe to the subordinate Magistrate: *Held* that this was insufficient to support a conviction under s. 162, without a finding that the money was accepted or obtained by the accused as a motive or reward for tampering with the subordinate Magistrate. R. CHINNASWAMI IYENGAR v. EMPEROR, **8 Ind. Cas 668=9 M.L.T. 137=1910 M.W.N. 776=11 Cr. L J. 696.**

(765)—*Ss.* 162 *and* 193—*Statement made to Police—Admissibility in evidence—Sanction to prosecute for perjury—Crim. Pro Code, ss.* 474, 476 — *Revision.* —Statements made to Police officers and recorded by them in the diaries cannot be used in evidence except for the sole purpose of contradicting the police officer. Where a person denied having made a particular statement to a Police officer in whose diary it was to be found. *Held* that prosecution for perjury against that person could not, sucessfully, be maintained. *Held* further that the High Court has power to interfere in revision in a case where the Magistrate sanctions a prosecution, under the above circumstances, even if the order was passed under s. 476, Crim. Pro. Code. MUHAMMAD USMANI v. KING-EMPEROR, **4 A.L.J, 811=A.W.N. 1908, 22=7 Cr. L.J. 3.** (19 A. 390, *F.*)

—S. 165.

(766)—S. 165—*See* Nos. 758, 759 and 760, *supra.*

—S. 166.

See PUBLIC SERVANT.

(767)—*S.* 166—*Gist of offence—Disobedience of* Mamlatdar's *orders by Village Kulkarni*—Mamlatdar's *Courts Act,* III *of* 1876, *s.* 17.—To satisfy the requirements of s. 166, I.P.C., there must be a wilful disobedience of an express direction of law; a disobedience to an order is not sufficient, even though that order may be one that is given under a provision of law. Where a village Kulkarni disobeys the orders issued to him by the *Mamlatdar* of the Taluka, under Act III of 1876, he cannot be convicted under s. 166, I.P.C. QUEEN-EMPRESS v. APPAJI NARAYAN, **Rat. Un. Cr. C. 764=Cr. Rg. 27 of 1895.**

(768)—*S.* 166—*Peon entrusted with service of notice—Representation that the notice was a warrant and arrest—Conviction under s.* 166, *I.P.C.—Legality.*—Where a peon, who was entrusted with a notice for service on the complainant, and whose duty was merely to require the signature of the complainant to an acknowledgment of the service of notice, represented the notice to be a warrant and actually arrested the complainant under colour

Penal Code (Act XLV of 1860)—*continued.*

of the alleged warrant, *held*, that the peon was rightly convicted under s. 166, I.P.C. *In re* RANGASAWMI NAIDU, **7 M.L.T. 429=6 Ind. Cas. 773=11 Cr. L.J. 400=20 M.L.J. 568.**

(769)—S. 166—*See* ACT XIV OF 1866, s. 47, 1 Weir 72.

(770)—S. 166—Attachment of cart while in motion for want of license—Goods placed in cart—Cart ready to receive passengers—Offence —*See* MAD. ACT IV OF 1884, s. 89, 13 Cr. L.J. 199=14 Ind. Cas. 199.

(771)—S. 166—*See* RULES, 1 Weir 73.

——S. 167.

See PUBLIC SERVANT.

(772)—*S.* 167—*Amin entrusted with a warrant of attachment of moveable property in judgment-debtor's possession.*—An Amin, who is directed to attach the moveable property in the judgment-debtor's possession by a warrant of attachment, is, by Form No. 136 in the fourth schedule to the Civ. Pro. Code, bound to return the warrant within a certain date, with an endorsement certifying the date and the manner in which it has been executed or why it has not been executed. He is, therefore, a public servant charged with the preparation of a document within the meaning of s. 167. *In re* MUTHALAGIRI RAJU, **1 Weir 74.**

(773)—S. 167—*See* CRIM. PRO. CODE, 1898, s. 161, U.B.R. 1897—1901, Vol. I, 29.

(773*a*)—S. 167—*See* No. 3082, *infra.*

(774)—*Ss.* 167 *and* 177—*Village Kurnam and Village Monigar furnishing false information regarding applications for vacant Government lands.*—As public servants, a Village Kurnam and a Village Monigar are bound to furnish to their superior Revenue Officer true information in regard to vacant Government lands sought to be taken up for cultivation. If they furnish information, which is false, they are punishable under s. 177, Penal Code, but not under s. 167, unless there is evidence to support the finding that the Kurnam and the Monigar are, in that capacity, charged with the correct preparation of the application or durkhast memorandum. HIGH COURT PROCEEDINGS, 7TH NOVEMBER 1877, NO. 2599, **1 Weir 108.**

(775)—*Ss.* 167 *and* 188—*Removal of a Deputy Inspector charged with an offence to another District.*—Where the Deputy Inspector-General removed a Deputy Inspector charged with an offence from one district to another, *held*, that his act was a contempt and contrary to Act V of 1861. CROWN v. BOODH SINGH, **47 P.R. 1867, Cr.** CROWN v. BOODH SINGH, **9 P.R. 1868, Cr.** [*Diss.*, 6 P.R. 1910, Cr.; *F.*, 11 Cr. L.J. 252=5 Ind. Cas. 829=6 P.R. 1910, Cr. =10 P.W.R. 1910, Cr.]

(776)—SS. 167 and 466—*See* JOINDER OF CHARGES—MISJOINDER OF CHARGES, 8 C. 450=10 C.L.R. 421.

——S. 168.

(777)—*S.* 168 — *Trade* — *Money-lending.*— *Held*, that the word "trade" in s. 168 of the Penal Code does not include lending money at interest. KING-EMPEROR v. NEK MUHAMMAD, **147 P.L.R. 1903=22 P.R. 1903, Cr.** (51 P.R. 1886, *R.*)

(778)—*S.* 168—*Berar Municipal Law, s.* 146 (1)—*Member of Municipal Committee—Advancing money to contractor for carrying out Municipal contracts—Offence under s.* 168, *I.P.C.*—A, the Vice-Chairman of a Municipal Committee, who on behalf of the Committee was empowered to make contracts, to pass contractor's bills and to issue municipal cheques in payment thereof, had also a private money-lending business of his own. He gave two contracts to one L. L being in want of funds, A advanced him money, subsequently passed L's bills and repaid himself out of the monies realised from cheques issued on behalf of the Municipality. *Held*, that A was guilty of an offence under s. 168, I.P.C. Any member of a Municipal Board in Berar, who lends money to a contractor with his Board upon the personal credit of such contractor, for the purpose of such money being applied in carrying out of the Municipal contracts, violates s. 146 (1) of the Berar Municipal Law, and becomes liable to punishment under s. 168 of the Penal Code as applied to Berar. A. B. v. EMPEROR, **7 N.L.R. 53=10 Ind. Cas. 577=12 Cr. L.J. 281.** (54 L.J. Q.B. 47, 23 L.J. Q.B. 254, 31 L. J. Ex. 233, 46 L.J. Ex. 314, 63 L.J.Q.B. 490, 72 L.J. Ch. 737, *R.*)

——S. 169.

(779)—S. 169—*See* No. 550, *supra.*

——S. 170.

(780)—*S.* 170—*Personating a public servant.* —To support a conviction under s. 170, it is not necessary that the act done or attempted to be done under colour of office should be such an act as might be legally done by the public servant personated. EMPEROR v. AZIZ-UD-DIN, **27 A. 294=1 A.L.J. 604=A.W.N. 1904, 232=1 Cr. L.J. 1913.** (10 A. 58, *R.*)

(781)—*S.* 170—*Personating a public servant —Acts done in such assumed character—"An act under colour of such office."*—Mere personation is insufficient to justify conviction under s. 170 of the Penal Code. The section further requires that the offender should be shown to have attempted to do or to have done, in such assumed character, some act under colour of such office. The phrase "an act under colour of such office" points to acts, which could not have been done, without assuming official authority or responsibility, and would not connote acts of a ministerial or mechanical character, which might be done, without requiring the justification of office in the person doing them. EMPEROR v. UMAKANT BALVANT, **9 Bom. L.R. 222=5 Cr. L.J. 211**; *see on further enquiry*, **9 Bom. L.R. 706=6 Cr. L.J. 70.**

(782)—*S.* 170—*Petition-writer, whether a public servant.*—A petition-writer is not a public servant as defined in s. 21, I.P.C., consequently, a person cannot be convicted under

Penal Code (Act XLV of 1860)—*continued.*

s. 170 of personating a petition-writer. QUEEN-EMPRESS v. NGA PO SAUNG, **U B.R. 1897—1901, Vol. I, 265.**

(783)—*S.* 170—*Personating a public servant.*—The above section does not make the act of pretending to hold a particular office as a public servant punishable unless the person in such assumed character does or attempts to do any act *under color of such office.* QUEEN-EMPRESS v. NGA PE, **U.B.R. 1892—1896, Vol. I, 168.**

(784)—S. 170—*See* REVISION —QUESTION OF FACT, 9 Bom. L.R. 706=6 Cr. L J. 70.

(785)—S. 170— *See* Nos. 212, 213 and 302, *supra.*

——**S. 171.**

(786)—*S.* 171—*Conviction under the section.*—Where a person was found carrying a police jacket under his arm with the intent that it should be believed that he was a police constable, he may be convicted of an offence under s. 171, I.P.C. KING-EMPEROR v. NGA PO KYAW, **U.B.R. 1904, 1st Qr., Penal Code, 3=1 Cr. L J. 554.** (U.B.R. 1892—1896, 168, [*R.*)

(787)—S. 171—*See* No. 212, *supra.*

——**S. 172.**

See ABSCONDING OFFENDER.

(788)—*S.* 172—*Object of section—Absconding to avoid service of summons—"Abscond," meaning of—Proof.*—The object of the section is to punish an offender for the contempt his conduct indicates of the authority whose process he disregards. In order to prove the commission of an offence under s. 172, the existence of a summons, notice or order is necessary. It is not sufficient to show that a person apprehended that a process will be issued, and has therefore absconded. It must also be shown that the accused knew or had reason to believe that the process had issued. The term "abscond" is not to be understood as implying necessarily that a person leaves the place in which he is. It matters not whether a person departs from a place or remains in it, if he conceals himself; nor does the term apply to the commencement of the concealment. If the person, having concealed himself before process issues, continues to do so after it has issued, he absconds. SRINIVASA AYENGAR v. QUEEN, **4 M. 393=1 Weir 76=1 Weir 891.**

(789)—*S.* 172—*Refusal to sign receipt of summons.*—A refusal to sign a receipt of a summons is not an offence under the Penal Code. EMPRESS v. HIRA LAL, **A.W.N. 1883, 222.** [*Appl*, 31 A. 608=6 A.L J. 777=3 Ind. Cas. 965=10 Cr L.J. 435.]

(790)—*S.* 172—*Absconding in order to avoid being served with a summons, notice or order—Running away to avoid an arrest under a warrant.*—S. 172 of the Penal Code has no application in the case of a warrant, which is not a "summons, notice, or order" and a conviction under that section for absconding in order to avoid being served with a warrant is bad in law. MAJHI MAMUD v. EMPEROR, **2 C.L.J. 625=3 Cr. L J. 117.**

(791)—*S.* 172 — *Warrant to apprehend offender if an order within section.*— *Held* (Campbell, J., *dissenting*) that a warrant which directs a Police Officer to apprehend an offender and produce him before the Magistrate is neither a "summons, notice, nor order" to such offender within the meaning of s. 172 of the Penal Code, and that the offence of absconding by an offender against whom a warrant has been so issued is not punishable under that section and must be dealt with in a different manner. QUEEN v. WOMESH CHUNDER GHOSE, **5 W.R. 71, Cr.** [*F.*, 4 N.W.P. 97, Rat. Un. Cr. C. 152, 2 C.L.J. 625, 9 W.R. Cr. 70.]

(792)—*S.* 172—*Warrant of arrest addressed to Nazir.*—A warrant of arrest addressed to the Nazir for the arrest of judgment-debtor is not a summons, notice, or order, within the meaning of s. 172, I.P.C., addressed to the person himself. QUEEN v. ZAHOOR ALI KHAN, **4 N.W.P. 97.** [*F.*, 2 C.L.J. 625=3 Cr. L.J. 117.]

(793)—*S.* 172—*Absconding to avoid service of warrant.*—A person absconding to avoid the service of a warrant issued by a Magistrate to the address of a Police Officer, directing the latter to arrest that person, does not commit an offence under s. 172, I.P.C. QUEEN-EMPRESS v. LAKSHMI, **Rat. Un. Cr. C. 152=Cr. Rg. 24-2-1881.**

(794)—*S.* 172—*Absconding to avoid service of summons.*—S. 172 only applies to persons absconding, "in order to avoid being served with a summons, notice or order." A warrant is not to be served but executed, and it is neither a summons nor a notice, nor is it an order to the person upon whom it is to be executed. Therefore, absconding to avoid a warrant is not punishable under s. 172. HIGH COURT PROCEEDINGS, 21ST APRIL 1866, **1 Weir 75.**

(795)—*S.* 172—*"Warrant," if summons, notice or order.*—A warrant is not a "summons, notice or order" within the meaning of s. 172. A person absconding with a view to avoid a warrant for his arrest, issued by a Civil Court is not punishable under s. 172, I.P.C. ALLA BAKSH v. EMPRESS, **28 P.R. 1890, Cr.**

(796)—*S.* 172—*Trial of absconding offender.*—Absconding by a person against whom a warrant has been issued, must be dealt with in the manner provided for by the Code of Criminal Procedure, and not under s. 172, Penal Code. QUEEN v. AMIRJAN, **7 N.W.P. 302.**

(797)—*S.* 172—*Witness absconding—Crim. Pro. Code* (1861), *ss.* 188 *to* 190.—S. 172 of the Penal Code is applicable to witnesses who abscond to evade service of a warrant issued by a Magistrate under ss. 188 to 190 of the Code of Criminal Procedure, 1861, and s. 183 of the latter Code lays down the course to be pursued when a party charged with an offence

Penal Code (Act XLV of 1860)—*continued.*

absconds, so that on a warrant issued against him he cannot be found. *In re* HOSSAIN MANJEE, 9 W.R. 70, Cr.

(798)—*S.* 172—*Crim. Pro. Code* (1872), *ss.* 473 *and* 206.—A Magistrate tried an accused under s. 172, I.P.C., for not presenting himself in obedience to a summons issued by him to give evidence in a Magistrate's Court and sentenced him to pay a fine of Rs. 5 or in default to suffer rigorous imprisonment for fifteen days. *Held*, that s. 172 was inapplicable and that the trial by the Magistrate under s 473, Crim. Pro. Code, 1872, the sentence of rigorous imprisonment in default and the conviction of the accused without recording his answer under s. 206, Crim. Pro. Code, 1872, were all illegal. GOVERNMENT v. VITHAL, **Colm. Dig. Cr. 38 of 1876.**

(799)—Ss. 172, 174—*See* CONTEMPT OF COURT, Rat. Un. Cr. C. 64 = Cr. Rg. 25-4-1872.

——S. 173.

(800)—*S.* 173—*Refusal to receive and sign summons.*—A refusal to receive and sign a summons does not constitute a prevention of service within the meaning of s. 173 of the Penal Code. REG. v. KUSHAL, **Rat. Un. Cr. C. 17 = Cr. Rg. 15-7-1869.**

(801)—*S.* 173—*Refusal to receive summons.*—A refusal to receive a summons is not an offence under s. 173, Penal Code, the words "any manner prevents the service" cannot apply when the summons is tendered and refused as it is good service. QUEEN v. PUNAMALAI NADAN, **5 M. 199 = 1 Weir 80 = 6 Ind. Jur. 410.** [*F.*, 1 Weir 80; *R.*, 31 A. 608 = 6 A.L.J. 777 = 10 Cr. L.J. 435 = 3 Ind. Cas. 965, 1 Weir 81.]

(802)—*S.* 173—*Refusal to receive summons.*—Where a person refuses to receive a summons and throws it down, he cannot be said to have prevented the service of the summons. QUEEN v. ARUMUGA NADAN, **5 M. 200, Note = 1 Weir 79.** [*F.*, 5 M. 199 = 1 Weir 80 = 6 Ind. Jur. 410.]

(803)—*S.* 173—*Refusal to sign an acknowledgment of summons.*—A refusal to sign an acknowledgment of summons issued by a Magistrate and the throwing down the summons do not amount to a prevention of service within the meaning of S. 173. *In re* ANANTA KERNAYA, **1 Weir 80.**

(804)—*S.* 173—*Refusal to serve summons.*—A refusal to serve as a Special Constable, when ordered to do so, is no offence under s. 173 of the Penal Code and proceedings taken under that section for such refusal are bad in law and should be quashed. The arrest of persons appointed as Special Constables, by the Police, their detention in Police custody till they execute a recognizance to appear before the Magistrate or the Police Inspector, and the taking of such recognizances from them are absolutely illegal. GOPINATH PARYAH v. EMPRESS, **2 C.L.J. 585 = 10 C.W.N. 82 = 3 Cr. L.J. 169.** [*F.*, 8 C.L.J. 66 = 12 C.W.N. 727 = 7 Cr. L.J 507; *R.*, 10 C.W.N. 322.]

Penal Code (Act XLV of 1860)—*continued.*

(805)—*S.* 173—*Citation to appear for enforcing payment of revenue—Refusal to receive or sign duplicate—Whether an offence—Land Revenue Act* (III *of* 1901), *ss.* 147, 195, 196.—Refusal to accept or to sign the duplicate of a citation issued under s. 147 of the Land Revenue Act is not an offence under s. 173 of the Indian Penal Code. The rules framed by the Board of Revenue to regulate the service of summonses or notice cannot override the provisions of ss. 195 and 196 of the Land Revenue Act. They do not profess to declare what is good and sufficient service. KING-EMPEROR v. AHMAD HUSAIN KHAN, **6 A.L.J. 777 = 31 A. 608 = 3 Ind. Cas. 965 = 10 Cr.L.J. 435.**

(806)—*S.* 173—*Refusal to sign order requiring accused's attendance—Crim. Pro. Code* (1882), *ss.* 69, 160.—The accused was convicted under s. 173, I P.C., for refusing to sign an order tendered to him requiring his attendance under s. 160, Crim. Pro. Code. *Held* that as the order was tendered to him, it was served, and that a refusal to sign the order did not amount to a prevention of the service of summons. He, therefore, committed no offence under s. 173, I P.C. EMPRESS v. GANGARAM, **A.W.N. 1886, 93.**

(807)—*S.* 173—*Refusal to sign summons.*—The refusal of a person to sign a summons does not constitute the offence of intentionally preventing the service of the summons upon himself. REG. v. KALYA *bin* FAKIR, **5 B.H.C. Cr. 34.** [*F.*, 3 C. 621, 20 C. 358, 6 A.L.J. 777 = 31 A. 608 = 10 Cr.L.J. 435 = 3 Ind. Cas. 965.]

(808)—S. 173—*See* CRIM. PRO. CODE, 1898, ss. 195 and 487, 1 Weir 80.

(809)—*Ss.* 173 *and* 174—*Power of Tahsildar to issue summons for purposes not contemplated by Act* III *of* 1869 (*Madras*).—The Tahsildar is not competent to issue a summons for a purpose not contemplated by Act III of 1869. Disobedience to such a summons is not an offence under s. 173, Penal Code. *In re* TIMMAROYAN, **1 Weir 96.**

(810)—*Ss.* 173 *and* 180—*Refusal to give receipt for summons.*—A refusal to give a receipt for summons is not an offence under s. 173 of the Penal Code. *In the matter of* BHOOBUNECHWAR DUTT, **3 C. 621 = 2 C.L.R. 80.** (5 B.H.C. Cr. 34, *F.*) [*R.*, 31 A. 608 = 6 A.L.J. 777 = 3 Ind. Cas. 965 = 10 Cr. L.J. 435.]

(811)—*Ss* 173, 180—*Refusal to sign receipt of summons.*—A refusal to sign a receipt for a summons does not amount to preventing service of summons, under s. 173 of the Code, nor does it amount to a refusal to sign a statement under s. 180 of the Code. QUEEN-EMPRESS v. KRISHNA GOBINDA DAS, **20 C. 358.** [*R.*, 31 A. 608 = 6 A.L.J 777 = 3 Ind. Cas. 965 = 10 Cr. L.J. 435.]

——S. 174.

See CONTEMPT OF COURT.

(812)—*S.* 174—*Disobeying notice—Officer entitled to issue summons—Legally competent.*—In order to sustain a conviction under s. 174,

Penal Code (Act XLV of 1860)—*continued.*

Penal Code, it has to be shown that the summons issued was issued by a public servant legally competent as such public servant to issue the same, and that the accused intentionally omitted to attend in pursuance of the summons. A Collector is empowered to transfer the proceedings in regard to sale of ancestral land to an Assistant Collector, First Class. When he transfers proceedings to Second-Class Assistant Collector who issues a summons for the attendance of the accused who disobeys it: *Held* that the accused is not guilty of an offence under s. 174, Penal Code. SHIAM LAL v. KING-EMPEROR, **12 A.L.J. 680=15 Cr.L.J. 595=25 Ind. Cas. 347.**

(813)—*S.* 174—*Inaccuracy in naming the person personally summoned.*—The mere fact of inaccuracy in naming a person who is personally summoned may not be a sufficient ground for acquitting a person so served for an offence under s. 174 Penal Code. *In re* VENKATA-SESHAIAH, **1 Weir 892.**

(814)—*S.* 174—*Essentials of the offence under.*—Before a person can be convicted of an offence under s. 174, it must be shown that he intentionally omitted to attend in obedience to the summons. It is not sufficient to prove that the summons was affixed to the house of those called on to attend, and that they did not attend. It must also be proved that the summons was brought to their knowledge, that they were required to attend, and that they intentionally omitted to do so. *In re* PERI-ANNAMALAWARAM, **1 Weir 84.**

(815)—*S.* 174—*Failure to appear in obedience to summons tendered, but refused.*—A summons, which is tendered to the accused, but which the accused refuses to receive, is a legal summons, as the service amounts to personal service. Failure to obey its directions is an offence punishable under s. 174, Penal Code. *In re* SETHU PADAYACHI, **1 Weir 81.**

(816)—*S.* 174—*Summons made returnable on Sunday—Legality.*—To make a summons returnable on a Sunday is not illegal. HIGH COURT PROCEEDINGS, 14TH AUGUST 1872, NO. 1485, **1 Weir 86.**

(817)—*S.* 174—*Land Revenue Act* (III of 1901), s. 147, *intentional disobedience of citation issued under—Construction of the sections of an Act—Legislative Council, admissibility of its proceedings for the purpose of construction.*—*Held*, that, a citation, issued under s. 147 of Act III of 1901, is an order to the defaulter to appear at the time and place named therein within the meaning of s. 174, Penal Code, and intentional disobedience of it is an offence under that section. *Held*, further, that debates in a Legislative Council, or reports of Committees which precede the passing of an Act, cannot be referred to as legitimate aids to the construction of a particular section of the Act. RAM BALI SINGH v. KING EMPEROR, **13 O.C. 55=5 Ind. Cas 808=11 Cr. L.J 250** (6 A. L. J. 114, Notes portion, 14 A. 145, *R.*)

Pen Code (Act XLV of 1860)—*continued.*

(818)—*S.* 174—*Power of Tahsildar to issue summons.*—Where the information required by a Tahsildar is not "evidence" within the meaning of Mad. Act III of 1869, he has no power to issue summons under that Act Omission to attend in pursuance of such summons is not an offence under s. 174, Penal Code. *In re* REDDI REVANA GOWD, **1 Weir 95**

(819)—*S.* 174—*Power of Tahsildar to issue summons—Crim. Pro. Code, s.* 68.—A Tahsildar is not legally competent to issue a summons under s. 68, Crim. Pro. Code, for the purpose of an enquiry into a refusal by the accused to serve as coolies. A disobedience of such summons is not punishable under s. 174, I.P.C. GOPIA v. KING-EMPEROR, **1 A.L.J. 263=A. W.N. 1904, 122=1 Cr. L.J. 497.**

(820)—*S.* 174—*Summons by Tahsildar—Disobedience, when an offence.*—Where there is no such inquiry being conducted by the Tahsildar as will justify his issuing a summons; under Act III of 1869, disobedience to the summons is not an offence under s. 174, Penal Code. *In re* KARE GOUD, **1 Weir 94.**

(821)—*S.* 174—*Mad. Act* III *of* 1869—*Power of Tahsildar to issue summons.*—A Tahsildar may issue summonses, under Act III of 1869, whenever there is a matter under investigation into which he is authorised to inquire, even though the inquiry may be of an administrative character. Where a Tahsildar summoned a Monigar in order that the Tahsildar might investigate the state of the old arrears of the village, *held*, that the Monigar, omitting to attend in pursuance of the summons, was guilty of an offence under s. 174. *In re* JANGAMA PATTAN, **1 Weir 93.**

(822)—*S.* 174—*Power of Tahsildar to summon village official.*—Under Act III of 1869, the Tahsildar is not authorised to summon a village official to explain why he has not reported an outbreak of small-pox. A person disobeying such a summons cannot be convicted under s. 174. *In re* REDDI NARASURAMAYYA, **1 Weir 95.**

(823)—*S.* 174—*Karnam summoned by tahsildar.*—A karnam, summoned by a Tahsildar, for the purpose of furnishing information regarding a refund certificate, would be guilty of an offence under s. 174, Penal Code, if he fails to obey the summons. *In re* YELLAPA, **1 Weir 93.**

(824)—*S.* 174—*Person* (*Karnam*) *appearing in obedience to summons, but departing without permission, when punishable.*—Where a karnam appeared in obedience to a summons, but left the office without permission, *held*, that the karnam would not be guilty under s. 174, unless the summons contained a direction that he should not leave the office without express permission, or unless there was an order to that effect. *In re* NARAYANAPPA, **1 Weir 99.**

(825)—*S.* 174—*Act* III *of* 1869 (*Madras*)—*Inquiry by Tahsildar in reference to vaccination of children.*—An inquiry, which a Tahsildar

Penal Code (Act XLV of 1860)—*continued.*

can hold with reference to vaccination of children, cannot be rightly considered as an inquiry relating to Revenue administration within the meaning of Act III of 1869. A Village Munsif failing to appear on summons before a Tahsildar, at such an inquiry, is not guilty of an offence under s. 174. *In re* VEERASAMI NAIDU, **1 Weir 95.**

(826)—S. 174—*Inquiry by Tahsildar regarding vaccinator's work—Mad. Act* III *of* 1869.—Act III of 1869 is inapplicable to an inquiry by a Tahsildar in regard to a vaccinator's work. Persons failing to attend such an inquiry, on being summoned, are not punishable under s. 174, Penal Code. *In re* KARUPANNA MUDALI, **1 Weir 96.**

(827)—*Power of Tahsildars and Deputy Tahsildars to issue summons.*—Under Mad. Act III of 1869, Tahsildars and Deputy Tahsildars (among others) are empowered to summon persons resident within the district to appear to give evidence for the investigation of matters in which they are authorised to hold an inquiry; but s. 2 limits their powers to summoning such persons to appear "before the said officer." A Tahsildar has not, therefore, the power to summon a karnam to appear before the Taluq Sheristadar, who is not a Deputy Tahsildar. *In re* P. SUBBAIYA, **1 Weir 97.**

(828)—*S.* 174—*Disobedience to summons—Thasildar—Incompetence of the officer to issue such summons—Persons appointed to prepare a list of cattle.*—The Thasildar is not legally competent to issue summons to persons called Munsifs, who are appointed to prepare and attest a list of cattle for the purpose of distributing revenue over waste lands. Therefore, any disobedience to appear in pursuance of the summons will not amount to an offence under s. 174 of the Code. KHOTA RAM v. KING EMPEROR, **4 P.R. 1907, Cr. = 6 Cr. L J. 107 = 37 P.L.R. 1907 = 25 P.W.R. 1907, Cr.** (2 P.R. 1875, 8 P.R. 1875, Cr., 14 P.R. 1887, Cr. *R.*; **7 M. 197,** *D.*)

(829)—*S,* 174—*Reg.* XXVII *of* 1803—*Order of Thasildar fixing no time for attendance.*—A Tahsildar ordered a *chuprassi* to cause the attendance of a *malguzaar*, who had defaulted but had, before the issue of the order, paid in his arrears, but fixed no date for his attendance; the Tahsildar tried and convicted the *malguzaar* summarily for not obeying the summons. *Held*, that the order was illegal as it was not one to attend at a certain time, was issued to the *chuprassi* to cause the attendance of the accused and not to the accused, and was not issued by a public servant legally competent to issue it; for, even if Reg. XXVII of 1803 be held to be in force in the C.P, it did not authorise a *malguzaar* who was no longer a defaulter to be summoned. CROWN v. RAM BUKHSH, **Colm. Dig. Cr. 88 of 1877.**

(830)—*S.* 174—*Non-attendance in obedience to order of Tahsildar—Place of attendance not specified — Officer's competency to direct the attendance.*—Where the accused, the *lumbardars*

Penal Code (Act XLV of 1860)—*continued.*

of a village, were charged for non-attendance in obedience to an order from the Tahsildar requiring their attendance for the purpose of appointing additional *Chaukidars*, *held*, that they could not be convicted under s. 174, as the accused were not ordered to attend at any specified place. *Held*, further, that the competency of the Tahsildar to require their attendance for the above purpose should have been also proved. GHULAM KHAN v. EMPRESS, **14 P.R 1887, Cr.** [*R.*, 4 P.R. 1907, Cr.]

(831)—*S.* 174—*Summons not specifying the time and place of attendance.*—Where, in a summons, no place is specified at which the person summoned is to appear, a person disobeying the sommons does not omit to attend a certain place as is required by the section. HIGH COURT PROCEEDINGS, 9TH DECEMBER 1876, NO. 2891, **1 Weir 81.**

(832)—*S* 174—*Madras Revenue Summons Act* (*Mad. Act* III *of* 1869), *s.* 1—*Disobedience to summons issued by Tahsildar—Revenue enquiry held by Revenue Inspector under Tahsildar's orders—Offence.*—Accused, a karnam, was summoned by the Tahsildar, under s. 1 of Madras Act III of 1869, to appear before him on a certain day for enquiring into the correctness of the sub-divisions of fields. Accused failed to appear and was convicted under s. 174, I.P.C. *Held* (1) that the accused was guilty of an offence under s. 174, I.P.C., and that his conviction was right, (2) that it did not affect the offence that the enquiry for which accused was summoned was not held by the Tahsildar but was deputed to a subordinate officer. *In re* VENKATARAO, **8 M.L.T. 373 = 8 Ind. Cas. 133 = 11 Cr. L.J. 566.**

(833)—*S.* 174—*Summons by Revenue Officers — Powers of summons given by Mad. Act* III *of* 1869, *when to be used.*—The power given by Mad. Act III of 1869 to Revenue Officers to issue process to compel the attendance of persons at inquiries is not intended to be employed on every occasion in which a Revenue Officer desires information, but to facilitate the holding of what are known as inquiries, that is, more or less formal proceedings held to ascertain facts. In other proceedings, the Revenue Officer should address a letter to the person, from whom information is required, to furnish the information. MANGALASWAMI THEVAR v. VIRARAGHAVA NAIK, **1 Weir 94.** [*F.*, 1 Weir 94.]

(834)—*S.* 174—*Disobedience to summons duly issued, under Mad. Act* III *of* 1869.—To render a person liable to be convicted under s. 174, Penal Code, for disobedience to a summons issued under s. 1 of Act III of 1869, it is enough that the person summoned is one, whose evidence is deemed to be necessary for the investigation of the matter. in which any of the authorities indicated "are authorised to hold an inquiry." The fact that no actual inquiry was made does not operate to take away the jurisdiction to try a person for neglecting to

Penal Code (Act XLV of 1860)—*continued.*

obey a summons duly issued under the Act. HIGH COURT PROCEEDINGS, 24TH OCTOBER 1879, NO. 1854, **1 Weir 96.**

(835)—*S.* 174—*Person summoned not for purpose of giving evidence in Revenue inquiry—Mad. Act* III *of* 1869, *nature of summons issued under.*—Where the purpose, for which the defendant was summoned was not to give evidence in a Revenue inquiry, but to take away a bundle of pattahs for distribution, *held*, that the summons was one, which could not be lawfully issued under the Act, and that it was not unlawful for the defendant to disobey it. *In re* CHIKKA HONNAPPA, **1 Weir 97.**

(836)—*S.* 174 — *Disobedience to summons issued under Mad. Act* III *of* 1869, *but not sealed nor specifying the place of attendance.*—Where a summons issued under Act III of 1869 is neither sealed, as required by s. 2 of the Act, nor specifies the place where the parties summoned are to attend, a conviction, under s. 174, Penal Code, for disobedience to that summons is bad. *In re* NARASAIYA, **1 Weir 100**

(837)—*S.* 174—*Summons by Revenne officer to give evidence in an inquiry regarding the pauperism of a party to a civil suit—Disobedience to such summons—Act* III *of* 1869 (*Madras*).—The accused, who were defendants in a pauper petition pending in a District Court, were summoned by the Tahsildar as to whether or not the petitioner was a pauper. They neglected to appear in obedience to the summonses which were served on them personally, and they were convicted under s. 174, Indian Penal Code. *Held*, that the conviction was illegal inasmuch as the question of the petitioner being a pauper or otherwise was not one which the Revenue authorities had to decide finally in connection either with Revenue or general administration, and as it was a question pending decision in a civil suit to which the Government was constructively a party for a limited purpose, the Collector's power as a party being limited to obtaining information from his subordinates and from such others as were willing to supply it. QUEEN-EMPRESS v. VARATHAPPA CHETTI, **12 M. 297 = 1 Weir 98.**

(838)—*S.* 174—*Disobedience to summons issued by Village Magistrate.*—Disobedience to a summons issued by a Village Magistrate is not an offence, when the offence, with which the prisoners were accused before the Village Magistrate, was one over which the latter had no jurisdiction. HIGH COURT PROCEEDINGS, 4TH MAY 1865, **1 Weir 87.**

(839)—*S.* 174—*Summoning parents of children not attending school.*—Where a Tahsildar, who is not legally competent to issue an order for attendance of the parents of children not attending school regularly, convicts such parents under s. 174, I.P.C., for disobedience of such order, *held* that that conviction was illegal. POLICE v. LALSA, **Colm. Dig. Cr. 74 of 1877.**

(840)—*S.* 174—*Summons to arbitrators.*—Accused were appointed arbitrators in a civil suit. They were summoned to attend the Court on a certain day, but did not obey the summons. *Held* that the accused could not be convicted under s. 174, I. P. C., as the summons in question was a process not provided for by the law. CROWN v. KASHI RAM, **2 P.R. 1871, Cr.**

(841)—*S.* 174—*Order to the police—Date of hearing.*—Where a Magistrate, in altering the date fixed for hearing of a security case by his predecessor, merely directed the police "to inform the parties of the date," *held* that this was neither a summons, a notice, an order, nor a proclamation within the meaning of s. 174 of the Penal Code, and that failure to attend on such date could not be punished under that section. QUEEN-EMPRESS v. HIRA LAL, **A.W.N. 1890, 1.**

(842)—*S.* 174—*Order requiring attendance at certain place in camp.*—A person disobeying a summons, requiring him to appear at a certain place in camp where the Magistrate might be on the date fixed, is not guilty under s. 174, I.P.C., as he is not legally bound by the order to attend at a certain place. CROWN v. JASWANT, **Colm. Dig. Cr. 89 of 1877.**

(843)—*S.* 174—*Non-attendance in obedience to summons—Summons not setting forth place and time of attendance—Effect.*—The accused were convicted by a Magistrate for non-attendance in obedience to summons and fined Rs. 2 each. It appeared that the summons did not set forth the place and time at which these persons were required to attend. *Held* that, under these circumstances, the conviction was illegal. EMPRESS v. BHOLANATH, **A.W.N. 1883, 109.**

(844)—*S.* 174—*Default to attend—Case not taken up owing to other reasons—Effect of.*—Where the accused failed to attend Court in obedience to a direction by the Court, but the case was not taken up owing to other demands on the Magistrate's time, no conviction can be made under s. 174, Penal Code. CROWN v. LALU, **3 S.L.R. 155 = 4 Ind. Cas. 410 = 10 Cr. L.J. 576.**

(845)—*S.* 174—*Witness not attending in obedience to summons—Court to give opportunity of explaining his absence.*—*Held*, that, before convicting a witness under s. 174, the Court is bound to decide whether there was an intentional disobedience to the summons, after giving him an opportunity of explaining his absence. RAMUN v. CROWN, **27 P.W.R. 1907, Cr. = 7 Cr. L.J. 226.**

(846)—*S.* 174—*Disobedience to order of police requiring attendance of accused—Crim. Pro. Code, s.* 160.—S. 160, Crim. Pro. Code, does not authorize a police officer to require the attendance of an accused person with a view to his answering the complaint made against him. The disobedience of such an order, therefore, cannot fall within s. 174, I.P.C. EMPEROR v. RATAN SATHARAM, **4 Bom.L.R. 644.** (7 M. 274, *R.*)

Penal Code (Act XLV of 1860)—*continued.*

(847)—*S.* 174—*Power of Magistrate, before whom an offence under the section was committed, to try the case himself—Crim. Pro. Code* (1872), *ss.* 471; 473.—An officer should not try himself an offence under s. 174, I.P.C., in his capacity as a Magistrate, when the offence has been committed before him in his capacity as a Settlement Officer. EMPRESS OF INDIA v. SUKHARI, **2 A. 405.** [*F.*, 9 C.P.L.R. 26 Cr.; *R.*, 27 P.R. 1903, Cr. = 21 P.L.R. 1904.]

(848)—*S.* 174—*Power of Magistrate to try case — Offence being disobedience to his own summons.*—Actual service of the summons, notice or order, must be strictly proved, or be admitted before a conviction can be had under s. 174, Penal Code, for non-attendance in obedience to such summons, notice or order. A Magistrate cannot try a case, under s. 174, Penal Code, of disobedience to a summons issued by himself. QUEEN-EMPRESS v. ANANT PARSHAD, **S.C. 99, Oudh.**

(849)—*S.* 174—*Crim. Pro. Code* (1882), *s.* 487—*Jurisdiction of Magistrate to try a case of disobedience of summons issued by himself—Summons not specifying the date for attendance.*—A Magistrate has no jurisdiction to try a person for disobedience of a summons issued by himself, the offence being one in contempt of his own authority. A summons directing a person to appear within a certain number of days, without specifying a particular day for the appearance, does not comply with the requirements of the section. *In re* G. SOMANNAH, **1 Weir 82.**

(850)—*S.* 174—*Refusal by complainant to answer questions.*—A complainant can hardly be held a witness punishable for refusal to answer questions either under s. 485, Crim. Pro. Code, 1882, or under s. 174, I.P.C. *In re* GANESH NARAYAN SATHE, **13 B. 600.** [*R.*, 21 B. 517.]

(851)—*S.* 174—*Witness — Oral order to attend—Disobedience.*—A verbal order given to a witness by a Court, to attend Court on a particular day at a particular hour, is an order, the disobedience of which is punishable under s. 174 of the Penal Code. REG. v. GUMAN, **Rat. Un. Cr. C. 75 = Cr. Rg. 12-6-1873.**

(852)—*S.* 174—*Accused person required by Magistrate verbally to appear on a certain date.*—Where a person, who was arrested by a warrant and who was released on bail, was asked by the Magistrate verbally to appear on the following day, but omitted to do so, *held* that he was guilty of an offence under s. 174. HIGH COURT PROCEEDINGS, 18TH JANUARY 1870, NO. 123, **1 Weir 87 = 5 M.H.C. App. 15.** [*R.*, 2 Weir 658, 24 M. 200.]

(853)—*S.* 174—*Verbal order by police officer for appearance before him—Crim. Pro. Code, s.* 160.—In the absence of an order in writing, under s. 160, Crim Pro. Code, a person required orally to appear before a police officer as a witness cannot be convicted under s. 174, Penal Code. VIRASAMI PILLAI, *Accused*, **1 Weir 86 = 2 Weir 123.**

(854)—*S.* 174—*Examination on commission—Notice to pleader—Refusal of admission to the Commissioner.*—Where the notice of the commission to take the deposition of the defendant, a lady, was only shown to her pleader and his signature taken thereupon, *held* that the refusal of the lady to allow the Commissioner admittance into her house did not amount to an offence under s. 174, as the service of the notice on the pleader was not a sufficient notice to make the party liable for punishment under s. 174. SARASWATI DEBI v. MAHARAJA DURGA CHURN ZAHA, **6 C.W.N. 927.**

(855)—*S.* 174—*Conviction under—Necessary proof.*—For a conviction under s. 174 of the Penal Code it must be shown that there was service, according to law, of the summons. EMPRESS v. TODD, **A.W.N. 1882, 52.**

(856)—*S.* 174—*Service of summons by affixing it to the door of the house—Proof of its being brought to the knowledge of the person summoned.*—Where a summons is affixed to the door of the house of the person summoned, it must be proved that the summons was brought to the knowledge of the person, in order to make him punishable under s. 174, Penal Code. HIGH COURT PROCEEDINGS, 1ST AUGUST, 1871, NO. 1313, **1 Weir 83 = 6 M.H.C. App. 29.**

(857)—*S.* 174—*Proof of service of summons.*—The mere production of the summons to the accused, with an endorsement of service and the alleged mark of the accused, is not sufficient proof of service in the face of his denial that he received the summons. The officer, who had served the summons, should be examined as a witness. *In re* ODDA KOLANTHAN, **1 Weir 85.**

(858)—*S.* 174—*Proof of knowledge of summons.*—Where a person was absent when a summons was stuck in his house and denied that he had at that time any personal knowledge of its being there, *held*, that the mere fact of his living in a place, where there was a post office by means of which the summons could have been communicated to him, would not be sufficient proof of his knowledge of the summons, but that it should be proved that the summons was brought to his knowledge. *In re* GANAPATHI AIYAN, **1 Weir 85.**

(859)—*S.* 174—*Accused absconding after having seen warrant for his arrest.*—A batta peon, on the establishment of a District Munsiff's Court, was entrusted with a warrant for the arrest of the defendant, who had failed to pay the amount of his judgment-debt. The peon found the defendant in his village, and, after showing his warrant, he asked the defendant to follow him; the defendant promised to do so, went into his house on the pretext of fetching a turban and absconded. *Held*, that the escape was not an offencep unishable under s. 174, Penal Code. HIGH COURT PROCEEDINGS, 5TH JAN. 1875, **1 Weir 89 = 7 M.H.C. App. 43.**

Penal Code (Act XLV of 1860)—*continued.*

(860)—*S.* 174 —*Crim. Pro. Code* (1861), *s.* 168—*Prosecution for offence under s.* 174, *I.P.C without sanction.*—A trial and conviction under s. 174, I.P.C., for non-attendance in obedience to summons, without obtaining previous sanction as required by s. 168, Crim. Pro. Code, was upheld on the ground that the charge being tried before the Magistrate whose summons was treated with contempt, his sanction should be implied. REG. v. GANU *bin* TATIA SELAR, **5 B H.C. Cr. 38.**

(861)—S. 174—*See* ACT XXVI OF 1850, 5 B.H.C. Cr. 33.

(862)—S. 174—*See* BOM. ACT V OF 1879, s. 189, Rat. Un. Cr. C. 488 = Cr. Rg. 52 of 1889.

(863)—S. 174—*See* MAD. ACT III OF 1869, s. 2, 1 Weir 100.

(864)—S. 174—*See* MAD. ACT III OF 1869, ss. 2 and 3, 11 M. 137 = 1 Weir 100 = 1 Weir 891.

(865)—S. 174—*See* CONTEMPT OF LAWFUL AUTHORITY, Rat. Un. Cr. C. 70 = Cr. Rg. 17-4-1873.

(866)—S. 174—*See* CRIM. PRO. CODE, 1898, s. 160, 4 Bom. L.R. 644.

(867)—S. 174—*See* CRIM. PRO. CODE, 1898, s. 205, 27 C. 985 = 5 C.W.N. 131.

(868)—S. 174 — *See* CRIM. PRO. CODE, 1898, s. 487, Colm. Dig. Cr. 41 of 1876.

(869)—S. 174—*See* ESCAPE FROM LAWFUL CUSTODY, 1 B.H.C. Cr. 38, 27 P.R. 1870, Cr.

(870)—S. 174—*See* MAGISTRATE, JURISDICTION OF—MISCELLANEOUS, 8 W.R. Cr. 61.

(871)—S. 174—*See* BOM. REG. XII OF 1827, s. 27, Rat. Un. Cr. C. 289 = Cr. Rg. 28 of 1886.

(872)—S. 174—*See* WITNESS — MISCELLANEOUS CASES, 6 M.H.C. App. 29.

(873)—S. 174—*See* Nos. 606, 799, 809, *supra.*

(874)—*Ss.* 174, 175, 186 *and* 188—*Public servant—Receiver appointed under s.* 56 *of the Bengal Land Registration Act,* VII *of* 1876.—A receiver appointed under s. 56 of Act VII of 1876 is not a public servant within the meaning of ss. 174, 175, 186 and 188, Penal Code. He is not legally competent to issue an order to persons to appear before him and produce their collection paper and rent receipts, and disobedience of such an order is not, therefore, an offence under s. 174 or s. 175 of the Penal Code. EBRAHIM SIRCAR v. EMPEROR, **29 C. 236 = 6 C.W.N. 141.**

(875)—*Ss.* 174, 186—*Police ordering presence at police station—Crim. Pro. Code* (1882), *s.* 160.—A police officer in enforcing a warrant of arrest against an absconding prisoner, cannot under s. 160 of the Crim. Pro. Code, enforce the attendance of his surety at the police station, and the surety, in refusing to obey such summons, does not commit an offence under s. 174 or s. 186 of the Penal Code. EMPRESS v. CHATTAR SINGH, **A.W.N. 1885, 43.**

(876)—Ss. 174, 186—*See* ESCAPE FROM LAWFUL CUSTODY, 1 P.R. 1871, Cr.

Penal Code (Act XLV of 1860)—*continued.*

(877)—Ss. 174, 224—*See* CONTEMPT OF COURT, 8 P.R. 1881, Cr.

(878)—*Ss.* 174, 225-*B* — *Applicability of sections.*—In this case, warrants were issued under s. 337, Code of Civil Procedure, 1882, by the Township Judge for the arrest of certain judgment-debtors in civil execution cases. The judgment-debtors resisted the arrest. *Held,* that s. 174, I.P.C., did not apply to the facts of the case and that the Magistrate should proceed under s. 225-B, I.P.C., on the complaint of the process-server. QUEEN-EMPRESS v. NGA PO PYN, **U.B.R. 1897—1901, Vol. I, 61.** (1 B. H.C. 38, 2 B.L.R. 21, F.B., 5 B.L.R. 100, 8 W.R. 61, 12 A. 405, 16 C. 766, 18 B. 380, U.B. R. 1892—1896, Vol. I, 53, *R.*)

——S. 175.

(879)—*S.* 175—*Crim. Pro. Code, Act* X *of* 1882, *s.* 487—*Junior member of Hindu family —Summons to produce document.*—Where a junior member of a Hindu family attended Court in obedience to a summons which directed him to produce his *bahi khata* (account book) in respect of family business in which he was partner with his father, but did not produce any account, *held* that he could not be proceeded against under s. 175 of the Penal Code or s 48, of the Crim Pro. Code, since the summons was too vague in not directing any particular book to be produced and since he, as junior member, could not be expected to have control of the books. QUEEN-EMPRESS v. SALIG RAM, **A.W.N. 1890, 171.**

(880)—*S.* 175—*Order directing production of a deed—Sub-Registrar, power of, to order production—Party, if legally bound to produce it—Non-production, if an offence.*—A person called upon by a Sub-Registrar to produce the original document, which was registered in his office, to enable him to compare it with the copy of the deed in the Registration Office Register, which, it was suspected, was tampered with, is not legally bound to produce it, and he cannot, on his failure to do so, be convicted under s. 175 of the Penal Code. ASMATULLA SIRDAR v. KING-EMPEROR, **2 C.L.J. 621 = 3 Cr.L.J. 114.**

(881)—S. 175—*See* CONTEMPT OF COURT, 12 B. 63, 13 M. 24 = 2 Weir 610.

(882)—S. 175—Search-warrant to accused for producing document—Disobedience—Effect—*See* CRIM. PRO. CODE, 1898, s. 96, 12 Cr.L.J. 98 = 9 Ind. Cas. 564.

(883)—S. 175—*See* PRODUCTION OF DOCUMENT, 12 C.W.N. 1016 = 8 C.L.J. 320 = 8 Cr. L.J. 224.

(884)—S. 175—*See* SANCTION TO PROSECUTE—AUTHORITIES COMPETENT TO GRANT SANCTION, ETC., 5 Ind. Cas. 17.

(885)—S. 175—*See* No. 874, *supra.*

(886)—*Ss.* 175 *and* 188—*Difference between s.* 136 *of the old, and O.* XI, *r.* 21 *of the new Code —Disobeying order for production or inspection of documents.*—*Held,* that a party to

Penal Code (Act XLV of 1860)—*continued.*

a suit failing to comply with an order for production or inspection of documents can be dealt with only in the manner prescribed by O. XI, r. 21, but is not punishable under s. 175 or any other section of the Penal Code. RAM CHAND v. CROWN, **15 P.W.R. 1910, Cr.=15 P.R. 1910, Cr.=6 Ind. Cas. 623=11 Cr. L.J. 386=90 P.L.R. 1910.**

——**S. 176.**

See CRIM. PRO. CODE, 1898, s. 45.

See INFORMATION OF COMMISSION OF OFFENCE.

(887)—*S. 176—Crim. Pro. Code, Act* V *of* 1898, *s.* 45—*Failure to give information of offence.*—Where a Magistrate ordered the prosecution of a zemindar and his agent for an offence under s. 176 of the Penal Code for failing to report to the police the fact that some people in the village had told them of the disappearance of a certain person from the village and of his having been killed, *held* that this was not "information" within the meaning of cl. (*d*) of s. 45 of the Crim. Pro. Code and that the order was illegal. *In the matter of the petition of* BHUP SINGH, **A.W.N. 1900, 207.**

(888)—*S. 176—Crim. Pro. Code, s.* 45—*Owners or occupiers of houses in a village—Omission to report sudden or unnatural death.*—Owners or occupiers of a house within a village are not owners or occupiers of land within the meaning of s. 45 of the Crim. Pro. Code. Failure by them to report a sudden and unnatural death in their houses is not punishable under s. 176, Penal Code. S. 45, Crim. Pro. Code, is designed to impose upon village headmen, watchmen and landed proprietors or their agents the duty of reporting deaths, as to which there must be suscipion that they had not occurred from natural causes. *In re* MAINDA, **1 Weir 101=2 Weir 38.**

(889)—*S. 176—Failure by kurnam to submit cultivation accounts.*—A failure by a kurnam of a Shotriam village to comply with an order of the Revenue Inspector calling for cultivation accounts of the village is not an offence under s. 176, Penal Code. *In re* TOLUPUR BHAGAVANNULU, **1 Weir 105.**

(890)—*S.* 176—Lambardar—*Duty to report sudden death.*—A *lambardar* could not be convicted of an offence for omitting to report a sudden or unnatural death. CROWN v. ALLA SINGH, **19 P.R. 1870, Cr.**

(891)—*S.* 176—"*Official Register,*" *meaning of—Refusing to furnish information to the patwari regarding collections made by a zamindar—Land Revenue Act* (*United Provinces*), ss. 32, 46 *and* 234.—*Held*, that the words "official register" in s. 176 of the Indian Penal Code do not refer exclusively to the registers prescribed by s. 32 of N.W.P. and Oudh Land Revenue Act, III of 1901. A *jamabandi* prepared under rules made under s. 234 of the same Act is a register answering this description, and consequently, where a zamindar refuses to give the patwari of the village information as to the collection of rent made by him, he is liable to be convicted of an offence under s. 176, Indian Penal Code. KING-EMPEROR v. SURAJ BAKHSH SINGH, **10 O.C. 238=6 Cr. L.J. 301.**

(892)—*S.* 176—*Rule made under s.* 565, *sub-s.* 8, *Crim. Pro. Code—Non-compliance of, whether an offence under.*—Where a person refuses or neglects to comply with any rule made under s. 565, sub-s. 3 of the Crim. Pro. Code, he is punishable as if he had committed an offence under the first part of s. 176 of the Penal Code. EMPEROR v. BHOLA, **1 N.L.R. 133=2 Cr. L.J. 745.** [*R.*, 12 Cr. L.J. 441=11 Ind. Cas. 765=7 N.L.R. 101.]

(893)—*S. 176—Rules under Land Revenue Act—Order of Deputy Commissioner—Compliance with the order, what amounts to.*—Where a *lambardar*, who was absent from the village when a case of cholera occurred, being present during the occurrence of a second case, was on his way to report it, but was taken back to the village by a native doctor, *held*, that the *lambardar* had conformed to r. 10, para 10, of the Rules framed under the Land Revenue Act and was, therefore, not liable to be punished under s. 176, I.P.C. RAMA v. CROWN, **23 P.R. 1872, Cr.**

(894)—*S. 176—Omission to give notice or information to public servant by person legally bound to give it.*—For the purpose of s. 45 of the Crim. Pro. Code, as modified in U. Burma by s. 4 of the Village Regulation, a village headman must be a headman appointed under the Regulation, and a subordinate *ywagaung* under the duly appointed village headman is not liable for failure to give any information under s. 176 of I.P.C., though he may become liable under s. 8 of the Village Regulation. NGA EIK MAUNG v. QUEEN-EMPRESS, **U.B.R. 1892—1896, Vol. I, 169.**

(895)—*S. 176—Omission to furnish information to a public servant respecting the commission of an offence.* QUEEN-EMPRESS v. NGA SHWE YIN, **U.B.R. 1892—1896, Vol. I, 171.**

(896)—*S.* 176—Mukaddam *appointing gumastha under ss.* 137 *and* 141, *C.P. Land Revenue Act—Responsibility of* Mukaddam—*Duty to report non-bailable offence.*—There is nothing in the Central Provinces Land Revenue Act by which the *Mukaddam* is entirely freed from responsibility by the appointment of gumastha. So, where a *Mukaddam* received information of a non-bailable offence having been committed in his village, and he is aware that his *Mukaddam* gumastha has not made any report, it is his duty to make the report himself, and his omission to do so is punishable under s. 176, Penal Code. LOCAL GOVERNMENT v. MANIHARSINGH, **7 N.L.R. 101=11 Ind. Cas. 765=12 Cr.L.J. 441.** (28 C. 501, 12 A. 550, 24 W.R. 60, Cr., 31 M. 546, 11 C. 619, 15 C. 386, 1 N.L.R. 133, *R.*)

(897)—S. 176—*See* U.P. ACT III OF 1901, s. 46, 8 O.C. 128=2 Cr. L.J. 207.

Penal Code (Act XLV of 1860)—*continued.*

(898)—S. 176—*See* CRIM. PRO. CODE, 1898, s. 565, 4 M.L.T. 325 = 19 M.L.J. 274 = 31 M. 548 = 8 Cr. L.J. 425.

(899)—S. 176—*See* SECURITY FOR GOOD BEHAVIOUR, 4 M.L.T. 223.

(900)—S. 176—*See* SUMMARY TRIAL, Rat. Un. Cr. C. 784 = Cr. Rg. 45 of 1895.

(901)—S. 176—*See* Nos. 125, 533, *supra*, No. 1392, *infra*.

(902)—*Ss.* 176 *and* 177—*Act* III *of* 1901 (*N.W.P. and Oudh Land Revenue*), *s.* 46—*Omission to give notice or intimation to a public servant by person legally bound to give it.*—In order to convict a person under s. 46 of the N.W.P. and Oudh Land Revenue Act (III of 1901) read with s. 176, I.P.C., the following facts should be proved :—(1) that a particular *patwari* or *kanungo* asked a particular zamindar for information, (2) and that that information was either refused or was false when given. A requisition to furnish information should be made, and unless that is done and the information is either refused or, when given, is found to be false, a conviction cannot be upheld. It is no offence on the part of the zamindar to abstain from going to the patwari in order to mention to him that the rent of a tenant or tenants has been raised. KING-EMPEROR v. JANKI SINGH, **8 O.C. 128 = 2 Cr. L.J. 207.**

(903)—Ss. 176, 179, 187—*See* CRIM. PRO. CODE, 1898, ss. 161, 174, 27 P.R. 1908, Cr. = 9 Cr. L.J. 105.

(904)—Ss. 176, 179, 187—*See* FALSE EVIDENCE, 23 M. 544 = 1 Weir 112.

(905)—*Ss.* 176, 201, 302 *and* 309—*Crim. Pro. Code, s.* 45—*Concealment of dead body.*—*Held*, that the removal or concealment of the body of a person proved to have committed suicide does not amount to an offence under s. 201, Penal Code. Under certain specified circumstances covered by s. 45 of the Crim. Pro. Code, the concealment of suspicious death can be punishable under s. 176, Penal Code, but mere servants, who are entirely dependent on their master in whose house the death has occurred, do not come within the category of persons who are bound to communicate an occurrence of this sort. THAKRI v. THE CROWN, **17 P. W.R. 1911, Cr. = 11 Ind. Cas. 609 = 12 Cr. L.J. 425.**

(906)—Ss. 176, 202—*See* ILLEGAL OMISSION, 20 P.R. 1887, Cr.

——**S. 177.**

(907)—*S.* 177—*Essentials for a conviction under the section.*—To come within the provisions of s. 177, Penal Code, the accused must be shown to be legally bound to furnish information, and to have furnished false information. It cannot be presumed that village officers are legally bound to furnish information upon every matter in which the information might be called for by their superior officer, nor upon every matter more or less remotely connected with the duties of their office. Where a Village Monigar and a Village Kurnam were alleged to have furnished a false declaration, appended to an official revenue account, to the effect that no *varasu* of the declarants was in arrears in the payment of revenue to the Government, the fact being that two *pangalis* were so in arrears, *held*, that, in the absence of proof that the accused were legally bound to furnish the information, they could not be convicted under s. 177. HIGH COURT PROCEEDINGS, 31ST JANUARY 1880, NO. 213, **1 Weir 106**

(908)—*S.* 177—*Essentials for a conviction under the section.*—In order to justify a conviction under s. 177, Penal Code, it is not necessary to prove an intention to defraud. It is enough to show that information furnished as true was either known to be false or not believed to be true. HIGH COURT PROCEEDINGS, 19TH NOVEMBER, 1880, NO. 2342, **1 Weir 107.**

(909)—*S.* 177—*Meaning of the term " legally bound "*—*Government servant bound to keep diary under departmental orders.*—Where a person made a false entry in a diary which was kept and sent to his superior officer in pursuance of a departmental order which such person was bound to obey, *held*, that the officer was punishable under s. 177, Penal Code. VIRASAMI MUDALI v. QUEEN, **4 M. 144 = 1 Weir 108.** [*Diss.*, 14 M. 484 = 1 Weir 109 ; *R.*, U.B.R. 1897—1901, Vol. 1, 29.]

(910)—*S.* 177—*False return by vaccinators.*—S. 177, Penal Code, embraces every case in which a subordinate seeks to impose false information upon his superior. Vaccinators, being public servants, are punishable under this section for false returns. HIGH COURT PROCEEDINGS, 21ST DECEMBER, 1871, **6 M.H C. App. 48.** [*Diss.*, 14 M. 484 = 1 Weir 109 ; *F.*, 4 M. 144.]

(911)—*S.* 177—*False report by police officer.*—A police officer stationed at a police station is bound by law to enter in the general diary all reports of cognizable and non-cognizable cases made to him at the *thana*. This duty involves that he should truthfully enter those reports. If he makes a false report, he is liable to be punished under s. 177, I.P.C. QUEEN-EMPRESS v. MUHAMMAD ISMAIL KHAN, **20 A. 151 = A.W.N. 1897, 227.**

(912)—*S.* 177—*Police recruit furnishing false information.*—A police recruit, being under an obligation to enlist under his own name, will be liable to be sentenced under s. 177, I.P.C., if he gives a false name. CROWN v. JAGAT SINGH, **S.C. 11, Oudh.**

(913)—*S.* 177—*Person examined by a police officer making false statement.*—This section does not apply to the case of any person who is examined by a police-officer making a false statement, but it evidently alludes to cases when, by law, landholders or watchmen are bound to give information, and other analogous cases of the same description. QUEEN v. LUCKHEE SINGH, **12 W.R. Cr. 23.**

Penal Code (Act XLV of 1860)—*continued.*

(914)—*S.* 177—*Omission by police officer to give information of riot.*—A police officer omitting to communicate information of the commission of a riot to his superior officer, as required by s. 44 of the Police Act, 1861, would be guilty of an offence under this section. *In re* SYED FUTTEH MAHOMED, **21 W.R. Cr. 30.**

(915)—*S.* 177—*Kurnam whether legally bound to furnish true information regarding cultivation in his village—Mad. Reg.* XXIX *of* 1802.—Under Mad. Reg. XXIX of 1802, a Kurnam is "legally bound" to furnish true information regarding cultivation in his village. PUBLIC PROSECUTOR v. VENKATANARASAPPA, **1 Weir 111.**

(916)—*S.* 177—*Purchase of stamp paper under false name.*—The purchaser of a stamped paper not being bound by any law, or rule having the force of law, to furnish information to the stamp vendor, is not punishable, under s. 177 of the Indian Penal Code, if he gives a false name. QUEEN-EMPRESS v. PARMAYA, **Rat. Un. Cr. C. 210 = Cr. Rg. 19-2-1885.**

(917)—*S.* 177—*Furnishing false information — Information required for the purpose of preventing commission of an offence.*—The first branch of the section deals with a simple case of a person who, being bound to furnish true of information to a public servant, furnishes false information to him. Under the second branch of the section, the information which a person is legally bound to give for the purpose of preventing a commission of an offence refers not to the commission of offences generally but to the commission of some particular offence. A constable employed on round duties, that is, to call at the house of notorious bad characters on his beat who were under police supervision and to ascertain whether they were indoors are not, falsely reported to his superior officer as to some of these people that they had been inside their houses when, as a matter of fact, they had not, *held* that he was guilty of an offence under the first branch of s. 177 and not under the second branch. *In the matter of the petition of* PANATULLA PANATULLA v. QUEEN-EMPRESS, 15 C. 386 [*Appl.*, 1 N.L.R. 133; *R.*, 31 M. 543 = 19 M.L.J. 274 = 4 M.L.T. 325 = 8 Cr. L.J. 425 = 3 Ind. Cas. 612, 7 N.L.R. 101 = 11 Ind. Cas. 785 = 12 Cr. L.J. 441.]

(918)—*S.* 177—*False information in a Road-cess return—Road-cess and Public Works Cess Act* (IX, *B.C. of* 1880), *ss* 14, 94 *and* 95—*Object of—Return submitted under s.* 14 *of the latter Act—False information in return.*—The object of s. 94 and other sections of the Road-cess and Public Works Cess Act (IX, B.C. of 1880) is to secure that the person submitting a return should not submit one in which he undervalues his property for the purposes of the Road-Cess and Public Works Cess. Where the petitioner, in a return submitted under the Road-Cess and Public Works Cess Act, stated that certain lands of his were held by a tenant, one R, at a rental of Rs. 2 but the

Penal Code (Act XLV of 1860)—*continued.*

Deputy Magistrate on evidence found that those lands were held by another tenant under him at a rental of annas eight, and that the object of the petitioner in submitting the false return was to create evidence for his success in a civil suit instituted by him; *held*, that under the circumstances of the case the petitioner could not be held guilty of an offence under s. 177, I.P.C. MOHAMED WASIL v. EMPEROR, **13 C.W.N. 191 = 5 M.L.T. 93 = 11 Cr. L.J. 11 = 4 Ind. Cas. 578.**

(919)—*S.* 177 — *Income-tax petition— False verification.*—A false verification in an objection petition to the assessment of income-tax is an offence punishable under s. 177. EMPEROR v. RUP SINGH, **44 P.R. 1905 = 187 P.L.R. 1905 = 3 Cr. L.J. 128.** (24 M. 121, *R.*; 27 C. 820, *D.*) [*R.*, 22 Ind. Cas. 146 = 15 Cr. L.J. 82.]

(920)—S. 177—*See* ACT V OF 1861, s. 44, 21 W.R. Cr. 30.

(921)—S. 177—*See* ACT I OF 1894, ss. 9 and 10, 27 C. 985 = 5 C.W.N. 131.

(922)—S. 177—*See* Nos. 126, 214, 774, 902, *supra.*

(923)— *Ss.* 177, 182—*False information to police by a person not legally bound to furnish information.*—Where a person who is not legally bound to furnish information of an offence, falsely informs the police that such an offence has been committed, without intending to cause injury or annoyance to any particular person, he commits no offence either under s. 177 or under s. 182 of the Penal Code. REG. v. SURAJI, **Rat. Un. Cr. C. 76 = Cr. Rg. 10-7-1873.**

(924)—*Ss.* 177, 182—*Applicant for renewal of license producing carriage not his own before Police Superintendent.*— Where the accused paraded a borrowed stage carriage instead of his own cart before the Local Superintendent of Police, with the object of inducing that officer to report favourably on his application for a renewal of license under Act XVI of 1861, *held*, that the misconduct of the accused did not constitute an offence punishable under s. 177, or s. 182, I.P.C. EMPRESS v. MAHAMMAD KHALIL, **A.W.N. 1887, 268.**

(925)—*Ss.* 177, 182, 193, 199—*False report to Revenue Surveyor for securing mutation of name —Declaration contemplated by s.* 199, *nature of —Crim. Pro. Code, ss.* 195, 537—*Sanction to prosecute—Revision—Conviction under s.* 199, *whether can be converted to one under s.* 182.—The declaration contemplated in s. 199, Penal Code, is a statement of facts in the form simply of a declaration which, for the purpose of proof of the fact declared to, has by itself all the legal force of evidence given on oath or solemn affirmation, that is to say, it must be a declaration which having been made is afterwards receivable as evidence of the fact declared. By reporting falsely that his father had died, the petitioner induced the Revenue Surveyor to enter his name in the Revenue Registers as owner of certain gardens and paddy lands in

Penal Code (Act XLV of 1860)—*continued.*

succession to his father:—*Held*, that the petitioner had not committed an offence under ss. 199, 177 or 193, but that he had committed an offence under s. 182, Penal Code. A conviction under s. 199, Penal Code, in respect of which no sanction is necessary, cannot be converted in revision to a conviction under s. 182 in respect of which a sanction is necessary, especially where the attention of the trying Magistrate was drawn to the necessity of such sanction. ISMAIL v. EMPEROR, **15 Cr. L J. 603 = 25 Ind. Cas. 515 = 8 Bur. L.T. 82.**

(926)—Ss. 177, 182, 415—*See* CHEATING—GENERAL, 6 A. 97.

(927)—Ss. 177, 193— *See* SANCTION TO PROSECUTE—NATURE AND FORM OF SANCTION, 16 W.R. Cr. 67.

—— **S. 178.**

(928)—*S.* 178—*Witness whose expenses were not paid—Refusal to give evidence on the ground of insufficient payment of expenses, whether offence—Plea of guilty when the offence was not correctly stated—Effect.*—A witness in a civil case is entitled to the payment of his expenses according to s. 160, Civ. Pro. Code, before he gives his evidence. If he is not paid, he is not bound to appear at all in answer to the summons, and, if he does appear, the Court may discharge him without requiring him to give evidence. The witness is perfectly entitled to represent to the Judge that he had not been properly paid, and on that ground to refuse to give evidence. It is then the duty of the Court to decide whether he had been duly paid. It is no offence to refuse to give evidence in the first instance on the ground of insufficient payment of expenses before the Judge decides that the payment made is sufficient. The plea of guilty of an accused person cannot be accepted, when it is not clear that the offence was correctly stated to him. NGA PYO v. KING-EMPEROR, **U.B.R. 1907, 3rd Qr., Penal Code, 9 = 7 Cr. L. J. 208 = 14 Bur. L.R. 216.**

(929)—S. 178—*See* ACT X OF 1873, s. 6, 20 P.R. 1902, Cr. = 47 P.L.R. 1902.

(930)—Ss. 178, 179 — *See* JOINDER OF CHARGES—WHEN LEGAL, 7 C.L J. 63 = 35 C. 161 = 7 Cr. L.J. 95.

—— **S. 179.**

(931)—*S.* 179, *Crim. Pro. Code* (*Act* X *of* 1872), *ss.* 118, 119, 134—*Refusing to answer questions put by police.*—The refusal by a person summoned as a "juryman" by the police to answer such a question as whether, on looking at the hands of a certain person, he found marks of tying with a rope, is not an offence under s. 179 of the Penal Code. The police have no authority to summon jurymen except in cases provided for by s. 134 of the Crim. Pro. Code. REG. v. FAKIRA, **Rat. Un. Cr. C. 92.**

(932)—*S.* 179—*Refusal to answer questions put by police officer—Crim. Pro. Code, s.* 161.—Under s. 161, Crim. Pro. Code, a person answering questions put by a police officer is not bound to answer truly. Therefore, a refusal to answer such questions is not punishable under s. 179. *In re* SAVANI VIRABAYI, **1 Weir 111 = 2 Weir 123.**

(933)—S. 179—*See* CONTEMPT OF COURT, 11 W.R. Cr. 49.

(934)—S. 179—*See* EVIDENCE ACT, 1872, s. 165, 10 B. 185.

(934-*a*)—S. 179—*See* Nos. 903, 904, 930, *supra.*

—— **S. 180.**

(935)—*S.* 180—*Refusal of witness to sign his evidence.*—Assuming that, under the Civ. Pro. Code, a Judge is legally competent to require that a witness shall sign his evidence, it will only be when the evidence has been read over to the witness, and he has admitted it to be correct, and has refused to sign it, that he will be guilty of an offence under s. 180, I.P.C. EMPRESS v. MABALI RAM, **A.W.N. 1881, 43.**

(936)—*S.* 180—*Refusal to sign deposition given in Revenue inquiry.*—A witness is not legally bound to sign a deposition given by him in a Revenue inquiry. HIGH COURT PROCEEDINGS, 9TH JANUARY 1871, NO. 40, **1 Weir 112 = 6 M.H.C. App. 14.**

(937)—*S.* 180—*Refusal to sign a statement made by accused under s.* 346 (*s.* 364, *Crim. Pro. Code*, 1898).—A refusal to sign a statement made under s. 364, Crim. Pro. Code, cannot be punished under s. 180, Penal Code. The signature of the accused is required by s. 364 more for his protection than to impose upon him an obligation which is to be enforced under s. 180, Penal Code. HIGH COURT PROCEEDINGS, 3RD SEPTEMBER 1881, NO. 1810, **1 Weir 113.**

(938)—*S.* 180—*Refusal to sign inquest report, whether an offence—Crim. Pro. Code, ss.* 174 *and* 175—*Power of village head acting under these sections.*—An inquest report is not a statement within the meaning of s. 180, Penal Code, and refusal to sign such a report is not an offence punishable under the Penal Code. A village head acting under ss. 174 and 175 of the Crim. Pro. Code has only the powers of a police officer specified in s. 175. *In re* ANDI, **8 M.L.T. 198, Cr. = 7 Ind. Cas. 557 = 11 Cr. L J. 500.**

(939)—*S.* 180—*Witness refusing to affix thumb mark to his deposition—Whether an offence—Ss.* 151, 122 *and O.* XVIII, *r.* 5, *Civ. Pro. Code—Chief Court Circular Orders—Correction slip No.* 61, *dated* 29-8-1904—A witness in a civil suit is not bound, when called upon to do so by the presiding officer of the Court, to affix his thumb mark to the record of his deposition, and is not liable to punishment under s. 180, I.P.C., for refusal to do so. S. 151, Civ. Pro. Code, 1908, does not authorise a judge to force a witness to sign his deposition, for such signature is neither necessary for the ends of justice, nor to prevent abuse of the powers of the Court. Correction slip No. 61, dated 29-8-1904, of the Chief Court rules,

Penal Code (Act XLV of 1860)—*continued.*

merely lays down the procedure to be followed by Courts in calling upon persons to thumb mark certain documents, but it has not the force of law, and if persons refuse to thumb mark, they cannot be compelled to do so, and are not liable to prosecution for an offence under s. 180, I.P.C. CROWN v. FATEH ALI, 8 P.R. **1912, Cr. = 37 P.W.R. 1912, Cr. = 245 P.L.R. 1912 = 16 Ind. Cas. 521 = 13 Cr. L.J. 713.** (4 B. 11, 6 M.H.C. 14, *R.*)

(940)—S. 180—*See* CONFESSION—MISCELLANEOUS, 4 B. 15.

(941)—S. 180—Accused person refusing to sign record—*See* CRIM. PRO. CODE, 1898, s. 364 (2), 4 Cr. L.J. 205 = 3 L.B.R. 199.

(941-*a*)—S. 180—*See* Nos. 810, 811, *supra.*

——S. 181.

(942)—*S.* 181—*Sentence.*—A sentence under s. 181, Penal Code, must award a term of imprisonment. HIGH COURT PROCEEDINGS, 4TH NOVEMBER, 1868, **4 M.H.C. App. 18.**

(943)—S. 181—*See* CONTEMPT OF COURT, 7 P.R. 1874, Cr.

(944)—*Ss.* 181 *and* 182—*Criminal appeal—Examination of appellant on oath to verify petition of appeal—False statement—Crim. Pro. Code* (1882), *ss.* 342, 428 *and* 540.—A criminal appeal is a continuation of the criminal case, and, except so far as there is a provision to the contrary, the appellant has the privilege of the accused and cannot be punished for making a false statement. Where an appellant, in his petition of appeal, stated falsely that the Magistrate had declined to summon the witnesses cited, and the appellate Court asked him to give a statement to that effect on solemn affirmation which he did accordingly, *held*, that he could not be convicted under ss. 181 and 182, Penal Code. QUEEN-EMPRESS v. SUBBAYYA, **12 M. 451 = 1 Weir 113.** [*F.*, 19 A. 200 = 17 A.W.N. 23 ; *R.*, 33 A. 163 = 7 A.L.J. 1143 = 11 Cr. L.J. 537 = 7 Ind Cas. 914, 4 Ind. Cas. 160 = 12 O.C. 308 = 10 Cr. L.J. 509.]

(945)—*Ss.* 181 *and* 193—*False evidence by a witness in a criminal case.*—Where a witness gave false evidence before a Magistrate and was convicted under s. 181, Penal Code, *held*, that, although the proper course for the Magistrate would have been to have committed the accused to the Sessions for the offence of giving false evidence in a judicial proceeding, yet, the accused could also be convicted under s. 181. HIGH COURT PROCEEDINGS, 26TH NOVEMBER 1867, **1 Weir 115.** [*F.*, 1 Weir 115 = 4 M. H.C. App. 18.]

(946)—*Ss.* 181, 193—*Conviction under former—Latter offence proved.*—A conviction by a Full Power Magistrate under s. 181 of the Penal Code while an offence under s. 193 has been proved is illegal and must be set aside, the latter offence being beyond the jurisdiction of the Magistrate. REG v. DAYALJI ENDARJI, **8 B.H.C. Cr. 21.**

(947)—Ss. 181 and 193—*See* ABETMENT, 1 Weir 114 = 2 M.H.C. 438 = 1 Weir 156.

Penal Code (Act XLV of 1860)—*continued.*

(948)—Ss. 181 and 193—*See* ACT XVIII OF 1879, 6 M. 252 = 1 Weir 116 = 1 Weir 156 = 1 Weir 785 = 7 Ind. Jur. 247.

(949)—Ss. 181 and 193—*See* CONTEMPT OF COURT, 25 P.R. 1873, Cr.

(950)—Ss. 181 and 193—*See* FALSE EVIDENCE, 4 M H.C. App. 18.

—— S. 182.

See CRIM. PRO. CODE, 1898, ss. 195, 476.

See FALSE CHARGE.

See FALSE INFORMATION.

See PENAL CODE, s. 211.

See SANCTION TO PROSECUTE.

(951)—*S.* 182—*Giving false information to a public servant.*—The penalties of s. 182, I.P.C., could not be applied to the case of a person, giving to the Collector of a District incorrect information that in the informant's opinion the Collector had a claim on behalf of the State, of which the local Zemindars had, according to the informant, usurped possession. Such information was no more than an expression of a private person's belief or opinion that the Collector might, if he chose, sustain a civil action against such persons. It is not the "information" contemplated by s. 182, nor is the intention of "giving trouble to Zemindars and wasting the time of the public authorities," attributed to the informant by the Collector, the criminal intention contemplated by s. 182. EMPRESS OF INDIA v. MADHO, **4 A. 498 = A. W.N. 1882, 128.** [*D.*, 13 B. 506.]

(952)—*S.* 182—*Scope—False personation—Giving false information for obtaining an office.*—S. 182, I P.C., makes the giving of false information to a public servant penal, when either of the two consequences is intended to be caused or is known to be likely to be caused by the false information, the first being the causing "the public servant to use the lawful power of such public servant to the injury or annoyance of any person," the second being the causing the "public servant to do or omit any thing which such public servant ought not to do or omit, if the true state of facts respecting which such information is given, were known to him." The second part of the section can, therefore, be read without importing into it the words, "to the injury or annoyance of any person." It is sufficient if the public servant does or omits any thing which he ought not to do or omit, if the true state of facts were known to him. As a public servant is bound to act in the discharge of his duty in the proper circumstances, it may often be interference with his duty, and thus dangerous to the public welfare, if through false information he is prevented from acting, or induced to act wrongly. The second accused personated the first accused at an examination and obtained a certificate from the educational authorities, in the name of the latter. Thereupon the first accused applied to the Assistant Collector to have his name registered in the list of candidates for the offices of *talati* and *karkun*, attaching the

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certificate to the application, as it was a rule in the Revenue department that none but those who had obtained such certificates were eligible for those offices. The Assistant Collector registered his name as a candidate for the public service. *Held* that the false information came within the meaning of s. 182, especially, as it was given, not as a mere joke, but with the purpose of obtaining the post. QUEEN-EMPRESS v. GANESH KHANDERAO, **13 B. 506.** [*F.*, 22 B. 768, Rat. Un. Cr. C. 761, 1 Weir 118, 14 Cr. L.J. 518 = 15 Bom. L.R. 708 = 20 Ind. Cas. 998; *Appr.*, 15 A. 210; *R.*, 19 B. 363, 19 B. 717, 28 M. 90 = 1 Weir 538-A, 8 Cr. L. J. 421 = 19 M.L.J. 271 = 4 M.L.T. 324 = 3 Ind. Cas. 609, 10 P.R. 1902, Cr.]

(953)—*S.* 182—*Offence under.*—It is not essential for the public servant mentioned in s. 182 to have been induced to do anything or to omit to do anything. It is sufficient if the party charged gave information which was false, with the intention of causing a public servant or knowing it likely that he would be caused to exercise his lawful power or authority to the injury of an individual, or to do or to omit to do something which he ought not to do or omit to do, were the true state of facts known to him. In other words, the criminality contemplated by s. 182 does not depend upon what is done or omitted to be done by the public servant on such false information, but upon what was, from the facts, the reasonable intention to be inferred on the part of the person who gave the false information. QUEEN-EMPRESS v. BUDH SEN, **13 A. 351 = A.W.N. 1891, 109.** (14 C. 314, *Diss. from.*)

(954)—*S.* 182—"*To use his lawful power,*" *meaning of.*—The words "to use his lawful power" in s. 182 refer to some power to be exercised by the officer mis-informed, which shall tend to some direct and immediate prejudice of the person against whom the information is levelled. They do not apply to such prejudice as might eventually arise in consequence of certain harmless intermediate steps to be taken by the mis-informed officer. QUEEN v. PERIANAN, **4 M. 241 = 1 Weir 117 = 2 Weir 456.** [*R.*, 13 B. 506, 11 Cr. L.J. 154 = 4 Ind. Cas. 1039 = 6 M.L.T. 175, Rat. Un. Cr. C. 946, 1 Weir 122; *D.*, 28 M. 565, 18 M.L.J. 584 = 4 M.L.T. 214.]

(955)—*S.* 182—*Offence under, when complete.*—The offence under s. 182 is complete when false information is given to a public servant by a person who believes it to be false, but who intends thereby to cause such public servant to institute proceedings against a third person. The offence is complete, although the public servant takes no step towards the institution of criminal proceedings. Where, on an enquiry by the Police, the complaint made by the accused was found by them to be false, and the Magistrate ordered the prosecution of the accused under s. 182, I.P.C., *held*, that the order, under the circumstances of the case, was valid, and that it was not necessary that the accused should be given an opportunity of establishing the truth of his complaint. QUEEN-EMPRESS v. RAGHU TIWARI, **15 A. 336 = A.W.N. 1893, 111.** [*F.*, 29 A. 587 = 4 A.L.J. 471 = A.W.N. 1907, 195; *R.*, 33 C. 1 = 2 C.L.J. 228 = 10 C.W.N. 158, A.W.N. 1899, 90.]

(956)—*S.* 182—*False information to public servant.*—It is against the public servant to whom the false information is given that the offence under s. 182 is committed, and it is complete directly the false information is given, irrespectively of the results which may actually follow the action that may be taken upon it. Therefore, no ground for a complaint of giving false information to a public servant exists on the part of any one but the public servant against whom the offence was committed. QUEEN v. HURREE RAM, **3 N.W.P. 194.**

(957)—*S.* 182—*Conditions necessary to constitute the offence.*—To constitute the offence under s. 182, it must be shown that the person giving the information knew or believed it to be false or that the circumstances in which the information was given were such that the only reasonable inference is that the person giving the information knew or believed it to be false. The fact that the information is shown to be false does not cast upon the party who is charged with an offence under this section, the burden of showing that when he made it he believed it to be true. The prosecution must make out that the circumstances were such that the only reasonable inference was that he must have known or believed it to be false. RAYAN HUTTE v. EMPEROR, **26 M. 640 = 1 Weir 190 = 1 Weir 122 = 2 Weir 704.**

(958)—*S.* 182—*Conditions necessary to constitute offence.*—S. 182 makes the giving of false information to a public servant punishable in two cases, first, when the intention or knowledge, with which the false information is given, is to cause the public servant to use his lawful power to the injury or annoyance of any person, and secondly, when the intention is to cause the public servant to do or omit to do anything which he ought not to do or omit to do. It is not necessary that the public servant shall have been actually induced to do or omit to do anything. It is sufficient if the person giving the false information intended to cause, or knew it to be likely that such information would cause, the public servant to do or omit to do something which he would not have done if the true state of facts had been known to him. The offence consists in the giving of false information with intent to mislead a public servant, and is complete whether the public servant was or was not misled. The imputability consists in the consciousness that deception is practised upon a public servant in contempt of his authority as such, and that he might thereby be induced to do what he ought not to do in the discharge of his duty as a public servant so as to prejudice the public interest. ACTING PUBLIC PROSECUTOR v. CHINNAPPA REDDI, **1 Weir 118.**

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(959)—*S. 182—Statements made by prisoners for their defence.*—Statements made by prisoners for the purposes of their defence cannot bring them under the provisions of s. 182, as information given to a public servant. QUEEN v. DARIM KHAN, **2 N.W.P. 128.** [*R.*, 33 A. 163=7 A.L.J 1143=7 Ind. Cas. 914=11 Cr. L.J. 537.]

(960)—*S. 182—Crim. Pro. Code (Act V of 1898), s. 195 (1)—Complaint by a police officer.*—One S made a report at a police station. On inquiry, the investigating police officer came to the conclusion that the report was false and that it had been made at the instance of one U. The Sub-Inspector sent a report to the Assistant Superintendent of Police, asking that action should be taken under s. 182, I.P.C. against S and U. The Assistant Superintendent of Police declined to take action, but sent the report to the Sub-Divisional Magistrate, who took cognizance of an offence against S and U under s. 182, I P.C. *Held*, that the Sub-Divisional Magistrate had no jurisdiction to take any action under s. 182, I.P.C. Report of a police officer is not a complaint under s. 195 (1), Crim. Pro. Code. U, not having given the information himself, could not be prosecuted under s. 182, I.P.C. UMRAO SINGH v. KING-EMPEROR, **6 A.L.J. 236=9 Cr.L.J. 518=2 Ind. Cas. 199.**

(961)—*S. 182— False information to public officer.*—Where the accused gave false information to the Mamlatdar to the effect that the widow of a Military pensioner had re-married, the Mamlatdar having the power to stop payment of the pension in case of the death or remarriage of the widow, *held* that the accused was guilty of an offence under s. 182. QUEEN-EMPRESS v. SHRIPATI, **Rat. Un. Cr. C. 946.**

(962)—*S. 182—False information to a Police officer—Statements made by persons to corroborate the informant during investigation—Ss. 161 and 162, Crim. Pro. Code.*—*Held*, that, in order to corroborate an informant, the making of a statement under s. 161, Crim. Pro. Code, in answer to questions put by the Police officer investigating the case, does not amount to giving information within the meaning of s. 182, Penal Code. The expression "give information" in the latter section means to volunteer information and is not intended to apply to a statement made in answer to questions put by a public servant. MANGU v. CROWN, **35 P.W.R. 1914. Cr.=227 P.L.R. 1914=15 Cr. L J. 650=25 Ind. Cas. 978.** (31 M. 506, U.B.R. 1905, p. 13=2 Cr. L.J. 474, *R.*)

(963)—*S. 182—Investigation by Police Officer—Giving false answer to Police Officer not an offence under—" Give information," meaning of.*—*Held*, that a conviction under s. 182 of the Penal Code could not be sustained against a person, who gave false answers to questions put by a Police Officer in the course of investigation of a cognizable offence. The ordinary meaning of the expression "give information" is to volunteer information, not to make statements in answer to questions put by a public servant. KING-EMPEROR v. NGA AUNG PO, **U.B.R. 1905, Penal Code, 13=2 Cr. L.J. 474.** [*R.*, 227 P.L.R. 1914=35 P.W.R. 1914, Cr.]

(964)—*S. 182 — False information to the police, prosecution for—Opportunity to the informant to prove his case—Sanction given by the Inspector of Police—Crim. Pro. Code (Act V of 1898), s. 195—Cognizance of an offence without the complaint of public servant with whom false information lodged.*—A person, who lays information to the police is entitled to have his case judicially determined, before he is called upon to answer the charge of giving false information under s. 182, I.P.C. Where, on the Police reporting an information to be false, the Inspector of Police, purporting to act under s. 195, Crim, Pro. Code, granted sanction for the prosecution of the informant under s. 182, I.P.C., and the Magistrate took cognizance of the offence: *Semble.*—That, without the complaint of the public servant to whom the alleged false information was given, the Magistrate was not right in taking cognizance of the offence. MUNSHI ISSER v. KING-EMPEROR, **14 C.W.N. 765=6 Ind. Cas. 415=11 Cr. L.J. 354.**

(965)—*S. 182—Police Officer—Sanction to prosecute.*—An officer in charge of a Police Station is not competent to make a complaint under s. 182, I.P.C., or to give the sanction required under s. 168, Crim. Pro. Code, for such a prosecution. QUEEN v. MAHOMED BUKSH, **116 P.R. 1866, Cr.**

(966)—*S. 182—Information given to—Public officer—Petition containing information not signed by accused—Sanction to prosecute—Petition fore taking action under s. 110, Crim. Pro. Code—Sanction granted without judicial investigation, legality of.*—An accused may be convicted of an offence under s. 182 of the Penal Code, even if the petition containing the information given by him is not actually signed by him. A petition was presented to a District Magistrate, praying that he would proceed under s. 110, Crim. Pro. Code, against a certain person, and certain information was given with regard to such person. The District Magistrate without holding a judicial investigation believed the information to be false and granted sanction against the petitioner for an offence under s. 182 of the Penal Code. *Held*, that the sanction to prosecute was valid. EMPEROR v. GOKAL *walad* SATRAM, **11 Cr.L.J. 3=4 Ind. Cas. 477=3 S.L.R. 132.**

(967)—*S. 182—Giving false information to a Village Magistrate, an offence under.*—Giving false information, of an alleged offence, to a Village Magistrate (a public servant) amounts to an offence under s. 182 of the Penal Code. Such information given to the Village Magistrate which it was his bounden duty to pass on to a Police Station House Officer, must be considered as having been given to the latter so that a complaint in writing, subsequently taken by

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him from the accused, is covered by s. 154, Crim. Pro. Code, and cannot be regarded as having been taken by the Police Officer under s. 162, Crim. Pro. Code. *Held*, therefore, the acquittal by the lower Court of the accused in the present case, on the ground that, as the false information in question was given in the first instance only to the Village Magistrate, the complaint subsequently taken from the accused by the Station House Officer was not admissible in evidence as recorded under s. 162 and not under s. 154, was erroneous and unsuitable in law. EMPEROR v. JOMALAGADDA VENKATARAYUDU, **28 M. 565 = 3 Cr.L.J. 108.** [*R.*; 32 M. 258 = 5 M.L.T. 269 = 9 Cr.L.J. 170, 31 M. 506 = 18 M.L.J. 573, 1 Ind. Cas. 187, 1914 M.W.N. 382.]

(968)—*S.* 182—*False charge against presiding officer of the Court by an accused.—Held*, that a person who was accused of an offence before a Court could not with impunity make a false charge against the presiding officer of the Court, such charge being ordinarily punishable under s. 182 of the Indian Penal Code, and could not escape punishment because his object was to get the case transferred to another Court. TRIBHAVAN v. KING-EMPEROR, **12 O C. 308 = 4 Ind. Cas. 160 = 10 Cr.L J. 509.** (12 M. 451, 29 A. 685, A.W.N 1898, 145, A.W.N. 1906, 42, 19 A. 200, *R.*; 3 O.C. 80, *D.*)

(969)—*S.* 182—*Unfounded allegations against a Magistrate in application for transfer—Information to public officer.*—The accused applied for transfer of his case from Tahsildar's Court, and in the application made certain unfounded allegations against the Tahsildar. He was examined by the Sub-Divisional Magistrate and repeated the allegations made in the application: *Held* that the statement made under such circumstances was not information given to a public officer within the meaning of s. 182, I.P.C., and the petitioner could not be prosecuted for that statement, inasmuch as he was in the position of an accused person and made the statement in answer to questions put by the Sub-Divisional Officer. MATAU v. KING-EMPEROR, **7 A.L.J. 1143 = 1 Ind. Cas. 914 = 11 Cr. L.J. 537.**

(970)—*S.* 182—*Jurisdiction—Magistrate—Assistant Collector—Power of Civil Court—Power to order sale or set it aside—Application informing him that an offence committed.*—A obtained a decree for money against B. In execution thereof certain immoveable property was ordered to be sold, and the execution was transferred to the Collector of Basti under s. 68, Civ. Pro. Code. The property was sold and knocked down to C. B prayed for permission to deposit the sum decreed and five per cent. of the purchase-money. He then presented a petition saying that he had made the required deposit. Subsequently he put in a petition to the effect that some unauthorised person had paid the money into the Treasury, and that he had been compelled to put his thumb impression on a blank paper which was used for the petition aforesaid. This petition was presented to the Assistant Collector and that officer ordered B's prosecution under s. 182, Penal Code. *Held*, that the Assistant Collector was not competent to deal with the application, he having no powers as a Civil Court; but he could pass it on to the Collector who could dispose of it as a Civil Court, and the application had not been presented to the Assistant Collector in a judicial proceeding. BHAJAN TEWARI v. EMPEROR, **13 A L.J. 479 = 37 A. 334 = 16 Cr.L J. 457 = 29 Ind. Cas. 89.**

(970-*a*)—*S.* 182—*Registration Act* (III *of* 1877), *s.* 82 (*d*)—*False personation—Village Registrar—Abetment.*—Abetment of personation before a Village Registrar, appointed under the Dekhhan Agriculturists' Relief Act, 1879, is not punishable under s. 82 (*d*) of the Registration Act, 1877; as the section does not, by itself, apply to such abetment. B appeared before a Village Registrar and falsely personated W, and in such assumed character, expressed a desire to execute a lease in favour of A, who was present and assented to take the lease. When B made some mistakes in giving the area of the land, C corrected him. E identified B as W before the Village Registrar and he and D assured the attesting witnesses that B was W. *Held*, that C, D and E could not be convicted under s. 82 (*d*) of the Registration Act, 1877, but that they committed an offence under s. 182, Indian Penal Code. QUEEN-EMPRESS v. BALA *bin* KASHABA, **Rat. Un. Cr. C. 761 = Cr. Rg. 22 of 1895.**

(971)—S. 182—*See* ACT VII OF 1878, s. 172, 10 B. 124.

(972)—S. 182—*See* CONFISCATION, 9 C.W. N. 597 = 2 Cr. L.J. 273.

(973)—S. 182—*See* CRIM. PRO. CODE, 1898, s. 161, Rat. Un. Cr. C. 124.

(974)—S. 182—*See* DEFAMATION, 1 Weir 585.

(975)—S. 182—*See* LEGAL PRACTITIONERS—GENERAL, A W.N. 1896, 20, Note.

(976)—S. 182 (*a*)—*See* CHARGE—GENERAL, 6 M.L.T. 175.

(977)—S. 182—*See* Nos. 923, 924, 925, 926 and 944, *supra*, and *see* Nos. 1436, 1437 and 1438, *infra*.

(978)—*S.* 182 *and Ch.* X—*Essentials for a conviction under the section.*— In order to support a conviction under this section, the information given should have been information which the informer knew or believed to be false, and it should have been proved that he gave it with such knowledge. *In the case of* MOULVI ABDOOL LUTEEF, **9 W.R. Cr. 31.**

(979)—*Ss.* 182, 193 — *Contradictory statements—Alternative charge— Crim. Pro. Code* (1872), *s.* 455.—It is not of itself sufficient to warrant a conviction either for giving false evidence or making a false oath, that an accused person has made one statement on oath at one time, and a directly contradicting one at another. The charge must not only allege which of such statements is false, but the prosecutor

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must also be prepared with confirmatory evidence independent of the other contradictory statement to establish the falsity of that which is impeached as untrue. The term "alternative" in s. 455, Crim. Pro. Code, 1872, means that, where the facts which can be proved make it doubtful what particular description of offence an accused person has committed, the charges should be so varied or alternated, as to guard against his escaping conviction through technical difficulties. But it is no authority for framing, against a person accused of giving false evidence, by making one statement on oath on one occasion, and a directly contrary one on oath on another, a charge in the alternative. EMPRESS OF INDIA v. NIAZ ALI, **5 A. 17.** [*Overruled*, 7 A. 44, F.B.]

(980)—*Ss.* 182, 193—*Crim. Pro. Code, s.* 195—*Sanction to prosecute—Perjury—False charge of witness made voluntarily and irrelevantly.*—A witness is bound to speak the truth, though he may have to make statements on oath which he would hesitate to utter in private life. A *bona fide* truth speaking witness must, therefore, be protected, even when he utters things that cannot be proved against others in the witness box. The Court must use its discretion to refuse sanction when necessary. Where a charge against another person is made by a witness not in the course of his evidence or in answer to a question but quite voluntarily and irrelevantly sanction can be properly granted to prosecute the witness under s. 182 of the Penal Code. Although it would be dangerous to hold that the mere fact of a witness having made contradictory statements would justify a Court in granting sanction to prosecute him for perjury, the propriety or impropriety of such a grant of sanction must rest on the circumstances. NGA LU PE v. EMPEROR, **13 Cr. L.J. 56 = 13 Ind. Cas. 392 = 4 Bur. L.T. 262.** (37 C. 618, 14 C.W. N. 767, 6 Ind. Cas. 476, 11 Cr. L.J. 360, *R.*)

(981)—*Ss.* 182, 193—*Complaint to the Magistrate as head of the Police and not as a Magistrate—Conviction under s.* 193 *bad.*—P appeared before a District Magistrate and stated that he did not wish to make a complaint, but wished him to make an enquiry to prevent a police officer behaving tyrannically towards him. The District Magistrate examined him on oath. On enquiry the charge was found to be groundless, and P was convicted under ss. 182 and 193, Penal Code. *Held* that, as the statement of P was made to the Magistrate, not as Magistrate, but as head of the police, the conviction under s. 193 could not stand. PHULEL v. KING-EMPEROR, **11 A.L J. 15 = 18 Ind Cas. 344 = 14 Cr.L.J. 56 = 35 A. 102.**

(982)—Ss. 182, 193—Sanction to prosecute—Police officer or Sub-Magistrate no Subordinate of Sessions Judge within s. 195 (7), Crim. Pro. Code—Essentials to grant sanction for contradictory statements—*See* CRIM. PRO. CODE, 1898, s. 195, 1914 M W.N. 793 = 27 M.L.J. 586 = 15 Cr. L.J. 612 = 25 Ind. Cas. 524.

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(983)—Ss. 182, 193—*See* CRIM. PRO. CODE, 1898, ss. 225, 232, 233, 537, 10 B. 124.

(984)—*Ss.* 182, 193, 211—*Dismissal of false complaint—Prosecution of complainant.*—The accused brought a false complaint against a person who was discharged. The Magistrate tried her under s. 182, I.P.C., for having given "false information before his own Court" and sentenced her to three months' rigorous imprisonment. *Held* that the offence committed by the accused fell under s. 211, I.P.C., and that an offence had also been committed under s. 193, I.P.C. QUEEN-EMPRESS v. MI OHIN. MA, **U.B.R. 1897—1901, Vol. I, 59.**

(985)—Ss. 182, 199, 417, 511—*See* BEN. ACT III OF 1884, s. 133, 22 C. 131.

(986)—*Ss.* 182, 211—*Order directing prosecution—Absence of inquiry or notice—Interference by High Court.*—Where a Magistrate inquired into one of two complaints preferred to a police officer by two people separately and finding it, to be false, directed the prosecution of both for offences under ss. 182, 211 of the Penal Code, *held* that though it was not illegal to order such prosecution without notice to the other complainant or separate inquiry, yet, it was a wrong exercise of discretion with which the High Court could interfere. *In the matter of the petition of* GAJADHAR, **A.W.N. 1899, 90.** (15 A. 336, 14 C. 707, *R.*)

(987)—*Ss.* 182, 211—*False information to police.*—A petition made by a person to the police, falsely stating that he suspected another of having committed an offence and praying for enquiry, does not amount to the institution of criminal proceedings, under s. 211 of the Penal Code. The petitioner should be charged under s. 182. In such a case, a conviction under s. 211 was altered into one under s. 182 by the High Court. REG. v. GOPAL BHIKAJI, **Rat. Un. Cr. C. 72 = Cr. Rg. 24-4-1873.**

(988)—*Ss.* 182, 211—*False information before police, offence under s.* 182—*Prosecution for laying false information before dismissal of complaint, illegal.*—S. 182, and not merely s. 211 of the Code, applies to cases in which the false statement charged is made to a Police Officer. The Magistrate has no jurisdiction to order a prosecution for making a false complaint, till that complaint has been finally determined. GATIMANDAL v. EMPEROR, **4 C.L.J. 88 = 4 Cr. L J. 68.** (5 C.W.N. 727, 3 C. W.N. 758, *F.*)

(989)—*Ss.* 182, 211—*False Information to Police—Making false charge of theft—Prosecution for—No previous sanction necessary.*—The offence of intentionally making a false charge of theft against some one in an information laid at a Police station falls both within s. 182 and s. 211 of the Penal Code. Therefore no sanction of Police officer is necessary previous to the filing of a complaint in respect of such offence. MI NGWE v. MI CHIT, **U.B R. 1912, 1st Qr., 134 = 15 Ind. Cas. 992 = 13 Cr. L.J. 576.** (24 W.R. 41, 3 C.W.N. 33, 3 C.W.N. 491, *R.*)

(990)—*Ss.* 182, 211—*False charge, bringing of, before Police—Recommendation by Police that informant should be prosecuted — Prosecution of informant and conviction—Irregularity—Crim. Pro. Code,* ss. 195, 532, 537—"*Complaint.*"—The appellant lodged information before a Sub-Inspector of Police that certain persons had beat him and set fire to a house. The Sub-Inspector on inquiry did not believe the story and recommended that the appellant might be prosecuted under ss. 182 and 211 of the Penal Code. The prosecution of the appellant was then directed by a Deputy Magistrate. A preliminary inquiry was made and the appellant was committed to the Court of Session and convicted under s. 211: *Held*, that, even if there was any defect in the initiation of the proceedings in the original Court, still when the accused had been committed for trial to the Court of Sessions, a conviction by that Court could not be set aside, simply on the ground of some irregularity in the commitment proceedings, more specially when that point was not raised in the first Court, and that s. 532 of the Crim. Pro. Code would cure such a defect. (33 C. 30 = 10 C.W.N. 30 = 3 Cr.L.J. 125, 7 C.L.J. 37 = 7 Cr. L.J. 338, *D.*; 9 B. 288, *Rel. on.*) S. 195, Crim. Pro. Code, clearly contemplates prosecutions at the instance of Police Officers. In any case, when a Police Officer asks that person should be prosecuted under s. 211, Penal Code, for information given to him, and gives evidence himself in support of that charge, no serious irregularity can arise in the conviction of the accused in proceedings initiated upon that report. DILAN SINGH v. EMPEROR, **13 Cr. L.J. 826 = 17 Ind. Cas. 570 = 40 C. 360.**

(991)—*Ss.* 182, 211—*Proceedings under the section—Necessity for giving an opportunity to complainant to prove his case.*—In cases to which s. 211 applies, and in which a criminal proceeding has been instituted, a Court should, as a rule, proceed to determine such proceeding instituted in it, and should give the person instituting it, a reasonable opportunity of supporting his case before proceeding against him for an offence under s. 211. It is left to the discretion of the Court to determine when and under what circumstances prosecutions should be proceeded with under ss. 182 and 211. That discretion would, as a rule, be rightly exercised by the Court proceeding to dispose of the criminal proceeding then pending before it, before taking action under s. 211 or s. 182 against the person who had instituted such proceeding, or on whose information such proceeding had been instituted. QUEEN-EMPRESS v. RAGHU TIWARI, **15 A. 336 = A.W.N. 1893, 111.** [*F.*, 29 A. 587 = 4 A.L.J. 471 = A.W.N. 1907, 195; *R.*, 33 C. 1 = 2 C.L.J. 228 = 10 C.W.N. 158, A.W.N. 1899, 90.]

(992)—*Ss.* 182 *and* 211—*False information—False charge—Essentials of the two offences—Two offences are distinct.*—S. 182 of the Indian Penal Code relates only to cases of information given to officials, with the intention of causing, or with knowledge that it is likely to cause, that official to do or omit to do something, which he ought not to do or omit to do, or to use his lawful power to the injury or annoyance of any person. This is a distinct offence from that described in s. 211 of the Code, which relates to an attempt to put the Criminal Courts in motion against another person. The action, which s. 211 renders penal, is action entailing very serious consequences and, therefore, the more serious consideration is required of the individual who takes it. It is sufficient, therefore, in such cases, for the prosecution to establish that there was no just or lawful ground for the action taken and that the accused knew this. But something more is required in the case of action referred to in s. 182. To bring a case within that section, it is necessary for the prosecution to prove not merely absence of reasonable or probable cause for giving the information, but a positive knowledge or belief of the falsity of the information given. The circumstances, which are necessary to bring a case within s. 182, involve different considerations from those that arise from s. 211. S. 182 does not necessarily impose upon the person giving information to the officer criminal liability for mere want of caution before giving that information. There must be positive and conscious falsehood established. EMPEROR v. RAMKRISHNA YESHWANT ADARKAR, **9 Bom. L.R. 33 = 31 B. 204 = 5 Cr. L.J. 105.** [*F.*, 11 Cr. L.J. 420 = 6 Ind. Cas. 944 = 20 P.R. 1910, Cr. = 30 P.W.R. 1910, Cr., 140 P.L.R. 1910.]

(993)—*Ss.* 182, 211—*False charge—Institution of criminal proceedings—Offence—Distinction between Ss.* 182 *and* 211.—S. 182, Penal Code, is to be interpreted not in isolation but in association with s. 211 of the Code. Where the information conveyed to the police amounts to the institution of criminal proceedings against a defined person or amounts to the falsely charging of a defined person with an offence as "offence" is defined in the Penal Code, then the person giving such information has committed an offence punishable under s. 211. In such a case, s. 211 is, and s. 182 is not, the appropriate section under which to frame a charge. S. 182, when read with s. 211, must be understood as referring to cases when the information given to the public servant falls short of amounting to institution of criminal proceedings against a defined person and falls short of amounting to the false charging of a defined person with an offence as defined in the Penal Code. EMPEROR v. APAYA TATOBA MUNDE, **15 Bom. L.R. 574 = 2 Bom. Cr. C. 86 = 14 Cr. L.J. 491 = 20 Ind. Cas. 747.**

(994)—*Ss.* 182 *and* 211—*Complaint of offence by police to Magistrate—Complaint made against person who was found to have made a false report and charge — Complaint presented to Magistrate to be disposed of — No necessity to give accused opportunity of proving truth of his complaint.*—G reported to the police that A

Penal Code (Act XLV of 1860)—*continued.*

had stolen Rs. 50 from him. The case was investigated by the police and found to be false. With the sanction of the District Superintendent of Police, the Sub-Inspector who investigated the case preferred a complaint against G of an offence under s. 182, Penal Code, to a first class Magistrate. It was contended on behalf of G that it was objectionable to proceed with the case against him, until his complaint had been inquired into by some officer other than the police and found to be false. The Magistrate overruled the objection, but on an application for revision of his order being made to the Sessions Judge, the latter submitted the case to the Judicial Commissioner's Court, with a view to the order complained of by G being set aside. *Held* that, where a complaint of an offence under s. 182, Penal Code, is preferred to a Magistrate, it stood on a footing quite different from a police report and that, in the absence of any provision of law barring it, the Magistrate is bound to receive and dispose of it, and that there was no legal authority for the special procedure suggested on G's behalf. *Pointed out*:—The offence was pointed out to be one under s. 211, Penal Code, rather than under s. 182, and that, as such, it was not one for the prosecution of which sanction is necessary, as it was not one committed in relation to any proceedings in any Court. EMPEROR v. GHANSRAM, **4 N.L.R. 136 = 8 Cr. L.J. 349.** (7 C.P.L.R. 6, *D.*)

(995)—*Ss.* 182, 211 — *Crim. Pro. Code, ss.* 403, 236—*Acquittal of accused of an offence under s.* 182, *Penal Code, whether bars subsequent trial of accused for an offence under s.* 211, *Penal Code.*—Where the accused was tried and acquitted of an offence under s. 182, Penal Code, *held*, the acquittal is no bar to the subsequent trial of the accused for an offence under s. 211, I.P.C., since these offences are essentially distinct and ss. 236 and 403, Crim. Pro. Code, have no application because in this case there has been no doubt as to which of the offences has been committed, and there could have been no charge in the alternative. THAKAR SINGH v. CHATTAR PAL, **20 P R. 1910, Cr. = 140 P.L.R. 1910 = 30 P.W.R. 1910, Cr. = 6 Ind. Cas. 944 = 11 Cr. L J. 420.** (32 C. 180, 31 B. 204, *D.*)

(996)—*Ss.* 182, 211 — Autrefois acquit — *Burden of proof—Offence under s.* 182—*Complaint to public servant whether necessary.*—The burden of establishing the existence of facts necessary for the application of the doctrine of *autrefois acquit* lies upon the accused. To sustain a prosecution for an offence under s. 182, Penal Code, it is not necessary that the complaint should have been made to a public servant with the intention of inducing such public servant to take action of a sort which a public servant of the description in question could take and which would not be open to a private individual. IMANDY APPALASWAMI v. EMPEROR, **15 Cr. L.J. 672 = 25 Ind. Cas. 1000.**

(997)—*Ss.* 182, 211—*Whether sanction necessary—Code of Criminal Procedure*, s. 195 (1).—

Penal Code (Act XLV of 1860)—*continued.*

H made a report against several persons including one S, at a police station, charging them with rioting and voluntarily causing hurt. The police made enquiry and sent up several persons for trial but not S. Some of these were convicted by the Magistrate, but acquitted by the Sessions Judge. Thereupon S made a complaint to the Magistrate, charging H with having made a false report in respect to himself to the police. The Magistrate took cognizance of the complaint. *Held*, that the Magistrate had no power to take cognizance of the complaint by reason of the absence of sanction. HARDWAR PAL v. KING-EMPEROR, **10 A.L.J. 61 = 13 Cr. L.J. 702 = 16 Ind. Cas. 510 = 34 A. 522.** [*Rel*, 13 Cr. L.J 855 = 17 Ind. Cas. 791 = 10 A.L.J. 429.]

(998)—*Ss.* 182, 211—*Application in Judge's Court—False information—Prosecution sanctioned by Judge—Legality of.*—The appellant was an insolvent against whom proceedings were pending before a District Judge. He made a petition to the Court alleging that the respondent had misappropriated certain things belonging to him and prayed that the respondent's house might be searched by the police. The District Judge forwarded the petition to the Magistrate with the result that the respondent was arrested and his house was searched. Eventually the Magistrate discharged the respondent. The latter applied to the District Judge for sanction to prosecute the appellant under ss. 182 and 211, Penal Code. *Held*, that the District Judge was a public servant before whom false information was given and he was competent to grant sanction to prosecute under s. 182, Penal Code. *Held* further, that, with regard to s. 211, Penal Code, the Court of the District Judge before whom insolvency proceedings were pending was not the Court in which criminal proceedings were instituted, and it could not be said that the offence of causing criminal proceedings to be instituted without just and lawful grounds was committed in relation to a proceeding pending in the Court of the District Judge. MAHOMMAD FAKHRUDDIN v. BHIKHI RAM, **12 A.L.J. 278 = 36 A. 212 = 15 Cr. L.J. 360 = 23 Ind. Cas. 728.**

(999)—Ss. 182, 211—*See* CRIM. PRO. CODE, 1898, ss. 4 (*h*), 476, 11 A.L.J. 529 = 14 Cr.L.J. 425 = 20 Ind. Cas. 409.

(1000)—Ss 182, 211—*See* CRIM. PRO. CODE, 1898, s. 203, 4 C.L.R. 413.

(1001)—Ss. 182 and 211—*See* DEFAMATION, 2 C P.L.R. 198.

(1002)—Ss. 182, 211—*See* MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION, Rat. Un. Cr. C. 670 = Cr. Rg. 30 of 1893.

(1003)—Ss. 182, 220, 342—Sanction required for prosecution under s. 182, I.P.C.—Giving public servant false information with intent to cause injury—Applicability of s. 220, I.P.C., to malicious arrest by police—Responsibility of police in such matters—*See* QUEEN-EMPRESS v. NAGA AUING ZAN, **U B R. 1892—1896, Vol. I, 172.** (7 W.R. Cr. 3, 10 B. 506, *R.*)

Penal Code (Act XLV of 1860)—*continued.*

(1004)—*Ss.* 182, 415, 419 *and* 511—*Production of false certificate—Illegal conviction—Pleading guilty.*—Attempt to get reinstated in Kurnam's post by the production of false certificate does not cause "harm" or "damage" within the meaning of s. 415, to the officer before whom the certificate is produced; and so conviction under ss. 419 and 511, *held* illegal. *Quære*:—Whether the facts proved might not amount to an offence under s. 182, I.P.C. A conviction, which is illegal and therefore liable to be set aside (on appeal), cannot be sustained merely on the ground that the accused pleaded guilty to the charge in the lower Court. *In re* MANIKKAM PILLAI, **4 M.L.T. 324=19 M.L.J. 271=8 Cr. L.J. 421.**

(1005)—Ss. 182, 419 — *See* CHEATING—FALSE PERSONATION, 14 P.R. 1880, Cr.

(1006)—Ss. 182 *and* 465—*Preparation of false document for securing dismissal of Forest Officer — Imitation of postal stamp.*—The accused, with a view to secure the dismissal of a Village Munsif from, and his own appointment to, the post of a Forest Officer, sent to the Tahsildar a false document purporting to be a *Takid* of the Forest Ranger, and, to give colour of reality to his document, he stamped a postage stamp with a stamp with the intention that it should be believed that the stamp had passed through the Post Office on a certain date. *Held*, that the act imputed to the accused could not be held to be a forgery, as it could hardly be said that the loss of his appointment by the Village Munsif would be the direct consequence of the concoction of the false document. *Held* also, that the limitation of the postal stamp could not be held to be a counterfeiting of a mark used for the purpose of authenticating a document; but that the accused would be guilty under s. 182, of the offence of giving false information to a public servant, intending thereby to cause the public servant to use his power to the injury of the Village Munsif. *In re* KRISHNA AIYAN, **1 Weir 539.**

(1007)—*Ss.* 182, 500—*Crim. Pro. Code,* ss. 234, 235, 236, 239 *and* 403—*Acquittal of an offence under s.* 182, *I.P.C., whether bars prosecution under s.* 500, *I.P.C., arising out of the same transaction.*—Where the accused who had, in a petition to a Tahsildar under the Court of Wards, falsely made certain defamatory allegations against a Sub-Inspector of Police, was tried for an offence under s. 182, I.P.C., on the sanction of the Manager of the Court of Wards, but was acquitted on the ground that the person to whom the petition was made was not a public servant, *held*—on a subsequent prosecution of the accused under s. 500, I.P.C., on the complaint of the Sub-Inspector, that the acquittal of the accused in the previous prosecution was no bar to his trial for the offence of defamation. *Per Holmwood, J.*—That the case fell under s. 235 (1) of the Code of Criminal Procedure and under no other of the exceptions in ss. 234, 235, 236 and 239, and therefore the prosecution under s. 500, I.P.C., was clearly saved by the provisions of s. 403 (2), Crim. Pro. Code. RAM SEBAK LAL v. EMPEROR, **14 C.W.N. 839=12 C. L.J. 15=6 Ind. Cas. 352=37 C. 604=11 Cr. L J. 325.**

(1008)—Ss. 182, 500—*See* CRIM. PRO. CODE, 1898, ss. 195, 198, 423, 25 A. 534=A.W.N. 1903, 100.

(1009)—Ss. 182, 500—*See* CRIM. PRO. CODE, 1898, ss. 248, 253, 403, 22 B 711.

(1010)—Ss. 182, 500—*See* SANCTION TO PROSECUTE—CONDITIONS REQUISITE FOR GRANT OF SANCTION, ETC., Rat. Un. Cr. C. 315=Cr. Rg. 1 of 1887.

——S. 183.

(1011)—*S.* 183—*Illegal resistance to attachment of property by bailiff.*—A mere verbal direction to the bailiff not to remove property attached by him in execution of a decree, unless the property was entered as the accused's property, cannot be regarded as an illegal resistance, under s. 183, if the evidence does not show that the bailiff is either abused or intimidated, or that any physical resistance was attempted. QUEEN-EMPRESS v. HUSAIN *valad* TAJBHAI, **15 B. 564.**

(1012)—*S.* 183—*Proceeding of inferior Criminal Court—Statement of necessary facts—Resistance to Karkoon—Conviction by Mamlatdar—Land Revenue Code, Bom. Act* (V *of* 1879), ss. 12, 87.—The proceedings of an inferior Court of limited jurisdiction must set forth the facts and orders (not being general statutes of which all Courts must take notice) requisite to give it authority in the particular case. The High Court cannot, on review, presume the existence of the necessary circumstances which are not set forth. Where it did not appear on the face of the conviction that the Mamlatdar was an officer to whom, under the provisions of s. 12 of the Land Revenue Code, the powers of the Collector, constituted by s. 87 of the Code, had been delegated under any general or special order of the Government, nor that the karkoon employed to distrain was an officer directed to perform that duty by the Commissioner, under the orders of Government, a person resisting such a karkoon by force when the latter came to distrain some goods at his house, is not guilty of an offence under s. 183 of the I.P.C. QUEEN-EMPRESS v. YESWANT, **Rat. Un. Cr. C. 325=Cr. Rg. 13 of 1887.**

(1013)—*S.* 183—*Refusal to hand over money to bailiff.*—A mere refusal by the accused to hand over to the bailiff the money which he had in his pocket, is not a resistance to the taking of that money within the meaning of s. 183 of the Penal Code. QUEEN-EMPRESS v. ALIBHAI, **Rat. Un. Cr. C. 412=Cr. Rg. 77 of 1888.**

(1014)—*S.* 183—*Obstructing attachment by Municipal Officer—Bona fides of the officer attaching the property—Madras District Municipalities Act* (IV *of* 1884), *s.* 277.—Where a Municipal Officer attaches property, belonging

Penal Code (Act XLV of 1860)—*continued.*

to a third person, under the *bona fide* belief that the property really belonged to the defaulter, the owner in obstructing its being taken by the Municipal Officer, who is also a public servant, would have committed an offence punishable under s. 183, Penal Code. The terms of s. 277 of the Madras District Municipalities Act are less wide than those of s. 183, Penal Code, and the owner, therefore, could not be convicted under s. 277 of the District Municipalities Act. Where such person was acquitted on a charge under s. 277 of the District Municipalities Act, the High Court refused to order a further prosecution under s. 183, Penal Code. PUBLIC PROSECUTOR v. SOOSAI KANNU CHETTI, **1 Weir 126.**

(1015)—*S.* 183—*Power of Village Munsif to distrain property outside his jurisdiction for arrears of revenue in respect of land within jurisdiction.*—Where a Village Munsif of a certain village was authorised by a demand notice to distrain the property of certain defaulters for arrears of the revenue due by them, *held*, that he had authority to distrain property belonging to the defaulters outside his jurisdiction, for arrears of revenue in respect of land within his jurisdiction, and that his appointment by reference to his office, instead of by name, was not illegal. *Held*, therefore, that a person obstructing such distraint of property outside the local jurisdiction of the Village Munsif would be guilty of an offence under s. 183, Penal Code. *In re* IYYEMPERUMAL NAIKAN, **1 Weir 127.**

(1016)—*S.* 183—*Resisting the taking of property by lawful authority of public servant—Crim. Pro. Code* (*Act* V *of* 1898), *s.* 195 (*a*)—*Sanction to prosecute—Competent Court.*—The accused was convicted of an offence under s. 183, Indian Penal Code, by a Magistrate of the First Class for resisting the taking of property in an execution case in the Munsif's Court. The attachment was made by the Naib Sheriff attached to the Tahsil, and, on the report of the Tahsildar, the District Judge, being of opinion that a criminal prosecution should be instituted, ordered the papers to be sent to the Deputy Commissioner for proper orders to be passed in the matter. The trying Magistrate took cognisance of the case on the order of the Deputy Commissioner and convicted the accused. It was contended for him that there was no complaint or legal sanction against him and that the conviction was, therefore, bad in law. *Held*, that the order of the District Judge operated as a complaint and the conviction was not illegal. CROWN v. NIHALA, **3 P.L.R. 1904=1 Cr.L.J. 36.**

(1017)—S. 183—*See* Nos. 31 and 402, *supra*, and No. 2266, *infra*.

(1018)—*Ss.* 183, 79, 99 *and* 353—*Resistance to the taking of property—Scope of the ss.* 99 *and* 183.—In construing s. 183, the language of s. 99, as well as that of other sections concerning resistance to the acts of public servants must be borne in mind. S. 99 declares that the protection afforded by the Penal Code to public servants acting in good faith under colour of their office is not lost to them, by reason of any mistake in the exercise of their proper function. In a case where a public servant does an act of a kind which he has no authority to do, he could not be acting in discharge of his public functions and the lawful authority required by s. 183 would be clearly wanting. If, on the other hand, the act of the public servant is an act of the kind which he is authorised to do, no miscarriage on his part, due to an honest mistake of fact, could render him liable to prosecution. Resistance to such an act, or an assault on him in the course of doing the act is punishable under s. 183 and s. 353 of the Code respectively. The phrase "lawful authority" used in s. 183 does not oblige a Court to hold that the cases in which the person charged may have a civil action against the public officer must be excluded from the operation of the section. A decree having been passed against the assets of a deceased debtor, execution was taken out, and the Amin of the Court attempted to attach and seized certain goods in the possession of the accused as forming part of the assets of the deceased. The accused wrested them from the hands of the attaching officer stating that they belonged to him and not to the deceased. *Held*, that the accused was guilty of an offence under s. 183, Penal Code, inasmuch as the Amin had lawful authority to take in execution the goods of the deceased, but acted erroneously regarding a matter which did not affect the nature of his authority. QUEEN-EMPRESS v. TIRUCHITTAMBALA PATHAN, **21 M. 78=1 Weir 123.** [*R.*, 21 M. 296=1 Weir 135.]

(1019) — Ss. 183, 185, 323, 355 — *See* SANCTION TO PROSECUTE — CONDITIONS REQUISITE FOR GRANT OF SANCTION, ETC., 17 M.L.J. 559=31 M. 43=7 Cr. L.J. 6=3 M. L.T. 113.

(1020)—*Ss.* 183, 186—*Attachment of property—Possession of warrant.*—It is the intention of law that, when a public servant attaches property under a warrant in execution of a decree, he must have the warrant with him; otherwise, the taking of the property is not lawful. EMPEROR v. GANESH LAL, **27 A. 258=1 A.L.J. 595=A W.N. 1904, 229=1 Cr. L.J. 896.** (5 A. 318, *R.*)

(1021)—*Ss.* 183 *and* 186—*Resistance to execution of warrant re-issued after a previous return—Validity of the warrant.*—Where, in pursuance of a warrant for the realisation of money due under a certificate from a Revenue officer, having the form of a decree, a return was made two days prior to the date on which the warrant was made returnable that no property of the debtor could be found, *held*, that the same warrant could not be re-issued after the return and that persons resisting the execution of the re-issued warrant would not be guilty, either under s. 183, or under s. 186, Penal Code. ADHAR MIDDAY v. EMPRESS, **8 C.W.N. 391.** [*R.*, 9 C.W.N. 125.]

Penal Code (Act XLV of 1860)—*continued.*

(1022)—*Ss.* 183 *and* 186—*Obstruction to attachment under a time expired warrant.*—An attachment of crops for arrears of revenue under a warrant of attachment that has expired is not legal. Obstruction to such attachment is not an offence either under s. 183 or under s. 186. *In re* RAMA GOUNDAN, **1 Weir 134.**

(1023) — *Ss.* 183, 186—*Attachment under defective warrant—Resistance.*—A resistance to a sheriff attaching property under a defective warrant is not liable to be punished under either s. 183, or s. 186, I.P.C. In execution of an order for attachment of articles in possession of the judgment-debtor, the sheriff is not competent to attach property alleged to belong to the judgment-debtor, but in the possession of a third person. PRABH DYAL v. KING-EMPEROR, **49 P.R. 1905, Cr.=164 P.L.R. 1905 =3 Cr. L.J. 75.**

(1024)—*Ss.* 183, 186—*Attachment in execution of decree—Resistance.*—Where a camel was taken by a Court peon who was ordered to attach it, without resistance, to the Court compound, but the accused rescued it, before it was handed over to the sheriff, *held*, that the accused was liable to be convicted under s. 186, I.P.C., and not under s. 183. UTTAM SINGH v. EMPRESS, **26 P.R. 1886, Cr.**

(1025)—*Ss.* 183, 186—*Execution of decree of Civil Court—Resistance to entry of bailiff—Breaking open door.*—A person who resists the entry into his house of a bailiff who, in execution of a decree against another person, enters his house by breaking open the door for attaching goods belonging to that person, cannot be convicted of an offence under s. 183 or s. 186 of the Penal Code, if it should turn out that the person or goods of the debtors are not in the house, for under such circumstances the bailiff would be a trespasser. REG. v. GAZI *kom* ABA DORE, **7 B.H.C. Cr. 83.** [*D.*, 21 M. 78.]

(1026)—*Ss.* 183 *and* 188—*Attachment of pay, order for—Disobedience.*—An auditor of a Railway Company being served with an order of a Civil Court dated the 31st March, attaching a railway servant's pay which fell due on the 1st April, returned the order endorsing on it that the pay was not due till the 1st April and that the order was dated the 31st March. The pay having been paid on the 1st April a subsequent order issued on that date was also returned. *Held*, that the auditor was not liable to be convicted either under s. 183 or s. 188, I.P.C. LIGHTFOOT v. CROWN, **9 P.R. 1874, Cr.**

(1027)—*Ss.* 183 *and* 192—*Resistance to execution of warrant of attachment.*—The accused were convicted, under s. 192 of the Penal Code, for offering resistance to an attachment of certain property ordered by the Deputy Collector in execution of a certificate under the Public Demands Recovery Act (VII of 1880, B.C.). The warrant under which the attachment was made, stated that the return should be made on or before 3rd February, but the offence was committed on the 4th February. *Held* that the conviction was bad. ANANDA LALL BERA v. THE EMPRESS, **10 C. 18=13 C.L R. 209.**

(1028)—Ss. 183, 352, 353—*See* SANCTION TO PROSECUTE— CONDITIONS REQUISITE FOR GRANT OF SANCTION, ETC., 31 C. 664.

——S. 184.

(1029)—*S.* 184—*Execution of sale-deed regarding property ordered to be sold in execution of decree.*—Where two persons were charged under s. 184, I.P.C., one of them from executing and the other for accepting a deed of sale of some property which was ordered to be sold in execution of a decree of a Revenue Court *held*, that the execution of the sale-deed would not amount to an obstruction of the sale, and was, therefore, not punishable under s. 184, I.P.C. EMPRESS v. BADAM SINGH, **A.W.N. 1883, 197.**

(1030)—*S.* 184—*Agra Tenancy Act, s.* 134—*Adjournment of sale owing to paucity of bidders—Obstruction to sale on adjourned date.*—An Amin, deputed to hold a sale under Ch. IX of the Agra Tenancy Act, adjourned it to another date, for paucity of bidders; the conditions laid down in s. 134 of the Act for an adjournment of sale did not exist in the case. *Held*, that persons obstructing the Amin on the adjourned date of sale could not be convicted under s. 184, I.P.C. EMPEROR v. TARA SINGH, **27 A. 480=A.W.N. 1905, 65=2 A.L.J. 128=2 Cr. L.J. 90.**

——S. 185.

(1031)—*S.* 185—*Bids at sale of monopoly of drugs—False name, whether an offence.*—The applicant bid under a false name at a sale of the sole right of selling drugs in a Tehsil, and when the sale was confirmed by the Board of Revenue denied that he had purchased it. It was found that he was the person who bid at the sale. *Held* that the applicant was guilty of an offence under s. 185, Penal Code. BISHAN PRASAD v. EMPEROR, **13 A.L.J. 109 =37 A. 128=16 Cr. L.J. 54=26 Ind. Cas. 646.** (3 W.R. 33, Cr., *R.*)

(1032)—S. 185—*See* CONTEMPT OF LAWFUL AUTHORITY, 3 W.R. Cr. 33.

(1033)—S. 185—*See* MAGISTRATE, JURISDICTION OF — GENERAL JURISDICTION, 7 N.W.P. 132.

(1034)—S. 185—*See* No. 1019, *supra.*

——S. 186.

See PUBLIC SERVANT.

(1035)—*S.* 186—*Obstructing public servant in discharge of public function—Voluntary obstruction, what amounts to.*—A District Judge directed a Commissioner to search the house of the accused and remove certain property thence to the District Court. The Commissioner, accordingly, went to the village of the accused and having read out the order, asked him to allow it to be executed. The accused remained inside his house and closing the doors against the Commissioner, obstructed the execution of

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the order in spite of repeated requests addressed to him. The Commissioner went away, without executing the commission forcibly in order to avoid any disturbance of public peace. *Held*, that the accused was not guilty under s. 186, Penal Code, inasmuch as the Legislature by using the word "voluntarily" contemplated the commission of some overt act of obstruction and did not intend to render penal passive conduct. QUEEN-EMPRESS v. SOMMANNA, **15 M. 221 = 1 Weir 133 = 2 M. L J. 120.** [*R.*, Rat. Un. Cr. C. 850.]

(1036) —*S.* 186—*Obstructing public servant in discharge of public functions—Obstruction must be intentional and direct.*—To constitute an offence under s. 186, I.P C., the obstruction must be intentional and it must be direct. Where a public servant has no authority to forbid a certain act, the doing of such act is not an offence under the above section. KING-EMPEROR v. NGA THA DIN, **U B R. 1897—1901, Vol. I, 266.** (15 M 93, *R.*)

(1037)—*S.* 186—*Order of public servant—Trespass.*—Where the accused, in the honest belief that men doing some work on private land under the orders of a Magistrate had committed trespass, prevented them from doing the work, *held* that he could not be convicted under s. 186 of the Penal Code. EMPRESS v. TODD, **A.W.N. 1882, 52.**

(1038)—*S.* 186—*Obstructing public servant—False defence of bribery—Sentence.*—The accused's son strayed from his house and was found at a police out-post, some distance from the *thana* and was sent into it under the charge of a chaukidar. Near the *thana* the accused met the chaukidar and claimed his son, when he was informed that he would get him when the *thana* was reached. The accused accompanied the chaukidar remonstrating and quarrelling with him for not giving up his son. On reaching the *thana*, the accused refused to allow his son to be taken inside, took him away from the chaukidar and police Moharir and used bad language. The Sub-Inspector then came up and the accused went away. The accused failing to prove his defence of bribery and assault on the part of Sub-Inspector, he was convicted of an offence under s. 186 and sentenced to fourteen days' rigorous imprisonment. *Held* that the offence would have been adequately punished by a small fine, and that the Magistrate was not entitled, in estimating the sentence to be passed, to treat the defence put forward by the accused as a matter of aggravation. EMPRESS v. CHEDA LAL, **A.W.N. 1883, 170**

(1039)—*S.* 186—*Escape from lawful custody.*—Where a person voluntarily obstructs a public servant in the discharge of his functions, *viz.*, in running away from the custody of a police peon, he is not liable to be punished under s. 186, I P.C REG v. POSHU *bin* DHAMBAJI PATIL, **2 B.H.C. 128.**

(1040)—*S.* 186—*Obstruction to surveyor's entering private houses for measurement—Bom. Act* I *of* 1865, *s.* 11.—Where the accused refused to accompany a clerk employed in making survey measurements of houses, under Act I of 1865 (Bombay) to have his house measured, *held*, that the act of the accused was no obstruction within the meaning of s. 186, I P C. REG v. BHAGTIDAS BHAGVANDAS, **5 B H C. Cr. 51.** [*F.*, 22 C. 286; *R.*, Rat. Un. Cr. 850.]

(1041)—*S.* 186—*Forbidding a surveyor to measure land in a particular manner*—To forbid a survey measurer to measure land in a particular manner, without using or threatening to use force to prevent him from doing so, does not amount to the offence of voluntarily obstructing a public servant in the discharge of his public functions. QUEEN-EMPRESS v. RAVAGI, **Rat. Un. Cr. C. 377 = Cr. Rg. 27 of 1888.**

(1042)—*S.* 186—*Unlawful obstruction to public servant.*—A Municipal Inspector finding the accused exposing vegetables for sale on a public road, directed him to remove the basket from the road, and, on the latter's refusing to do so, commenced to take away the basket to the Municipal Office, which the accused snatched away. *Held* that the accused could not be convicted of an offence under s. 186, I.P.C., as no authority was pointed out to justify the action of the complainant who was clearly doing an illegal act. EMPEROR v. GOVIND GOPALSEHET, **4 Bom. L.R. 437.**

(1043)—*S.* 186—*Obstruction to public servant in executing a warrant.*—Where a person not only refuses to give up property but threatens to do harm to the police officer if he ventures to carry out the warrant, he commits an offence under s. 186, I.P.C, since the threat is an overt act sufficient in law to constitute "voluntary obstruction." EMPEROR v. PUNDLICK KRISHNA PAI, **6 Bom. L R. 254 = 1 Cr. L.J. 262.**

(1044)—*S.* 186—*Municipal servant fixing pegs and strings on road—Removal—Bona fide claim of right to road.*—Unless the road on which pegs were put by the complainant, a servant of the Municipality, is a Municipal road, the complainant cannot be said to have been discharging a public function in putting down the pegs and tying strings to them in order to mark out the road. Therefore, the act of the accused in pulling up the pegs and cutting the strings would not be an offence under s. 186, I.P.C. A person between whom and the Municipality there is a *bona fide* dispute as to the ownership of the road, commits no offence, under s. 186 I.P.C., if he pulls up the pegs and cuts the strings in the assertion of his right. QUEEN-EMPRESS v. SAGAN, **Rat. Un. Cr. C. 366 = Cr. Rg. 13 of 1888.** [*R.*, 2 Bom. Cr. C. 66 = 15 Bom. L.R. 315 = 14 Cr. L.J. 251 = 19 Ind. Cas 507.]

(1045)—*S.* 186—*Wife chaining out-door of house to prevent execution of warrant against her husband's property.*—Where the accused chained the outer-door of her dwelling house from within when the taluka karkun came to execute the Mamlatdar's warrant for attaching

Penal Code (Act XLV of 1860)—*continued.*

her husband's moveable property, *held* that she was acting within her rights and could not be convicted under s. 186 of voluntarily obstructing a public servant in the discharge of his public functions. QUEEN-EMPRESS v. MAINA, **Rat. Un. Cr. C. 407 = Cr. Rg. 79 of 1888.**

(1046)—*S.* 186—*Obstruction to public servant — Lawful discharge of public functions — Crim. Pro. Code, ss.* 75 *and* 80—*Omission to sign warrant of arrest and notify its substance.* —There cannot be any voluntary obstruction of public servant in the discharge of his public functions, unless it is shown that the public servant was acting in the discharge of his functions in the manner authorised by law. A police constable executing a warrant of arrest which is not signed by the Magistrate, as required by s. 75, Crim. Pro. Code, but only bears his initials, and whose substance is not notified as required by s. 80 of the Code, cannot be held to be acting in a manner authorised by law. ABDUL GAFUR v. QUEEN-EMPRESS, **23 C. 896.** [*F.*, 10 P.R. 1905, Cr., *R.*, 25 C. 274, 26 C. 748, 16 P.R. 1904, Cr., 19 P. W.R. 1913, Cr. = 14 Cr. L.J. 141 = 18 Ind. Cas. 893 = 183 P.L.R. 1913; *D.*, 27 A. 499 = 2 A.L. J. 219 = A.W.N. 1905, 74, 20 P.W.R. 1913, Cr. = 14 Cr. L.J. 142 = 18 Ind. Cas. 894 = 155 P.L. R. 1913 = 16 P.R. 1913, Cr.]

(1047) *S.* 186—*Indian Railway's Act* (IX *of* 1890), *ss.*121 *and* 122—*Impeding a railway servant in the discharge of his duties—Penal Code, s.* 186.—Before a person can be convicted under s. 121, Railways Act, of wilfully obstructing or impeding a railway servant in the discharge of his duties, or, under s. 186, I.P.C., of voluntarily obstructing a public servant in the discharge of his public functions, it must be shown that the obstruction or resistance was offered to a railway or a public servant in the discharge of his duty or public functions as authorised by law. The mere fact of a public servant or a railway servant believing that he was acting in the discharge of his duty will not be sufficient to make resistance or obstruction to him, amount to an offence. *In the matter of* BARODA KANT PRAMANICK, **1 C.W.N. 74.** [*R.*, 24 C. 320 = 1 C.W.N. 154.]

(1048)—*S.* 186—*Resistance to the execution of warrant under the Public Demands Recovery Act after the date specified in the warrant—Civ. Pro. Code* (*Act* V *of* 1908), *O.* XXI, *r.* 24—*Extended date not specified in the warrant—Execution by person not expressly authorized—Warrant under Chowkidari Act* (VI *of* 1870, *B.C.*), *s.* 45—*Delegation of authority to execute.* —A warrant issued under the Public Demands Recovery Act (I of 1895) was made returnable on the 26th July, and it was alleged by the prosecution that the warrant was extended to the 8th of August. The accused resisted the execution of the warrant on the 2nd August and were charged with an offence under s. 186, I.P.C. *Held* that, under O. XXI, r. 24, Civ. Pro. Code, the day on or before which the warrant was to be executed should have been specified in the warrant. Even assuming that the warrant had been extended to the 8th August, the warrant, on the date of its execution, *viz.*, the 2nd August, was not a good warrant, inasmuch as the extended date did not appear on the warrant, and therefore the accused did not commit any offence under s. 186 by offering resistance to its execution on the 2nd August. Resistance to the execution of a warrant issued under the Public Demands Recovery Act, by a person on whom the warrant on the face of it does not confer any authority to execute it, does not constitute an offence under s. 186, I.P.C. The person against whom the warrant is sought to be executed is entitled to see the warrant not only for the purpose of satisfying himself as to the amount, but also for the purpose of satisfying himself that the person who seeks to execute the warrant is legally authorised to do so. Where a warrant issued under s. 45 of the Chowkidari Act (VI of 1870, B.C.) was directed to the naib-nazir, who made it over to one of his subordinates for execution, *Held*, that the resistance to the execution of the warrant by the latter person to whom the warrant was made over did not constitute an offence under s. 186, I.P.C. The warrant issued under s. 45 of the Chowkidari Act must contain the name of the person who is to execute it, and only that person who is named in the warrant as charged with execution can lawfully execute it. The words of s. 45 of the Chowkidari Act are sufficiently stringent to override any general power of delegation which the naib-nazir might have in cases of execution of warrants in which his power has not been specifically limited by statute. SHEIKH NASUR v. EMPEROR, **37 C. 122 = 14 C.W.N. 282 = 5 Ind. Cas. 409 = 11 Cr. L.J. 128.**

(1049)—*S.* 186—*Obstructing vaccinator in discharge of his duty, what constitutes.*—The mere informing of a vaccinator that he would get no children to vaccinate in the village and that he might have saved himself the trouble of coming, does not constitute the offence of obstructing a public servant in the discharge of his duty. *In re* ANANDAPPA NADAN, **1 Weir 130.**

(1050)—*S.* 186—*Preventing people from bringing children for vaccination by spreading false report—Re-vaccination.*—Spreading a false report and thereby preventing people from bringing their children for vaccination does not amount to voluntary obstruction of the vaccinator in the performance of his public duties. Per *Wilkinson, J.*—To prevent by physical means persons willing to be vaccinated from being vaccinated might be obstruction of vaccinator within the meaning of s. 186. But merely to dissuade a person from submitting to vaccination is not obstruction, for it is only with regard to willing patients that the vaccinator has any duty. Per *Shephard, J.* QUEEN-EMPRESS v. THIMMACHI, **15 M. 93 = 1 Weir 131.** [*R.*, 7 P.R. 1905, Cr. = 96 P.L.R. 1905, Rat. Cr. C. 850, U.B.R. 1897—1901, 266.]

Penal Code (Act XLV of 1860)—*continued.*

(1051)—*S.* 186— *Urging people not to allow children to be vaccinated.*—It is quite at the option of every parent to have his children vaccinated, and it is not unlawful to dissuade others from undergoing or suffering their children to undergo the operation. Where the headman of a village urged the villagers not to allow their children to be vaccinated by a public vaccinator, alleging that the operation has been prejudicial to the health of his own child, *held* that he was not guilty of an offence under s. 186, Penal Code. *In re* THULUKANA CHETTI, **1 Weir 129.** [*F*, 1 Weir 130.]

(1052)—*S.* 186— *Refusing to allow children to be re-vaccinated.*—Where the accused persons refused to allow their children to be re-vaccinated and further refused to show them to the vaccinator that he might ascertain whether they had before been vaccinated, *held*, that the accused was not guilty of an offence under s. 186, Penal Code. *In re* BYLOOR LINGAH, **1 Weir 130.**

(1053)—*S.* 186—*Illegal acts of vaccinator—Obstruction.*—A vaccinator is not legally authorised to remove the scab caused by the vaccination wound from the arm of the child vaccinated, nor is he authorised to require the father of the child to permit lymph to be taken from the arm of the child. Therefore an obstruction by the father to such acts being done is not an offence under s. 186, Penal Code. *In re* KOMATI RAMANNAH, **1 Weir 131.**

(1054)—*S.* 186—*Child being taken for vaccination without father's consent—Right of father.*—Where a father does not consent to the vaccination of his child, he has a perfect right to take away the child from the vaccinator and to use such force as is necessary for the purpose. *In re* JOGABATHUDU, **1 Weir 132.**

(1055)—*S.* 186—*Taking away a child from vaccinator vaccinating other children from it.*—Where the lawful guardian of a child took away the child from the vaccinator, who was vaccinating other children from it, and thereby prevented his continuing his work, *held* that, as the vaccinator had no legal rights to detain the child, the guardian acted strictly within his right in taking away the child. *In re* CHITTA KONAIYA, **1 Weir 132.**

(1056)—*S.* 186—*Obstruction to public servant—Proof of* mala fides *of accused, whether necessary.*—The offence made punishable under s. 186 is that of "voluntarily" obstructing a public officer in the discharge of his duty. Proof of *mala fides* on the part of the person obstructing the public servant is not necessary. *In re* KARUMAN, **1 Weir 134.**

(1057)—*S.* 186—*Abuse, whether obstruction.*—Mere abuse cannot be held to be obstruction so as to constitute an offence under s. 186, Penal Code. *In re* SOORAPARAZU SINGAYYA, **1 Weir 134 = 1 Weir 621.**

(1058)—*S.* 186—*Excise Act—Search.*—A conviction under s. 186, I.P.C., cannot be sustained, unless it be proved that a public servant was obstructed in the discharge of his public functions. In conducting searches under the Excise Act and similar laws, the procedure prescribed must be strictly observed. Where a first class constable had illegally searched a house, it was held that no offence was committed in obstructing him. QUEEN-EMPRESS v. NGA NYEIN, **L.B.R. 1872—1892, 152.** (7 B.H.C. Cr. 50, *R.*)

(1059)—*S.* 186—*Civ. Pro Code* (1882), *s.* 269—*Custody of attached property — Offence.*—Where attached property has been placed in charge of persons who are not public servants, the removal of such property, without the consent of such persons, is not an offence under the above section. QUEEN-EMPRESS v. NGA SHWE BWA, **L.B.R. 1872—1892, 336.**

(1060)—*S.* 186—*Causing obstruction to a public servant—Posting up of placards.*—An officer of the Government was conducting a sale of nazul property. The accused posted up placards claiming title to the property sold as theirs and warning intending bidders that they purchased at their own risk. The result was that those present did not bid, or refused to bid, except on an assurance that the purchase money would be refunded in case the title of the Government was found defective. *Held*, that the accused was not guilty of an offence under s. 186, I.P.C. KING-EMPEROR v. GOPAL RAI, **7 P.R. 1905, Cr. = 96 P.L.R. 1905 = 2 Cr. L.J. 44** (29 C. 236, 15 M. 93, *R.*)

(1061)—*S* 186—*Resistance of illegal warrant of attachment.*—A person is not guilty of an offence under s. 186, I.P.C., by resisting the execution of an illegal warrant of attachment issued by a public servant. KING-EMPEROR v. HIMAYAT ALI, **10 P.R. 1905, Cr. = 68 P.L.R. 1905 = 2 Cr. L.J. 64.** (13 B. 168, 23 C. 896, *R.*)

(1062)—*S.* 186—*Public servant.*—Case where a conviction under this section for obstructing a *mouzadar* in the discharge of his duty was reversed, as it was not shown that the *mouzadar* was a public servant. JOYNATH v. SOORJARAM, **8 W R. Cr. 66.**

(1063)—*S.* 186—*Refusal to allow cart on hire to Government officer.*—Where the accused, the owner of a cart, refused to give it on hire to a Government officer who applied for it, he could not be convicted of obstructing a public servant in the discharge of his public functions. REG v. DHORI KULLAN, **9 B.H.C. 165.**

(1064)—*S.* 186—*Obstructing public servant.*—Where the accused, prisoners in a jail, gave insubordinate answers and surrounded in a menacing attitude a constable who went to the cells to make inquiries, about the diet of the prisoners, *held*, they were guilty of an offence under s. 186 of the Penal Code. EMPRESS v. PADARATH, **A.W.N. 1882, 233.**

(1065)—*S.* 186—*Public servant—Obstruction—Municipality—Existence of* bona fide *dispute—Obstruction to or encroachment on public street—District Municipalities Act* (*Bom. Act* III *of* 1901), *s.* 122.—The accused owned a

Penal Code (Act XLV of 1860)—*continued.*

shop, between which and the public road in front was a small strip of land. This strip was used by him for upwards of forty years for the purpose of depositing his bales and other goods. The Municipality claimed the strip as part of the public road and prosecuted the accused for encroachment on it under s. 122 of the District Municipalities Act, but the accused was acquitted. The Municipal officers next went to the place in question and tried to remove the goods stocked on the land ; but were obstructed by the accused. On these facts the accused was prosecuted for an offence punishable under s. 186, Penal Code. *Held*, that the accused was not guilty of the offence, inasmuch as the existence of a *bona fide* dispute between himself and the Municipality as to the ownership of the land prevented his obstruction from being wrongful. (Rat. Un. Cr. C. 366, *F.*) To support a conviction under s. 186, Penal Code, it is requisite to prove that the public servant obstructed was obstructed in the discharge of his public functions. This is a matter of fact and not a matter of the public servant's intentions. His intentions may have been perfectly honest, but if, in fact and in law, the functions in the discharge of which he is obstructed are not public functions, then no offence can be committed under the section. The functions will not be public functions if they fall wholly outside the jurisdiction or authority which he as a public officer possesses. No man can be convicted of a criminal offence where the theory of his guilt is no more likely than the theory of his innocence. EMPEROR v. SHIVDAS OMKAR, **15 Bom. L.R. 315 = 2 Bom. Cr. C. 66 = 14 Cr. L.J. 251 = 19 Ind. Cas. 507.**

(1066)—*S.* 186—*Process-server — Obstruction to attachment.—Held*, that, where a process-server was seriously obstructed, insulted and jostled in the execution of his duty, it is a serious obstruction and the persons doing so are guilty of the offence under s. 186, Penal Code. MUSSAMMAT JATTO v. CROWN, **30 P. W.R. 1915, Cr.**

(1067)—S. 186—*See* ACT VII OF 1870, ss. 22, 20, 22 C. 596.

(1068)—S. 186—*See* ACT VIII OF 1873, s. 45, 27 A. 499 = A.W.N. 1905. 74 = 2 A.L J. 219 = 2 Cr. L.J. 183.

(1069)—S. 186—*See* BEN. ACT V OF 1875, s. 45, 6 C.W N. 120.

(1070)—S. 186—*See* BEN. ACT VIII OF 1885, s. 69, 18 C. 518.

(1071)—S. 186—*See* CONTEMPT OF COURT, 22 P.R. 1879, Cr., 2 B.L.R. F.B. 21 = 10 W.R. Cr. 43.

(1072)—S. 186—Obstruction of public servant —Complaint—Want of sanction—Quashing of proceedings—*See* CRIM. PRO. CODE, 1898, s. 4 (*h*), 17 C.W.N. 980 = 20 Ind. Cas. 622 = 14 Cr. L.J. 462.

(1073)—S. 186—*See* CRIM. PRO. CODE, 1898, ss. 4, 195 and 537, A.W.N. 1904, 266.

Penal Code (Act XLV of 1860)—*continued.*

(1074)—S. 186—*See* CRIM. PRO.CODE, 1898, ss. 556, 195, 8 S.L.R. 41 = 15 Cr. L.J. 649 = 25 Ind. Cas. 977.

(1075)—S. 186—*See* Nos. 17, 31, 32, 33, 45, 409, 410, 411, 593, 606, 607, 608, 874, 875, 876, 1020 to 1025, *supra*.

(1076)—*Ss.* 186, 187—*Refusal to assist the police in burying dead body.*—The accused, who were *Malguzars*, refused to assist a police constable in burying a dead body and even threatened to punish any one who did so, and were convicted under ss. 186 and 187. *Held* that the conviction was untenable, for, to constitute that offence, there must be an actual obstruction and not a mere withholding of assistance or an inciting of others to withhold assistance, and that, further, there was no law which required a *Malguzar* to assist a police officer in burying the dead body. DAULATSING v. BAPU, **6 C. P.L.R. Cr. 5.**

(1077)—*Ss.* 186 *and* 188.—*Disobedience of order by kurnam to desist from constructing a pyal—Encroachment on public road.*—The accused, a bricklayer, was engaged in constructing a pyal. The kurnam of the village considered that it was an encroachment on the public road and ordered him to stop work. But the accused continued to proceed with the work. *Held*, that the mere omission to desist from work when desired to do so, would not amount to a voluntary obstruction within the meaning of s. 186. *Held*, also, that the kurnam's order to desist from proceeding with the work was not such an order as was contemplated by s. 188, I.P.C. *In re* AGORA MAISTRI, **1 Weir 132.**

(1078)—Ss. 186, 189, 506—*See* CRIMINAL INTIMIDATION, Rat. Un. Cr. C. 850 = Cr. Rg. 18 of 1896.

(1079)—*Ss.* 186, 225-*B—Resistance or obstruction to arrest—Overt act.*—Where a warrant was issued by the Civil Court for arrest of a judgment-debtor, and he resisted the officer executing the warrant in making the arrest, he would be guilty of an offence under s. 225-B, Penal Code. But where the judgment-debtor, on seeing the officer, ran into the house and thus avoided arrest, *held* that it did not amount to intentional resistance or obstruction to the arrest within the meaning of s. 225-B, I.P.C. There must be an overt act of resistance or obstruction which could justify a conviction under s. 186 or s. 225, I P.C. KING-EMPEROR v. GAJADHAR, **7 A L.J. 1174 = 8 Ind. Cas. 823 = 11 Cr. L.J. 721.**

(1080)—*Ss.* 186, 355—*Assault—Obstruction to a public servant in the discharge of his duty —Search of a person suspected to have cocaine —Officers of Abkari Department—Crim. Pro. Code (Act V of 1898), ss. 366, 367, 370—Magistrate writing judgment after pronouncing sentence — Irregularity — Illegality — Practice.*— Whilst the complainants, a Sub-Inspector and a constable in the Abkari Department, were proceeding to search a man who they suspected of possessing *cocaine*, the accused assaulted first

Penal Code (Act XLV of 1860)—*continued.*

the constable, and then the Sub-Inspector, as a result of which the man escaped and the complainants could not search him. The accused was convicted of two offences punishable under s. 353 and one offence under s. 186, Penal Code. *Held*, that the accused was rightly convicted. Per *Curiam.*—The legality or illegality of a judgment in consequence of its delivery after sentence passed is a question which can only be answered by the light of the circumstances of each case. EMPEROR v. THAVE ISSAJI BOREE, **13 Bom. L.R. 635 = 11 Ind. Cas. 993 = 12 Cr. L.J. 457.**

— S. 187.

(1081)—*S.* 187—*Rendering assistance to a public servant—Refusal by a witness to a search to sign duly prepared search list.*—The word "assistance" referred to in the first part of s. 187, Penal Code, is *ejusdem generis* with the various forms of assistance specified in the latter half of the section. The "assistance" must have some direct personal relation to the execution of the duty by the public officer. The word implies that the party who assists is doing something which, in ordinary circumstances, the party assisted could do for himself. Where a person, on requisition, attended a search, *held* under s. 103 of the Code of Criminal Procedure, and witnessed the search, but refused to sign the search-list when it was duly prepared, *held*, that he was not guilty of an offence under s. 187, Penal Code, as the signing of the search-list is an independent duty imposed on the witness, having no personal relation to the execution of the duty by the public officer. *In the matter of* RAMAYA NAIKA, **26 M. 419 = 1 Weir 136, F.B.**

(1082)—S. 187—Refusal to serve as member of panch—*See* ACT VII OF 1878, s. 78, 22 B. 769.

(1083)—S. 187—*See* SEARCH, L.B.R. 1893-1900, 406.

(1083-*a*)—S. 187—*See* Nos. 903, 904, 1076, *supra.*

(1084)—*Ss.* 187, 188—*Disobedience of landholder to an order directing to find a clue in a case of theft—Crim. Pro Code* (1872), *ss.* 187, 188.—An order, requiring certain land-holders to find a clue in a case of theft within fifteen days, is wholly unwarranted by the provisions of ss. 90, 91, Crim. Pro. Code. The persons so directed cannot be convicted under ss. 187, 188, I P.C., for disobedience of such order. EMPRESS OF INDIA v. BAKHSHI RAM, **3 A. 201.**

(1085)—*Ss.* 187, 188—*Omission to obey an order under s.* 21, *Reg.* XX *of* 1817.—Ss. 187, 188, apply to direct refusal or omission of a person bound by law to render or furnish assistance to a public servant to do so. An omission by a land-holder bound under s. 21, Reg. XX of 1817, to nominate some person to act as village watchman, on the occurrence of a vacancy, so to do, is not an offence under either s. 187 or s. 188, I.P.C. *In the matter of* KALI PROSUNNA GHOSE, **7 C.L.R. 575 = 3 J.G. 45.**

Penal Code (Act XLV of 1860)—*continued.*

——S. 188.

(1086)—*S.* 188—*Scope of section—Crim. Pro. Code* (1882), *s.* 133—*Jurisdiction of Magistrate.*—A Sub-divisional Officer, in view of the prevention of the destructive fires at his head-quarters, issued a hortatory proclamation calling upon the people to keep themselves well supplied with pots filled with water upon their roofs and also with hooked sticks for use in beating out fires. He further issued instructions regarding precautions to be taken in cooking and in the use of fire generally throughout the dry season. The accused were convicted of disobedience to these orders in that they, both by day and night, cooked their meals in their houses, and had neglected to put up fire-hooks, waterpots, etc., likewise neglecting to keep those waterpots full. For this so-called offence, they were punished under s. 188, I.P.C. *Held* that, if the order fell within the scope of s. 133, Crim. Pro. Code, 1882, it would be bad because it is not addressed to any person; and no time or place is fixed by the order for the consideration by the Magistrate of objections which might be urged against the order. The order made was not an order "promulgated by a public servant lawfully empowered to promulgate such order." The conviction was consequently set aside and the fines which were paid were refunded. QUEEN-EMPRESS v. SHWE PE, **L.B.R. 1872—1892, 363.**

(1087)—*S.* 188—*Scope of section.*—To justify a conviction under s. 188, it is necessary to establish that the disobedience "causes, or tends to cause, obstruction, annoyance, or injury to any person lawfully employed," and to make the offence graver, it must be established that such disobedience causes, or tends to cause danger to human life, health or safety; or causes or tends to cause a riot or affray. If none of these conditions are satisfied, a conviction under the section is illegal. EMPRESS v. HABIBULLAH, **A.W.N. 1886, 251.**

(1088)—*S.* 188—*Scope of section--Disobedience to an order duly promulgated by a public servant.*—The two main parts to be proved in a case of this kind are (1) that the order is one "promulgated by a public servant lawfully empowered to promulgate such order" and (2) that disobedience to the order "causes or tends to cause obstruction, annoyance or injury or risk of obstruction, annoyance or injury to any persons lawfully employed." Ss. 5 and 8 of the Upper Burma Village Regulation do not apply to an order of this kind issued under s. 188 of the I.P.C. S. 188 of the Penal Code does not refer to an order which a public officer is *not forbidden to issue* but to one which he is lawfully empowered to promulgate. QUEEN-EMPRESS v. NGO PO SAING, **U B.R. 1892—1896, Vol. I, 181.**

(1089)—*S.* 188—*Scope of section—Disobedience to an order duly promulgated by a public servant.*—An order passed by the Deputy Commissioner forbidding the slaughter of cattle or sale of meat within a radius of three miles

Penal Code (Act XLV of 1860)—*continued.*

of a slaughter-house licensed in a village by the Deputy Commissioner, is not an order by a public servant lawfully empowered to promulgate such an order, and hence a conviction under s. 188, I.P.C., is bad in law. QUEEN-EMPRESS v. NGA PO NAING, **U.B.R. 1892-1896, Vol. I, 179.**

(1090)—*S.* 188—*Scope of section--Disobedience to order duly promulgated by public servant.*—A Magistrate who was personally interested in the removal of a nuisance has no power to try that case, being barred by ss. 487 and 555 of Crim. Pro. Code. QUEEN-EMPRESS v. NGO PO TUN, **U.B.R, 1892-1896, Vol. I, 178.**

(1091)—*S.* 188--*Scope of section—Disobedience to an order duly promulgated by a public servant.*—The procedure laid down in Ch. X of the Crim. Pro. Code ought to be followed in making an order under the above section. There should also be evidence that the disobedience of the order caused or tended to cause obstruction, annoyance or injury or risk of obstruction, annoyance or injury. The provisions of Ch. X of the Crim. Pro. Code are not applicable to cases where another remedy is already provided by law. QUEEN-EMPRESS v. SATA DIN, **U.B.R. 1892-1896, Vol. I, 176.**

(1092)—*S* 188--*Scope of section* --Disobedience of order promulgated by public servant lawfully empowered to promulgate such order—Powers of Magistrates limited to those conferred by Chs. X and XI of the Code of Criminal Procedure. QUEEN EMPRESS v. NAWEB KHAN, **U.B.R. 1892-1896, Vol. I, 174.**

(1093)—*S.* 188—*Scope of section.*—Under s. 188 of the Penal Code, it is necessary that the person convicted of an offence under that section should be proved to have known that an order had been promulgated by a public servant, ordering such person to abstain from a certain act. QUEEN v. RAMTONOO SINGH, **12 W.R. Cr. 49.**

(1094)—*S.* 188—*Scope of section — Public servant—Disobedience of order.*—In order to support a conviction under this section, there must be clear evidence that the order has been promulgated by a public servant, and that such servant was lawfully empowered to promulgate it. QUEEN v. SUBUN SINGH, **23 W.R. Cr. 57.**

(1095)—*S.* 188—*Scope of section.*—An order in writing under s. 62 of the Code of Criminal Procedure, 1861, is essential to uphold a charge under s. 188 of the Penal Code. *In re* PITAMBER DAY, **17 W.R. Cr. 57.**

(1096)—*S.* 188—*Scope of section.*—Ss. 62, Crim. Pro. Code (1861), and 188 of the Penal Code should be read together. GOVERNMENT v. MAHOMED BUKHSH, **1 Agra Cr.** 23.

(1097)—*S.* 188—*Gist of offence* —S. 188 requires proof not only of the disobedience of an order, but that the disobedience causes, or tends to cause, obstruction, annoyance, or injury, or risk of the same to a person lawfully employed. REG. v. RANCHOD DAYAL, **10 B.H.C. 424.**

Penal Code (Act XLV of 1860)—*continued.*

(1098)—*S.* 188—*Elements of the offence under —Crim. Pro. Code, s.* 144—*Disobedience of order under—Holding a* hat *close to an old one on the same day.*—In order to constitute an offence under s. 188, it is necessary to show, *first*, a lawful order promulgated by public servants; *second*, a knowledge of the order and disobedience of it, and *thirdly*, the result that is likely to follow such disobedience. A conviction under s. 188, I.P.C., for disobedience of an order under s 144, Crim. Pro. Code, is bad in law, if there is no evidence as to the likely result of the disobedience. [*F.*, 31 C. 990=8 C.W.N. 781, 32 C. 793=2 Cr. L.J. 760.] Although the establishment of a rival *hat* at a place near to an old *hat* and to be held on the same day may very often lead to a breach of the peace, it will not be safe and proper that, that should by itself form a sufficient ground for a conviction under s. 188. BHOJO NATH GHOSE v. EMPRESS, **4 C.W.N. 226.**

(1099)—*S.* 188—*Conviction under — Essentials for—Accused's knowledge of order.*—In order to support a conviction for disobedience of an order duly promulgated by a public servant, it must be established that the order has been brought to the actual knowledge of the person sought to be affected by it. QUEEN-EMPRESS v. ANANT SHITARAM KULKARNI, **1 Bom. L.R. 524.**

(1100)—*S.* 188—*Essentials of conviction under the section.*—To sustain a conviction under s. 188 of the Penal Code, it is essential that there should be evidence to show that the disobedience would produce one of the consequences specified in the section. In this case, the disobedience was of an order passed by a Municipal Council under s. 73 of Bom. Act VI of 1875, prohibiting caste feasts, while cholera was raging. QUEEN- EMPRESS v. HARI LAL, **Rat. Un. Cr. C. 433.** (4 M.H.C. App. 5, *R.*)

(1101)—*S.* 188—*Essentials of conviction under the section.*—A conviction under s. 188 cannot be supported, unless there is evidence to show that the disobedience caused or tended to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, or that it caused or tended to cause danger to human life, health, or safety, or caused or tended to cause riot or affray. HIGH COURT PROCEEDINGS, 16TH MARCH, 1868, **1 Weir 137=4 M.H.C. Ap. 5.** [*F.*, Rat. Un. Cr. C. 433.]

(1102)—S. 188, Indian Penal Code, what amounts to an offence under. OOMRA v. CROWN, **17 P.R. 1869, Cr.**

(1103)—*S.* 188—*Order by Collector prohibiting the placing of stake-nets in river—Section, in what cases applicable.*—Where a District Collector, in his capacity of Collector and not in his capacity of District Magistrate, ordered that no stake-nets were to be placed in places in which it was not customary for them to be placed, *held*, that the order of the Collector

Penal Code (Act XLV of 1860)—*continued.*

was not an order of such a kind that disobedience to it could be punished under s. 188, Penal Code HIGH COURT PROCEEDINGS, 18TH JAN. 1878, No. 106, **1 Weir 138.**

(1104)—*S* 188—*Order duly promulgated by a public servant—Disobedience, what constitutes.*—S. 188, Penal Code, applies to cases in which an order has been issued by a public servant, and disobedience to such order causes or tends to cause certain ill effects enumerated in the section. Where, on the accused persons squatting on some puramboke land, an Head Assistant Magistrate directed that the squatters should be warned to quit, and punished for trespass if they failed to obey, *held*, that the accused could not be convicted under s. 188 because their disobedience could not cause any of the effects enumerated in the section. HIGH COURT PROCEEDINGS, 20th Nov. 1875, No. 2886, **1 Weir 138.**

(1105)—*S.* 188—*Order promulgated by a public servant—What constitutes disobedience—Disobedience to order directing the holding of* hat *on certain days.*—To support a conviction under s. 188, Penal Code, some evidence that the disobedience is likely to cause a breach of the peace is necessary. Disobedience of a Magistrate's order directing a party to hold a *hat* on certain specified days of the week cannot be punished under s. 188, Penal Code. SHYAMA NAND DAS PAHARAJ v. EMPEROR, **31 C. 990 = 8 C.W.N. 781 = 1 Cr. L.J. 778.**

(1106)—*S.* 188—*Lawful order for removal of obstruction from public road, what constitutes.*—A lawful order for the removal of an obstruction from a public way can only be issued in the mode, and by the officer named in Ch. X, Crim. Pro. Code, 1882. *In re* AGORA MAISTRI, **1 Weir 132.**

(1107)—*S.* 188—*Crim. Pro. Code* (1872), *s.* 521—*Disobedience of order—Danger to public.*—Where a Magistrate convicted the accused for not having done such work around a well as was directed by an order under s. 521 of the Crim. Pro. Code, 1872, and it was shown that almost the whole work except as to an immaterial portion was done within the time specified in the order, *held* that the conviction was illegal since it was not shown that the unfinished work was such as was likely to cause any of the consequences referred to in s. 188 of the Penal Code. EMPRESS v. BENI KISHEN, **A.W.N. 1882, 232.**

(1108)—*S.* 188—*Order restraining persons from extending cultivation—Legality*—There is no legal authority for the Superintendent of Police to promulgate an order restraining the inhabitants of a village from extending the cultivation of land beyond a certain place. EMPEROR v. KALIAN SINGH, **A.W N. 1904, 233 = 1 Cr. L.J. 916.**

(1109)—*S.* 188—*Order dealing with right to cultivate land.*—An executive order dealing with the question whether a man is or is not entitled to cultivate a certain plot of land, is not such an order as is contemplated by s. 188, I.P.C. DHAN SINGH v. KING-EMPEROR, **1 A. L.J. 615 = 1 Cr. L.J. 987.**

(1110)—*S.* 188—*Disobedience of oral order.*—A Mukhtear attempted to assist a vakil in the defence of an accused person without the permission of the Magistrate. He was ordered not to give such assistance without permission, under s. 186, Crim. Pro. Code, 1872, and to leave the Court. *Held*, that the Mukhtear could not be convicted under s. 188, I.P.C., as that section did not apply to the facts of the case. *In re petition of* SULTAN AHMAD, **A. W.N. 1881, 20.**

(1111)—*S.* 188—*Verbal order to remove obstruction, whether legal—Disobeying such order, whether offence—Crim. Pro. Code, ss.*133, 137.—A verbal order to remove an obstruction has not the effect of a final order under s. 137, Crim. Pro. Code, and is not lawful, and a person disobeying such an order is not guilty of an offence under s. 188, Penal Code. THAKUR JANAKI NATH CHAKRAVARTI v. JNANENDRA NATH CHAKRAVARTI, **16 Cr. L.J. 24 = 26 Ind. Cas. 328.**

(1112)—*S.* 188—*Cantonment Magistrate's order to appoint a resident agent.*—A mere agent of the non-resident owner of a house within cantonment limits cannot be convicted under s. 188 of the Penal Code for disobeying the order of the Magistrate requiring him to appoint a resident agent. EMPRESS v. TODD, **A.W.N. 1882, 52.**

(1113)—*S.* 188—*Non-erection of segregation quarters—Person leaving the village against advice of plague authority—Epidemic Diseases Act* (III *of* 1897), *Rule* 2 (*Proviso*).—Where no segregation quarters were erected outside a village as required by the proviso to Rule 2 of the Rules sanctioned by Government under the Epidemic Diseases Act, a person could not be convicted under s. 188, I.P.C., merely because he was advised by the plague authority, a public servant, not to leave the village. IMPERATRIX v. GOVIND GUNDO, **1 Bom. L.R. 51.**

(1114)—*S.* 188—*Conviction under section read with Rule* 6 *of the Mofussil Plague Rules framed under Epidemic Diseases Act* III *of* 1897.—To warrant a conviction under s. 188, I.P.C., read with Rule 6 of the Mofussil Plague Rules, it is necessary to prove—(1) that the accused was the occupant of a house or building in which, or the principal surviving member of a family amongst the members of which, sickness or death occurred, and (2) that the sickness or death was due or likely to be due to plague. QUEEN-EMPRESS v. ABDUL HAMID MOLVI, **1 Bom. L.R. 223.**

(1115)—*S.* 188—*Order, promulgation of—Disobedience to the order—Picketing prohibition of—Public place.*—A number of young men, including the accused, were found preaching and patrolling the roads near the liquor shops in the Belgaum city, some shouting "Don't

Penal Code (Act XLV of 1860)—*continued.*

drink," and using offensive language in addition to those words such as "If you drink, it will be as if you drink the blood of your children." The District Magistrate thereupon issued orders under s. 144 of the Crim. Pro. Code, prohibiting these acts; but the persons warned continued to do them from the verandah of a private house adjoining a public place. *Held* (1) that objectionable language such as "If you drink, you will be drinking the blood of your children," speaks for itself; no further evidence than the words used is required to prove that it has a tendency to cause annoyance to persons lawfully employed, under s. 188 of the Indian Penal Code, and (2) that the fact that the place from which the accused did the shouting against drink was the verandah of a private house, whereas the order of the District Magistrate which forbade shouting applied only to a public place, made no difference; for, if a man standing on a private place adjoining a public road shouts into the road words deliberately meant for persons using that road, he is as much shouting in a public place as if he stood on the road itself and shouted. EMPEROR v. GOVIND VENKATESH YALGI, **10 Bom. L.R. 1047 = 8 Cr. L.J. 431 = 4 M.L.T. 363.**

(1116)—*S. 188—Magistrate's order not to bury corpse at a place—Crim. Pro. Code* (1861), *ss.* 62, 63—*Publication.*—Where the accused was convicted of an offence under s. 188 of the Penal Code, in disobeying an order of a Magistrate prohibiting people from burying or burning corpses at a particular place, *held*, that the conviction was illegal, since the order had not been served individually on the accused but only posted at the place referred to. REG. v. SUKAR BUDHIA, **Rat. Un. Cr. C. 30 = Cr. Rg. 3-3-1870.**

(1117)—*S.* 188—*Crim. Pro. Code, Act X of* 1872, *ss.* 518, 521—*Removal of hedges—Bom. Act* VII *of* 1867.—The pruning of hedges abutting on a highway is not such an urgent and speedy remedy as to empower a third-class Magistrate to pass an order under s. 518 of the Crim. Pro. Code, in respect thereof. Disobedience of such an order, when followed by none of the consequences specified in s. 188 of the Penal Code, does not render the person disobeying liable to a conviction under that section. REG. v. BAPUJI BECHAR, **Rat. Un. Cr. C. 81 = Cr. Rg. 11-6-1874.**

(1118)—*S.* 188—*Crim. Pro. Code* (1882), *s.* 138—*Disobedience of general order.*—Where a Magistrate issues, under s. 138 of the Crim. Pro. Code, 1882, a general order prohibiting the establishing of cotton ginning yards in certain villages, a person establishing a cotton gin in contravention of the above order cannot be proceeded against under s. 188 of the I.P.C. QUEEN EMPRESS v. MANEKCHAND, **Rat. Un. Cr. C 342 = Cr. Rg. 33 of 1887.** [*F.*, 1 Ind. Cas. 378.]

(1119)—*S.* 188—*Proprietor of theatre not in possession, at time of disobedience of order under.*—A proprietor of a theatre not in actual possession or management of the same at a time when a lawful order promulgated by a public servant was disobeyed, cannot be convicted under s. 188 of the Penal Code. QUEEN-EMPRESS v KRISHNA SHET, **Rat. Un. Cr. C. 527 = Cr. Rg. 59 of 1890.**

(1120)—*S.* 188—*Applicability of section to orders in possessory suits.*—S. 188 of the Penal Code refers to orders made for public purposes, and does not apply to an order made in a possessory suit between party and party. QUEEN-EMPRESS v. ULWAPGAVDA, **Rat. Un. Cr. C. 864 = Cr. Rg. 27 of 1896.**

(1121)—*S.* 188—*Applicability of—Orders made by public functionaries for public purposes.*—S. 188 of the Penal Code applies to orders made by public functionaries for public purposes, and not to an order made in a civil suit between party and party. *In the matter of the petition of* CHANDRAKANTA DE, **6 C 445 = 7 C.L.R. 350.** [*F.*, 3 Cr. L.J. 151, 11 Cr. L.J. 56 = 4 Ind. Cas. 824 = U.B.R. 1909, Penal Code, p. 23; *R.*, 14 C.P.L.R. 174.]

(1122)—*S.* 188—*Disobedience of order under s.* 144 *of Crim. Pro. Code, Act X of* 1882—*Jurisdiction of Magistrate.*—A Magistrate is not competent to try and convict a person under s. 188 of the Penal Code for disobedience of an order issued by himself under s. 144 of the Crim. Pro. Code, 1882. QUEEN-EMPRESS v. LANGADAY BALU KOLI, **Rat. Un Cr. C. 904 = Cr. Rg. 14 of 1897.** (18 B. 380, *D.*)

(1123)—*S.* 188—*Conviction and sentence for disobedience to an order under s.* 144, *Crim. Pro. Code—Proof of likelihood of a breach of the peace.*—In order that a disobedience to an order passed under s. 144, Crim. Pro. Code, may amount to an offence under s. 188, Penal Code, there must be some definite evidence on the record to show that such disobedience is likely to cause a breach of the peace. RAM GOPAL DAW v. EMPEROR, **32 C. 793 = 2 Cr. L.J. 760.** (4 C.W.N. 226, *R.*)

(1124)—*S.* 188—*Order under s.* 144, *Crim. Pro. Code—Disobedience.*—An order under s. 144, Crim. Pro. Code, in order that a disobedience of it may be an offence under s. 188, I.P.C., must be in writing and must be duly served or promulgated to the public as required by s. 188. MUL RAJ v. EMPEROR, **36 P R. 1905, Cr. = 84 P.L.R. 1905 = 2 Cr. L.J. 719.**

(1125)—*S.* 188—*Disobedience of order under s.* 144, *Crim. Pro. Code—Sanction to prosecute, essentials for granting.*—A Magistrate should not sanction a prosecution under s. 188, Penal Code, unless he thinks that all the elements necessary for a conviction are present. Where the order sanctioning a prosecution under s. 188, Penal Code, for an alleged disobedience of an order under s. 144, Crim. Pro. Code, did not show that the disobedience caused or tended to cause obstruction, annoyance or injury or a riot, the High Court set it aside in revision. PROJAPAT JHA v. EMPEROR **14 C.W.N. 234 = 5 Ind. Cas. 154 = 11 Cr. L.J. 49.**

Penal Code (Act XLV of 1860)—*continued.*

(1126)—*S.* 188—*Crim. Pro. Code* (1882), *ss.* 133, 136 *and* 140—*Order under s.* 133 *to fence a well in a public street—Order being made absolute and notice served on accused under s.* 140—*Prosecution under s.* 188, *Penal Code, on disobedience of such order—Plea of possession not being with the accused, validity of.*—A Magistrate made an order under s. 133, Crim. Pro. Code, calling upon the accused either to fence the well in a public street or appear before the Second Class Magistrate to move to have the order set aside. A copy of the order was affixed to his house, but the accused did not appear before the Magistrate. The order was made absolute under s. 136, and a notice was issued as directed by s. 140, Crim. Pro. Code, requiring the accused to fence the well. The notice was personally served on the accused, who, however, did not comply with the order. *Held*, that he was guilty of an offence under s. 188, although he alleged that he was not liable to fence the well as he was not the owner. The accused was not competent to re-open the question of possession, etc., by reason of s. 136, Crim. Pro. Code, which conclusively presumes that the conditional order was correctly made and directs that he shall be liable to the penalty prescribed by s. 188, Penal Code. QUEEN-EMPRESS v. NARAYANA, **12 M. 475 = 1 Weir 144.** [*F.*, 13 A. 577 ; *D.*, 18 A.W.N. 141 = 20 A. 501.]

(1127)—*S.* 188—*Disobedience of an order under s* 530, *Crim. Pro. Code*, 1872.—Where there is no evidence to show that an order under s. 530, Crim. Pro. Code, 1872, was in fact directed to the accused, he cannot be convicted under s. 188, I.P.C., of disobedience of such order. *In the matter of* NOBO KISHORE CHUCKERBUTTY, **7 C.L.R. 291.**

(1128)—*S.* 188—*Resistance to attachment by Chaukidar—Ben. Act* VI *of* 1870 (*Village Chaukidari*).—Resistance to an attachment by a Chaukidar is not an offence under s. 188, Penal Code, if the provisions of ss. 26 and 27 of the Village Chaukidari Act have not been complied with DURGA CHARAN MALI v. NOBIN CHANDRA SIL, **25 C. 274.**

(1129)—*S.* 188—*Order by Revenue Officer to pay assessment to certain person.*—An order by a Revenue Officer requiring the accused to pay their assessment to a certain specified individual, is not an order of such a kind that the disobedience of it could be punished under s. 188, Penal Code. *In re* RAMCHANDRA NAYAKO, **1 Weir 139.**

(1130)—*S.* 188—*Permit to cut and transport timber under ss.* 26 *and* 35 *of the Madras Forest Act.*—A permit to cut and transport timber issued under ss. 26 and 35 of the Forest Act is not an order within the meaning of s. 188, Penal Code. *In re* VEMURI PICHAYYA, **1 Weir 140.**

(1131)—*S.* 188—*Order of Sub-Collector in his revenue capacity regarding channel filled up by the accused.*—The accused filled up a channel passing through his land, which channel supplied water to accused's land and to other Government lands below them, the distribution of the water conveyed by such channel being under the management and control of the officers of the Government. He substituted for this another course, in so far as the channel passed through his lands, a little below, *i.e.*, on a somewhat lower level than the old channel, the result being that more water was taken to or intercepted on his land than before, and the diminution in the quantity of water available for villages lower down, which were entitled to a supply. The Sub-Collector, in his capacity of a Revenue Officer, directed the accused to fill up the new channel and restore the old one within fifteen days. *Held* that the Sub-Collector had no power to promulgate such an order, and that the accused could not be convicted under s. 188 for disobedience of the order, but that the act of the accused would amount to mischief. *In re* RAMASAMI PILLAI, **1 Weir 141.**

(1132)—*S.* 188—*Crim. Pro. Code*, 1882, *s.* 147—*Magistrate's order to remove an obstruction to a right of way—Disobedience, whether punishable under s.* 188, *Penal Code.*—A Magistrate is not authorised, under s. 147, Crim. Pro. Code, 1882, to remove an obstruction to a right of a way. Such an order might be passed under Ch. X, Crim. Pro. Code, 1882. Therefore disobedience to a Magistrate's order under s. 147, Crim. Pro. Code, directing the removal of an obstruction to a right of way is not punishable under s. 188 Penal Code. *In re* LUTCHMIAH MAISTRY, **1 Weir 143 = 2 Weir 118.** [*D.*, 15 Cr. L J. 362 = 23 Ind. Cas. 730 = 15 M.L.T. 230 = M.W.N. 1914, 394.]

(1133)—*S.* 188—*Guardian and Wards Act* (*Act* VIII *of* 1890), *ss.* 12, 43 *and* 45—*District Judge's power to prohibit marriage of minor ward.*—Disobedience to an order issued by a District Judge during the pendency before him of proceedings under the Guardian and Wards Act, 1890, prohibiting the guardian of the minors from celebrating their marriages, is not punishable under s. 188, Penal Code EMPEROR v. RAGHUBIR SINGH, **14 C.P L.R. 174.**

(1134)—*S.* 188—*Disobedience of order—Sentence of fine and six months' rigorous imprisonment in default.*—A Cantonment Magistrate convicted a person under s. 188, I.P.C., for disobeying an order issued by himself that all persons letting out ponies for hire must register them in his office and sentenced him to a fine (or, in default, to six months' rigorous imprisonment) ; but the proceedings were held to be illegal, for, there was nothing on the record to show that the order was issued by a public servant lawfully empowered to issue it, and that the disobedience caused or tended to cause obstruction, annoyance, etc., to any person lawfully employed ; the sentence was also held illegal in ordering six months' rigorous imprisonment in default, for, imprisonment in excess of one month as rigorous imprisonment, could only be inflicted when the disobedience caused

Penal Code (Act XLV of 1860)—*continued.*

or tended to cause danger to human life, etc. POLICE v. MUNIA, **Colm. Dig. Cr. 39 of 1876.**

(1135)—*S.* 188—*Crim. Pro. Code* (1898), *s.* 133—*Order prohibiting prostitutes carrying on their trade on public roads—Service of the order.*—*Held*, that the petitioners' conviction under s. 188, Indian Penal Code, for disobeying an order passed under s. 133 and made absolute under s. 136, Crim. Pro. Code, prohibiting them from carrying on their trade as prostitutes on the public roads was not illegal. *Held*, also, that the order fell within the scope of s. 133, Crim. Pro. Code, and having been made absolute and being subsisting, its disobedience was punishable, even if its legality were not fully established. *Held*, further, that the service of notice not having been strictly in accordance with the provisions of s. 134, did not affect the legality of the conviction, as it appeared that the order had been previously communicated to the petitioners. MT. NUR JAN v. EMPRESS OF INDIA, **P.L.R. 1900, 24, Cr.** = **2 P.R. 1900, Cr.** (16 C. 9, *R.*)

(1136)—*S.* 188—*Disobedience of a Civil Court decree.*—Where a person, who was merely given the custody of a girl, the right to arrange for the marriage of the girl being given to another under a Civil Court decree, gave the girl away in marriage, *held*, that he could not be convicted under s. 188, I.P.C. CROWN v. NAND LALL, **3 P.R. 1876, Cr.**

(1137)—*S.* 188—*Disobedience to an injunction issued by a Civil Court, if punishable under*—'*Promulgated*,' *import of.*—The word 'promulgated' in s. 188, Penal Code, refers to orders passed under the Code of Criminal Procedure, and disobedience to an injunction issued by a Civil Court is not punishable under that section. POMMANICHINTAKATH MAMMALI v. THAZHITHATTATHKUTTI AMMU, **2 L.W. 410** = **17 M.L.T. 391.** (6 C. 445, *F.*)

(1138)—*S.* 188—*Disobedience of an order—Injunction issued to a guardian not to marry wards under his charge — Prosecution* —A temporay injunction was issued to a guardian not to marry two minor girls in his charge. The guardian, however, handed over the minors to his sister, who brought about the marriage of the infants. For wilful disobedience of this order, the guardian was ordered to be prosecuted :—*Held*, that the order for prosecution was unsustainable under s. 188, Penal Code. The operation of s. 188 is limited to the promulgation by public servants of public orders relating to safety, health or convenience of the public. EMPEROR v. MALLAPA MALLAPA TAVARGI, **17 Bom. L.R. 676** = **3 Bom. Cr. C. 89.**

(1139)—*S.* 188—*Illegal orders under—Disobedience.*—An order issued by the Lieutenant Governor was as follows :—"His Honour desires that in the case of every *kacha* road in the province, which has to support a traffic on cart, one side may be assigned to the cart, and one side reserved for the light traffic." *Held*, such an order was not a legal order within the meaning of s. 188, I.P.C. CROWN v. UDNIR, **8 P.R. 1873, Cr.**

(1140)—*S.* 188—*Order* ultra vires *unlawful —Disobedience of.*—When the Deputy Commissioner ordered the accused to stop a canal and the order was disobeyed, *held*, that the order being *ultra vires*, the accused could not be convicted under s. 188, Penal Code. DAURANA KHAN v. CROWN, **12 P.L.R. 1901.**

(1141)—*S.* 188—*Unlawful orders, disobedience of.*—It is not a lawful order to direct a man not to leave his home without informing the *lambardar* of the village or the police. CROWN v. BOOLAKEE, **12 P.R. 1868, Cr.**

(1142)—*S.*188—*Unlawful orders, disobedience of.*—It is not a lawful order to direct a man not to leave his home without a ticket of leave or the permission of the Police. CROWN v. HURNAM SINGH, **45 P.R. 1867, Cr.**

(1143)—*S.* 188—*Unlawful and* ultra vires, *orders—Disobedience of.*—*Held* that an order issued by a Deputy Commissioner forbidding carters to drive their carts on a public road for the space of six months, and threatening those who should disregard it with arrest was *ultra vires*, and that consequently disobedienee of such order would not constitute an offence under s. 188, I.P.C. QUEEN-EMPRESS v. MAUNNG PO THIN, **U.B.R. 1897-1901, Vol. 1, 268.**

(1144)—*S.* 188—*Fishing with nets—Lawful order.*—Where the accused, without a license for fishing, was caught fishing with nets, the meshes of which were smaller than one inch and a quarter square, or six inches all round, the minimum size fixed by the Financial Commissioner's Cir. No. 40 of 1870, *held*, that the accused was not guilty of an offence under s. 188, I.P.C. CROWN v. KANHAYA, **11 P.R. 1873, Cr.**

(1145)—*S.* 188—*Neglect to attend a Revenue summons.*—A land-holder is not punishable for neglecting to attend to the summons of a Tahsildar, calling upon him to assist in the measurement of land. CROWN v. KUREEM, **32 P.R. 1867, Cr.**

(1146)—*S.* 188—*Erection of 'zayats' on land granted for Christian burial ground—Order to remove the buildings—Disobedience—Whether punishable—Powers of Revenue Officers under the Burma Land and Revenue Act.*—The Burma Land and Revenue Act and the rules framed under it do not appear to confer on Revenue Officers any power to deal with third parties who trespass on grant land, or who otherwise interfere with the grantee's enjoyment thereof. An order directing persons other than the grantee to take certain order with building on the land is not authorized by the Act or rules. So, where certain persons built *Zayats* on land which had been already granted by the Deputy Commissioner for the purpose of a Karen Christian burial ground, and the Town-ship officer, acting under the

Penal Code (Act XLV of 1860)—*continued.*

orders of the Deputy Commissioner, directed them to remove the *Zayats* by a certain date, *held* that the Revenue Officers had no authority in law for promulgating such an order, and the disobedience of such order was not punishable under s. 188, Penal Code. BA NYUN v. KING EMPEROR, 7 L B.R. 75=7 Bur. L.T. 25=22 Ind. Cas. 166=15 Cr.L.J. 22.

(1147)—*S.* 188—*Crim. Pro. Code, s.* 550—*Order issued by Police Sub-Inspector to a Station Master to detain certain logs lying on trucks suspected to be stolen property, legality of.*—Where a Police Sub-Inspector found reason to suspect that certain logs which were lying on trucks at a Railway Station were stolen property and the Sub-Inspector instead of seizing them under s. 550, Crim. Pro. Code, issued an order to the Station Master directing him to detain the same, *held* that the order was irregular and objectionable. Where the Station Master after detaining the goods for sometime, forwarded the consignment under express order from the Traffic Superintendent, *held*, that, under these circumstances, a conviction under s. 188, Indian Penal Code, could not be sustained. KING-EMPEROR v. BITHAL NATH, **16 O.C. 371=15 Cr. L J. 177=22 Ind. Cas. 753.**

(1148)—*S.* 188—*Disobedience of prohibitory order under s.* 268, *Civ. Pro. Code,* 1882 (= *O.* 21, *r.* 46, *Civ. Pro. Code,* 1908)—*Whether punishable under s.* 188, *I.P.C.*—A person who disobeys a prohibitory order issued under s. 268, Civ. Pro. Code, 1882 (=O. 21, r. 46, Civ. Pro. Code, 1908) is not liable to conviction under s. 188, I.P.C. YAUNG HON v. KING-EMPEROR, **U.B.R 1909, 2nd Quarter, Penal Code, 23=4 Ind. Cas. 824=11 Cr. L.J. 56.** (6 C. 445, *R.*)

(1149)—*S.* 188—*Crim. Pro. Code, s.* 532.—When an order does not direct anybody to abstain from any act or to take any order with any property in their possession, but merely declares that, as between the parties to a contention, certain land in dispute does not belong to the public, such order is not one the contravention of which can form the subject of an order under the Indian Penal Code, s. 188. UNNODA PROSHAD DUTT v. RANEE SHAMA SOONDUREE, **24 W.R. Cr. 20.**

(1150)—*S.* 188 — *Crim. Pro. Code, s.* 62.—A Magistrate issued an order warning owners of cattle to take proper care of them, and that, in case of disobedience or neglect, they would be punished according to law, and did punish them for disobedience under s. 188 of the Penal Code. *Held*, that the Magistrate was not competent, under s. 62 of the Code of Criminal Procedure, to pass such an order, that the order contemplated under this section was in the nature of an injunction, that such an order passed by a Magistrate would not be legal, and that the conviction under s. 188 of the Penal Code was illegal. *In the matter of* AMIRADDI, **3 B.L.R A. Cr. 45=12 W.R. Cr. 36.**

Penal Code (Act XLV of 1860)—*continued.*

(1151)—*S.* 188—*Act* XXXI *of* 1860, *s.* 26—*Act* XXV *of* 1861, *ss.* 250, 251—*Carrying fire-arms without license—Disobedience to an order promulgated by a public servant.*—A Magistrate issued a notification that all persons desirous of carrying arms should take out a license enabling them to do so, under s. 26 of Act XXXI of 1860; and certain persons were, in consequence of his notification, arrested and brought before him, charged in a Police report with carrying arms without a license. No summons or warrant had been applied for, or any complaint lodged before the Magistrate previous to the arrest of the prisoners. No charge was in writing framed as required under ss. 250 and 251 of the Crim. Pro. Code. No evidence was taken; but the prisoners admitted carrying the fire-arms. The Magistrate convicted them, under s. 188 of the Penal Code, of disobedience to an order duly promulgated by a public servant. There was no evidence that the disobedience would cause or tend to cause annoyance, obstruction, or injury to human life, health, or safety. *Held*, the conviction must be quashed. Necessity of observing the rules laid down in the Crim Pro. Code remarked on. QUEEN v. NANDKUMAR BOSE, **3 B.L.R. Ap. 149.**

(1152)—*S.* 188—*Crim. Pro. Code, s.* 318—*Orders under, on whom binding—Parties to the proceeding.*—Where an order, under s. 318 of the Crim. Pro. Code, was made in a dispute between A on the one side and B and the then tenants of B on the other, declaring that A was in possession of property in dispute, *held*, that this order was only binding on the actual parties to the case before the Magistrate, and that subsequent tenants of B could not be criminally punished for disobeying the order in question. *In the matter of* GOPAL BURNAWAR, **3 B.L.R. A. Cr. 13**

(1152-*a*)—*S.* 188—*Order forbidding* Pandas *to enter railway premises except for travelling—Legality of—Summary trial—No evidence recorded.*—The public have a right to go to the railway station for many purposes other than travelling and an order forbidding persons to enter railway premises except for travelling purposes is an illegal order. Where therefore certain *Pandas* who were ordered not to enter railway premises except for travelling, entered those premises and importuned pilgrims, they could not be convicted of offences under s. 188, Penal Code, for disobeying orders lawfully promulgated. When there is nothing on the record to show that an order was promulgated by a public servant lawfully empowered to promulgate such an order, the High Court would set aside a conviction based under s. 188, I.P.C., even if the accused were convicted in a summary trial. RAMA v. KING-EMPEROR, **11 A.L.J. 92=18 Ind. Cas. 682=14 Cr. L J. 122=35 A. 136.**

(1153)—S. 188—*See* BOM. ACT V OF 1864, 5 B.H.C. Cr. 21, 3 B H C. Cr. 53, 5 B.H.C. Cr. 46.

(1154)—S. 188—*See* BOM. ACT VI OF 1873, s. 73, 14 B. 180.

Penal Code (Act XLV of 1860)—*continued.*

(1155)—S. 188—*See* BUR. ACT XIII OF 1877, s. 3, L.B.R. 1872—1892, 92.

(1156)—S. 188—*See* MAD. ACT V OF 1884, s. 98, 1 Weir 796.

(1157)—S. 188—*See* MAD. ACT V OF 1884, ss. 98 (2) and 98 A (2), 1 Weir 140 = 1 Weir 797.

(1158)—S. 188—*See* CONFISCATION, 13 P. R. 1872, Cr.

(1159)—S. 188—*See* CRIM. PRO. CODE, 1898, s. 133, S.C. 60, Oudh.

(1160)—S. 188—*See* CRIM. PRO. CODE, 1898, ss. 133, 136, 140, 13 A. 577 = A.W.N. 1891, 169.

(1161)—S. 188—*See* CRIM. PRO. CODE, 1898, s. 144, 18 B. 758, 10 A. 115 = A.W.N. 1888, 25, 9 C.W.N, 392, 24 M. 262 = 2 Weir 611 = 2 Weir 93.

(1162)—S. 188—Illegal order under s. 145, Crim. Pro. Code—Disobedience not punishable —*See* CRIM. PRO. CODE, 1898, s. 145, 14 Cr. L.J. 63 = 18 Ind. Cas. 351 = 16 P.W.R. 1913, Cr. = 92 P.L.R. 1913.

(1163)—S. 188—Disobedience or order of public servant—Application for sanction if necessary— *See* CRIM. PRO. CODE, 1898, ss. 195 (1) (*a*), 144, 17 C.W.N. 976 = 19 Ind. Cas. 948 = 14 Cr. L J. 292.

(1164)—S. 188—*See* CRIM. PRO. CODE, 1898, ss. 521, 526, 10 C.L.R. 193.

(1165)—S. 188—*See* CRIM. PRO. CODE 1898, ss. 530, 195, Colm. Dig. Cr. 40 of 1876.

(1166)—S. 188—*See* CRIM. PRO. CODE, 1898, s. 556, 10 C. 1030

(1167)—S. 188—*See* DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 13 C. 175.

(1168)—S. 188—*See* FURTHER ENQUIRY, 21 W.R. Cr. 86.

(1169)—S. 188—*See* MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION, Rat. Un. Cr. C. 50 = Cr. Rg. 13-4-1871.

(1170)—S. 188—*See* NUISANCE UNDER CRIM. PRO. CODE. 18 M.L.J. 216 = 3 M.L.T. 403 = 31 M. 280 = 8 Cr. L.J. 151, 12 C.L.R. 231, 16 C. 9, 1 Agra, 23, Cr.

(1171)—S. 188—*See* NUISANCE UNDER PENAL CODE, 14 B. 165.

(1172)—S. 188—*See* SANCTION TO PROSECUTE—CONDITIONS REQUISITE FOR GRANT OF SANCTION, ETC., 24 M. 70 = 2 Weir 158.

(1173)—S. 188—*See* Nos. 180, 775, 874, 886, 1026, 1077, 1084, 1085, *supra.*

(1174)—Ss. 188, 116—*See* QUARANTINE, Rat. Un. Cr. C. 966.

(1175)—*Ss.* 188 *and* 268—*An order promulgated by a public servant and prevention of public nuisance* —That the pollution of the presence of the body of a person dying on the day before the new moon can during that day, if the corpse is not removed before night, cause the physical injury, danger or annoyance referred to in s. 268 of I.P.C. is a thing that cannot be presumed but proved. The powers conferred by s. 144, Crim. Pro. Code, are intended for the maintenance of the law as it is and not for the development of a new law of one's own. A Magistrate proceeds without jurisdiction where he has not been empowered under s. 191, cl. (*e*), Crim. Pro. Code, in acting in a case without complaint or Police report, and his proceedings would accordingly be void under s. 530 of the Code. A Magistrate disobeys the prohibition in s. 487 of the Crim. Pro. Code, in trying a person for an offence referred to in s. 195 which was committed in contempt of his own authority. QUEEN-EMPRESS v. NGA SHWE MAUNG, **U.B.R. 1892—1896, Vol. I, 183.**

(1176)—*Ss.* 188 *and* 290—*Cremation of corpse in a burning ground used immemorially for the purpose, against an order by the Collector prohibiting such cremation—Crim. Pro. Code, s.* 143. —The accused cremated a corpse on a spot close to the bathing ghaut of a river used by the inhabitants of an adjoining village for bathing and other lawful purposes. It was found that the cremation caused substantial annoyance and discomfort to the persons who were at the ghaut and to the passers-by, but the spot was used for the purpose of burning corpses by the people of the village to which the accused belongs from time immemorial. The accused, in cremating, acted in defiance of an order promulgated by the District Magistrate prohibiting the people of the village from using that spot as a burning ground and directing them to use other grounds which had been provided. *Held*, that the act of the accused was not a public nuisance but would fall under the limited class of cases designated as nuisances "legalised." *Held*, further, that the notification promulgated by the Magistrate was not a valid order and the accused had not, therefore, committed an offence under s 188, Penal Code. QUEEN-EMPRESS v. SAMINADHA PILLAI, **19 M. 464 = 1 Weir 247 = 6 M.L.J. 181 = 1 Weir 247 = 2 Weir 65.**

(1177)—*Ss.* 188 *and* 290—*Cremation of dead bodies—Crim. Pro. Code* (1882), *ss.* 143 *and* 417 —*Leave to appeal to the Privy Council.*—An application to the Privy Council for leave to appeal, against the decision of the Madras High Court holding that persons burning a corpse on the cremation ground of their village situated near the bathing ghaut of another village and near a public road were not guilty of public nuisance, was refused by the Privy Council. VIRA PILLAI v. SAMINADHA PILLAI, **7 M.L. J. 33, P. C.**

(1178)—*Ss.* 188 *and* 430—*Overseer of the P.W.D. not a public servant lawfully empowered to promulgate an order—Disobedience thereto—No offence under s.* 188.—The accused, *ryots* of a certain village, were convicted by the Deputy Magistrate of offences under ss 430 and 188, Penal Code, for damming a certain *odai* and feeding the tank in contravention of an order issued by the P.W.D. Overseer. The Sessions Judge reversed the conviction under s. 430, but confirmed the conviction under s. 188, I.P.C. It was contended on behalf of

Penal Code (Act XLV of 1860)—*continued.*

the accused that the Overseer's order did not come within s. 118 *Held*, that the contention was valid. The order of the Overseer could not operate to make an act unlawful which was lawful before its promulgation. MALINA SERVAI v. EMPEROR, 8 Ind. Cas. 302=**1910 M.W.N. 616=9 M.L.T. 42=11 Cr. L.J. 621.**

(1179)—Ss. 188, 441—*See* CRIMINAL TRESPASS, 1 A. 527.

(1180)—*Ss.* 188, 447—*Crim. Pro.Code* (1882), s. 146—*Land under attachment*—*Trespass upon that land.*—A person trespassing upon a land, under attachment under s. 146, Crim. Pro. Code, is liable to be punished under s. 447, Penal Code, but not under s. 188. NAGOJI RAMA CHANDRA v. QUEEN EMPRESS, **8 M. L.J. 253=1 Weir 522=1 Weir 143=2 Weir 112.**

——S. 189.

(1181)—*S.* 189—*Threat of injury to public servant.*—It is most material in a prosecution under s. 189, I.P.C., that the actual words used by the accused towards the public servant, should be before the Court to enable it to ascertain whether, in fact, a threat of injury to the public servant was really made by the accused. Where there is a serious conflict of testimony as to the words used by the accused regarding the public servant, it is exceedingly doubtful whether a conviction could be had under the section, merely because the witnesses are agreed as to the general effect of those words. QUEEN-EMPRESS v. MAHESHRI BAKHSH SINGH, **8 A. 380=A W.N. 1886, 128.**

(1182)—*S.* 189—*Gist of offence.*—In order to sustain a conviction under s. 189, there must be a threat of injury to either the public servant or to any one whom the accused believes that public servant to be interested. What the section deals with are menaces which would have a tendency to induce the public servant to alter his actions because of some possible injury to himself or to some one in whom the accused believes he has an interest. QUEEN EMPRESS v. AMIR KHAN, **Rat. Un. Cr. C. 273.**

(1183)—S. 189—*See* No. 1078, *supra.*

——S. 190.

(1184)—S. 190—*See* PUBLIC NUISANCE, Rat. Un. Cr. C. 903=Cr. Rg. 13 of 1897.

(1185)—Ss. 190, 268—*See* PUBLIC NUISANCE, Rat. Un. Cr. C. 765=Cr. Rg. 28 of 1895.

——S. 191.

See FALSE EVIDENCE.

See PERJURY.

See SANCTION TO PROSECUTE.

(1186)—*S.* 191—*False evidence need not necessarily be on a point material to the case.*—The words in s. 191 are very general and do not contain any limitation that the statement made shall have any bearing upon the matter in issue.

Penal Code (Act XLV of 1860)—*continued.*

It is sufficient to bring a case within that section, if the false evidence is intentionally given, that is to say, if the person making the statement makes it advisedly, knowing it to be false, and with the intention of deceiving the Court and of leading it to be supposed that what he states is true. The evidence the nature of which was to make a witness more or less credible to the Court, is material evidence and therefore fit subject for prosecution. If the evidence does not bear directly on a material issue in the case, being relative to incidental or trivial matters, then it would be a matter to be taken into consideration in fixing the sentence. EMPEROR v. BABU RAM, **26 A 509=1 A.L.J. 236=A.W.N. 1904, 115=1 Cr. L.J. 434.** (16 W.R. 37, 19 W.R. 69, *R.*; A.W.N. 1903, 68, *Diss.*) [*R.*, 14 Cr. L.J. 456=20 Ind. Cas. 616=7 S.L.R. 25.]

(1187)—*S.* 191—*Misreading document.*—If a witness misreads a certain document read for the information of the Magistrate, the offence of giving or fabricating false evidence is not committed. EMPRESS v. LATKANSING, **9 C.P.L.R. Cr. 5.**

(1188)—*S.* 191—*False balance-sheet.*—The making of a false balance-sheet is not an offence under s. 191, I.P.C. QUEEN-EMPRESS v. MOSS, **16 A. 88=A.W.N. 1894, 23.**

(1189)—*S.* 191—*False statement under s.* 161 *of Crim. Pro. Code.*—A false statement recorded under s. 161, Crim. Pro. Code, 1882, is an offence under s. 191, I.P C. QUEEN-EMPRESS v. ABDUR RAHMAN, **7 P R. 1896, Cr.**

(1190)—*S.* 191—*Mutually contradictory statements*—*When to be charged.*—The practice of charging a man with making two mutually contradictory statements may be convenient, but it can only be successfully used where the two statements are necessarily and irreconcilably contradictory. PARVATANENIKAMAYYA v. EMPEROR, **1915 M W N. 34=16 Cr. L J. 14=26 Ind. Cas. 318.**

(1191)—S. 191—*See* No. 135, *supra.*

(1192)—Ss. 191, 192—*See* REVISION—ACQUITTALS, 5 B.H.C. Cr. 68.

(1193)—*Ss.* 191, 193—*Application for execution*—*Omission to give name of some of the parties.*—Where one of two joint decree-holders applied for execution of the decree, but omitted to mention the name of the other decree-holder in the column for names of the parties, as required by cl. (*b*) of s. 235, Civ. Pro. Code, 1882, *held* that, by such an omission, he was not guilty of an offence under s. 193, I.P.C. EMPRESS v. BEHARI LAL, **A.W.N. 1887, 223.**

(1194)—*Ss.* 191, 193—*Police enquiry*—*False answers*—*Crim. Pro. Code* (1872), *s.* 119.—In an enquiry by a police officer preliminary to a proceeding before a Court of justice, persons are bound to answer questions put to them by the police, and, if they give false answers, they are liable to be punished under ss. 191, 193, Penal Code. *In the matter of* JUGGERNATH SAHAI, **8 C.L R. 236.** (20 W.R. Cr. 41, *F.*)

Penal Code (Act XLV of 1860)—*continued.*

(1195)—*Ss.* 191 *and* 193.—*Trial held without jurisdiction—False statement.*—A trial without jurisdiction is an illegal proceeding; though evidence may be recorded in the course of such trial, it cannot be said to have been legally taken. Therefore, a person making a false statement in such a trial is not guilty of an offence under s. 193. *In re* POOSIA NAICKEN, **1 Weir 151.**

(1196)—*Ss.* 191 *and* 193—*Officer conducting sale under s.* 286, *Civ. Pro. Code* (1882), *making a false return.*—An officer conducting sale under s. 286, Civ. Pro. Code, 1882, is bound by law to return the sale warrant, certifying the manner in which the warrant of the sale has been executed. He is, therefore, a person who, within the meaning of s. 191, Penal Code, is bound by law to make a declaration in writing as to the manner in which the warrant of sale has been executed. If he makes a false return, he is guilty of giving false evidence under the second part of s. 193, Penal Code. *In re* CHENANNA GOWD, **1 Weir 155.**

(1197)—*Ss.* 191, 193—*Execution application—False verification—Omission to certify for amounts received—False evidence— Offence—Punishment—Intention to defraud—Whether material.*—Where the accused, a decree-holder, knowing that the judgment-debtor had paid some amounts due for certain instalments payable under the decree, neglected his duty to certify the payments he received to Court under O. XXI, r. 2 (1), and presented a verified execution application for the full amount due under the decree. *Held*, that the accused gave false evidence as defined by s. 191, Penal Code, and committed an offence punishable under s. 193 of the same Code. (16 W R. 37, 26 A. 509, 6 Bom. L.R. 886, 10 B. 288, 6 A. 626, *R.*) It is immaterial whether the accused did or did not intend to defraud the judgment-debtors for, the offence charged is one against public justice, and it is with a view to secure the more orderly administration of justice that the law makes penal the deliberate assertion of falsehood in pleadings. CROWN v. HAKIKATSINGH KHUSHIRAM, **7 S.L.R. 25=14 Cr. L J. 456=20 Ind. Cas. 616.**

(1198)—*Ss.* 191, 193—*Application for land registration—Declaration required under Land Registration Act* (*Bengal*) VII *of* 1876, *ss.* 52, 88 —*False statements in such declaration—Offence—Punishment under ss.* 191, 193, *I.P.C.*—*Rule framed under s.* 88, *Bengal Act* (VII *of* 1876) (*Land Registration*)—*Force of Law—Validity.*—A claimant for land registration is bound by law to make a true declaration upon the subject of his application, and if he makes a false statement in the course of a declaration, which he is required to make under r. 5, Chap. V of the Board's Rules framed under s. 88, Land Registration Act, 1876, he is liable to punishment under ss. 191 and 193, I.P.C. (14 M. 484, 27 C. 820, 30 C. 36, 38 C. 230, *D.*, 11 C. W.N. 470, *R.*) Rules passed by the Board of Revenue under s. 88, provided they refer to the procedure as to presentation, admission and verification of an application for registration under Part IV and as to enquiries under s. 52, have the force of law by reason of the express enactment of s. 88 itself. NALOO PATRA v. EMPEROR, **38 C. 368=11 Ind Cas. 595=12 Cr. L.J. 411.** [*R.*, 36 M. 72=13 Cr. L.J. 723 =16 Ind. Cas. 755=23 M.L.J. 393=13 M.L.T. 367=1912 M.W.N. 1012.]

(1199)—Ss. 191, 193—*See* CONFESSION—RETRACTED CONFESSIONS, 11 B. 702, F.B.

(1200)—Ss. 191, 193—Sessions case—Third-class Magistrate recording statement under s. 164, Crim. Pro. Code—Contradictory statement before a qualified Magistrate in the preliminary enquiry—False evidence—Alternative charge—*See* CRIM. PRO. CODE, 1898, s. 164, 14 Bom. L.R. 753=16 Ind. Cas. 517=13 Cr. L.J. 709=1 Bom. Cr. C. 167.

(1201)—*Ss.* 191, 193 (2)—*Witnesses, whether bound to state the truth in a proceeding under Land Registration Act* (VII *of* 1876), *ss.* 52, 53, 84.—By s. 53 of the Land Registration Act, the Land Registration Collector has exactly the same powers to compel witnesses to give evidence, as are given to a Civil Court by the Code of Civil Procedure, and a witness, who makes a false statement before him, is liable to be convicted under the latter part of s. 193, Penal Code. HIRANAND OJHA v. EMPEROR, **9 C. W.N. 127=2 Cr. L J. 15.** [*R.*, 36 M. 72=23 M.L.J. 393=13 M.L.T. 367=1912 M.W.N. 1012=16 Ind. Cas. 755=13 Cr. L.J. 723.]

——**S 192.**

See FALSE EVIDENCE.

See PERJURY.

(1202)—*S.* 192—*Filing* vakalatnamah *with false attestation.*—To constitute an offence under s. 192, it is necessary to prove that it was intended that the false circumstance should appear in evidence in a judicial proceeding, that is, should appear as part of the evidence on which the judicial officer has to form his judgment, and that the circumstance should be of such a nature as might have caused the judicial officer to entertain an erroneous opinion touching some material point in the case. The filing of a *vakalatnamah* with a false attestation, although it is intended to be used in a judicial proceeding, does not fulfil the other essentials of the offence under s. 192. *In re* KAILASAM PATTER, **1 Weir 175=5 M.H.C. 373.** [*F.*, 21 A. 159.]

(1203)—S. 192—*See* Nos. 1027, 1192, *supra* and *see* No. 3065, *infra.*

(1204)—*Ss.* 192, 193—*False evidence, fabrication of—Document, admissibility of—Intention and not admissibility creates criminal offence.*—Under s. 192, Penal Code, it is the intention that creates the criminal offence and not the fact as to whether, under the terms of the law, the document is admissible in evidence. Correctness of the reported decisions showing that s. 192 is limited to such cases as those in which the fabricated evidence is, in fact, admissible under the terms of the law of evidence, is doubtful and the view expressed in such reported

decisions might raise considerable difficulty in cases where the Judge has improperly admitted in evidence a document not admissible under the terms of the law. BARODA KANTA SARKAR v. EMPEROR, **16 Cr. L.J. 620=30 Ind. Cas. 444.**

(1205)—Ss. 192, 193, 218, 471—*See* FALSE EVIDENCE, 5 A. 553.

(1206)—Ss. 192, 193, 414—*See* STOLEN PROPERTY, 1 A. 379.

(1207)—*Ss.* 192, 196—'*Fabrication of false evidence' meaning of—Evidence not admissible —Whether there can be fabrication—Document not a 'public document'—Copy of document is not evidence—Meaning of 'corruptly using evidence'—Ss.* 65, 74, *Evidence Act—Explanation consistent with innocence of accused—Duty of prosecution.*—The prosecution must in a criminal case exclude all explanation of the facts which is reasonably consistent with the innocence of the accused. There can be no fabrication of false evidence within the meaning of s. 192, I.P.C., if the evidence is not admissible in itself. (6 A. 42, 21 A. 159, 2 C.L.J. 46, *R.*) A document purported to be a report by a village *Nikah Khawan* to the Moharir in charge of the central office (in which entries in the village registers are copied into another register), informing him that, on the day after the entry of the marriage of B and A, F (former husband of B) had come to the writer and stated that he had not divorced B. The writer accordingly desired the Moharrir not to take action upon his report of the marriage of B and A. *Held*, that such a report was not a public document within the meaning of s. 74, Evidence Act, and under s. 65, no secondary evidence of its contents could be given. *Held*, also that the production of the copy of that letter was an attempt to use the original. (6 W.R. Cr. 41, 28 A. 402, *R.*) The word 'corruptly' is not intended to connote a motive necessarily connected with the passing of money as an inducement to the person impugned to use or attempt to use the fabricated evidence. An intention to procure a false conviction is a corrupt intention within the meaning of s. 196, I.P.C. FAZI AHMAD v. CROWN, **1 P.R. 1914, Cr.=139, P.L.R. 1914 =15 Cr. L.J. 344=23 Ind. Cas. 696.** (5 C. 717, 7 W.R. 23, Cr., 7 M. 289, *R.*)

(1208)—Ss. 192, 218—*See* FALSE EVIDENCE, 6 A. 42.

(1209)—Ss. 192 and 464—*See* FORGERY, 4 L.B.R. 45=6 Cr. L.J. 283.

——**S. 193.**

See CRIM. PRO. CODE, 1898, ss. 195, 476.

See FALSE EVIDENCE.

See PERJURY.

See SANCTION TO PROSECUTE.

(1210)—*S.* 193—*Fabricating false evidence—Gist of the offence.*—The gist of the offence does not consist in actually causing a failure of justice, but in the intention to cause a failure of justice by misleading the Court, and with such intent causing the existence of any circumstances which might appear in evidence. Where a person was charged with an offence, and the accused, his brother, brought before the Court several persons among whom the accused falsely said his brother was, and requested the Court to ask the witnesses to identify him, and on their saying that he was not there, the accused pointed out a certain person as his brother, but who was discovered to be another person wearing a false moustache, *held*, that the accused was guilty of an offence under s. 193. EMPEROR v CHEDA LAL, **29 A. 351=4 A L J 237=A.W.N. 1907, 107=5 Cr. L J. 285.**

(1211)—*S.* 193—*Making false statements—Conviction based on accused's previous statements —Illegality.*—Where the accused was convicted under s. 193, I.P.C., of making false statements on solemn affirmation in the course of a trial, and where the evidence upon which he was convicted consisted of his own statements made at different times: *Held* that the conviction was improper and ought to be set aside. Proof that the statements which form the subject of charge are false must consist of reliable evidence, and the Court is not justified in treating obviously unreliable evidence as good, merely because the accused himself was responsible for it. BUKSHALI v. CROWN, **5 S.L.R. 136=13 Ind. Cas. 220=13 Cr. L.J. 28.**

(1212)—*S.* 193—*Statement of a witness—Contradictory statements in the same deposition whether an offence — Witness is entitled to correct before finishing his statement—Perjury.* —It is desirable to give witnesses a *locus penitentiæ* and an opportunity to correct themselves, and if they do correct themselves immediately afterwards or on a second thought in the same deposition, a prosecution for perjury would hardly be desirable. No statement made by a witness in a deposition can, moreover, be regarded as a completed statement until the deposition is finished and corrected, if necessary, for till then every statement is liable to be retracted, corrected, varied or qualified. The whole deposition must be read as one and if a later statement in it is contradictory to or at variance with a previous statement in the same deposition, the statement first made will be deemed to be modified by the subsequent statement. Intention to give fale evidence is a necessary element to constitute an offence under s. 193, Penal Code. That intention can only be gathered from the surrounding circumstances, and the subsequent correction or retraction by a witness of his statement in the same deposition might negative the existence of such an intention. LACHMI NARAIN v. KING EMPEROR, **16 O.C. 81=14 Cr. L J. 280=19 Ind. Cas 712.**

(1213)—*S.* 193—*False statement by witness—Immediate retraction of such statement—Whether prosecution necessary.*—Where a witness makes a statement which is false and at once admits this, and states what is the real truth, he should

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not be prosecuted for giving false evidence. DASONDHA SINGH v. EMPEROR, **12 Cr. L.J. 405 = 230 P.L.R. 1911 = 11 Ind. Cas. 589 = 34 P.W.R. 1911. Cr.**

(1214)—*S.* 193—*Contradictory statements—Later statement withdrawn.*—Where the accused made a statement on oath in 1886 and a contradictory statement in 1887, but, on the latter occasion, his attention being drawn to the previous deposition, withdrew the second statement, *held*, that the whole deposition must be read as one, that there was thus no contradiction and that the offence of giving false evidence was not committed. QUEEN-EMPRESS v. GOPAL, **Rat. Un. Cr. C. 502 = Cr. Rg. 16 of 1890.**

(1215)—*S.* 193—*Signing and verifying* darkhast *containing false statement.*—Signing and verifying a *darkhast* containing false statements is an offence punishable under s. 193, I.P.C. It makes no difference that, at the time when the signature and verification were appended, the *darkhast* was blank. EMPEROR v. RATANCHAND DHANNRAM, **6 Bom. L.R. 886 = 1 Cr. L.J. 959** [*R.*, 14 Cr. L.J. 456 = 20 Ind. Cas. 616 = 7 S.L.R. 25.]

(1216)—*S.* 193—*Registration Act* (1908), ss. 63, 82 (*a*)—*False statement before Sub-Registrar—Offence under s.* 82 (*a*), *Registration Act and under s.* 193, *I.P.C.*—Under s. 63, Registration Act, the Sub-Registrar has authority to administer an oath to a person and record a note of the substance of the statement made by that person before him. If such a person makes a false statement before the Sub-Registrar, he commits an offence punishable under s. 82 (*a*) of the Registration Act and under s. 193, I.P.C. *In re* NARAYANASAWMI IYER, **12 M.L.T. 376 = 1912 M.W.N. 1107 = 18 Ind. Cas. 662 = 14 Cr. L.J. 102.** (1 Bom. L.R. 686, *D.*)

(1217)—*S.* 193—*Statement before constable—Proof.*—A statement taken down in writing by the chief constable is not evidence of the statement made by the accused. It must be proved by those who heard the statement made, but the chief constable may use the writing to refresh his memory. QUEEN-EMPRESS v. WARDHAN, **Rat. Un. Cr. C. 503.**

(1218)—*S.* 193—*False answers given to police officer investigating case—Plea that true answers would lead to prosecution—Information of crime given by person other than accused—Crim. Pro. Code*, s. 44.—When once information of the fact of a crime of murder has reached the police patel, the object of s. 44, Crim. Pro. Code, 1882, has been fulfilled, and no further duty imposed by it remains. There is no legal liability imposed on any person, when once the information of the crime has reached the police, to inform the police, *proprio motu* of the murder, and his admission of failure to inform the police of such fact would not expose him to a criminal prosecution under s. 176, I.P.C. Therefore, in such a case, if a person answers falsely the questions put to him by a police officer investigating the case and pleads in his trial for an offence under s. 193, that if he had spoken truly, his answers would have had a tendency to expose him to a criminal charge under s. 176, such a plea would not preclude him from being convicted under s. 193, I.P.C. QUEEN-EMPRESS v. SADA, **Rat. Un. Cr. C. 674 = Cr. Rg. 40 of 1893.**

(1219)—*S.* 193—*Statements before Magistrate inconsistent with those before Inspector—Crim. Pro. Code* (1872), s. 119.—Where the accused were charged under s. 193, Penal Code, with having made statements, on solemn affirmation before the Magistrate, inconsistent with those made before the Inspector, regarding which the Inspector was examined, who merely put in two documents as the records of what had taken place before him, *held*, that, as the documents were inadmissible in evidence under s. 119, Crim. Pro. Code, evidence ought to have been given as to what was actually stated by the accused to the Inspector of Police. *In the matter of* SHEIKH DABEE, **6 C.L.R. 47.**

(1220)—*S.* 193—*Report by* Amin *of obstruction to the execution of a Civil Court decree, to the Court executing the decree and to the police—Contradictory statement in a subsequent deposition—Alternative charges.*—Where an *Amin* reported to the Court executing a decree as also to the police that he had been obstructed while executing the decree, and subsequently made a deposition inconsistent with the two reports formerly made by him, *held*, that an alternative charge under s. 193, based on the contradiction between the two reports on the one hand, and the deposition on the other, was bad, as the two reports, even if false, would not amount to the fabrication of false evidence, and that it was necessary to prove the falsity of the deposition. QUEEN-EMPRESS v. AJUDHIA PRASAD, **17 A. 436 = A.W.N. 1895, 102.**

(1221)—*S.* 193—*False statement, what constitutes—Over-estimating of the value of land in proceedings under the Land Acquisition Act.*—It is a false statement made under a verification that constitutes an offence under s. 193, not a verification on oath by solemn affirmation. An exaggeration or over-estimate of the value of land, in a proceeding under the Land Acquisition Act, cannot properly constitute a false statement, which would demand a prosecution for perjury and the fact, that, some years before, the land was offered for sale at a much lower price is no sufficient ground for imputing such an offence. DURGA DAS RUKHIT v. QUEEN-EMPRESS, **27 C. 820.**

(1222)—*S.* 193—*Crim. Pro. Code* (*Act* V *of* 1898)—*Perjury—Sanction to prosecute—Judicial proceedings Land Alienation Act* (XIII *of* 1900)—*Delegation of power.*—The mortgagee having produced before the Deputy Commissioner a copy of a mortgage deed, that officer referred it to the Tahsildar for investigation and report. The Tahsildar did not make any enquiry. Before the Naib-Tahsildar, the mortgagee stated that no payments were made by the mortgagor to him. On enquiry it was

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found that payments had been made which were indorsed on the back of the original mortgage-deed and the document was withheld for that reason. The Deputy Commissioner sanctioned prosecution of the mortgagee for falsification of evidence by fraudulently producing the copy and not the original of the mortgage-deed and making a false statement before the Naib Tahsildar. *Held* that the prosecution was illegal, for (1) the mere production of the copy did not amount to falsification of evidence and (2) the proceedings before the Naib Tahsildar were *ultra vires.* KALYAN SINGH v. CROWN, **80 P.L.R. 1910 = 8 Ind. Cas. 243 = 11 Cr. L.J. 601.**

(1223)—*S.* 193—*Perjury—Crim. Pro. Code* (*Act* V *of* 1898), *s.* 417—*Appeal from acquittal —High Court, power of—Evidence Act* (*I of* 1872), *s.* 145—*Previous statements in writing.* —In a trial for giving false evidence, the record of a previous deposition given by the accused is relevant and necessary evidence. Such record is not inadmissible under s. 145 of the Evidence Act, which has no application to the case, nor because the actual vernacular words were not taken down. In an appeal by the Local Government under s. 417, Crim. Pro. Code, the High Court is a Court of Appeal on matters of fact, as well as of law, and must decide questions of fact from the whole of the evidence on record. GOVERNMENT OF BENGAL v. GANNOO MAHTO, **9 C.L.J. 378 = 4 Ind. Cas. 124 = 10 Cr. L.J. 499.**

(1224)—*S.* 193—*Sanction to prosecute—How to deal with offences under the section—Discretion of Judge.*—The offence under s. 193 of the Penal Code is an offence against public justice. The person best qualified to say whether a prosecution should or should not be instituted is the Judge before whom the evidence was given and who had considered all the facts of the case. Observations upon the best way of checking the offence of perjury. CHIRANJI LAL v. RAM LAL, **9 A.L J. 538 = 15 Ind. Cas 496 = 13 Cr. L J. 496.**

(1225)—*S.* 193—*Sanction to prosecute — Affidavits in support of application for transfer of civil case—Sworn before subordinate Magistrate—Sub-Divisional Magistrate granting sanction for prosecution—Illegality.*—Where a Sub-Divisional Magistrate granted sanction for the prosecution of three persons who had sworn affidavits before a subordinate Magistrate in support of an application for the transfer of a civil case, on the ground that it was alleged that the statements made in the affidavits were false: *Held*, that the statements were not evidence and cannot form the subject of a charge under s. 193, I.P.C. CROWN v DITAL SAFAR, **5 S L R. 102 = 12 Cr L J. 563 = 12 Ind. Cas. 651.** (14 C. 653, *F.*)

(1226)—*S.* 193—*Sanction to prosecute under s.* 193, *I.P.C.—Complaint by a person not party to the case—District Magistrate allowing prosecution for false evidence—Ss.* 195, 476, *Crim. Pro. Code —Held*, that, a prosecution under

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s. 193, I.P.C., should not be started on the complaint of a person who is not a party to the case in which the false evidence is alleged to have been given and who simply complains to give trouble to his enemy, as such an action is not in the interests of justice. *Held*, also, that the order of a District Magistrate to prosecute A, for giving false evidence, passed upon the complaint of such a person as is mentioned above, who merely informed that he came to know that A had made a false statement in a case before a 2nd Class Honorary Magistrate without asking for sanction to prosecute, is illegal, as it neither falls under s. 195 nor under s. 476, Crim. Pro. Code. ABDUL JAMAL v. CROWN, **13 P.W.R. 1913, Cr. = 68 P.L.R. 1913 = 18 Ind. Cas. 667 = 14 Cr. L.J. 107.**

(1227)—*S.* 193—*Perjury—Crim. Pro. Code* (*Act* V *of* 1898), *s.* 195—*Sanction to prosecute—Incorrect statement in answer to irrelevant question—Intention—Mistake.*—A witness was prosecuted and convicted for having made a false statement in which he disclaimed knowledge of a report previously made by a zaildar in another matter two months previously. He had then made a statement to the zaildar in an enquiry under s. 203 of the Crim. Pro. Code ending in dismissal of the complaint under s. 203. When called to account later on, he at once admitted that he had made a mistake. *Held*, that the conviction must be set aside, in such cases sanction to prosecute should not be given. The answer given by the witness may have been literally true. He could not be punished for not giving a more detailed answer, even if he remembered the circumstances of the zaildar's enquiry which he may well have forgotten for the moment when confused by questions having no immediate bearing on the point as to which he was being examined. If the Court thought that there was a suppression of truth on the witness' part, it ought to have cleared the matter up at once by giving him an opportunity of explaining more fully and pointing out that he seemed to be making a mistake. There was clearly no intention of giving false evidence. Intention was the essence of the offence and could not be presumed in this case. RATTAN SINGH v. CROWN, **72 P. L R. 1911 = 14 P.W.R. 1911 = 10 Ind. Cas. 840 = 12 Cr. L J. 265.**

(1228)—*S.* 193—*Practice—Sanction granted by District Judge—Conviction of accused for false evidence—Appeal heard by the same Judge as Sessions Judge—Competency to hear appeal.* —A District Judge gave sanction for the prosecution of the accused on a charge triable under s 193, Penal Code. The accused was tried for the offence and convicted. His appeal against the conviction and sentence came up before the same Judge in his capacity as Sessions Judge. The accused applied for transfer of the appeal to another Court: *Held*, that the Sessions Judge was legally competent to hear and dispose of the appeal; for, the question before him when he was moved to sanction the prosecution was a totally different question from that which would

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present itself when the appeal would be argued. EMPEROR v. GULAM AHMED ALI SAHEB, **15 Bom. L.R. 104=2 Bom. Cr. C. 27=19 Ind. Cas. 190=14 Cr. L.J. 190.**

(1229)—*S. 193—Order to prosecute—Case pending before Court of Sessions—Alleged perjury—Propriety of prosecution by committing Magistrate.*—Where a committing Magistrate had ordered the prosecution of a witness under s. 193, Penal Code, while the case in which he had deposed was pending before the Court of Sessions, the High Court set aside the order. The impropriety of taking proceedings against a witness while the case is still pending, commented on. BHIRENDRA NATH DAS GUPTA v. EMPEROR, **18 C.W.N. 1342=16 Cr.L.J. 147=27 Ind. Cas. 211.**

(1230)—*S. 193—Trial for perjury—False deposition of accused tendered in evidence—Examination of another witness while deposition was being read out to accused—Admissibility of deposition—Crim. Pro. Code (Act V of 1898), s. 360—Evidence Act (I of 1872), s. 91.*—In the trial of an accused for having made a false statement in the course of a judicial proceeding, his deposition in the said proceeding was put in evidence. Objection was taken to its admissibility on the ground that, while the deposition was being read to the accused, another witness was being examined. *Held*, overruling the objection, that the deposition was admissible as the provisions of s. 360, Crim. Pro. Code, were complied with both literally and in spirit. *In re* MUTHUKUMARA REDDY, **9 Ind. Cas. 262=12 Cr.L.J. 44=9 M.L.T. 325=21 M.L.J. 411.**

(1231)—*S. 193—Several accused—Separate trial.*—In a prosecution for giving false evidence, under s. 193, I.P.C., the case of each person accused should be separately enquired into by the Magistrate, and, if committed to the Sessions Court, separately tried by the Judge. EMPRESS OF INDIA v. NIAZ ALI, **5 A. 17.**

(1232) — *S. 193—Several accused—Separate trial.*—Where several persons are accused of giving false evidence in a judicial proceeding, it was held that each ought to have been tried separately and that each of them had a right to call the other accused persons as witnesses. AMEER AHMED v. QUEEN-EMPRESS, **L.B.R. 1872—1892, 129.** (7 B.L.R. Ap. 66, 3 M.H.C. App. 32, 5 B. 55, *F.*)

(1233)—*S. 193—Form of charge.*—In a charge under s. 193 of the Penal Code, the words constituting the false statement or their substance should be inserted. QUEEN-EMPRESS v. KALIDAS, **Rat. Un. Cr. C. 488=Cr. Rg. 57 of 1889.**

(1234)—*S. 193—Charge under—Frame of.*—The alleged false evidence, and not its assumed substance and purport, should be set forth in a charge under s. 193, I.P.C. QUEEN v. JAMURHA, **7 N.W.P. 137.** [*R.*, 14 Cr.L.J. 664=11 P.R. 1913=21 Ind. Cas. 904.]

(1235)—*S. 193—Infliction of sentence of imprisonment imperative.*—S. 193 makes it imperative upon the Court to pass some sentence of imprisonment in every case of conviction under that section. *In re* KHODAI SINGH, 2 J.G. 26.

(1236)—*S. 193—False evidence in a civil suit—Evidence not read over to a witness—Oral evidence, whether admissible.*—Where a witness, who had given evidence in a civil suit to which s. 182, C.P.C., applied, being charged with having given false evidence, contended that the evidence was not read over to him, *held*, that such statement could be proved by oral evidence, although the record itself may not be admissible under s. 80, Evidence Act. KHAN SINGH v. EMPRESS, **25 P.R. 1890, Cr.** (6 C. 762, *Not F.*)

(1237)—*S. 193—Perjury—Evidence, sufficiency of.*—A sued B for ejectment from a certain house. B pleaded that he was the owner of the house. A produced two *kirayanamas* executed by B, which showed that he was the tenant of A. B said that he had left his signature on blank papers and it was on those papers that A had subsequently filled up the contents of the *kirayanamas*; he, however, subsequently endorsed on the back of the documents "*Tahrir taslim hai.*" Upon the strength of the endorsement, B was run down for perjury; *held*, that the endorsement was not alone sufficient evidence to convict B for perjury. CHATAR SINGH v. EMPEROR, **7 Ind. Cas. 420=11 Cr. L.J. 485.**

(1238)—S. 193—*See* ACT IX OF 1869, s. 19, 7 P.R. 1879, Cr.

(1239)—S. 193—*See* ACT X OF 1873, ss. 4, 5, 14, 16 M. 421=1 Weir 175.

(1240)—S. 193—*See* ACT III OF 1877, s. 82, 20 C. 719.

(1241)—S. 193—*See* ACT I OF 1879, s. 51, 5 A. 17.

(1242)—S. 193—*See* ACT XVIII OF 1879, ss. 32, 14, A.W.N. 1901, 60.

(1243)—S. 193—*See* ACT II OF 1886, s. 25, 44 P.R. 1905, Cr.=187 P.L.R. 1905=3 Cr. L.J. 128.

(1244)—S. 193—*See* BRIBERY, Rat. Un. Cr. C. 488=Cr. Rg. 57 of 1889.

(1245)—S. 193—Alteration of finding under ss. 109 and 211 to one under s. 193, I.P.C.—*See* CHARGE—ALTERATION OF CHARGE, 3 C.W.N. 367.

(1246) — S. 193—*See* CHARGE — ALTERNATIVE CHARGE, Rat. Un. Cr. C. 503.

(1247)—S. 193—*See* CHARGE—FORM OF CHARGE, Rat. Un. Cr. C. 503, 511=Cr. Rg. 35 of 1890, 1 B.L.R.A. Cr. 13=10 W.R. 37, 7 B.L.R. App. 66=16 W.R. Cr. 47.

(1248)—S. 193—*See* CRIM. PRO. CODE, 1898, ss. 133, 342, 488, 9 C.W.N. 983=2 C.L.J. 149.

(1249)—S. 193—*See* CRIM. PRO. CODE, 1898, ss. 157, 159 and 476, 6 A.L.J. 963=32 A. 30.

(1250)—S. 193—*See* CRIM. PRO. CODE, 1898, s. 161, 11 B. 659, Rat. Un. Cr. C. 619=Cr. Rg. 43 of 1892, U.B.R. 1897—1901, Vol. I, 31.

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(1251)—S. 193—Statement made to the Police—Signature on that statement—False denial of signature—Prosecution for false evidence—Legality — *See* CRIM. PRO. CODE, 1898, ss. 161, 162, 476, 6 S.L.R. 277=14 Cr. L.J. 302=19 Ind. Cas. 958.

(1252)—S. 193—Perjury — Prosecution for, when not expedient—*See* CRIM. PRO. CODE, ss. 236, Ill. (*b*), 476, 8 Ind. Cas. 947=11 Cr. L. J. 734.

(1253)—S. 193—*See* CRIM. PRO. CODE, 1898, s. 282, 19 M. 375, 2 Weir 680=6 M.L.J. 195.

(1254)—S. 193 — Handing over record of deposition to witness for being read by him if sufficient compliance with law—Such deposition if admissible and prosecution for perjury if can be made thereon—*See* CRIM. PRO. CODE, 1898, s. 360, sub-s. (1), s. 476, 18 C.W.N. 1242=15 Cr. L.J. 483=24 Ind. Cas. 571.

(1255)—S. 193—*See* CRIM. PRO. CODE, 1898, ss. 481, 482, 195, 476, 1 A. 625, F.B.

(1256)—S. 193—*See* CRIM. PRO. CODE, 1898, s. 487, 2 Weir 607.

(1257)—S. 193—*See* FURTHER ENQUIRY, 6 A.L.J. 963.

(1258)—S. 193—*See* JOINT TRIAL, 26 M. 592=2 Weir 297.

(1259)—S. 193—Deputy Collector acting as Income Tax officer—Order sanctioning prosecution for offence under, by such officer—*See* LETTERS PATENT—LETTERS PATENT, 1865—MADRAS, cls. 39, 11, 12, 13, 14 M.L.T. 421=25 M.L.J. 565.

(1260)—S. 193—*See* OATH, 11 B.H.C. 11.

(1261)—S. 193—*See* SENTENCE—IMPRISONMENT—GENERAL, 3 C.L.R. 527.

(1262)—S. 193 — *See* TRANSFER OF CRIMINAL CASES—GENERAL, A.W.N. 1906, 42=3 A.L.J. 98=3 Cr. L.J. 225=28 A. 331.

(1263)—S. 193—*See* WITNESS—MISCELLANEOUS CASES, L B.R. 1893—1900, 247.

(1264)—S. 193—*See* Nos. 135, 215, 473, 530, 765, 925, 927, 945 to 950, 979 to 984, 1193 to 1201, 1204, 1205, 1206, *supra* and *see* Nos. 1298, 1343, *infra*.

(1265)—Ss. 193, 72—*See* FALSE EVIDENCE, Rat. Un. Cr. C. 401=Cr. Rg 62 of 1888.

(1266)—Ss. 193, 109—Perjury and abetment of perjury during police investigation—Sanction to prosecute—*See* CRIM. PRO. CODE, 1898, s. 195, 14 Bom. L.R. 715, 17 Ind. Cas. 63=13 Cr. L.J. 751=1 Bom. Cr. C. 164.

(1267)—Ss. 193, 194—Approver not examined as witness—False statement by him—Sanction to prosecute for perjury—See CRIM. PRO. CODE, 1898, ss. 337 (2), 339 (3), 14 Cr. L.J. 64=18 Ind. Cas. 352=17 P.W.R. 1913, Cr.=227 P.L.R. 1913.

(1268)—Ss. 193, 194 — *See* MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION, 24 M. 675=2 Weir 699.

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(1269)—Ss. 193, 196—*See* JOINT TRIAL, A. W.N. 1882, 37=4 A. 293.

(1270)—Ss. 193, 196, 199, 471—Perjury and forgery committed before Income-tax Collector—Sanction to prosecute—*See* CRIM. PRO. CODE, 1898, s. 195, cls. (*b*) and (*c*), 16 Bom. L.R. 446=2 Bom. Cr. C. 199=38 B. 642=15 Cr. L.J. 581=25 Ind. Cas. 333, F.B.

(1271)—*Ss.* 193 *and* 199—*False evidence—Proceedings under Ch.* IV *of the Land Revenue Act, not judicial proceedings—Statements made therein, not declarations.*—Proceedings under Ch. IV of the Land Revenue Act, not being judicial proceedings within the meaning of s. 193, Penal Code, statements made therein are not declarations, within the meaning of s. 199, Penal Code. EMPRESS v. DIN DAYAL, **A.W.N. 1885, 29.**

(1272)—*Ss.* 193 *and* 199—*Transfer application by accused under s.* 526, *Crim. Pro. Code—False statement in affidavit supporting the application for transfer.*—An application by the accused, under s. 526, Crim. Pro. Code, made to the High Court, for the transfer of a case is a "criminal proceeding" within the meaning of s. 5, Oaths Act. Under that section it is unlawful to administer an oath or affirmation to the accused. Therefore, an affidavit sworn to by him before the Deputy Registrar of the High Court is a mere nullity and he cannot be convicted for any false statement therein. PUBLIC PROSECUTOR v. RAMASAMY CHETTY, **1 Weir 176=1 Weir 822=2 Weir 686.**

(1273)—Ss. 193, 199—*See* BEN. ACT VIII OF 1885, s. 95, 20 C. 724.

(1274)—Ss. 193, 199—*See* AFFIDAVIT, 14 C. 653.

(1275)—Ss. 193, 199—*See* JOINT TRIAL, A. W.N. 1885, 29.

(1276)—*Ss.* 193, 201—*Concealment by accused of his own guilt.*—*Held*, that an accused person cannot be charged either with giving or fabricating false evidence with the sole object of diverting suspicion from himself and concealing his guilt in regard to a crime with which he is charged. EMPEROR v. RAM KHILAWAN, **A.W.N. 1906, 191=4 Cr. L.J. 66=28 A. 705.**

(1277)—*Ss.* 193, 209—*Dishonestly making false claim and falsely attesting plaint in the same matter—Separate convictions.*—A person cannot be convicted both of fraudulently and dishonestly making a false claim in a Court of justice and of falsely attesting the plaint in the false case, the latter being an essential ingredient of the former offence. KING-EMPEROR v. ZAR MUHAMMAD KHAN, **A.W. N. 1901, 187.**

(1278)—*Ss.* 193, 209—*False verification of plaint—Jurisdiction.*—Where it is found that in preferring a false claim the accused has made a false verification of his plaint, the offence is one under s. 193 of the Penal Code, and not under s. 209 and a full power Magistrate has no jurisdiction to try the accused. REG. v. LUXUMAN DAS, **Rat. Un. Cr. C. 25=Cr. Rg. 23-9-1869.**

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(1279)—*Ss.* 193, 209 – *Sanction to prosecute — Suing wrong person on genuine pro-note.*—Where on a genuine promissory note a plaintiff sues a wrong person of the same name but not dishonestly and intentionally, a sanction to prosecute him under ss. 193 and 209, Penal Code, cannot be granted. SUBRAMANIA PILLAI v. V.T.L. NACHIAPPA CHETTY, **16 Cr. L.J. 154 = 27 Ind. Cas. 218.**

(1280)—Ss. 193, 210, 406—*See* FALSE EVIDENCE, 10 B. 288.

(1281)—*Ss.* 193, 210, 511—*Fraudulent execution of satisfied decree—Statement.*—A wilful attempt, by means of false statements, to use the process of the Court to recover money twice over, is punishable under s. 210, read with s. 511 and under s. 193, I.P.C. A statement is within the meaning of s. 193, whether made "verbally" or "otherwise." QUEEN-EMPRESS v. BAPUJI DAYARAM, **10 B 288.** [*R.*, 16 C.L. J. 174 = 16 C.W.N. 923 = 13 Ind. Cas. 63, 11 Cr. L.J 90 = 5 Ind. Cas. 257 = 1 P.R. 1910, Cr = 161 P.L.R. 1910 = 3 P.W.R. 1910, Cr., U. B.R. 1897—1901, 278.]

(1282)—Ss. 193, 211—*See* COMPENSATION—GENERAL, 21 M. 237 = 2 Weir 312, 100 P.L.R. 1901.

(1283)—Ss. 193, 211—*See* FALSE CHARGE, L.B.R. 1893—1900, 443.

(1284)—Ss. 193, 211—*See* PRELIMINARY ENQUIRY, 8.C. 284, Oudh.

(1285)—Ss. 193,403—*See* FALSE EVIDENCE, 10 C.L.R. 187,

(1286)—Ss. 193, 416—*See* FALSE EVIDENCE, 1 B.H C. Cr. 89.

(1287)—Ss. 193, 423—*See* CRIM. PRO. CODE, 1898, s. 236, 60 P.L.R. 1903.

(1288)—Ss. 193, 457—*See* FALSE EVIDENCE, 10 B. 190.

(1289)—*Ss.*193, 463—*Endorsement on a mortgage deed showing payment—Intention to fabricate false evidence and defraud the mortgagee—Cheating and forgery.*—The accused transferred the whole of his property in favour of his wife, but before registering the sale-deed mortgaged the property to F. The sale-deed was, however, registered after the mortgagee had made all necessary enquiry at the Registration office. After the registration of the sale-deed, the mortgage-deed was also registered. The accused was charged for cheating the mortgagee. It appeared during the trial that the mortgage deed filed by the complainant bore on it an endorsement of the return of the consideration, although there was no such endorsement on it when it was filed in Court. The accused was thereupon further charged for fabricating false evidence and forgery. *Held,* that the accused was guilty of fabricating false evidence and cheating, as the accused must be presumed to know the probable result of his action and it obviously could not have been absent from his mind when he forged the endorsement that he was thereby attempting to defraud the mortgagee of his money. ABDUL RASHID KHAN v KING-EMPEROR, **12 A.L J. 104 = 15 Cr. L J. 221 = 22 Ind. Cas. 1005.**

(1290)—Ss. 193, 465, 471—*See* CRIM. PRO. CODE, 1898, s. 478, 22 W.R. Cr. 52.

(1291)—Ss. 193, 467—*See* JOINT TRIAL, Rat. Un. Cr. C. 31 = Cr. Rg. 7-4-1870.

(1292)—*Ss.* 193, 467 *and* 471—*Alteration of the date of decree by a pleader's clerk.*—The accused, a pleader's clerk, failed to file an execution petition within the period of limitation. Thereupon he altered the date in the copy of the decree and also the date in a register of execution petitions maintained by the accused for his master in order to hide his fault and avoid the consequences of the same. The altered decree was filed in the Court, *held,* that the accused was not guilty under s. 467, for the copy of the decree was not a valuable security, but was guilty under ss. 193 and 471, Penal Code. *In re* GODLAVEDU BALAYYA, **1 Weir 551.**

(1293)—Ss. 193, 511—False evidence given before District Judge acting under s. 22, Act III of 1901—Sanction for prosecution—*See* BOM. ACT III OF 1901, s. 22, **15 Bom. L.R. 45 = 2 Bom. Cr. C. 1 = 18 Ind. Cas. 408 = 14 Cr. L J. 72 = 37 B. 365.**

(1294)—Ss. 193, 511—*See* FALSE EVIDENCE, 2 A. 105, 25 A. 75 = A.W.N. 1904, 196.

——S. 194.

(1295)—S. 194—*See* CRIM. PRO. CODE, 1898, ss. 337, 339, 27 C. 137.

(1296)—S. 194—*See* Nos. 1267, 1268, *supra.*

——S 195.

(1297)—S. 195—*See* Nos. 70, 474, *supra.*

(1298)—Ss. 195, 193—*See* CRIM. PRO. CODE, 1898, ss. 436, and 476, 2 Weir 549.

(1299)—Ss. 195, 211—*See* FALSE CHARGE, 8 W.R. Cr. 65.

——S. 196.

See FALSE EVIDENCE.

See SANCTION TO PROSECUTE.

(1300)—S. 196—*See* CRIM. PRO. CODE, 1898, ss. 487, 195, 16 C. 766, F.B.

(1301)—S. 196—*See* DISTRICT JUDGE, JURISDICTION OF, 16 C. 766, F.B.

(1302)—S. 196—*See* Nos. 1207, 1269, 1270, *supra.*

(1303)—Ss. 196, 271—*See* CRIM. PRO. CODE, 1898, ss. 168, 476, 477, 487, 1 A. 129.

(1304)—Ss. 196, 471—*See* CRIM. PRO. CODE, 1898, ss. 195, 215, 476, 537, 10 Ind. Cas. 616 = 12 Cr. L J. 320.

——S 197.

(1305)—S. 197—*See* ACT III OF 1877, s. 81, 6 O.C. 153.

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——S. 199.

(1306)—S. 199—*Prosecution under—Declaration must be admissible in evidence—Court authority to receive it.*—A declaration, before it can be made the foundation of a prosecution under s. 199, Penal Code, must be one which is admissible in evidence, and which the Court before whom it is filed, is bound or authorised by law to receive in evidence. The fact that there is no prohibition against the reception of such declaration in evidence does not render it admissible or make the declarant amenable to the provisions of s. 199, Penal Code. RAM PRASAD v. KING-EMPEROR, **10 A.L.J. 462=13 Cr. L.J. 769=35 A. 58=17 Ind. Cas. 401.**

(1307)—S. 199—*False declaration — False declaration made before Mamlatdar for obtaining Abkari license.*—The accused made a false declaration before a Mamlatdar with a view to obtain a certificate of solvency for the purpose of securing a license from the Abkari authorities. He was convicted of an offence under s. 199, Penal Code, for making the declaration: *Held*, setting aside the conviction, that no offence was committed under s. 199, Penal Code, inasmuch as no Court of Justice or any public servant was either bound or authorised by law to receive the declaration in evidence. EMPEROR v. RAJAPPA RAMAPPA KALAL, **17 Bom. L.R 222=3 Bom. Cr. C. 43=16 Cr. L J. 309=28 Ind. Cas. 645.**

(1308)—S. 199—*See* CRIM. PRO. CODE, 1898, s. 478, 7 B.H.C. Cr. 29.

(1309)—S. 199—*See* Nos. 520, 925, 985, 1270, 1271 to 1275, *supra.*

(1310)—*Ss.* 199, 210—*Sale of more than what the decree allowed—Criminal intention.*—M obtained a decree for sale of half of certain property. He executed the decree thrice. First he applied for sale of the half, but, in his second application, which was infructuous, he applied for the sale of the whole property and actually got the same sold by his third application. On the judgment-debtor's objection, part of the property was exempted, and the decree-holder was put on his trial for an offence under s. 193, Penal Code, which in appeal was changed to s. 210: *Held* that the facts proved did not establish a criminal intention. MANGAT RAI v. KING-EMPEROR, **7 A.L.J. 93=11 Cr. L.J. 202=5 Ind. Cas. 695.**

——S. 201.

(1311)—S. 201—*Offence under the section, what constitutes.*—To sustain a charge of an offence under s. 201, Penal Code, the proper order of proof is (1) that the murder was committed, (2) that the accused gave information respecting the offence, (3) that such information was false and known by him to be so, (4) that he then knew of the commission of the murder, and (5) that his intention was to screen the murderer. QUEEN v. SUBRAMANIA PILLAI, **1 Weir 179=3 M.H.C. 251.** [*R.*, 3 A. 279, F. B.]

Penal Code (Act XLV of 1860)—*continued.*

(1312)—S. 201—*Offence under the section, what constitutes—Causing disappearance of evidence of an offence.*—In order to sustain a conviction under s. 201, it must be proved that an offence has been actually committed. It is not sufficient to establish that the accused had reason to believe an offence to have been committed. MULA SINGH v. EMPRESS, **19 P.R. 1895, Cr.**

(1313)—S. 201—*Offence under the section, what constitutes.*—In order to the conviction of a person on a charge under section 201, I.P. Code, of causing the disappearance of evidence of the commission of an offence, it must be shewn that the person knew or had reason to believe that the offence had been committed. CROWN v. TARA CHAND, **7 P.R. 1867, Cr.**

(1314)—S. 201—*Scope and application of.*—S. 201 refers to prisoners other than the actual criminals who, by their causing evidence to disappear, assist the principals to escape the consequences of their offences. But the person who commits an offence, and afterwards cancels the evidence of it, cannot be punished on both heads of the charge according to the terms of the Penal Code. QUEEN v. RAM SOONDAR SHOOTAR, **7 W.R. Cr. 52.**

(1315)—S. 201—*Scope and application of.*—S. 201 of the Penal Code applies merely to the person who screens the principal or actual offender, and not to a person causing disappearance of his own crime. Two persons were charged with murder, and also with causing the disappearance of the corpse of the deceased with the intention to screen the murderer from punishment under s. 201 of the Penal Code. The evidence for the prosecution pointed conclusively to one or other of the accused being the actual murderer; but it was impossible, upon the evidence, to say which of them caused the death. They were acquitted on the charge of murder but convicted under s. 201 of the Code. *Held*, that the conviction should be set aside. TORAP ALI v. QUEEN-EMPRESS, **22 C. 638.** [*F.*, 10 Cr. L.J. 321=3 Ind. Cas. 622; *R.*, 12 C.P L.R. 17, 2 Weir 301, 1 L. B.R. 316, 6 P.R. 1902, Cr.=85 P.L R. 1902, 8 Cr. L.J. 191=1 S L.R. 73, Cr.; *D.*, Rat. Un. Cr. C. 799, 1 P.R. 1904, Cr.=30 P.L.R. 1904.]

(1316)—S. 201—*Scope and application of.*—S. 201 of the Penal Code does not apply to a person who is proved or admitted to be the principal offender. The mere fact that the accused is possibly or probably the principal offender does not prevent his conviction under s. 201. It does not refer exclusively to causing the disappearance of the *corpus delicti*, but to causing the disappearance of any evidence as to the commission of the offence. AUNG KYAW ZAN v. CROWN, **1 L B R. 316.** (Rat.Un. Cr. C. 799, 6 P R. 1902, Cr, *F.*)

(1317)—S. 201—*Gist of the offence*—To sustain a conviction under s. 201, it is necessary to adduce proof that the accused, knowing, or having reason to believe, that an offence had been committed, caused evidence of the commission of the offence to disappear, with the

Penal Code (Act XLV of 1860)—*continued.*

intention of screening the offender from legal punishment. When no positive act of concealment is proved against the offender, he is not guilty under s. 201. MIR AFZAL v. EMPRESS, **25 P.R. 1881, Cr.**

(1318)—*S. 201—Gist of the offence under—Causing disappearance of evidence of murder—Principal offender, conviction of, for a secondary offence.*—Where the accused admitted that two persons committed murder in his presence, removed the *razai*, on which the deceased was sleeping, and concealed it in a stack in his presence, *held*, that he could not be convicted under s. 201, inasmuch as, if the *razai* had not been concealed or destroyed, its presence or existence would have been no evidence of the murder. A person who is concerned as a principal cannot be convicted of the secondary offence of concealing evidence of the crime of murder. QUEEN-EMPRESS v. LALLI, **7 A. 749 = A.W.N. 1885, 165.** [*F.*, 8 A. 252, 22 C. 638, Rat. Un. Cr. C. 799, 1 L.B.R. 316, 1 L.B R. 327, 27 M. 271 = 14 M.L.J. 226 = 2 Weir 808, 1 S.L.R. 73, Cr. = 8 Cr. L.J. 191 ; *D.*, 1 P.R. 1904, Cr. = 30 P.L.R. 1904.]

(1319)—*S. 201—Person causing disappearance of evidence of murder.*—Where a person causes the disappearance of evidence of a murder, but without the intention of screening the offender from legal punishment, he is not guilty of an offence under s. 201. The requirements of the section are not satisfied, if the disappearance of evidence was merely likely to have the effect of screening the offender. QUEEN v. TOOLSHEE RAI, **5 N.W.P. 186.** [*R.*, 13 Cr. L.J. 721 = 16 Ind. Cas. 753, 6 S.L. R. 76.]

(1320)—*S. 201—Causing disappearance of evidence of murder—Scope of the section.*—S. 201, I.P.C., refers to persons other than the actual offenders. Where a person who has committed murder removes the corpse from one field to another, he does not cause any evidence of murder which that corpse affords to disappear, but his object is merely to divert suspicion from himself. EMPRESS OF INDIA v. KISHNA, **2 A. 713.** [*F.*, 8 A. 252 = 6 A.W. N. 716, 22 C. 638, 1 L.B.R. 316, 30 P.L.R. 1904 = 1 P.R. 1904, Cr., 1 S.L.R. 73, Cr., 8 Cr. L.J. 191.]

(1321)—*S. 201—Acquittal of charge of murder—Conviction for causing disappearance of evidence of murder—Omission of Sessions Judge to give any finding on minor charge—Effect.*—An accused person, who is acquitted of the charge of murder, may be convicted of a minor charge under s. 201, I.P.C., when also tried for that offence, in spite of the omission of the Sessions Judge to give any finding at all about him in respect of this minor charge. MAHAMMAD SHAH v. CROWN, **8 P.R. 1913, Cr. = 19 Ind. Cas. 710 = 223, P.L.R. 1913 = 14 Cr. L.J. 278 = 22 P.W.R. 1913, Cr.** (1 P.R. 1904, Cr., *F.*)

(1322)—*S. 201—Causing disappearance of evidence of crime, what amounts to—Murder.*—Where an accused removed a sheet from the dead body of a girl murdered by her (accused's) son and locked it up in a box, she could not be held to have caused evidence of murder to disappear, as the presence of the sheet was in itself no evidence of the murder and its concealment did not cause evidence of the murder to disappear. Nor did the act of the accused, in merely locking the outer door of her house, where she found the dead body, without moving the corpse, or concealing it, amount to the offence of causing the disappearance of the evidence of a crime under s. 201, Penal Code. A person giving false information respecting murder commits no offence, unless he gave the information with the intention of screening the murderer. KING-EMPEROR v. RAJAN, **53 P.R. 1905, Cr. = 202 P.L.R. 1905 = 3 Cr. L.J. 136.**

(1323)—*S. 201—Exculpatory statements by accused—Applicability of section.*—S. 201 does not apply to a case where the person, who is the probable or possible offender, makes statements exculpating himself by inculpating another. *In the matter of the petition of* BEHALA BIBI; EMPRESS v. BEHALA BIBI, **6 C. 789 = 8 C.L.R. 207.** [*F.*, 8 A. 252 ; *R.*, 22 C. 638, Rat. Un. Cr. C. 799, 85 P.L.R. 1902 = 6 P.R. 1902, Cr., 1 L.B.R. 316, 30 P.L.R. 1904 = 1 P.R. 1904, Cr. = 8 Cr. L.J. 191 = 1 S.L.R. 73.]

(1324)—*S. 201—Conviction under—Proof of offence.*—To sustain a conviction under s. 201 of the Penal Code, there must be proof that an offence, the evidence of which the accused is charged with causing to disappear, had been committed and also that the accused knew or had sufficient information which would lead him to believe that the offence had been committed. MATUKI MISSER v. QUEEN-EMPRESS, **11 C. 619.** (3 A, 279, *F.*) [*Appl.*, 14 M. 400 = 1 Weir 195; *R.*, 12 Cr.L.J. 441 = 11 Ind. Cas. 785 = 7 N.L.R. 101 = 1 L.B.R. 316; *R.& D.*, U.B.R. 1892—1896, Vol. I, 196 ; *D.*, 1 P.R. 1904, Cr. = 30 P.L.R. 1904.]

(1325)—*S. 201—Proof of offence.*—In order to convict a person under s. 201, Penal Code, it is not sufficient to show that the accused was aware of a rumour of a suspicion relating to the offence. It is necessary to show that an offence had been committed, that the accused knew, or had reason to believe, that the offence had been committed and that, in order to screen the offenders, he gave information respecting the offence, which he knew, or believed, to be false. *In re* KANDIPURI LAKSHMANNA, **1 Weir 180.**

(1326)—*S. 201—Proof of offence.*—In order to support a conviction under s. 201, Indian Penal Code, the fact of the commission of the offence, of which the evidence was caused to disappear, must be proved or admitted. CROWN v. LAL PYU, **1 L.B.R. 308.**

(1327)—*S. 201—Conviction under section for accessory offence—Proof.*—A conviction for the accessory offence under s. 201, I.P.C., is not illegal, merely because it is suspected, but not proved or admitted, that the accused committed or was one of several persons who committed

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the principal offence. QUEEN-EMPRESS v. LIMBYA, **Rat. Un. Cr. C. 799 = Cr. Rg. 56 of 1895.** [*F.*, 1 L.B.R. 316.]

(1328)—*S.* 201—*Accessory—Proof.*—The conviction of an accused as accessory to an offence, known or believed to have been committed by himself, is not illegal, merely because it is suspected, but not proved or admitted, that the accused committed or was one of several persons who committed the principal offence. QUEEN-EMPRESS v. LIMBYA, **1 L.B.R. 327.** (8 B.H.C. 126, *F.*)

(1329)—*S.* 201—*Causing disappearance of evidence—Proof—Acquittal—Principal offender—Confession of accused.*—If there is clear independent proof that any person has caused evidence to disappear in order to screen some "person or persons unknown," the mere fact that he had been suspected or even tried and acquitted of the crime itself would not itself prevent his conviction under s. 201 of the Penal Code. A person who has been acquitted of a crime is, in the eye of the law, not the principal offender, who, if no one has been convicted, would be some person unknown. It is not safe or proper to convict an accused person under s. 201 merely upon his own confession made while under a charge of murder, and exculpating himself from, and inculpating others in, that charge of murder. NAZRU v. EMPEROR, **6 P. R. 1902, Cr. = 85 P.L.R 1902.** (6 C. 789, 22 C. 638, *R.*) [*R.*, 1 P.R. 1904, Cr.]

(1330)—*S.* 201—*Person causing disappearance of evidence of his own crime—Abetment.*—S. 201 does not apply to a criminal causing disappearance of evidence of his own crime. QUEEN-EMPRESS v. DUNGAR, **8 A. 252 = A. W.N. 1886. 71.** (7 W.R.Cr. 52, 8 B.H C Cr. 126, 2 A. 713, 6 C. 789, 7 A. 749, *R.*) [*F.*, 22 C. 638 ; *R.*, Rat. Un. Cr. C. 799, 2 Weir 301, 1 L.B R. 327, 30 P.L.R. 1904 = 1 P.R. 1904, Cr., 1 S.L.R. 73, Cr. = 8 Cr. L.J. 191.]

(1331)—*S.* 201—*Abetment.*—A person cannot be convicted under s. 201 of the Penal Code for causing evidence of the commission of an offence by himself to disappear, nor can he be convicted of the abetment of such an act—*Per Lloyd and Kemball, JJ.* REG. v. KASHINATH DINKAR, **8 B.H C. Cr. 126.** [*F.*, 8 A. 252, 22 C. 658 ; *Discussed*, 1 L.B R. 316 ; *Expl*, 1 P.R. 1904, Cr. 3 = 30 P.L.R. 1904 ; *R.*, Rat. Un. Cr. C. 799. 1 L.B.R. 327, 1 S L.R. Cr. 73 = 8 Cr.L.J. 191.]

(1332)—*S.* 201—*Abetment.*—A prisoner was present at a murder when it took place ; he was not aware that such an act was to be committed; but he did not interfere to prevent the commission of the crime through freight, and also joined the murderers in concealing the body. *Held* that the prisoner was guilty, not of the abetment of murder, but of an offence under s. 201 of the Penal Code. QUEEN v. GOBURDHAN BERA, **6 W.R. Cr 80.**

(1333)— *S.* 201— *Screening offender.*— This section does not apply to a criminal causing the disappearance of evidence of his own crime. It applies merely to the person who screens the actual offender. EMPRESS v. GHASIA KEWAT, **12 C.P. L.R. Cr. 17.** (22 C. 638, *R.*)

(1334)—*S.* 201—*Screening offender—Knowledge of offender's identity—Not essential—Illustration—Scope of—Not controlling section.*—S. 201, I.P.C., does not lay down that the accused should be aware of the identity of the offender whom he intends to screen. (5 N.W.P. 186, 14 M. 400, 3 C. 412, *R.*) Illustrations rank only as cases decided under the section, and ought never to be allowed to control the plain meaning of the section itself. CROWN v. RINO SOBEDAR, **6 S.L R. 76 = 16 Ind. Cas. 753 = 13 Cr. L.J. 721.** (1 B. 147, 20 M. 97, 7 C. 132, *R.*)

(1335)—*S.* 201—*Keeping a witness to the commission of offence out of the way.*—The taking of measures to keep a person, possessed of the knowledge of the occurrence of a crime out of the way, does not amount to causing disappearance of evidence within the meaning of the law. MUHAMMAD BAKSH v. EMPRESS, **21 P R. 1882, Cr.**

(1336)—*S.* 201—*Concealment of offence—Concealment should be by a third person—Evidence recorded in a previous trial imported into a subsequent trial for another offence—Irregularity—Crim. Pro. Code (Act V of 1898), s. 537.*—Under s. 201 of the Penal Code, the concealment must be concealment by a third person and not by the person, who is charged with having committed the offence and aided or abetted the same. It is also necessary that the disappearance of evidence should be after the offence. The accused was tried for abetment of murder and acquitted. He was again put up for trial for an offence under s. 201 of the Penal Code with respect to the same offence. At the request of the pleader of the accused and with the consent of the Government Pleader, the evidence recorded by the Judge at the previous trial was accepted as evidence in the second case : *Held*, that the procedure adopted was irregular and was cured by s. 537, Crim. Pro. Code, 1898. *Per Russel, J.*—"The procedure which was adopted in this case must never be followed under any circumstances whatever. The evidence of all the witnesses before the Judge and assessors must be *viva voce*, except in the case of evidence given by a Medical Officer which, under certain circumstances, need not be *viva voce*." EMPEROR v. GHANASHAM RAMCHANDRA MANTRI, **8 Bom. L.R. 538 = 4 Cr L.J. 89.** [*R.*, 8 Cr. L J. 191 = 1 S.L R. 73, Cr]

(1337)—*S.* 201—*Right of private defence of property—Causing disappearance of evidence.*—A commits no offence, if in exercising the right of private defence of his property against B, whom he finds near a hole in A's house, and on being attacked by B, he strikes a blow at random, and in the dark, with a stick in his hand, whereby B is killed. C and D, by assisting A in removing the body of B, cannot be convicted (under s. 201 of the Penal Code) of having caused evidence to disappear, they having no knowledge or belief that an offence

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had been committed, nor any intention of screening an offender. QUEEN v. PELKOO NUSHYO, 2 W R. Cr. 43.

(1338)—S. 201—*See* COMMITMENT TO SESSIONS COURT, 42 P.R. 1884, Cr.

(1339)—S. 201—*See* OFFENCE, 1 L.B R. 308.

(1340)—S. 201—*See* Nos. 241, 242, 421, 473, 905, 1276, *supra* and Nos. 1925, 1926, *infra.*

(1341)—*Ss.* 201 *and* 40—*Conviction under s.* 201, *when justifiable.*—It is necessary, in order to justify a conviction under s. 201, I.P.C., that an offence, of which some person has been convicted or for which he is criminally responsible, within the definition of s. 40, should have been committed. EMPRESS OF INDIA v. ABDUL KADIR, **3 A. 279. F.B.** [*Appl.*, 12 A. 432, 14 M. 400=1 Weir 195; *F.*, 11 C. 619; *R.*, U.B. R. 1892—1896, 196, Cr, Rat. Un. Cr. C. 778, 1 L.B.R. 316; *D.*, 1 P.R. 1904, Cr.=30 P.L.R. 1904.]

(1342)—*Ss.* 201 *and* 143—*Disappearance of evidence of a crime.*—Case where a conviction for causing the disappearance of evidence of an offence which amounted to culpable homicide not amounting to murder was upheld, though it was not proved who actually committed the offence. QUEEN v. MUDDUN MOHUN BOSE, **7 W.R. Cr. 22.**

(1343)—Ss. 201, 193 — *See* JOINDER OF CHARGES—MISJOINDER OF CHARGES, 14 Bur. L.R. 242, F.B.=4 L.B.R. 294.

(1344)—*Ss.* 201, 202—*Offence under s.* 202, *not minor offence included under s.* 201—*Burial of corpse—Offence under s.* 201.—The offence under s. 202, I P C., cannot be treated as a minor offence included under s. 201; for an essential ingredient of the offence under s. 202 is the legal duty of the accused to give information and this is no part of the offence under s. 201. S. 238, Crim. Pro. Code therefore does not apply and a charge under s. 202 should have been framed. The burial of the corpse of a murdered man, if done with the intention of concealing the fact that there were marks of violence on it, might be causing evidence of the commission of the offence to disappear and amount to an offence punishable under s. 201, I.P.C. IMPERATOR v. RINO WD. SOBHDAR, **5 S.L.R. 123=13 Cr. L.J. 18=13 Ind. Cas. 210.**

(1345)—Ss. 201, 202—*See* EVIDENCE ACT, 1872, ss. 114, ill. (*b*), 133, 27 M. 271=2 Weir 803=14 M.L.J. 226.

(1346)—*Ss.* 201, 202 *and* 203—*Convictions under—What must be proved.*—In order to constitute a legal conviction under ss. 201, 202 and 203 of the Penal Code, the proof of the two points—*viz.* (1) the substantial fact of an offence having been committed, and (2) the knowledge or reasonable belief on the part of the accused that such was the case—is not absolutely necessary. For, if a person has reason to believe (s. 26) that an offence has been committed, and acts in the manner described in either of those sections, he would

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be liable to punishment, even although it might subsequently transpire that he was mistaken in his belief. **2 W.R. Cr. Letters, 1.**

(1347)—*Ss.* 201 *and* 218—*Points to be proved*—Accused charged with framing incorrect report under s. 218; or with giving false information under s. 201 with intent to save offenders from punishment. The issue to be tried is merely the belief of the person with respect to his guilt. QUEEN v. HURDUT SURMA, **8 W.R. Cr. 68.**

(1348)—*Ss.* 201 *and* 300—*Presence of a person when murder was being committed.*—Where the murder of a person was a common object of several members of a gang of rebels to which the appellant belonged and the murder was committed, but the appellant was not shown by the evidence to have had any part in the murder or to have been a member of the particular body that combined to carry out that purpose, *held*, that the mere fact, that he happened to be on the spot and was present at the murder and took part in the burial of the body, was not sufficient to make him guilty of murder but merely guilty, under s. 201, of causing disappearance of evidence of murder, the intention of screening the offenders from legal punishment being inferable from the circumstances of the case. *In re* KAMMARI KANNAPPA, **1 Weir 297.**

(1349)—*Ss.* 201, 300—*Murder, conviction for—Separate conviction for offence under s.* 201, *legality of.*—A separate sentence under s. 201, Penal Code, along with a conviction of the accused of murder. is illegal. *In re* NALLI NARASIGADU, **16 Cr. L J. 583=30 Ind. Cas. 135.**

(1350)—*Ss.* 201 *and* 302—*Crim. Pro. Code (Act* V *of* 1898), *s.* 237—*Murder—Causing disappearance of evidence—Charge—Conviction for offence not charged—Irregularity.*—If there is clear and independent proof that any person has caused evidence to disappear in order to screen some "person or persons unknown," the mere fact that he had been suspected or even tried and acquitted of the crime itself would not in itself prevent his conviction under s. 201 of the Indian Penal Code. At a trial, six persons were charged with and acquitted of murder, but two of them were convicted of the offence under s. 201 of the Indian Penal Code. The evidence recorded in the case was found sufficient to establish that murder had been committed. It was contended that, inasmuch as the accused were charged with being principals in the murder, they could not be convicted, at any rate under that charge, of an offence under s. 201. *Held*, that the contention had no force. In the absence of proof of prejudice, the conviction was not illegal, the case being covered by s. 237 of the Crim. Pro. Code. BUCHA v. KING-EMPEROR, **1 P R. 1904 Cr =30 P.L.R. 1904 =1 Cr. L.J. 113.** (6 P.R. 1902, Cr.=85 P.L R. 1902; *F*; 22 C. 638, 2 A. 713, 7 A. 749, 8 A. 252, 6 C. 789, 7 W.R. 52, Cr., 8 B.H.C 126, *R.*) [*R.*, 22 P.W.R. 1913=8 P.R. 1913=223 P.L. R. 1913=19 Ind. Cas. 710=14 Cr. L.J. 278.]

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(1351)—Ss. 201, 302—*See* MURDER, 2 Ind. Cas. 622 = 8 P.W.R. 1909, Cr.

(1352)—*Ss.* 201, 302 *and* 314—*Alternative charges— Removal of corpse.* — Where it is doubtful whether a dead person had been intentionally murdered or had died from the effects of an attempt to cause her to miscarry against her will, the accused ought to be convicted in the alternative either of an offence under s. 302 or of an offence under s. 314, I.P.C.; and the mere removal of a dead body under such circumstances is no proof whatever of complicity in the original crime, although it may be good proof of an attempt to destroy traces of the commission of a crime under s. 201, I.P.C. QUEEN-EMPRESS v. MUSSAMUT SHEORAJA, **S C. 138 Oudh.**

—— **S. 202.**

(1353)—*S.* 202—*In what cases applicable.*—S. 202, Penal Code, is applicable only where the accused "knowing or having reason to believe that an offence has been committed" intentionally omits to give information of the crime. *In re* RAMASWAMI UDAYAN, **1 Weir 181.**

(1354)—*S.* 202—*Intentional omission to give information.*—A request by a villager to the *Ywagaung*, to whom an offence has been reported, not to report the offence is not such an intentional omission to give information as deserves punishment under s. 202, I.P.C. KING-EMPEROR v. NGA THA DUN, **U.B.R. 1897—1901, Vol. I, 276.**

(1355)—*S.* 202—*Omission of police patel to report arrival of dacoits.*—A police patel failed to report the arrival of dacoits at his village and supplied them with food and drink: *Held* that he would not be convicted under s. 202 of the I.P.C., as there was nothing to show that an offence was committed by the persons who visited his village. QUEEN-EMPRESS v. BALA, **Rat. Un. Cr. C. 160.**

(1356)—*S.* 202—*Failure to report suspicious death—Liability of police patel.*—Where, from the fact of the police patel ordering the kulkarni to write a report regarding a suspicious death in his village, his good faith is apparent, and it does not seem that he had an intention to omit the report, it is not proper to convict him, under s. 202, I.P.C., of an intention to evade the law about the first report. QUEEN-EMPRESS v. MHATU BALAJI, **Rat. Un. Cr. C. 783 = Cr. Rg. 44 of 1895.**

(1357)—*S.* 202—*Crim. Pro. Code, Act* X *of* 1872, *s.* 90 (*c*)—*Lambardar—Omission to give information of theft.*—Certain wheat was stolen from the grain pit of the accused who was a lambardar. He did not report the theft to the police. *Held* that, as he was bound to give such information to the police under s. 90, Crim. Pro. Code, 1872, he was rightly convicted of an offence under s. 202, I.P.C. EMPRESS v. SHANKAR SINGH, **A.W.N 1883, 9.**

(1358)—*S.* 202—*Omission to give information of offence—Reasonable excuse.*—A person is not bound to give information of a murder of which he is aware, if he has reasonable excuse for not making a report, as where the accused had no reason to believe that his informant had himself committed the offence when he came and told him of the murder as having been committed by some one else, and where there was clearly no attempt at concealment of the fact of murder, and where the probability, as it would present itself to the mind of the accused at the moment, was that the husband of the murdered woman, after giving the alarm to his neighbours, would go on to the police station. QUEEN-EMPRESS v. NGA CHO, **L B.R. 1893-1900, 382.**

(1359)—S. 202—*See* Nos. 906, 1344, 1345, and 1346, *supra and* Nos. 1392, and 1926, *infra.*

—— **S. 203.**

(1360)—*S.* 203—*False evidence given on questions by police during investigation.*—S. 203 does not apply to the case of a person who gives false evidence as a witness to the police in the course of their investigation, and that only in reply to questions put to him. It contemplates information volunteered by some person. SARJU SARUN v. EMPEROR, **7 Ind. Cas. 50 = 7 A.L J. 1150 = 11 Cr.L.J. 438.**

(1361)—S. 203—'Gives information'—Meaning of—*See* EVIDENCE ACT, 1872, ss. 25, 26, 6 S.L.R. 143 = 14 Cr.L.J. 252 = 19 Ind. Cas. 508.

(1362)—S. 203—*See* INFORMATION OF COMMISSION OF OFFENCE, 20 W.R.Cr. 66.

(1363)—S. 203—*See* Nos. 214, and 1346, *supra.*

—— **S 204.**

(1364)—*S.* 204—*Gist of the offence.*—In order to convict a person under s. 204, I.P.C., it must be proved, that he destroyed the document with the intention of preventing it from being used or produced as evidence. AMIR CHAND v. EMPRESS, **24 P.R. 1889, Cr.**

(1365)—*S* 204—*Secreting a document*—Panchnama—*Rough copy destroyed owing to obliterations—New copy made and duly signed—Destruction of rough copy is no offence.*—The accused, a Police Officer, drew up a *panchnama* and had it signed by a Panch. But finding that it was disfigured by interlineations and scratches, he had the document fairly written out again in textually the same form and had it signed by the same Panch. The rough document was thereupon destroyed. For doing this act, the accused was convicted of an offence punishable under s. 204, Penal Code:—*Held,* that the accused committed no offence under s. 204 of the Code, for the fair document which the accused preserved and ultimately presented to the Court must be regarded as the only document which he was lawfully compelled to produce as evidence; and the former writing must be regarded merely as rough notes designed for the preparation of the fair document. EMPEROR v. GANGARAM TUKARAM, **14 Bom L R. 1163 = 1 Bom. Cr. C. 234 = 13 Cr L J. 912 = 17 Ind. Cas. 1003.**

(1365-*a*)—S. 204—*See* No. 2507, *infra.*

(1366)—Ss. 204, 218—*See* FALSE EVIDENCE, 20 A. 307 = A.W.N 1898, 52.

Penal Code (Act XLV of 1860)—*continued.*

——S. 205.

See CHEATING.

See FALSE PERSONATION.

(1367)—S. 205—*See* BOM. ACT III OF 1852, Rat. Un. Cr. C. 59.

——S. 206.

(1368)—*S.* 206—*Fraudulent removal or concealment of property—Assignment of decree under attachment.—Held*, that the assignment, by the decree-holder, of a decree obtained upon the basis of a debt, which is under attachment, does not *per se* amount to the commission of the offence defined in s. 206, inasmuch as such assignment cannot affect the rights of the attaching creditors. RAM NARAIN v. JOKHI RAM, **3 A.L.J. 1 = A.W.N. 1906, 26 = 3 Cr.L.J. 92.**

(1369)—*S.* 206—*Fraudulent removal of property to prevent seizure in executian of decree—Removal of crops under attachment under Public Demands Recovery Act* (I *of* 1895) (*B.C.*).—A certificate issued under the Public Demands Recovery Act (I of 1895 B.C.) has the force and effect of a decree of a Civil Court, as regards the remedies for enforcing the same, and money under such certificate must be regarded as money due under a decree of a Civil Court, and cannot be regarded as forfeiture or fine. A removal of crops under attachment, in executiou of such certificate, amounts to an offence punishable under s. 206, Penal Code. SUNDER DASADH v. SITAL MAHTO, **28 C. 217 = 5 C.W.N. 291.**

(1370)—*S.* 206—*Offence under—Sale—Valuable consideration.*—In an offence under s. 206, the accused is not entitled to be acquitted on the assertion of the vendees that the transactions were for valuable consideration and not fraudulent. But the question whether the alienations were real or colourable, depends not merely on such assertions, but on the whole facts including the existence of the old debt, the absence of transfer of possession or payment of rent, the presence or absence of other signs of fraud. QUEEN-EMPRESS v. VAJIRAM, **16 B. 414.**

(1371)—*S.* 206—*Offence under the section.*—To bring an offence within s. 206, there must be a fraudulent removal, sale, or transfer of property, or of some interest therein, intending thereby to prevent that property from being taken as a forfeiture or in satisfaction of a fine. *In re* BALMOKAND BROJOBASI, **18 W.R. Cr. 65.**

(1372)—S. 206—*See* BEN. ACT VIII OF 1869, 10 W.R. Cr. 46 = 2 B.L.R.S.N. 4.

(1373)—*Ss.* 206, 406—*Substitution of inferior article—Attachment by Collector for arrears of revenue.*—Where the accused who were entrusted with articles distrained for arrears of land revenue, produced inferior articles of the same description on the date of sale, *hela* that a conviction under s. 206 of the Penal Code was wrong (1) since the distraint had already been made and (2) since the distraint of property by a Collector was neither a forfeiture, the rights of the owner being only held in abeyance by such distraint, nor effected under a sentence pronounced by a Court of Justice or other competent authority. EMPRESS v. MURLI, **A.W.N. 1888, 237.**

——S. 209.

(1374)—*S.* 209—*Applicability.*—S. 209 of the Penal Code is not limited to cases where the whole claim made by the accused is false. It applies even where a part of the claim is false. QUEEN-EMPRESS v. BULAKI RAM. **A.W.N. 1890, 1.**

(1375)—*S.* 209—*Preferring false claim.*—In order to establish an offence under s. 209, I.P.C., it is essential to prove that the claim made is one which the person making it knows to be false, and it is not sufficient to show that the claim is one which he believes or has reason to believe to be false or does not believe to be a true claim. BAISAKHI v. EMPRESS, **38 P. R. 1888, Cr.**

(1376)—S. 209—*See* CRIM. PRO. CODE, 1898, ss. 426, 439, 440, 476, A.W.N. 1882, 92.

(1377)—S. 209—*See* Nos. 1277, 1278 and 1279 *supra.*

(1378)—*Ss.* 209 *and* 210—*Fraudulent execution of satsified decree, when such satisfaction is not certified—Civ. Pro. Code. s.* 258,—A Criminal Court is competent to convict a person for fraudulently causing, or attempting to cause, a decree to be executed after it has been satisfied, although the payment in satisfaction of the decree has not been duly certified as is required by s. 258, Civ. Pro. Code. QUEEN EMPRESS v. PILLALA, **9 M. 101 = 1 Weir 183 = 1 Weir 717.** [*R.*, 16 C.L.J. 174 = 16 C.W.N. 923 = 13 Ind. Cas. 63, U.B.R. 1897—1901, Vol. I, 278.]

(1379)—*Ss.* 209 *and* 210—*Applying for execution of decree.*—A person applying for the execution of a decree which has already been executed, is guilty not under s. 209, but under s. 210 of the Penal Code. QUEEN v. BEEGUN MAHTOON, **12 W.R. Cr. 37.**

——S. 210.

(1380)—*S.* 210 — *Fraudulently executing decree after it has been satisfied—Civ. Pro. Code (Act* XIV *of* 1882), *ss.* 258 *and* 643—" *Satisfied* " *meaning of the word.*—The words "after it has been satisfied" in s. 210 of the Code indicate the fact of the satisfaction of the decree. The fact that the satisfaction of the decree is of such a nature, that the Court executing it could not recognize it, would not take the case out of the purview of the section. MADHUB CHUNDER MOZUMDAR v. NOVODEEP CHUNDER PUNDIT, **16 C. 126** [*R.*, 16 C.W.N. 923 = 13 Ind. Cas. 63.]

(1381)—*S.* 210—" *Satisfied,*" *meaning of.*—In construing s. 210, I.P.C., it is necessary to attach to the word "satisfied" its ordinary meaning, and not to understand it as referring

Penal Code (Act XLV of 1860)—*continued.*

only to decrees, the satisfaction of which has been certified. QUEEN-EMPRESS v. BAPUJI DAYARAM, **10 B. 288.**

(1382)—*S.* 210—*Illegal execution of satisfied decree—Commitment—Procedure.* — Where a District Munsiff sent up to the Joint Magistrate, under s. 643, Civ. Pro. Code, 1882, a person, for having taken out a warrant in execution of a decree which had already been satisfied out of Court, *held*, that the commitment to the Magistrate was legal, notwithstanding the failure to comply with the provisions of s. 258, Civ. Pro. Code, 1882, *i.e.*, the omission to certify the payment to the Court. Although a Judge could not recognise a payment in execution of a decree out of Court unless it is certified, so as to rule that the execution was illegal, yet he would not be prevented from investigating into the question whether the facts brought the case within s. 210 of the Penal Code. QUEEN v. MUTTURAMAN CHETTI, **4 M. 325.** [*R.*, 10 B. 288, 16 C.L.J. 174=16 C.W.N. 923=13 Ind. Cas. 63.]

(1383)—*S.* 20—*Illegal execution of satisfied decree.*—If a decree-holder obtains satisfaction of a decree, but fails to certify it under s. 258, Civ. Pro. Code, 1882, and then proceeds to take out execution of the same decree, he is clearly liable to a prosecution, under s. 210, I.P.C. MUNSHI RAM v. DERA MUL, **U.B.R. 1897—1901, Vol. I, 278.** (9 M. 101, 10 B. 288, *F.*)

(1384)—*S.* 210, *offence under—Fraudulent decree.*—An offence is committed under s. 210 of the I.P.C., when the decree is fraudulently obtained; it, therefore, makes no difference whether the decree alleged to be fraudulent has, or has not, been subsequently set aside by the parties, against whom it was made. The fact that the decree has not been set aside might be evidence to prove that there was no fraud, but that fact cannot be, in any way, a bar to the prosecution. Also, even had the decree been set aside by a Civil Court on the ground of fraud, that fact would not have been evidence in the Criminal Court of the existence of fraud. EMPEROR v. MOLLA FUZLA KARIM, **33 C. 193=3 Cr. L.J. 365.** [*F.*, 5 C. L.J. 176: *R.*, 35 C. 133; *D.*, 2 M.L.T. 298=11 C.W.N. 568=34 C. 551=5 Cr.L J. 398=5 C.L. J. 508, F.B.]

(1385)—*S.* 210 — *Fraudulently causing a decree to be executed.*—The decree-holder held an *ex parte* decree against two persons. He made an agreement with one of them, acknowledging receipt of half the decree money, and admitting that he had no further claim against him. Subsequently he applied for execution of the decree as against the other judgment-debtor, and, in the application, he stated that nothing whatever had been paid in satisfaction of the decree. The Court issued notices to both the judgment-debtors, calling upon them to show cause why the decree should not be executed. Notice was not served on the judgment-debtor with whom the aforesaid agreement was entered into, it being reported that he was dead. On the application of the other judgment-debtor, the *ex parte* decree was set aside and the case was re-tried. The decree-holder was prosecuted and convicted under s. 210 of the Indian Penal Code. *Held*, that the conviction could not be maintained, as the execution of the decree could not begin until the judgment-debtor had appeared, and had either made no objection or had made an objection which had been formally overruled. The decree-holder did not cause the decree to be executed. The only result of his application was the issue of a notice calling upon the judgment-debtor to show cause why the decree should not be executed. NAURANG MAL v. EMPEROR, **88 P.L.R. 1902=13 P.R. 1902, Cr.** (23 C. 971, *F.*)

(1386)—*S.* 210—*Fraudulently executing a satisfied decree.*—S. 258, Civ. Pro. Code, is no bar to its being found by a Criminal Court that a decree which is sought to be executed has been satisfied by a payment out of Court and not certified to the Court whose duty it was to execute the decree. LALU v. EMPRESS, **7 P.R. 1885, Cr.** (83 P.R. 1884, F.B., *R.*)

(1387)—S. 210—*Fraudulent execution of decree—Application for sanction to prosecute.*—The accused applied for execution of a decree, without mentioning in his application the receipt of a certain sum of money admittedly paid to him by judgment-debtor three days previous to the application. The Court executing the decree sanctioned prosecution of the decree-holder for an offence under s. 210, Penal Code. It was contended that the sanction should be revoked, for (1) the sum of money was only made over to him as deposit, (2) the warrant applied for was never in fact issued and the judgment-debtor suffered no loss and was put to no disgrace and the interests of justice did not require a prosecution, and (3) in any case there was no completed offence under s. 210, I.P.C. *Held*, that the sanction was properly granted. The Chief Court declined to consider the points raised on behalf of the decree-holder. CHIMAN LAL v. GHULAM MOHY-UD-DIN, **59 P.L.R. 1911=12 Cr. L.J. 189=10 Ind. Cas. 646.**

(1388)—*S.* 210—*Decree-holder realising more than what is due to him—Duty of executing Court to find out the amount due.*—*Held*, that, where a decree-holder draws the executing Court's attention to the final decre both in the heading and at the foot of his application for execution, but misdescribes its precise terms, he cannot be made criminally liable under s. 210, I.P.C., for such a mistake, particularly where the executing Court fails in its duty of verifying the amount due to him in terms of the decree sought to be executed. DAYA RAM v. CROWN, **11 P.W.R. 1914, Cr.=23 Ind. Cas. 471=15 Cr. L.J. 263=64 P.L.R. 1914.**

(1389)—S. 210—*See* SANCTION TO PROSECUTE—CONDITIONS REQUISITE FOR GRANT OF SANCTION, ETC., Rat. Un. Cr. C. 374=Cr. Rg. 22 of 1888.

Penal Code (Act XLV of 1860)—*continued.*

(1390)—S. 210—*See* SANCTION TO PROSECUTE—REVOCATION OF SANCTION, 23 C. 971.

(1391)—S. 210—*See* Nos. 1280, 1281, 1310, 1378 and 1379, *supra.*

(1392)—Ss. 210, 202, 176—*See* CRIM. PRO. CODE, 1898, ss. 403, 235, 10 C.W.N. 518 = 3 Cr. L.J. 388.

—— **S. 211.**

See CRIM. PRO. CODE 1898, ss. 195, 476.

See FALSE CHARGE.

See PENAL CODE, s. 182.

See SANCTION TO PROSECUTE.

(1393)—*S.* 211—*Scope of the section.*—S. 211 of the Penal Code contemplates a charge which is indivisible in its nature; to judge whether a complaint, part of which is true and part of which is false, falls under the section the nature of the complaint or charge made by the accused has to be considered; in other words, whether the complaint is substantially true or whether it is substantially false; no precise rule or principle can be laid down in respect of the question, and each case must depend upon its own circumstances. GIRDHARI NAIK v. EMPRESS, **5 C.W.N. 727.**

(1394)—*S.* 211—*Offence under, what constitutes.*—It is not necessary that any criminal proceedings should be taken on a complaint, in order to prosecute the complainant under s. 211, Penal Code. It is sufficient that a false charge of an offence is made. HARDEO SINGH v. HANUMAN DAT NARAIN, **26 A. 244 F.B. = A.W.N. 1904, 10 = 1 Cr. L.J. 7.**

(1395)—*S.* 211, *offence under, what constitutes.*—To constitute an offence under the second portion of s. 211, I.P.C., it is necessary that the complaint which is alleged to constitute the false charge should have been made to a Police officer with a view to further proceedings or to a Magistrate competent to inquire into and to investigate the matter of the complaint. QUEEN EMPRESS v. RAHIMULLH, **A.W.N. 1892, 144.**

(1396)—*S.* 211—*Report of an offence without any one being named as the perpetrator thereof.*—Before a case can be instituted under s. 211, it must be proved that the person accused instituted or caused to be instituted a criminal proceeding against a particular person with intent to cause injury to that person. Where a person, therefore, made a report to the police without naming any person, that property was stolen, and, on investigation, it was found to have been removed with the permission of his co-owner by a person against whom criminal proceedings were taken, but who was acquitted, *held,* that the person making the report was not guilty of the offence under s. 211, I.P.C., there being no proof of his intention to injure that person. NIAZ ALI v. EMPEROR, **4 A.L.J. 361 = A.W.N. 1907, 149 = 5 Cr. L.J. 396.**

(1397)—*S.* 211—*False charge made to a Village Magistrate.*—Where a person makes a false accusation of murder to a Village Magistrate, who, under s. 13, Reg. XI of 1816, has authority to arrest any person whom he suspects of having committed the murder of a person whose body is found within his jurisdiction, such an accusation is a "charge" within the meaning of s. 211, even though it does not amount to the institution of criminal proceedings and even though no criminal proceedings follow it, owing to the police, on investigation, referring the case as false. CHENNA MALLI GOWDA v. EMPEROR, **27 M. 129 = 1 Weir 193.**

(1398)—*S.* 211—*Accused having been a witness in previous criminal proceedings.*—The fact that the accused was a witness in the previous criminal proceedings does not render s. 211 of the Penal Code inapplicable. JOGRAJ DAI v. MEHNDI KHAN, **A.W.N. 1882, 84.**

(1399)—*S.* 211—*Prosecution under s.* 211, *after dismissal of the complaint.*—Although a person should not be prosecuted under s. 211, until he has had the opportunity of establishing the truth of his complaint, yet, as long as he has the opportunity which the Code gives him and the dismissal of the complaint is only after hearing and taking such steps as are provided by the Code, it cannot be said that he has not been given an opportunity of establishing the truth of his complaint. SURJYA HARIANI v. KING-EMPEROR, **6 C.W.N. 295.** (20 C. 474, 6 C. 308, *R*.) [*R.*, 2 P.R. 1907 = 5 Cr. L.J. 491 = 18 P.W.R. 1907.]

(1400)—*S* 211—*False charge, prosecution for—Opportunity to complainant to prove his case.*—A person should not be ordered to be prosecuted under s. 211, unless he is given an opportunity of proving his case. Where a person filed a complaint before a Court which dismissed it on receiving a report from the police to the effect that the complaint was false, and without taking any evidence, he could not be prosecuted under s. 211. EMPEROR v. TULA, **29 A. 587 = A.W.N. 1907, 193 = 4 A.L.J. 471 = 6 Cr.L.J. 42.** (8 A. 38, 15 A. 336, *F.*) [*R.*, 30 A. 52 = 4 A. L.J. 790 = A.W.N. 1907, 288 = 3 Cr. L.J. 396; 5 Bur. L.J. 129 = 13 Cr.L.J. 578 = 15 Ind. Cas. 994.]

(1401)—*S.* 211—*Opportunity to prove truth of complaint.* — Before charging a person with having committed an offence under the above section, opportunity of proving the truth of the complaint made by him should be given to him. Such an opportunity should be given to him before the Magistrate and not before the police. QUEEN v. ABBAS ALI, **S.C. 94 Oudh.**

(1402)—*S.* 211—*Opportunity of substantiating case.*—Where it is intended to prosecute any person under s. 211 of the Indian Penal Code, such person ought to be given an opportunity of substantiating, if he can, the charge which he has made before his prosecution is ordered. EMPEROR v SHEO GHULAM, **A.W.N. 1907, 268 = 6 Cr.L.J. 340**

(1403)—*S.* 211—*False charge — Order for prosecution, when to be made—Court's discretion.*—It is not in every case that a Magistrate

Penal Code (Act XLV of 1860)—*continued.*

considers to be false that he should direct a prosecution under s. 211 of the Code. Each case must be judged by its own facts. EMPEROR v. GOPAL BARIK, 34 C. 42=11 C.W.N. 125=4 C .L J. 460. [*R.*, 37 C. 52=5 Ind. Cas. 62=14 C.W.N. 132= 11 Cr. L.J. 45.]

(1404)—*S. 211—False information to Police.* —The offence of laying false information to the Police falls under the first paragraph of S. 211, Penal Code. BARKATULLAH v. SADHO KALWAR, 10 A.L.J. 429=13 Cr. L J. 855=17 Ind. Cas. 791.

(1405)—*S. 211 — Laying false information before Police—Duty of prosecution— Onus of proof—Elements necessary to be proved—Failure of defence to examine witness, effect of.*— Where the petitioner was convicted under s. 211 of the Penal Code of having laid a false information of theft before the police, and the petitioner's case was that he had heard from his wife that the persons named in the information had disappeared and the properties named therein were missing and his information was based on this statement of the wife, and prosecution did not prove that there was no such statement by the wife who was not examined as a witness for the prosecution, nor did the petitioner examine her as a witness on his side: *Held*, that the duty of the prosecution in a case under s. 211, I.P.C., is to prove by satisfactory evidence that the charge was wilfully false to the knowledge of the maker of the charge. That it is for the prosecution to establish their case, and if they fail to supply that proof which is required to secure the conviction of the accused, the failure on the part of the latter to examine any particular witness or witnesses will not imply the guilt of the accused. That the case against the petitioner being that no theft took place, the obligation of proving it rested on the prosecution. In the present case the prosecution not having established that there was, as a matter of fact, no theft and the petitioner knew that there was no theft, the High Court set aside the conviction and sentence under s. 211, I.P.C. MIRZA HASSAN MIRZA v. MUSST MAHBUBAN, 18 C W.N. 391=15 Cr. L J. 355=23 Ind. Cas. 723.

(1406)—*S. 211—Preferring a false charge—Communication of suspicion to Police—Whether amounts to institution of a criminal proceeding.* —The mere communication of suspicion to the Police on which an inquiry may be initiated does not amount to the institution of a criminal proceeding within the meaning of s. 211, Penal Code. SWAMINATHA THEVAN v. EMPEROR, 13 Cr. L J. 303=14 Ind. Cas 767=1912 M.W.N 1123.

(1407)—*S. 211—Preferring false complaint before police—Subsequent filing of similar complaint before a Magistrate — Institution of prosecution under s. 211 against complainant by the accused after initiation of Magisterial proceedings by the former—Sanction to prosecute—Necessity to obtain—S. 195, Crim. Pro. Code.*— P complained to the Police at M that B had possession of a pony stolen from him. The Police took cognizance of an offence of theft against B, but on enquiry reported the case as false. Before the enquiry by the Police at M was finished, P preferred a complaint of an offence under s. 411, I.P.C., against B in the Sub-Divisional Magistrate's Court at D. B was discharged by the Magistrate at D. While the proceedings were pending before the Sub-Divisional Magistrate at D, B preferred a complaint against P under ss. 211 and 384, I.P.C., before the Magistrate at M without previously obtaining the sanction of the Sub-Divisional Magistrate at D. *Held*, that the sanction of the Sub-Divisional Magistrate at D was necessary, when a prosecution under s. 211, I.P.C., is instituted after Magisterial proceedings have followed police proceedings in the same matter as in the present case. PO HLAING v. BAE, 6 L.B.R. 506=13 Cr. L J. 565=15 Ind. Cas 981 =5 Bur. L.T. 111. (3 C.W.N. 33, *R.*)

(1408.—*S. 211—Sanction to prosecute—Inquiry in granting sanction—Report of Police—Magistrate—Crim. Pro. Code (Act V of 1898), ss. 201—203.*—Before granting any sanction under s. 211, Penal Code, the Magistrate ought to observe all the formalities prescribed in ss. 201—203, Crim. Pro. Code. In other words, he should examine the complainant, and then afterwards he might refer the matter to the police and when the police report is received by him, then he may determine whether the complaint is true or false. That gives him jurisdiction to exercise his discretion and determine the question as to the truth or otherwise of the complaint. There is nothing in the Code of Criminal Procedure which compels a Magistrate in express terms to examine any or all witnesses whom the complainant wishes to adduce, before dismissing a complaint and granting sanction under s. 211, Penal Code. It may be contrary to justice to do that, but whether it is so or not must depend on the circumstances of each case. *In re* RACHAPPA TIPPANNA, 12 Bom L.R. 229 =5 Ind. Cas. 971=11 Cr. L J. 338.

(1409)—*S. 211—Telegram sent—No complaint —No prosecution can be ordered—Crim. Pro. Code (Act V of 1898), s. 193—Hearsay evidence.* —A Chaprasi sent a telegram to the Collector, saying that the Tahsildar and certain others in his absence entered his house and forcibly inoculated his wife and children. The Collector sent the telegram to a Magistrate who examined the Chaprasi and certain witnesses, who stated that they had heard that the complainant's house was forcibly entered into. Finding the statement false, he directed the prosecution of the complainant and his witnesses. *Held* that the complaint was no complaint in law, and a prosecution could not be maintained against the Chaprasi under s. 211, Penal Code. A hearsay statement should not be recorded by a Magistrate while recording the deposition of a witness. If such a statement is recorded, it cannot be made the subject of prosecution under s. 193, Penal Code. CHEDI v. KING-EMPEROR, 7 A L J 618=11 Cr. L J 351=6 Ind. Cas. 890.

Penal Code (Act XLV of 1860)—*continued.*

(1410)—*S.* 211—*Instituting criminal proceedings—Statement under s.* 162, *Crim. Pro. Code.*—A statement made under s. 162, Crim. Pro. Code, cannot be made the basis of a prosecution for an offence under s. 211, I.P.C., when the accused made his statement, the law had already been set in motion, and the proceedings cannot be said to have been instituted by the statement made by the accused under s. 162, Crim. Pro. Code. *In re* KRISHNA BAIPADITHAYA, **20 M. L.J. 132 = 5 Ind. Cas. 908 = 11 Cr. L.J. 286 = 8 M.L.T. 87.** (31 M. 506, *F.*)

(1411)—*S.* 211—*Falsely charging a person with an offence—Application for leave to inspect record— Code of Criminal Procedure* (*V of* 1898), *s.* 476.—The answering of questions put to a person by a Magistrate in the enquiry which he has no option but to answer cannot be held to constitute a charge within the meaning of s. 211, Penal Code. The words "falsely charges" in s. 211 must be construed along with the words which speak of the institution of proceedings in the earlier part of the section, and the test is whether a person who made the statement which is alleged to constitute the charge did so with the intention and object of setting the criminal law in motion against the person against whom the statement is directed. ZORAWAR SINGH v. KING-EMPEROR, 8 **A.L.J. 1106 = 12 Cr. L.J. 433 = 11 Ind. Cas. 617.**

(1412)—*S.* 211—*Sentence.*—Where a person is convicted under the second clause of s. 211, I.P.C., he should be sentenced to undergo a term of imprisonment, and not merely to payment of fine. REG v. RAMA *bin* RABHAJI, **1 B.H.C. 34.**

(1413)—*S.* 211—*Revision—Finding of fact—High Court's power to interfere.*—Application for revision in criminal cases stand on a fundamentally different footing from appeals against appellate decrees in civil suits. In cases of the latter description, the High Court is bound by the rigid provisions of s. 100 of the Code of Civil Procedure (1908) to act on findings of fact embodied in the judgment of the lower appellate court. In criminal cases, on the other hand, there is no such statutory restriction to the exercise of jurisdiction by the High Court. As a matter of practice, the High Court does not ordinarily interfere with the conclusions of the lower appellate Court on questions of fact. But the High Court is competent to interfere with a finding of fact when the occasion requires it, and it will do so when satisfied that the finding is manifestly erroneous and a miscarriage of justice would result from it if left uncorrected. In a prosecution under s. 211, Penal Code, two principles are to be kept in view; namely, *first*, that failure on the part of a complainant to establish the truth of his allegation does not by any means justify the inference that the complaint was false, and, *secondly*, that, to secure a conviction in this class of cases, it must be established beyond reasonable doubt that the circumstances are not merely consistent with the guilt of the accused but entirely inconsistent with his innocence. RAM PROSAD v. KING-EMPEROR, **16 C.L.J. 453 = 17 Ind. Cas. 993 = 13 Cr. L.J. 897 = 17 C.W.N. 379.**

(1414)—S. 211—*See* ABETMENT, 9 B.L.R. App. 16.

(1415)—S. 211—*See* ACT XIII OF 1859, s. 1, 2 L.B.R. 300.

(1416)—S. 211—*See* CHARGE TO JURY—MISDIRECTION, 1 C.W.N. 301.

(1417)—S. 211— *See* COMPENSATION—GENERAL, 29 C. 479, 30 P.W.R. 1907, Cr. = 7 Cr.L.J. 231, 6 P.R. 1904, Cr. F.B.

(1418)— S. 211—*See* COMPLAINT— DISMISSAL OF COMPLAINT, 13 W.R. Cr. 37.

(1419)—S. 211—*See* COMPOUNDING OFFENCE, 11 C. 79.

(1420)—S. 211—*See* CONTEMPT OF COURT, 3 P.R. 1877, Cr.

(1421)—S. 211—*See* CRIM. PRO. CODE, 1898, s. 4, 15 C.W.N. 1051 = 12 Ind. Cas. 303 = 12 Cr. L J. 535.

(1422)—S. 211—Information before Police reported false—Informant called upon by Magistrate to prove his case—Order for prosecution under s. 211, I.P.C.—Legality—*See* CRIM. PRO. CODE, 1898, ss. 4 (*h*), 154, 159, 173, 202, 476, 17 C.W.N. 824 = 14 Cr.L.J. 287 = 20 Ind. Cas. 211.

(1423)—S. 211—*See* CRIM. PRO. CODE, 1898, ss. 4, 195, 30 C. 415.

(1424)—S. 211—Acquittal of accused by one Magistrate—Order for prosecution of complainant by another Magistrate.—*See* CRIM. PRO. CODE, 1898, ss. 4 (*h*), 195, 202, 203, 253, 476, 17 C.W.N. 290 = 14 Cr. L.J. 57 = 18 Ind. Cas. 345 = 40 C. 444.

(1425)—S. 211—*See* CRIM. PRO. CODE, 1898, ss. 154, 157, 1914 M.W.N. 382 = 15 Cr.L.J. 622 = 25 Ind. Cas. 630.

(1426)—S. 211—*See* CRIM. PRO. CODE, 1898, s. 190, 14 C. 707, F.B.

(1427)—S. 211—*See* CRIM. PRO. CODE, 1898, ss. 200 and 202, 10 C.W.N. 773 = 3 Cr.L.J. 471.

(1428)—S. 211— Prosecution under, sanctioned by Assistant Superintendent of Police—Station House-officer preparing charge-sheet which was presented to Magistrate by a constable —Order directing constable to pay compensation —Legality— *See* CRIM. PRO. CODE, 1898, s. 250, 10 M.L.T. 191 = 21 M.L.J. 844 = 12 Cr., L.J. 482.

(1429)—S. 211—False charge— Vexatious charge — Compensation to accused — Order sanctioning prosecution of complainant for false charge.—*See* CRIM. PRO. CODE, 1898, s. 250, 15 Bom. L R. 49 = 2 Bom. Cr. C. 5 = 18 Ind. Cas. 411 = 14 Cr.L.J. 75 = 36 B. 376.

(1430)—S. 211—*See* CRIMINAL PROCEEDINGS, 6 M.L.T. 133.

(1431)—S. 211—*See* DISMISSAL OF COMPLAINT, 28 C. 251.

Penal Code (Act XLV of 1860)—*continued.*

(1432)—S. 211—*See* MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION, L.B.R. 1893—1900, 190.

(1433)—S. 211—*See* MALICIOUS PROSECUTION, 3 M. 6=5 Ind. Jur. 467.

(1434)—S. 211—*See* NOTICE, 30 A. 52=A.W.N. 1907, 288=4 A.L.J. 790=6 Cr. L.J. 396.

(1435)—S. 211—*See* Nos. 215, 475, 521, 761, 984, 986 to 1002, 1282, 1283, 1284, and 1299, *supra.*

(1436)—*Ss.* 211 *and* 182—*Making false charge—Opportunity to prove charge to be given to complainant.*—A person alleged to have deliberately made a false charge to the police, on the case being reported to be false, was under the order of the District Magistrate, tried and convicted summarily under s. 182, Penal Code. *Held*, that an opportunity should have been offered to the applicant of either supporting his charge of theft or abandoning it, before an order was passed for his prosecution, and that the prosecution, if instituted at all, should have been instituted under s. 211, Penal Code, not under s. 182, as the provisions of the latter section are intended to apply only to cases in which the intimation given falls short of a false charge of an offence, and as s. 211 only applies where a false charge is actually made. Magistrates ought not to try summarily any case in which there is *prima facie* reason to suppose at the outset that the circumstances of the case are such that the accused, if convicted, cannot be adequately punished under the summary procedure. EMPRESS v. GANGARAM SONAR, **7 C.P.L.R. Cr. 6.** [*R.*, 8 Cr. L.J. 349; *D.*, 4 N.L.R. 136.]

(1437)—*Ss.* 211 *and* 182—*Search on suspicion no offence—Sanction for offence under s.* 182, *I.P.C.*—Where the police were told that they should search certain houses because there was reason to suspect the conduct of the owners of those houses, it does not amount to a charge within the meaning of s. 211, I.P.C. Prosecution under s. 182, I.P.C., must be instituted on the sanction or the complaint of the public servant to whom the false information was given. SOLAIMATHU PILLAI v. MARUNGIAH MOOPAN, **1915 M.W.N. 272.**

(1438)—Ss. 211, 182—Same facts—Charge under s. 211 in former trial—Acquittal—Subsequent proceedings on a charge under s. 182—Bar—*See* CRIM. PRO. CODE, 1898, ss. 403, 236, 235, cl. (1) & 195, 24 M.L.J. 463=13 M. L. T. 360=19 Ind. Cas. 310=14 Cr.L.J. 214=36 M. 308.

(1439)—*Ss.* 211, 500—*False charge with intent to injure—Defamation—Sanction—Jurisdiction of Magistrate.*—A Magistrate cannot give himself jurisdiction to try an offence under s. 211 by treating it as one under s. 500, I.P.C. Where the offence alleged is one under s. 211, I.P.C., according to s. 195, Crim. Pro. Code, cognizance should not be taken of it without sanction. QUEEN-EMPRESS v. MI GYWET, **U.B.R. 1897—1901, Vol. I, 279.**

Penal Code (Act XLV of 1860)—*continued.*

——S. 212.

(1440)—*S.* 212—*Gist of the offence.*—In order to constitute an offence under s. 212, I.P.C., it must be established (1) that an offence has been committed, (2) that the person known or reasonably believed to be the offender has been harboured or concealed, and (3) that such harbouring or concealing has been done with the intention of screening that person from legal punishment. QUEEN-EMPRESS v. FATEH SINGH, **12 A. 432=A.W.N. 1890, 73.** (3 A. 279, *R*). [*Appl.*, 14 M. 400=1 Weir 195; *R. & D.*, 37 B. 658=2 Bom. Cr. C. 101=16 Bom. L.R. 694=14 Cr. L.J. 453=20 Ind. Cas. 613, U.B.R. 1892—1896, Vol. I, 196.]

(1441)—*S.* 212 — *Offence of screening an offender.*—To support a conviction under s. 212, there must be evidence of an offence committed which the accused could have intended to screen, and of harbouring or concealing the offender. CROWN v. KOLA SINGH, **21 P.R. 1867, Cr.**

——S. 213.

(1442)—*S.* 213 — *Screening an offender.*—S. 213 is applicable only when it is proved that the person screened or attempted to be screened from legal punishment has been guilty of an offence, and not when there is merely a suspicion of his having committed some offence. GIRISH MYTE v. QUEEN-EMPRESS, **23 C. 420.** (14 M. 400, *F.*) [*R.*, 37 B. 658=15 Bom. L.R. 694=2 Bom. Cr. C. 101=20 Ind. Cas. 613=14 Cr. L.J. 453.]

(1443)—S. 213—*See* SENTENCE— POWERS OF APPELLATE COURT—ENHANCEMENT, 53 P.L.R. 1905=2 Cr. L.J. 232.

(1444)— *Ss.* 213, 214—*Screening offence—Offence must be shown to have been committed—No screening where no offence committed.*—G entrusted certain jewellery to M, who pledged the same with S under circumstances which constituted such pledging the offence of criminal breach of trust. The jewellery was later on returned by S to G on the latter undertaking not to prosecute M for the offence of criminal breach of trust. M was accused of criminal breach of trust, but was acquitted. S and G were also charged with offences under ss. 213 and 214, Penal Code, in that they took and offered restitution of property in consideration of screening an offence. The trying Magistrate convicted S and G of the offences charged, on the ground that, for the purposes of the present case, M must be held guilty. On appeal: *Held*, acquitting the accused, (1) that there could be no screening of an offence, which offence was not proved to have been committed. (2) That the trying Magistrate was bound to proceed on the footing that no criminal breach of trust had been committed, since the prosecution could not make it appear that such an offence had been committed. EMPEROR v. SANALAL LALUBHAI; EMPEROR v. GORDHANDAS KESHAVALAL, **15 Bom. L R. 694=2 Bom. Cr. C. 101=20 Ind. Cas. 453=14 Cr. L.J. 453=37 B. 658.**

Penal Code (Act XLV of 1860)—*continued.*

(1445)—Ss. 213, 214, 406—*See* CRIMINAL BREACH OF TRUST, 6 C L.R. 392.

——**S. 214**

See COMPOUNDING OFFENCE.

(1446)—*S* 214, *Exception—Compounding of offences—Crim. Pro. Code* (1872), *s.* 188.—It is not competent for a Magistrate to permit the offences of cheating and fraudulent personation to be compounded. It is irregular for him, to allow his decision to be guided by anything, that appeared in some proposed bill, that has not become law, and it is his duty to interpret s. 214, I.P.C., without reference to merely contemplated legislation. RAUNAK HUSAIN v. HARBAN SINGH. **3 A 283.**

(1447)—*S.* 214—*Screening an offender from legal punishment—Proof of actual commission of an offence.*—It was not the intention of the Legislature to punish the giving of gratifications, under a delusion that an offence had been committed or that the person was guilty of such offence. The words "concealing an offence" and "screening any person from legal punishment for any offence" pre suppose the actual commission of an offence, and the guilt of the person screened. QUEEN-EMPRESS v. SAMINATHA, **14 M. 400=1 Weir 195=1 M.L.J. 163.** [*F*, 1 Weir 196; *Appl.*, 23 C. 420; *R.*, 37 B. 658=20 Ind. Cas. 613, 14 Cr. L.J. 453, 2 Bom. Cr. C. 101=15 Bom. L.R. 694, 13 Cr. L.J. 721=15 Ind. Cas. 753=6 S.L.R. 76; *D.*, U.B.R 1892—1896, Vol. I, 196.]

(1448)—*S.* 214—*Scope of the section—Offer of bribe for screening offender.*—S. 214, Penal Code, includes the offer of a bribe by a person who has committed the offence that it is desired to screen. *In re* KARUPANNAN, **1 Weir 194.**

(1449)—*S.* 214—*Proof of offence hushed up.*—A conviction under s. 214 of the Penal Code cannot be upheld in the absence of proof of the theft for the hushing up of which a bribe is alleged to have been offered. *In re* PEDDU REDDI, **1 Weir 196.**

(1450)—*S.* 214—*Offering gift or restoration of property in consideration of screening the offender.*—In the above section, the words "in consideration of that person's concealing any offence or of his screening any person from legal punishment for any offence, or of his not proceeding against any person for the purpose of bringing him to legal punishment" are applicable not only to the case of a completed offence, but also to the cases of an offence in progress, and an offence proposed but not yet commenced. SAYA PO v. QUEEN-EMPRESS, **U.B.R. 1892—1896, Vol. I, 196** (14 M. 400, 3 A. 279, 12 A. 432, 11 C. 619. *R.*)

(1451)—*S.* 214—*Illegal gratification—Violation of Forest Rule—Compoundable offence—Offer of money to Forest Officer—No offence.*—Where a person, who committed a compoundable offence by violating the conditions laid down by a Forest Rule, offered a sum of money to a forest subordinate who discovered the offence, as consideration for not proceeding further with the case. *Held*, that he committed no offence under s. 214, I.P.C. KING EMPEROR v. KYA SONE, **6 L.B R 48=15 Ind. Cas 990=13 Cr. L J 574**

(1452)—S. 214—*See* ACT IX OF 1872, s. 23, 8 C. 24.

(1453, 1454)—S. 214—*See* Nos. 1444 and 1445, *supra.*

(1455)—Ss. 214, 161, 116—*See* ABETMENT, L.B.R 1893—1900, 338.

——**S. 215.**

(1456)—*S.* 215—*Scope of.*—The words "takes or agrees or consents to take" in s 215, imply that the person taking the gratification and the person giving it have agreed, not only as to the object for which the gratification is to be given, but also, as to the shape or form the gratification is to take. An attempt to take a gratification within the meaning of s. 215 necessarily includes the idea of a concurrence of wills between the giver and the taker; with this much superadded thereto, that some act has been done preliminary to the act of taking. In other words, an attempt is a stage in the commission of the offence which is intermediate between the agreement or consent and the actual taking. QUEEN-EMPRESS v. CHITTAR, **20 A. 389=A. W.N. 1898, 84.** [*R.*, 1 Cr. L.J. 1116=2 L.B.R. 310.]

(1457)—*S.* 215—*Scope and application of.*—S. 215 was never intended to apply to the actual thief, but to some one who, being in league with the thief, receives some gratification on account of helping the owner to recover the stolen property, without at the same time using all the means in his power to cause the thief to be apprehended and convicted of the offence. QUEEN-EMPRESS v. MUHAMMAD ALI. **23 A. 81=A.W.N. 1900, 205.** [*R.*, 7 Cr. L J. 464=14 Bur. L.R. 67=4 L.B.R. 199, 12 Cr. L.J. 72=9 Ind. Cas. 421, 15 Cr. L.J. 471=24 Ind. Cas. 351=26 M.L.J. 598.]

(1458)—*S.* 215—*Scope and application of.*—S. 215, Penal Code, is not applicable to the case of the offender himself taking gratification. *In re* KUDUMBAM **1 Weir 196.**

(1459)—*S.* 215—*Money paid under unlawful agreement, suit to recover—Contract Act*, 1872, s. 65—*See* ARUR SINGH v. KHUDA BAKSH. **66 P.R. 1895, Cr.**

(1460)—*S.* 215—*Cow lost from grazing ground—Accused taking money from complainant and promising to return cow—Failure to do so—Applicability of s.* 215.—Complainant's cow was lost from the grazing ground. Some days later he heard that accused had it. He went to the accused and the accused took Rs 12 from complainant promising to return the cow in 10 days. He did not, however, keep his promise and subsequently refused to return either the cow or the money. There was no evidence that the cow was taken out of the complainant's possession by means of an offence. *Held* that

Penal Code (Act XLV of 1860)—*continued.*

s. 215, Penal Code, did not apply merely because the accused took money from the complainant and failed to carry out his promise. SHARFA v. CROWN, 9 **P.R. 1915, Cr.** (6 Ind. Cas. 250, *F.*)

(1461)—S. 215—*See* ATTEMPT, 2 L.B.R. 310.

(1462) S 215—*See* No. 227, *supra* and *see* Nos. 2458 to 2461 and 2508, *infra.*

(1463)—*Ss.* 215, 379—*Double conviction and sentence under — Not sustainable.*—S. 215, Penal Code, is not intended to apply to the thief himself; and where a man is convicted of the theft, he ought not to be also convicted under s. 215 of taking a gratification to restore the stolen property. KING-EMPEROR v. NGA NYAN U. **U.B.R. 1914, 4th Qr., 43.** (4 L.B.R. 199, 1 Weir 196, 23 A. 81, *F.*; 1 Cox 36, *R.*)

(1464)—Ss. 215, 379 — *See* JOINDER OF CHARGES—WHEN LEGAL, 2 L.B.R. 23.

(1465)—*Ss.* 215, 379, 411—*Scope of s.* 215—*S.* 215 *not applicable to thief—Accused convicted in the alternative for offence under s.* 379 *or s.* 411, *I.P.C.—Conviction under s.* 215, *I.P.C.—Legality—Close association between the accused —One trial for offences under ss.* 215, 379, 411, *I.P.C.—No misjoinder of charges—S.* 239, *Crim. Pro. Code.*—S. 215, I.P.C., is not intended to apply to the actual thief, but to some one, who, being in league with the thief, receives some gratification on account of helping the owner to recover the stolen property without at the same time using all the means in his power to cause the thief to be apprehended and convicted. (23 A. 81, *F.*) Where the principle of the above ruling in 23 A. 81 would apply where the receiver of the gratification was also in dishonest possession of the stolen property under s. 411, I.P.C., but not the actual thief, is open to argument. But where the accused is convicted in the alternative of an offence under s. 379 or s. 411, I.P.C., the spirit of the ruling in 23 A. 81 should apply and his conviction under s. 215 should be set aside. Where the evidence of close association between the accused persons justifies the inference that the theft and retention of the stolen properties and their restoration on payment were all part of one plot and one transaction within the meaning of s. 239, Crim. Pro. Code, the trial of the accused for charges under ss. 215, 379 and 411, I.P.C., is not bad for misjoinder. *In re* NALLI VEERA THEVAN, **26 M.L.J. 598 = 15 Cr. L.J. 471 = 24 Ind Cas. 351.**

(1466)—*Ss.* 215, 420—*Deprived of moveable property—Necessary ingredient for conviction under s.* 215—*Cattle disappearing—No presumption as to its being stolen—Cheating—Dishonest motives must be present at the time of taking money.*—There can be no conviction for an offence under s. 215 of the Penal Code, until it is proved that a person has been deprived of moveable property by an offence punishable under the Code. Where a buffalo has disappeared, there is no presumption that an offence has been committed in respect of it. In order to constitute an offence under s. 420, Penal Code, the dishonest intent must either precede or accompany the act of dishonesty. HEMRAJ v. EMPEROR, **6 Ind. Cas. 250 = 11 Cr. L.J. 295.**

——S. 216.

(1467)—*S.* 216—*Harbouring or concealing—"Order a person to be apprehended for an offence," meaning of—"Punishable," meaning of.*—It is an offence under s. 216, Penal Code, to harbour or conceal a person for whose apprehension an order has been passed by a public servant, even when such apprehension is sought to be made not for the purpose of trying him for an offence that he may have committed, but for enforcing a punishment already inflicted on him for having committed the offence. The expression "order a person to be apprehended for an offence" in s. 216, Penal Code, means only that the offence is the *causa sine quo non* of the apprehension. The word "punishable" in the latter part of the section is used merely for the purpose of describing particular classes of offences, in relation to which the punishment indicated in the section is to be inflicted; and it does not indicate that in a particular case the offence must not have been punished. SATANJI KOER v. KING-EMPEROR, **11 C L.J. 109 = 5 Ind. Cas 311 = 11 Cr.L.J. 95.**

(1468)—*S.* 216—*Harbouring a dacoit.*—The mere fact of harbouring a person who has committed dacoity is not an offence under the above section. In order to constitute an offence, it must be done with the intention of preventing the apprehension of such person. NGA MYAT GYI v. QUEEN-EMPRESS, **L.B.R. 1872 -1892, 174.**

(1469) — *S.* 216 — *Harbouring offender — Offence.*—The word "harbour" in s. 216, Penal Code, must be construed liberally. It includes a person who harbours the offender in a house belonging to a third person and who visits him there. EMPEROR v. BHUJABALI AKAPPA GORWADI, **14 Bom. L.R. 583 = 16 Ind. Cas. 509 = 13 Cr. L J. 701 = 1 Bom. Cr. C 151.**

(1470) — *S.* 216 — *Harbouring proclaimed offender—Criminal Intelligence Gazette, publication in, whether sufficient notice — Offender adopting false name—Harbourer misdescribing offender as his relation—Knowledge.*—In order to establish an offence under s 216, Penal Code, it must be proved that a public servant in the exercise of his lawful authority ordered a certain person to be apprehended for an offence and that the person charged with harbouring him did so, knowing of such order with the intention of preventing his apprehension. Such knowledge cannot be presumed from the mere publication of the name of the offender in the *Criminal Intelligence Gazette*, nor can it be inferred from the offender's adopting a false name and the harbourer's misdescribing him as his relation. BALWANT SINGH v. EMPEROR, **15 Cr. L J. 349 = 23 Ind. Cas 701.**

Penal Code (Act XLV of 1860)—*continued.*

—— S. 216-A.

(1471)—*S.* 216-*A*—*Gist of offence.*—In order to justify a conviction under s. 216-A, I.P.C., there must be evidence, both of knowledge and of intention. QUEEN-EMPRESS v. SAKHARAM, **Rat. Un. Cr. C. 775 = Cr. Rg. 39 of 1895.**

—— S. 216-B.

(1472)—*S.* 216-*B*—*Scope.*—The words at the end of s. 216-B, I.P.C., "or assisting a person in any way to evade apprehension" must be meant to point to some method *ejusdem generis* with those that have been specified in the earlier portion of the section. A bare lie in order to induce the police to desist in their pursuit does not fall within that category. EMPEROR v. HUSAIN BAKHSH, **25 A. 261 = A.W.N. 1903, 29.**

—— S. 217.

(1473)—*S.* 217—*Public servant disobeying any direction of law—Criminal intention to be shown.*—In order to support a conviction under s. 217, Penal Code, it is sufficient to prove that the accused has knowingly disobeyed any direction of the law as to the way in which he is to conduct himself as a public servant for the purpose of saving a person from legal punishment. But it is not necessary to show that the person intended to be saved had committed an offence or was justly liable to legal punishment. *In re* AMIRUDEEN, **1 J.G. 45.**

(1474)—*S.* 217—*Gist of offence.*—Before a person can be convicted under s. 217, I.P.C., it must be shown that there is a direction of the law as to the way in which he is to conduct himself, as such public servant, and this direction must be a direction to be found in some positive statute or some rules or regulations which are declared by statute to have the force of law. KING-EMPEROR v. RAM PRASAD, **A.W.N. 1902, 16.**

(1475)—*S.* 217—*Police officer keeping people apprehended in village — Escape.*—A police officer, who apprehends several persons at night, on suspicion that they have committed culpable homicide, and who keeps them in the village where they have been arrested after tying them together by the hands, is not guilty of an offence under s. 217, if the prisoners escape in the course of the night. CROWN v. OOTUM CHAND, **18 P.R. 1871, Cr.**

(1476)—*S.* 217—*Scope of the section—Crim. Pro. Code* (1872), ss. 89 *and* 90.—The direction of law mentioned in s. 217, Penal Code, means a positive direction of law, such as those contained in ss. 89 and 90, Crim. Pro. Code, and cannot be made to extend to the more general obligation by which every subject is bound not to stifle a criminal charge. *In the matter of* RAMINIHI NAYAR, **1 M. 266 = 1 Weir 196.**

(1477)—*S.* 217—*Proof of offence under.*—It is only necessary for a conviction under s. 217 of the Penal Code to show that the prisoner knew that the person he released was in danger of being subjected to legal punishment, and

Penal Code (Act XLV of 1860)—*continued.*

that the prisoner released such person with the intention of saving him. QUEEN v. ABDOOL JULEEL, **W.R. 1864, Cr. 5.**

(1478)—*S.* 217—*Public servant—Disobeying direction of law—Protectoin of a person from punishment.*—The accused, a Police Patel, on a complaint having been made to him that an attempt had been made to commit rape on a girl, made some investigation, prepared a *panchnama* of the scene of the offence and arrested the two persons against whom the accusation was laid. He sent them with a report to the Police station, but on the way the parties came to a settlement and all returned to the village. The complainant informed the Patel that he had no desire to continue the proceedings, whereupon the Patel tore up the *panchnama* which he had made. For this destruction, the Patel was convicted of an offence under s. 217, Penal Code. *Held,* acquitting the Patel, that it could not be fairly said that he knowingly disobeyed any direction of the law as to the way in which he should conduct himself, or that he intended or knew it to be likely that by tearing up the *panchnama* he would save any person from legal punishment. EMPEROR v. NARANBHAI BHULABHAI, **15 Bom. L.R. 578 = 2 Bom. Cr. C. 90 = 20 Ind. Cas. 601 = 14 Cr. L.J. 441.**

(1479)—S. 217—*See* CHARGE—GENERAL, 2 B. 142.

(1480)—*Ss.* 217 *and* 218—*Evidence.*—For the purpose of a conviction under s. 217 of the Code, it is sufficient that the accused has knowingly disobeyed any direction of the law as to the way in which he is to conduct himself as a public servant and that he has done this with the intention of saving a person from legal punishment. It is not further necessary to show that, in point of fact, the person so intended to be saved had committed an offence or was justly liable to legal punishment. EMPRESS v. AMIRUDDEEN, **3 C. 412 = 1 C.L.R. 483.** [*R.*, Rat. Un. Cr. C. 405, 13 Cr. L.J. 721 = 16 Ind. Cas. 753 = 6 S.L.R. 76.]

(1481)—*Ss.* 217, 411—*Police Officer retaining property found in search for theft—Property not part of stolen property—Offence—Crim. Pro. Code,* s. 523—*Failure to report.* — A Police constable, who retained for himself a piece of gold found in a search for stolen property but not proved to be part of the stolen property and failed to report his possession to his superior officers under s. 523 of the Code of Criminal Procedure, is guilty of an offence under s. 217 of the Penal Code. *In re* B. DASAPPA, **16 Cr. L J. 453 = 29 Ind. Cas. 85.** (34 I.A. 55 = 11 C. W.N. 370 = 5 C.L.J 123 = 9 Bom. L. R. 3 = 17 M.L.J. 67, P.C. = 2 M L T. 96 = 34 C. 129 = 5 Cr. L.J. 50, *F.*)

—— S 218.

(1482)—*S.* 218—*Gist of offence under.*—To support a conviction under s. 218, I.P C., it is necessary to prove that the accused believed, or had reason to believe, that the person concerned had committed an offence, though it is not

Penal Code (Act XLV of 1860)—*continued.*

necessary to prove such an offence had, as a matter of fact, been committed. Hence, where a public servant, whose duty it is to make entries in the cattle pound register, makes a false entry, knowing that a person has committed no offence, and with the intention only of obtaining money from him, the public servant cannot be convicted under s. 218. QUEEN-EMPRESS v. KRISHNAJI, **Rat. Un. Cr. C. 405 = Cr. Rg. 68 of 1888.**

(1483)—*S.* 218—*Falsification of public document* —S. 218, I.P.C., contemplates the wilful falsification of a public document with the intent thereby to cause loss or injury, and this means by the document itself or by some transaction with which it is essentially connected. QUEEN-EMPRESS v. RAMCHANDRA, **Rat. Un. Cr. C. 201.**

(1484)—*S.* 218—*Preparation of false record.* —S was charged with the preparation of a certain record, and was in the habit of preparing it from certain abstracts made and read to him by D. D made and read false abstracts, whereby an incorrect record was prepared. The Court was of opinion that D could not strictly be held to have committed the offence described in s. 218, Penal Code. He was guilty, however, of abetment of the offence described in that section, and not the less so that S had no guilty knowledge or intention in the matter. QUEEN v. BRIJ MOHAN LAL, **7 N.W.P. 134.**

(1485)—*S.* 218—*Village Munsif submitting a false calendar.*—A Village Munsif, trying a case of theft, is not bound to prepare a calendar. Therefore, a Village Munsif who submits a false calendar of a case of theft tried by him is not guilty of an offence under s. 218, Penal Code. *In re* CHINNAKANNU UDYAN, **1 Weir 197.**

(1486)—*S.* 218—*Framing of incorrect record by public servant—Elements of the offence.* —To constitute an offence under s. 218, I.P.C., it is not necessary that the incorrect document should be submitted to another person or be otherwise used by the writer. The requirements of the section are satisfied, if it is shown that the document has been prepared by a public servant, charged with its preparation, in a manner which he knows to be incorrect and with the knowledge that he is thereby likely to cause loss to the public. MEGRAJ v. EMPRESS, **13 P.R. 1881, Cr.**

(1487)—*S.* 218—*Public servant framing an incorrect record with intention to save person from punishment — Meaning of "charged"— Offence under Gambling Act — Cognizable offence—Crim. Pro. Code* (1898), *s.* 4 (1)(*n*) *and* (*f*)—"*Public officer,*" *meaning of the expression.*—The words "charged with the preparation" in s. 218, Penal Code, are not restricted to the narrow meaning of "enjoined by a special provision of law." It is sufficient to show that the document was prepared in accordance with a practice, to which it was the duty of the accused to conform. An offence under the Gambling Act, being an offence for which the District Superintendent of Police may arrest without a warrant, is a cognizable offence under s. 4 (1) (*n*) of the Code of Criminal Procedure. But the practice in gambling cases being to require a first information report, etc., just as in ordinary cognisable cases, a Sub-Inspector who prepares the first information or a special diary does not act on his own volition, but in pursuance of an order laid upon him. Where the Sub-Inspector frames a first information and special diary incorrectly in order to save certain persons from legal punishment for having committed an offence under the Gambling Act, he is liable to be convicted under s. 218, Penal Code. The words "Police Officer" in s. 4 (1) (*f*) cannot be held to mean "any and every" Police Officer. It is sufficient if the Legislature has limited the power of arrest to any particular class of Police Officers. QUEEN-EMPRESS v. DEODHAR SINGH, **27 C. 144.** [*F.*, 33 C. 649 = 10 C.W.N. 609; *R.*, 35 M. 397 = 13 Cr. L.J. 352 = 12 M.L.T. 1 = 1912 M.W.N. 549 = 14 Ind. Cas. 896 = 12 Cr. L.J. 150 = 9 Ind. Cas. 897 = 21 M.L.J. 283 = 10 M. L. T. 84 = (1911) 2 M.W.N. 327, 22 M.L. J. 490 = 1912 M.W.N. 207 = 14 Ind. Cas. 849.]

(1488)—*S.* 218—*Intentionally framing an incorrect public record by a Police Inspector— Subsequent conduct*—Bona fides *of the entry.*— Where a Police Inspector had been charged with framing an incorrect record, in that he entered in his diary that certain cartmen told him that "*they were not beaten by dacoits,*" while, in fact, they told him that "*they were beaten by dacoits,*" this, of itself, is not sufficient to sustain a conviction under s. 218, I.P.C.; but where he, without endeavouring to enquire into the truth of the said entry in his diary, destroys certain records which falsify it and *substitutes fresh note books,* his *bona fides* is open to question and he must be deemed to have framed an incorrect public record *intentionally.* RAMASWAMI IYENGAR v. EMPEROR, **1911, 2 M.W.N. 44 = 12 Cr. L J. 455 = 11 Ind. Cas. 799.**

(1489)—S. 218—*See* ACT V OF 1861, s. 29, 15 W.R. Cr. 17.

(1490)—S. 218 — Pay-sheets drawn up in Railway Offices whether a 'record'—*See* CONFESSION—GENERAL, 15 Cr. L.J. 502 = 24 Ind. Cas. 590.

(1491)—S. 218—*See* FALSE EVIDENCE, 19 A. 305 = A.W.N. 1897, 64.

(1492)—S. 218—*See* Nos. 446, 1205, 1208, 1347, 1366 and 1480, *supra*, and *see* No. 2176, *infra*.

——S. 220.

(1493)—*S.* 220—*Scope.*—Where an arrest is legal, there can be no guilty knowledge "superadded to an illegal act" such as is necessary to establish against an accused to justify a conviction under s. 220, I P.C. It is only when there has been an excess by the police officer of his legal powers of arrest that it becomes necessary to consider whether he has acted corruptly or maliciously and with the knowledge

Penal Code (Act XLV of 1860)—*continued.*

that he was "acting contrary to law." QUEEN-EMPRESS v. AMARSANG JETHA, **10 B. 506.** [*R.*, U.B.R. 1892-1896, Vol. I, 172.]

(1494)—*S.* 220—*Gist of offence.*—To justify a conviction under s. 220, I.P.C., there must be a guilty knowledge superadded to an illegal act. QUEEN-EMPRESS v. AMARSANG, **Rat. Un. Cr. C. 222.**

(1495) —*S.* 220 — *Gist of offence—Guilty knowledge.*—In order to convict a police officer of an offence under s. 220, I.P.C., the mere proof of the unlawful character of the commitment cannot raise a presumption of malice. There must also be proof of guilty knowledge, *i.e.*, knowledge of the act of confinement being contrary to law. Whether or not that knowledge exists, must be inferred from the circumstances of each case, but that question is one of fact, not of law ; and any finding thereon in a case of acquittal must be conclusive. REG. v. NARAYAN BABAJI, **9 B.H.C. 346.** [*R.*, 10 B. 506, Rat. Un. Cr. C.222 ; *D.*, 19 B. 72.]

(1496)—S. 220—*See* No. 1003, *supra*, and *see* No. 1511, *infra*.

(1497)—*Ss.* 220, 323, 504—*Police constable abusing, arresting and dragging a person for not giving his name.*—A police constable asked the complainant not to create any disturbance on a public road. Upon the complainant's declining to do so, he demanded his name and address which were not given. The constable thereupon abused, arrested and dragged the complainant to the Police Chowky ; and detained him there till his name and address were ascertained. The police constable was, on these facts, convicted of offences under ss. 220, 323 and 504, I.P.C. *Held* that the conviction under ss. 220 and 323, I.P.C., could not stand : but that the accused was rightly convicted of an offence under s. 504, as he was found to have addressed the complainant as "soowar." EMPEROR v. GOOLAB RASUL, **5 Bom. L.R. 597.**

——**S. 221.**

(1498)—*S.* 221—*Village Chowkidars—Duty of apprehending person accused of murder—N.W.P. Village and Road Police Act* (XVI *of* 1873), *s.* 8—*Crim. Pro Code* (1872), *s.* 92.—A village chowkidar is not legally bound, as a public servant, to apprehend a person accused of having committed murder, if the murder was not committed within his village or if the person accused was not a proclaimed offender, or if the homicide was not committed in his presence. EMPRESS OF INDIA v. KALLU, **3 A. 60.** [*R.*, 27 C. 366, 29 A. 377=A.W.N. 1907, 94=5 Cr. L.J. 277.]

(1499)—*S.* 221—*Offence under this section and also under Police Act, s.* 29—*Punishment.*—An offence falling under the Police Act and also under the Penal Code should be punished under the latter enactment. CROWN v. FUTTEH KHAN, **11 P.R. 1874, Cr.** [*R.*, 2 P.W.R. 1913, N.W.F.P., Cr., 158 P.L.R. 1913.]

Penal Code (Act XLV of 1860)—*continued.*

——**S. 222.**

(1500)—Ss. 222, 223—*See* ESCAPE FROM LAWFUL CUSTODY, 6 A. 129=A.W.N. 1883, 257.

——**S. 223.**

(1501)—*S.* 223—*Crim. Pro. Code, s.* 54—*Escape from lawful custody—Chaukidar.*—The police of an adjoining Native State arrested in British territory one Ban Sing suspected of having committed an offence in the Native State, and made him over to one Debi, a Chaukidar, from whose custody he escaped. *Held* that neither the original arrest nor the subsequent custody by the Chaukidar was lawful, and, therefore, that the Chaukidar could not properly be convicted under s. 223 of the Penal Code. EMPEROR v. DEBI, **A.W.N., 1907, 94=5 Cr. L.J. 277=29 A. 377.** (3 A. 60, 27 C. 366, 23 A. 266, *R.*)

(1502)—*S.* 223—*Negligently suffering prisoner to escape—Marching prisoner by night.*—Where the accused were charged under s. 223, I.P.C., it was shown that they marched the prisoner by night. There was no evidence that they had reason to expect that any attempt would be made at rescuing the prisoner. *Held*, that an offence under s. 223 was not made out. *In re* DISTRICT MAGISTRATE OF NELLORE, **6 M.L.T. 247=3 Ind. Cas. 460=10 Cr. L.J. 293.**

(1503)—*S.* 223—*Custody of village watcher—Madras Reg.* XI *of* 1816, *ss.* 15, 16 *and* 17—*Madras Police Act* (XXIV *of* 1859)—*Village* Vetti, *allowing prisoner to escape.*—Ss. 15, 16 and 17 of Reg. XI of 1816 having been repealed by the Police Act, the custody of the village watcher, except for the purpose of assisting the Village Magistrate to arrest a prisoner or in confining a prisoner on conviction, is not legal. A Village *Vetti* is not a public servant, within s. 223, legally bound to keep in confinement any person charged with or convicted of committing any offence. *In re* BODAPATI PENTADU, **1 Weir 197.**

(1504)—*S.* 223— *Negligently suffering an accused to escape from police custody—Acquittal—Appeal.*—On an appeal from the acquittal of an accused, charged of an offence under s. 223, I.P.C., *held* that, where the accused police officer absented himself from the police station on the night during which the person in the police station *havalat* escaped, it cannot be said that he negligently suffered the person to escape from confinement, in which he was legally bound to keep him, although, under the departmental rules, the police officer should have been at the police station during the night, and at the time of escape. CROWN v. GHOLAM MOHYADDIN, **6 P.L.R. 1900, Cr.**

(1505)—*S.* 223—*Escape from confinement, what amounts to.*—The expression "escape from confinement" in s. 223, I.P.C., is not limited to escape from the particular sort or place of confinement, to which a prisoner is subjected or in which he is restrained at the time of the occurrence. A prisoner cannot be said to have

Penal Code (Act XLV of 1860)—*continued.*

escaped from confinement until he has regained his liberty. EMPRESS v. ALBEL SINGH, 32 **P.R. 1890, Cr.**

(1506)—*S.* 223—*Negligently suffering a prisoner to escape—Officer in charge leaving order to Head Constable—Negligence.*—Before a man can be convicted under s. 223, Penal Code, of having negligently suffered a prisoner to escape, it must be shown, not only that he was guilty of negligence, but that the escape was at least the natural and probable consequence of his negligence. Where an officer in charge of a Police station was ordered to despatch certain prisoners, and he left the Police station ordering the Head Constable to despath them, and in the way the prisoners escaped, *held* that the negligence of the officer in charge was too remotely connected with the escape, and he could not be convicted under s. 223, Penal Code. DURGA PRASAD v. KING-EMPEROR, **7 A.L.J. 907, Cr. = 11 Cr. L.J. 478 = 7 Ind. Cas. 411.**

(1507)—S. 223—Charge of negligently suffering a person charged with an offence to escape —Sentence modified—*See* QUEEN v. GYAN SING, **115 P.R. 1866, Cr.**

(1508)—S. 223—*See* PUN. ACT IV OF 1904, s. 9 (c), 2 P.W.R. 1913, N.W.F.P., Cr. = 158 P.L R. 1913.

(1509)—S. 223—*See* PUBLIC SERVANT, 7 W.R. Cr. 63.

(1510)—S. 223—*See* Nos. 34 and 1500, *supra.*

(1511)—*Ss.* 223, 220, 225—"*Confinement*" *term explained.*—The word "confinement" in s. 223, I.P.C., should not be restricted to confinement within circumscribing limits. In ss. 220, 225, I.P.C., the Legislature appears to have used the word "custody" and "confinement" as co-extensive. QUEEN-EMPRESS v. IMAM DIN, **2 P.R. 1891, Cr., F.B.**

(1512)—*Ss.* 223 *and* 225—Daffadar *in charge of jail allowing convicts to pass out of the gate.* —The term "rescue" in s. 225, Penal Code, implies intention and the use of violence to effect the object desired. Where a *daffadar*, in charge of one of the gates of a jail, allowed certain convicts to pass out of the gate to have an interview with their friends, but the convicts, taking advantage of the *daffadar's* over-confidence, effected their escape, *held*, that the *daffadar* was not liable to be convicted under s. 225, but may be convicted under s. 223, I.P.C. GHULAM ALI v. EMPRESS, **19 P.R. 1883, Cr.**

——**S. 224.**

See ESCAPE FROM LAWFUL CUSTODY.

(1513)—*S* 224—"*Charging.*" *term explained —Arrest by duly authorised officer on imputation of an offence.*—The accused was found carrying salt without a permit and was arrested by a Daroga in the Salt Department and handed to a peon in the Department to be taken to the office of the Daroga. On the way to the office of Daroga, the accused escaped from the custody of the peon. The Magistrate discharged the accused on the ground that he was not charged with or convicted of an offence within the meaning of s. 224, I.P.C. *Held*, that the Magistrate had taken the word "charged" in too narrow a sense such as would excuse a person who was arrested on the spot for murder or grievous hurt, and escaped. An arrest of a person by an officer authorized in that behalf is a charging, *i.e.*, an imputation of the alleged offence, though but a *prima facie* imputation until the case goes before some functionary authorized to deal with it. QUEEN-EMPRESS v. KUTIA ALU, **Rat. Un. Cr. C. 298 = Cr. Rg. 46 of 1886.**

(1514)—*S.* 224—*Lawful custody.*—A person being guilty of contempt of Court, the presiding Magistrate ordered him into custody. He resisted being taken and would not allow the Police to arrest him. He was, however, arrested in Court, under a warrant issued by the Magistrate and was convicted by another Magistrate for resisting the arrest under s. 224, Penal Code. *Held*, that the conviction was proper, the order of arrest and the custody being legal. *In re* MAHOMAD KASSIM, **1 Weir 204.**

(1515)—*S.* 224—*Refusal to undergo sentence, if an offence under.*—Where an accused person, being sentenced to imprisonment by a Village Magistrate, refused to undergo the sentence and went away, although an attempt was made to prevent him from so doing, *held*, that the accused could not be convicted under s. 224, Penal Code. *In re* NOORUBOOBU, **1 Weir 204.**

(1516)—*S.* 224—*Person accused of an offence in a Native State escaping into British territory — Power of British Police to arrest him.*— Where a person accused of an offence in a Native State escapes into British territory, the British Police has no power to arrest him, unless he is a native Indian subject of Her Majesty, or unless there is any warrant under s. 11 or s 15 of Act XXI of 1879. If he escapes from the custody of a British Police officer, who has arrested in the absence of the conditions above-mentioned, he has not committed an offence under s. 224, I.P.C. CHOGHATTA v. EMPRESS, **20 P.R. 1891, Cr.**

(1517)—*S.* 224—*Escape from lawful custody —Act* XXI *of* 1879, *ss.* 3 *and* 11.—Where the accused, who was made over to the Patiala Vakil, by virtue of a warrant signed by the Commissioner of Ambala, escaped from the custody of the Patiala Vakil, *held*, that the custody was not a lawful custody, as the Commissioner of Ambala was not the Political Agent of the State, and as the provisions of s. 11 of Act XXI of 1879 had not been complied with. RUR SINGH v. EMPRESS, **21 P.R. 1885, Cr.**

(1518)—*S.* 224—*Evading an arrest.*—Manual detention is not essential to constitute an arrest. The mere evasion of an arrest will not amount to resistance or illegal obstruction to the arrest. *In re* NANJAN, **1 Weir 205.**

Penal Code (Act XLV of 1860)—*continued.*

(1519)—*S. 224—Crim. Pro. Code*, ss. 46, 50—*Resistance to unlawful force—Handcuffs, abuse of.*—When the offence, against an accused is a bailable offence, the Police have no authority to attempt to put handcuffs on him in the first instance, and would only be justified in using them, if, for some special reason, there had been reasonable grounds for believing that he, after a proper arrest, would attempt to escape and was likely to do so, or he could not be got to go to the Police station except by such amongst other means. Trivial resistance to unlawful force on the part of an arresting officer does not constitute an offence under s. 224, I.P.C. It is highly important that Magistrates should check any abuse by Police officers of their powers and should insist on the plain provisions of the law being carried out. TAIN SEIN *alias* MAUNG SINGH v. CROWN, **1 L.B.R. 173.**

(1520)—*S. 224—Escape from custody—Arrest of judgment-debtor — Judgment debtor allowed to go by decree-holder and process server.*—Where a person arrested in execution of a civil process was allowed to go by the decree-holder and the process-server who had arrested him. *Held*, that there was no offence of escape from lawful custody committed by the person who was arrested. *In re* PUBLIC PROSECUTOR. **7 Ind. Cas. 392 = 11 Cr. L.J. 477 = 8 M.L.T. 286 = 1910 M.W.N. 592.**

(1521)—S. 224—*See* ACT XXVI OF 1870, ss. 47, 48, A.W.N. 1894, 176.

(1522)—S. 224—*See* SENTENCE—GENERAL, 8 W.R. Cr. 85.

(1523)—S. 224—*See* Nos. 121, 122, 216, 217 and 877, *supra.*

(1524)—Ss. 224, 109—Village Chowkidar if a Police Officer—Escape from custody—Abetment—*See* CRIM. PRO CODE. 1898, s. 59, 17 C.W.N. 978 = 14 Cr. L.J. 494 = 20 Ind. Cas. 750.

(1525)—*Ss. 224, 225—Escape from lawful custody—Arrest by a private person — Crim. Pro. Code*, s. 59.—By enacting s. 59, Crim. Pro. Code, the Legislature did not intend that a private person making an arrest should himself be bound to take the person arrested to the Police station. The directions are sufficiently complied with when the person arresting forwards the person arrested in charge of a servant or village servant. Where a village *chaukidar* in charge of a person so arrested was prevented from taking him to the Police station, and the person arrested was rescued from his custody by the accused, *held* that the accused were guilty of an offence under s. 225, I.P.C. EMPEROR v. PARRIDHAN SINGH, **29 A. 573 = A.W.N. 1907, 179 = 4 A L J. 483 = 6 Cr. L J. 10.** (11 M. 480, *F.*; 23 A. 266, *R.*)

(1526)—*Ss. 224 and 225—Illegal obstruction—Civ. Pro. Code* (*Act* XIV *of* 1882), *s* 651.—The term "illegal obstruction" is used in two sections of the Penal Code, ss. 224 and 225, and by virtue of two other sections, namely, 184 and 186 of the Code, certain obstructions are expressly rendered illegal and punishable. S. 651 of the Code of Civil Procedure being in *pari materia* with ss. 224 and 225 of the Penal Code, and the term illegal obstruction being employed in each section, regard must be had in construing them to the well-known definition of 'illegal' in s. 43 of the Penal Code. The complainant, a peon of a District Munsif's Court, was entrusted with a warrant to arrest the person of the first accused. The judgment-creditor accompanying the peon pointed out the first accused, who was standing in her compound, to the peon, and, thereupon, the first accused went inside her house and shut the door, the consequence being that the complainant was unable to inform the first accused of the warrant. The second and third accused, who were seated at another door of the house, on being informed by the complainant of the warrant and being requested to leave the place, refused to do so. *Held*, that there was no illegal obstruction. HIGH COURT PROCEEDINGS, 14TH MAY 1879, NO. 848, **1 Weir 211.**

(1527)—*Ss. 224, 225, 332 and 353—Obstructing search—Arms Act* (XI *of* 1878), *s.* 25—*Crim. Pro. Code* (*Act* V *of* 1898), *s.* 165.—Where the accused were convicted of offences under ss. 225—332 and 224—353, Penal Code, and it was urged on their behalf, on revision, that a search under the Arms Act which gave rise to the alleged obstruction and use of criminal force on their part, was illegal inasmuch as it was made at night, and was not restricted to the procedure laid down in s. 25 of the Arms Act, *held*, maintaining the convictions, that a search by night is not illegal, and, in cases under the Arms Act, is not restricted to the procedure laid down in s. 25 of the Act. S. 25 of the Arms Act does not override s. 165 of the Crim. Pro. Code. SHARAF KHAN v. EMPEROR, **114 P.L.R. 1903.**

(1528)—Ss. 224, 225, 353—*See* SENTENCE—CUMULATIVE AND SEPARATE SENTENCES, 3 B.L.R.A. Cr. 14.

(1529)—*Ss. 224, 226—Prisoner under sentence of transportation—Confinement in jail before actual transportation — Escape from jail — "Return from transportation"—Interpretation of statutes—Penal enactments.*—Criminal statutes are to be construed strictly. It is not merely unsound but unjust to read words and infer meanings that are not found in the text. A prisoner under a sentence of transportation, who escapes from a jail where he is confined before he is actually transported beyond the seas, cannot be convicted under s. 226 of the Penal Code. His escape is not a "return from transportation." NGA PO CHEIN v. EMPEROR, **13 Cr. L.J. 54 = 13 Ind. Cas. 390 = 4 Bur. L.T. 216.** (4 M.H.C. 152, *F.*)

(1530)—Ss. 224, 411—*See* ESCAPE FROM LAWFUL CUSTODY, 23 A. 266 = A.W.N. 1901, 77.

(1531)—*Ss. 224, 456—Running away to avoid arrest—Trespass.*—Where the accused were convicted under s. 456 of the Penal Code for having trespassed into a house with intent to commit the offence under s. 224 in that they

Penal Code (Act XLV of 1860)—*continued.*

ran away to avoid being arrested, *held* that such running away did not amount to an offence under s. 224 and that the conviction under s. 456 was therefore illegal. QUEEN-EMPRESS v. KALLU, **A.W.N. 1891, 64.**

——**S. 225**

See ESCAPE FROM LAWFUL CUSTODY.

(1532)—*S.* 225—*Arrest by a chowkidar under the Village Chowkidari Act, resistance to—An offence under the section.*—An arrest of a person, who may be lawfully arrested without a warrant, by a Chowkidar, on the authority of an order in writing delivered to him in conformity with the provisions of s. 56 (1) of the Crim. Pro. Code, would be legal; and, therefore, resistance by the accused to the lawful apprehension of him by the Chowkidar is an offence under s. 225-B of the Penal Code. BAHUBAL SIRCAR v. EMPEROR, **10 C.W.N. 287 = 3 Cr. L.J 201.**

(1533)—*S.* 225—*Rescue from custody of private persons, when punishable—Crim. Pro. Code, s.* 59.—By s. 59 of the Crim. Pro. Code, any private person is authorized to arrest any person who, in his view, commits a non-bailable and cognizable offence. A person rescuing another, who is lawfully in the custody of a private person, is guilty of an offence under s. 225, Penal Code. CRIMINAL REVISION CASE NO. 215 OF 1885, **1 Weir 209.**

(1534)—*S.* 225—*Arrest by private person, resistance to—Whether an offence—Persons with powers of a police officer—Power of arrest—Crim. Pro. Code, s.* 54 (1) (*first*)—*Power to send private persons to make arrest—Crim. Pro Code, s.* 367 (2)—*Judgment, omission to specify the offence in.*—A person with powers of a police officer may, without warrant, arrest a person, against whom suspicion exists of his having been concerned in theft, under s. 54 (1) (first), Crim. Pro. Code, but he cannot send persons, not police officers, to make an arrest which he himself can lawfully make. So, where private persons were sent, by a person having the powers of a police officer, to arrest a person suspected of theft, *held*, they had no lawful authority to arrest him, and any resistance to such persons did not constitute an offence under s. 225, I.P.C. Under s. 367 (2), Crim. Pro. Code, the offence of which the accused is convicted must be specified in the judgment, with the same precision as in the charge. KING-EMPEROR v. TAIK PYU, **5 L.B.R. 21 = 2 Ind. Cas. 619 = 10 Cr. L.J. 118.**

(1535)—*S.* 225—*Civil warrant not addressed to bailiff by name—Arrest—Legal*—A Civil warrant not addressed to a particular bailiff by name but addressed "to the bailiff of the Court" is not invalid; therefore, the rescuer of a person arrested under such warrant is guilty of an offence under s. 225 of the Penal Code. *In re* ABDUL RAHIMAN SAHEB, **15 Cr. L.J. 439 = 24 Ind. Cas. 175 = (1914) M.W.N. 498 = 15 Cr. L J. 673 = 25 Ind. Cas. 328.** (5 C. W.N. 843, 26 C. 748 = 3 C.W.N. 741, *D.*)

Penal Code (Act XLV of 1860)—*continued.*

(1536)—*S.* 225, *para.* 2 — *Construction — Second-class Magistrate, power of, to try an offence.*—The words in the second para. of s. 225 of the Code describing the punishment for the offence with which the person apprehended is charged should not be read disjunctively as denoting transportation for life or imprisonment of ten years in the alternative. A second-class Magistrate is not a competent Court to try a person for an offence falling under cl. 2 of s. 225 of the Penal Code. *In re* VENKATASUBBIAR, **1 Weir 210.**

(1537)—S. 225—*See* ARREST, 27 C. 366 = 4 C.W.N. 252.

(1538)—S. 225—*See* CRIM. PRO. CODE, 1898, ss. 235, 239, 537, 29 C. 385 = 6 C.W.N. 468.

(1539)—S. 225—*See* Nos. 121, 216, 1511, 1512 1525 to 1528, *supra.*

(1540)—*Ss.* 225, 225-*B*—*Deserter from Army—Detention of, in police custody—Obstruction—Rescue from such custody—Offence under s* 225 *B, I.P.C., read with s.* 54 (1) *sixthly, Crim. Pro. Code.*—Where the accused intentionally offered any resistance or illegal obstruction to the apprehension of a deserter from the army or rescued or attempted to rescue from the custody of a police constable in which he was lawfully detained. *Held*, that the accused are guilty of an offence under s. 225-B, I.P.C., read with s. 54 (1) sixthly, Crim. Pro. Code, and that they might be punished accordingly. The provisions of s. 225-B I.P.C., were enacted by the Legislature to meet cases not provided for in s. 225, I.P.C., or in any other law for the time being in force. CROWN v. RAHIM ALI, **20 P.R. 1911, Cr. = 14 Ind Cas. 426 = 13 Cr. L.J. 234 = 260 P.L R. 1912.**

(1541)—*Ss.* 225, 353 *and* 147—*Arrest on a warrant allowing bail without intimating that bail has been allowed, legality of—Lawful custody—Rescue from custody.*—On a warrant which provided for bail, a constable arrested one S without giving him intimation that bail had been allowed; S was then rescued by a number of persons, who assaulted the constable. —*Held*, that the arrest of S, was illegal, as before actually making the arrest, the constable should certainly have said, "Can you give the required bail"—That, as S was not in lawful custody, his rescue did not constitute any offence and the persons who rescued S had the right of private defence, and as they, under the circumstances of the case, had not exceeded that right, they could not be held guilty of any offence. SHAYAMA CHURN MUJUMDAR v. KING-EMPEROR, **16 C.W N 549 = 15 Ind. Cas. 1006 = 13 Cr. L.J. 590.**

(1542)—*Ss.* 225, 353 *and* 379—*Rescue from lawful custody—Arrest by* Duffadar—*Theft not committed in his presence—Act* VI *of* 1870, *s.* 39, *cl.* 2 (*B.C.*).—A certain person committed theft. Sometime after, the *Duffadar*, on information, arrested the thief. The accused rescued the thief from the custody of the *Duffadar*, and attempted to beat him. *Held*, the

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accused were not liable, either for rescuing, or for the attempt at beating, inasmuch as the arrest by the *Duffadar* was illegal, under s. 39 (2) of Act VI of 1870 (B.C.), the theft not having been committed in his presence, and the offence of theft not being a 'continuing' one. BOLAI DE v. EMPEROR, **35 C. 361 = 12 C.W.N. 367 = 7 Cr. L.J. 188.**

(1543)—Ss. 225, 379—*See* JOINDER OF CHARGES—MISJOINDER OF CHARGES, 13 C. W.N. 804 = 9 Cr. L.J. 147 = 1 Ind. Cas. 69.

——S. 225-B.

See ESCAPE FROM LAWFUL CUSTODY.

(1544)—*S.* 225-*B*—*Resistance to a warrant of arrest—Evidence Act, s.* 114.—Where a warrant of arrest was signed by the Sheristadar of a Civil Court duly authorised to sign them, the judgment-debtor resisting its execution would be guilty of an offence under s. 225-B, Penal Code. It cannot be presumed from the mere fact of the Sheristadar signing such warrants that he had been duly appointed to sign warrants. Evidence of the fact of appointment should be given. DEPUTY LEGAL REMEMBRANCER v. MIR SARWAR JAN, **6 C. W.N. 845.** (8 A. 293, *R.*)

(1545)—*S.* 225-*B*—*Person having custody of prisoner asleep—Escape of prisoner.*—A man legally arrested for an offence must submit to be tried and dealt with according to law. Even when the escape is effected by the consent or the neglect of the person that kept the prisoner in custody, *e.g.*, when the person having the custody of the accused went to sleep, the accused is no less guilty, as neither such illegal consent nor neglect absolves him from the duty of submitting to the judgment of the law. PUBLIC PROSECUTOR v. RAMASWAMI KONAN, **31 M. 271 = 8 Cr. L J. 200.** [*D.*, 11 Cr. L.J. 477 = 7 Ind. Cas. 392 = 8 M.L.T. 286.]

(1546)—*S.* 225-*B*—*Escape from custody—Unlawful detention—Liability*—In order to obtain a conviction under s. 225-B of the Penal Code it is necessary for the prosecution to prove that the custody from which the accused escaped was a lawful custody, *i.e.*, that the accused person was lawfully detained. KING-EMPEROR v. RAMARA, **4 L.B.R. 103 = 7 Cr.L. J. 74.**

(1547)—*S.* 225-*B*—*Person going into his house and staying on seeing warrant.*—A person, who merely goes into his house and stays there, on seeing a warrant to arrest him in execution of a decree, does not offer resistance or illegal obstruction within the meaning of s. 225-B. KING-EMPEROR v. GUN PAL, **U.B.R. 1906, Penal Code, 29 = 4 Cr. L.J. 287.**

(1548)—*S.* 225-*B*—*Resistance to the execution of a warrant—Crim Pro. Code (Act* V *of* 1898), *s.* 90—*Warrant, issue of, for the arrest of a witness, when illegal—Omission to record reasons for the issue of the warrant.*—The issue of a warrant under s. 90 of the Crim. Pro. Code, for the arrest of a witness in the first instance, without previously serving summons upon him for attendance, and without recording reasons for the issue of the warrant, is illegal. The adoption of the stereotyped printed form of the warrant reciting "whereas I have good and sufficient reasons to believe that he (the witness) will not attend as a witness on the hearing of the said complaint unless compelled to do so" is not a sufficient compliance with the imperative direction of law requiring the Court to record its reasons in writing. Resistance to the execution of such a warrant is not an offence under s. 225-B, I.P.C. SUKHESHUR PUKHAN v KING-EMPEROR, **15 C.W.N. 1001 = 11 Ind. Cas. 593 = 12 Cr. L.J. 409 = 38 C. 789.**

(1549)—S. 225-B—*See* ARREST, 16 P.R. 1904 Cr., 26 C. 748 = 3 C.W.N. 741.

(1550)—S. 225-B—*See* Nos. 122, 406, 878, 1079, and 1540, *supra.*

(1551)—*Ss* 225-*B*, 82—*Obstructing the arrest of a boy under* 7 *years—No offence.*—Where the accused is charged under s. 225 (B), I.P.C., with having offered obstruction to the lawful apprehension of a boy under 7 years of age by the police for theft, *held* that the conviction must be set aside. Under s. 82 of the Penal Code, nothing is an offence which is done by a child under seven years of age. SANTA GRUZ MORAIZ *alias* SIVASANGA v. EMPEROR, **1915 M W.N. 543 = 30 Ind. Cas. 154 = 16 Cr. L.J. 602.**

(1552)—*S.* 225-*B and* 353—*Illegal disobedience of warrant—Proof necessary—Duty of prosecution.—Warrant with incorrect description of the accused.*—In order to have a conviction for illegal disobedience of a warrant, it is for the prosecution to show that the accused is the person against whom the warrant was issued, or, in other words, that he satisfied the description of the person against whom it was issued, and not the accused to show that he was not the person. It is illegal to convict a person under ss. 225-B and 353, Penal Code, when the warrant attempted to be executed was addressed to the person with a wrong description to which the accused did not answer. DEBI SINGH v. QUEEN-EMPRESS, **28 C. 399 = 5 C.W.N. 413.** [*R*, 16 P.R. 1904, Cr., 16 P. R. 1913, Cr. = 155 P.L.R. 1913 = 14 Cr. L.J. 142 = 18 Ind. Cas. 894 = 20 P.W.R. 1913, Cr.]

(1553)—*Ss.* 225-*B and* 353—*Arrest of witnesses under an illegal warrant—Rescue from custody.*—A warrant was issued under s. 174, Civ. Pro. Code, 1882, read with s. 193 of the N.W.P. Tenancy Act, for the arrest of certain witnesses. One of them was arrested but was rescued and the officers entrusted with the warrants were also assaulted. Previous to the issue of the warrant, there had been three summonses, but they were all affixed to the houses of the persons to be served, the serving officer not being able to serve the summonses personally. The Court did not comply with the provisions of s. 82, previous to the issuing of the warrant, although the Court was of opinion that there was due service of summonses and

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that the witnesses were keeping out of the way intentionally. *Held*, that the warrant was not absolutely illegal, and that, even if the accused were not liable to be convicted under s. 225-B, they were liable to be convicted under s. 353. EMPEROR v. NARBADESHWAR, **27 A. 491 = A.W.N. 1905, 66 = 2 Cr. L.J. 155.**

(1554)—*Ss.* 225-*B*, 353—*Resistance to the execution of warrant—Notification of the contents of the warrant, necessity for.*—It may be that, in order to make an arrest upon a warrant of a Civil Court valid, it may not be necessary to show the warrant; but it is the duty of the bailiff to acquaint the person with the contents of the warrant at the time he arrests him, and that he was authorised to arrest him, and if the person then wants to see the warrant, it is the duty of the bailiff to show it to him. RAJANI KANTO PAL v. EMPEROR, **5 C.W N. 843.** [*D.*, 15 Cr. L.J. 439 = 24 Ind. Cas. 175.]

——**S. 226.**

(1555)—S. 226—*See* No. 1529, *supra.*

——**S. 228.**

See CONTEMPT OF COURT.

(1556)—*S.* 228, *scope of.*—S. 228, Penal Code, is aimed at something other than prevarication in giving evidence SADR PROCEEDINGS, 28TH APRIL 1862, **1 Weir 214.**

(1557)—*S.* 228—*Intentional insult or interruption to a public servant.*—Where an advocate moved the Judicial Commissioner to take action in the matter of a complaint which he brought against a first class Magistrate, for allowing one Court Inspector to use various insulting expressions and thus annoy and interrupt him while conducting the defence in a criminal case, and, immediately after, a summons was issued to him by the Deputy Commissioner charging him under s. 228, I.P.C., the Judicial Commissioner transferred the case to his own file, and, after hearing the evidence, *held* there was no proper justification for the institution of criminal proceedings against the advocate and that there was no intentional interruption of the Magistrate's proceedings by him. QUEEN-EMPRESS v. BOYLER, **S C. 186, Oudh.**

(1558)—*S.* 228—*Interruption to Court, nature of, under—Rights of pleader.*—Under s. 228, the insult or interruption to the Court should be intentional. Some latitude should be allowed to a member of the bar insisting, in the conduct of his case, upon his question being taken down or his objections noted, where the Court thinks the question inadmissible or the objections untenable. *In re* DATTATRAYA, **6 Bom. L.R. 541 = 1 Cr. L.J. 612.**

(1559)—*S.* 228—*Contempt of Court—Pleader interrupting Court.*—When a Magistrate fined a pleader under s. 228, I.P.C., for interrupting him and the interruption consisted in his having, while the Magistrate was recording the name and parentage of a witness, asked the witness a question to clear up a doubt he felt

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about his identity, and in his putting a question to the witness later on when the Magistrate was examining the witness, *held*, that the order of the Magistrate was ill-advised and illegal. BHAGAT RAM v. CROWN, **29 P.L R. 1903.**

(1560)—*S.* 228—*Prevarication of witness—Interruption.*—Prevarication on the part of a witness may amount to an offence specified in s. 228 of the Penal Code. REG. v. JAIMAL, **Rat Un. Cr C. 69.** (4 B.H.C. Cr. 6, 7, *R.*)

(1561)—*S.* 228—*Making signs from outside to a prisoner on his trial.*—Making signs from outside to a prisoner on his trial does not constitute an offence under s. 228. HIGH COURT PROCEEDINGS, 17TH JAN. 1870, NO. 108, **1 Weir 214.**

(1562)—*S.* 228—*Person ordered to remain leaving the Court.*—A person leaving the Court, when ordered to remain, is not guilty of an offence under s. 228, Penal Code. HIGH COURT PROCEEDINGS, 21ST OCT. 1870, NO. 1793, **1 Weir 215.**

(1563)—*S.* 228—*Interruption of Judge — Absence from Court.*—Absence from Court is not an interruption of the Judge sitting in Court within the meaning of s. 228, Penal Code. HIGH COURT PROCEEDINGS, 30TH NOV. 1878, NO. 2047, **1 Weir 215.**

(1564)—*S.* 228—*Audible remark in Court—Interruption of proceedings—Intention, if inferable.*—Mere audible remark by the accused, which interrupted the proceedings in a Court of Justice, is not enough to sustain a conviction for an offence under s. 228, I.P.C. The Court must further be satisfied that the accused intentionally offered interruption. Courts, taking action under s. 228, I P.C., ought not to give room for the belief that they are unduly sensitive about their dignity. *In re* RAMASAMI GOUNDEN, **2 L.W. 686 = 29 M L J. 274 = 16 Cr. L.J. 610 = 30 Ind. Cas. 434.**

(1565)—*S.* 228 — *Retracting statements in giving evidence.*—Where a defendant, when examined as a witness before a Magistrate, made certain statements which he afterwards retracted, *held*, that the conduct of the defendant did not amount to an offence under s. 228, Penal Code. HIGH COURT PROCEEDINGS, 2ND AUG. 1879, NO. 1115, **1 Weir 216.**

(1566)—*S.* 228—*Defendant not giving answers, when being questioned.*—One of the accused, when asked as the defendant in a civil suit, if he had any witness, made no answer and walked out of Court. The other accused advised him to take that course. *Held*, that the accused were not guilty of an offence under s 228, Penal Code. *In re* ABDUL RAHIMAN, **1 Weir 218.**

(1567)—*S.* 228—*Use of vulgar language for emphasis.*—Where a witness, in a case, in answer to a question whether any sheep had been left with him, replied "not even a hair," *held*, that the expression, although vulgar, was not necessarily abusive, but was merely used to emphasize a denial. The accused, therefore,

Penal Code (Act XLV of 1860)—*continued.*

could not be convicted under s. 228. HIGH COURT PROCEEDINGS, 23RD OCT. 1880, NO. 2101, **1 Weir 216.**

(1568)—*S.* 228—*Crim. Pro. Code (Act V of* 1898), *s.* 480—*Contempt of Court—Using defamatory expressions in petition.*—The accused was convicted of an offence under s. 228 of the I.P.C., for having made the following statements in a petition, filed by him in a case against him under s. 182, I.P.C.—" It appears from the records of the former Court that my applications did not receive full consideration. The Court was inclined to do favour to the accused *lambardars.* Hence who could render justice to the petitioner-informant. When the petitioner-informant found that the case had become weak by the *kamghauri* of the former Court in the former proceedings..." *Held*, that the conviction was illegal, the use of objectionable or defamatory expressions in the petition presented to the Magistrate could not be regarded as a contempt committed in his presence justifying him in taking immediate action under s. 228, I.P.C., and s. 480 of the Crim. Pro. Code. CROWN v. WAHID BAKHSH, **137 P.L R 1903.**

(1569)—*S.* 228—*Accused under trial making defamatory statements about trying Magistrate in transfer application.*—Where, in an application for transfer, the accused made defamatory and scandalous statements about the Magistrate trying the case, without any intention to insult the Court but merely for procuring the transfer, *held* that, under the circumstances of the case, the conviction of the accused under s. 228 was not right and that the section did not apply in such a case. QUEEN-EMPRESS v. ABDULLAH KHAN, **A.W.N. 1898, 145.** [*D.*, 12 O.C. 308.]

(1570)—*S.* 228—*Yawning in Court after being warned.*—To constitute an offence under the section, the act must be done intentionally and with intent to insult the Court. Where a person, under examination, loudly yawned in Court, after he had been warned not to do so, *held*, that the accused could not be convicted under s. 228, unless the yawning was intentional and done with intent to insult the Court. HIGH COURT PROCEEDINGS, 19TH MAY 1881, NO. 1003, **1 Weir 216.**

(1571)—*S.* 228—*Chewing betel, while being examined as a witness.*—A person chewing betel, while being examined as a witness, was held guilty, under s. 228, of contempt of Court. *In re* BHAVANI MUDALIAR, **1 Weir 217.**

(1572)—*S.* 228—*Listening to evidence after being told to leave the Court.*—Where the accused, a witness in a case before a Magistrate, was asked by the Magistrate to stay in a place for witnesses in order that the evidence given before the Court might not be heard by him, but the accused, disobeying the order, came and heard the evidence, *held* that the accused was not guilty under s. 228, Penal Code, as there was no interruption. *In re* PAPA NAIKEN, **1 Weir 217.**

(1573)—*S.* 228—*Judicial proceedings, when come to an end.*—It cannot be said that the judicial proceedings of a Court in a particular case are at an end the moment that the sentence has been passed, and that a prisoner may then insult the Judge with impunity. The judicial proceedings continue until the prisoner is discharged or removed in custody. HIGH COURT PROCEEDINGS, 14TH AUG. 1868, NO. 1109, **1 Weir 214.**

(1574)—*S.* 228—*Offence under—Jurisdiction.*—The Court in which an offence is committed under s. 228 should try the offender itself then and there and pass orders under that section. JOGENDRA NARAYAN MAJUMDAR CHOWDHURY v. SYAMA CHARAN UKIL, **6 C.L J. 713=6 Cr. L J. 405.**

(1575)—*S.* 228—*Offence under—Jurisdiction.*—Where an offence, under s. 228 of the Penal Code, is committed before an officer while he was acting in a certain capacity, he cannot in another capacity take up and try the offence. QUEEN v. CHUNDER SEEKHUR ROY, **12 W.R. Cr. 18.**

(1576)—*S.* 228—*Contempt of Court—Judicial proceeding.*—A Tahsildar who was enquiring a civil case allowed an interruption by a *lambardar* who had come with a portion of revenue due from him and demanded payment of the revenue in full. The *lambardar* abused him and the Tahsildar ordered his arrest, but the accused resisted the arrest. *Held*, that the accused could not be convicted under s. 228, I.P.C., and under s. 435, Crim. Pro. Code, 1872, as the Tahsildar was not sitting in any stage of a judicial proceeding. EMPRESS v. SULAIMAN KHAN, **40 P.R. 1881, Cr.**

(1577)—*S.* 228—*Contempt of Court—Crim. Pro. Code, ss.* 439 *and* 480 *to* 484.—*Held*, that a course expression used by a litigant but not addressed to the Court can hardly be treated as an intentional insult to the Court or interruption of the proceedings under s. 228, Penal Code, even if it is actually over-heard by the presiding officer. *Held*, also, that litigants are bound to conduct themselves in an orderly manner but too much notice should not be taken of the sudden lapse during a moment of excitement into language which is unfortunately too common among the lower class of rustics and is not meant to be taken seriously. Where a litigant is detained and adopts a submissive attitude when brought before the Court later, after the excitement has worn off, a due admonition or a petty fine at the most is sufficient for preservation of the order. JIT SINGH v. CROWN, **23 P.W R. 1912, Cr.=15 Ind. Cas 983=13 Cr. L.J. 567.**

(1578)—S. 228—*See* ACT III OF 1877, s. 84, 22 W.R. Cr. 10=13 B.L.R. Ap. 40.

(1579)—S. 228—*See* CRIM. PRO. CODE, 1898, ss. 369, 480, 481, 10 C W.N. 1062=4 Cr. L.J. 415=4 C.L.J. 210.

(1580)—S. 228—*See* CRIM. PRO. CODE, 1898, ss. 410, 486, 4 M.H C. 146.

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(1581)—S. 228—*See* CRIM. PRO. CODE, 1898, s. 480, 13 B.L.R. App. 40=22 W.R. Cr. 10, 2 Weir 603.

(1582)—S. 228—Offence under—Record must show stage of interruption—Evidence—Intention—*See* CRIM. PRO. CODE, ss. 481 (2), 537, 15 Cr.L.J. 621=25 Ind. Cas. 629.

(1583)—S. 228—*See* CRIM. PRO. CODE, 1898, s. 487, Colm. Dig. Cr. 44 of 1876.

(1584)—S. 228—*See* EVIDENCE ACT, 1872, s. 3, 13 B.L.R. App. 40=22 W.R. Cr. 10.

(1585)—S. 228—*See* LEGAL PRACTITIONERS—PLEADER, 7 B.H.C. A.C.J. 102.

——S. 229.

(1586)—Ss. 229 and 304-A—*See* RASH AND NEGLIGENT ACT, CAUSING DEATH BY, 33 P.R. 1889, Cr.

——S. 230.

See COUNTERFEITING COIN.

(1587)—S. 230—*See* ACT XIX OF 1872, 5 N.W.P. 187.

(1588)—S. 230—*See* No. 71, *supra.*

(1589)—*Ss.* 230, 235—*Murshidabad rupees—Queen's coins.*— Murshidabad rupees of the 19th year of Shah Alam, formerly used with the sanction of the Government of British India for the time being as money, are "Queen's coins." BAMAN v. EMPEROR, **1 P.R. 1903, Cr. =47 P L R. 1903.**

(1590)—*Ss.* 230, 235 *and* 243—*Definition—Queen's coin—Murshidabad rupees—Practice—Duty of subordinate Courts to follow decisions of superior Courts—Maxim*—Stare decises.—Murshidabad rupees stand on the same footing as Farrukhabad rupees and fall within illustration (*e*) to s. 230, these rupees having been stamped and issued by the authority of the Government of India, or at least of the Government of a Presidency, and issued as money under the authority of the Government of India, as were Farrukhabad rupees. They are therefore "Queen's coin" within the meaning of the section. It is the duty of every subordinate Court, where it finds a decision of the High Court to which it is subordinate applicable to a case before it, to follow such decision without question. KING-EMPEROR v. DENI, **2 A.L.J. 498=A.W.N 1905, 184=2 Cr. L J. 395=28 A. 62.** (A.W.N 1903, 115, *F.*)

(1591)—*Ss.* 230 *and* 420—*Definition—"Coin"—Uttering false coin—Cheating.*—Where the offence charged consisted of selling or pawning, as genuine gold mohars of the reign of Shahjahan, silver rupees of that reign which had been gilt or in some way covered over with gold, it was *held* that the offence would be that of cheating and not that of uttering false coin. A gold mohar of the reign of Shahjahan cannot be deemed to be "coin" within the meaning of s. 230 of the Indian Penal Code, as it is not used for the time being as money. EMPEROR v. KHUSHALI, **A W.N 1906, 308=4 Cr. L J. 453=29 A. 141=4 A.L.J. 43.**

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——S. 231.

(1592)—S. 231—*See* No. 72, *supra.*

——S. 232.

See COUNTERFEITING COIN.

(1593)—S. 232—*See* ABETMENT, 9 P.R. 1884, Cr.

(1594)—S. 232—*See* Nos. 70, 218, 531, *supra.*

(1595)—*Ss.* 232, 233 *and* 240—*Counterfeiting Queen's coin—Delivery of Queen's coin possessed with knowledge that it is counterfeit—Making instruments for counterfeiting coin.*—The Chief Court finding that the accused was guilty of counterfeiting Queen's coin under s. 232, Indian Penal Code, set aside the conviction under s. 233, as the accused's act formed but one transaction. *Held*, that s. 240, Indian Penal Code, was not intended to apply to the counterfeitors of coin. LASPIR v. QUEEN-EMPRESS, **P L R. 1900, p. 14, Cr.** (10 P.R. 1892, Cr., 3 N.W.P. 150, *F.*)

——S. 233.

(1595-*a*)—S. 233—*See* No. 1595, *supra.*

——S. 235.

See COUNTERFEITING COIN.

(1596)—*S.* 235—*Possession of coining instruments—Proof of the capability of instruments to produce counterfeit coins.*—The offence under s. 235 consists in the possession of moulds, capable of being used to manufacture counterfeit coin. The prosecution is bound to adduce evidence to show that the moulds were capable of producing counterfeit coin. Broken moulds are of no use for such purpose, though they may be evidence of coining having been previously carried on. PUBLIC PROSECUTOR v. KONA THIRUMALA REDDI, **1 Weir 219.** [*R.*, 10 M.L.T. 108=11 Ind. Cas. 241=21 M.L.J. 766=12 Cr. L.J. 377.]

(1597)—*S.* 235—*Possession of instruments for counterfeiting coin—Exclusive possession.*—The accused was convicted of an offence under s. 235 of the Indian Penal Code for being in possession of a box containing instruments used for counterfeiting coin. It appeared that two other brothers of the accused had access to the box and it was not proved that there was any property of the accused in it. *Held*, that the conviction was illegal, for it was not shown that the accused was in exclusive possession of the box. ABDUL MAJID v. CROWN, **7 P.L R. 1904=1 Cr. L J. 40.**

(1598)—*S.* 235—*Possession of instruments for counterfeiting coin—Accused's knowledge, if material — Crim. Pro. Code, s.* 103 (2)—*Search—Procedure.*—For a conviction under s. 235, Penal Code, it is not only necessary that the accused should be in possession of the instruments or materials for counterfeiting coin but it should also be proved that the possession was within the accused's knowledge. In conducting searches the provisions of s. 103 (2)

Penal Code (Act XLV of 1860)—*continued.*

of the Crim. Pro. Code should be strictly complied with. NGA SAN NYEIN v. EMPEROR, **16 Cr. L.J. 264 = 28 Ind. Cas. 152.**

(1599) – S. 235—*See* Nos. 70, 71, 218, 1589, 1590, *supra.*

(1600)—*Ss.* 235, 243—*Counterfeiting Queen's coin—Possession of instruments and coins.—Per Batty, J.*—The first essential required by ss. 235, 243, is that possession of the instruments and coins should be established against the accused person. To establish such possession it is not sufficient to show that the object in question was in such a position that the accused, if he had known it, might have exercised power or control over it. There must further be evidence of some circumstance indicating that he intended to exercise such power or control or that he knew that he could do so at will. The possession contemplated is not possession which has never been voluntary; and for the purpose of bringing home to any person the voluntary possession of any object, the mere proof of a fact of which he knew nothing would be valueless. The section also requires in the accused person intention or knowledge as to the use to be made of the objects in possession, and these might be implied from the nature of the objects themselves. But before that stage is reached, there must be some circumstance indicating such intention or knowledge as is inseparable from the notion of conscious retention implied in the word "possession." Such indication may arise from the position of the object in a place which is constantly used by the person accused, and which could not be overlooked by him, or from the bulk of the object itself, or from any circumstance, such as the locking up of the object, which would point to voluntary or conscious possession. Per *Aston, J.*—If the words "conscious" or "voluntary" are introduced before the word "possession" where that word is not so qualified in a section of the Penal Code, the Court would be legislating instead of administering the law, with inconvenient consequences such as shifting the burden of proof indicated by ss. 106 and 114, Evidence Act, and even altering the substantive Criminal law. EMPEROR v. HARI MANIRAM SONAR, **6 Bom. L.R. 887 = 1 Cr. L.J. 960.** [*R.*, 15 C.L.J. 517 = 16 C.W.N. 1105 = 13 Cr. L.J. 609 = 16 Ind. Cas. 257.]

—S. 239.

See COUNTERFEITING COIN.

(1601)—*S.* 239—*Delivery to another of coin with the knowledge of its counterfeitness.*—Where the accused, goldsmiths, being in possession of counterfeit pagodas, delivered them to the complainant as security for the due performance of a contract, *held* that it was not necessary, for the purpose of constituting an offence under s. 239, that the pagodas should be current coin. *Held*, also, that, from the fact that the accused were goldsmiths, it may be presumed that, when they became possessed of the pagodas in question, they knew them to be counterfeit. *In re* KANDAMURU ANNAPPA, **1 Weir 221.**

(1602)—S. 239—*See* No. 72, *supra*,

—S. 240.

See COUNTERFEITING COIN.

(1603)—S. 240—*See* Nos. 219, 476 and 1595, *supra.*

(1604)—*Ss.* 240, 241, 243—*Offences under ss.* 240, 243, *elements of.*—Knowledge on the part of the accused, that the coin was counterfeit, when they first came to possess it, is an element of the offence as defined in ss. 240 and 243. *In re* KARUPPA MUPPEN, **1 Weir 222.**

(1605)—Ss. 240 and 243—*See* JOINT TRIAL, 31 C. 1007.

—S. 241.

See COUNTERFEITING COIN.

(1606)—S. 241—*See* CRIM. PRO. CODE, 1898, s. 517, 2 Weir 669.

(1607)—S. 241—*See* Nos. 531 and 1604, *supra.*

(1608)—*Ss.* 241, 243—*Possession of counterfeit coin as genuine—Knowledge—Evidence—Burden of proof—Passing off as genuine a counterfeit coin—Presumption—Evidence Act* (I *of* 1872), *s.* 25—*Confession to a Police Officer—One accused can prove on his own behalf a co-accused's confession to a Police Officer.*—Before a conviction can be had under s. 243, I.P.C., the prosecution must prove that the accused knew that the coin was counterfeit at the time he became possessed of it. The evidence, of course, may be direct or presumptive. Where a person tendered a false coin to another and asked for change, which was refused on the ground that the coin was false, and he thereafter tendered it to another person; *Held*, that it might be presumed that, after the first refusal, the accused knew the coin to be bad and that his attempt thereafter to induce another person to receive it constituted an offence under s. 241, I.P.C. S. 25 of the Evidence Act only provides that a confession made to a Police Officer shall not be proved as against an accused person. It does not preclude one accused person from proving, on his own behalf, a confession made to a Police Officer by another accused person tried jointly with him. EBRAHIM v. EMPEROR, **12 Cr. L.J. 79 = 9 Ind. Cas. 449.**

—S. 243.

(1609)—S. 243—*See* Nos. 219, 476, 1590, 1600, 1604, 1605 and 1608, *supra.*

—S. 251.

See COUNTERFEITING COIN.

(1610)—*S.* 251—*Sentence under the section.*—S. 251 does not require that a sentence of fine as well as of imprisonment should be awarded. The former sentence is optional. *In re* JOSEPH *alias* THAVASI, **1 Weir 223.**

(1611)—S. 251—*See* SENTENCE—POWERS OF APPELLATE COURT—ENHANCEMENT, 45 P.R. 1887, Cr.

Penal Code (Act XLV of 1860)—*continued.*

——**S. 253.**

(1612)—S. 253—*See* No. 609, *supra*.

——**S. 256.**

(1613)—S. 256—*See* COUNTERFEITING COIN, 3 M.L.T. 140=7 Cr. L.J. 132.

——**S. 260.**

(1614)—S. 260 — *See* COUNTERFEITING GOVERNMENT STAMP, 2 W.R. Cr. 65.

——**S. 262.**

(1615)—*S.* 262—*Gist of offence.*—It is incumbent on the prosecution, where a person is charged under s. 262, I.P.C., to bring home to him, not only that he used the stamp with the knowledge that it had been before used, but also that he used it fraudulently or with intent to cause loss to Government. The intent to defraud or to cause such loss cannot be assumed. EMPRESS v. NIAZ AHMAD, **A.W.N. 1881, 56.**

(1616)—*S.* 262—*Affixing used postal stamp to letter.*—The mere affixing to a letter a postal stamp which has been previously used does not itself prove a fraudulent intent to cause loss to the Government within the meaning of s. 262 of the Indian Penal Code. QUEEN-EMPRESS v. MURLIDHAR, **Rat. Un. Cr. C. 145.**

(1617)—*S.* 262—*S.* 37, *Act* XIV *of* 1866—*Using postage stamps twice.*—The provisions of s. 37, Act XIV of 1866, enact that postage stamps shall be considered as stamps issued by the Government for the purpose of revenue within the meaning of the Penal Code. Hence, though an accused may have been ignorant of the law, he must have known that using a stamp twice was defrauding the Government and may, therefore, be rightly convicted under s. 262, Penal Code. EMPRESS v. SITARAM, **5 C.P.L.R. Cr. 43.**

——**S. 264.**

See WEIGHTS AND MEASURES.

(1618)—*S.* 264—*Shortness of weight—Intent.*—Where the accused was charged under s. 264, I.P.C., with fraudulently using a false weight, the weight being a five seer weight and being one tolah or one rupee short, *held* that the weight in question could not be regarded as a false weight in the sense of the Penal Code. EMPRESS v. BIKKA MAL, **A.W.N. 1883, 224.**

(1619)—S. 264—*See* MAD. ACT IV OF 1889, ss. 46 and 47, 19 M. 310=1 Weir 206=6 M.L.J. 173=1 Weir 892.

——**S. 265.**

See WEIGHTS AND MEASURES.

(1620)—*S.* 265 — *Unstamped measure.* —Where an accused person, a butter-milk seller, sells butter-milk by means of an unstamped measure, a conviction under s. 265 is not maintainable, unless the evidence discloses fraud or falsity of the measure. *In re* ACHI, **1 Weir 223.**

(1621)—*Ss.* 265 *and* 266—*Sale of goods with deficient weights.*—The accused professed to sell goods by weights of certain English denominations. The accused admitted that he had been using the weights for a long time and that the weights were in the possession of the accused for being so used. The weights were deficient. But the Sessions Judge held that the act of the accused was not fraudulent, inasmuch as the weights had been openly and, therefore, presumably, ignorantly used. *Held*, that the accused had committed an offence under s 266. *In re* MEETALAGATH POKER, **1 Weir 223.**

(1622)—*Ss.* 265, 266—*False weights.*—*Held*, that a conviction under s. 265, I.P.C., cannot be maintained where there is no complaint by a purchaser; and the fact that the search took place after dark without proper precautions, the absence of proper description of the weights seized, the small discrepancies alleged, the silence of the record as to what standard weights were used for purposes of comparison and the want of proof of knowledge or fraudulent intent on the accused's part, are all fatal defects in a prosecution under s. 266, I.P.C. SOBHA v. CROWN, **38 P.W.R. 1908, Cr.= 9 Cr. L.J. 4.** [*R.*, 22 Ind. Cas. 155=20 P.R. 1913.]

(1623)—*Ss.* 265, 266—*Absence of standard weight—Fraudulent intent, presumption of—Sustainability of conviction—"Correct," meaning of.*—Where no standard is prescribed, it is clear that no presumption of fraud can arise, and a conviction under ss. 265 and 266, I.P.C., cannot be sustained. "Correct" is a relative term and is meaningless where there is no standard to refer to, whether a standard prescribed by lawful authority or generally recognised by local custom. KING-EMPEROR v. MI YA PYAN, **U.B.R. 1908, 3rd Qr., Penal Code, 17=9 Cr. L.J. 415.**

(1624)—Ss. 265, 415, 417—*See* CHEATING—GENERAL, Rat. Un. Cr. C. 386=Cr. Rg. 36 of 1888.

——**S. 266.**

See WEIGHTS AND MEASURES.

(1625)—*S.* 266—*Fraudulent intention.*—A person in possession of false weights, the same being in excess of the authorised weights, cannot be convicted under s. 266, unless fraudulent intention is charged and proved. REG. v. DAMODHAR DALJI, **1 B.H.C. Cr. 181.** [*R.*, Rat. Un. Cr. C. 514.]

(1626)—*S.* 266—*Duty of a person selling according to a standard measure.*—A person, who represents himself as using a measure of a particular standard, is bound to see that the measure he uses is correct according to that standard. The circumstance that it varies from the standard so as to give him a considerable advantage suggests that it is used fraudulently. *In re* VENKATA CHETTI, **1 Weir 225.**

(1627)—*S.* 266—*Sale by a standard of weight—Omission to take weights to the Collectorate to have them tested and stamped.*—If a person professes to sell by a certain standard, he is

Penal Code (Act XLV of 1860)—*continued.*

bound to take reasonable care that his weights are not defective. Although a seller is under no legal obligation to take his weights to the Collectorate to have them tested and stamped, yet, the omission to do so is, however, a circumstance which the Magistrate is at liberty to consider in deciding the question whether the possession of the weights is combined with a fraudulent intention. *In re* APPASAMI *alias* MUNISAMY, **1 Weir 225.**

(1628)—S. 266—Fraudulent possession of false weights and measures, what amounts to—Joint trial of 68 persons—Legality—*See* ACT XXXI OF 1871, 20 P.R. 1913, Cr.

(1629)—S. 266—*See* Nos. 1621, 1622 and 1623, *supra.*

—— S. 267.

(1630) —Ss. 267, 417, 420—*See* CHEATING—GENERAL, 11 B. 59.

—— S. 268.

See NUISANCE UNDER PENAL CODE.

See PUBLIC NUISANCE.

(1631)—*S.* 268—*Crim. Pro. Code, Ch. XX.*—A prosecution under s. 268 of the I.P.C. is not illegal on the ground that proceedings have not been previously taken under Ch. XX of the Crim. Pro. Code. REG v. SUKLAL, **Rat. Un. Cr. C. 23 = Cr. Rg. 17-9-1869.**

(1632)—*S.* 268—*Removal of plague patient to another house—Resident in latter house attacked with plague—Offence committed—Further enquiry*—Prima facie *proof of negligence of accused —Proof of having taken proper precautions* —Onus.—R was suffering from plague. C, the accused, removed R to another house where there were several persons living. X, who was one of such residents, was, as the result of the removal of R, attacked with plague. On these facts, C was convicted of an offence under s. 268, I.P.C. On appeal, the appellate Magistrate directed the Court of first instance to take any further evidence which prosecution can produce to prove illegality or negligence. *Held* that it was not necessary to direct such further evidence to be taken. Where the prosecution has adduced evidence to show *prima facie* that the accused was guilty of negligence, the burden of proving that proper precautions were taken lies upon the accused. CHABUMIAN SAHIB, **12 M L.T. 664 = 14 Cr. L J. 45 = 18 Ind. Cas. 269.**

(1633)—S. 268—*See* BOM. ACT III OF 1866, s. 14, 7 B.H.C. Cr. 74.

(1634)—S. 268—*See* BOM. ACT VII OF 1867, s. 31, Rat. Un. Cr. C. 134 = Cr. Rg. 8-4-1878.

(1635)—S. 268—*See* PUN. ACT IV OF 1873, s. 14, 6 P.R. 1874, Cr.

(1636)—S. 268—*See* Nos. 1175 and 1185, *supra.*

(1637)—*Ss.* 268 *and* 269—*Refusal to remove a person suffering from small pox to hospital.*—Where a mother kept her daughter, suffering from small-pox, confined to the house and opposed her removal to the hospital, unless she

Penal Code (Act XLV of 1860)—*continued.*

accompanied her, and there was no evidence to show that lodgers or boarders were kept in the house, *held*, that she had not committed any offence under s. 268 and that her act was not an unlawful and negligent act within the meaning of s. 269. S. CAHOON v. A. MATHEWS, **24 C. 494 = 1 C.W.N. 274.** [*R.*, 22 P.R. 1902, Cr.]

(1638)—*Ss.* 268, 278, 290—*Throwing dust and sweeping in front of house.*—Where the accused was charged and convicted under s. 278, Penal Code, with vitiating the atmosphere so as to make it noxious to health by throwing dust and sweeping in front of their houses, the High Court held that the act of the accused constituted an offence under s. 268, and was, therefore, punishable under s. 290, Penal Code. *In re* VASUDEVA CHETTI, **1 Weir 242.**

(1639)—*Ss.* 268, 290—*Act V of* 1861 (*Police Act*), *s.* 34—*Public nuisance — Definition— Temporary obstruction of public thoroughfare.* —M placed a board in front of his house over the water channel and a considerable portion of the road-way, leaving only a small space by which persons could pass by his house. On this board he sat writing and delivering to a large crowd of persons vouchers for bets which they had made with him about the Government opium sales. *Held,* that, under these circumstances, although M could not properly be convicted under s. 34 of Act V of 1861, he was liable to conviction under ss. 268 and 290 of the Indian Penal Code. EMPEROR v. MADHO RAM, **4 A.L J. 44 = A.W N. 1906, 317 = 4 Cr. L J. 492.**

(1640)—*Ss.* 268, 290—*Gambling in a place where the Gambling Act is not in force.*—Gambling in a place where the Gambling Act is not in force is not an offence under s. 268, Penal Code. SASI KUMAR BOSE v. EMPEROR, **7 C.W.N. 710.**

(1641)—*Ss.* 268 *and* 290—*Public nuisance—Encroachment on streets.*—An encroachment by a private person building over a part of a public street is a "public nuisance" within the meaning of s. 268, Penal Code, and it is not necessary for the prosecution in such a case to adduce evidence that any particular person was injured or obstructed by the encroachment. The public are entitled to the use of the full width of the public street, however wide it may be, and whoever builds over a portion of a public street does an act which must necessarily cause obstruction to persons who may have occasion to exercise their right of using the portion encroached upon. It is no answer to say that the street is still wide enough for all comers. Each and every part of a public street is open to lawful use by the public, and it is the duty of the public authorities to prevent encroachment thereon by private persons. QUEEN-EMPRESS v. KRISHNA REDDI, **7 M. L.J. 95.**

(1642)—*Ss.* 268, 290—*Obstruction of a public way.*—Where a person obstructs a part of the highway, the whole width of which highway

Penal Code (Act XLV of 1860)—*continued.*

the public has a right to pass over, he can be convicted of an offence under s. 268 punishable under s. 290 of the Code. *In re* VANKIPURAM CHACRAVARTHI IYENGAR, **1 Weir 232.**

(1643)—*Ss.* 268, 290—*Crim. Pro. Code* (*Act V of* 1898), *s.* 143—*Working rice-husking machine at night.*—Upon revision, the Chief Court upheld the conviction of the petitioner under ss. 268-290 of the Indian Penal Code for working a rice-husking machine at night in a residential quarter of a city and the order passed against him under s. 143 of the Crim. Pro. Code forbidding the working of the machine at night after 10 P.M., with the modification that the prohibition should last till 6 A.M. PHIRAYA MAL v. EMPEROR, **69 P.L.R. 1904 = 9 P.R. 1904, Cr = 1 Cr. L.J. 512.**

—— S. 269.

See NUISANCE UNDER PENAL CODE.

(1644)—*S.* 269—*Travelling in a train by a person suffering from cholera.*—Where the first accused, knowing that he was suffering from cholera, travelled in a train with the second accused who, knowing of the former's condition brought him the ticket and travelled with him, *held*, that the first accused was properly convicted under s. 269, Penal Code, inasmuch as he did an act, which he should have known was likely to spread the infection of a disease, dangerous to life, negligently, and the second accused of abetment of the same. QUEEN-EMPRESS v. KRISHNAPPA, **7 M. 276 = 1 Weir 226.** [*R.*, 7 C.P.L.R. 5, Cr., 22 P.R. 1902, Cr.]

(1645)—*S.* 269—*Essentials for a conviction under the section.*—Knowledge or belief that an act is likely to spread infection is necessary, in addition to the illegality of the act, to support a conviction under s. 269, Penal Code. *In re* POTINA PADMANABHASWAMI, **1 Weir 226.**

(1646)—*S.* 269 — *Negligent inoculation.*—Inoculation is not in itself an illegal or negligent act, unless it is proved that any act has been done negligently in respect of the persons when inoculated, with the knowledge or belief that it is likely to spread the infection of a disease dangerous to life. It is, however, possible for the operator or a third person to be punishable under the section, on proof of a negligent dealing with the patient or patients after inoculation, with the knowledge or belief required by the section. Whether there has been such negligence accompanied by such knowledge or belief is always a question of fact. HIGH COURT PROCEEDINGS, 10TH JULY 1867, **1 Weir 226.**

(1647)—*S.* 269—*Inoculation, when offence.*—In order that there may be a conviction for inoculation under s. 269, it must be shown that the act is done, if not unlawfully, at least negligently, and the mere performance of inoculation is not punishable under the above section. QUEEN EMPRESS v. SAN HLA, **U.B R. 1897—1901, Vol. 1, 280.**

(1648)—S. 269—*See* BOM. ACT III OF 1888, ss. 429, 430, 7 Bom. L.R. 460 = 2 Cr. L.J. 495.

Penal Code (Act XLV of 1860)—*continued.*

(1649)—S. 269—*See* CONFISCATION, Colm. Dig. Cr. 54 of 1876.

(1650)—S. 269—*See* No. 1637, *supra.*

(1651)—*Ss.* 269 *and* 270—*Essentials for conviction under the sections.*—To support a conviction under either of the sections, it must be established not merely that the act committed by the accused person was prejudicial to health, but that it was likely to spread the infection of some particular disease dangerous to life, and that the accused person knew or had reason to believe it to be likely to spread that disease. The mere burial of a carcass in or near a village is not an offence under either of the above sections. EMPRESS v. GORIA, **7 C.P.L. R. Cr. 5.** (7 M. 276, *R.*)

(1652)—*Ss.* 269 *and* 272—*Soaking paddy in dirty water.*—Soaking paddy in dirty water is not an offence under s. 269, but is an offence under s. 272. *In re* CUNNIAPPA, **1 Weir 227.**

—— S. 270.

(1653)—S. 270—*See* No. 1651, *supra.*

—— S. 271.

(1654)—S. 271—*See* No. 1303, *supra.*

—— S. 272.

(1655)—*S.* 272—*Milk for sale, adding water to, if an offence.*—Mixing water with milk intending to sell the compound is, in itself, no offence under s. 272, Penal Code, in the absence of anything to show that such milk was rendered noxious as food or drink by the admixture of water. CROWN v. ABDUL RAMAN, **1 L.B.R. 153.**

(1656)—S. 272—*See* No. 1652, *supra.*

—— S. 273.

See NUISANCE UNDER PENAL CODE.

(1657)—*S.* 273—*Sale of noxious food—Definition—Sale of grain in bulk in a closed pit.*—Where, as a matter of trade, the owner of a grain pit sold the contents of the pit, before it was opened, at a certain sum per maund, whether the grain was good or bad, and, on the pit being opened, it was found that a large proportion of the grain was unfit for human consumption, it was *held* that the vendor could not be convicted under the section. EMPEROR v. SALIG RAM, **A.W.N. 1906, 23 = 3 A.L.J. 840 = 3 Cr. L.J. 208 = 28 A. 312.**

(1658)—*S.* 273—"*Noxious,*" *meaning of*—*Adulteration of ghee with vegetable oil.*—The word "noxious" in s. 273, I.P.C., means harmful to health or unwholesome. In the absence of evidence to show that the adulteration of ghee with vegetable oil was such as to render it noxious in the above sense, such adulteration cannot be held to constitute an offence under s. 273 of the Penal Code. CHOKRAJ MARWARI v. EMPEROR, **12 C.W.N. 608 = 7 Cr L.J. 405.**

(1659)—*S.* 273—*Noxious food, what amounts to.*—A person cannot be convicted of an offence under s. 273, I.P.C., for selling wheat containing a large admixture of extraneous matter,

Penal Code (Act XLV of 1860)—*continued.*

e.g., dirt, wood, matches, charcoal, black-seeds. EMPEROR v. NARUMAL JAWARMAL, **6 Bom. L.R. 520 = 1 Cr.L.J. 618.**

(1660)—*S.* 273—*Sale of noxious food—Offence must be complete.*—Where a butcher had killed a sheep and hung it up. and on inspection the flesh was found unfit for food, but the flesh was neither removed to the shop nor was exposed or offered for sale, *held*, that the accused could not be convicted under s. 273, Penal Code, because the offence was incomplete. *In re* MADAR SAHIB, **1 Weir 227.**

(1661)—*S.* 273—*Sale of milk mixed with water.*—The mixing of water with milk does not make the milk noxious or unfit for drinking, and a person selling milk mixed with water is not punishable under s. 273, Penal Code. *In re* CHINNIAH, **1 Weir 228.**

(1662)—*S.* 273—*Sale of noxious toddy.*—Toddy, in which worms have germinated, is noxious and unfit for drink. Offering or exposing such toddy for sale is an offence under s. 273, Penal Code. *In re* EDIGA NARASAPPA, **1 Weir 228.**

(1663)—*S.* 273—*Sale of horse's food unfit for horse to eat. whether a punishable offence—Meaning of words "the public" in ch.* XIV.—S. 273 of the Penal Code does not make the sale, as horse's food, of grain, or fodder, unfit for a horse to eat, an offence punishable under the section. Ch. XIV of the Code, which contains s. 273, deals with offences affecting the public health, safety, convenience, decency and morals, and the words "the public" mean human beings in general and do not include animals. SITA RAM v. KING-EMPEROR, **3 P. R. 1908, Cr. = 5 P.W.R. 1908, Cr. = 7 Cr.L.J. 278 = 139 P.L.R. 1908.**

(1664) —*S.* 273—*Conviction, when sustainable.*—Before a person can be convicted under s. 273, it must be shown that the article which he has sold or exposed for sale was, to his knowledge or belief, noxious as food or drink. EMPEROR v. SHEO LAL, **26 A. 387 = 1 A.L.J. 64 = A.W.N. 1904, 56 = 1 Cr. L.J. 210.**

——**S. 277.**

(1665)—*S.* 277—*Points to be considered under the section, in respect of a charge.*—There are two questions to be considered with reference to a charge under s. 277, Penal Code. The first is, whether the water of the tank has been ordinarily used for drinking purposes, the second, whether the accused voluntarily corrupted or fouled the water so as to render it less fit for drinking. The first question is entirely one of fact and does not depend upon whether the water has been reserved for drinking by any legal authority. As to the second question, there can be little doubt that bathing, as it is ordinarily practised, must foul drinking water to some extent. *In re* MUTHIAN, **1 Weir 229.**

(1666)—*S* 277—*"Corrupts or fouls," meaning of the expression.*—The expression "corrupts or fouls" as used in s. 277 must be taken in its literal and not in its artificial sense. It could not be said that a mahar by drawing water from a public well, rendered the water less fit for drinking purposes and thus "corrupts or fouls" it within the meaning of the above section. The quality of the water is not affected by the fact that certain persons, owing to caste prejudices, may refrain from using the well. EMPRESS v PANDIA MAHAR, **13 C.P. L.R. 92.** (7 M. 590, 12 B. 437, *R.*)

(1667)—*S.* 277—*District Police Act* (*Bom. Act* IV *of* 1890), *s.* 61 (*m*)—*Scope of the sections—Defiling water.*—The defiling or causing to be defiled the water, etc., referred to in s. 61 (*m*) of Bom. Act IV of 1890, and the voluntarily corrupting or fouling water, etc., referred to in s. 277, I.P.C., both mean some act which defile or fouls the water. Where a woman of the lower caste takes water from public cisterns of water, she cannot be convicted of defiling or fouling the water either under the Bombay District Police Act or under the Indian Penal Code. QUEEN-EMPRESS v. BHAGI *kom* NATHIABA, **2 Bom. L.R. 1078.**

(1668)—*S.* 277—*Public spring, what constitutes*—Nallah.—The water of a *nallah* does not constitute a "public spring," the fouling of the water of a *nallah*, therefore, by washing a fish therein is no offence under s. 277, I.P.C. QUEEN-EMPRESS v. NILLAPPA DAYAPPA. **Rat. Un. Cr. C. 963 = Cr. Rg. 17 of 1898.** [*R.*, 6 Bom. L R. 52.]

(1669)—*S.* 277—"*Public spring*," *whether includes water running along the bed of a river and public river.*—The term "public spring" in s. 277 does not include a continuous stream of water running along the bed of a river. QUEEN v. VITTI CHOKKAN, **4 M. 229 = 1 Weir 230.** [*F.*, 1 Weir 230, Rat. Un. Cr. C. 215 ; *R.*, 6 Bom. L.R. 52.]

(1670) —*S.* 277—*Public river.*—S. 277 does not apply to a public river or to the water flowing in a continuous stream in a river bed. Where the accused, a dog killer, buried the carcase of a dead dog in the bed of a public river and there was evidence that the people of the vicinity bathed in, and drank water from, and used for domestic purposes, water taken from the river in the bed of which the carcase was buried, *held*, that the section would not apply as the river was a public river. *In re* ANTHONY, **1 Weir 230.** [*F.*, 6 Bom. L.R. 52]

(1671)—*S.* 277—*River and rivulet—Public spring.*—A river is not a public spring within the meaning of s. 277 of the Penal Code. REG. v. PATHA, **Rat. Un. Cr. C. 14 = Cr. Rg. 2-7-1869.**

(1672)—*Rivulet—Public spring.*—The water of a rivulet, even though standing in pools, does not constitute a "public spring" within the meaning of s. 277, I.P.C QUEEN-EMPRESS v. HARI, **Rat. Un. Cr. C. 215 = Cr. Rg. 1-10-1885.** [*R.*, 6 Bom. L.R. 52.]

(1673)—*S.* 277—*Public river--Public spring or reservoir.*—A public river is not a 'public spring or reservoir' within the meaning of the

Penal Code (Act XLV of 1860)—*continued.*

above section. EMPRESS v. HALODHUR POROE, **2 C. 383.** [*R.*, Rat. Un. Cr. C. 215, 6 Bom. L.R. 52.]

(1674)—*S.* 277—*Bathing in a tank not set apart for bathing purposes.*—The mere bathing in a tank, not set apart by any lawful order for bathing purposes, without anything further, is not an offence under s. 277, Penal Code. HIGH COURT PROCEEDINGS, 13TH DECEMBER, 1878, NO. 2129, **1 Weir 228.**

(1675)—*S.* 277—*Fishing with basket-nets in a tank.*—Where the accused fished with basket nets in a tank used for drinking purposes, thereby causing a slight disturbance of the mud and so making the water rather less fit for drinking, *held*, that the accused had committed an offence under s. 277, Penal Code. *In re* PUNI BESOYI, **1 Weir 231.**

(1676)—*S.* 277—*Angling in a tank, whether an offence.*—Mere angling in a tank is not an offence under s. 277, Penal Code, without proof that the accused used bait of a foul kind. *In re* SRINIVASA NAIK, **1 Weir 231.**

(1677)—*Ss.* 277, 290—*Fouling the river water running in a continuous stream—Fouling the water of a* nallah.—The fouling of the water of a river running in a continuous stream is not an offence under s. 277, I.P.C., but yet it may be an offence under s. 290, if the evidence shows that the act was such as to cause common injury or danger to the public. EMPEROR v. NAMA RAMA, **6 Bom. L.R. 52 = 1 Cr. L.J. 6.** (Rat. Un. Cr. C. 203, *F.*)

(1678)—*Ss.* 277, 290—*Fouling water of a* nala.—A person fouling the water of a *nala* by putting into it bundles of stacks of *tur* plants, commits an offence under s. 290, I P.C., and not under s. 277. QUEEN-EMPRESS v. VITHOBA, **Rat. Un. Cr. C. 203.** [*F.*, 6 Bom. L.R. 52.]

(1679)—*Ss.* 277 *and* 291—*Cultivating paddy in the bed of a tank.*—Cultivating paddy in the bed of a tank used by the public for drinking purposes is a nuisance and is punishable under ss. 277 and 291, Penal Code. *In re* RAMATRIPATI, **1 Weir 229.**

——**S. 278.**

(1680)—*S.* 278—*Call of nature.*—The act of performing the offices of nature in front of one's door-step in a public street is not an offence under s. 278, I.P.C. QUEEN-EMPRESS v. MAHADSHET, **Rat. Un. Cr. C. 200 = Cr. Rg. 29-5 1884.**

(1681)—S. 278—*See* No. 1639, *supra.*

——**S. 279.**

(1682)—*S.* 279 — *Rash riding.*— Although there is no proof of any person being on the part of the road on which, and at the time when, the accused was riding his horse in a rash and negligent manner, it is competent to the Magistrate to take into his consideration the probability of persons using that road being placed in danger by the act of the accused. QUEEN-EMPRESS v. HORMUSJI NOWROJI LORD, **19 B. 715.** [*Appl.*, Rat. Un. Cr. C. 829.]

Penal Code (Act XLV of 1860)—*continued.*

(1683)—*S.* 279—*Driving bullock without nose strings.*— Simply driving a cart the bullocks of which had no nose strings does not constitute an offence under s. 279 of the Penal Code. REG. v. GANPATEE, **Rat. Un. Cr. C. 19 = Cr. Rg. 12-8-1869.**

(1684)—*S.* 279—*Conviction under the section —Necessary proof.*—To sustain a charge under s. 279 of the Penal Code, it must be shown that there was rashness or negligence on the part of the rider or driver. Where negligence, *i.e.*, neglect of civil duty of circumspection, is alleged, it is incumbent on the prosecution to show that there was such neglect. It cannot be inferred from the mere fact of a person having been run over. *In re* PILLAGAN, **1 Weir 232.**

(1685)—*S.* 279—*Rash riding—Essentials to be proved.*—What has to be proved under this section is that the accused was riding rashly or negligently without exercising that care for the safety of others, which a prudent man might reasonably be expected to exercise. If he was riding so fast that he would be unable to stop the horse if a foot passenger got in the way, he would be liable, provided that the foot passenger acted in a reasonable manner. EMPRESS v. BALUNKI, **1 C.P.L.R. 112.**

(1686)—*S.* 279—*Rash driving.*—In case of a collusion and injury to another arising out of rash driving, the person that drove the carriage and not the owner of it, is liable. A.W. LARRYMORE v. PERNENDOO DEO RAI, **14 W.R. Cr. 32.**

(1687)—*S.* 279—*Actual injury not necessary.* —To constitute an offence under s. 279, Penal Code, it is not necessary that actual hurt should be caused to a human being: it is sufficient if the accused's act is likely to cause such hurt or injury. Without any good reason, the extraordinary power of revision should not be exercised where a convict has failed to appeal. NABI BAKHSH v. CROWN, **2 P.W.R. 1912, Cr.**

(1688)—S. 279—*See* No. 310, *supra*, and No. 2019, *infra.*

(1689)—*Ss.* 279, 337, 338—*Rash driving along a road.*—Where a person allowed his cart to proceed unattended along a road and run over a boy who was sleeping on the road, he could not be convicted under s. 279, but convicted under s. 337 or s. 338, I.P.C. GOVERNMENT OF BOMBAY v. MAIKAJI, **Rat. Un. Cr. C. 198.**

(1690)—*Ss.* 279, 426—*Rash driving on a public road.*—Rash driving on a public road causing thereby collusion with, and injury to the horse of, another carriage is punishable under s. 279, I.P.C., and not under s. 426. EMPRESS v. MULA, **13 P.R. 1900, Cr.**

(1691)—*Ss.* 279, 427—*Rash and negligent driving—Damage—Conviction for mischief in respect of—Improper—Fine for each of several offences—Terms of imprisonment in default—Order to run concurrently—Illegality—Crim. Pro. Code, s.* 35.—Where an accused was found

Penal Code (Act XLV of 1860)—*continued.*

guilty of rash and negligent driving under s. 279, I.P.C., he cannot also be convicted for mischief under s. 427 in respect of damage caused by such driving. The offence of mischief imports that the act was done wilfully and not merely negligently. (9 B. 173, *F.*) Where a Magistrate has imposed a fine for each of several offences, he is not justified by s. 35, Crim. Pro. Code, to pass an order directing the terms of imprisonment in default of the fines to run concurrently. IMPERATOR v. AKIDULLAL WD. AZIZULLAH, **5 S L.R. 263 = 15 Ind. Cas. 808 = 13 Cr. L.J. 536.**

——S. 280.

(1692)—*S.* 280—*Rash navigation of a launch —Running into a boat at anchor in itself* prima facie *evidence of negligence.*—It is the primary duty of steam vessels to keep out of the way of vessels lying at anchor. The fact that a launch runs into a cargo boat at anchor is in itself *prima facie* evidence of negligent navigation. LAL MEAH v. EMPEROR, **12 Cr. L.J. 582 = 12 Ind. Cas. 846 = 4 Bur. L T. 140.**

(1693)—*S.* 280—*Rash and negligent act, proof and decree of—Contributory negligence how far is an element for consideration—Evidence, consideration of, by the High Court in revision.* —The accused was in charge of a steam launch which was coming up the river in a moonlight night. In the river, at deep water, some country boats were moored having no lights in them. The accused on account of mist could not make out whether the boats were stationary or moving, but he thought they were moving. He gave whistles but before he could stop the launch, it came into collision with two of the boats, with the result that they sank almost immediately. The accused then sent a jolly-boat to rescue the drowning passengers of the sunken boats. *Held*—Under the circumstances of the case, the accused was not guilty of the offence under s. 280, I.P.C., as his conduct was not rash or negligent within the meaning of that section. To support conviction under s. 280, I.P.C., it must be proved that the immediate cause of the accident was rashness or negligence on the part of the navigator. In considering the question of degree, the question of contributory negligence has also to be taken into account, not as a defence to the indictment, but for the purpose of determining causation and fixing a measure of the liability of the navigator. When the accused navigator did all he could to save the situation but could not avoid the collision, he would not be guilty under s. 280, I.P.C. The High Court in revision went through the evidence to decide whether the rashness or negligence was proved. KAMDAR ALI SERANG v. EMPEROR, **15 C.W N. 835 = 12 Cr. L.J. 362 = 11 Ind. Cas. 130 = 14 C.L J. 656.**

(1694)—S. 280—*See* No. 477, *supra.*

(1695)—*Ss.* 280, 109—*Abetting rash navigation—Evidence.*—Where a ferry-boat contractor was convicted, under ss. 280 and 109 of the Penal Code, of abetting rash navigation on the

Penal Code (Act XLV of 1860)—*continued.*

evidence that the boat hired by him in fulfilment of a contract was upset from not containing sufficient ballast, *held* that the conviction was bad since there was no evidence to show that the contractor intentionally omitted to provide the boat with what he knew to be necessary for safe navigation. REG v. SAKARAM GOVIND, **Rat. Un. Cr. C. 35 = Cr. Rg. 28-7-1870.**

——S. 282.

(1696)—Ss. 282, 336—*See* CHARGE—FORM OF CHARGE, 1 B.H.C. 137.

——S. 283.

See NUISANCE UNDER PENAL CODE.

See OBSTRUCTING RIGHT OF WAY.

(1697)—*S.* 283—*Gist of offence.*—The accused accosted two persons who were going to the Magistrate's Court and asked them what business they had. They said they wanted to lay a complaint, whereupon he asked them to go with him and took them to a Parsee who wrote their complaint. *Held* that the act of the accused did not fall within the provision of s. 283, I.P.C., as he did not in any way obstruct the complainants, that is to say, prevent them going where they wished to go. QUEEN-EMPRESS v. HARRICHAND BHASKER, **1 Bom. L.R. 517.**

(1698)—*S.* 283—*What constitutes obstruction to public way.*—To warrant a conviction under s. 283 for causing obstruction in a public way, it must be established that the way is a public way and the act of the accused has caused danger, obstruction, or injury to some person. QUEEN-EMPRESS v. BENI MADHAV CHAKRAVARTI, **25 C. 275.**

(1699)—*S.* 283—*Obstruction to public street.* —A conviction on a charge under s. 283, should not be merely general in its terms, but it should show on its face that some particular person or persons have been obstructed. EMPRESS v. RAM SINGH, **11 C.L.R. 462.** [*R.*, 25 C. 275.]

(1700)—*S.* 283—*Exposing goods for sale in a hut encroaching upon a thoroughfare.*—Where an obstruction to a public thoroughfare was caused by the erection of the hut and not by the act of the accused who had rented it, in exposing his goods for sale in it, *held*, that the accused could not be convicted under s. 283. NARAIN AUDHIKARI v. EMPEROR, **8 C.W.N. 369 = 1 Cr. L J. 244.**

(1701)—*S.* 283—*Obstruction to a public way.* —Where there is no proof of obstruction caused to a particular person by the act of the accused, a conviction under s. 283, Penal Code, cannot be sustained. *In re* VANKIPURAM CHAKRAVARTHI IYENGAR, **1 Weir 232.**

(1702)—S. 283—*See* MAD. ACT XXIV OF 1859, s. 48, cl. 3, 4 M. 235 = 1 Weir 911 = 1 Weir 232.

(1703)—S. 283—*See* COMPENSATION TO COMPLAINANT AND HIS RELATIVES, **Rat. Un. Cr. C. 241 = Cr. Rg. 8 of 1886.**

Penal Code (Act XLV of 1860)—*continued.*

(1704)—S. 283— *See* CRIM. PRO. CODE, 1898, s. 133, 3 C.L.J. 360=3 Cr. L.J. 331.

(1705)—*Ss.* 283, 114—*Obstruction—Public way—Exhibition of clock-work toys in a shopwindow—Collection of crowd outside—User in trade.*—The accused, who had a toy shop, exhibited in the windows of their shop, overlooking a public road, certain clock work toys during the Divali festival. A large crowd of people collected on the road to witness the toys, in consequence of which there were dangerous rushes, several persons were knocked down and great obstruction and danger were caused to those using the road. The accused were asked by the Police to stop the exhibition, but they did not obey. On these facts, the Magistrate convicted the accused of offences under ss. 283 and 114, Penal Code: *Held,* (1) that there was obstruction, danger and injury to the persons using the public way, which amounted to a public nuisance; (2) that the efficient cause of the nuisance was the act of the accused, inasmuch as, in working the toys in the manner they did, their object was to attract a crowd, and as they knew that a crowd would be attracted by what they did, they must be regarded as having intended that consequence. The question whether a thing complained of is done in the course of a reasonable user of the accused's business on his own premises, is one of time, place and circumstance. It must be decided with reference to all the facts of the case in which it arises. Ordinarily, every shop-keeper has a right to exhibit his wares in any way he likes in his shop, but he must exercise the right so as not to cause annoyance or nuisance to the public. EMPEROR v. NOOR MAHOMED SULEMAN, **13 Bom. L.R. 209=10 Ind. Cas. 804=12 Cr. L.J. 258=35 B. 368.**

(1706)—*Ss.* 283, 290—*Obstruction to persons when to be necessarily inferred—Actual obstruction to specific individual whether to be proved.*—The petitioners in this case were convicted of an offence under s. 283, I.P.C., by leaving a 'prabha' lying in a public road for 24 hours so as to cause obstruction. The road was three yards wide and the 'prabha' was two yards wide, and consequently as long as the 'prabha' remained on the road, no vehicle could pass, and even a foot passenger could not pass without inconvenience. *Held* that the 'prabha' could not fail to cause obstruction to any person who had occasion to pass along the public road and that, though obstruction to any individual was not expressly proved, it was a matter of necessary inference. *In re* K. VENKAPPA, **38 M. 305=29 Ind. Cas. 832.** (4 M. 232, *N.F.*; 20 A. 433, *R.*)

(1707)—Ss. 283, 291—*See* REVISION—MATTERS PERTAINING TO EVIDENCE, 20 W.R. Cr. 55.

(1708)—Ss. 283, 441, 447—*See* CRIMINAL TRESPASS, 1 Weir 514=6 M.H.C. App. 26.

——**S. 285.**

(1709)—*S.* 285—*Negligent conduct with respect to fire—Evidence.*—The owner of a house in which a fire breaks out cannot be convicted under the above section, without proving actual carelessness or an illegal omission in the owner, from which rashness or negligence can be inferred. There may be conduct either by act or omission from which rashness or negligence may be inferred, which would require the accused to rebut it by evidence; but, merely because a fire breaks out and destroys property or occasions risk to life or property, evidence of actual carelessness or of an illegal omission to take order with it must generally be shown, before the party, by or through whom a fire is said to be occasioned, can be convicted. QUEEN-EMPRESS v. MEI ON, **L.B.R. 1872—1892, 134.**

Penal Code (Act XLV of 1860)—*continued.*

(1710)—*S.* 285—*Negligence in respect of fire.*—The mere fact that a man's house is burnt owing to causes which cannot be discovered furnishes no ground for the assumption that he has been guilty of negligence under s. 285, Indian Penal Code. The negligence must be clearly proved. QUEEN-EMPRESS v. NGA SEIN, **L.B.R. 1872—1892, 569.**

(1711)—*S.* 285—*Conviction under—Culpable rashness—Culpable negligence.*—In order to sustain a conviction under the above section, there must be evidence of rashness or of negligence of the accused. QUEEN-EMPRESS v. NGA YA PO, **L.B.R. 1872—1892, 337.**

(1712)—*S.* 285—*Culpable negligence—Fire.*—To sustain a conviction under s. 285, Penal Code, criminal negligence, as taking no proper precautions after discovering the fire, ought to be proved. KING-EMPEROR v. NGA KA MI KIN, **1 U B.R 1902—1903, Penal Code, 7.**

(1713)—*S.* 285—*Mischief by fire—What constitutes offence.*—In order to support a conviction under the above section, the following matters must be proved:—(i) rash or negligent dealing with fire; (ii) this rashness or negligence must be such as (*a*) endangers human life, or (*b*) is likely to cause hurt or injury to any other person; or (iii) there must be found intentional or negligent omission in dealing with fire to guard against probable danger to human life. QUEEN-EMPRESS v. NGA CHO, **L.B.R. 1872—1892, 411.**

(1714)—*S.* 285—*Offence under—Likelihood of injury to property, proof of.*—S. 285 of the Indian Penal Code does not render it necessary to show danger to human life; it is sufficient to prove likelihood of injury to property. QUEEN-EMPRESS v. KRISHNA, **Rat. Un. Cr. C. 134.**

(1715)—S 285—*See* No. 128, *supra.*

(1716)—*Ss.* 285, 436—*Wilful act of accused.*—S. 285 of the Indian Penal Code is not applicable where the act of the accused is wilful and not rash or negligent. To such a case, s. 436 may be applicable. QUEEN-EMPRESS v. HARI, **Rat Un Cr. C. 126.**

——**S. 286.**

(1717)—*S.* 286—*Obstructing a public servant in discharge of public functions—Duties of butwari amin—Estate Partition Act (Bengal Act VIII of 1876), ss. 112 and 116.*—The

Penal Code (Act XLV of 1860)—*continued.*

public functions contemplated by s. 186, Penal Code, mean legal or legitimately authorized public function. They could not have been intended to cover any act that a public functionary might choose to take upon himself to perform. The accused were convicted under s. 186 of the Penal Code, for obstructing a *butwari* Amin, who proceeded to measure some lands in the course of partition of an estate under Bengal Act VIII of 1876. It was found that the Amin's authority to measure the land did not fall either under s. 112 or s. 116 of the Act. *Held*, that the accused was not guilty of an offence under s. 186 of the Penal Code. LILLA SINGH v. QUEEN-EMPRESS, **22 C. 286.** [*R.*, 24 C. 320, 21 M. 78 = 1 Weir 123, 10 Cr. L.J. 269.]

(1718)—*S.* 286—*What constitutes the offence under the section—Placing loaded gun outside house—Probability of danger to human life.*—If a person omit to take precautions in respect of explosives in his possession sufficient to guard against any probable danger to human life, being conscious of the probability of danger resulting from such omission, he "knowingly" does that which, under s. 286, renders him liable to punishment. If a person omits to take such precautions without such consciousness, he is liable, by reason of his negligence, if he "has not exercised the caution incumbent on him," and which, if he had exercised it, would have created in him the consciousness that his omission was likely to cause danger. Where a person coming home with his gun loaded and finding his house-door locked, placed his gun on a cot outside the house with the hammer down on the nipple on which there was a cap, and went away for a short time to a neighbouring house, and a child of four years, the daughter of a neighbour, apparently played with the gun and was killed by the explosion of the gun, *held*, that he could not be convicted under s. 286, Penal Code, as the danger which actually occurred was not such a probable danger as that he could be held responsible under that section. QUEEN-EMPRESS v. CHENCHUGADU, **8 M. 421 = 1 Weir 233 = 9 Ind. Jur. 463.**

(1719)—*S.* 286—*Explosive substance—Revolver.*—An Assistant Collector left a loaded six-chambered revolver upon his office box on the platform of a railway station, while he went to the Station Master's room to change his clothes. His peon took up the revolver and apparently not knowing how to handle it, one chamber went off wounding a police constable, who was standing near, in the leg. *Held*, that the peon could not be convicted under s. 286, Penal Code, as a revolver was not an explosive substance within the meaning of that section, though, had rashness or negligence on the part of the peon been shown, a conviction under s. 337 might probably have been had. *In re* KASIYA PILLAI, **1 Weir 235.**

(1720)—*S.* 286 — *Negligent conduct with respect to explosive substance.*—The first part of s. 286, Penal Code, is not confined to cases where the explosive is in possession of the accused at the time of the injury. The accused, a gunpowder shop-keeper, sold some fireworks to a person living at a distance from the shop. The fireworks, while being conveyed in a country-cart, exploded and injured the driver and two other persons, all of whom died in consequence. The accused was acquitted, on appeal, on the ground that the explosive was not in his possession at the time of the injury. *Held*, on appeal to the High Court, that the acquittal was wrong and that attention should have been paid as to whether the accused when he sold the explosives had them packed in cases, canisters, or bags in the manner prescribed by the Rules framed under the Explosives Act, 1884, or as to whether fuses or detonators were improperly and negligently packed with them. There should have been also inquiry as to whether the explosives were in themselves so carelessly prepared as to be dangerous. The appellate Magistrate was directed to re-hear the appeal. *In re* ANANTNARAYANA PATTAR, **1 Weir 236.**

(1721)—*Ss.* 286 *and* 337—*Causing hurt by means of a gun—Evidence of negligence.*—*Held*, that the causing of hurt by negligence in the use of a gun would fall within the purview of s. 337 rather than of s. 286 of the Indian Penal Code. But, where all the evidence against the accused was that he went out shooting in the month of July when people were likely to be about in the fields and that a single pellet from his gun struck a man who was sitting in a field, it was *held* that this was not sufficient evidence of rashness or negligence to support a conviction under s. 337 of the Code EMPEROR v. ABDUS SATTAR, **A.W.N. 1906, 91 = 3 Cr. L.J. 363 = 3 A.L.J. 332 = 28 A. 464.**

——S. 287.

(1722)—*S.* 287 — *Negligent conduct with respect to machinery.*—When an owner of machinery employs a competent man to work it and *leaves him unfettered*, he cannot be held criminally responsible for any accident due to the errors of his employee, but, if he discards employees who contend for safety and seeks out one, who, although technically competent, agrees to take the risk, the owner cannot shelter himself behind the employee. KING-EMPEROR v. KANHAYA LAL, **8 P.R. 1906, Cr. = 4 Cr. L.J. 279 = 112 P.L.R. 1907.**

——S. 288.

(1723)—*S.* 288 — *Station-House-Officer — Making a false entry in his diary—Subsequent conduct*—Mala fides *proved—Offence made out.* —Where a Station-House-Officer, in order to support the Inspector, makes a false entry in his diary that the "four cartmen stated to him as they had said before the Inspector," he is guilty of framing an incorrect public record *intentionally*, when it appears from the evidence that he took no action on the complaint of the cartmen, and his statement that no complaint of dacoity was made to him was falsified by his

Penal Code (Act XLV of 1860)—*continued.*

own witness. PASUPULETI RAMDOSS v. EMPEROR. 1911, 2 M.W.N. 64=12 Cr. L.J. 502=12 Ind. Cas. 222.

——**S. 289.**

See NUISANCE UNDER PENAL CODE.

See PUBLIC NUISANCE.

(1724)—*S.* 289—*Gist of the offence under.*—In order to convict a person of an offence under s. 289, I.P.C., it must be established in the affirmative that the accused knowingly or negligently omitted to take such order with the animal in question as was sufficient to guard against probable danger to human life or probable danger of grievous hurt from such animal. It should, therefore, be established in the affirmative that there was a probability that the animal would cause grievous hurt or danger to human life. MUHAMMAD SADIQ v. KING-EMPEROR, **1 A.L.J. 605=1 Cr. L.J. 1059.**

(1725)—*S.* 289 — *Negligent keeping of an animal* —Where a bullock escaped by a pure accident, and it was not proved that the disposition of the bullock rendered any precautions necessary, *held*, that the mere fact that the rope tied to the bullock, when violently strained, broke, would afford no proof of negligence, nor was there anything to show that the probable consequence of the negligence, even if it was assumed that there was negligence, would be danger to human life or danger of grievous hurt. *In re* SUBBARAYA PADAYACHI, **1 Weir 237.**

(1726)—*S.* 289 — *Negligence with respect to animals.*—The likelihood of the consequence must be determined by a deduction from facts antecedent to the actual event, and a man cannot be held criminally liable for a consequence of which, so far as appears by the evidence, nothing had occurred to show the probability. Where a pony kicked a child on the road and the owner of the pony was convicted under s. 289, *held* by the High Court, that, even assuming the negligent keeping of the pony, there was no evidence in the case to show that such insecure keeping would probably lead to danger to human life or of grievous hurt. If the pony had been proved to be vicious, and the accused to be cognisant of the fact, there would have been evidence of the commission of the offence defined in the section. HIGH COURT PROCEEDINGS, 8TH APRIL 1867, **1 Weir 237=3 M.H.C. App. 33.** [*F.*, 1 Weir 237.]

(1727)—*S.* 289—*Negligence with respect to an animal—Conviction under section when sustainable.*—Before the owner or keeper of an animal can be convicted under s. 289, I.P.C., for negligence with respect to his animal, it must be made out that the animal was known to be ferocious, and that it was negligently kept. It is, however, not necessary to show that the animal had actually bitten or injured another person before it bit or injured the complainant; it would be enough to show that, to the knowledge of the owner, it had evinced a savage disposition, *e.g.*, by attempting to bite. QUEEN-EMPRESS v. THAUKRA AUNG, **L.B.R. 1872—1892, 353.**

(1728)—*S.* 289—*Domesticated animals.*—In the case of animals of which, when domesticated, there is no probability of danger to human life or risk of grievous hurt in allowing them to be at large without a herdsman, there should be some evidence that the animals, of which the person in possession, is charged with a conscious or negligent omission to take due order for their custody, are of an abnormally vicious disposition. But in the case of animals naturally fierce, all persons acquainted with their habits are aware that danger to human life or risk of grievous hurt will be the probable consequence of allowing them to be at large. HIGH COURT PROCEEDINGS, 5TH MAR. 1880, NO. 421, **1 Weir 238.**

(1729)—*S.* 289—*Bull set at large.*—A bull set at large in accordance with general practice, at a time when it is not dangerous, cannot be said to belong to or to be in the possession of the person who has set it at large. Such a person cannot be prosecuted for an offence under s. 289 of the Indian Penal Code, if it becomes dangerous afterwards. EMPEROR v. SHIMBHU DIAL, **87 P L.R. 1904=5 P.R. 1904, Cr.=1 Cr. L.J. 501.**

(1730)—*S.* 289—*Driver leaving carriage unattended.*—The accused, a horse-keeper in the employ of the complainant, harnessed his master's horse, put him into his carriage and then went away, leaving the horse and carriage standing in the road of the compound of the complainant's house, without any justification: *Held* that in so doing the accused was guilty of knowingly or negligently omitting to take such order with the horse in his possession as was sufficient to guard against the probable danger of grievous hurt from such animal, an offence punishable under s. 289, I.P.C. The horse was not the less in the actual possession of the servant, because it was for some purposes in the constructive possession of his master. QUEEN-EMPRESS v. NATHU REVA, **Rat. Un. Cr. C. 163=Cr. Reg 24-4-1881.**

(1731)—*S.* 289—*Injury to complainant's buffalo caused by accused's buffalo.*—Where the accused's buffalo attacked the complainant's buffalo and injured the latter by breaking its leg, the accused could not be convicted of an offence under s. 289, I.P.C. QUEEN-EMPRESS v. PANDU, **Rat. Un. Cr. C 197.**

(1732)—*S.* 289—*Bullock running away.*—Where the bullock of the accused escaped from the herd, and going into a hospital ate up some clothes, *held* that a conviction under s. 289 was illegal, since the escape was not due to the negligence of the accused who took every step to find it and since the result was unexpected. QUEEN-EMPRESS v. LINGAPA, **Rat. Un. Cr. C. 606.**

(1733)—*S.* 289—*Animal known to be dangerous—Injury caused by such animal—Conviction of herdsman in charge of animal—*

Penal Code (Act XLV of 1860)—*continued.*

S. 423, Crim. Pro. Code—Enhancement of sentence by appellate Court.—Where a buffalo known to be dangerous caused injury to a person, the herdsman in charge of the animal was held to be properly convicted, under s. 289, Penal Code, inasmuch as he, though present at the time of occurrence, took no steps to prevent the injury. In such a case, the owner of the animal was also punishable, as he took no special precaution regarding the animal. An alteration of sentence by the appellate Court, from simple imprisonment for one month, to a sentence of simple imprisonment for three weeks and a fine of Rs. 50 and a further imprisonment of one week in default of payment, is an enhancement of sentence and is consequently illegal. SHAMLAY v. EMPEROR, **3 N.L.R. 90 = 6 Cr. L.J. 100.**

(1734) - S. 289—*See* MAD. ACT V OF 1882, s. 26, 1 Weir 769.

(1735)—S. 289—*See* NEGLIGENCE, 31 P.R. 1889, Cr., 5 P.R. 1904, Cr.

(1736)—S. 289—*See* SUMMARY TRIAL, 1 L.B.R. 208.

(1736-*a*)—S. 289—See No. 2019, *infra.*

(1737) *Ss.* 289, 290—*Presence of stray cattle at night in a road.*—The presence of stray cattle in a road at night cannot be said to involve probable danger to human life or of grievous hurt under s. 289. But, in letting loose their cows upon the public road, the accused may be held to have done an act, which must necessarily cause obstruction, danger and annoyance to persons, who may have occasion to use the public road at night. *In re* KASAYI AHMED, **1 Weir 238.**

— S 290.

See NUISANCE UNDER PENAL CODE.

See PUBLIC NUISANCE

(1738)—*S.* 290—*Gambling with cards in a public road.*—Where the accused sat on a public road, outside a village, inviting the villagers and others to gamble at cards, and won sums of money from them by means of the game, *held*, that the accused had been rightly convicted under s. 290, Penal Code. HIGH COURT PROCEEDINGS 28TH JAN. 1878, NO. 200, **1 Weir 239.**

(1739)—*S.* 290—*Sentence of imprisonment in default of payment of fine, nature of.*—Under s. 290, Penal Code, the sentence of imprisonment in default of payment of fine must be one of simple imprisonment, and not of rigorous imprisonment. *In re* MALA OBIGADU, **1 Weir 239.**

(1740)—*S.* 290—*Sentence.*—A person sentenced to fine on conviction of an offence punishable under s. 290. can only be sentenced to simple imprisonment in default of payment of fine. QUEEN-EMPRESS v. NGA KYAUH KHE, **L B.R.** 1872—1892, **279.**

(1741)—*S.* 290—*Gambling in a private house.*—Playing with cards for money in a private house is not in itself a common nuisance, unless there is evidence to show that the house is maintained as a common gaming house for gain, or that a crowd of disorderly persons was assembled and caused annoyance to persons living in the neighbourhood. HIGH COURT PROCEEDINGS, 17TH JULY 1880, NO. 1024, **1 Weir 240.**

(1742)—*S.* 290—*Gambling in private house.*—Gambling in a private house is not *per se* a public nuisance under s. 290, Penal Code. HIGH COURT PROCEEDINGS, 25TH FEB. 1879, No. 316, **1 Weir 240.** [*D.*, 14 M. 364 = 1 Weir 241.]

(1743)—*S.* 290—*Gambling—When offence.*—Gambling of itself is not a public nuisance, though it may be punishable under the Police Act or other provisions of law. *In re* MANAGIL KARUVAN, **1 Weir 240.**

(1744)—*S.* 290—*Allowing gambling in one's house.*—A person allowing people to gamble in his house does not commit an offence punishable under the above section. QUEEN-EMPRESS v. NGA KYAWK KHE, **L B.R. 1872—1892, 279.**

(1745)—*S.* 290—*Gambling in a market place.*—*Held*, that, on the evidence in the case, the accused had committed a public nuisance by gambling in a market place. *In re* BETHAN CHETTI, **1 Weir 242.**

(1746)—*S.* 290—*Throwing rubbish in one's own garden.*—The mere act of throwing rubbish in one's own garden does not constitute a public nuisance under s. 290, Penal Code. *In re* KUPPA PILLAI, **1 Weir 242.**

(1747)—*S.* 290—*Keeping offensive vegetable matter in front of house.*—Where a woman kept on her premises vegetable matter, which caused a smell offensive to persons using the public street, *held* that he was liable to be convicted under s. 290, Penal Code. HIGH COURT PROCEEDINGS, 29TH MAY 1883, No. 1956, **1 Weir 243.**

(1748)—*S.* 290—*Trotting of rams in a crowded market place.*—The trotting of rams trained to fight in a crowded market-place constitutes a public nuisance. *In re* RAJAH SAHIB, **1 Weir 243.**

(1749)—*S.* 290—*Liability of Chairman of a Municipality.*—The Chairman of a Municipality cannot be prosecuted under the section for an act, amounting to a public nuisance, committed by the Municipality. If any prosecution is to be instituted, it should be against the Muncipal Corporation. *In re* CHAIRMAN OF THE MUNICIPAL COUNCIL, ELLORE, **1 Weir 243.**

(1750)—*S.* 290—*Allowing pigs to stray in a village.*—Allowing pigs to stray in a village is not illegal within the meaning of s. 43 of the Penal Code and does not, therefore, constitute a public nuisance under s. 290, Penal Code. *In re* VALLAPOO KOTADU, **1 Weir 244.**

(1751)—*S.* 290—*Enclosing village site.*—Where a person enclosed a village site, the property of Government, *held*, that the act did not constitute a public nuisance, in the absence of any proof of that the act caused any common injury to the public. *In re* NEVOR PARIVATAPPA, **1 Weir 245.**

Penal Code (Act XLV of 1860)—*continued.*

(1752)—*S.* 290—*Public nuisance—Obstruction caused by acts of third parties in accused's land—Offence.*—Where some persons diverted the water of a stream into the land of the accused, with the result that a certain path was obstructed, and the accused was charged with and convicted of an offence under s. 290, I.P.C. *Held*, that the conviction was wrong and should be set aside. VELLAI GOUNDEN v. EMPEROR, **2 Ind. Cas. 424 = 10 Cr. L.J. 10.**

(1753)—*S.* 290—*Public nuisance— Evidence —Crim. Pro. Code* (1882), *s.* 243.—In order to justify a conviction under s. 290 of the Code, it should be shown that the nuisance charged caused a common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity of the place. *Held* that, where the accused pleaded guilty, but their admission was not recorded as required by s. 243, Crim. Pro. Code, 1882, and, in all probability was not a plea of guilty, *i.e.*, was not an admission of an act or acts which constituted an offence under the Penal Code, a conviction cannot be based on such plea. EMPRESS v. MUSSAMMAT ADHIKA, **1 C.P.L.R. 25, Cr.**

(1754)—*S.* 290—*Refusal to pay difference in Railway fare.*—The refusal of the accused to pay the difference between the fare of the class he was travelling in and the class he had booked for, on the ground that he was permitted by the Guard to travel in a superior class, and his seizing the belt of the policeman who detained him, with a view to ascertain, the latter's number do not constitute an offence of public nuisance. REG v. MUHAMMAD ALI *valad* ABDUL ALI, **8 B.H.C. Cr. 9.**

(1755)—*S.* 290—*Public nuisance—Placing a* charpoy *temporarily on road.*—*Held*, that placing a *charpoy* temporarily on the road in a *bazar*, without any intention of obstructing traffic, does not amount to the offence of causing public nuisance. KAMALA PRASAD v. KING-EMPEROR, **10 A.L.J. 362 = 13 Cr.L.J. 830 = 17 Ind. Cas. 574.**

(1756)—*S.* 290—*Skinning of animals dying natural death — Nuisance.*—Skinning of an animal which dies a natural death does not in itself constitute a public nuisance. KING-EMPEROR v. BENI, **12 A.L.J. 349 = 15 Cr. L.J. 600 = 25 Ind. Cas. 352.**

(1757)—S. 290—*See* CRIM. PRO. CODE, 1898, s. 143, 34 P.L.R. 1903.

(1758)—S. 290—*See* GAMBLING, 16 P.R. 1867, Cr.

(1759)—S. 290—*See* SENTENCE—IMPRISONMENT — IMPRISONMENT IN DEFAULT OF PAYMENT OF FINE, ETC., 5 M. 157.

(1760)—S. 290—*See* Nos. 127, 184, 478, 1176, 1177, 1638 to 1643, 1677, 1678, 1706, 1737, *supra.*

(1761)—Ss. 290, 291—*See* JOINT TRIAL, 5 M. 20 = 2 Weir 303.

(1762)—*Ss.* 290 *and* 447—*Charge under s.* 447, *but conviction under s.* 290 *upheld by appellate Court—Validity.*—Where a person who was called upon to meet a charge under s. 447, but was convicted both under that section and s. 290, and the appellate Court quashed the conviction under s. 447, but maintained that under s. 290, *held*, that as the accused was not called upon to meet the latter charge, and had no opportunity to give evidence in rebuttal thereof, the conviction could not stand. *In the matter of* CHINI BAS PAL, **5 C.W.N. 567.**

—— **S. 291.**

See NUISANCE UNDER PENAL CODE.

See PUBLIC NUISANCE.

(1763)—*S.* 291 — *Elements of offence.*—In order to support a conviction for the offence of continuance of a nuisance after an injunction to discontinue under s. 291, I.P.C., it is necessary that the order of the Magistrate forbidding the continuance of the nuisance, or evidence of notice of such a character as to make plain the precise terms of the order and notice, be recorded in the case. Strict proof of all the circumstances constituting an offence, especially where the offence is one which is not *malum in se*, should be required as the basis of a conviction. QUEEN-EMPRESS v. GUNYA, **Rat. Un. Cr. C. 295 = Cr. Rg. 39 of 1886.**

(1764)—S. 291—*See* Nos. 184, 1679, 1707, 1761, *supra.*

—— **S. 292.**

See OBSCENE PUBLICATION.

(1765)—*S.* 292—*Distributing obscene pamphlet—Definition—Intention.*—The test of obscenity with reference to a charge of distributing obscene literature, is whether the tendency of the matter is to deprave and corrupt those whose minds are open to such immoral influence and into whose hands a publication of this kind may fall. If a publication is detrimental to public morals and calculated to produce a pernicious effect in depraving and debauching the minds of the persons into whose hands it may come, it will be an obscene publication which it is the intention of the law to suppress. The question whether a publication is, or is not, obscene in a question of fact, if a publication is is fact obscene, it is no defence to a charge of selling or distributing the same that the intention of the person so charged was innocent. EMPEROR v. HARI SING, **A.W.N. 1905, 203 = 28 A. 100 = 2 Cr. L. J. 520.** (3 A. 837, 20 B. 193, *R.*; Queen v. Hicklin, 3 Q B 360, *R.*; Reg v. Gathercole, 2 Lewin C.C. 237, King v Dixon, 3 M. & S. 11, *Ref.*) [*F.*, 39 C. 377 = 15 C.L.J. 151 = 13 Cr. L.J. 177 = 13 Ind. Cas. 993.]

(1766)—*S.* 292—*Principal and agent—Liability of principal—Finding.*—The mere fact that a person is proprietor and publisher of a newspaper does not render him criminally liable for any obscene advertisement or other matter inserted therein by his servants, in the absence of a distinct finding that it was put in by the

Penal Code (Act XLV of 1860)—*continued.*

order or owing to the negligence of the proprietor. QUEEN-EMPRESS v. MOHAMMAD MOHSIN, **A.W.N. 1890, 175.**

(1767)—*S.* 292—*Advocating checks to conception.*—A book advocating checks to conception or explaining what apparatus helps such check, is not necessarily obscene. But if the details given in the book, irrespective of the ultimate purpose, are calculated to inflame the passions and corrupt the sense of decency of the readers, a conviction under s. 292 is proper. QUEEN-EMPRESS v. FRAMJI D. TARA PERE-WALLA, **Rat. Un Cr. C. 620.**

(1768)—*S.* 292—*Obscene book, printing for sale—Obscene, meaning of*—Natu Churi (*theft of tops*), *if an obscene book—Religious work, publication of recognised, if and when an offence —Obscenity, test of*—" Rati," *meaning of—Krishna and Radha, love affairs of—Allegorical meaning—Extracts from religious publications, if and when protected.*—If, in fact, a work or publication is one of which it is certain that it will suggest, to the minds of the young of either sex or even to persons of more advanced years, thoughts of a most impure and libidinous character, then its sale is a criminal offence, and it is immaterial that the accused had in view an ulterior object which was innocent or even laudable. (1868, L.R. 3 Q.B. 360, 1872, L.R. 7 C.P. 261, 20 B. 193, 28 A. 100, 3 A. 837, *F.*) The word "*Rathi*" in the love stories of Radha and Krishna is no doubt used in a spiritual sense, to indicate spiritual union or love in the higher sense, but in the ordinary acception of the word, it means carnal intercourse and it may be so understood by ordinary people. The story, however, as related in the book *Natu Churi*, shows that it could not relate to human beings, as Krishna is described as a boy of 5 years of age and is called by well-known names of the Divine Krishna, even in the objectionable passages, and is related to be doing supernatural acts, and the description must have a spiritual meaning. The love stories and dalliances of Radha and Krishna have a deep allegorical meaning ; but the deep allegory and the spiritual significance of the love stories of Radha and Krishna cannot be fully understood by persons who have not a certain degree of spiritual culture. The Hindus generally and the Vaishnavas in particular do not look upon Radha and Krishna as human beings, and do not judge their doings by the standard of human conduct or as in any way improper. They are worshipped as deities. Even a school boy, or an ignorant Hindu who has neither the learning nor the spiritual culture for appreciating the esoteric meaning of the *alias* (mysterious deeds) of Radha and Krishna, would look upon them as divine persons, and all the incidents in their lives, including the amorous incidents, as divine, and the latter would not, therefore, raise impure thoughts in the minds of Hindus who believe in the divinity of Radha and Krishna. The exception to s. 292 of the Penal Code does not apply to religious books. But the reason why religious books are not included in the exception is that the tendency of a religious publication is not to deprave or corrupt the morals of persons, and therefore a religious work is not obscene within the meaning of s. 292. But if the objectionable passages contained in a religious book are extracted and printed separately and such passages deal with matters which are to be judged by the standard of human conduct, for instance, where they relate to immoral acts of human beings, and the tendency of such publication is to deprave and corrupt those whose minds are open to immoral influences, such publication may not be justified on the ground that the passages formed part of a religious book. Where, however, a story (which looks objectionable) is taken from a religious book and printed separately, but it relates to beings whose conduct is not to be judged by the standard of human conduct, it cannot be condemned as obscene, merely because, being looked upon as sacred, they wouldnot raise immoral thoughts in people, who believe in the divinity of beings whose acts and conduct are described in such story. The book being a religious one and being apparently intended for Hindus, and describing, as it does, incidents which are not considered improper by the Hindus who form the vast majority of the Urya population, it cannot be condemned as obscene, merely because, a small section of the Uryas who do not believe in the divinity of Radha and Krishna might take immoral ideas from it. The mere fact that no notice was taken of other editions of the book or that the book is described in the Calcutta Gazette as a mythological poem would not justify its publication, if it is really obscene. *Held*, also, in the circumstances of the case, that it cannot be said that the tendency of the book '*Natu Churi*' is to deprave and corrupt those whose minds are open to immoral influences, or that the book is one of which it was certain that it would suggest thoughts of a most impure character or that the publication of the book is an offence under s. 292 of the Penal Code. KHORODE CHUNDER ROY CHOWDHURY v. EMPEROR, **15 C.L.J. 151 = 13 Ind. Cas. 993 = 13 Cr. L.J. 177 = 39 C. 377.**

(1769)—*S.* 292—*Obscene literature—Publication—Test of obscenity.*—In a prosecution for an offence punishable under s. 292, Penal Code, if the prosecution succeed in showing that the detailed passages on which they rely are of an obscene character, the author's liability in respect of those passages will not be saved or avoided merely by reference to other passages in the book which may contain moral precepts of an unexceptionable character. The test to be applied is whether the language complained of is such as is calculated to deprave or corrupt those whose minds are open to immoral influences. The important point to look at is rather the form of the expression than the actual meaning, for the same meaning may be obscenely expressed by one form of language, and yet by the use of another form of language may be couched in expressions free from reproach. A distinction must, however, be

Penal Code (Act XLV of 1860)—*continued.*

observed between obscenity, *i.e.*, language calculated to inflame the passions, and a certain primitive frankness of expression such as one would expect to find in such a language as Marathi. It is not the primitive frankness or directness of expression which is most likely to corrupt or inflame the mind. EMPEROR v. VISHNU KRISHNA, **15 Bom. L.R. 307 = 2 Bom. Cr. C. 58 = 19 Ind. Cas. 504 = 14 Cr. L.J. 248.** (1868 L.R.Q.B. 360, *R.*)

(1770)—S. 292—*See* No. 299, *supra.*

(1771)—*Ss.*292, 294—*Charge under, essentials of.*—When a charge is brought against an accused under s. 292 or s. 294, it should always specify the words or representations alleged to be obscene, and the Magistrate should state in his judgment what he finds to have been exhibited or uttered. QUEEN-EMPRESS v. MI MIN SI, **L.B.R. 1872—1892, 262.**

(1772)—Ss. 292 and 294—*See* ACT X OF 1875, s. 147, **1 C. 356.**

—— **S. 293.**

See NUISANCE UNDER PENAL CODE.

See OBSCENE PUBLICATION.

See PUBLIC NUISANCE.

—— **S. 294.**

(1773)—*S.* 294—*Using obscene words—Omission to set out the words in evidence.*—Where a person was charged under s. 294, with using obscene words and was convicted, *held*, that the omission to set out those words in the evidence was not a ground for setting aside the conviction. *In re* NARASAMMA, **1 Weir 251.**

(1774)—*S.* 294—*Uttering obscene words—Security for keeping the peace—Crim. Pro. Code, s.* 106.—A clear and specific allegation of the words and of the persons by whom they were uttered must be stated against the accused, prosecuted under s. 294, I.P.C. A Magistrate should not order the accused, on conviction of an offence under s. 294, Penal Code, to give security for keeping the peace, as the offence is not one of those mentioned in s. 106, Crim. Pro. Code, and is in no way whatever connected with any probability of a breach of the peace. QUEEN-EMPRESS v. NGA SO PE, **L.B.R. 1893—1900, 50.** (1 C. 356, *F.*)

(1775)—*S.* 294—*Obscene songs.*—A conviction under s. 294 for singing obscene songs in a public place was set aside, in the absence of proof that the particular songs sung were obscene, though they belonged to a class of songs many of which were obscene. REG. v. GNAU *bin* KRISHNA GURAV, **4 B H.C Cr. 25.**

(1776)—*S.* 294—*Bad language—Annoyance.*—Annoyance to others is essential to constitute an offence under s. 294, Indian Penal Code, and if it is not proved, no conviction can be obtained. In ordinary cases under s. 294, Penal Code, where the bad language is not specially pointed at an individual and arises from a mere outbreak of temper, a small fine is sufficient to meet the requirements of justice. QUEEN-EMPRESS v. MA KYE U, **L.B.R. 1872—1892, 537.**

(1777)—*S.* 294—*Abusive language, use of—Sentence.*—A woman who abused her husband in language and under circumstances amounting to an offence under the said section was ordered to pay a fine of Rs. 20, and, in default of payment, to undergo one month's simple imprisonment. The fine was paid. *Held*, that the sentence was unduly severe and that it must be reduced to Rs. 2 and that the balance ought to be refunded. QUEEN-EMPRESS v. MI U RI, **L.B.R. 1872—1892, 309.**

(1778)—*S.* 294—*Conviction under, when sustainable--Sentence in ordinary cases.*—Where there is no evidence recorded that the language used caused annoyance to anybody, a conviction under the above section cannot be sustained. QUEEN-EMPRESS v. NYO KE, **L.B.R. 1872—1892, 332.**

(1779)—S. 294—*See* CRIM. PRO. CODE, 1898, s. 106, **2 L.B.R. 125.**

(1780)—S. 294—*See* SECURITY TO KEEP THE PEACE—ON CONVICTION, U.B.R. 1904, 1st Qr., Penal Code, 4.

(1780-*a*)—S. 294—*See* Nos. 166, 1771, 1772, *supra.*

(1781)—*Ss.*294, 509 *and* 71—*Obscene act done in a public place—Exposing one's person to insult a woman—One conviction only.*—Although the act of exposing one's person with intent to insult a woman and doing an obscene act in a public place causing annoyance to others fall under ss. 509 and 294, Penal Code, there is only one act and only one conviction and sentence should be passed under the first proviso of s. 71, Penal Code. QUEEN-EMPRESS v. NGA PO MYA, **1 L.B.R. 52.**

—— **S. 294-A.**

(1782)—*S.* 294-*A—Keeping Lottery Office—Registration, effect of.*—Where a fund consisted of two hundred subscribers or shareholders, each paying Rs. 2 a month, so long as they remained on the rolls of the fund, and as soon as the total sum of Rs. 400 was collected, Rs. 300 was held in reserve to be let out at interest and the remaining Rs. 100 was raffled for as a prize, and the prize winner ceased thereafter to be a subscriber, *held*, that the fund constituted a lottery, as it depended entirely on the drawing of lot whether or not the prize fell to any given subscriber. *In re* DORAISAMI MUDALY, **1 Weir 251.**

(1783)—*S.* 294—*Lottery.*—Where a fund was in its nature of a lottery, *held*, that the mere fact of its being registered would not exonerate the persons carrying on the business from liability under s. 294-A. *In re* RAMANJAM CHETTI, **1 Weir 252.** [*R.*, 15 Cr. L.J. 243 = 23 Ind. Cas. 195.]

(1784)—*S.* 294-*A—Annoyance and injury.*—In order to obtain a conviction under the said section, it is necessary to give evidence of actual annoyance or injury to the public. MUN SEIN v. QUEEN-EMPRESS, **L.B.R. 1872—1892, 59.**

Penal Code (Act XLV of 1860)—*continued.*

(1785)—*S. 294-A—Keeping a Lottery Office—Lottery, what is.*—*Held*, that, the office or place, the keeping of which is punishable under the first part of s. 294-A of Act XLV of 1860, is the scene of the actual drawing of the lottery. But keeping a small office for doing preliminary business and correspondence, and not intended and fit for the drawing purposes, is not indictable under this part of the section. *Held*, also, that a scheme for distributing prizes, etc., of the following description, is a 'lottery' within the meaning of the second part of the said section. "Every subscriber pays Rs. 10-8 and gets a bond for Rs. 10. This sum is guaranteed by one of seven Banks, and not only is negotiable but can be cashed at the Bank at par at any time. The draws were to start when two thousand tickets had been sold, and, at stated intervals, further drawings were to be made until every one had got a prize or had had their money returned. Those who did not draw prizes in the first draw would go on drawing at each distribution till they got a prize, or decide to withdraw their money. Thus the original ten rupees was absolutely safe, the extra eight annas was to cover the cost of correspondence, etc." *Obiter* :—In case of doubt, a penal provision of a statute should always be construed in favour of the subject. MADAN GOPAL v. CROWN, **14 P.W.R 1910, Cr. = 17 P.R. 1910 = 6 Ind. Cas. 620 = 11 Cr L.J. 382 = 92 P.L.R. 1910.** (1 M.H.C. 488, 22 M. 212, *D.*).

(1786)—*S. 294-A—Agreement to secure payment under* kuri.—Where a number of persons subscribe, each a certain sum, by periodical instalments, with the object that each in his turn (to be decided by lot), shall take the whole subscription for each instalment, all such persons getting back the amount of their contributions, and the common fund being lent to each subscriber in turn, *held*, that the transaction was neither illegal in itself nor rendered so by s. 294-A, Penal Code. VASUDEVAN NAMBUDRI v. MAMMOD, **22 M. 212.** (1 M H.C. 448, *F.*) [*D.*, 11 Cr L.J. 382 = 6 Ind. Cas. 620 = 92 P.L. R. 1910 = 17 P.R. 1910 = 14 P.W.R. 1910.]

(1787)—*Penal Code, s. 294-A—Lottery — Scope—"Publisher," meaning of.*—The words "any such lottery" in s. 294 A mean any lottery not authorised by Government. It does not matter in the least, where a lottery is to be drawn, whether in British India or out of it. If it is one, "not authorised by the Government," any one who publishes such a proposal, as is therein contemplated, relating to it, renders himself liable to be punished under para. 2 of the section. Both the persons sending the proposal and also the proprietor of a newspaper publishing such proposal as an advertisement, are publishers within the meaning of the section and liable to be punished under it. Therefore, the proprietor of an Indian newspaper publishing an advertisement relating to a foreign lottery is liable to be punished under s. 294 A, I P.C. QUEEN-EMPRESS v. MANCHERJI KAVASJI SHAPURJI, **10 B. 97.**

Penal Code (Act XLV of 1860)—*continued.*

(1788)—S. 294-A—*See* GAMBLING, **7 M. 301.**

(1789)—S. 294-A—*See* No. 16, *supra.*

——**S. 295.**

See RELIGION, OFFENCES RELATING TO.

(1790)—*S. 295—Word "defile," explained.*—Where the accused, a goldsmith by caste, performed *Abishekam, i.e.*, poured cocoanut-water over a *Lingam*, *held*, by *Muthusawmi Iyer, J.*—The word "defiled" in s. 295 must not be restricted to acts which would render the *Lingam* unclean or dirty as a piece of stone or metal. It is to be taken in the sense in which such class of worshippers usually understand it when it is applied to a place or an object of worship. In this sense, it would include any act done in relation to the *Lingam*, which would render it impure to the accused's knowledge, according to the recognised usage of the institution as an object of worship. If the act leads to this result, it is of no consequence whether it makes the *Lingam* materially or ritually impure. In many temples, it is not usual for worshippers generally to touch the idol or pour cocoanut-water upon it, except through persons, who are specially appointed to do so and enjoined to observe special rules of cleanliness. If the accused knew that the temple, in the present case, was one of those temples, and if he did the act imputed to him to ridicule openly the established rule in regard to the purity of the *Lingam* as an object of worship, it might then be reasonably inferred that he did the act wantonly, and with the intention of insulting the religious notions of the general body of worshippers. *Per Parker, J.*—The word "defile is used in s. 295, in its primary signification and means "to make unclean," to render foul or dirty. As the accused did the act as an act of worship, there was no *mens rea*. *In re* SIVAKOTI SWAMI, **1 Weir 253**

(1791)—*S. 295—"Defile" meaning of.*—The word "defile" must be taken to be used in the sense in which it is generally used with reference to religious matters. It makes no difference that the guilty party is a worshipper of the temple which he has defiled. *In re* BHEEMA GOUNDAN, **1 Weir 256.**

(1792)—*S. 295—Pollution of.*—Where a person, as a result of a quarrel with a relation, throws a basket containing cooked food, into a well, but without any intention to wound the religious susceptibilities of any one, he cannot be convicted of an offence under s. 295, I.P.C. QUEEN EMPRESS v. WAMAN LAKSHMAN, **Rat. Un. Cr. C. 979 = Cr. Rg. 40 of 1898.**

(1793)—*S. 295—Drawing water from road-side well.*—*Mahars* drawing water from a well in the road-side cannot be said to commit an offence under this section, the well not being an object held sacred by any class of persons. EMPRESS v. GANPATYA, **5 C P L.R. Cr. 20.**

(1794)—*S 295—Conviction under, when sustainable.*—The mere defilement of a place of worship is no offence under s. 295. In order to sustain a conviction under that section,

Penal Code (Act XLV of 1860)—*continued.*

there must be an intention of thereby insulting the religion of a class of persons, or the knowledge that a class of persons is likely to consider the defilement as an insult to their religion. EMPRESS v. MUSSAMMAT ZINGOO, **7 C.P.L.R. Cr. 45.**

(1795)—*S.* 295—*Injuring or defiling a place of worship with intent to insult the religion of any class.*—As to whether a *kyaung* is a place of worship or an object held sacred by the Buddhists within the meaning of s. 295, I.P.C., and whether injuring or defiling the same, would be an offence under the above section of the Code. ANONYMOUS, **U.B.R. 1892—1896, Vol. I, 198.**

(1796)—*S.* 295—*Scope—Term "object" explained.*—The word "object," in s. 295 is not limited to inanimate objects, but includes animate objects, which are held sacred, as well as idols, relics or the like. HAKIM v. EMPRESS, **27 P.R. 1884, Cr.** [*R.*, 34 P.R. 1888, Cr.]

(1797)—*Ss.* 295, 297—*Scope of sections—Hindu having sexual intercourse in enclosure surrounding Mahomedan Fakir's tomb.*—There is a distinction, not arbitrary, between objects which are objects of respect and even veneration and objects which are held sacred; as an example of the former, reference may be made to a place of sepulchre (not actually consecrated, as in the case of ground specially consecrated for that purpose, according to the rites of Christian churches), as distinguished from a place of worship to the deity, or where an idol or altar is kept; and such distinction appears to have been kept in view by the legislature, for, while s. 295 deals with the latter class of objects and places, s. 297 deals more especially with trespasses on places of sepulchre and places set apart for the performance of funeral rites and as depositories for the remains of the dead. Where a Hindu had sexual intercourse with a woman at about 9 P.M., within an enclosure surrounding a tomb of a Mahomedan Fakir, venerated by some of his co-religionists, *held* that the accused had no intention to insult the religious feeling of the Mahomedans, and he could not be convicted under s. 295 inasmuch as there was no evidence to show that the tomb in question was used as a place of worship, or that any particular object held sacred was defiled. *Held* also that, upon the facts found, a conviction under s. 297 could be supported. *In re* RATNA MUDALI, **10 M. 126 = 1 Weir 256.** [*R.*, U.B.R. 1892—1896, Vol. I, 199.]

(1798)—*Ss.* 295 *and* 297—*Offences relating to religion.*—An accused, who commits an offence by having sexual intercourse within the enclosure surrounding a pagoda, is punishable under s. 297 for trespassing on a place of worship with the knowledge that the religious feelings of the worshippers are likely to be injured thereby and not under s. 295 for defiling a place of worship. QUEEN EMPRESS v. NGA PO SAN, **U.B.R. 1892—1896, Vol. I, 199.** (10 M. 126, *R.*)

Penal Code (Act XLV of 1860)—*continued.*

(1799)—*Ss.* 295—298—*Section whether applicable to different sects or classes—Object of Legislature.*—It cannot be held that ss. 295-298 are only applicable as between those, who follow different religions and not as between different sects or classes of Hindus, who are animated by sectarian feelings.—*Per Muthusami Iyer, J.*—The Legislature, in enacting Ch. XV of the I.P.C., apparently had in view to punish—in a country populated by persons of widely different religion—deliberate acts of offence perpetrated by persons of one religious persuasion for the insult or annoyance of persons of another persuasion. It is not intended by the chapter to make criminally punishable breaches of ritualistic observance committed by persons of any one creed against the canons of their own faith. It could never have been intended to make acts harmless in themselves, and only regarded with disfavour because opposed to an ecclesiastical law, punishable under the Penal Code. *In re* SIVAKOTI SWAMI, **1 Weir 253.**

(1800)—Ss. 295—299—*See* CRIM.PRO.CODE, 1898, ss. 107 and 144, S.C. 77, Oudh.

(1801)—*Ss.* 295, 378, 403, 425—*Meaning of the word 'object'—Killing of a bull set at large at* Sradha.—The word 'object' means something *ejusdem generis* with an object of worship, such as an idol or a picture; something that is capable of 'destruction' in the sense in which that word is ordinarily used, or of 'damage,' or of 'defilement.' Therefore, where certain Mahommedans, secretly and at night, killed a bull dedicated and set at large at the *Sradha* of a Hindu, *held*, that no offence under s. 295 had been committed, inasmuch as the bull was not an 'object' within the meaning of that section. *Held*, also, that, in such a case, the accused would not be guilty of an offence under ss. 378 and 403 of the Code, as the bull was not 'moveable property' within the meaning of those sections, nor would he be liable under s. 425 of the Code, as such bull was not 'property' within the meaning of that section. Such a bull was *nullius proprietas*, and the fact that such a bull received some attention from the cowherd of the person setting it at liberty and was daily fed by him by the direction of its original owner would not be inconsistent with a total surrender by the person setting it at liberty of all his rights as proprietor. ROMESH CHUNDER SANNYAL v. HIRU MONDAL, **17 C. 852** (10 A. 150, 8 A. 51, *F.*; 11 M. 145, *R & Commented on.*) [*R.*, 30 A. 181 = 5 A.L.J. 147 = 28 A.W.N. 1908, 64 = 7 Cr. L.J. 381, 18 B. 212]

(1802)—*Ss.* 295 *and* 379—*Dispute regarding trusteeship of a temple—Removal by accused of the idol and other articles before execution of decree for possession by Civil Court.*—The accused obtained possession of a temple and its contents, by breaking open the doors of the temple, under the *bona fide* belief that they were entitled to do so and placed their locks on the doors. The Magistrate passed an order under s. 144, Crim. Pro. Code, on the next day, prohibiting the accused and the complainant

Penal Code (Act XLV of 1860)—*continued.*

from entering the temple. The locks, however, which the accused had placed on the doors, remained until possession was given to the complainant in execution of the District Court's decree for possession. On the morning of the day on which possession was given to the complainant in the execution of the decree in his favour, the accused removed the idols and other articles of the temple to a Mantapam close to the temple and apparently belonging to it. When the accused acted in this manner, the order of the Magistrate under s. 144 had already expired. *Held*, that the accused had not committed the offence of theft, inasmuch as the complainant could not be held to have been in possession between the date of the expiry of the order of the Magistrate and the date on which he was placed in possession in execution of the District Court's decree. *Held* further that, even assuming that the decree of the District Court continued complainant's possession of the temple and its contents from the date of the decree, the act of the accused would not amount to theft, as he simply moved the articles from one part of the premises belonging to the temple to another, without any intention of afterwards misappropriating them to their own use and in the exercise of what they believed to be *bona fide* entitled to. But the accused would be guilty of an offence under s. 295, Penal Code. VEDAGIRI MUDALY v. SAPPANI MUDALY, **1 Weir 430 = 2 Weir 577.**

——**S. 296.**

See RELIGION, OFFENCES RELATING TO.

(1803)—*S. 296—Right of Muhammadans to worship in a mosque—"Amin," how to be pronounced.*—A mosque that has been dedicated to God cannot be appropriated exclusively to or by any particular sect or denomination of the *sunni* Muhammadans. A mosque to be a mosque must be a building dedicated to God, and not a building dedicated to God with a reservation that it should be used only by a particular person holding particular views of the ritual. No sect or creed or portion of the community can restrain others claiming the right. [*R.*, 1 C.W.N. 76.] There is no authority in the Muhammadan Ecclesiastical Law to limit the tone of the voice in which the word "Amin" is to be pronounced. So long as persons are Muhammadans, they are entitled to enter a mosque and perform the worship and say the word "Amin" without anything to restrain their tone or note of the octave. But if the pronouncing of the word "Amin" results in the disturbance of the peace, that will have to be dealt with under the Criminal Law. But where the word "Amin" is pronounced aloud in the honest exercise of the conscience that it should be so pronounced, there can be neither any offence under the Criminal Law, nor any wrong in the Civil Law—*Per Mahmood, J.* If a Muhammadan goes to a mosque not with the object of honestly performing his own religious duties, but with the deliberate purpose and intention of disturbing the quiet devotion of others engaged in prayers, and acts in such a way that the necessary consequence is that the congregation is disturbed, he has brought himself within the meaning of s. 296, I.P.C.—*Per Straight, J.* A Muhammadan would bring himself within the grasp of the Criminal Law, who, not in the *bona fide* performance of his devotions, but *mala fide* for the purpose of disturbing others engaged in their devotions, makes any demonstrations oral or otherwise in a mosque, and disturbance is the result —*Per Edge, C. J.* ATA-ULLAH v. AZIM-ULLAH, **12 A. 494, F.B. = A.W N. 1890, 179.** (7 A. 461, *R.*). [*Rel. on*, 35 C. 294 = 12 C.W.N. 289 = 7 C.L.J. 433 = 3 M. L.T. 191 ; *R* , 18 C. 448, P.C. = 18 I.A. 59, 35 M. 681, 18 Ind. Cas. 195, 15 P.R. 1902, Cr. = 104 P.L.R. 1902.]

(1804)—*S. 296—"Disturbance," what constitutes.*—In order to constitute a disturbance within the meaning of s. 296, it is not necessary that there should be a stopping or an actual prevention of the carrying on of a religious service ; nor is it necessary that the religious assembly should be really disturbed. *In re* SELVARAJALU NAIKER, **1 Weir 259.**

(1805)—*S. 296—Disturbing religious assembly.*—It cannot be said that a congregation assembled for public worship cannot be disturbed unless there is an actual stay or interruption of the service. Where the worshippers are reciting one Mantram, it amounts to a disturbance to recite another, in their presence and hearing, so as to distract their minds from the act in which they are engaged. *In re* A. KRISHNATATACHARI, **1 Weir 259.**

(1806)—*S. 296—Disturbing assembly lawfully engaged in worship—Highway—Religious procession.*—*Held*, that, as no assembly can be lawfully engaged, within the meaning of s. 296, Penal Code, on a highway, the accused could not be convicted of an offence under that section, for having taken possession of drums from certain boys, who were beating them on a public road to summon people for a procession during *Mohurram*, which the accused restored to them the next day. The Chief Court, in quashing conviction of the accused, refused to consider whether the action of the accused constituted a technical offence under any other provision of law. CROWN v. DHALU RAM, **119 P L.R. 1909 = 33 P.W R. 1909, Cr. = 3 Ind. Cas. 981 = 10 Cr. L.J. 445.**

(1807)—*S. 296—Disturbing a religious assembly—Religious procession on a highway—Carrying of flags to temple.*—Where certain Lodhas, who, with the sanction of the public authorities, had been carrying flags to a temple in procession through a public street, were attacked by certain others, *held*, that the act constituted a disturbance of the performance of a religious ceremony, punishable under s. 296, Penal Code. MASIT v. KING EMPEROR, **8 A.L.J. 1150 = 12 Cr. L.J. 573 = 12 Ind. Cas. 837.**

(1808)—S. 296—*See* Nos. 650, 726, 1800, *supra.*

Penal Code (Act XLV of 1860)—*continued.*

(1809)—Ss. 296, 298—*See* CRIM. PRO. CODE, 1898, s. 106, 2 Weir 47.

——**S. 297.**

(1810)—*S.* 297—*Trespass on burial place.*—Persons who enter a burial ground and plough up land used as a grave-yard are guilty of the offence under s. 297, although they enter the ground with the knowledge of the owner, and apparently with his consent. QUEEN-EMPRESS v. SUBHAN, **18 A. 395 = A.W.N. 1896, 119.** [*F.*, 34 M. 927 ; *R.*, 33 A. 773 = 8 A.L J. 927 = 12 Cr. L.J. 532 = 12 Ind. Cas. 300.]

(1811)—*S.* 297—*Gist of offence.*—The provisions of s. 297 of the Indian Penal Code become applicable where there is a trespass into a place of religious worship with the knowledge that the feelings of persons would be wounded thereby. QUEEN-EMPRESS v. BAGYA, **Rat. Un. Cr. C. 148.**

(1812)—*S.* 297—*Trespassing on a burial place.*—Where the accused, forming part of a committee, whose duty it was to collect subscriptions to defray the cost of a wall round the cemetery, but having no right to compel payment of burial fees, demanded a fee from the complainant's party before admitting the corpse into the cemetery, and, after some discussion, during which the corpse was placed on the ground, the corpse was admitted without payment, *held*, that there was no "indignity" within the meaning of s. 297. *In re* HAJEE MAHAMED GHOUSE SAHAB, **1 Weir 287.**

(1813)—*S.* 297—*Using tomb for adulterous intercourse.*—Using a Mahomedan tomb as a place of privacy for adulterous intercourse is an offence under s. 297, Penal Code, as it is trespassing on a place of sepulchre with the knowledge that the religious feelings of certain Mahomedans were likely to be insulted thereby. EMPRESS v. GAJA, **5 C.P.L R. Cr. 32.**

(1814)—*S.* 297--*Stopping* Moharram *procession.*—The stopping of a *tazia* during a *Moharram* procession does not amount to an offence under s. 297 of the Penal Code. GHOSITA v. KALKA, **A.W.N 1885, 49.**

(1815)—*S.* 297—*Burial ground—Delay in digging grave.*—Where, owing to a *bona fide* dispute as to the right to use a burial place, arising out of a question between the parties as to the complainant's delay or neglect in making a certain payment, a delay occurred in digging the grave, but nothing else, the corpse not having been brought to the ground, when the dispute commenced, *held*, that s. 297 was not applicable to the case. BURHAN SHAH v. EMPRESS, **26 P.R. 1887, Cr.**

(1816)—*S.* 297—*Trespass on burial ground—Ploughing up burial ground—Joint owner.*—A joint owner of land, who enters upon the land with the intention or knowledge that he was about to do an act which was wrongful to his fellow owners, does commit trespass. Hence, where a joint owner of property entered a grove for the purpose of demarcating his share, and in doing so dug up certain graves and exposed the bones of the persons buried in spite of the remonstrances of the relations of the buried persons, *held*, he was liable to be convicted of offence under s. 297 of the Penal Code. RAM PRASAD v. KING-EMPEROR, **8 A.L J. 927 = 12 Ind. Cas. 300 = 12 Cr. L.J. 532.**

(1817)—S. 297—*See* CRIM. PRO. CODE, 1898, ss, 253, 437, 2 Ind. Cas. 825.

(1818)—S. 297—*See* CRIMINAL TRESPASS, 3 M. 178 = 1 Weir 286.

(1819)—S. 297—*See* Nos. 1797 to 1800, *supra.*

(1820)—*Ss.* 297, 441—*Burial ground, if should be in use—Depository for the remains of the dead, trespass on—Knowledge or intention requisite to constitute offence—"Trespass" in s. 297 if has same meaning as "criminal trespass" in s. 441.*—It is not necessary for the purposes of s. 297, I.P.C., that a burial ground should be in use. If it has been a burial ground and if there are visible graves in it, it becomes a depository for the remains of the dead, and any act of trespass by which the feelings of the relations of the dead are wounded would certainly come under the section.—*Per Richardson, J.*—S. 441, I.P.C., cannot be read into s. 297, I.P.C. The term "trespass" in s. 297 means any violent or injurious act committed in such place and with such knowledge or intention as is defined in that section. JHULAN SANI v. EMPEROR, **17 C.W.N. 534 = 18 Ind. Cas. 677 = 14 Cr.L.J. 117 = 40 C. 548.**

(1821)—*Ss.* 297, 441—*Meaning of the word "trespass"—Land in which place of sepulchre is included belonging to accused—Effect—Gist of offence under s. 297—Knowledge of accused—Presumption—Construction of penal statutes.*—*Per Shah Din, J.*—The meaning of the word "trespass" in s. 297, Penal Code, is not the same as is attached to it in the expression "criminal trespass" in s. 441 of the same Code. The word "trespass" in s. 297 denotes a wrongful act, and the act of a person who destroys or disturbs a place of *sepulchre* with the intention of wounding the feelings of any person, or with the knowledge that the feelings of any person are likely to be wounded, is wrongful and amounts to a "trespass" within the meaning of the said section, no matter whether the land in which the *place of sepulchre* is included does or does not belong to the person who is guilty of the act complained of. The gist of the offence is the committing of trespass on a *place of sepulchre* with the intention or with the knowledge specified in s. 297, and if these essentials are not established, no offence under s. 297, Penal Code, is made out. The actual place of *sepulchre* in which dead bodies are buried, as contradistinguished from the land round about it which is not covered by graves, cannot be the subject of a sale by one person to another. When, therefore, the accused entered on the land actually occupied by the graves and destroyed them, he entered, not on his own property, but upon property which was *waqf* and which he could not lawfully take possession of ; and his entry on the graves for the purpose of

destroying or levelling them was wrongful and amounted clearly to a "trespass" on a *place of sepulchre* within the meaning of s. 297, Penal Code. The destruction of graves, be they old or new, in a Muhammadan graveyard is regarded by the Muhammadans as a sacrilege, and the accused must be presumed to have the knowledge that, by such acts of desecration as he has been found to have been guilty of, the feelings of the complainant and of other persons whose relatives were buried in the graves on the land in question were likely to be wounded. *Per Le Rossignol, J.*—The word "trespass" used in the Penal Code and other Acts signifies unauthorized entry upon the property of another. Therefore no person can trespass upon his own property. All penal statutes must be construed strictly, and a well-established principle of interpretation is, that words must be interpreted in their natural sense, and the sense in which they are used in other contemporaneous statutes is a good guide. UMAR DIN v. CROWN, **23 P. R 1915, Cr.** (18 A. 395, 33 A. 773, 40 C. 548, *F.*; 2 Ind. Cas. 825, *Not F.*; 27 P.R. 1913, P.C., *D.*)

——S. 298.

See RELIGION, OFFENCES RELATING TO.

(1822)—*S.* 298—*Wounding religious feelings.*—Where the accused called out to a gathering of members of a certain caste at a dinner, that they would be eating cow's flesh if they did not admit a certain woman to the caste, and in consequence the guests left their food untouched, *held* that no offence under s. 298 of the Penal Code had been committed. QUEEN-EMPRESS v. DAGADI, **Rat. Un. Cr. C. 592.**

(1823)—*S.* 298—*Offence under.*—A woman having given birth to an illegitimate child went to the house of the person whom she alleged to be its father and threw upon him the cloth which she had been wearing at the time of her confinement. *Held* that this was no offence under s. 298, Penal Code, as it treats of offences relating to religion and not to those relating to caste. TUKARAM v. ZELI, **6 C P.L.R. Cr. 7.**

(1824)—*S* 298—*Gist of the offence.*—The intention to wound the religious feelings of another must, in order to convict a person, under s 298, I.P.C., be a *deliberate* one. HABIBULLAH v. CROWN, **4 P.R. 1890, Cr.**

(1825)—S. 298—*See* Nos. 363, 1799, 1800, 1809, *supra*, and No. 2899, *infra*.

——S. 299.

See CULPABLE HOMICIDE.

See CULPABLE HOMICIDE NOT AMOUNTING TO MURDER.

See MURDER.

(1826)—*S.* 299—*Savage attack with deadly weapons upon the deceased—High fever following the wounds caused by the attack—Blood poisoning and brain fever—Death—Wounds the cause of death—Conviction for murder—Legality.*—There was a savage attack upon L with dangerous weapons by the accused resulting in dangerous wounds. Following the attack, the victim was continuously suffering from high fever for 40 days at the end of which period symptoms of blood poisoning developed, followed on the next day by symptoms of brain fever, and died the next day. *Held*, that the wounds were the cause of death within the meaning of s. 299, I.P.C., and that the accused were rightly convicted of murder. CROWN v. NURO **7 S.L.R. 83 = 15 Cr. L.J. 376 = 23 Ind. Cas. 744.**

(1827)—S. 299—*See* Nos. 595, 651, 1800, *supra*, and No. 2020, *infra*.

(1828)—*Ss.* 299 *and* 300—*Culpable homicide not amounting to murder and murder, distinction between.*—There is a clear distinction between a person causing death by doing an act "with the knowledge that he is likely by such act to cause death," which is culpable homicide within the definition in s. 299, I.P.C., and causing death by an act known by the person doing it to be "so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death" which is murder under cl. (4) of s. 300. The former includes the latter but the two descriptions are by no means co-extensive. EMPRESS v. GHASIA CHAMAR, **8 C.P.L R. Cr. 9.** (5 W.R. Cr. 145, *R.*).

(1829)—*Ss.* 299, 300—*Culpable homicide—Murder—Difference.*—All murder is culpable homicide, but all culpable homicide is not murder. Thus s. 299 covers a wider ground than s. 300. NGA YAN THEIN v. KING-EMPEROR, **U.B.R. 1897—1901, Vol. I, 282.**

(1830)—*Ss.* 299, 300.—The last clause of s. 299 and the fourth clause of s. 300 must be confined to cases, where no intentional injury has been caused. In cases of murder and culpable homicide not amounting to murder, there is a distinction between what is likely and what is probable; because death has resulted from blows, it cannot be held in every case that the striker intended to cause injury sufficient in the ordinary course of nature to cause death. The distinction between murder and culpable homicide not amounting to murder is a question of degree of probability, and depends generally on the nature of the weapon and on the way it is used. NGA NA BAN v. KING-EMPEROR, **U.B.R. 1906, Penal Code, 33 = 5 Cr. L.J. 306** (U.B.R. 1892—1896, I, 215, U.B.R. 1897—1901, I, 282, 3 L.B.R. 122, 2 L.B.R. 125, 1 B. 342, *R.*) [*R.*, U.B.R. 1907, Penal Code, 5, 7 Cr. L.J. 205.]

(1831)—*Ss.* 299, 300—*Murder—Culpable homicide.*—Where the accused, a young man of 18, knocked his wife down, struck her several times with his fist on the back and, on her falling on the ground, put one knee on her chest, and struck her violently two or three times on the face, causing thereby an extravasation of blood on the brain resulting in her death, *held* that the accused was only guilty of culpable homicide not amounting to murder as there was no intention to cause death, and as the bodily injury was not sufficient in the

ordinary course of nature to cause death. REG. v. GOVINDA, **1 B. 342.** [*F.*, 5 Cr. L.J. 306= U.B.R. 1906, 3rd Qr., Penal Code, 33, L.B.R. 1872-1892, 179, L.B.R., 1872-1892, 650, L B R. 1893-1900, 112, 3 L.B.R. 122, Rat. Un. Cr. C. 603, 14 Cr L J. 459=20 Ind. Cas. 619=7 S.L.R. 29; *R.*, 1 L.B.R. 233, 1 N.L.R. 134.]

(1832)—*Penal Code, ss.* 299 *and* 300—*Culpable homicide and murder.*—In this case death was due to strangling The deceased was dragged along with a ligature round his neck. The Sessions Judge was of opinion that the original intention of the accused was to merely maltreat the deceased, but that in their excitement their passions got the better of them and they strangled him either before they dragged him along or in this process. He thought the crime was not a premeditated and cold blooded murder and that therefore none of the accused were guilty under s. 302, Penal Code. He convicted the accused of culpable homicide not amounting to murder. *Held*, that the Sessions Judge's view of law was wrong, (i) because the act of strangulation was murder. Those persons who were engaged in committing it must either have intended to cause death or have known that it was so imminently dangerous that it would in all probability cause death. The conviction should therefore have been of murder and not of culpable homicide of the lesser degree. AZIM v. EMPRESS, **23 P.R. 1890, Cr.**

(1833)—*Ss.* 299, 300—*Charge of murder—Provocation—Insufficient—Reduction of sentence—Statement of accused pleading guilty, value of.*—A provocation, though insufficient to bring a charge of murder within the exception to s. 300, may yet be sufficient for the reduction of the sentence. A statement of an accused pleading guilty, if probable and consistent, should be given weight to and acted on in preference to the prosecution evidence. *In re* KRUSHNO KARIKO, **16 Cr. L.J. 611=30 Ind. Cas. 435.**

(1834)—*Ss.* 299 *and* 300, *cls* 2 *and* 3.—Murder as defined in cls. 2 and 3 of s. 300, I.P.C., is, only an amplification of that part of s. 299, I.P.C., which speaks of an act done "with the intention of causing such bodily injury as is likely to cause death." GAJAN v. EMPRESS, **18 P.R. 1893, Cr.** [*R.*, 17 P.R. 1898, F.B.]

(1835)—*Ss.* 299, 300, 302—*Murder—Culpable homicide—Jury—Misdirection—Imperfect statement of elements constituting offence—Failure to direct that every man is presumed to intend the natural consequences of his act.*—Where the accused had no legal excuse to go to a certain land in the possession of the party of the deceased, armed with dangerous weapons, to enforce their right or supposed right, and a fight ensued, and the injuries inflicted, though not premeditated, resulted in the death of the deceased: *Held, per Sharfuddin and Teunon, JJ.* (*Chatterjee, J.*, *diss.*), that the case came under cl. 4 of s. 300, Penal Code, and a charge of murder ought to have been framed against the accused, and the Judge's omission to do so vitiated the whole trial. An imperfect statement of elements constituting an offence under cl. 1 of s. 304, and the failure of the Judge to direct the jury that, in law, every man must be presumed to intend the natural and ordinary consequences of his acts, constitute very grave misdirection. *Per Sharfuddin, J.*—All murder is culpable homicide, but all culpable homicide is not murder. Subject to the five exceptions to s. 300, Penal Code, every act that falls within one or more of the four clauses of that section is murder, and also falls within the definition of culpable homicide in s. 299, Penal Code. Every act that falls within any or more of the four clauses of s. 300, Penal Code, in respect of which there co-exist one or more of the sets of circumstances described in the five exceptions to that section, is, by that fact, taken out of s. 300, Penal Code, but the act notwithstanding continues to be within s. 299, and since it is not murder, it is culpable homicide not amounting to murder. Every act that falls within s. 299 and does not fall within s. 300, since it is not murder, is culpable homicide not amounting to murder. REAZ-UD DIN SHAIKH v. EMPRESS, **6 Ind. Cas. 251=11 Cr. L.J. 295.**

(1836)—*Ss.* 299, 300, 302 *and* 304—*Culpable homicide and murder distinguished—Distinction between the two parts of s.* 304, *Penal Code pointed out.*—Causing death by an Act, which the offender knows to be likely to cause death, is culpable homicide not amounting to murder, punishable under the latter part of s. 304, while causing death with the knowledge that the most probable result of the act done will be death or such bodily injury as will, in the ordinary course of nature, cause death, constitutes murder punishable under s. 302. The first part of s. 304 applies only where death has been intentionally caused, and the circumstance of the case brings it within one of the exceptions to s. 300. The latter part of s. 304 applies where intention to cause death or knowledge that death would be the most probable result, is not proved. MAUNG U v. QUEEN-EMPRESS, **L.B.R. 1893-1900, 112.** (1 B. 342, *F.*)

(1837)—*Ss.* 299, 300, 302, 304, 304-A—*Culpable homicide—Grave and sudden provocation.*—A man who intentionally strikes such a blow with a stick, as is sufficient to cause death in the ordinary course of nature, commits culpable homicide, although he may not have intended to cause death. Where the accused came home hungry, expecting to find his dinner ready and was in a hurry to get back to his field, the wife's refusal to cook his dinner, accompanied with words of abuse, was held to be such grave and sudden provocation as deprived him of the power of self-control. It was held sufficient, therefore, to convict the accused under s. 304, I.P.C. EMPRESS v. BANSI, **A.W.N. 1881, 105.**

Penal Code (Act XLV of 1860)—*continued.*

(1838)—*Ss.* 299, 300, 304—*Crim. Pro. Code, s.* 307—*Duty of High Court—Murder—Culpable homicide not amounting to murder—Intention—Knowledge.*—On a reference under s. 307, Crim. Pro. Code, the High Court has all the powers of an appellate Court and should form its own opinion after considering the entire evidence and giving weight to the opinion of the Sessions Judge and the Jury. (29 C. 128, 6 C. W.N. 253, 2 C.W.N. 593=25 C. 852, *F.*) If a person strikes another on a vital part with a cutting instrument, the striker should be presumed to have intended to cause bodily injury sufficient in the ordinary course of nature to cause death; but it does not follow that the striker must be found guilty of murder: his act may fall under one of the exceptions to s. 300, Penal Code. (2 L.B.R. 63, *R.*) The parts of ss. 299, 300, 304, Penal Code, dealing with "knowledge" are not applicable to a case in which bodily injury intended for a particular individual has resulted in death. Where a death has been caused by intentional bodily injury inflicted by the accused on the deceased, the question of what knowledge must be attributed to the accused comes in only "as a means of arriving at his intention when he committed the act, and for that purpose, and not for the purpose of deciding whether the case falls within the last part of s. 304, must the question be considered." EMPEROR v. KOTIYA, **15 Cr.L.J. 513=24 Ind. Cas. 601.** (3 L.B.R. 122=3 Cr. L.J. 355, *R.*)

(1839)—*Ss.* 299, 300, *cl.* 3 *and* 304, *Part* I—*Accused beating the deceased with* lathi—*Injuries caused by the blows—Not sufficient to cause death in ordinary course of nature—Offence committed—Culpable homicide not amounting to murder—Conviction under s.* 304, *Part* I.—Where the accused gave the deceased a severe beating with a *lathi* which led to his death 18 days later, and the doctor does not say that the injuries were sufficient in the ordinary course of nature to cause death but merely says that it is quite likely that all the injuries would have produced death. *Held*, that the degree of probability referred to in s. 299 was all that was proved and fell short of that defined in s. 300 (3), I.P.C., that the accused could not be convicted of murder and that he was guilty of only culpable homicide not amounting to murder under s. 304, part I, I.P.C. DARHOON *wd.* KHUDA BAKSH v. CROWN, **8 S.L.R. 337 =16 Cr. L.J. 472=29 Ind. Cas. 104.** (1 B. 342, *R.*).

(1840)—*Ss.* 299, 300, 304 (1)—*Murder—Culpable homicide not amounting to murder—Death caused by reckless violence—No premeditation—Nature of the weapon—Test.*—Where, in the course of a trivial quarrel, the accused dealt two blows with a *lathi* on the head of the deceased who was pushed down by another, and where the blows fractured the skull of the deceased and caused his death. *Held*, that the accused was guilty of the offence of culpable homicide not amounting to murder and ought to be punished under s. 304, Part I, I.P.C. In cases of death caused by reckless violence and without premeditation, a safer criterion to determine the question whether the accused is guilty of the offence of murder or of culpable homicide not amounting to murder is of the nature of the *weapon* used rather than the nature of the injuries *inflicted.* CROWN v. HASHIM, **7 S.L.R. 29=14 Cr.L.J. 459=20 Ind. Cas. 619.** (1 B. 342, *R.*)

(1841) — *Ss.* 299, 300, 307, 511— *See* ATTEMPT, 4 B.H.C. Cr. 17.

(1842)—*Ss.* 299, 301, 304-*A*—*Person committing house-breaking at night—Striking out with a dangerous weapon 'wildly'—No intention to cause death—Actual death caused—Offence committed—Culpable homicide.*—Where a person commits the offence of house-breaking into a dwelling house at night and, in order to evade arrest, strikes out 'wildly' with a dangerous weapon, utterly regardless of whether his blows will or will not cause death or injury to any one of the inmates, and causes the death of a person, *held*, that he committed the offence of culpable homicide as defined in s. 299, I.P.C., for, even if it is assumed that he did not intend to cause death or to cause such injury as was likely to cause death, he knew or must be taken to have known that by his act he was likely to cause death. (*Vide* s. 301, I.P.C.) S. 304-A would not apply to such a case. GUJAR v. CROWN, **12 P.R. 1911, Cr.=41 P. W.R. 1911=12 Ind. Cas. 967=12 Cr. L.J. 591.**

(1843)—*Ss.* 299, 302—*Murder—Death of person killed need not be intended.*—S, with the intention of killing N, gave him poisoned sweatmeat. N, after eating a little, threw the rest away and this was picked up by R who ate it and died. *Held*, that S. was guilty of the murder of R. THE PUBLIC PROSECUTOR v. SURYANARAYANAMOORTHY, **1912, M.W.N. 136=13 Ind. Cas. 833=11 M.L.T. 127=13 Cr. L.J. 145.**

(1844)—*Ss.* 299, 304—*Death caused by ill-treatment for extorting confession.*—Death caused by the ill-treatment of a woman for the purpose of extorting a confession and by subsequent neglect amounts to culpable homicide. NGA SHWE BAW v. QUEEN-EMPRESS, **U.B.R. 1897 —1901, Vol. I, 285.**

—— S. 300.

See CULPABLE HOMICIDE.

See CULPABLE HOMICIDE NOT AMOUNTING TO MURDER.

See MURDER.

(1845)—*S.* 300—*Causing death by act possibly dangerous to life.*—Where the accused person caught a boy stealing toddy, and being angry, struck the boy a blow on his forehead with a heavy stick he was carrying in his hands and caused the boy's death, *held*, that the accused should be convicted of culpable homicide not amounting to murder, inasmuch as it was doubtful whether the accused knew more than that a blow, with such a stick and with the

Penal Code (Act XLV of 1860)—*continued.*

force used by him, was possibly dangerous to life. *In re* MIDDE VENKAPPA, **1 Weir 299.**

(1846)—*S.* 300—*Death caused by fracture of skull.*—The accused struck a woman with a heavy billet of wood causing a fracture of the skull. She fell down senseless and died, subsequently, without having recovered consciousness. *Held*, that, as a fracture of the skull was sufficient in the ordinary course of nature to cause death, the accused must be deemed to have intended to cause such bodily injury as is referred to in the third clause of s. 300 of the Penal Code. The fourth clause of s. 300 of the Penal Code is intended, primarily, and especially, to apply to cases, in which there has been no intention to cause death or bodily injury to any specific individual. JHAGRU GOND v. EMPEROR, **1 N.L.R. 134=2 Cr. L.J. 746.**

(1847)—*S.* 300 — *Murder — Taking undue advantage in quarrel.*—Where the accused takes undue advantage in the course of a quarrel, the case does not fall within the exception of s. 300, I.P.C., although the fatal wound is inflicted without premeditation, in a sudden fight, in the heat of passion and upon a sudden quarrel, and the accused in such a case would rightly be convicted of murder. Thus, in this case, the accused in the course of a quarrel and struggle with the deceased, who was unarmed, drew his clasp knife and stabbed the deceased in the chest; the wound was three inches deep, penetrated the cavity of the chest, and injured the lungs. The deceased died after being in hospital for twenty-four days. *Held*, that accused was guilty of murder. QUEEN-EMPRESS v. NGA SHWE THAU, **L.B.R. 1872—1892, 271.**

(1848)—*S.* 300—*Whether every case of homicide is* prima facie *murder.*—The law of British India, differing from the Law of England, does not regard every case of homicide as *prima facie* murder; it throws on the prosecution the burden of proving a certain intent or knowledge constituting an act a murder. HIGH COURT PROCEEDINGS, 19TH MAY, 1881, No. 1002, **1 Weir 288.**

(1849)—*S.* 300.—Culpable homicide, though committed under provocation, will amount to murder, unless it is proved not only that the act was done under the influence of some feling which took away from the person doing it all control over his actions, but that that feeling had an adequate cause. QUEEN v. HARI GIRI, **1 B.L R.A. Cr. 11=10 W.R.Cr. 26.**

(1850)—*S.* 300—*Several persons beating the deceased to death—Intention and knowledge to be inferred from the reasonable and probable result of their act—Distinction between intention and desire.*—Five men armed with *lathis* assaulted an unarmed person and beat him in such a way that he died. Another person came to the rescue of the deceased and he too was severely belaboured by those five men and died. *Held* that all of them were guilty of culpable homicide amounting to murder. The intention of causing death can be inferred from reasonable and probable result of the act or conduct of the accused. If death is caused, even though there is no desire on the part of the accused to kill the deceased, they must be taken to have had knowledge that their act must in all probability cause death or such bodily injury as is likely to cause death. HANUMAN v. KING-EMPEROR, **11 A.L.J. 926=14 Cr.L.J. 685=35 A. 560=21 Ind. Cas. 1005.**

(1851)—*S.* 300—*Culpable homicide not amounting to murder—Deceased wounding accused and severely stabbing the latter's father—Provocation—Accused dealing out a blow and causing death of deceased—Self-defence--Offence.*—A, the deceased, came out of his room in a challenging manner to meet M and was fighting with him. S, the father of M, interfered. A gave a severe stab on left side of S's chest and also wounded M. M gave A a blow with his knife which he tucked into his waist cloth and caused A's death. *Held*, that M was under provocation which was grave enough to deprive him of his self-control, and that he was guilty of the offence of culpable homicide not amounting to murder. Under the circumstances, a plea of self-defence cannot prevail. MURUGAYA NADAN v. EMPEROR, **9 M.L.T. 480=(1911) 1 M.W.N. 275=12 Cr. L J. 235=10 Ind. Cas. 262.**

(1852)—*S.* 300 (3)—*Murder—Medical opinion based on misconception of fats, value of—Injury likely to cause death.*—A Medical Officer's opinion that the injuries inflicted were not serious, which is based upon a misconception of facts, should be disregarded when the evidence shows that the injuries inflicted were one inch deep and they pierced the pleura, which in the ordinary course of events, is sufficient to cause death. PUBLIC PROSECUTOR v. THANDAVAN CHETTY, **16 Cr. L.J. 543=29 Ind. Cas. 671.**

(1853)—*S.* 300, *cl.* (iv)—*Distinction between fourth clause and first three clauses—Intention.*—The cases in which the fourth clause of s. 300, Penal Code, has any application, are extremely rare, and though it is not easy, and perhaps not desirable, to attempt to define with any strictness the kind of cases in which that clause comes in. still there is one very broad distinction between it and the first three clauses—in the latter the important thing is an *intention* to kill or to hurt, while the fourth clause says nothing about intention. NAWAB v. EMPEROR, **263 P.L.R. 1914=15 Cr. L J. 610=31 P.R. 1914, Cr. =25 Ind. Cas. 522=45 P.W.R. 1914, Cr.**

(1854)—*S* 300 (4)—*Culpable homicide—Murder—Act committed "without any excuse."*—The true construction of the words "without any excuse" in the fourth paragraph of s. 300, Penal Code, discussed and explained by *Rattigan J.* SUBA v. EMPRESS, **40 P.R. 1888, Cr.**

(1855)—S. 300— *See* CHARGE—GENERAL, 8 C. 211=10 C.L.R. 11.

(1856)—*S.* 300, *excep.* 1—*Grave and sudden provocation.*—The appellant, a Brahmin, and

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the deceased, a *chamar*, were prisoners in the jail and employed in digging up radishes in the garden. The appellant pulled up a radish and began eating it, and the deceased abused him for doing so, calling him *bahin-chod* or *betechod*, whereupon the appellant struck him four blows with the spade which was in his hand and caused his death. *Held*, that, although the language used by the deceased, a *chamar*, to the appellant, a Brahmin, was of a very abusive and offensive character, it would not amount to the grave and sudden provocation meant in excep. 1 of s. 300, I.P.C., so as to reduce the offence to culpable homicide not amounting to murder. EMPEROR v. GIRWAR, **A.W.N. 1886, 297.**

(1857)—*S.* 300, *excep.* 1, *proof to be adduced by accused claiming benefit of.*—It is incumbent on an accused person, who seeks to reduce the nature of his crime, by bringing his case under excep. 1 of s. 300, to prove that the provocation received by him was such as might reasonably be deemed sufficient to deprive him of his self-control, and that the killing took place whilst that absence of self-control lasted and may be fairly attributed to it. LOCAL GOVERNMENT v. HANUMAN PERSHAD, **14 C. P.L.R. 188.**

(1858)—*S.* 300, *excep.* I — *Sister — Suspicion of unchastity against—Killing her and stranger—Deliberate act—No grave or sudden provocation—Baluch custom sanctioning killing for unchastity—No ground for mitigation of sentence.*—Where the accused met his sister and a stranger not far from his house and took no immediate action but quietly brought them home, and sat down and talked with them, and, after satisfying himself that there were grounds for suspicion, deliberately fell upon them and killed them. *Held*, that the facts of the case did not disclose either grave or sudden provocation within the meaning of excep. I, s. 300, I.P.C. A Baluch custom justifying the accused in taking the life of his sister for unchastity is no ground for mitigation of sentence. CROWN v. RAHIM KHAN (*wd*) ARZEE, **7 S L.R. 118 = 15 Cr.L J. 501 = 24 Ind. Cas. 589.**

(1859)—S. 300, excep. 1—*See* ABANDONMENT OF CHILDREN, 18 P.R. 1870, Cr.

(1860)—S. 300, excep. 1—*See* MENTAL STATE, L.B.R. 1893—1900, 249.

(1861)— *S.* 300, *excep.* 2— *Culpable homicide not amounting to murder – Self defence—Causing more injury than necessary.*—Where the accused, who was concealing himself from the Police, was seized by the deceased and two others, and in order to rescue himself he struck the deceased two severe blows on the head and shoulder, with an axe, which he had in his hand at the time, in consequence of which blows the deceased expired within a week. *Held*, that the accused exceeded his right of private defence in that he caused more harm than was necessary to resist the unauthorized attempt of the deceased to place him in confinement. FARID v. EMPEROR, 12 Cr.L J. 81 = 9 **Ind. Cas.** 452.

Penal Code (Act XLV of 1860)—*continued.*

(1862)—*S.* 300, *excep.* 2—*Culpable homicide —Firing at person mistaken for thief—Fatal injury—Offence.*—The accused fired at a person a gun loaded with a slug, one inch long, in the mistaken belief that he was a thief; the shot was fired in order to protect certain fruits from being stolen. The shot resulted in the death of the person fired at. It was found that the accused had no reason to apprehend anything more serious than the theft of certain fruits, and that he must have known that the shot was likely to cause death: *Held*, that the accused was not entitled to the benefit of the second exception to s. 300 of the Penal Code. THEKUMTHATATHIL KELUKUTTI v. EMPEROR, **13 Cr. L J. 782 = 17 Ind. Cas. 414.**

(1863)—*S.* 300, *excep.* 4—*Death caused in sudden fight—Murder.*—If two men are fighting and one of them is unarmed, while the other uses a deadly weapon, the one who uses such a weapon must be held to take an undue advantage and not entitled to the benefit of excep. 4 to s. 300, Penal Code. KING-EMPEROR v. PO KIN, **2 L B.R. 320 = 1 Cr. L J. 1128.** (L. B.R. 1872-1892, 371, L.B.R. 1872-1892, 463, *Overruled.*)

(1864)—S. 300, except. 4—*See* PRIVATE DEFENCE, RIGHT OF, 8 C.L.J. 561 = 9 Cr. L. J. 32.

(1865)—*S.* 300, *exceps.* 4 *and* 5—*Scope of the exceptions.*—The fifth exception to s. 300, extends to all cases of death occasioned by, or resulting from, premeditated acts, where the party killed takes the risk of death with his own consent. It extends to the case of an armed man, who deliberately fights with another man, whom he knows also to be armed, and thereby consents to take the risk of death. The fourth exception, is an independent exception, applying to all cases of death occurring in the course of sudden and unpremeditated fight, and does not, in any way, limit the natural operation of the fifth exception. SUMSSHERE KHAN v. EMPRESS, **7 C.L.R. 158.** (4 C.L.R. 285, *R.*)

(1866)— *S.* 300, *excep.* 5—*Applicability of.*—When a person claims the benefit of excep. 5, he must show that the person whose death he caused consented to have the act, which caused death, done upon him, knowing that it would cause his death or knowing that his life would be endangered thereby. But it is not sufficient merely to satisfy the Court that the person whose life he took voluntarily took the risk of death. So, where M voluntarily entered the compound of N's house and rushed at N, knowing that the latter had a knife in his hand, and knowing that N had threatened to stab him if he came to the house, and in the course of the struggle M was fatally stabbed, *held* that N was guilty of murder and excep. 5 would not be applicable to the case. PO SET v. KING-EMPEROR, **5 L B.R. 160 = 11 Cr. L. J. 343 = 5 Ind. Cas.** 988. (18 C. 484, *R.*)

Penal Code (Act XLV of 1860)—*continued.*

(1867)—S. 300—*See* Nos. 343, 344, 383, 498, 699, 1348, 1349, 1828 to 1841, *supra* and 2020, 2139, *infra.*

(1868)—Ss. 300, 302—*Striking another with iron on the head—Murder—Undue advantage taken in sudden fight.*—When a man strikes another with a heavy iron-bound stick on the head, with such force as to smash in one side of his skull, he must be held to have intended to cause such bodily injury as he knows to be likely to cause death. In such circumstances, the accused must be presumed to know and intend the probable and natural consequences of his act. If two men fight with their hands, or with weapons of a similar kind, and one of them uses also a weapon of a distinctly advantageous kind, such as a pistol, a dagger, or a heavy club, he takes an undue advantage over his opponent and is not protected by the fourth exception of s. 300, I.P.C. NGA MIN PO v. QUEEN-EMPRESS, **U B R. 1897—1901, Vol. I, 288.**

(1869)—*Ss.* 300 *and* 302—*Murder—Evidence merely amounting to grave suspicion, but not justifying conviction.*—The case against a prisoner, accused of murder of his wife, rested entirely upon the fact that he slept with his wife alone on the night of the occurrence, and in the morning she was found dead, her body showing that death was caused by strangulation. One of the witnesses deposed that the witness was, for some months, on terms of great intimacy with the deceased, and on the previous afternoon he was seen by the other wife of the accused, who told her husband of it. This was alleged to be the cause of the murder. But this evidence was not corroborated. *Held*, that, although the case was one of grave suspicion, yet, it was not one upon which the Court would be justified in convicting the accused. EMPEROR v. NURI SHEIKH, **29 C. 483 = 6 C. W.N. 596.** [*D.*, 29 P.R. 1902, Cr.]

(1870)—*Ss.* 300 *and* 302—*Murder—Culpable homicide not amounting to murder—Intention to inflict such injury as is likely to cause death, essential to constitute murder.*—In the course of a murderous attack on his wife by the accused, the former ran to the deceased woman for protection and clasped her arms round her waist. The accused thereupon gave a fatal stab to the deceased with the sole object of making her let go his wife, so that he might wreck his vengeance on her. The accused had no quarrel with the deceased and had no intention of killing her. *Held, per Abdur Rahim and Sundara Iyer, JJ.* (*Spencer, J., Diss.*) that the accused was only guilty of culpable homicide not amounting to murder, as he did not intend to inflict such injury on the deceased as was likely to cause her death or was sufficient in the ordinary course of nature to cause her death. PERUMAL NAIKEN v. EMPEROR, **1912 M.W.N. 193 = 13 Ind. Cas. 817 = 13 Cr.L.J. 129.**

(1871)—Ss. 300, excep. 1, 302—*See* PLEA OF GUILTY, 11 C. 410.

Penal Code (Act XLV of 1860)—*continued.*

(1872)—*Ss.* 300, 302 *and* 304—*Murder—Culpable homicide not amounting to murder—Sudden and grave provocation—Revision—Enhancement of sentence.*—The accused was convicted by the Sessions Judge under s. 304, I.P.C., and sentenced to seven years' rigorous imprisonment for causing the death of his wife by striking blows on her head with a pestle. The Sessions Judge held that the accused's act amounted to murder but for the sudden and grave provocation he received at the hands of the deceased, which brought the offence under the first exception to s. 300, I.P.C. The Sessions Judge was of opinion that the accused's anger was partially inflamed by a suspicion that the deceased had an intrigue with another person, and, in addition to this, she refused him sexual intercourse with her and called him a dog and threw him on the ground from her cot, which, according to the ideas prevalent in the part of the country where the parties lived and in the society in which they moved, was most offensive to a husband. *Held*, that upon the facts proved, the accused was guilty of murder and liable to punishment under s. 302, I P.C. *Held*, also, that as the Sessions Judge had virtually acquitted him of murder and there was no appeal before the Chief Court against the order of acquittal, it had no authority to alter the conviction to s. 302, I.P.C. The Chief Court considering it unnecessary to order a re-trial maintained the conviction under s. 304, I.P.C., and enhanced the sentence to one of transportation for life. RAMZAN v. EMPEROR OF INDIA, **108 P.L.R. 1902.**

(1873)—*Ss.* 300, 302, 304—*Punishment in cases of doubt as to whether the offence is culpable homicide or murder—Accused committing an act which he knows to be imminently dangerous as to cause death—Sentence.*—If in a case it is difficult to determine whether the offence proved to have been committed by the accused is culpable homicide or murder, the proper course is to convict the accused of the lesser offence. In passing a sentence on an accused convicted of an offence of murder, regard should be had to the circumstances of the case. Where the accused was convicted of murder only by reason of his case coming under cl. (4) of s. 300, I.P.C., a sentence of death is not proper. NGA PO AUNG v. QUEEN-EMPRESS, **L B R. 1872—1892, 459.**

(1874)—*Ss.* 300, 302, 304 (1)—*Murder—Culpable homicide not amounting to murder—Grave and sudden provocation—Sentence—Evidence—Confession.*—Where the accused saw his sister and her paramour coming out of the *kujra* of a mosque and receiving an insulting answer from the latter, there and then attacked and killed him. *Held*, that the provocation received by the accused was both grave and sudden. The sentence of transportation for ten years passed by the Sessions Judge on the accused under s. 304 (1) of the Penal Code was reduced to one of rigorous imprisonment for four years. The Chief Court set aside the conviction of the

Penal Code (Act XLV of 1860)—*continued.*

co-accused that was based chiefly on his confession which had been made before a third class Magistrate and retracted at the enquiry. JAFAR v. KING-EMPEROR OF INDIA, **140 P. L.R. 1905 = 2 Cr. L.J. 705.**

(1875)—*Ss.* 300, *Excep.* 2, 302, 304—*Causing death and grievous hurt by stabbing—Right of private defence — Absence of plea of—Facts sufficient to establish such defence, proved—Court's duty.*—Where the deceased and some of the prosecution witnesses had trespassed by night into the house of the accused and were dragging him outside the house, the accused was entitled to defend himself against them. But where the accused, while so being dragged, stabbed the deceased, and the first accused inflicted mortal wounds on the former and caused grievous hurt to the latter, when his assailants were unarmed and when there was nothing to suggest that he had any reason to believe that he was in danger of death or grievous hurt at their hands. *Held*, that the accused exceeded his right of private defence, but was within the second exception of s. 300, I.P.C. and that he was consequently guilty not of murder but of culpable homicide not amounting to murder. Where the accused failed to set up the plea of right of private defence, but the facts proved were sufficient to establish such a right, the Court is not only entitled but also bound to decide the case on a consideration of the facts proved by the evidence, in favour of the accused. *In re* GARUGA RAMMAYYA, **8 M.L.T. 462 = 8 Ind. Cas. 1088 = 12 Cr. L.J. 18.**

(1876)—*Ss.* 300 (*Excep.* 4), 302, 304—*Murder—Culpable homicide not amounting to murder—Attack without pre-meditation and in the heat of passion.*—Where, in the course of a faction fight, the accused inflicted a fatal wound on the deceased, who was not actually engaged in the fight and who cried out that he was unarmed. *Held*, that it was hardly safe to assume that the accused, in the heat of the fight, when he had himself probably been wounded already, could be aware that the deceased had no offensive intention and could have heard that the deceased was unarmed. The accused was, therefore, given the benefit of the 4th exception to s. 300, Penal Code, and the sentence of death was reduced to 7 years' transportation. NGA THWE v. EMPEROR, **13 Cr. L.J. 272 = 14 Ind. Cas. 656 = 4 Bur. L.T. 17.**

(1877)—*Ss.* 300, 302, 304, 326—*Stabbing in the chest—Murder—Culpable homicide—Grievous hurt.*—A person, who causes death by stabbing with a knife in such a way that the knife penetrates the cavity of the chest of the person stabbed, must be presumed to have known that he was likely by his act to cause death; and such a person should be at least found guilty of culpable homicide not amounting to murder. MI NI v. QUEEN-EMPRESS, **L.B.R. 1872—1892, 300.**

(1878)—*Ss.* 300, 302, 304, 326 — *Murder — Culpable homicide—Grievous hurt.*—Where the accused in the course of a quarrel, stabbed the opponent in four places out of which he died *held* that, in the absence of any evidence to show the character of the wounds inflicted, and whether death was the probable result of the wounds, the accused could not be convicted of culpable homicide, but should have been convicted of voluntarily causing grievous hurt with a dangerous weapon. NGA SANYA v. QUEEN-EMPRESS, **L.B.R. 1872—1892, 463.**

(1879)—*Ss.* 300, *cls.* 2 *and* 3, 302 *and* 325—*Murder—Culpable homicide amounting to murder—Grievous hurt.*—On a finding that the accused charged with murder had no intention of killing the deceased or perhaps of badly injuring him, *held*, that the accused could not be convicted of murder or of culpable homicide not amounting to murder and that, as there was not present in the mind of the accused anything more than a knowledge that, he was likely to cause a grievous hurt, the accused was guilty only of an offence under s. 325, I.P.C. GAJAN v. EMPRESS, **18 P.R. 1893, Cr.** [*R.*, 17 P.R. 1898, F. B.]

(1880)—*Ss.* 300 *and* 304—*Presumption of intention.*—The presumption of the law is that a man intends the natural and inevitable consequences of his own act. Where the accused took a stout bamboo stick, four feet long, and struck with it the deceased, whose back was turned, a furious blow on the head which fractured the skull, *held* that the accused should have known death to be a very probable result of the act committed by him and that the act of the accused clearly fell under the definition of culpable homicide punishable under s. 304. *Held*, further, that the Sessions Judge had committed a serious error in law in holding that the prisoner's state of mind, at the time, must be taken into consideration in determining the question whether the prisoner intended to cause injury which was likely to cause death or only to cause grievous hurt. HIGH COURT PROCEEDINGS, 27TH AUGUST, 1886, No. 434 JUDICIAL, **1 Weir 300.**

(1881)—*Ss.* 300, 304—*Sudden quarrel—Fighting while in hot blood.*—If, on a sudden quarrel, blows pass without any intention to kill or seriously injure one another, and if one of those fighting, while in hot blood in the course of the struggle, kills the other with a deadly weapon, this is not murder, but culpable homicide. NGA SHAN GYI v. QUEEN-EMPRESS, **L.B.R. 1872—1892, 371.**

(1882)—*Ss.* 300, 304—*Causing death of thief.*—In this case, causing the death of a thief suddenly discovered and pursued, was held to amount to culpable homicide not amounting to murder. A WE v. QUEEN-EMPRESS, **U.B.R. 1897—1901, Vol. 1, 291.** (5 W.R. Cr. 73, *R.*)

(1883)—*Ss.* 300, 304, *first part—S.* 304, *first part, scope of—Applicable to cases covered by exceptions under s.* 300.—The first part of s. 304, I.P.C., is intended to include only those cases in which the act of the accused person would be culpable homicide amounting to murder,

Penal Code (Act XLV of 1860)—*continued.*

but for the fact that it was committed in circumstances which render one or other of the exceptions to s. 300 applicable. MASTI v. CROWN, 3 P.R. 1911, Cr. = 9 P.W.R 1911 = 87 P.L.R. 1911 = 10 Ind. Cas. 852 = 12 Cr. L.J. 274.

(1884)—*Ss.* 300, 304—*Culpable homicide not amounting to murder—Provocation, grave and sudden—Wife found lying with stranger, murder of.*—Where an accused, finding his wife inside his house lying on a cot with a man with whom she had previously had an intrigue, murdered the wife. *Held*, that the provocation caused by the wife and the man being found lying together on the cot in view of the previous intrigue was sufficiently grave and sudden to disturb the equanimity of the accused, so that the case fell within the exception contained in s. 300, Penal Code, and that the accused should accordingly be convicted under s. 304, Penal Code. AJUDHI v. EMPEROR, 16 Cr. L.J. 625 = 30 Ind. Cas. 449.

(1885)—Ss. 300 and 304—*See* JURISDICTION OF CRIMINAL COURTS—GENERAL, 5 C.P.L. R. Cr. 7.

(1886)—*Ss.* 300, *excep,* 1 *and* 304, *first part—Grave and sudden provocation—Seeing paramour of wife coming out of the house—Culpable homicide not amounting to murder—Punishment under s.* 304, *first part.*—Where the accused, a weak looking youth of 17 (his wife being 35 years old), on his unexpected return from officiating at a marriage, found the paramour of his wife coming out of accused's house, remonstrated with his wife, was further annoyed by her reception of his remonstrances and killed her with a *hoe* which way lying near him, *held* that the circumstances under which the accused killed his wife brought the case within the first exception to s. 300, I.P.C. and that the accused was guilty of culpable homicide not amounting to murder punishable under the first part of s. 304, I.P.C. RALLA v. KING-EMPEROR, 3 P.R. 1913, Cr. = 11 Ind. Cas. 208 = 14 Cr. L J. 208 = 209 P.L.R. 1913.

(1887)—*Ss.* 300, 323—*Murder—Four accused joined in beating of which two only gave fatal blows—Responsibility of the other two—Hurt.*—When four persons joined in beating 5th, out of which two gave him fatal blows on his head which resulted in his death, while the remaining two struck him on the body not with exceptional violence and were not shown to have realized that they were taking part in a murder or how grave the injuries inflicted by their comrades were: *Held*, that the latter were guilty only of causing simple hurt under s. 323, Penal Code. Their sentence of transportation was altered to one year's rigorous imprisonment. GUL SHAH v. CROWN, 41 P. W.R. 1914, Cr. = 16 Cr. L.J. 93 = 26 Ind. Cas. 1005.

(1888)—*Ss.* 300, 325—*Murder — Grievous hurt—Hanging a human body believing the person to be dead and thereby causing death, if murder—Intention to kill.*—The accused assaulted his wife and gave her kicks, blows and slaps. The kicks were given below the navel. The woman fell down and became unconscious. In order to create an appearance that the woman had committed suicide, the accused took up the unconscious body of his wife, thinking it to be a dead body and hung it by a rope. The *post-mortem* examination showed that death was due to hanging.—*Held*, that the accused could not have intended to kill his wife, if he thought that she was already dead, and he could not be convicted of murder. The offence that the accused committed was an offence under s. 325, I.P.C., for having given her kicks, blows and slaps before she fell down. EMPEROR v. DALU SARDAR, 18 C.W.N. 1279 = 15 Cr. L.J. 709 = 26 Ind. Cas. 157.

(1889)—*Ss.* 300, 326—*Murder – Grievous hurt.*—Where it is clear that the act by which the death of the deceased was caused was so dangerous that it must be presumed that the accused knew it to be likely to cause death, then, unless the accused rebuts this presumption, he must be convicted under s. 239, and, if the case does not fall with the exceptions specified in s. 300, then, under s. 300. A conviction under s. 326 is in such a case improper. QUEEN-EMPRESS v. LAKSHMAN, Rat. Un. Cr. C. 411.

(1890)—*Ss.* 300, 411 — *Murder — Stolen property belonging to the murdered man, in possession of accused not sufficient for conviction of murder--Evidence.*—Where the only evidence, against an accused person is a bundle of cloths, which he produced and which is identified as having been stolen from a person proved to have been murdered, and there is no admissible evidence against him, upon the record to connect him more directly with the murder, it is impossible to do more than convict him under s. 411, Penal Code. AHMAD v. EMPEROR, 220 P.L.R. 1913 = 19 Ind. Cas. 707 = 23 P.W. R. 1913, Cr. = 14 Cr. L.J. 275.

——S. 301.

(1890-*a*)—S. 301—*See* No. 1842, *supra.*

——S. 302

See CULPABLE HOMICIDE.

See CULPABLE HOMICIDE NOT AMOUNTING TO MURDER.

See MURDER.

(1891)—*S.* 302—Dhatura *poisoning—Large quantity—Intention not to kill—Effect of death.*—Where a man gives *Dhatura* to another in such a large quantity as to result in his death within three or four hours, although he may not have had any intention to kill, he must be held to have known that his act in giving a dangerous substance in such a quantity was likely to cause death. GULALI v. KING-EMPEROR, 6 A.L.J. 129 = 31 A. 148 = 9 Cr L. J. 383 = 1 Ind. Cas. 765. [*F.*, 12 Cr. L J. 125 = 9 Ind. Cas. 731 = 32 P L.R. 1911.]

(1892)—*S.* 302—*Murder—Sentence—Age of the accused.*—Where the accused, a girl of sixteen, was held guilty of deliberately killing

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her husband, by means of arsenic poison which she mixed up with the food cooked and served up by herself to the husband, *held*, that, in consideration of her age, she should be transported for life, instead of suffering the extreme penalty of death. EMPEROR v. JASHA BEWA, **11 C.W.N. 904**=**6 Cr. L.J. 154.** [*F.*, 12 Cr. L J. 448 =11 Ind. Cas. 792=U.B.R. 1911, 87.]

(1893)—*S.* 302 — *Murder — Circumstantial evidence—Conviction of one of two persons, when it is uncertain who fired the fatal shot—* Onus *of proof.*—The fact that an accused person was found with a gun in his hand immediately after a gun was fired and a man was killed on the spot from which the gun was fired, may be strong circumstantial evidence against the accused, but it is an error of law to hold that the burden of proving innocence lies upon the accused under such circumstances. If there are two persons who answer the above description, the circumstantial evidence loses its weight very substantially. When there is no evidence which of them fired the fatal shot, and when there is no finding that they had a common intention and acted in concert and that the gun was fired, in furtherance of their common intention, the legal inference from these findings must be, neither of them was guilty of the offence of murder. NIBRAN CHANDRA ROY v. KING-EMPEROR, **11 C.W.N. 1085**=**6 Cr. L.J. 304.**

(1894)—*S.* 302—*Evidence--Probabilities—Acquittal* —Where the evidence against an accused person convicted of the murder of a woman was that of a girl of fifteen, and of a boy of thirteen years, who deposed to having seen the accused throw the deceased down more than once, and who did not, for a long time after the event, say a word about it to any body to whom they would have naturally reported it, had it been true, *held*, acquitting the accused, that the evidence was most improbable and was not free from reasonable suspicion. *In re* ERIKALA SUBBADU, **2 M.L.T. 496**=**7 Cr. L J. 216.**

(1895)—*S.* 302—*Murder—Widow causing death of her illegitimate child—Sentence.*—The accused, a widow, left her own village when advanced in pregnancy, and went to a neighbouring village. She told no one of her condition. Feeling her time approaching, she left the village, and was delivered of a living female child in a jungle. She immediately strangled her child by twisting the umbilical cord round its neck, and buried the body in the jungle. Upon the above facts she was convicted of murder, and sentenced to transportation for life. *Held*, that the conviction was right. The Chief Court recommended to the Local Government that the sentence passed on the accused be commuted to one of seven years' rigorous imprisonment, of which three months should be passed in solitary confinement. MUSSAMMAT RAM KAUR v. THE CROWN, **145 P.L.R 1902.**

(1896)—*S.* 302—Corpus delicti.—In a case of murder, it is very important that the body of

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the person murdered should be produced and fully identified. NGA NYO v. QUEEN-EMPRESS, **L.B R 1872—1892, 325.**

(1897)—*S.* 302—*Abetment of murder—Proof.*—To establish a charge of aiding and abetting another in murdering a third party, it must be proved that the alleged abettor knew of the principal's intention to murder the deceased, not merely that such abettor helped the principal in what he did. MA ON NYUN v. KING-EMPEROR, **1 U.B R. 1902—1903 Penal Code, 5.** (U.B.R. 1897-1901, Vol. I, 247, *R*)

(1898)—*S.* 302—*Burial of explosive substance on path—Explosion—Death of a passer-by—Murder—Presumption—Facts to be proved—Explosive Substances Act* VI *of* 1908, *ss.* 3, 5—*Gist of s.* 3—*Essentials of s.* 5—*Report of Chemical Analyst—How far and when evidence.*—The accused got made for him an iron arch and also gave a false name when he got the arch made. It was also proved that a piece of a paper found at the house of the accused was taken from a copy of a certain book, and the scraps found at the scene of explosion were taken from a copy of the same book. *Held*, that the facts proved were not sufficient to sustain the conviction of the accused for the offence of murder and for an offence under s. 3, Explosive Substances Act, 1908. *Held*, also, that the accused was properly convicted under s. 5, Explosive Substances Act, 1908. *Per Chief Justice* :—The essence of the offence under s. 3 Act VI of 1908, is the unlawfully and maliciously causing, by any explosive substance, an explosion of a nature likely to endanger life or to cause serious injury to property. Though the circumstances that the accused gave no explanation and adduced no evidence as to why he got the arch made and as to how the piece of paper found at his house came into his possession, tell against the accused, yet they do not relieve the prosecution from the obligation of adducing such affirmative evidence as leaves no room for any reasonable doubt as to whether the accused was guilty of the offence with which he was charged (see the observations of *Abdur Rahim, J.*, to a similar effect). *Per Abdur Rahmin, J.*—Under s. 5, Explosive Substances Act, 1908, it is not necessary to come to any more definite finding than that the accused had possession of the explosive substance under suspicious circumstances. The gist of s. 3 of the same Act is the causing an explosion unlawfully and maliciously, which must be proved in the ordinary way. The words of s. 114, Evidence Act, as is abundantly clear from the illustrations appended to it, indicate that the existence of only such facts may be presumed as are likely to have happened, having regard to the common course of natural events in their relation to the facts of the particular case. A conviction for murder cannot be based solely on presumptive evidence. The law makes the contents of a report of a Chemical Analyst to the Government, evidence, and dispenses with the necessity of examining the expert as a witness in the case. But such

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report can be of no use, unless there is proof of identity of the articles found during investigation and sent to the chemical examiner with the articles examined by him. *Per Benson, J.*—The facts proved in this case lead one clearly to the belief that the first accused either himself made the bomb and buried it in the path were it exploded, or caused it to be made and buried there by some other person, and in either case he is equally guilty on the principle *qui facit per altum facit per se.* If a person buries a bomb in a frequented path where it is almost certain to be trodden on, and to explode and cause the death of any one treading on it, and if it does, in fact, explode and cause death, that person is guilty of murder, unless he can explain his action in such a way as to negative the inference as to his intention which the nature and circumstances of the act suggest. CHUKKAPALLI RAMAYYA v. EMPEROR, **7 M.L.T. 314=6 Ind. Cas. 51=1 Cr. L.J. 222=20 M.L.J. 657=(1910) M.W. N. 77.**

(1899)—*S.* 302—*Punishment for murder.*—If, for a trivial offence committed by a child, *viz.*, the mere throwing of a clod of earth, a man violently causes its death, it is a clear case of murder, for which the proper sentence is death. QUEEN-EMPRESS v. BEHARI, **S. C. 216, Oudh.** (10 A. 225, *Refd. to*, S.C. 120, Oudh, *D.*)

(1900)—Where a Sessions Judge finds the accused guilty of a cruel murder under s. 302, there being no extenuating circumstances, he should not refrain from passing a sentence of death, because there were no eye-witnesses to the murder. QUEEN-EMPRESS v. CHE YA, **L.B R. 1872—1892, 436.**

(1901)—*S.*302 -*Murder—Retracted confession —Corroboration—Sulphate of copper poisoning.* —Where one of two women (R and S daughter and mother), R, gave birth to a female child, and S. alone attended her, and the infant, while in their custody, died of sulphate of copper poisoning soon after its birth, the presumption is that they (R and S) have administered the poison, and they are guilty of murder even in the absence of a clear motive for committing the crime. The fact of their taking no step towards saving the infant's life is the evidence of intentional, and negatives the defence of, accidental poisoning Such a circumstance is sufficient to corroborate their confession of guilt retracted by them at the time of trial. *Held*, also, that in such a case capital sentence is not justifiable. MUSSAMMAT SAIDAN v. CROWN, **43 P.W R. 1910, Cr=8 Ind. Cas. 815 =17 P.L R. 1911=11 Cr. L J. 717.**

(1902)—*S.* 302—*Absence of evidence as to who struck the fatal blow—Effect—Sentence of death—Legality.*—Where there is nothing in the early stages of the case to indicate who struck the fatal blow, it is not safe to rely on the later differentiation of the parts taken by the various accused, and sentence some of them to the extreme penalty of law. *In re* BUTARI CHINNA VOBIAH, **9 M.L.T. 103=12 Cr. L J. 48=9 Ind. Cas.** 288.

(1903)—*S.* 302 — *Murder —Circumstantial evidence—Death by arsenical poisoning—Suicide—Further evidence in appeal—Inspection of spot—Penal Code, s.* 302—*Crim. Pro. Code, s.* 375.—*Held*, that:—1 The charge of murder like any other charge of an offence, can be established by inferences, but, when there is extremely little in the way of direct evidence, it is due to the accused that there should be no exaggeration of minor incidents in the case and that each inference against him should be verified with scrupulous accuracy and expressed in language of studied moderation. 2. A conviction on circumstantial evidence cannot be based unless and until all the inferences to be drawn from the whole history of the case point so strongly to the commission of the crime by the accused that the defence theory appears, on the face of it, impossible or highly improbable. The general rule is that, in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt. 3. Where a person dies of arsenical poisoning and there is every reason to believe the poisoning was suicidal and not homicidal, the mere fact that the frightened persons, among whom he admittedly died, attempted to dispose of the dead body secretly does not in itself show they are concerned in causing his death or in committing any other crime in connection therewith. 4. Where, during the course of trial, the accused person applies to call certain further material evidence bearing on the line of the defence, there is nothing in law prohibiting the Sessions Court from allowing an adjournment in order that this further evidence might be produced. On the other hand it is due to an accused person that he should be given every opportunity of producing evidence upon which he relies in rebuttal, especially if he has to meet a charge entirely based on assumptions s. 7. When such an application of an accused person has been refused by the lower Court, he should be permitted under s. 375, Crim. Pro. Code, by the appellate Court to produce the further evidence. 6. Where inspection of the scene of the crime is material either to the case for the prosecution or that of the defence, it is desirable that the appellate Court should also inspect the spot. BHAGWAN KAUR v. CROWN, **16 P.W. R. 1911, Cr.=12 Cr.L J. 412=11 Ind Cas. 596.** [*R.*, 12 Cr. L.J. 425=11 Ind. Css. 609=17 P. W.R 1911, Cr.]

(1904)—*S.* 302—*Murder combined with robbery—Recent and unexplained possession of stolen property is presumptive evidence against the prisoner on the charge of murder as well as that of robbery.*—In cases in which murder and robbery have been shown to form part of one transaction, it has been *held* that recent and unexplained possession of the stolen property, while it would be presumptive evidence against

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a prisoner on the charge of robbery, would similarly be evidence against him on the charge of murder. (3 M. 426, *F.*). When, therefore, it is shown that the accused and another entered the house of the deceased, who was a widow living alone in the house, at about 3 o'clock one afternoon and left it sometime after, and the widow was found dead in the room at 6 by another man who went to the house that very afternoon, her head and face beaten in by a mallet which was stained with blood, and when it is further found that the accused had in his possession a number of jewels which agree with the jewels stated by the deceased's brother to have been taken from her when she was murdered, in his first complaint to the Police—*Held*, the accused is guilty of murder. PUBLIC PROSECUTOR v. CHIAREDDI MUNNAYYA, **(1911) 2 M.W.N. 478 = 21 M.L.J. 1071 = 12 Cr. L.J. 564.**

(1905)—*S.* 302—*Murder—Poisoning by opium —Circumstantial evidence.—Held,* that, in a case of murder by opium poisoning, the prosecution evidence that the accused put some sugar into the vessel in which milk was given to the deceased and stirred the milk with his finger after putting the sugar into it, and the deceased died a few hours afterwards, is not sufficient for convicting the accused, particularly when the motive for murder is not strong and the habit of eating opium is common among the class of people to which the deceased belonged. KALA SINGH v. THE CROWN, **25 P.W.R. 1911, Cr. = 12 Cr. L.J. 484 = 12 Ind. Cas. 92 = 241 P.L.R. 1911.**

(1906)—*S.* 302— *Murder—Sentence—Youth —Punishment, principle of awarding—Practice — Upper Burma Courts bound to follow Upper Burma Rulings.*—Youth is a ground which a Court can properly take into consideration in determining the punishment to be awarded for murder. (1 L.B.R. 359, *Diss.*; U.B.R. 1892—1896, Vol. I, 209, 11 C.W.N. 904, Cr. L.J. 154, *F.*)—The framers of the Penal Code have made it discretionary with Judges, even in cases of murder, to consider mitigating circumstances in awarding punishment. Punishment should be as moderate as is consistent with the object aimed at. The law indicates the gravity of an act by the maximum penalty, and the Courts have to judge whether the act committed falls short of the maximum degree of gravity, and, if so, by how much. The Courts in Upper Burma are bound by the Upper Burma Rulings. NGA THA KIN v. EMPEROR, **12 Cr. L.J. 448 = U.B.R. 1911, 87 = 11 Ind. Cas. 792.** (U.B.R. 1897—1901, Vol. I, 330, *Rel.*)

(1907)—*S.* 302—*Murder by grandmother of her grandchild—No justification — Sentence, appropriate—Circumstantial evidence, whether alone sufficient to pass death sentence—Lenity to woman—Rule of practice — Sex of accused, whether determining factor in passing death sentence—Principle to exercise discretion misconceived—Revision — High Court, power of interference.*—Where an old woman of 50 years of age, who had long hated her daughter-in-law and resented her intrusion and had worked herself up to a frenzy of hatred against her, taking advantage of her absence from the house, entered it and murdered her five years' old grandchild with horrible cruelty, and nothing was alleged by her or suggested on her behalf which could, if established, have afforded any sort of legal or moral justification, the mere fact that the case rests on circumstantial and not direct evidence should not affect the passing of death sentence. *Per Ayling, J.*—Comparative lenity to woman is a commonly accepted rule of practice though, needless to say, not of law, but in dealing with an atrocious crime like this the mere sex of the criminal should not bar the imposition of a sentence which would be considered appropriate in the case of a man. *Per Seshagiri Aiyar, J. (dissenting).*—Where a conviction is based purely upon circumstantial evidence, it is an element to be taken into consideration in determining the nature of the sentence. Where, in addition to it, there are the facts that the prisoner is a woman 50 years old and a period of four months has elapsed from the date of her conviction, no case is made out for altering the sentence of transportation for life into one of death. *Per Oldfield J.*—Where the principle on which a Sessions Judge exercises his discretion is misconceived, a High Court can interfere in revision with that exercise of discretion. *In re* RASAMMAL, **16 Cr.L.J. 20 = 26 Ind. Cas. 324.**

(1908)—*S.* 302—*Accused's statement not incriminating himself, whether confession—Identification, when sufficient to convict—Grave suspicion whether sufficient for conviction.*—An accused's statement which does not incriminate himself is not a confession and cannot be used against his co-accused. Identification, unless conclusive, cannot be made the basis of a conviction, specially when the identifiers are nervously upset and do not mention the striking features of the accused in their first information. The gravest suspicion against the accused will not suffice to convict them of a crime unless evidence establishes it beyond all doubt. NGA PO THEIN v. EMPEROR, **16 Cr. L.J. 25 = 26 Ind. Cas. 329.**

(1909)—*S.* 302—*Crim. Pro. Code, ss.* 374, 376—*Accused charged with murder—Duty of presiding Judge as to arranging for his defence —Re-trial on the same charge.*—The accused who was undefended in the Sessions Court was convicted under s. 302, I.P.C. The case came up to the High Court for confirmation of the sentence of death under s. 374, Crim. Pro. Code, and also an appeal. *Held*, that accused persons charged with murder should not go undefended. The respective duties of the Judge and the Bar as to the defence of such accused persons pointed out. The High Court held that, on the evidence as it stood, the sentence of death could not be confirmed, and directed, under s. 376, cl. (*b*), a re-trial of the accused on the same charge after arrangement being made

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for his defence. KING-EMPEROR v. MOHAR ALI SHEIKH, **19 C.W.N. 536 = 21 C.L.J. 495 = 29 Ind. Cas. 321.**

(1910)—S. 302—*See* ABETMENT, 24 P.R. 1882, Cr.

(1911)—S. 302—*See* CRIM. PRO. CODE, 1898, ss. 164, 533, U.B.R. 1892—1896, Vol. I, 205.

(1912)—S. 302—*See* CRIM. PRO. CODE, 1898, s. 271, U.B.R. 1887—1901, Vol. I, 76.

(1913)—S. 302—*See* CRIM. PRO. CODE, 1898, s. 367, L.B.R. 1893—1900, 112.

(1914)—S. 302—Husband murdering wife on suspicion of misconduct— Punishment—*See* CRIM. PRO. CODE, 1898, s. 512, 157 P.L.R. 1911 = 10 Ind. Cas. 119 = 12 Cr. L.J. 214.

(1915)—S. 302—*See* EVIDENCE ACT, 1872, s. 24, 221 P.L.R. 1911 = 12 Ind. Cas. 642 = 12 Cr. L.J. 554.

(1916)—S. 302—*See* EVIDENCE ACT, 1872, s. 114, 15 Cr. L.J. 410 = 24 Ind. Cas. 146.

(1917)—S. 302—*See* SENTENCE—GENERAL, 22 C. 805, 11 C.W.N. 904 = 6 Cr. L.J. 154.

(1918)—S. 302—*See* Nos. 94 to 99, 106, 241, 242, 332, 333, 340, 344, 345, 383, 469, 470, 479, 502, 518, 522, 523, 532, 595, 699, 711, 712, 713, 905, 1350, 1351, 1352, 1835, 1836, 1837, 1843, 1868, 1870, 1871 to 1879, *supra* and Nos. 1973, 1974, 2083, 2142 and 2162, 2598, *infra.*

(1919)—Ss. 302, 34, 109, 114—Acquittal on charge of murder if bar to trial on charge of culpable homicide where culpable homicide was charged in previous trial—Acquittal on charge under s. 302/34, I.P.C., if bar to trial on charge under s. 302/114, or 302/109, I.P.C.—*See* CRIM. PRO. CODE, 1898, ss. 403, 305, 18 C.W.N. 723 = 10 Cr. L.J. 460 = 24 Ind. Cas. 340 = 41 C. 1072.

(1920)—*Ss.* 302, 37—*Culpable homicide—Murder—Trial of issue—Sessions Court—Practice—Murder committed in concert—Liability of each concertor.*—Where culpable homicide has been committed, *prima facie* the principal issue is: whether the culpable homicide does or does not amount to murder. In all ordinary cases, the issue ought to be tried, and ought not to be prejudged by any authority less than the authority of a Court of Session. Where two persons are acting in concert in the sense that their attack on the deceased (with a heavy stick by the one, and with a heavy stone by the other) was a single indivisible thing, both of them are liable for the resultant murder, under the provisions of s. 37, Penal Code. EMPEROR *v.* SUBBAPPA, **15 Bom. L.R. 303 = 2 Bom. Cr. C. 84 = 19 Ind. Cas. 331 = 14 Cr. L.J. 235.** [*D.*, 35 A. 506 = 11 A.L.J. 804 = 21 Ind. Cas. 663 = 14 Cr. L.J. 615.]

(1921)—*Ss.* 302, 109—*Privy Council, jurisdiction in Criminal cases—Conviction when to be set aside on appeal—Violation of principles of natural justice or grave injustice done or disregard of legal process—Suspicion of guilt—Inadmissible and hearsay evidence admitted and used to grave prejudice of accused—Absence of reliable evidence—Motive, evidence of, however strong and convincing, if can take the place of reliable evidence—Approver's evidence—Confession, retracted—Corroboration—Evidence not reliable against co-accused, if may be relied on for conviction of an accused for abetment—Police, sending for, delay in.*—When their Lordships are of opinion that, by some disregard of the form of legal process, or by some violation of the principles of natural justice or otherwise, some substantial and grave injustice has been done, then, whatever doubts they may have of the appellant's innocence, or whatever suspicion they may entertain of his guilt, or however great may be their reluctance to interfere with, or overrule the decisions of the Indian Courts in criminal matters, their Lordships think they are bound to advise His Majesty that the conviction should not be allowed to stand (12 A. C. 459, *F.*). Their Lordships have come to the conclusion that injustice of the kind mentioned above has been done in this case by the admision of a vast body of wholly inadmissible, hearsay and other evidence, and the evidence so admitted has been used to the grave prejudice of the accused, and that, at the end of the hearing before the Sessions Judge, there did not exist any reliable evidence upon which a capital conviction could be safely or justly based. However strong and convincing the evidence of an adequate motive may be, that evidence can never counteract the harm done by the reception of inadmissible evidence, or the injustice its use may lead to, nor by itself supply the want of all reliable evidence, direct or circumstantial, of the commission of the crime with which an accused person may be charged. The approver's story and the retracted confession and the evidence adduced for its corroboration were held to be irreconcilable, full of contradictions and improbabilities and wholly unworthy of credit. Where messengers were sent by a friend of the accused to announce the death of the deceased to friends and acquaintances of the accused in another village, and the messengers told some persons that the deceased had died of cholera, but the friend who had sent the messengers denied on oath that he had instructed the messengers to make such statement, and no evidence was adduced to show that the accused had himself instructed those messengers to make this statement or directly or indirectly even authorised any one to make it for him or on his behalf or that he knew anything about it: *Held*, that grave and substantial injustice was done to the accused in admitting and using this piece of inadmissible evidence against the accused and connecting it with the conversation about the cremation of remains, which may well have had reference to nothing more than the ordinary mode of Hindu funeral which was to take place in due course, and inferring therefrom the consciousness of the guilt of the accused and convicting him thereon. When the case against the accused, if it had any truth in it, was that he was the principal, and further, the first

prosecution story was that he had dealt the blows with his own hand, and it was proved that, owing to a badly united fractured forearm, it was physically impossible for him to have inflicted the blows, the Sessions Judge was not justified in convicting him for abetment of murder under ss. 302, 109, Penal Code, relying on evidence which he regarded as corroborative of his guilt, but which the Judge found to be unreliable against three of the co-accused. VAITHINATHA PILLAI v. KING-EMPEROR, **17 C.W.N. 1110. P.C.=14 M. L.T. 263=1913 M.W.N. 806=15 Bom. L.R. 910=25 M.L.J. 518=2 Bom. Cr. C. 123=18 C.L.J. 365=14 Cr. L.J. 577=21 Ind. Cas. 369 =11 A.L.J. 881=36 M. 501=40 I.A. 193.** [*R.*, 15 Cr. L.J. 309=23 Ind. Cas. 661=18 C. W.N. 785.]

(1922)—*Ss.* 302, 149—*Assault to rescue cattle —Beating the deceased—Common object.*—The applicant's cattle were doing considerable damage to the crops belonging to complainants who drove them to the cattle pound. While they were in the way to the pound the accused came armed with *lathis*, to rescue the cattle. At the command given by one of them the others assaulted the deceased and beat him with the result that he died. *Held* that the offence was committed in pursuance of the common object and each one of the accused was guilty of an offence under s. 302, I.P.C. RASUL KHAN v. EMPEROR, **13 A.L.J. 470=29 Ind. Cas. 91.**

(1923)—*Ss.* 302, 149—*Sentence of imprisonment for offences under.*—The lowest sentence for an offence under s. 302, I.P.C., being transportation for life, a sentence to various terms of imprisonment for offences under ss. 302 and 149 is not according to law. *In re* DURAISAWMY TEVAN, **9 M.L.T. 510=12 Cr. L.J. 145=9 Ind. Cas. 885.**

(1924)—*Ss.* 302, 149, 34—*Murder—Gang of persons—Common object of the gang—Arrest of two persons out of that gang—Murder of one of the arresting party by a member of the gang still at large.*—A gang of persons, making preparations to commit dacoity, was discovered in the limits of a certain village and was pursued by villagers who seized and arrested two accused who were members of the gang. Shortly afterwards, a dacoit at large fired a gun and killed one of the villagers. The accused were thereupon tried for the offence of murder under s. 302 read with ss. 149 and 34, Penal Code. The jury returned a verdict of not guilty, but the Sessions Judge differed from the verdict and referred the case to the High Court: *Held*, that the accused were not guilty of murder, for the separation of the two accused from the gang having been prior to the murder, there could be no common object, and neither s. 149 nor s. 34 applied. In so far as the common object of the unlawful assembly had been originally to commit a dacoity, that object at the critical time must be taken to have been abandoned; and the two accused being by force of circumstances separated from the gang, the subsequent murder committed by one, who still remained a member of the gang, ought to be regarded in fact as an independent and isolated act for which the two accused could not be held liable. EMPEROR v. HARI BIJAL, **17 Bom. L.R. 906=3 Bom. Cr. C. 118.**

(1925)—*Ss.* 302, 201—*Crim. Pro. Code* (1898), *ss.* 233, 235.—Charges under ss. 302 and 201, Penal Code, cannot be combined. *In re* SAVARA SANKADU, **2 Weir 301.**

(1926)—Ss. 302, 201, 202—Joinder of charges under — Legality—*See* CRIM. PRO. CODE, 1898, ss. 236, 403, 4 S.L.R. 174=8 Ind. Cas. 936=11 Cr. L.J. 731.

(1927)—*Ss.* 302, 304 — *Murder — Culpable homicide— Crim. Pro. Code* (1882), *s.* 439—*Revision.*—An accused person had been charged with murder and culpable homicide not amounting to murder, and had been acquitted of the former offence and convicted of the latter; it was held that the Judicial Commissioner sitting as a High Court in the exercise of its power of revision is not authorised to convert the finding of the acquittal of murder into one of conviction. (3 B. 150, 2 C. 273, *F.*) The distinction between murder and culpable homicide not amounting to murder considered. QUEEN-EMPRESS v. NGA KYAW THA, **L.B. R. 1872—1892, 241.**

(1928)—*Ss.* 302 *and* 304—*Provocation, not being grave and sudden — Murder—Culpable homicide.*—Where a person acts under some provocation, not being grave and sudden provocation, and strikes a person one blow on the left side of the head with a heavy club, from which the person dies within twenty-four hours due to compression of the brain, *held* that he should not have been convicted of murder, but of culpable homicide not amounting to murder. QUEEN-EMPRESS v. NGA THET, **L.B.R. 1872 —1892, 508.**

(1929)—*Ss.* 302, 304—*Death by use of* lathi. —If men will use such a formidable and dangerous weapon as a *lathi* with such violence and on such a part of the body as causes death immediately or soon afterwards, they should be convicted of murder and not merely of culpable homicide not amounting to murder. QUEEN-EMPRESS v. KALLU, **A.W.N. 1890, 74.**

(1930)—*Ss.* 302, 304—*Charge of murder— Onus of proving exceptional circumstances.*—Although it is true that it is for the person who has taken the life of another to show that the homicide was accidental, or that it did not amount to murder, yet, it is necessary in order to throw the burden of exculpating himself on the accused in a case of murder, that the witnesses for the prosecution should have told a story which can be believed in itself and that the Judge is satisfied that they are not concealing circumstances which would go to reduce the offence if disclosed. QUEEN-EMPRESS v. RAM GOPAL, **A.W.N. 1897, 121.**

(1931)—*Ss.* 302, 304—*Intention.*—Where four persons attacked one man, who, in consequence

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of the attack, died subsequently, *held*, that the assailants are guilty under s. 302, I.P.C., if the common intention of the assailants was to cause death or bodily injury likely to cause death or sufficient in the ordinary course of nature to cause death ; and, under s. 304, if their common intention was to make a violent assault upon the deceased and they knew that they were likely to cause his death. Their intention must be gathered from what they said and what they did at the time of the attack. MUSAI v. EMPEROR, **13 Cr. L J. 159 = 13 Ind. Cas. 847.**

(1932)—*Ss.* 302, 304—*Culpable homicide—Murder—Causing injury likely to cause death—Intention and wish distinguished.*—A person who inflicts injury on the person of another, which ends fatally and which the former should have known was likely to cause death, is guilty of culpable homicide amounting to murder, though he had no wish to cause death or any motive to do so. The law will presume that the person inflicting the injury intended to cause death, and it lies on the offender to show that such was not his intention. Where the accused, in a drunken state, stabbed his wife, owing to her refusal to start with him for a certain place, which resulted in her death, and the injuries inflicted were such that the accused should have known that they were likely to cause death. *Held*, that the accused was guilty of the offence under s. 302, Penal Code, and not of the lesser offence under s. 304, Penal Code. SYED BATCHA SAHIB v. EMPEROR, **14 Cr. L.J. 115 = 18 Ind. Cas. 675 = 1913 M.W.N. 556.**

(1933)—*Ss.* 302 *and* 304—*Death by strangulation.*—Where a sweeper had been appointed as a *Rakha* by a *Jat* to watch his crops of gram, and, on account of the former stealing the stuff, quarrel ensued and he was strangled to death by the latter. *Held*, that the culprit was guilty of an offence punishable under the second part of s. 304, I.P.C., and a sentence of 4 years' rigorous imprisonment was quite sufficient to meet the ends of justice. SUNDAR SINGH v. CROWN, **6 P.W.R. 1912, Cr. = 68 P.L R. 1912 = 15 Ind. Cas. 318 = 13 Cr. L.J. 478.**

(1934)—*Ss.* 302, 304 (*first part*)—*Distinction between injury likely to cause death and injury which in the ordinary course of nature would cause death — Intoxication and intention.*—Where a person, when drunk, struck another on the head with a billet of wood which dazed him, and immediately after struck a third person in consequence of which blow that person died at once : *Held*, that the accused must be deemed to have intended to cause an injury to deceased which he knew would be likely to cause death ; but it was not necessary in the circumstances to impute to him the intention of causing an injury which, in the ordinary course of nature would cause death. (3 L.B.R. 122, 3 Cr. L.J. 255, *F.*) *Per Twomey, J.*—In a case of culpable homicide, when a man is killed by a blow, the intention of the accused is a presumption of law. He is presumed to have intended the natural and necessary consequence of his act, even if he is drunk. NGA PO LU v. EMPEROR, **12 Cr. L.J. 524 = 12 Ind. Cas. 292 = 4 Bur. L.T. 253.** (U.B.R. 1910, 17, 8 Ind. Cas. 469, 11 Cr. L J. 659, *D. & Expl.*).

(1935)—Ss. 302, 304—*See* CRIM. PRO. CODE, 1898, s. 403 (3), 3 P.R. 1901, Cr.

(1936)—Ss. 302, 304 — *See* VERDICT OF JURY, Rat. Un. Cr. C. 982 = Cr. Rg. 44 of 1898.

(1937)—Ss. 302, 304 and 324—*See* UNLAWFUL ASSEMBLY, 21 M. 249 = 1 Weir 310.

(1938)—Ss. 302, 304, 324, 326—*See* COMMITMENT TO SESSIONS COURT, A.W.N. 1883, 257.

(1939)—*Ss.* 302, 304, 325—*Hurt with* lathis.—Where the accused beat a person with *lathis* not of a deadly nature, and not on any dangerous part of his body, but the person died nine days after, and it was not proved that the accused had any such intention as is described in s. 299 or s. 300 of the Penal Code, *held* that the conviction must be under s. 325 and not under s. 302 or s. 304. QUEEN-EMPRESS v. BISHESHAR, **A.W.N. 1892, 105.**

(1940)—*Ss.* 302, 304, 325, 328, 329—*Administration of* dhatura *for the purpose of facilitating robbery, causing death.*—Where, for the purpose of facilitating robbery, *dhatura* was administered by two persons to certain travellers, in consequence of which one of them died and others were made seriously ill, *held*, that in respect of the traveller who died, the offence committed was that punishable under s. 325, and in respect of the traveller who did not die, the offence committed was that defined by s. 328, I.P.C. EMPEROR v. BHAGWAN DIN, **30 A. 568 = A.W.N. 1908, 243 = 4 M.L.T. 402 = 8 Cr. L.J. 383.** (20 A. 143, *N.F.*) [*Diss.*, 12 Cr. L.J. 125 = 9 Ind. Cas. 731 = 32 P.L.R. 1911.]

(1941)—*Ss.* 302, 304-*A*—*Taking a loaded gun without authority from another—Causing death.*—When it appeared that the deceased, without any authority, tried to take from the accused a loaded gun in his possession, and, in the course of the struggle, the deceased was accidentally shot and killed, *held* that the accused was not guilty of any offence. CHARLES MYRICK v. EMPEROR, **111 P L.R. 1902.**

(1942)—*Ss.* 302, 304-*A*—*Administering drug without due care and caution.*—If a man intentionally commits any offence and consequences beyond his immediate purposes result, the result is not to be attributed to mere rashness ; if knowledge could not be imputed, still the wilful offence does not take the character of rashness, because its consequences have been unfortunate, but acts probably or possibly involving danger to others which in themselves are not offences may be offences within the meaning of s. 304-A, Penal Code, and kindred sections, if done without due care to guard against dangerous consequences. The mere administering of a love potion or drug which a person thinks might be beneficial is not in itself an offence ; but when it is supposed to have effect upon persons with whom the paramour of the accused had enmity, and when she administers it without due care and

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caution or any enquiry as to what it really is, her act falls within s. 304-A, Penal Code. PIKA BOWA v. KING-EMPEROR, **15 C.L.J. 512 = 13 Cr. L J. 195 = 14 Ind. Cas. 195 = 16 C. W.N. 1055 = 39 C. 855.**

(1943) — *Ss.* 302, 305 *and* 396. — Accused committed for trial under s. 396, I P.C., but wrongly convicted under ss. 395 and 302 without amending the charge—Effect. NGA PO SIN v. QUEEN-EMPRESS, **U.B.R. 1897—1901, Vol. I, 47.**

(1944) – *Ss.* 302, 307—*Attempt to commit murder—Murder.*—The accused, with the deliberate intention of causing the death of his father-in-law, gave him three blows on the head. He fell down senseless on the ground. The accused, thinking that he was dead, put under his head a box of firewood, and set fire to the hut in which he was lying, with the intention of removing all evidence of crime. The medical evidence in the case showed that the injury caused by the blows would not have caused death if the hut had not been set fire to and that the burning caused the death. *Held*, by *Birdwood, J.*, and *Sargent, C.J.*, that the accused was not guilty of murder, because, when he set fire to the hut he thought that his father-in-law was dead, and his object in setting fire to the hut was apparently to remove evidence of the crime, and not to make the deceased's death certain. He was, therefore, guilty of an attempt to commit murder under s. 307, I.P.C. *Held, by Parsons, J.*, that the accused was guilty of murder under s. 302, I.P.C. QUEEN-EMPRESS v. KHANDU *valad* BHAVANI, **15 B. 194.**

(1945)—*Ss* 302, 307 – *Murder — Attempt to commit murder — Death caused by* dhatura *poisoning — Evidence Act,* s. 15—*Evidence — Intention—Series of acts—Burden of proof—Assumption of facts.*—The accused on the 7th June, 1909 administered *dhatura* poison to A and B, both of whom died from the effects thereof, and on the following date he administered the same poison to C and D, the former got ill and recovered, but the latter died. *Held*, that the accused was guilty of the offence of murder ; for, when he administered *dhatura* poison, he committed an act which, even if not committed with the intention of causing death or causing bodily injury likely to the knowledge of the offender or in the ordinary course of nature sufficient to cause death, was so imminently dangerous that it must in all probability, cause death, or such bodily injury as is likely to cause death. (31 A. 148, *F.*; 30 A. 571, *Diss.*) *Held*, also, that the events which occurred or were said to have occurred on the 7th and 8th June were relevant to the case of charge of murder of D as forming incidents in a series of similar transactions occurring about the same time and tending to show system and intention, and to negative the idea of accident. *Held*, further, that the accused was guilty of an offence under s. 307 of the I.P.C., as regards the poison administered to C. The Sessions Judge and the assessors assumed that the accused was aware of the death of A and B when he administered *dhatura* to C and D. *Held*, that neither the Judge, nor the assessors, were justified in making assumptions of guilty knowledge on the part of the accused. LALA v. CROWN, **32 P.L.R. 1911 = 12 Cr.L.J. 125 = 9 Ind. Cas. 731.**

(1946)—*Ss.* 302, 307—*Murder—Evidence—Prosecution, duty of, to prove their own story—Weakness of defence, effect of—Right of private defence—Benefit of doubt—Practice.*—The prosecution are bound to prove their own story independently and cannot rely upon the weakness of that put forward by the defence. The tenants of a *sahukar zemindar* went to his house in a body to make some sort of demonstration against him and perhaps to seize their cotton crop which the *zemindar* had taken possession of and stored in his house. Probably some of the tenants had weapons and the *zemindar*, apprehending that some hurt would be caused to him, fired off his gun in the direction of the crowd of villagers, without any intention of killing any one or of doing more harm than was necessary for his own protection: *Held*, that what the *sahukar* did was done in the exercise of his right of private defence and that he was therefore, entitled to the benefit of any doubt which existed. LACHHMAN DAS v. EMPEROR, **16 Cr. L.J. 152 = 27 Ind. Cas. 216 = 14 P.W.R. 1915, Cr. = 131 P.L.R. 1915.**

(1947)—Ss. 302, 307—*See* CRIM.PRO. CODE, 1898, s. 217, U.B.R. 1897—1901, Vol. I, 78.

(1948)—*Ss.* 302, 318—*Admission—Sole evidence against accused—Admission to be taken in its entirety.*—Where an accused was charged with murder and the only evidence against her was her admission that she threw the child under the impression that it was dead at the time : *Held*, that the admission should be taken in its entirety, unless there is good reason for the contrary. *In re* KAMAKKA, **9 M.L.T. 316 = 9 Ind. Cas. 790 = 12 Cr. L.J. 142 = 1911 M.W.N. 199.**

(1949)—Ss. 302, 324 and 326—*See* CRIM. PRO. CODE, ss. 227 and 537, 20 P.W.R. 1909, Cr.

(1950)—*Ss.* 302, 325—*Murder — Culpable homicide—Voluntarily causing grievous hurt.*—Where there was no intention of causing death, and where there was also not sufficient ground for presuming that the accused intended to cause such bodily injury as was likely to cause death or knew that his act was likely to cause death, the conviction should be for voluntarily causing grievous hurt under s. 325, I.P.C. NGA PO TIN v. QUEEN-EMPRESS, **U.B.R. 1897—1901, Vol. I, 293.** (U.B.R. 1892—1896, Vol. I, 211, U.B.R. 1897—1901, Vol. I, 311, *R.*)

(1951)—*Ss.* 302, *cl.* 4 *and* 325 — *Murder—Grievous hurt—More than one accused—Common intention to inflict bodily injuries likely to cause death—All guilty of murder.*—The accused, four in number, all armed with *lathis* felled the deceased, who was defenceless and armless,

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gave him a prolonged beating and inflicted several blows completely smashing the skull; *held* that there was clearly an intention on the part of all the accused to inflict such bodily injury as is likely to cause death, and the offence was one of murder under cl. 4 of s. 302, I.P.C., and not that of grievous hurt under s. 325 of the Penal Code, and all the four accused were rightly convicted of murder, although the evidence might not have disclosed which of the injuries were inflicted by each of the accused, respectively. KANHAI v. KING-EMPEROR, **11 A.L.J. 752=35 A. 329=21 Ind. Cas. 657=14 Cr. L.J. 609.** [*R*, 21 Ind. Cas. 663=11 A.L.J. 804=14 Cr. L.J. 615=35 A. 506.]

(1952)—Ss. 302 and 363—*See* KIDNAPPING, **1 S.L.R. 104, Cr.=8 Cr. L.J. 361.**

(1953)—*Ss.* 302, 369—*Kidnapping with intent to steal—Murder—Evidence of kidnapped boy having been with the accused and of theft—Discovery of remains of boy—Absence of direct proof of murder—Conviction for murder illegal.*—The following facts were proved against the accused who was charged with kidnapping and murder under ss. 369 and 302, Penal Code—the complainant's son who was alleged to have been kidnapped by the accused was seen in the arms of the accused just before the murder of the boy; on the very day when he was so seen or shortly afterwards, the accused was seen disposing of the jewellery which the boy was wearing; remains of the boy were seen in a bush, but there was no direct evidence as to how he came by his death: *Held*, on these facts, that the accused was guilty of an offence under s. 369, Penal Code, but could not be convicted under s. 302, Penal Code. *In re* VUPPALAPU VIRASAWMY, **13 Cr. L J. 249=14 Ind. Cas. 601,** (13 M. 426, *D.*)

(1954)—*Ss.* 302, 369—*Murdered child found in well indicated by the accused who disclaimed all knowledge—Fact of stripping the child of her ornaments established—Youth of accused.*—In a case of murder the facts clearly established were that the accused was last seen with the child alleged to have been murdered, and that he stripped her of most of her ornaments and sold them and that her body was next found in a well, and the accused disclaimed all knowledge of the matter, though he himself indicated the well: *Held*, that the accused was guilty of a foul murder, which, in spite of his youth, called for the extreme penalty. WADHAWA SINGH v. EMPEROR, **16 Cr. L.J. 167=27 Ind. Cas. 531.**

(1955)—*Ss.* 302, 411—*Possession of ornaments worn by a murdered child.*—Where the accused admitting that the deceased was at his house immediately before his death, declared that his respiration stopped owing to fall from the roof and that he took the body and threw it into a tank, where it was afterwards found, and he also produced the ornaments worn by the child on the morning on which he was missed, *held*, that this was not sufficient to find the accused guilty of murder, especially when the medical evidence shewed that the deceased might have been either intentionally or accidentally strangled, and that the accused could only be found guilty of an offence under s. 411. KING-EMPEROR v. RAJANI KANTO KOER, **8 C.W.N. 22=1 Cr. L J. 10**

——S. 304.

See CULPABLE HOMICIDE.

See CULPABLE HOMICIDE NOT AMOUNTING TO MURDER.

See MURDER.

(1956)—*S.* 304—*Causing death by administration of* datura.—Causing death by the administration of *datura* poison in toddy for the purpose of detecting thieves will amount to murder. In this case, the accused was charged and convicted of culpable homicide not amounting to murder, but the Chief Court, on appeal, observed that having regard to the ignorance of the people and their addiction to old practices, no order need be made for a re-trial, and the appeal was merely rejected. NGA PAYUNG v. QUEEN-EMPRESS, **U.B.R. 1897—1901, Vol. I, 296.**

(1957)—*S.* 304—*Culpable homicide not amounting to murder.*—Where an indention to cause death or deadly injury was not proved and was not even likely, a conviction under the first clause of s. 304 of I.P.C., is untenable; as that of a person who causes the disappearance of a woman who had rushed waist-deep into a sot of a river by striking her two blows on the head with a *light bamboo.* QUEEN-EMPRESS v. PIR BAKSH, **S.C. 123, Oudh.**

(1958)—*S.* 304—*Accused throwing stick at the deceased.*—Where the accused threw his stick at the deceased with such force that it hit him in the head with the point and made a punctured wound which caused his death, *held* that the accused was not liable to be punished under s. 304-A, because injury was intentionally caused to the deceased. QUEEN-EMPRESS v. WILLIAM KEEGAN, **Rat. Un. Cr. C. 673=Cr. Rg. 38 of 1893.**

(1959)—*S.* 304—*Conviction on mere probability.*—The Sessions Judge held on the probabilities that it was more likely that the prisoner, rather than the other inmate of his house, inflicted the injuries which were proved to have caused his daughter's death, but did not come to any conclusion that the guilt of the prisoner was established by the evidence beyond reasonable doubt; *held* that, as a prisoner on his trial is merely on the defensive, and owes no duty to any one but himself, he could not be convicted because he had not tried to explain to the Court how the death occurred or by whose means. QUEEN-EMPRESS v. JETHMAL NARAYAN, **Rat. Un. Cr. C. 686=Cr. Rg. 4 of 1894.**

(1960)—*S.* 304—*Desertion of child by mother—Child taken care of by others—Death caused by diarrhœa.*—The accused, a young married woman, bore an illegitimate child in her husband's house and left her home, ten days after

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the birth of the child. The child remained and was fed for four days after the mother's departure, partly with cow's milk, partly from the breast of the infant's maternal aunt; and eventually the infant died of weakness probably resulting from infantile diarrhœa. *Held* that, under these circumstances, the conviction of the accused under s. 304 was not proper and that the accused should be released. QUEEN-EMPRESS v. JEONI, **A.W.N. 1893, 100.**

(1961)—*S.* 304—*Jury to be asked under which part of section the accused is guilty.*—As s. 304, I.P.C., deals with two kinds of culpable homicide, the jury ought to be asked to say under which part they find the accused guilty. QUEEN-EMPRESS v. REGO MONTOPOULO, **19 B. 741.**

(1962)—*S.* 304—*Culpable homicide not amounting to murder — Circumstantial evidence—Wife receiving injury on her head—Presumption that it was inflicted by husband.*—*Held*, that, when the only inmates of the house were the husband and his two wives, and the deceased elder wife was habitually ill treated and half-starved by her husband, and at last she was found suffering from a serious injury to the head, from the effects of which she died three days after she was admitted to hospital where she was too ill to make any statement, and there was no indication that the injury was accidental or self-inflicted, and the explanation given by the husband as to the injury was unsatisfactory and highly improbable, the presumption is that the injury was caused by her husband. *Held*, also, that, to inflict such an injury on the head of a woman already reduced by ill-treatment to such a poor condition, was an act which warrants the finding that the culprit must have known that it was likely that death would be the result, and was sufficient to bring him under s. 304, part 2, I P.C.—In this case a sentence of ten years' rigorous imprisonment was not considered severe. The co-wife was given the benefit of doubt and was acquitted. RAHIM DAD v. CROWN, **3 P.W.R. 1913, Cr. = 150 P.L.R. 1913 = 19 Ind. Cas. 715 = 14 Cr. L.J. 283.**

(1963)—*S.* 304—*Culpable homicide not amounting to murder—Causing death by* a chhavi *blow given on head in spur of the moment and heat of passion—Sentence.*—*Held*, that, where a person, on the sour of the moment, in the heat of passion, and without any pre-meditation and motive for causing death, seizes a *chhavi*, the first weapon which came to his hands, and inflicts with it a blow on the head of another which results in the death of the latter, the former's act falls within the 2nd part of s. 304, Penal Code. But in such a case the culprit deserves the maximum sentence of imprisonment provided for that offence. KUNDA SINGH v. CROWN, **4 P.W.R. 1914, Cr. = 3 P.L.R. 1914 = 15 Cr. L.J. 178 = 22 Ind. Cas. 754.**

(1964)—*S.* 304—*First report—Culpable homicide not amounting to murder—Grave discrepancies between the first report and subsequent evidence—Benefit of doubt.*—*Held*, that, grave discrepancies between the statement of the deceased contained in the first report and the evidence of his witnesses as to the persons attacking him and giving him fatal injuries, throw a great doubt on the whole case, the benefit of which must be given to the accused. RAJWAJI v. CROWN, **23 P.W.R. 1914, Cr. = 172 P.L.R. 1914 = 15 Cr. L.J. 530 = 24 Ind. Cas. 842.**

(1965)—S. 304—*See* ABANDONMENT OF CHILDREN, 2 A. 349, 18 P.R. 1870, Cr.

(1966)—S. 304—*See* CHARGE TO JURY—MISDIRECTION, Rat. Un. Cr. C. 530 = Cr. Rg. 62 of 1890, 6 B L.R. Ap. 86 = 15 W.R. Cr. 17.

(1967)—S. 304—*See* SENTENCE—TRANSPORTATION, Rat. Un. Cr. C. 735 = Cr. Rg. 4 of 1895.

(1968)—S. 304—*See* Nos. 84, 96, 334, 345, 347, 348, 373, 384, 397, 432, 595, 623, 652, 653, 654, 655, 700, 703, 710, 714, 762, 1836, 1837, 1838, 1839, 1840, 1844, 1872 to 1878, 1880 to 1886, 1927 to 1940, *supra and* Nos. 2020, 2105, 2106 and 2140, *infra.*

(1969)—*Ss.* 304 *and* 149—*Scope of s. 304 read with s. 149.*—S. 304 coupled with s. 149 applies only to such persons who, though not taking an active part in an unlawful assembly, are liable to be punished by reason of their being members of the unlawful assembly, and a person being killed in prosecution of the common object of the assembly. RAM SARUP RAI v. EMPEROR, **6 C.W N. 98.**

(1970)—*Ss,* 304 *and* 149—*Constructive murder under—Effect on charge under s. 149.*—It is a doubtful question whether a person, constructively guilty of murder under s. 304 of the Penal Code, can be said to have committed the offence of murder within the meaning of s. 149 of the Code, so as to make others, by a double construction, guilty of murder—*Per Field, J.* EMPRESS v. JHUBBOO MAHTON, *In the matter of the petition of* JHUBBOO MAHTON, **8 C. 739 = 12 C.L.R. 233.**

(1971)—*Ss.* 304 *and* 149—*Culpable homicide not amounting to murder—Unlawful assembly, offence committed by a member of.*—B went to a police station and made report of an assault against F and others. The police declined to take action and referred her to a Magistrate. The accused F with his companions went to the house of B, evidently with the intention of taunting her with her failure to obtain any satisfaction from the police. A tenant of B, who was in B's house at the time, picked up a stick and came out abusing and threatening the intruders. F struck the tenant one severe blow with a *chhavi* at his head from which he died. F was convicted of an offence under s. 304, Penal Code, and his companions of the offence under s. 149 read with s. 304, Penal Code. *Held*, that F was rightly convicted of the offence under the first part of s. 304, but his companions must be acquitted, for, none of them took any part in any assault at B's house,

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Their going to B's house and calling out to her that she had got nothing by going to the police station could not make them members of an unlawful assembly. FAUJA SINGH v. KING-EMPEROR OF INDIA, 55 P.L.R. 1911 = 10 P.W.R. 1911 = 12 Cr. L.J. 187 = 10 Ind. Cas. 643.

(1972)—*Ss.* 304, 160—*Culpable homicide—Two persons assaulting each other while others also joined the fight—One of them dying of the injuries received—Effect of absence of reliable evidence to prove who was the real assailant.*—Where L and M met and after abuse came to blows and each struck the other down while others had also joined the fight, and M died of the injuries received on that occasion, but there was no reliable evidence that L alone was the assailant. *Held*, that L could not be convicted under s. 304, Part 2, I.P.C., and that any offence beyond an affray under s. 160, Penal Code, had not been committed. LANGAR v. CROWN, 32 P.W.R. 1912, Cr. = 16 Ind. Cas. 526 = 13 Cr. L.J. 718.

(1973)—Ss. 304, 302 and 325—*See* VERDICT OF JURY, 11 C. 85.

(1974)—*Ss.* 304, 302 395, 396—*Dacoity—Stuffing cloth into deceased's mouth in order to silence him—No intention to kill—Offence.*—Where, in committing dacoity, the accused stuffed a cloth into the deceased's mouth in order to silence him and not with any idea of killing him, *held*, they must be convicted under ss. 304 and 395, I.P.C., and not under ss. 302 and 396, I.P.C. *In re* SENGODA GOUNDEN, 18 M L.T, 103 = 1915 M.W.N. 621 = 16 Cr.L J. 614 = 30 Ind. Cas. 438.

(1975)—*Ss.* 304, 304-*A—Beating to cast out evil spirit with party's consent resulting in death.*—The accused acting *bona fide* gave a severe beating, according to the generally followed method, to a young woman, believed by herself and her relatives to be possessed, for the purpose of casting out an evil spirit, but she died as the beating was done without due care and attention. *Held*, that as there was neither the intention nor the knowledge that death would be the result, requisite to bring it within the definition of that offence, the accused committed an offence within s. 304 A, Indian Penal Code. NGA PO KYAW v. KING-EMPEROR, 1 U.B.R. 1902—1903, Penal Code, 1.

(1976)—Ss. 304, 304-A, 323—*See* CULPABLE HOMICIDE, 3 A. 597.

(1977)—*Ss.* 304, 307—*Confesssion by prisoner—Non-finding of dead body.*—Where a prisoner admits having thrown a girl into a canal, but the body cannot be found, it is inexpedient to convict him of murder; his act would properly be met by a conviction of attempt to murder. QUEEN-EMPRESS v. KASHNA, Rat. Un. Cr. C. 687 = Cr. Rg. 7 of 1894.

(1978)—*Ss.* 304, 320—*Death resulting from attacks with* lathis.—Where *lathis* are freely used by several assailants, the result of which is the death of the person assaulted, the common intention of the assailants may be deemed to have been to cause grievous hurt, inasmuch as the probable result of the use of *lathis* was at least grievous hurt. In the absence of evidence to show that there was a common intention on the part of several assailants to cause death or such injury as was likely to cause death, s. 304 would not apply. Where there was no proof as to which of the assailants dealt the fatal blow, but death resulted from the assault committed, *held*, that all the assailants could not be convicted of murder, but should be convicted of grievous hurt. EMPEROR v. BHOLA SINGH, 29 A. 282 = A.W.N. 1907, 51 = 4 A L.J. 207 = 5 Cr. L.J. 130. (19 M. 483, *F.*) [*Rel.*, 14 Cr. L J. 241 = 19 Ind. Cas. 497 = 16 O.C. 19; *R.*, 35 A. 506 = 11 A.L.J. 804 = 14 Cr. L.J. 615 = 21 Ind. Cas. 663.]

(1979)—*Ss.* 304, 320 (8)—*Death by blow with a weapon—Intention to cause death—Whether can be presumed—Omission to point out alternative case of grievous hurt under s.* 320 (8) *to the jury—Misdirection.*—Where death has been caused by a blow with a weapon, that does not necessarily suggest an intention to cause such bodily injury as would in the ordinary course of nature cause death, and it is presumed, in the accused's favour, that he had no knowledge that the injury which he intended to cause was likely to cause the death of the person injured. Where the circumstances are such that an intention merely to cause hurt dangerous to life might not unreasonably be inferred, the jury should be directed that it is open to them to find the accused guilty of the lesser offence, namely, of causing grievous hurt under s. 320 (8). CROWN v. CHAGAN, 6 S.L.R. 116 = 17 Ind. Cas. 62 = 13 Cr. L.J. 750.

(1980)—*Ss.* 304 *and* 323—*Voluntarily causing hurt—Culpable homicide*—Lathi *blow.*—In this case, the accused person struck a man one blow on the head with a bamboo yoke and the injured man died afterwards in hospital, principally from the excessive use of opium surreptitiously administered by his friends. *Held* that, as there was no intention to cause death, and as the blow in itself was not of such a nature as was likely to cause death, the offence committed was that of voluntarily causing hurt. If the immediate cause of death be the improper administration of dangerous drugs, then the persons who administered such drugs without any excuse are the persons "who caused the death." NGA SHWE PO v. QUEEN EMPRESS, L B R. 1872—1892, 179. (4 C. 815, 2 A. 522, *R.*)

(1981)—*S.* 304 (2) *and* 323—*Liability of a joint assailant when it is not certain who struck the fatal blow — Crim. Pro. Code, s.* 423—*Remark against police investigation.*—Where S was convicted under s. 304 (2) for stabbing R, and sentenced to five years' rigorous imprisonment, but S and four others at least struggled with S in a crowd at a dark place, and it was consequently difficult for any one to see what actually happened and who struck the

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fatal blow, and the evidence on this point was also conflicting and *great pressure was brought by the police to bear on the witnesses to make them give evidence as desired,* the Chief Court altered the conviction to one under s. 323, Indian Penal Code, and reduced the sentence to two months' rigorous imprisonment. SHIB DAS v. CROWN, **2 P.W.R. 1908, Cr.=77 P.L. R. 1908=7 Cr. L.J. 321.**

(1982)—Ss. 304, 323—*See* CULPABLE HOMICIDE, 4 Bom. L.R. 879.

(1983)—*Ss.* 304, 323 *and* 325—*Sudden fight between two parties—Death caused by one blow of* Sudwai *of an* ekka (*a heavy wooden prop*)—*Absence of conclusive proof who gave the fatal blow.*—Where, in a sudden fight between G.S. and M. on one side and D.R. and I. on the other, for which G on his side and D on the other side were chiefly to blame, and in which blows of ordinary sticks and of fists were exchanged, and it was alleged that D. took up a heavy *Sudwai* of an *ekka* close by and gave a severe blow on the head of G, which fractured his skull bone and ultimately resulted in his death; but it was neither proved conclusively that D. did so, nor was there any indication that originally D. or any member of his party intended or knew it to be likely that any such serious injury would be caused: *Held*, that D could not be convicted of an offence either under s. 304 or 325, I.P.C., and that D and his party were only responsible for simple hurt under s. 323, I.P.C. D's sentence of 5 years' rigorous imprisonment and a fine of Rs. 300 was reduced only to 6 months' rigorous imprisonment. The sentence of R who was convicted under s. 323, I.P.C., and sentenced to six months was reduced to the period already undergone by him. DHANI RAM v. CROWN, **1 P.W.R. 1913, Cr.=18 Ind Cas. 664=14 Cr. L.J. 104=162 P.L.R. 1913.**

(1984)—*Ss.* 304, 324—*Death caused by blow—Enlarged spleen.*—Where death was caused by a blow with a stick, but it appeared that death would not have been caused by the violence apparently used, had the deceased's spleen been in a healthy condition, and that the accused did not prove that the deceased's spleen was diseased, *held* that the accused was merely guilty of voluntarily causing hurt by a dangerous weapon, but not of culpable homicide not amounting to murder. EMPRESS v. MULUA, **A.W.N. 1881, 112.**

(1985)—Ss. 304, 325—*See* EVIDENCE ACT, 1872, s. 30, Rat. Un. Cr. C. 450=Cr. Rg. 9 of 1889.

(1986)—Ss. 304, 325—*See* VERDICT OF JURY, 9 Bom. L.R. 1051=7 Cr. L.J. 236.

(1987)—*Ss.* 304, 325, 328—*Sexual intercourse with wife above ten years, but not attained puberty—Death caused by such act—Nature of the offence.*—The prisoner, a fully developed adult man, was charged with causing the death of his wife, a girl aged about eleven years and three months. The death was caused by haemorrhage from a laceration in the upper part of the vagina caused by the prisoner having

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sexual intercourse with her. The prisoner contended that he had sexual intercourse with the girl on several previous occasions without any injury to her. The medical evidence in the case was to the effect that, though there might have been previous sexual intercourse, it must either have been an intercourse involving less complete penetration or with less vigour. *Held*, that the prisoner was guilty of an offence, under s. 338 and not under ss. 304 or 304-A or 325 of the Penal Code. QUEEN-EMPRESS v. HURREE MOHAN MYTHU, **18 C. 49.**

——**S. 304-A.**

See CULPABLE HOMICIDE.

See MURDER.

See RASH AND NEGLIGENT ACT, DEATH CAUSED BY.

(1988)—*S.* 304-*A*—*Scope.*—S. 304-A refers to rash and negligent acts and does not apply to cases where hurt is voluntarily caused. QUEEN-EMPRESS v. HASAN, **2 Bom.L.R. 613.**

(1989)—*S.* 304-*A*—*Scope of section*—S. 304-A is not intended to cover cases where there was no intention to cause hurt. Neither that section nor those as to culpable homicide apply to cases where death has arisen, not from the negligent or rash mode of doing the act, but from some result supervening the act which could not have been anticipated. KING-EMPEROR v. HEERA JOEETA, **3 Bom. L.R. 394.** [*R.*, 1 Bom. Cr. C 183=14 Bom. L.R. 887 =13 Cr. L.J. 798=17 Ind. Cas. 542.]

(1990)—*S.* 304-*A*—*Scope and application of.*—The provisions of s. 304-A seem to apply to cases where there is no intention to cause death and no knowledge that the act done, in all probability, would cause death. SUKAROO KOBIRAJ v. EMPRESS, **14 C. 566.**

(1991)—*S.* 304-*A*—*Applicability of—Rashness, Negligence, Knowledge, etc.*—S. 304-A of the Penal Code does not apply to a case in which there has been the voluntary commission of an offence against the person. If a man intentionally commits such an offence, and consequences beyond his immediate purpose result, it is for the Court to determine how far he can be held to have the knowledge that he was likely by such act to cause the actual result; and if such knowledge can be imputed, the result is not to be attributed to mere rashness, if it cannot be imputed, still the wilful offence does not take the character of rashness because its consequences have been unfortunate. Acts, probably or possibly involving danger to others, but which, in themselves, are not offences, may be offences under ss. 336, 337, 338, or 304-A, if done without due care to guard against the dangerous consequences. Acts, which are offences in themselves, must be judged with regard to the knowledge, or means of knowledge, of the offender and placed in their appropriate place in the class of offences of the same character. [*F.*, 3 A. 776, 1 L.B.R. 259; *R.*, L.B.R. 1872—1892, 241, 8 Bom. L.R. 414=3 Cr. L J. 494, 1 A.W.N. 103, 1 A. W.N. 105, 14 C.P.L.R. 126.] In judging of

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the knowledge had by an accused, we must consider the circumstances; the blow that to one person, or under ordinary circumstances, may not, in the ordinary course of nature, be likely to cause death, may yet be imminently dangerous to another, or under special circumstances. EMPRESS v. KETABADI MUNDAL, **4 C. 764.** (7 M.H.C. 119, *R. and Appr.*) [*F.*, 39 C. 855=15 C.L.J. 512=13 Cr. L.J. 195=14 Ind. Cas. 195=16 C.W.N. 1055.]

(1992)—*S.* 304-*A—Application of section.*—Where the act causing the death of the accused is in its nature criminal, s. 304-A has no application. QUEEN-EMPRESS v. DAMODARDU, **12 M. 56=1 Weir 326.** [*R.*, Rat. Un. Cr. C. 458.]

(1993)—*S.* 304-*A—Application of section.*—S. 304-A, I.P.C., cannot apply to a case where there was neither culpable rashness nor culpable negligence in the sense in which those terms are usually accepted. The section does not apply to a case in which there has been the voluntary commission of an offence against the person. The nature of the offence committed by the accused should be determined on a consideration of the intention and knowledge of the accused as to the probable consequences of his act. EMPEROR v. MARDAN SINGH, **14 C. P.L.R. Cr. 126.**

(1994)—*S.* 304-*A—Application of section.*—S. 304-A, I.P.C., does not apply to a case in which the act itself was unlawful and amounted to the voluntary commission of an offence against the person. Personal injury intentionally caused is neither a rash nor a negligent act. When an act of violence which is itself an offence has been committed, the nature of the offence depends on the knowledge of the offender. QUEEN-EMPRESS v. NGA NI, **U.B. R. 1897—1901, Vol. I, 314.**

(1995)—*S.* 304-*A—Object of.*—S. 304-A, I.P.C., is intended to provide for cases where death is caused by rashness and negligence in the doing of an act, and where the person doing the act is culpable in so far as it relates to the causing of death only by reason of his rashness or negligence. QUEEN-EMPRESS v. LU MAUNG, **L.B.R. 1872—1892, 89.**

(1996)—*S.* 304-*A—Person deliberately throwing stone at another—Culpable homicide.*—Where a person deliberately throws a stone at another with the intention of killing him and causing him hurt, the act is an offence of itself, and the accused is liable to be punished for causing the death of the deceased, should be committed for trial to the Court of Sessions on a charge of culpable homicide. QUEEN-EMPRESS v. LU MAUNG, **L.B.R. 1872—1892, 89.**

(1997)—*S.* 304-*A—Culpable rashness—Culpable negligence.*—The deceased and the accused went out shooting together in the jungle, and, in course of time, got separated. Ultimately the accused saw something move in the jungle, and, without stopping first to see whether it was a man or beast that caused this movement, that is to say, without seeing what he fired at, fired and killed the deceased. *Held*, that if this is not culpable rashness, it is certainly culpable negligence and that the accused was guilty of an offence under s. 304-A. QUEEN-EMPRESS v. NGA PAN GYI, **L.B.R. 1872—1892, 308.** (7 M.H.C. 119, *F.*)

(1998)—*S.* 304-*A—Death resulting from an act intended to cause hurt—Applicability of the section.*—Where death resulted from an act intended to cause hurt, but with no intention of causing death or knowledge that it might be the probable consequence, *held*, that the prisoner should not be convicted of causing death by a rash and negligent act, and that the offence amounted to hurt. HIGH COURT PROCEEDINGS, 23RD FEB. 1880, NO. 357, **1 Weir 326.**

(1999)—*S.* 304-*A—Terms "rashness" and "negligence" explained—Offence defined by section, nature of.*—Culpable rashness is acting with the consciousness that the mischievous and illegal consequences may follow, but with the hope that they will not, and often with the belief that the actor has taken sufficient precaution to prevent their happening. The imputability arises from acting despite the consciousness. Culpable negligence is acting without the consciousness that illegal and mischievous effects will follow, but in circumstances, which show that the actor has not exercised the caution incumbent upon him, and that if he had, he would have had the conciousness. The imputability arises from the neglect of the civic duty of circumspection. It is manifest that personal injury, consciously or intentionally caused, cannot fall within either of these categories, which are wholly inapplicable to the case of an act or series of acts, themselves intended, which are the direct producers of death. To say that, because in the opinion of the operator, the sufferer could have borne a little more without death following, the act amounts merely to rashness because he has carried the experiment too far, results from an obvious and dangerous misconception. [*F.*, 4 C. 764, 2 A. 766, 3 A. 597, 1 Weir 233=8 M. 421, 1 Weir 337, 22 P.R. 1905, Cr.=2 Cr.L J. 207=24 P.L.R. 1905; *R.*, 3 A. 776, L.B.R. 1872—1892, 308, 8 Bom. L.R. 414.] It is clear, that if the words "not amounting to culpable homicide" are part of the definition, the offence defined by the section consists of the rash or negligent act not falling under that category, as much as of its fulfilling the positive requirement of being the cause of death. *In re* NIDAMARTI NAGABHUSHANAM, **1 Weir 324=7 M.H.C. 119.** [*F.*, 3 A. 776; *R.*, 12 M. 56=1 Weir 326.]

(2000)—*S.* 304-*A—Conviction under—Criminal rashness, inference of.*—To find a person, who had caused the death of another with an enlarged spleen by blows inflicted on the body and who was charged with culpable homicide, guilty under s. 304-A, it would not do for the jury to infer rashness from the mere fact of the prevalence of the disease of the spleen in the

district; but they must be satisfied of the accused's knowledge of such prevalence and of the danger to life involved in the striking on the trunk of the body of a person who might be affected with the disease. EMPRESS v. SAFATUALLA, **4 C. 815.** [*R.*, L.B.R. 1872—1892, 179.]

(2001)—*S.* 304-*A*—*When criminal liability attaches under.*—To impose criminal liability under s. 304-A, it is necessary that the death should have been the direct result of a rash and negligent act of the accused, and that act must have been the proximate and efficient cause without the intervention of another's negligence. It must be the *causa causans*; it is not enough that it may have been the *causa sine qua non.* EMPEROR v. OMKAR RAMPRATAP, **4 Bom. L. R. 679.**

(2002)—*S.* 304-*A*—*Causing death by rash and negligent act.*—The accused, a railway servant in charge of trucks to convey them by the help of coolies across a river, discharged the duty negligently and conveyed the trucks contrary to the instructions given him, whereby he lost control over them. In their course, one of the coolies who, under orders of the accused, was endeavouring to stop them, slipped under the wheels and was run over and killed. *Held*, that the accused should be held to have caused the death of the deceased by his negligent act in allowing the trucks to go down the line without proper precaution. QUEEN-EMPRESS v. NAND KISHORE, **6 A. 248=A.W.N. 1884, 71.** [*R.*, 32 C. 73, 2 Cr.L.J. 207=24 P.L.R. 1905=22 P.R. 1905, Cr.]

(2003)—*S.* 304-*A*—*Mother giving milk in such quantity as to kill child.*—Where the evidence of a Civil Surgeon showed that milk was administered in such quantity as to kill the child, but there was no evidence to show that the mother was aware of it, *held* that she was not guilty of an offence under s. 304-A. If the mother was held to be aware of the over-feeding or of the probable consequences of over-feeding her infant, she could not be convicted of an offence under s. 304-A, which provides for the causing of the death by any rash or negligent act not amounting to culpable homicide. What a person does with the knowledge that the consequences will be likely to cause death cannot be reduced to a simple rash and negligent act. QUEEN v. MUSSAMUT PAMKOER, **5 N.W.P. 38.** [*F.*, 3 A. 776.]

(2004)—*S.* 304-A—*Shooting at a person falsely thinking him to be a thief.*—The prisoner had been in charge of a police station, the vicinity of which had been troubled by thieves. On one occasion a thief had fired at the prisoner. It having been reported to the prisoner that three thieves were prowling about, he, with other men, went out to patrol. They saw a man crouching under a tree, and thinking he must be a thief, the prisoner fired at him and killed him. The man proved to be a *halcara.* The prisoner wrote a false report to the effect that the deceased had been killed by thieves. *Held* that, under the circumstances, the accused was guilty of an offence under s. 304-A. EMPRESS v. WAZIRULZAMA KHAN, **A.W.N. 1881, 156.**

(2005)—*S.* 304-*A*—*Thief dying from the effects of a blow.*—The accused, who was watching his field one dark night, hearing a noise in the field, shouted, whereupon a thief ran out of it, whom he followed and struck with a stick. The thief fell down, and the accused caught him and took him to the zemindar's house. The thief became insensible and subsequently died from the effects of the blow which the accused had given him. *Held*, with reference to the terms of s. 304-A, that the conviction under that section was bad. EMPRESS v. BHIKHAM, **A.W.N. 1881, 103.**

(2006)—*S.* 304-A—*Causing death by rash and negligent act*—*Act* IX *of* 1890 (*Indian Railways Act*), s. 101—*Endangering safety of passengers.*—In the Bengal-Nagpur line, which is worked on the line-clear and caution-message system, no train is allowed to start from a station without a line-clear certificate to the effect that the line is clear up to the next station. The Station Master of a certain station had, before the arrival of a train at his station and before the receipt of a line-clear message from the next station, written out a conditional line-clear message and had left it unsigned and without filling in all the particulars required by the rules to be filled therein. On the arrival of a train at the station, the Guard in charge of the train went into the Station Master's room, tore off the unfinished and unsigned line-clear message from the book, and handed it over to the Driver and started the train. All this took place without the knowledge of the Station Master, who had been otherwise engaged. The train came in collision with another, which was coming from the opposite direction with the result that some people in the train were killed. The Station Master was, on these facts, charged with, and convicted of, offences under s. 304-A of the Penal Code and s. 101 of the Indian Railways Act, IX of 1890. The conviction was sought to be supported on the ground that the act of writing out the conditional line-clear message was against rule No. 18 of the Company. *Held*, the conviction was illegal, because (1) the act of the Station Master did not directly lead to the serious results which followed and (2) he could never have intended, nor did he intend, to use the conditional line-clear message in the state in which it was; nor could he have imagined that the Guard would remove it from the book in his absence contrary to rules, or use it without looking over it or start the train without his permission. SHANKAR BALKRISHNA v. KING-EMPEROR, **32 C. 73=8 C.W.N. 645=1 Cr. L.J. 634.** (1894 Ind. Ry. Cas. 722, *F.*) [*R.*, 9 Cr. L.J. 348, 9 Cr. L.J. 352=4 L.B.R. 350, 13 Cr. L.J. 145=13 Ind. Cas. 833=1912 M.W.N. 136=11 M.L.T. 127=22 M.L.J. 333; *D.*, 4 L.B.R. 353.]

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(2007)—*S. 304-A—Causing death by rash and negligent act—Liability of master for acts of servant—Contributory negligence.* — While the accused was being driven in a carriage to her house through the streets of a town at night at an ordinary pace in the middle of the road, the carriage came into contact with the complainant's father, an old, deaf man, and the latter was thereupon knocked down, run over and killed. It was found that, when the accident took place, the night was dark and the carriage without lamps, but that the horse-keeper and coachman were shouting out to warn foot passengers. *Held* that there was no evidence that the death of the deceased was caused by any negligent or rash act of the accused. In India, looking at the passive submissiveness of the native servant, it would be a dangerous doctrine to hold that the master inside a carriage is entirely guiltless, if his directions brought about the rash and negligent driving. Where the death of the deceased is shown to have been caused by the negligence of the prisoner, it is not a complete defence to say that the deceased was also guilty of negligence, and so contributed to his own death. The conduct of the deceased will of course have an important influence, as a matter of fact, upon the relation of cause and effect between the act of the accused and the consequence induced HIGH COURT PROCEEDINGS, 17TH AUG. 1871, NO. 1423, **1 Weir 322=6 M.H.C. App. 31.**

(2008)—*S. 304-A—Causing death by rash and negligent driving —Contributory negligence.*— The accused, a cart-driver, absorbed in looking at certain preparations for a festival being made on grounds adjoining the road, on the south side thereof, drove the carriage on that side and ran over and killed a child. There was evidence to show that the child, which was killed, as well as other children, crossed or attempted to cross the road in front of the cart, "on finding the cart drawing close to them" and that, though the road was broad, the accused drove his cart on the south side thereof and near to the edge, regardless of those standing on that part of the road. *Held* that the accused was rightly convicted under s. 304-A. If a child's death was due to his having attempted to cross the road in front of a cart, when to make such attempt was in itself dangerous, and no necessity to run such risk existed, or if it did exist, was not due to any act or omission on the part of the accused, the cart-driver, amounting to criminal negligence, than the mere fact that, by the exercise of the greater promptitude or mere caution, that cart might have been stopped in time would not be sufficient to support a conviction; it is for the prosecution to prove negligence, and to show that the acts or omissions of the accused contributed to the result. *In re* INTRO SOUZA, **1 Weir 327.**

(2009)—*S. 304-A—Administering poison believing it to be a charm—Rash and negligent act—Liability for.*—Where the accused received a powder from an enemy of her relative, took no precaution to ascertain whether it was noxious, and mixed it with his food, believing that by doing so she would become rich *held*, that her conduct was wanting in that prudence and circumspection, which every human being is supposed to exercise, and as by her rash and thoughtless act she caused death, she was guilty of an offence under s. 304-A, Indian Penal Code. JAMNA v. KING-EMPEROR, **6 A. L.J. 203=31 A. 290=9 Cr. L.J. 522=2 Ind. Cas. 214.** (4 Bom. L.R. 203, *D.*)

(2010)—*S. 304-A—Causing death by rashness —Administering poison as a love potion.*—The accused administered to her husband a deadly poison (arsenious oxide) believing it to be a love potion, in order to stimulate his affection for her. The husband having died from the effects of the poison, the accused was tried for the offence of murder. The jury found her not guilty of murder. The Sessions Judge disagreeing with the verdict referred the case to the High Court: *Held* that the accused was guilty of an offence punishable under s. 304-A, Penal Code, inasmuch as she acted both rashly and negligently in dealing, as a love potion, with a deadly form of poison. EMPEROR v. RAMAVA CHANNAPPA, **17 Bom. L.R. 217=3 Bom. Cr. C. 38=16 Cr. L.J. 305=28 Ind. Cas. 641.**

(2011)—*S. 304-A—Attempt to murder.*—An attempt to murder contemplates an intention to murder and an act done which, if it caused death, would amount to murder, but which did not cause death. QUEEN-EMPRESS v. RAWAL ARAB, **Rat. Un. Cr. C. 964.**

(2012)—*S. 304-A—Abetment of negligent act.* —Where two persons, well acquainted with firearms, go out shooting with a rifle sighted up to hundred yards, and, after setting a target on the side of a public road, proceed to fire at it, against the light, and without the least circumspection with regard to the safety of others and one of the bullets so fired hit and killed a man, *held*, both were guilty under s. 304-A, Indian Penal Code. It is not necessary to call in s. 34 or s. 107 as abetment of negligence must itself be negligence. EMPEROR v. MORGAN, **36 C. 302=13 C.W.N. 362=9 C.L.J. 204 =9 Cr. L.J. 393=1 Ind. Cas. 814.** (7 M.H.C. 119, *F.*; 21 M. 74, *D.*)

(2013)—*S. 304-A—Unsound boat used as ferry.*—The owner of a ferry, having the exclusive right to carry passengers across a certain river at a particular spot, and, being bound to maintain for the purpose a certain number of boats in efficient condition, is liable to be punished under s. 304-A, if he causes the death of any passenger by drowning owing to the unsoundness of one of the boats. QUEEN-EMPRESS v. BHUTAN, **16 A. 472=A W.N. 1894, 182.** [*R.*, 2 Cr. L.J. 207=24 P.L.R. 1905=22 P.R. 1905, Cr.]

(2014)—*S. 304-A—Death by negligence—Boat, overcrowded, sinking of—Sinking due to strong wind and rough water and resulting in*

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loss of life—Unseaworthy condition of boat not proved—Lessees of ferry not responsible—Accident.—Where owing to strong wind and rough water, a ferry-boat overturns or sinks resulting in loss of life, the lessees of the ferry cannot be convicted of an offence under 304-A, Penal Code, unless it is shown that the boat, although overcrowded was in the unseaworthy condition at the time of the occurrence. RAGHU v. EMPEROR, **16 Cr. L.J. 72=26 Ind. Cas. 664.**

(2015)—*S. 304-A—Rash and negligent act—Intentional causing of death.*—S. 304-A of the Penal Code does not apply to a case where injuries are inflicted neither rashly nor negligently, but intentionally and designedly. EMPEROR v. ISTLINGAPA SHIVAPA, **14 Bom.L.R. 887=1 Bom. Cr. C. 183=13 Cr. L.J. 798=17 Ind. Cas. 842.**

(2016)—S. 304-A—*See* COMPENSATION—TO COMPLAINANT AND HIS RELATIVES, 12 M. 352=2 Weir 719, 21 M. 74=2 Weir 719, F.B., 7 P.R. 1877, Cr., 17 P.R. 1898, Cr., F.B.

(2017)— S. 304-A—Conviction under—Passing orders under s. 562, Crim. Pro. Code—Legality—*See* CRIM. PRO. CODE, 1898, ss. 562, 341, 11 M.L.T. 404=14 Ind. Cas. 600=13 Cr. L.J. 248.

(2018)—S. 304-A—*See* Nos. 133, 138, 299, 308, 347, 477, 1586, 1837, 1842, 1941, 1942, 1975 and 1976, *supra.*

(2019)—*Ss. 304-A, 279, 289—Rash driving.*—Where the accused was alleged to have been negligent, either in rashly driving or in leaving his bullocks to go along the road unattended, and a child was run over and killed; *held* that the accused ought to have been tried under ss. 304-A, 279 and 289. QUEEN-EMPRESS v. BALI, **Rat. Un.Cr.C. 396.**

(2020)—*Ss. 304-A, 299, 300, 304 (2)—Rash and negligent act—Applicability of s. 304-A to cases in which act is done with intention of causing bodily injury.*—The prisoner beat the deceased with a stick causing among other minor injuries the rupture of the spleen and of the liver and breaking the ninth and tenth ribs. The prisoner admitted the assault. The Sessions Judge convicted him under s. 304-A, and sentenced him to six months' rigorous imprisonment. On revision *held*, that s. 304-A is intended to cover offences which are outside the range of ss. 299 and 300, and obviously contemplates those cases into which neither intention nor knowledge enters. Where, therefore, death is the consequence of an act performed with the intention of causing bodily injury, s. 304-A does not apply. Conviction altered to one under s. 304 (2) and sentence enhanced. CROWN v. NASHKIR, **7 P.W.R. 1913, N.W.F.P., Cr.=259 P.L.R. 1913.**

(2021)—*Ss. 304-A, 321—Rupture of spleen—Death.*—Where a person is beaten and death ensues on account of the rupture of a diseased spleen, the offence is one under s. 321 and not under s. 304-A of the Penal Code. REG. v. BAWAJI, **Rat. Un. Cr. C. 63=Cr. Rg. 23-2-1872.** [*R.*, Rat. Un. Cr. C. 66.]

Penal Code (Act XLV of 1860)—*continued.*

(2022)—*Ss. 304-A, 323—Drunken brawl—Injury—Death.*—Where, being insulted in a drunken brawl, the accused threw down the deceased and stamped his feet on his body and death ensued within twenty days, the offence was one under s. 323 of the Penal Code, and not under s. 304-A. REG. v. RADKIA BADRU, **Rat. Un. Cr. C 67=Cr. Rg. 9-10-1872.** (Rat. Un, Cr. C. 63, *R.*)

(2023)—*Ss. 304-A, 323—Causing death by rash or negligent act.*—A conviction under s. 304-A is not sustainable where death has resulted from violence intentionally directed against the deceased by the accused. The conviction should be under s. 323, I.P.C. EMPRESS v. GANDA SINGH, **11 P.R. 1880, Cr.**

(2024)—*Ss. 304-A, 323—Accused beating his wife whose brain was anæmic—Causing death—Intention.*—The accused, after a trival domestic quarrel, beat his wife with a light stick, with the result that she fell down and expired. The medical evidence showed that the deceased was a thin and poorly developed woman; that her brain was anæmic, but otherwise all the internal organs were healthy and uninjured; no bones were broken; but there were many bruises on the body and death had been due to stock. The Sessions Judge found that the accused had beaten his wife most unmercifully, and that he must have known that by such beating he was likely to cause the death of a thin and weak woman, such as his wife was. He therefore convicted the prisoner of culpable homicide not amounting to murder and sentenced him to ten years' rigorous imprisonment under s. 304 (2), I.P.C. *Held*, that, as all the physical injuries sustained by the deceased were simple hurts, the prisoner should properly have been convicted of an offence under s. 323, I.P.C. The accused could not have known that the deceased's brain was anæmic, or that the shock of a severe beating would prove fatal to her. An accused person should be convicted and punished for the hurt which he intended to cause, or might reasonably be held likely to cause, by the act done, and not for an unforeseen result of that act. Conviction altered accordingly to one under s. 323, I.P.C. MUHAMMAD ALI v. CROWN, **5 P.W.R. 1913, N.W.F.P., Cr.=157 P.L.R. 1913.** (11 P.R. 1897, Cr., 2 A. 522, 2 A. 597, *R.*)

(2025)—*Ss. 304-A, 325—Causing death of a child by a blow intended for another.*—The accused struck at a man with whom he was quarrelling with a wooden rolling-pin; the blow missed its aim, and falling on the head of a child caused its instant death. The Magistrate convicted the accused of voluntarily causing hurt. *Held* that the accused should have been convicted of causing grievous hurt. QUEEN EMPRESS v. BUDHYA, **Rat. Un. Cr. C. 398.**

— S. 305.

(2026)—S. 305—*See* No. 1943, *supra.*

Penal Code (Act XLV of 1860)—*continued.*

——S. 306.

(2027)—S. 306—*See* Nos. 447 and 448, *supra.*

——S. 307.

See CULPABLE HOMICIDE.

See MURDER.

(2028)—*S.* 307 — *What constitutes attempt under the section.*—For the purpose of constituting an attempt under s. 307, there are two ingredients required, first, an evil intent or knowledge, and, secondly, an act done. If a person who has an evil intent does an act which is the last possible act that he could do towards the accomplishment of a particular crime that he has in his mind, he is not entitled to pray in his aid an obstacle intervening not known to himself. If he did all that he could do, and completed the only remaining proximate act in his power, he cannot escape criminal responsibility, because his own act, volition and purpose having been given effect to their full extent, a fact unknown to him and at variance with his own belief intervened to prevent the consequences of the act which he expected to ensue. Where a person, intending to shoot another, pointed a loaded pistol at him, pulled the trigger, the hammer falling on the nipple, but the gun failed to go off, as the cap did not explode, *held*, that he was guilty of attempting to commit murder under s. 307. QUEEN-EMPRESS v. MIDDHA, **14 A. 38 = A.W. N. 1891, 176.** [*F.*, 9 C.L.J. 432 = 10 Cr. L.J. 57 = 2 Ind. Cas. 593, 9 C.P.L R. 14, Cr.]

(2029)—*S.* 307—*Attempt to commit murder —What must be proved to support a conviction under section.*—To support a conviction under s. 307, Penal Code, it must be proved that the accused intended by his act to cause death and also that the act was one capable of causing death in the natural and ordinary course of things, although death did not eventually ensue. The accused, a Brahmin widow, enticed into her house a boy aged nine years, used violence to him, and stripped him of several jewels which he was wearing. Being unable to remove his anklets and ear rings, she lifted him up and tying his wrists together with a rope, having a loop at each end, tied the rope round his neck, and put a cloth in his mouth. She then took him into a room and placed him sitting him in a jar and put a mill-stone on the mouth of the jar, leaving him in this condition all night. She did not give him food at night, and before dawn, she lifted the stone, and, seeing that the boy was there, replaced the stone over the jar. Whilst in the jar, the boy untied the rope from his wrists with his teeth and then he cut the rope off his neck. In the morning he lifted off the stone and the jar sloping a little he got out and ran home. *Held* that the accused was rightly convicted under ss. 307, 392 and 394, Penal Code. *In re* MANGAVALLI RANGANAYAKAMMA, **1 Welr 328.**

(2030)—*S.* 307—*Prima facie case of attempt at murder—Commitment, if necessary.*—Where, on the evidence, the act of the accused amounts to an attempt to commit murder, the Magistrate should commit the accused to the Sessions Court for trial and should not try the case himself. *In re,* ARUMUGAM, **5 M.L.T. 257 = 4 Ind. Cas. 114 = 11 Cr. L.J. 196.**

(2031)—*S.* 307—*Attempt to murder—Firing two shots—Statement of victim how far and when credible—Impropriety of prosecuting a witness during trial—Prejudice—Examination of accused—Personal inspection of a spot by a Magistrate—S.* 342 *of Crim. Pro. Code* (1898). —*Held*, that:—(1) A person's firing two shots successively at another person clearly shows murderous intent. (2) Where a victim in agony makes a statement as to what has happened with him shortly after the occurrence, the connection of a false story becomes highly improbable though not quite impossible. (3) While a case is pending, it is undesirable and improper to start prosecution of a witness for perjury or other offence, which the witness appears to have committed in connection with the case, in the opinion of the presiding officer. To adopt such a course very often prejudices the party producing the witness. (4) It is against the provisions of s. 342, Crim. Pro. Code, 1898, to subject an accused person to a lengthy examination, before the whole of the prosecution evidence is over; particularly to cross-examine him regarding the line of defence which the accused is to adopt is hardly justifiable. (5) A Magistrate does not make himself a witness in the case by incorporating into it the results of his inspection of a spot, where something connected with the commission of the crime is alleged to have happened. Having visited the spot expressly for the purpose of the trial, he is fully justified in noting what he sees and in drawing reasonable inferences therefrom. MALIK AHMAD YAR KHAN v. CROWN, **11 P.W.R. 1910, Cr. = 5 Ind. Cas. 602 = 11 Cr. L.J. 171.** (13 P.R. 1901, *F.*; 19 M. 263, *Not F.*)

(2032)—*S.* 307 — *Whether bodily injuries caused must be capable of causing death, to justify conviction under above section—Intention, how to find out —Held* (*Ormond, J., dissenting*) that the offence, which is called shortly in the marginal index to s. 307, Penal Code, "attempt to murder," does not depend at all on the nature of the hurt actually inflicted; it is an offence which may be committed without inflicting any hurt at all, as will be clear from the first illustration to the section. Though, in most cases, the nature of the injuries inflicted is of considerable assistance in coming to a finding as to the intention with which the accused acted, yet, such intention must also be deduced from a consideration of the whole facts of the case and may even be ascertained, in some cases, without reference to the wounds at all. KYAW WE v. KING EMPEROR, **4 L. B R. 311, F.B. = 9 Cr. L.J. 11.** (S.J.L B. 466, *overruled*.)

(2033)—*S.* 307—*Doubt—Circumstantial and tracker's evidence—Blood stains on a zemindar's clothes—Accusing one person at the* Thana *and*

different person on the spot.—Where, in a case under s. 307, Penal Code. A and B were named as assailants at the *Thana* and when the Police reached the spot the name of C was substituted instead of B, and the only eye witness said their backs were seen. *Held*, that the accused could not be convicted on account of their being blood stains on the clothes and on the evidence of the trackers which is by no means infallible. SHERA v. CROWN, **14 P.W.R. 1913, Cr.=67 P. L.R. 1913=19 Ind. Cas. 196=14 Cr. L.J. 196.**

(2034)—*S.* 307—*Infliction of many incised wounds on the head—Inference of murderous intent—Benefit of doubt.*—*Held*, that a culprit who inflicts 20 incised wounds on the body of a person most of which were aimed at his head must be credited with murderous intent and the sentence of transportation for life is not excessive. *Held*, also, that, where several persons profess to be eye-witnesses standing at short distances from the scene of the crime, but they fail to explain satisfactorily why none of them did not come to the rescue of the injured, the probability is that they did not see the assault. In such a case the evidence of the complainant should be accepted with reservations and benefit of doubt should be given to those against whom it is not sufficiently corroborated. GAYAN SINGH v. CROWN, **13 P.W.R. 1915, Cr.=132 P.L.R. 1915.**

(2035)—S. 307—*See* ATTEMPT, 20 A. 143= A.W.N. 1897, 225, 8 B.H.C. Cr. 164.

(2036)—S. 307—Attempt to murder—Intention—Wounding in neck with knife—Punishment—Morphia habit — Absence of mental aberration—*See* CRIM. PRO. CODE, 1898, ss. 4 (i), 454 (i), 460, 13 Cr. L.J. 197=14 Ind. Cas. 197=24 P.W.R. 1912, Cr.=6 P.R. 1912, Cr.

(2037)—S. 307—*See* REFERENCE TO HIGH COURT, 9 C.L.J. 432=2 Ind. Cas. 593.

(2038)—S. 307 — *See* Nos. 148, 217, 335, 1841, 1944, 1945, 1946, 1947 and 1977, *supra*, and Nos. 2141 and 2156, *infra*.

(2039)—*Ss.* 307 *and* 308—*Attempt at murder —Attempt at culpable homicide—Grievous hurt.* —In the absence of any evidence to show that the wounds inflicted by the accused on the complainant are dangerous or likely to cause death, the accused cannot be convicted of an attempt to murder (s. 307, I.P.C.) or attempt to commit culpable homicide (s. 308, I.P.C.) but only of voluntarily causing grievous hurt. NGA SHEW NWE v. QUEEN-EMPRESS, **L.B. R. 1872—1892, 466.**

(2040)—*Ss.* 307, 317—*Abandonment of child —Abetment of murder.* — Where a woman abandoned her newly born child, but left it in a place which was quite close to the village and also near a public road, where, in fact, the child was shortly after discovered, *held* that the mother could not be rightly convicted of an attempt to murder, but should rather be convicted of the offence described in s. 317, I.P.C. EMPEROR v. KUNDAN, **A.W.N. 1903, 43.**

Penal Code (Act XLV of 1860)—*continued.*

(2041)—*Ss.* 307, 323—*Intention to kill—Presumption.*—The accused, in the course of a quarrel with her sister-in-law and in a fit of anger, flung her child, three years old, into a pond four feet deep, on the edge of which her house was situated, and at the same time gave expression to a wish that the death of the child should rest as a curse on the woman with whom she was quarrelling: *Held*, that the circumstance gave rise to a presumption that the intention of the accused was to cause death of the child, and that she was, therefore, guilty of an offence under s. 307, although the child was picked up by a stander by without loss of time. EMPEROR v. MUSSAMMAT NANNHI BAHU, **5 Ind. Cas. 138= 11 Cr. L.J. 48.**

(2042)—*Ss.* 307, 324—*Hurt with dangerous weapon—Wound with axe—Attempt to murder.*— A person striking his wife on her neck with an axe, and causing an incised wound, is guilty of voluntarily causing simple hurt by a dangerous weapon (s. 324, Penal Code) and not of attempt to murder (s. 307). S. 307, Penal Code, provides in terms for the punishment of a person who does any act with such intention or knowledge or under such circumstances that if he by that act cause death, he would be guilty of murder. The only act which can fall within the purview of the section is an act which by itself must be ordinarily capable of causing death in the natural and ordinary course of events. EMPEROR v. MARTU VITHOBA PRABHU, **15 Bom. L.R. 991=2 Bom. Cr. C. 159= 14 Cr. L.J. 641=21 Ind. Cas. 881.**

(2043)—*Ss.* 307, 325—*Discharging loaded gun from short distance —Causing injuries which might have proved fatal—Offence.*—A person intentionally discharging a loaded gun at another from a short distance, inflicting injuries which might have proved fatal, is guilty of an offence under s. 307, Penal Code, and not merely of causing grievous hurt. THE PUBLIC PROSECUTOR v. KOLANGARET IMBICHIKUTTAM, **16 Cr. L.J. 542=29 Ind. Cas. 670.**

(2044)—*Ss.* 307, 325, 511—*Attempt to murder —Attempt to cause grievous hurt.*—The prisoner in this case threw two bricks, described as large, at a jailor, one of which struck him on the shoulder. This was done by the prisoner immediately after the jailor had lodged a complaint against him; and there was no premeditation. The prisoner said at the time to the jailor that he had meant to kill him. *Held* that the facts did not justify a conviction for attempt to murder. The offence was only an attempt to cause grievous hurt. EMPRESS v. HUSAIN BAKSH, **A.W.N. 1881, 172.**

(2045)—Ss. 307, 326 and 511—*See* ATTEMPT, 30 P.R. 1904, Cr.

(2046)—*Ss.* 307, 328 *and* 511—*Poison—Putting into food something found to be—No evidence of quantity or probable effect—Nature of intention presumable.*—Where the appellant was proved to have put something found subsequently to be poison by the Chemical Examiner, into the food prepared for the prosecutor's

Penal Code (Act XLV of 1860)—*continued.*

family, and there was no evidence as to the quantity of the poison found in the food or as to the probable effects on any one who might have eaten it,—*held* that the accused must have intended to cause hurt and was guilty of offences under ss. 328 and 511, I.P.C. MI PU v. KING-EMPEROR, **5 L.B.R. 79 = 3 Ind. Cas. 721 = 10 Cr. L.J. 363.**

(2047)— Ss. 307, 394—*See* SENTENCE—TRANSPORTATION, 7 W.R. Cr. 41.

(2048)— Ss. 307, 406—*See* JOINDER OF CHARGES—MISJOINDER OF CHARGES, 6 A. L.J. 697 = 3 Ind. Cas. 466.

(2049)— *Ss.* 307, 511—*Attempt to commit murder—Scope of s.* 307, *I.P.C.*—S. 307 is exhaustive, and no Court has any right to resort to the provisions of ss. 299 and 300 read with s. 511 for the purpose of convicting a person of attempted murder, which, according to the view of the Court, does not come within the provisions of s. 307. QUEEN-EMPRESS v. NIDDHA, **14 A. 38 = A.W.N. 1891, 176.** [*R.*, 30 P.R. 1904, Cr., U.B.R. 1892—1896, Vol. I, 191.]

——S. 308.

(2050)—S. 308—*See* Nos. 2039 and 2999, *supra*.

——S. 309.

(2051)—*S.* 309—*Punishment.*—A Magistrate, while convicting a person under s. 309, I.P.C., is bound to pass a sentence of imprisonment, however short the period of imprisonment may be. A mere sentence of fine without any imprisonment does not satisfy the requirements of the section. REG. v. CHANVIOVA *kom* SHIDRAM SHETTI, **1 B.H.C. 4.**

(2052)—*S.* 309—*Attempt to commit murder.*—The pounding of oleander roots with the intention to poison oneself with the same, does not constitute an attempt to commit suicide. QUEEN-EMPRESS v. TAYEE, **Rat Un. Cr. C. 188.**

(2053)—*S.* 309—*Attempt to commit suicide.*—Where a woman quarrelling with her father and brother ran to a well saying that she would fall into it but she was caught on the way, and was convicted under s. 309, Penal Code, *held*, that the conviction was bad inasmuch as she might have still changed her mind and as she was caught before anything which might be regarded as the commencement of the offence of which she was convicted. QUEEN-EMPRESS v. RAMAKKA, **8 M. 5 = 1 Weir 330.** [*D.*, 32 C. 292 = 9 C.W.N. 547.]

(2054)—*S.* 309—*Suicide—Attempt—Leaping into well to avoid Police torture.*—The accused jumped into a well to avoid and escape from the Police and when rescued he came out of the well of his own accord. *Held*, that, in the absence of evidence that he jumped into the well to commit suicide, he could not be convicted of an offence under s. 309, Penal Code. EMPEROR v. DWARKA POONJA, **14 Bom. L R. 146 = 1 Bom. Cr. C. 87 = 14 Ind. Cas. 598 = 3 Cr. L.J. 246.**

Penal Code (Act XLV of 1860)—*continued.*

(2055)—S. 309—*See* ATTEMPT, 22 P.R. 1878, Cr.

(2056)—S. 309—*See* No. 905, *supra*.

——S. 310.

(2057)—S. 310—*See* No. 550, *supra*.

(2058)—*Ss.* 310 *and* 311—*Thug—Habitual association for the purpose of committing robbery accompanied with murder.*—In this case, the conditions required to convict a person who was charged with habitually associating with others for the purpose of committing robbery by means of the administration of a preparation of *Dhatura* were laid down. PIRA v. EMPRESS, **28 P.R. 1881, Cr.**

——S. 311.

(2059)—S. 311—*See* No. 2058, *supra*.

——S. 312.

See MISCARRIAGE.

(2060)—*S.* 312—*Presumption of commission of offence.*—In the absence of evidence to the contrary, a midwife introducing two sticks into the womb of a pregnant woman and the latter delivering prematurely give rise to the inference that the midwife caused the woman to miscarry and thereby committed an offence under s. 312, I.P.C. LOCAL GOVERNMENT v. MT. BHAGO, **Colm. Dig. Cr. 46 of 1876.**

(2061)—S. 312—*See* CHILD, 5 C.P.L.R. Cr. 21.

——S. 314.

(2062)—S. 314—*See* No. 1352, *supra*.

——S. 317.

See ABANDONMENT OF CHILDREN.

(2063)—*S.* 317—*Mother giving birth to illegitimate child—Throwing it into bush—Concealing fact—Never showing any solicitude for child—Guilty of offence.*—Where a woman immediately after giving birth to an illegitimate child and throwing it into a thorn bush, walked nearly a mile and a half, gave a false account of her condition to her companions, dispensed with any assistance even after she reached home, denied having given birth to a child when questioned by the Headman next morning, and never asked after the child's welfare at any time or showed any solicitude on the subject: *Held*, that the woman was guilty of the offence under s. 317, Penal Code. EMPEROR v. MI MEIN GALE, **U.B.R. 1914, 1st Qr., 5 = 24 Ind. Cas. 837 = 15 Cr. L.J. 525.**

(2064)—S. 317—*See* No. 2040, *supra*.

——S. 318.

(2065)—*S.* 318—*Scope of the section.*—The offence under s. 318 cannot be committed, unless the child had arrived at the stage of maturity, at the time of birth, that it might have been a living child. The law does not compel a woman to proclaim her own want of chastity, and if she miscarried when the fœtus was but a few months old and had no chance of life, she cannot be convicted of the charge of

Penal Code (Act XLV of 1860)—*continued.*

concealing the birth of the child. HIGH COURT PROCEEDINGS, 6TH AUGUST 1869, **1 Weir 334 = 4 M.H.C. App. 63.**

(2066)—*S.* 318—*Scope of section.*—No conviction can be had under this section unless the child had arrived at such a maturity at the time of birth that it might have been a living child. It is not necessary that it should have been born alive, but it must have reached a period when, but for some accidental circumstances such as disease on the part of itself or of its mother, it might have been born alive. EMPRESS v. MUSSAMMAT BILAEE, **2 C.P.L.R. 153.**

(2067)— *S.* 318 —*Scope of section.*— The offence punishable by s. 318 cannot be committed, unless the child had reached such a stage of maturity, at the time of birth, that it might have been a living child and unless it is shown that there was a secret disposition of the child's body. KING-EMPEROR v. MI PYO NYO, **U. B.R. 1905, Penal Code, 27 = 3 Cr. L.J. 432.**

(2068)—*S.* 318—*Gist of offence.*—To support a conviction under s. 318, it is sufficient to show that a child was born and that the child was sufficiently developed to have lived if born alive. QUEEN-EMPRESS v. RADHA *kom* RANGU, **1 Bom. L.R. 155.**

(2069)—*S.* 318—*Gist of offence.*—In order to constitute an offence under this section, there must be a secret burial or other disposal of the dead body. The disposal must clearly be *ejusdem generis* with the secret burial. The disposal need not necessarily be a final disposal. It is sufficient if the body be temporarily concealed with the intention of removing it elsewhere when opportunity offers. EMPRESS v. MUSSAMMAT SUKHDEHI, **13 C.P.L.R. Cr. 188.**

(2070)—*S.* 318—*Offence under, when complete.*—The offence contemplated by s. 318, I.P.C., becomes complete when the accused conceals the birth of her child by burying the body of the child, independently of the question "whether such child die before or after or during its birth." QUEEN-EMPRESS v. LALBU, **Rat Un. Cr. C. 961 = Cr. Rg. 15 of 1898.**

(2071)—*S.* 318—*Section explained.*—The meaning of s. 318, I.P.C., regarding concealment of birth by secret disposal of dead body explained. EMPRESS v. PIARA, **5 C.P.L.R. Cr. 29.**

(2072)—*S.* 318—*Concealment of birth—Secret disposal of dead body.*—A mere irregular or even secret disposal of the dead body of a child is not sufficient to constitute the offence, a necessary ingredient of which is the intentional concealment of or attempt to conceal the birth of the child. EMPRESS v. NANDU MARWADI, **8 C. P.L.R. Cr. 5.**

(2073)—*S.* 318—*Section if applicable to fœtus of a few months' formation—Absence of proof of murder.*—S. 318 of the Penal Code refers only to the dead body of the child and a mere fœtus, of perhaps a few months' formation, would not be within the section. HIGH COURT PROCEEDINGS, 21ST JULY 1868, NO. 985, **1 Weir 333.**

(2074)—*S.* 318—*Fœtus seven months old.*—*Held* that the concealment of the birth of a fœtus seven months old was an offence under s. 318, Penal Code. *In re* SUNNA, **1 Weir 334.**

(2075)—*S.* 318—*Child born alive—Benefit of doubt—Murder.*—Unless there is the clearest evidence of murder against a person secretly disposing of the dead body of a child which is proved to have been born alive, a lenient view must always be taken in such cases, and the doubt resolved in favour of the accused by dealing with the case as one of concealment of birth only. *In re* SUBBALAKSHMI AMMAL, **1 Weir 334.**

(2076)—*S.* 318—*Whether the leaving of the body where the birth took place would constitute an offence under—Essential ingredient of the offence.*—The accused, being pregnant with an illegitimate child, went to the village jungle for purposes of nature and there, in the presence of another woman, gave birth to a child, which died from natural causes almost immediately. The dead body was left on the spot where the birth took place. *Held*, that the mere leaving of the body where the birth took place did not constitute a secret disposal within the meaning of s. 318 of the Penal Code, and could not constitute an offence under that section. An essential ingredient of an offence under that section is an intentional concealment or endeavour to conceal, by secretly burying or otherwise disposing of the dead body. MUSSAMMAT SARASWATHI v. EMPEROR, **1 N.L.R. 89 = 2 Cr. L.J. 667.** (5 C.P.L.R. Cr. 29, *Diss.*)

(2077)—*S.* 318—*Dead child left in compound.*—A woman cannot be convicted under s. 318 of the Penal Code for leaving a still-born child where it was born, *i.e.*, in the compound of her house, since there was no secret disposal. QUEEN-EMPRESS v. AMINA, **Rat. Un. Cr. C. 607.**

(2078)—*S.* 318—*Birth of child—Concealment.*—A Magistrate was held to have rightly convicted a woman of concealment of the birth of a child in the case of miscarriage in the sixth month of pregnancy. QUEEN-EMPRESS v. KASAI, **Rat. Un. Cr. C. 727 = Cr. Rg. 55 of 1894.** (4 M.H.C. App. 63, *R.*)

(2079)—*S.* 318 — *Secret disposal of dead child—Abetment by mother.*—Where a woman gives her new-born illegitimate child to another woman with instructions to dispose of it secretly, and the latter carries out the instructions by throwing it in a river, the mother cannot be convicted of the substantive offence under s. 318, I.P.C., but her offence can more appropriately come under the definition of abetment. QUEEN-EMPRESS v. BAJI, **Rat. Un. Cr. C. 775 = Cr. Rg. 40 of 1895.**

(2080)—*S.* 318—*Admission of offence under, by accused—Absence of evidence.*—An admission from the accused alone to the effect that she committed the offence is not sufficient to

Penal Code (Act XLV of 1860)—*continued.*

sustain a conviction under s. 318, Penal Code, in the absence of evidence *aliunde*. EMPRESS v. MUSSAMMAT KALU, **1 C.P.L.R. 163, Cr.**

(2081)—*S. 318—Public place—Leaving the dead body of a child.*—Where a person leaves the dead body of a child in a public place, near a number of houses, there is "no secret disposition of the body" within the meaning of s. 318 of the Penal Code. ABBAS BI v. EMPEROR, **1911, 2 M.W.N. 379 = 12 Cr. L.J. 562 = 12 Ind. Cas. 650.**

(2082)—S. 318—*See* No. 1948, *supra*.

(2083)—*Ss.* 318, 302—*Acquittal—Appeal by Local Government—Interference when justifiable—Crim. Pro. Code, s.* 417.—*Held*, that an appellate Court cannot interfere in the order of acquittal, unless the original Court's finding is clearly wrong and unreasonable on the evidence in the case. (7 P R. 1904, Cr., *R.*) *Held*, also that placing the dead body of a child on a *Batora* (dung heap) quite close to public road does not amount to a secret disposing of it within the meaning of s. 318, I.P.C. CROWN v. MUSSAMMAT BAKHTAWARI, **26 P.W.R. 1913, Cr. = 20 Ind. Cas. 1005 = 14 Cr. L.J. 525 = 328 P.L.R. 1913.**

—S. 319.

(2084)—S. 319—*See* No. 264, *supra*.

(2085)—Ss. 319, 322—*See* HURT, 8 W.R. Cr. 29.

—S. 320.

See GRIEVOUS HURT.

See HURT.

(2086)—*S. 320—Cases of hurt or grievous hurt—Duty of Magistrate in classifying them.*—In cases of hurt, it is for the Magistrate to classify and to come to a finding of his own, as to whether the hurt was grievous or simple, and, for this purpose, the Magistrate should examine the Medical Officer to ascertain whether the injuries are of any of the kinds specified in s. 320 of the Code. It is not the business of the Medical Officer to decide whether a wound is grievous hurt or not, but to describe the facts, from which the Magistrate will decide. PO MAUNG v. EMPEROR, **4 Cr. L.J. 202 = 3 L.B.R. 196.**

(2087)—S. 320—*See* Nos. 1978 and 1979, *supra*.

(2088)—*Ss.* 320 *and* 411—*Retention of stolen property—Theft committed during mutiny and among offences pardoned by the Government—Retention of such property if offence.*—Where a prisoner convicted of dishonestly retaining stolen property, having reason to believe the same to be stolen, pleaded that the theft referred to having been committed during the Mutiny, was among the offences pardoned by the Government, and, that, consequently, the retention of that stolen property was no crime, *held* that the pardon proclaimed by the Government after the Mutiny of 1857 did not amount to a perpetual indulgence to commit fresh offences proceeding out of offences perpetrated before or in the Mutiny. QUEEN-EMPRESS v. SITARAM, **S.C. 190, Oudh.**

—S. 321.

(2089)—S. 321—*See* No. 2021, *supra*.

—S. 322.

(2090)—*S. 322—Writ of possession, execution of—Justifiable degree of force in delivering possession—Hurt—Finding, what amounts to—Disbelieving witnesses as regards graver charges against accused and believing them with regard to rest, propriety of—Letter sent by complainant to Police station before lodging complaint, admissibility of.*—The petitioner, a Bailiff of the Small Cause Court, Calcutta, was entrusted with the execution of a writ of possession which required and authorised him to "give possession" to the decree-holder of certain premises in the occupation of the judgment-debtor. On the complaint of the judgment-debtor's wife, the petitioner was placed on his trial on the allegation that he caught hold of her by the hand, forcibly dragged her out of the house and pushed her and when, in consequence of the push, she fell, the petitioner kicked her. Sometime after the occurrence, the complainant sent through her husband a letter of complaint to the *thana* and subsequently a complaint made either by the complainant or her husband was lodged against the petitioner at the *thana*. The Magistrate in convicting the petitioner under s. 323, I.P.C., found that, in pulling or dragging the complainant out of the house, he pushed or jerked her from him in such a manner as to cause her to fall and to receive the injuries found on her elbows and knee. He further found that the petitioner did not deliberately kick the complainant, but nevertheless held as follows: "I think it quite possible that, on seeing her fall, he went up to ascertain what had happened to her and pushed *her* more than once with his foot to make her rise." *Held* (without deciding whether the provisions of the English Common Law or the Code of Civil Procedure were applicable to the writ in question)—That under the provisions of either law, in the execution of a writ of possession, a reasonable degree of force may be used in order to effect the removal of persons bound by the decree and refusing to vacate. That on the Magistrate's own finding the petitioner should not have been convicted. That to say that a thing may possibly have happened is not to find that it did happen, and there was no finding by the Magistrate that, after the complainant had fallen, the petitioner touched or pushed her with his foot. That the Magistrate should not have relied on the letter sent by the complainant to the *thana* previous to the lodging of the complaint. That the witnesses having been disbelieved with regard to the graver charges brought against the petitioner could not be safely believed with regard to the small *residum* of what the Magistrate conceived to be truth. H. MEREDITH v. SANJIBANI DASI, **19 C.W.N. 273 = 42 C. 313.**

Penal Code (Ac XLV of 1860)—*continued.*

(2091)—S. 322—*See* No. 2085, *supra.*

(2092)—*Ss.* 322, 325—*Grievous hurt—Intention to cause—Presumption — Drunkenness.*—Where B, the accused, was much enraged at being turned out of the shop whither he had gone for drink, and intended to revenge himself on the man who turned him out, and where B hit that man over the head with a stick hard enough to fracture his skull. *Held* that, in the circumstances, B must be presumed to have intended either to cause grievous hurt or known that he was likely to cause it, within the meaning of s. 322, Penal Code. The fact that B was drunk at the time may well be taken into consideration in arriving at a conclusion as regards the motive or intention of the accused to commit a crime while he was drunk. NGA BA GYAW v. KING-EMPEROR, **U.B.R. 1911, 4th Qr. 105 = 15 Ind. Cas. 311 = 13 Cr.L.J. 471.** (U.B.R. 1910, 17, *D.*; 37 C. 194, 35 C. 138, *R.*)

(2093)—*Ss.* 322, 325—*Scope—Duty of Magistrate or Court.*—The provisions of s. 322, Penal Code, are very precise and incapable of misconstruction. A Magistrate or Court dealing with a charge of voluntarily causing grievous hurt must consider and decide not only whether grievous hurt has been caused, but, if it has been caused, whether the accused intended or knew himself to be likely to cause grievous hurt. If he intended or knew himself to be likely to cause simple hurt only, he cannot be convicted under s. 325. NGA TUN E v. KING-EMPEROR, **U.B.R. 1914, 4th Qr. 35 = 16 Cr. L.J. 431 = 28 Ind. Cas. 1007.**

——**S. 323.**

See GRIEVOUS HURT.

See HURT.

(2094)—*S.* 323 — *Striking with* lathi.—It cannot be said that a person who strikes another with a *lathi* on the elbow with such force as is insufficient to break a bone and with a view to get one of two persons engaged in a trifling quarrel released from the hold of the other, did the act with the knowledge that it was likely to cause death. The conviction should only be under s. 323 of the Penal Code. EMPRESS v. ALLATUN, **A.W.N. 1888, 236.**

(2095)—*S.* 323—*Decree entitling decree-holder to recover possession of immoveable property—Forcible removal of person in possession.*—A decree-holder, in execution of a decree entitling him to recover possession of a house, is not entitled to forcibly remove by himself the judgment-debtor from the house ; and if he does so, he commits an offence. The Civil Court bailiff to whom the warrant is issued under s. 318, Civ. Pro. Code, has power to remove any person refusing to vacate the house ; and this power of removal given to the bailiff includes, by necessary implication, the power to do everything essential for that purpose. Had the bailiff called upon the petitioner to assist him in removing the complainant, the petitioner's act might perhaps be regarded as the act of the bailiff and protected. EMPEROR v. MAGAN NARSIRAM, **8 Bom. L.R. 977.**

(2096)—*S.* 323—*Voluntarily causing hurt.*—An accused person gave the deceased a slap and a kick on the side, but it was, however, not a severe one, and, but for the spleen or other organs of the deceased being in a highly diseased condition, a fact not known to the accused, the kick would have been innocuous ; *held* that the accused could be rightly convicted of voluntarily causing hurt. S. 304-A is not applicable to such a case. EMPRESS v. RAMDAYAL, **5 C.P.L.R. 69, Cr.**

(2097)—*S.* 323—*Conviction under—Appeal—Reference to High Court.*—In this case, two persons were convicted by a first class Magistrate, the sentence passed upon one of them being appealable and the sentence passed upon the other being non-appealable. On an appeal by the former, the conviction was set aside on the ground that the evidence for the prosecution was false and discrepant. On a petition preferred by the latter, it was held, on a reference to the High Court, that the reference was wrongly made and that no grounds for interference were disclosed. EMPEROR v. WAHID ALI, **17 C.P.L.R. 36 = 1 Cr. L.J. 533.**

(2098)—*S.* 323—*Crim. Pro. Code* (1861), ss. 237, 239—*Form of charge.*—The charge under s. 323 of the Penal Code should distinctly deny the existence of circumstances constituting a special exception, as the terms of s. 237 of the Crim. Pro. Code should prevail in preference to any direction which may be inferred from the forms of charge contained in s. 239 (6). RUTNAGIRI SESSION JUDGE'S LETTER NO. 866 OF 1869, **Rat. Un. Cr.C. 20 = Cr. Rg. 17-8-1869.**

(2099)—S. 323 — *See* COMPENSATION — GENERAL, 17 P.R. 1887, Cr., 31 P.R. 1886, Cr.

(2100)—S. 323—*See* COMPOUNDING OFFENCE, A.W.N. 1886, 167, 10 B.H.C. 68.

(2101)—S. 323—*See* CRIM. PRO. CODE 1898, s. 403 (4), 5 Bom. L.R. 125.

(2102)—S. 323—*See* SENTENCE—FINE, A. W.N. 1898, 109.

(2103)—S. 323—*See* Nos. 96, 97, 100, 204, 311, 378, 406, 407, 412, 472, 645, 646, 647, 656 to 663, 704, 1019, 1497, 1887, 1976, 1980 to 1983, 2022, 2023, 2024 and 2041, *supra*, and Nos. 2244 and 2556, *infra.*

(2104)—*Ss.* 323, 147—*Hurt, voluntary causing of—Charge, absence of—Conviction, if sustainable—Common object, omission to specify, if vitiates conviction—Bail, order for—Stay of proceedings, order for, communication of, effect of.*—In the absence of a charge for an offence voluntarily causing hurt and the common object charged for causing rioting not specifying the intention to cause hurt, there can be no conviction for voluntarily causing hurt under s. 323 of the Penal Code. When a rule is issued by the High Court and the proceedings stayed, and *a fortiori* when there is an order for bail, the Magistrates on receiving reliable information thereof should

Penal Code (Act XLV of 1860)—*continued.*

stay their hands then and there. (2 C.W.N. 498, *F.*) All bail orders should be issued on the very date on which they are pronounced by the Judges sitting on the Bench, irrespective of the written order on the record. LAL MOHAN MANDAL v. KALI KISHORE BHUIMALI, **13 C.L.J. 329=38 C. 293=9 Ind. Cas. 965=12 Cr. L.J. 169.** [*R.*, 39 C. 896=16 C.W.N. 1053 =15 Ind. Cas. 481.]

(2105)—Ss. 323, 304 — Accused acquitted under s. 323—Subsequent death of the injured —Commitment to sessions—*See* CRIM. PRO. CODE, 1898, ss. 34, 114, 423, 439, 11 A.L.J. 959.

(2106)—Ss. 323 and 304—*See* CULPABLE HOMICIDE, 19 M. 356=1 Weir 313.

(2107)—Ss. 323, 324—*See* CRIM. PRO. CODE, 1898, s. 345, Rat. Un. Cr. C. 519=Cr. Rg. 43 of 1890.

(2108)—*Ss.* 323, 325—*Inference of intention or knowledge of accused from injury caused.*—The intention or knowledge of the accused can only be inferred from the nature and extent of the injury, and, on this point, the accused is entitled to the benefit of the doubt. In this case the conviction was altered from s. 325 to one under s. 323, I.P.C. KING-EMPEROR v. NGA TOK HLA, **U.B.R. 1897—1901, Vol. I. 316.**

(2109)—*Ss.* 323, 325—*Knowledge to cause grievous hurt essential — Imprisonment, obligatory under s.* 325.—Where a number of accused intended to beat the complainant but grievous hurt was inflicted. *Held*, (1) that it must be proved, before any one could be convicted of causing grievous hurt, that the common object was the intention to cause grievous hurt or the knowledge that any one of them might likely cause grievous hurt in the course of the beating which they intended to give to the complainant. (19 M. 483=1 Weir 298, *F.*) (2) That the imposition of the punishment of imprisonment on a conviction for causing grievous hurt is obligatory. *In re* SOOGOOR BASAUNA GOWD, **15 Cr. L.J. 192=22 Ind. Cas. 768.**

(2110)—Ss. 323, 325, 379, 394—*See* SENTENCE—CUMULATIVE AND SEPARATE SENTENCES, 5 P.R. 1883, Cr.

(2111)—Ss. 323, 332—*See* BEN. ACT IV OF 1866, ss. 46 and 72, 4 C.L.J. 92=4 Cr. L.J. 71.

(2112)—Ss. 323, 342— *See* COMPOUNDING OFFENCE, A.W.N. 1883, 245.

(2113)—Ss. 323, 352—*See* SESSIONS JUDGE —JURISDICTION OF, 5 W.R. Cr. 12.

(2114)—*Ss.* 323 *and* 353—*Magistrate authorising police officer to bring before him persons selling fruit unfit for human food—Validity of order.*—A Magistrate gave a general direction to his orderly to bring to him persons found selling fruit unfit for human food (s. 273, Penal Code, a non-cognizable offence). In execution of this order, the constable endeavoured to compel two persons to go with him before the Magistrate, the constable considering that these persons were selling fruit in a noxious state. The accused refused to go with the constable and assaulted him when he endeavoured to lay hold of them. *Held*, that the accused could not be convicted either under s. 353 or s. 323, inasmuch as the order of the Magistrate which the constable obeyed was not a legal order, and as the constable could not, in good faith, have believed that he was justified in using force to compel the attendance of the accused before the Magistrate, since it should be presumed that a police constable was aware of the difference between a cognizable and a non-cognizable offence. *In re* PERUMALU, **1 Weir 344.**

(2115)—Ss. 323, 353—*See* COMPOUNDING OFFENCE, A.W.N. 1884, 256.

(2116)—Ss. 323, 380—*See* WITHDRAWAL OF CHARGE, Rat. Un. Cr. C. 288=Cr. Rg. 26 of 1886.

——S. 324.

See GRIEVOUS HURT.

See HURT.

(2117)—*S.* 324—*Hurt caused by dangerous weapon.*—Where the accused was convicted under the above section of "voluntarily causing hurt with a dangerous weapon," it was pointed out that the charge should have followed the wording of the section. QUEEN-EMPRESS v. NYA SEIK, **U.B.R. 1897—1901, Vol. I, 318.**

(2118)—*S.* 324— *Husband cannot chastise wife with cane.*—Husbands have no right whatever to chastise their wives, even with small canes or bamboos. QUEEN-EMPRESS v. NGA NANDA, **L.B.R. 1872—1892, 421.**

(2119)—*S.* 324 — *Section explained.*—The expression "an instrument, which, used as a weapon of offence, is likely to cause death," in s. 324 should be construed with reference to the nature of the instrument, and not the manner of its use. QUEEN-EMPRESS v. NGA PO THIT, **U.B.R. 1897—1901, Vol. I, 311.** (U.B. R. 1892—1896, Vol. 1, 211, *R.*)

(2120)—S. 324—*See* CRIM. PRO. CODE, 1898, s. 192, 1 L.B.R. 59.

(2121)—S. 324—*See* CRIM. PRO. CODE, 1898, s. 345, U.B.R. 1897—1901, Vol. I, 83.

(2122)—S. 324—*See* CRIM. PRO. CODE, 1898, s. 562, 3 L.B.R. 30.

(2123)—S. 324—*See* TRANSFER OF CRIMINAL CASES—TRANSFER BY OTHER COURTS, L.B.R. 1893—1900, 392.

(2124)—S. 324—*See* Nos. 211, 336, 664, 665, 666, 667, 701, 745, 1937, 1938, 1949, 1984, 2042 and 2107, *supra*, and No. 2182, *infra*.

(2125)—Ss. 324, 325—*See* COMPOUNDING OFFENCE, 1 L.B.R. 349.

(2126)—*Ss.* 324, 334—*Scope.*—S. 334, I.P.C., applies to the case of a person who causes hurt on grave and sudden provocation to the person giving the provocation. S. 324 does not apply to such a case. REG. v. BHALA CHULA, **1 B. H.C. 17.**

Penal Code (Act XLV of 1860)—*continued.*

(2127)—Ss. 324, 334—*See* COMPOUNDING OFFENCE, L.B.R. 1893—1900, 484.

(2128)—Ss. 324, 352—Misjoinder of offences and parties—Charges framed, confusing—Irregularity—Prejudice—Re-trial—*See* CRIM. PRO. CODE, 1898, ss. 233, 235, 239, 17 C.W.N. 419 = 19 Ind. Cas. 308 = 14 Cr. L.J. 212.

(2129)—Ss. 324, 457—*See* GRIEVOUS HURT, W.R. Cr. 52.

——**S. 325.**

See GRIEVOUS HURT.

See HURT.

(2130)—*S.* 325—*Grievous hurt—Right of private defence—Evidence Act, s.* 105.—When one man takes away the life of another, he should prove circumstances, if any, justifying his doing so. Even if the act is done in exercise of the right of private defence, it lies upon him to show that he did not exceed that right. ASIRUDDIN AHMED v. KING-EMPEROR, **8 C.W.N. 714 = 1 Cr. L J. 708.** [*R.*, 16 C.L.J. 440 = 13 Cr. L.J. 905 = 17 Ind. Cas. 1001.]

(2131)—*S.* 325—*Compounding offence under s.* 325—*Parties to—Revision—High Court's power.*—An offence under s. 325, Penal Code, is compoundable with the permission of the Court, but the only person who can compound is the man who is hurt. Where, therefore, the man who is hurt dies of the injury, the case cannot be compounded by the heirs of the deceased. Case in which several persons were acquitted by the Sessions Judge, but the High Court, on being moved by the Government, issued warrant for their arrest, but the accused not being found, the Court set aside the order in the exercise of its revisional jurisdiction. EMPEROR v. RAHMAT, **13 A.L J. 630.**

(2132)—*S.* 325—*Private defence—Plea of private defence cannot be allowed in certain circumstances.*—Where both sides voluntarily and deliberately engage in fighting, it is not open to a member of either party to claim the right of private defence. The right of private defence cannot be successfully invoked by men who voluntarily and deliberately engage in fighting with their enemies for the sake of fighting, as opposed to the case where men are reluctantly forced to use violence in order to protect themselves from violence offered to them. EMPEROR v. BECHAR ANOP, **17 Bom. L.R. 888 = 3 Bom. Cr. C. 100.**

(2133)—S. 325—Parties willing to compromise—Effect—Composition when may not be refused—*See* CRIM. PRO. CODE, 1898, s. 345, 17 O.C. 92 = 15 Cr. L.J. 567 = 24 Ind. Cas. 975.

(2134)—S. 325—Fight in the course of which a person was killed—Accused charged under s. 325—Compounding of the offence by the relations of the deceased—Order of acquittal—Legality—Revision—Re-trial—*See* CRIM. PRO. CODE, 1898, ss. 345 (2), 439 (5), 7 S.L.R. 200 = 16 Cr. L J. 553 = 24 Ind. Cas. 961.

(2135)—S. 325—*See* CRIM. PRO. CODE, 1898, ss. 421, 423, Rat. Un. Cr. C. 304 = Cr. Rg. 53 of 1886.

(2136)—S. 325—*See* SENTENCE—IMPRISONMENT, GENERAL, 2 W.R. Cr. 32.

(2137)—S. 325—*See* VERDICT OF JURY, 5 C. 871.

(2138)—S. 325—*See* Nos. 91, 100, 106, 205, 206, 207, 306, 372, 382, 427, 432, 472, 590, 595, 623, 624, 647, 648, 651, 661, 668, 669, 670, 716, 717, 1879, 1888, 1939, 1940, 1950, 1951, 1973, 1983, 1985, 1986, 1987, 2025, 2043, 2044, 2092, 2093, 2108, 2109, 2110 and 2125, *supra.*

(2139)—*Ss.* 325 *and* 300—*Grievous hurt.*—Where the medical evidence was that, had the deceased not been suffering from a diseased liver, he would not have died, and there was no evidence that the internal weakness was manifested by any outward signs or that the deceased seemed other than a man of ordinary strength, *held* that the accused should have been convicted of causing grievous hurt and not of culpable homicide not amounting to murder. EMPRESS v. JAWAHIR, **5 C P.L.R. Cr. 41.**

(2140)—*Ss.* 325 *and* 304 *read with s.* 149—*Charge under s.* 325 *whether minor to or included in charge under s.* 325 *read with s.* 149.—Where, in a trial on charges under ss. 147, $\frac{149}{304}$, $\frac{149}{325}$ and $\frac{149}{323}$, Penal Code, the Judge in his charge to the jury said "if therefore the jury find that a riot took place, they should, under s. 149, find every member of the unlawful assembly guilty of causing hurt or grievous hurt," but he nowhere instructed the jury what their verdict should be, if they found that there was no unlawful assembly, but that grievous hurt or hurt was caused by any one or more of the accused persons, *held*, that the omission of the Judge to do so amounted to a serious misdirection; and that, under no reasonable construction of ss. 236, 237 and 238, Crim. Pro. Code, can causing grievous hurt be regarded as minor to, or included in, a charge under s. 325 read with s. 149, I.P.C. The accused person could not, therefore, be convicted under s. 325. PANCHU DAS v. EMPEROR, **34 C. 698 = 11 C. W.N. 666 = 5 Cr. L J. 427.** (6 C.W.N. 93, *F.*) [*R.*, 41 C. 662 = 18 C.W.N. 668 = 15 Cr. L.J. 155 = 22 Ind. Cas. 731.]

(2141)—*Ss.* 325, 307—*Throwing wife out of window—Intention.*—Where the accused threw his wife out of a window six feet high, but the fall was broken by a weather board fixed just below the window, and the act resulted in the fracture of a kneepan and several wounds, *held*, per *Jardine* and *Birdwood, JJ.*, that the offence was one under s. 325 of the Penal Code, and not under s. 307, since an intention to kill could not be inferred from the act. *Parsons, J*, thought the offence was one under the latter part of s. 308. QUEEN-EMPRESS v. JIVA, **Rat. Un. Cr. C. 558.**

(2142)—Ss. 325, 326, 148, 302—Acquittal of accused under ss 325, 326, 148—Subsequent trial under s. 302—Legality—*See* CRIM. PRO. CODE, 1898, ss. 403 (4), 213, 7 P.R. 1912, Cr. = 39 P.W.R. 1912, Cr. = 243 P.L.R. 1912 = 17 Ind. Cas. 54 = 13 Cr. L.J. 742.

Penal Code (Act XLV of 1860)—*continued.*

(2143)—Ss. 325, 387, 392—*See* CRIM. PRO. CODE, 1898, ss. 234 and 236, Colm. Dig. Cr. 55 of 1876.

——S. 326.

See GRIEVOUS HURT.

See HURT.

(2144)—*S.* 326—*Scope of the section.*—S. 326 can only apply to a person who does a substantive act himself, namely, inflicts a blow which causes grievous hurt as defined in the Code. RAM SARUP RAI v. EMPEROR, 6 C. **W.N. 98.**

(2145)—*S.* 326—*Stabbing — Punishment.*—The crime of stabbing requires severe repression, and where grievous hurt is caused it usually calls for a heavy sentence. Where some aggravating circumstance exists, to which the law attaches a severe punishment, such as the use of a deadly weapon or the use of the same in cases of robbery or dacoity under ss. 397 and 398, it is the duty of the Court to ascertain the aggravating circumstance and not to assume jurisdiction by ignoring it, and then by passing a sentence for a minor offence, defeat the plain intention of the law. NGA PO THIN v. QUEEN-EMPRESS, **L B.R. 1872—1892, 182.**

(2146)—*S.* 326—*Voluntarily causing grievous hurt—Civil Surgeon.*—It is difficult to conceive any case of voluntarily causing grievous hurt in which it is not necessary to take the evidence of the Civil Surgeon, if such evidence is obtainable, it must be laid down as a general rule that, in all grievous hurt cases, the evidence of the Civil Surgeon who examined and attended on the person to whom the hurt has been caused, if obtainable without unreasonable delay or expense, should be taken. If it is not taken, the accused will always be entitled to the benefit of the presumption which would arise from the prosecution withholding the best evidence. QUEEN-EMPRESS v. NGA CHET, **L.B.R. 1872—1892, 292.**

(2147)—*S.* 326—*Abetment of assault.*— A person urged another to attack the complainant; and such other person cut the complainant in the forearm with a clasp knife, while the former threw sticks at him. It appeared from the evidence that there was no proof that the latter had the knife in his hand at the time of the former's urging him on ; nor was there evidence that the former knew in any other way that the latter would be likely to use the clasp knife. *Held* that the former could not be convicted of abetting the offence of causing grievous hurt with a dangerous weapon under s. 326, Penal Code, but that he could only be convicted of abetting an assault. THA MYA v. KING-EMPEROR, **4 L.B.R. 271 = 8 Cr. L J. 472.**

(2148)—*S.* 326—*Causing grievous hurt with* Chhavis *by way of exceeding self-defence—Sentence reduced to 2 from 5 years and to 1 from 3 years.*—Where A, B and C were convicted under s. 326, I.P.C., for causing grievous hurt, though not serious, in protecting D by means of *Chhavis*, and thus exceeded the right of self-defence which they had by law, the sentence of 5 years to A and of 3 years each to B and C was reduced respectively to 2 and 1 year's rigorous imprisonment. GIYAN SINGH v. CROWN, 29 P.W.R. 1914. **Cr. = 182 P.L.R. 1914 = 15 Cr. L J. 540 = 24 Ind. Cas. 948.**

(2149)—*S.* 326—*Cutting wife's nose— 'No leniency to be shown'—Punishment.*—On an appeal by the accused who was found guilty of having cut off his wife's nose by a razor and was convicted of an offence under s. 326, I.P.C., and sentenced to 4 years' rigorous imprisonment, the Sessions Judge reduced the sentence to 2 years' rigorous imprisonment. On revision the Chief Court held that nose-cutting is an offence for which leniency is, ordinarily speaking, quite out of place and enhanced the sentence to the full term of 4 years. SIKANDAR v. CROWN, **20 P.R. 1915, Cr.**

(2150)—S. 326—*See* ACCUSED PERSON, A. W.N. 1900, 47.

(2151)—S. 326—*Purdanashin* ladies placed on their trial on charge under s. 326—Dispensing with their personal attendance in Court—*See* CRIM. PRO. CODE, 1898, ss. 205, 526, 17 C.W.N. 1248.

(2152)—S. 326—Common intention must be looked to where it is doubtful which accused caused mortal injury—Conviction for murder altered into one for grievous hurt—*See* EVIDENCE ACT, 1872, ss. 32 (1), 33, 14 Cr. L.J. 396 = 20 Ind. Cas. 220 = 6 Bur. L.T. 68.

(2153)—S. 326—*See* SECURITY TO KEEP THE PEACE—FINAL ORDER, ETC., 5 L.B.R. 34, F.B.

(2154)—S. 326—*See* Nos. 96, 98, 99, 209, 220, 336, 405, 587, 649, 704, 705, 714, 1877, 1878, 1889, 1938, 1949, 1987, 2045, 2142, *supra*, and No. 2608, *infra*.

(2155)—Ss. 326, 114, 109, 34—Misdirection—Jury trial—Grievous hurt—Abetment by conspiracy—Seisin by jury—Re-trial—Jurisdiction-*See* JURY, 16 C.W.N. 909 = 16 Ind. Cas. 523 = 13 Cr. L.J. 715.

(2156)—Ss. 326 and 307—*See* CRIM. PRO. CODE, 1898, ss. 236, 237, 1 L.B.R. 221.

——S. 327.

(2157)—S. 327—*See* No 671, *supra*.

——S. 328.

See GRIEVOUS HURT.

See HURT.

(2158)—*S.* 328—*Administering an unwholesome drug.*—The accused called in "a medicine man" to detect a case of theft. The latter told the accused that he would administer the juice of some leaves to all the villagers, and that it would cause the belly of the thief to swell. The medicine man mixed some drug with the juice in the presence of the accused, and those who took the medicine really submitted themselves to the ordeal. Three of them showed symptoms of having been poisoned and suffered severely for upwards of a fortnight. *Held* that

Penal Code (Act XLV of 1860)—*continued.*

the accused had committed an offence under s. 328, for having caused an unwholesome drug, likely to cause hurt to be administered. *In re* DASI PICHIGADU, **1 Weir 335.**

(2159)—*S.* 328—*Offence—Mere administration of drug is not enough—Intent must be proved.*—In order to convict a person of an offence under s. 328, Penal Code, mere administration of the drug will not do. There must also be evidence to show that such administration was with the intent specified in the section and to cause injury to the person to whom it was administered. MURUGA GOUNDAN v. EMPEROR, **15 Cr.L.J. 599 = 25 Ind. Cas. 351.**

(2160)—S. 328—*See* CRIM. PRO. CODE, 1898, ss. 170, 188, 8 Bom. L.R. 513 = 4 Cr. L.J. 54.

(2161)—S. 328—*See* Nos. 312, 1940, 2046, *supra.*

(2162) — *Ss.* 328, 302 — *Administering of poison.*—The accused administered arsenic to the deceased, her lover, in sweetmeat balls given to him to eat, in the belief that it was a charm which would revive his love for her, but she did not know that this substance was a deadly poison. *Held*, acquitting the accused, that to support a conviction against her under s. 328, it must be shown that the poison was administered with intent to cause hurt, or to commit or facilitate the commission of an offence, or knowing it to be likely that she would thereby cause hurt. EMPEROR v. NAGAWA KOM BHIMAPPA, **4 Bom. L.R. 425.** [*D.*, 31 A. 290 = 6 A.L.J. 203 = 9 Cr.L J. 522 = 2 Ind. Cas. 214.]

(2163)—Ss. 328, 380, 401, 411—*See* JOINT TRIAL, Rat. Un. Cr. C. 509 = Cr. Rg. 27 of 1890.

(2164)—Ss. 328 and 511—*See* ATTEMPT, 9 C.P.L.R. Cr. 14.

——S. 329.

(2165)—S. 329—*See* No. 1940, *supra.*

——S. 330.

See GRIEVOUS HURT.

See HURT.

(2166)—*S.* 330—*Extortion of confession by Police officer by means of hurt—Gravity of offence—Sentence enhanced.*—In this case the accused, a Sergeant of Police, was convicted under s. 330, I.P.C., and sentenced to three months' simple imprisonment for causing hurt to a prisoner in his custody for the purpose of extorting a confession. On revision, the sentence was enhanced to rigorous imprisonment for two years, for the reason that the offence found to have been committed was of the gravest character, and such as to shake judicial confidence in a most important portion of the evidence, which has commonly to be relied on by the Courts of Justice, namely, the genuineness and trustworthiness of early confessions, for such evidence ought to be free from the slightest taint, and to tamper with it is to pollute justice at the fount. NGA PO MYA v. QUEEN-EMPRESS, **U.B.R. 1897—1901, Vol. I. 320.**

Penal Code (Act XLV of 1860)—*continued.*

(2167)—*S.* 330—*Police constable beating the deceased in the course of an enquiry—Offence.*—Where a police constable, in the course of an enquiry, violently beat the deceased who died of the beating nine days subsequently, *held* that he was guilty of an offence under s. 330, I.P.C. MEAH MAHOMED v. CROWN, **86 P.R. 1866, Cr.**

(2168)—*S.* 330—*Causing hurt for the purpose of extortion.*—Causing hurt for the purpose of extorting information which might lead to the detection of an offence. QUEEN v. NIM CHAND MOOKERJEE, **20 W.R. Cr. 41.**

(2169)—S. 330—*See* CRIM. PRO. CODE, 1898, s. 238, 7 C.P.L.R. Cr. 17.

(2170)—S. 330—*See* FALSE EVIDENCE, 20 W.R. Cr. 41.

(2171)—S. 330—*See* VERDICT OF JURY, 8 B.L.R. 557 = 14 W.R. Cr. 59.

(2172) — S. 330—*See* Nos. 442, 449, 450, *supra*, and No. 2176, *infra.*

(2173)—*Ss.* 330, 332—*Excise Inspector committing irregularities—Public servant—Discharge of duty.*—An Excise Inspector in searching the house of a person, under the suspicion that he would find cocaine there, committed many irregularities. He had no warrant authorising him to make the search, he had brought only one search witness and he directed a constable to scale the outer wall of the house. The accused assaulted and beat him. *Held* that the Inspector and the constables were not acting in the discharge of their duties as public servants and the accused were not guilty of an offence under s. 330, Penal Code, but were guilty of causing hurt only. MUKHTAR AHMAD v. EMPEROR, **13 A.L.J. 439.**

(2174)—Ss. 330, 348—*See* ABETMENT, 1 Weir 52.

(2175)—*Ss.* 330 *and* 506—*Voluntarily causing hurt—Criminal intimidation.*—A person voluntarily causes hurt when he himself does an act with the intention of causing hurt to any person or with the knowledge that he is likely thereby to cause hurt to any person and actually causes hurt thereby to any person. Hence, a person, who, by using threats, forces another to dip his hands into hot oil, can be convicted, not of voluntarily causing hurt but of criminal intimidation only. EMPRESS v. HIRDE RAM, **9 C.P.L.R. Cr. 18.**

——S. 331.

(2176)—Ss. 331, 330, 114, 218—One trial for offences under—Misjoinder—*See* CRIM. PRO. CODE, 1898, s. 235, ill. (*f*), 14 Bom. L.R. 41 = 13 Ind. Cas. 825 = 1 Bom. Cr. Cas. 72 = 13 Cr. L.J. 137.

——S. 332.

See GRIEVOUS HURT.

See HURT.

(2177)—*S.* 332—*Assault on constable on duty —Duty need not be imposed by law.*—Where a constable was employed to watch the accused,

Penal Code (Act XLV of 1860)—*continued.*

and the accused knew of it when he assaulted him. *Held*, that the constable was not doing anything in excess of his authority at the time of the assault, and the accused was rightly convicted under s. 332, I.P.C. *Held*, also that the duty need not be a particular duty imposed expressly by the law on the particular occasion. *In re* MAHOMAD YAKOOB, **7 M.L.T. 386 = 6 Ind. Cas. 12 = 11 Cr. L.J. 221.**

(2178)—*S.* 332—*Railway passenger entering compartment reserved for females to assist his wife travelling in that compartment— Interference by Railway Police.*—The accused entered a compartment of a Railway carriage reserved for females to assist his wife who was to travel in that compartment. A constable of the Railway Police having interfered and some quarrel having ensued, the accused was challenged and convicted of an offence under s. 332 of Penal Code. *Held*, that the conviction was illegal. Entry into a compartment reserved for females without lawful excuse is forbidden, but the accused had the best of all excuses for entering the carriage. The constable acted *ultra vires* in interfering, as the Railway Police are not allowed to do so until they are called upon by the Railway authorities. CHHAJJU MAL v. EMPEROR OF INDIA, **76 P.L.R. 1903.**

(2179)—*S.* 332—*Crim. Pro. Code, s.* 54—*Power of police officer to arrest without warrant —Case of burglary—Reasonable suspicion—Assaulting police officer.*—Under s. 54, Crim. Pro. Code, a police officer investigating a charge of burglary (*a cognisable case*) is empowered to arrest, without an order from a Magistrate or a warrant, persons against whom a reasonable suspicion of having been concerned in the burglary existed, and so the persons assaulting the police officer while arresting them would be guilty of an offence under s. 332, Penal Code. CROWN v. YUSUF ALLA DITTA, **18 P.R. 1910, Cr. = 6 Ind. Cas. 956 = 32 P.W.R. 1910, Cr. = 104 P.L.R. 1910 = 11 Cr. L.J. 423.** (18 A. 246, 26 C. 630, *Dist.*)

(2180)—S. 332—*See* Nos. 204, 210, 406, 407, 642, 672, 673, 674, 675, 721, 1527, 2111, 2173, *supra.*

(2181)—*Ss.* 332, 147, 99—*Police search—Place beyond the limits of the station of the officer conducting search — No written order from officer having jurisdiction over the place—Illegality — Arrest of suspected person and attachment of property—Riot—Escape of person and disappearance of property—Police beaten—Offence committed—Private defence—Crim. Pro. Code, ss.* 54, 165, 166, 550.—During the course of a search by an officer in charge of a police station at a place beyond the limits of his station, a riot took place in which the appellants took part. The policemen were beaten, the arrested person escaped and the attached property disappeared. It was found that the common object of the riot was to prevent search being made, and not to take back the property which had been attached or to release the prisoners. *Held* that, in the absence of a written order of the officer in charge of the police station within the limits of which the search took place, the search was illegal (*vide* ss. 165, 166, Crim. Pro. Code). *Held*, also, that in spite of the illegal search, the police would still be justified in arresting suspected persons under s. 54, Crim. Pro. Code, or attaching suspected property under s. 550 of the same Code. The accused could not be found guilty of offence under s. 332, I.P.C., because the object of the riot was to resist the search, and in making the searches, the police were not acting in discharge of their duty. (108 R.R. 186, *R*). *Held*, further, that the accused have under s. 99, I.P.C., no right of private defence, for the police were acting in good faith under color of their office (7 B.H.C. Cr. 50, 18 A. 246, *R.*) and that the accused were guilty of the offences of hurt and rioting. Even if the accused had a right of private defence, they exceeded it when they beat the police. MIR SHAH NAWAZ KHAN v. CROWN, **8 S.L.R. 1 = 16 Cr. L.J. 15 = 26 Ind. Cas. 319.**

(2182)—Ss. 332, 353, 324—*See* PUBLIC SERVANT, L.B.R. 1893—1900, 192.

(2183)—*Ss.* 332 *and* 355—*Causing hurt to deter public servant from his duty—Assault with intent to dishonour—Assault on police witness while giving evidence.* — An accused person while under trial struck a Sub-Inspector of Police, who was in the witness box giving evidence against him. *Held*, that the offence of which the accused was guilty in this respect was rather that provided for by s. 355 of the Penal Code, than that punishable under s. 332 of the Code. EMPEROR v. ALTAF MIAN, **A.W.N. 1907, 186 = 6 Cr. L.J. 22.**

—— S. 333.

(2183-*a*)—S. 333—*See* Nos. 210, 721, *supra.*

—— S. 334.

(2184)—S. 334—*See* Nos. 378, 2126, 2127, *supra.*

—— S. 335.

See GRIEVOUS HURT.

See HURT.

(2185)—*S.* 335—*Grievous hurt—Cutting of nose—Grave and sudden provocation—Punishment.*—The accused was convicted of causing grievous hurt (*viz.*, the cutting of nose) to his wife under grave and sudden provocation, and was sentenced to suffer rigorous imprisonment for four months On reference to the Sessions Judge for enhancement of sentence :—*Held*, enhancing the sentence to one of two years' rigorous imprisonment, that the particular act of which the accused was found guilty was one which imported deliberate design. EMPEROR v. BHAGWAN CHHAGAN, **17 Bom. L.R. 68 = 3 Bom. Cr. C. 1 = 16 Cr. L.J. 168 = 27 Ind. Cas. 552.**

(2186)—S. 335—*See* SUDDEN PROVOCATION, A.W.N. 1889, 9.

(2187)—*Ss.* 335 *and* 338—*Grievous hurt, when compoundable.* — Only grievous hurt

Penal Code (Act XLV of 1860)—*continued.*

coming under the provisions of s. 335 or s. 338, I.P.C., is compoundable. QUEEN-EMPRESS v. SIDHA, **S.C. 74, Oudh.**

——**S. 336.**

See GRIEVOUS HURT.

See HURT.

(2188)—*S.* 336—*Cases covered by.*—S. 336 is meant to deal with cases of rashness or negligence in doing a lawful act, but not when the act is criminal in itself. EMPRESS v. KANHYA, **Sel. Case No. 31 of 1887.**

(2189)—*S.* 336—*Act endangering life or personal safety of others—' Rashness,' defined.*—The imputability of culpable rashness arises from acting despite the consciousness that mischievous consequences may follow, but with the hope that they will not, and often with the belief that sufficient precautions have been taken to prevent them happening. Where an engine driver was taking an engine which was letting off steam along a public thoroughfare, at a time when the traffic was exceptionally heavy, and within a few yards of a large number of horses and carriages which had been packed together, in spite of the warnings from the police that to do so would endanger the public safety, *held*, that the driver, although he might have believed that no danger would in fact be caused, was not the less answerable for his act under s. 336, Penal Code. *In re* GEORGE LOVEDAY, **1 Weir 337.**

(2190)—*S.* 336—*Essentials of the offence.*—The only questions in a case under s. 336, Penal Code, are (1) whether the act done is a rash and negligent act, and (2) whether it was such as was likely to endanger life. No distinction can be drawn between the act itself and the instruments with which it is done. *In re* THIPPANA GANGI REDDI, **1 Weir 337.**

(2191)—*S.* 336—*Application of section—Throwing stones on the top of a house—Evidence for conviction under section.*—The provisions of the above section are intended to meet cases where acts which are in themselves lawful are done so rashly or negligently as to endanger human life or the personal safety of others. To throw stones on the top of a house at a wedding is not to do an act rashly or negligently. The act may have been in itself a dangerous one, but the person committing the act may very well have thrown the stones with great care and skill and without any rashness or negligence. In order to convict a person under the above section, the prosecution must prove rashness or negligence on the part of the accused, and also that by such rashness or negligence human life or the personal safety of others was actually endangered. QUEEN-EMPRESS v. NGA THA KU, **L.B.R. 1872—1892, 91.**

(2192)—*S.* 336, *Application of the section.*—S. 336 is not appropriate for the punishment of a person deliberately throwing stones at a house. The offence falls under s. 501, I.P.C. QUEEN-EMPRESS v. NGA TUN, **L.B.R. 1872—1892, 595.**

Penal Code (Act XLV of 1860)—*continued.*

(2193)—*S.* 336—*Offence under the section.*—For the conviction of an offence under s. 336, the fact that human life or the personal safety of others was endangered must be proved. It is not merely a question of the words "rashly or negligently." QUEEN-EMPRESS v. BASHIN. **1 L.B.R. 45.**

(2194)—*S.* 336—*"Rashly," defined — Rash act as opposed to deliberate act—Throwing stones at a house.*—A rash act is primarily an over-hasty act and is thus opposed to a deliberate act, but it also includes an act which, though it may be said to be deliberate, is yet done without due deliberation and caution. When a person intentionally throws a stone at a house or on a house under such circumstances that, although he does not intend to cause hurt, and does not in fact cause hurt, he yet must know that he is likely to cause hurt, he commits an offence punishable under s. 336, Penal Code. QUEEN-EMPRESS v. NGA MYAT THIN, **L.B.R. 1893—1900, 426.** (L.B.R. 1872—1892, 595, L.B.R. 1893—1900, 91, *Diss.*; 14 C. 566, *Appl.*)

(2195)—*S.* 336—*Swinging by hooks inserted in the flesh.*—A village headman having a license to conduct swinging during the *charak pujah* in his village was charged under s. 336 for allowing a person to swing by hooks inserted in the flesh, instead of by being attached to the swinging apparatus by cloths. *Held*, that the headman was not guilty under s. 336, Penal Code. GOPINATH MAHTO v. MANSARAM KOOMAR, **5 C.W.N. 376.**

(2196)—*S.* 336—*Whether an act* per se *unlawful is rash.*—An act which is in itself unlawful is neither rash nor negligent. KING-EMPEROR v. NGA PO AUNG, **U.B.R. 1905, Penal Code, 15 =2 Cr. L.J. 475.**

(2197)—*S.* 336—*Doing an act endangering human life or the safety of others--Temple resorted to by pilgrims on festive occasions--Duty of person in charge to ensure safety of pilgrims attending by license and invitation.*—The petitioner was the lessee of a certain temple from some of the *shebaits* and was the general manager of all of them. It appeared that on a certain day in the year pilgrims and others in large number visited this temple. Close by the gate leading from an outer court-yard into the inner temple there was a well which was surrounded by a masonry platform $1\frac{1}{2}$ to 2 feet high and the ring or parapet of the well stood again about 1 foot above the platform. Early at night on the day of the congregation of pilgrims an accident having occurred, the petitioner at the instance of the Police-officer in charge had a light placed on or near the one foot parapet, but at a later hour the petitioner had the light removed, and thereafter between 1 and 2 A.M. while the people were again entering into the inner temple, a boy who had no previous knowledge of the well and in the darkness could not see it fell into it. *Held*, that the facts constituted an offence within the meaning of s. 336, I.P.C. That, on the occasion of the festival in question, the temple becomes a place of public

Penal Code (Act XLV of 1860)—*continued.*

resort, and it was the bounden duty of the petitioner as the person in charge to take all reasonable precautions necessary to ensure the safety of those crowding thither by his license and invitation. NARSING CHARAN MAHAPATRA v. KING-EMPEROR, 18 C.W.N. 1176 = 27 Ind. Cas. 195 = 16 Cr. L.J. 131.

(2198)—S. 336—*See* CRIM. PRO. CODE, 1898, s. 106, 2 Weir 48.

(2199)—S. 336—*See* Nos. 347 and 1696, *supra*, and No. 2236, *infra*.

(2200)—*Ss.* 336 *and* 337—*Acts endangering life or personal safety of others.*—It is true that an offence under s. 336 is not one of those which may be lawfully compounded. In s. 345 of Crim. Pro. Code, the word "to compound" means "to withdraw from a prosecution for a consideration" and not merely to withdraw. In a case where the offence is not compoundable, it is open to the Magistrate to proceed under s. 248, Crim. Pro. Code, and to permit the withdrawal of the complaint though he may not be bound to do so. S. 248, Crim. Pro. Code, applies only to summons cases. QUEEN-EMPRESS v. NGA PO GAUNG, U.B.R. 1892—1896, Vol. I, 219. (L.B.R. 1872—1892, 91, 595, *R.*)

(2201)—*Ss.* 336, 426, 504—*Throwing brick-bats at the back of a house—Mischief.*—Where the accused threw brick-bats, at the back of the complainant's house which had hit it and fallen to the ground, and there was no evidence to show that human life or personal safety of any body was endangered by the accused's acts. *Held*, that the accused ought not to be convicted under s. 336, but should be convicted under s. 426, I.P.C. Roofs and walls of dwelling houses are not put up to be pelted at with brick-bats, and owners have a right to be protected from even dents and marks being made in and on them without their consent. In a case where large pieces of brick are wantonly thrown at a house, the house which is hit is to some extent altered in condition and damaged, and thereby wrongful loss or damage is caused to the owner. MA NYEIN GALE v. NGA SEIN, 5 L.B.R. 100 = 4 Ind. Cas. 293 = 10 Cr. L J. 332.

—— S. 337.

See GRIEVOUS HURT.

See HURT.

(2202)—*S.* 337— *Application of section.* — S. 337, I.P.C., applies only to acts done without any criminal intent. Personal injury intentionally caused is neither a rash nor a negligent act. KING-EMPEROR v. NGA SHWE LU, U.B.R. 1904, 1st Qr., Penal Code, 6 = 1 Cr. L.J. 537. (U.B.R. 1897—1901, 314, 1 L.B.R. 259, *R.*)

(2203)—S. 337—*See* Nos. 1689, 1781 and 2200, *supra*.

(2204)—*Ss.* 337, 338—*Hurt caused by rashness or negligence—Hakim—Operation on eyelid with ordinary scissors—Omission of ordinary medical precautions.*—The accused, who was a Hakim, performed an operation with an ordinary pair of scissors, on the outer side of the upper lid of the complainant's right eye, the wound was sutured with an ordinary thread and needle. It appeared that the operation was needless and performed in a primitive way; that the most ordinary precautions were not taken; and that the instruments used were not disinfected and sterilized. The result was that the operation was unsuccessful and the complainant's eyesight was permanently damaged to a certain extent. The trying Magistrate convicted the accused of an offence under s. 338, Penal Code. The accused having applied to the High Court:—*Held*, (1) that the accused had acted rashly and negligently, for, whether a trained practitioner or not, he was bound by law to avoid such rashness or negligence as would endanger human life or the personal safety of others, when he undertook an operation; (2) that the act of the accused amounted to an offence punishable under s. 337, Penal Code, inasmuch as there was no permanent privation of the sight of the eye in consequence of the operation. Where a Hakim gives out that he is a skilled operator and charges considerable fees, the public are entitled to the ordinary precautions which surgical knowledge regards as imperative. To neglect such precautions entirely is negligence such as is contemplated by the criminal law. EMPEROR v. GULAM HYDER PANJABI, 17 Bom. L R. 384 = 3 Bom. Cr. C 47 = 16 Cr. L.J. 437 = 29 Ind. Cas. 69 = 39 B. 523.

—— S. 338.

(2205)—*S.* 338—*Causing grievous hurt by an act which endangers life—Criminal negligence—Discharging a gun in place where persons were expected to pass.*—Accused, who owned a paddy field in a jungly tract, discharged a gun in the direction of a foot-path, close to his field, through which complainant was passing. The complainant was wounded in his leg and had to be treated in the hospital and his leg amputated. The accused knew that the foot-path was generally used by the public. *Held*, that the accused was guilty of culpable negligence and was rightly convicted under s. 338, Penal Code. P. CHANDU v. EMPEROR, 13 Cr. L. J. 703 = 16 Ind. Cas. 511. (7 M.H.C. 119, *R.*)

(2206)—S. 338—*See* Nos. 1689, 2187 and 2204, *supra*.

—— S. 339.

See WRONGFUL RESTRAINT.

(2207)—*S.* 339—*Scope and application of the section.*—S. 339 of the Penal Code relates to the voluntary obstruction by a person, and not, obviously, at least, to obstructions, which are not voluntarily continued by the persons accused of the obstruction, throughout the time the obstruction lasts. EMPEROR v. ABDUL, 9 Bom. L.R. 30 = 5 Cr. L.J. 97. [*R.*, 34 M. 547 = 11 Cr. L.J. 708 = 8 Ind. Cas. 757 = 9 M.L.T. 103 = M.W.N. 1910, 727.]

Penal Code (Act XLV of 1860)—*continued*

(2208)—*S.* 339—*Wrongful restraint—Obstruction to passage of cart along certain way—No obstruction to the person passing the way—No wrongful restraint.*—The complainant driving a bullock-cart was obstructed from taking his cart through a certain passage; but there was no obstruction to the complainant passing through the passage alone without the cart: *Held*, there could be no conviction for wrongful restraint under s. 339, Penal Code, for though the complainant was hindered from driving his cart through the passage, he himself was unobstructed. Under s. 339 the obstruction should be so complete and successful as to prevent the person obstructed from proceeding in any direction in which he has a right to proceed. The wrong, being a wrong against the person, is not completed where the person is at liberty to go in any direction he pleases. EMPEROR v. RAMA LALA, **15 Bom. L.R. 103 = 2 Bom. Cr. C. 26 = 19 Ind. Cas. 177 = 14 Cr. L.J. 177.**

(2209)—*Ss.* 339, 340—*Wrongful restraint—Wrongful confinement.*—Where the complainant, his wife and daughter, occupied a house, and, during their temporary absence, the accused put a lock on the outer door and thereby obstructed them from getting into the house: *held*, that the accused was guilty of wrongful restraint. Physical presence of the obstructor is not necessary as an ingredient of the offence of wrongful confinement or of wrongful restraint. To constitute the offence, the obstructor must intent or know or have reason to believe it to be likely that the means adopted would cause the obstruction of the complainant. ARUMUGA NADAR v. EMPEROR, **8 Ind. Cas. 757, Cr. = 11 Cr. L.J. 708 = 9 M.L.T. 103 = 1910 M.W.N. 727 = 34 M. 547.**

(2210)—*Ss.* 339 *and* 341, *essentials of an offence under*—Mamul path, *whether a public path—Ploughing up, whether an obstruction.*—To justify a conviction for an offence under s. 341, I.P.C., it must be found that the person complaining has a right to proceed along the path and that he was obstructed from doing so. The expression *mamul path*, is very ambiguous. The mere ploughing up of a path does not amount to an obstruction within the meaning of s. 339, I.P.C. *In re* RAMA REDDI, **2 L.W. 1035.**

——**S. 340.**

(2211)—S. 340—*See* No. 2209, *supra.*

——**S. 341.**

See WRONGFUL CONFINEMENT.

See WRONGFUL RESTRAINT.

(2212)—*S.* 341—*Plague Passport Officer refusing passport to passenger—Wrongful restraint.*—Unreasonable delay on the part of a Plague Passport Officer to issue a passport to a person, who without such a passport, cannot lawfully proceed to another place, though highly reprehensible, cannot amount to wrongful restraint or imprisonment of such person, in the absence of anything to show that the officer objected to such person going on without a passport, or that he, either physically or by the show or suggestion of force prevented such person from proceeding. *In re* CHOKALINGA ASARI, **2 M.L.T. 159 = 5 Cr. L.J. 357.**

(2213)—*S.* 341—*Intending emigrant—Prevention from leaving the Emigration Depot by watchman—Wrongful restraint—Offence punishable under s.* 341—Where a person either was, or pretended to be, an intending emigrant, and went to the emigration depot and was there treated as such, receiving meals and advance of money, and where such person, while trying to leave the depot, was prevented by the watchman from doing so: *Held*, that neither the emigration Agents, nor their servant, the watchman, had any power to prevent him from leaving the depot when he desired to do so, and that the watchman committed the offence of wrongful restraint punishable under s. 341, I.P.C. PUBLIC PROSECUTOR v. SHAIK AHMED, **21 M.L.J. 439 = 10 Ind. Cas. 107 = 12 Cr. L.J. 212 = 1911. 1 M.W.N. 369.** [*R.*, 14 M. L.T. 200; 1913 M.W.N. 728.]

(2214)—*S.* 341—*Obstruction under* bona fide *colour of title, &c.*—*Held*, that voluntarily obstructing any person from entering upon the land under *bona fide* colour of title and possession is not such an obstruction as can be made the subject of a criminal prosecution under s. 341 of the I.P.C. SHEO NATH v. CROWN, **5 P.W.R. 1914, Cr. = 34 P.L.R. 1914 = 15 Cr. L. J. 532 = 24 Ind Cas. 844.**

(2215)—S. 341—*See* Nos. 303, 524, 588, 610, 611 and 2210, *supra.*

(2216)—Ss. 341, 352, 448—*See* CRIMINAL TRESPASS, 4 C.W.N. 47.

(2217)—*Ss.* 341, 352, 504, 142—*Addressing respectable gentleman in the singular.*—The accused stood on the road while the complainant, a respectable gentleman, was driving along the road, and addressed him in the singular. The Magistrate convicted them under ss. 341, 352, 504, 142, I.P.C., and sentenced each of them to rigorous imprisonment for sixty-seven days, and to pay a fine of Rs. 25, in default of payment to simple imprisonment for a month. *Held* that the offence would have been sufficiently dealt with if it had been treated as a silly and reprehensible out-break of ill manners, and not as a grave and serious crime, and that a small fine would have been a sufficient punishment. QUEEN-EMPRESS v. OSMAN, **Rat. Un. Cr. C. 933.**

——**S. 342.**

See WRONGFUL CONFINEMENT.

See WRONGFUL RESTRAINT.

(2218)—*S.* 342—*Confinement, by arresting officer, of judgment debtor, in decree holder's house.*—In the present state of the Indian law, an arresting officer, who confines a judgment-debtor in the decree-holder's house, whilst waiting to produce him before the Court on its re-opening after a holiday, is not guilty of wrongful confinement. There are no provisions

Penal Code (Act XLV of 1860)—*continued.*

in the Indian Law corresponding to the English Law (s. 14, Sheriff's Act, 1887), imposing restrictions upon the sheriff's officer as to the places where persons under arrest may be confined. Under the warrant, the legal duty of the arresting officer is to produce the judgment-debtor at the next sitting of the Court, and, in the meantime, he is responsible for his safe custody. He is, therefore, necessarily empowered to confine the judgment-debtor in the interval, and the law does not prescribe where he should be confined, and does not prohibit confinement in the decree-holder's house. EMPEROR v. SAMUEL, **30 M. 179 = 16 M L J. 530 = 5 Cr. L.J. 102 = 2 M.L.T. 28.**

(2219)—S. 342—*See* BOM. ACT VII OF 1867, s. 42, Rat. Un. Cr. C. 220 = Cr. Rg. 26-11-1885.

(2220)—S. 342—*See* Nos. 132, 208, 221, 222, 301, 1003 and 2112, *supra.*

(2221)—Ss. 342, 346, 363, 511—*See* KIDNAPPING, 6 N.W.P. 293.

(2222)—*Ss.* 342 *and* 348—*Wrongful confinement.*—In all actions taken by the police authorities, it is necessary they should distinctly understand their responsibility in detaining witnesses, unduly or disobeying directions of law concerning the detention of accused or suspected persons in custody, whether by actual physical restraint or practical coercion through fear. They must know that, if they commit illegalities in defiance of the law, they are punishable under the Criminal law as well as departmentally. If there is any uncertainty about the intention of the accused that, in a case of wrongful confinement, the confinement should last for as much as three days, he may have the benefit of the doubt and be convicted under s. 342, I P.C., instead of s. 343. MAUNG TUNG HLA v. QUEEN EMPRESS, **U.B.R. 1892—1896, Vol. I, 221.**

(2223)—Ss. 342, 353—*See* COMPOUNDING OFFENCE, Rat. Un. Cr. C. 331 = Cr. Rg. 22 of 1887.

(2224)—Ss. 342, 357, 467—*See* SESSIONS JUDGE, JURISDICTION OF, 4 Ind. Cas. 312.

(2225)—Ss. 342, 500, 506—*See* SANCTION TO PROSECUTE—CONDITIONS REQUISITE FOR GRANT OF SANCTION, ETC., 9 P.L.R. 1905 = 29 P.R. 1904, Cr.

—— S. 343.

(2226)—Ss. 343, 498—*See* SENTENCE—CUMULATIVE AND SEPARATE SENTENCES, W.R. 1864, Cr. 21.

—— S. 344.

See WRONGFUL CONFINEMENT.

See WRONGFUL RESTRAINT.

(2227)—*S* 344—*Sentence.*—Under s. 344, I.P.C., the sentence should include imprisonment. REG. v. BAHIRJI *bin* KRISHNAJI, **1 B. H.C. 39.**

—— S. 346.

(2228)—S. 346—*See* No. 2221, *supra.*

Penal Code (Act XLV of 1860)—*continued.*

—— S. 347.

(2228-*a*)—S. 347—*See* COMPLAINT—WHAT IS, AND WHO SHOULD INSTITUTE, 7 B.L.R. 9, note = 12 W.R. Cr. 27.

—— S. 348.

(2229)—S. 348—*See* Nos. 442, 2174 and 2222, *supra.*

—— S. 349.

(2230)—*S.* 349—Lathi *raised by the accused and the person attacked ran away to save himself —Whether criminal force.*—Where the accused went to the field of another and cut the crops sown by him, and on the latter resisting, they raised their *lathis* to strike him and that other ran away to save himself, *held,* that the accused were guilty of using force by means of bodily power within the meaning of s. 349, Penal Code. JAI RAM v. KING-EMPEROR, **12 A.L. J. 154 = 23 Ind. Cas. 183 = 15 Cr. L.J. 231.** (1 A.L.J. 602, *D.*)

(2231)—S. 349—*See* Nos. 291 and 676, *supra.*

—— S. 350.

(2232)—S. 350—*See* CRIM. PRO. CODE, 1898, s. 522, 25 C. 434 = 2 C.W.N. 305.

(2233)—S. 350—*See* DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 27 C. 174 = 4 C.W.N. 307.

—— S. 351.

See ASSAULT.

See CRIMINAL FORCE.

(2234)—*S.* 351—*Assault on constable by one accused—Other accused surrounding constable in a threatening attitude—Effect.*—Where one of the accused hit a constable on the face, and the other accused surrounded the constable in a threatening attitude, this finding is not sufficient to convict the other accused of assault within the meaning of s. 351, I.P.C. MUNISAMI v. EMPEROR, **8 M.L.T. 118 = 7 Ind. Cas. 416 = 11 Cr. L J. 483.**

(2235)—S. 351—*See* No. 378, *supra.*

(2236)—Ss. 351 and 336—*See* ASSAULT, 4 Cr. L J. 201 = 3 L B.R. 194.

(2237)—Ss. 351, 352—*See* ATTEMPT, 45 P.R. 1882, Cr.

(2238)—Ss. 351, 497, 498—*See* MAGISTRATE, JURISDICTION OF—MISCELLANEOUS, A.W. N. 1899, 212.

—— S. 352.

See ASSAULT.

See CRIMINAL FORCE.

(2239)—*S.* 352—*Assault or use of criminal force.*—To constitute 'criminal force,' the offender must intentionally use force to any person without that person's consent, in order to the committing of any offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such force be will cause, injury, fear or annoyance to the person to whom the force is used. Unless all these elements are present, a person cannot be

Penal Code (Act XLV of 1860)—*continued.*

convicted under s. 352, I.P.C. SHWE TIN v. QUEEN-EMPRESS, **U B.R. 1892—1896, Vol. I**, 226.

(2240)—*S.* 352—Autrefois acquit—*Hurt.*—A person tried and acquitted on a charge of using criminal force under s. 352 (which includes the offence of battery) cannot be tried in respect of the same criminal matter on a charge of hurt. KAPTAN v. G.M. SMITH, **7 B.L.R. Ap. 25=16 W.R. Cr. 3.**

(2241)—S. 352—*See* ACT IX OF 1890, ss.102, 108, 109, 120, 31 P.W.R. 1910, Cr.=7 Ind.Cas. 355=11 Cr.L.J. 451=26 P.R. 1910, Cr.=200 P.L.R. 1910.

(2242)—S. 352—*See* Nos. 15, 35, 221, 365, 378; 413, 480, 589, 623, 1028, 2113, 2128, 2216, 2217 and 2237, *supra*, and Nos. 2272, 2969, *infra*.

(2243)—*Ss.* 352, 114, 34.— Abetment of grievous hurt with dangerous weapon—Abetment of assault—Knowledge of abettor—Offence committed in presence of abettor. THA MYA v. KING-EMPEROR, **4 L.B.R. 271=8 Cr. L.J. 472.**

(2244)—Ss. 352 and 323—*See* COMPLAINT—WITHDRAWAL AND REVIVAL OF COMPLAINTS, 5 M. 378.

(2245)—*Ss.* 352 *and* 353—*U.P. Land Revenue Act III of* 1901—*Local*—*Ss.* 147, 227 *and* 228—*Powers of attachment*—*Delegation of seizure*—*Good faith.*—The Collector or Assistant Collector of the first class, in charge of a sub-division, is bound to exercise the power of attachment conferred on him by ss. 147 and 227, cl. 16, himself, and they have no right to delegate that power generally to a Tahsildar. The passing of a general order, delegating the power to attach to the Tahsildar, in all cases, whether of a sub-division or a village, is not a compliance with Rule 4 of the Circulars of the Board of Revenue. Where a Collector delegated his authority to a Tahsildar, to exercise the powers of attachment, for default of revenue under s. 147 of the Land Revenue Act, on the ground that the land-holders were a troublesome people, and the Tahsildar, in exercise of that power, seized the property of some of the landholders in which he was resisted, *held* that the order was illegal, but that the convictions might be upheld under ss. 352 and 147 of the Indian Penal Code, since the persons seizing were acting in good faith under colour of their office. EMPEROR v. RADHE LAL, **4 A.L.J. 132=29 A. 272=A.W.N. 1907, 42=5 Cr. L.J. 110.**

(2246)—*Ss.* 352, 353—*Imprisonment of carts for Government officer's use*—*Obstruction.*—The rules or executive orders of Government printed at pp. 26 and 27 of Mr. Nairne's Revenue Hand-Book have not the force of law. *Held* that a peon, therefore, who was deputed by a Forest Settlement Officer "to impress fifteen carts for his use" was not acting in the execution of his duty as a public servant, when he seized the accused's cart, and the accused could not be convicted under s. 353, but only under s. 352. *In the petition of* RAKHMAJI, 9 B. 558. [*F.*, 21 B. 773; *R.*, 24 C. 320, 24 C. 324, 14 Cr. L.J. 141=18 Ind. Cas. 893=183 P.L.R. 1913, 14 Cr. L.J. 512=20 Ind. Cas. 992=325 P.L.R. 1913=38 P.W.R 1913, Cr.]

Penal Code (Act XLV of 1860)—*continued.*

(2247)—*Ss.* 352, 353—*Charge under s.* 353 *for assaulting a private individual, validity of.*—Where a person was charged under s. 353, for having assaulted a police officer in the discharge of his public duties, but it was found in the course of the trial, that he committed an assault on a private individual, a witness in the case, and not on the police officer, *held* that he could not be convicted of the latter offence. *In the matter of* AKBAR MOMIN, **6 C.W.N. 202.**

(2248)—*Ss.* 352 *and* 354—*Assault or use of criminal force.*—For an offence under the above section, there must be clear proof that force was used intentionally to a person without that person's consent. QUEEN-EMPRESS v. NGA HME, **U.B.R. 1892—1896, Vol. I, 228.**

—— S. 353.

See ASSAULT.

See CRIMINAL FORCE.

(2249)—*S.* 353—*Assault on public servant*—*Distraint*—*Defective warrant.*—Where a public servant was authorised by the Tahsildar to distrain some property, an assault committed on him to deter such distraint amounts to an offence under s. 353, notwithstanding the fact that the Tahsildar had omitted to make a proper indorsement on the warrant. EMPRESS v. DIWAN SINGH, **A.W.N. 1885, 244.**

(2250)—*S.* 353—*Vaccination not compulsory*—*Vaccinating child against will of parents*—*Prevention of, whether an offence*—*Using criminal force to vaccinator.*—A vaccinator is not discharging any duty under the law, when attempting to vaccinate a child against the will of its parents, in a place where vaccination is not compulsory; and so, any person preventing him from doing so, cannot be said to have committed any offence under s. 353. *In re* BOZAGELLAYA, **19 M.L.J. 238=4 Ind. Cas. 1166=11 Cr. L.J. 200.**

(2251)—*S.* 353—*Assaulting vaccinator and village talayari acting under his orders.*—The accused, being called upon by a vaccinator to produce his child for vaccination, refused to do so. The vaccinator then directed the village talayari to enter and bring out the child from the house of the accused. The accused then took hold of a spade and threatened to strike any one who should enter his house. *Held*, that the accused could not be convicted of assaulting a public servant under s. 353, Penal Code, for a vaccinator had no compulsory powers of vaccination. *In re* PETHAN KOVAN, **1 Weir 345.**

(2252)—*S.* 353—*Mysore Police, whether public servants.*—The Mysore Police do not answer the description of public servants within the meaning of the Penal Code. They have no authority to enter British territory and make an attempt to arrest persons suspected of crime.

Penal Code (Act XLV of 1860)—*continued.*

Persons using criminal force to them cannot be convicted under s. 353, Penal Code. *In re* VENKATIGADU, **1 Weir 342 = 1 Weir 837.**

(2253)—*S.* 353—*Power of police constable deputed to investigate non-cognisable case to make arrest—Resistance to the arrest—Crim. Pro. Code, s.* 155.—A police constable, who is deputed to investigate a non-cognisable case, has no power of arrest without a warrant. Therefore, a Village Munsif who remonstrated with the constable against such arrest and assaulted him, was held to be not guilty under s. 353, Penal Code, but to be guilty under s. 352. *In re* LATCHMANA GOUNDAN, **1 Weir 343.**

(2254, 2255)—*S.* 353—*Opium Act* (I *of* 1878), *s.* 4—*Right of private defence.*—An excise *chaprassi,* with the avowed object of seeing if *chandu* was not being manufactured, ascended the stairs of accused No. 1's house and looked into the place where the accused No. 1 and his wife were sitting. The accused No. 1, on perceiving him, came to the door, and shoved him down the stairs and followed him when accused No. 2 came in and hit him. It was found that the *chaprassi.* was not injured in any way. The accused were convicted under s. 353 of the Indian Penal Code. *Held,* that the conviction was illegal. The accused No. 1 was justified in turning out the *chaprassi,* for he was not authorized to enter the premises of the accused even with the object of seeing if *chandu* was being manufactured. Such power is given under s. 4 of Act I of 1878 only to officers of the Excise Department, superior in rank to a peon, who may be so authorized by the Local Government. CROWN v. ALLAH BAKHSH, **105 P.L R. 1904 = 1 Cr.L.J. 956.** [*R.,* 18 Ind. Cas. 893 = 14 Cr.L.J. 141.]

(2256)—*S.* 353—*Assaulting a police constable making a house search.*—Assaulting a police constable, who was deputed by his superior to make an enquiry, while searching the accused's house, is an offence punishable under s. 353, I.P.C. ALI v. EMPRESS, **24 P.R. 1880, Cr.**

(2257) —*S.* 353—*Obstructing a public servant in the discharge of his duty—Search of accused's house by Head Constable under orders from the Sub-Inspector—Assault by accused on the Head Constable—Crim. Pro. Code* (*Act* V *of* 1898), *s.* 165 (3).—Where, at the search of accused's house by a Head Constable under orders of the Sub-Inspector, the accused assaulted the constable and prevented his entering the house. *Held,* that accused was guilty of an offence under 353, I.P.C., as the Head Constable, in conducting the search, was obeying the order of his superior officer, and that s. 165 (3) of the Crim. Pro. Code, did not apply to the case. *In re* PARASURAMA ASARI, **8 Ind. Cas. 881 = 9 M L.T. 168 = 11 Cr.L.J. 727.**

(2258)—*S.* 353—*Public servant executing orders of his superiors—Orders right or wrong—Assault.*—An assault made on a public servant acting in obedience to the orders of his superiors is punishable under s. 353 of the Penal Code, the question whether those orders were right or wrong being immaterial in the case. A Tahsil *chaprasi* was sent by the Tahsildar to seize camels for transport. The camel-men assaulted the *chaprasi* while he was in the act of seizing their camels. *Held,* that the camel-men were guilty of an offence under s. 353, Penal Code. EMPEROR v. AMIR KHAN, **14 Cr. L.J. 141 = 18 Ind. Cas. 893 = 183 P.L.R. 1913 = 19 P.W.R. 1913. Cr.**

(2259)—*S.* 353—*Provisions of ss.* 165, 166, *Crim. Pro. Code, not complied with—Resistance to search.*—The Sub-Inspector of Kuraon sent an intimation to the Sub-Inspector of Manda that he intended to search a house within the jurisdiction of the latter officer, and secured the presence of a constable to help him in carrying on the search, but the constable had no authority from his Sub-Inspector either verbal or in writing. *Held,* that the provisions of ss. 165 and 166 were not complied with and a person resisting the search was not guilty of an offence under s. 353, Penal Code. MADHO SONAR v. EMPEROR, **13 A.L.J. 691 = 16 Cr. L.J. 589 = 30 Ind. Cas. 141.**

(2260)—S. 353—*See* BOM. ACT IV OF 1890, s. 47, 22 B. 746.

(2261)—S. 353—*See* MAD. ACT IV OF 1884, s. 41, 13 M. 131 = 1 Weir 345 = 1 Weir 726.

(2262)—S. 353—Cognizable offence—Warrant issued—Arrest without warrant—Obstruction in the discharge of duty—*See* CRIM. PRO. CODE, 1898, s. 54 (1), 11 A.L.J. 957.

(2263)—S. 353—*See* SEARCH, 17 M.L.J. 323 = 6 Cr. L.J. 105.

(2264)—S. 853—*See* Nos. 36, 202, 408, 411, 414, 415, 416, 417, 418, 419, 428, 517, 612, 662, 677, 678, 679, 680, 1018, 1028, 1080, 1527, 1528, 1541, 1542, 1552, 1553, 1554, 2114, 2115, 2182, 2223, 2245, 2246 and 2247, *supra.*

(2265)—*Ss.* 353 *and* 149—*Obstruction to execution of warrant—Time expired warrant—Civ. Pro. Code* (1882), *s.* 251.—Under s. 251, Code of Civil Procedure, 1882, it is the duty of the Court to specify in a warrant for execution of a decree, whether it be a decree for delivery of possession or otherwise, the day on or before which the warrant must be executed. A Commissioner has no authority, after the expiry of the date mentioned in the warrant, to go upon the land in possession of the party, who resists the execution, and to attempt to deliver possession of it to decree-holder. Resistance offered to such execution would not amount to an offence under ss. 149 and 353, Penal Code. ABINASH CHANDRA ADITYA v. ANANDA CHANDRA PAL, **31 C. 424 = 1 Cr. L J. 442.**

(2266)—Ss. 353, 183 — Altering conviction under s. 353 to one under s. 183—Power of appellate Court—*See* CRIM. PRO. CODE, 1898, s. 423, 1912 M.W.N. 1110 = 19 Ind.Cas. 335 = 14 Cr.L.J. 239.

Penal Code (Act XLV of 1860)—*continued.*

——S. 354.

See ASSAULT.

See CRIMINAL FORCE.

(2267)—*S* 354—*Offence under the section, what constitutes.*—In order to constitute an offence under the section, mere knowledge that the modesty of a woman is likely to be outraged is sufficient without any deliberate intention having such outrage alone for its object. The pulling of a woman by the arm, coupled with a request for sexual intercourse, would constitute an offence under s. 354. *In re* SENA SHETTY, **1 Weir 347.**

(2268)—*S.* 354—*Assault or use of criminal force to a woman with intent to outrage her modesty—Attempt at rape.*—Where a charge of rape is not supported by any other evidence than that of the woman raped, it would be more discreet in the Magistrate not to convict the accused. What happens on these occasions is that the man and woman have an intimacy, which the woman fears some one has detected, and she then accuses the man of acting against her will in order to throw a clock over her own lasciviousness. The man, being a Burman ignorant of the law, imagines that he has broken it by having anything to do with the woman and, therefore, submits to punishment. QUEEN-EMPRESS v. NGA CHIT KYU, **U B.R. 18971—901, Vol. I, 325.** (U.B.R. 1892—1896, VOL. I, 229, *R.*)

(2269)—*S.* 354—*Assault or use of criminal force to a woman with intent to outrage her modesty.*—A charge under the above section is one which is very easy to make and very difficult to rebut, and also one which experience shows women are sometimes apt to make from one motive or another without the slightest foundation. So, when such charges are made, it is necessary to see whether they are supported by independent evidence besides that of the woman herself or, are corroborated by her conduct and the surrounding circumstances and are consistent with ordinary probabilities. NGA AUNG DWE v. QUEEN-EMPRESS, **U.B. R. 1892—1896, Vol I, 229.**

(2270,—S. 354—*See* SUMMARY TRIAL, 1 L. B.R. 63.

(2271)—S. 354—*See* Nos. 15, 223, 313, 380 and 2248, *supra.*

(2272)—*Ss.* 354 *and* 352—*Assault, and assault on a woman with intent to outrage her modesty—Charge of minor offence—Conviction of graver offence.*—On a charge under s. 354, Penal Code, the accused might be convicted of an offence under s. 352, as between assault or use of criminal force, by itself, which is punishable under s. 352, and assault or use of criminal force to a woman with intent to outrage her modesty, punishable under s 354, the former is the minor offence. The latter is the offence punishable under s. 352, with additional circumstances. It is obviously unjust to convict an accused under s. 354, Penal Code, without calling upon him

Penal Code (Act XLV of 1860)—*continued.*

for his defence in respect of the particulars, which differentiate the offence from that stated in the charge against him under s. 352. CROWN v. CHIT YE, **1 L.B.R 287.** [*R.*, 13 Cr. **L.J.** 429 =14 Ind. Cas. 973=U.B.R. 1911, Vol. I, 98.]

(2273)—*Ss.* 354, 363, 376—*Kidnapping -Rape—Alleged mixing up of witnesses for defence with those for prosecution—Preliminary inquiry—Indecent assault - Outraging of modesty.*—Where a Magistrate is inquiring into the truth or otherwise of a complaint, he can examine all those who know about the matter, and it is immaterial at what stage they are called, as long as opportunity for cross-examination is allowed. An offence of indecent assault on a woman cannot be complete unless there is intention or knowledge that the woman's modesty will be outraged. To establish kidnapping, there must be evidence that the minor was taken out of the keeping of the lawful guardian without her consent. FATIMA v. CAPTAIN MCCORMICK, **14 Cr. L.J. 149=19 Ind. Cas. 149, F.B.=6 Bur. L.T. 21.**

(2274)—*Ss.* 354, 375, 511—*Indecent assault—Attempt to commit rape.*—An indecent assault upon a woman does not amount to an attempt to commit rape, unless the Court be satisfied that the conduct of the accused indicated a determination to gratify his passions at all events, and in spite of all resistance. EMPRESS v. SHANKAR, **5 B. 403.**

(2275)—*Ss.* 354, 376 *and* 511—*Major offence tried as minor.*—In this case, offences falling under ss. 376 and 511, I.P.C., were improperly tried under s. 354. District Magistrates were directed by the High Court to issue instructions to the Subordinate Magistrates in order to the prevention of such irregularities. QUEEN-EMPRESS v. NGA LU, **U.B.R. 1897—1901, Vol. I, 84.** (U.B.R. 1892—1896, Vol. I, 231, U.B.R. 1897—1901, Vol. I, 327, *R.*)

(2276) — *Ss.* 354, 376 *and* 511—*Use of criminal force to outrage a woman's modesty—Rape and attempt to commit.*—Magistrates ought not to give themselves jurisdiction by trying cases under s. 354, I.P.C., which properly come under ss. 376 and 511, I P.C., and if they do so, their procedure is clearly an evasion of the law, which purposely provides the special protection of a trial by the Court of Session or by the Court of an experienced Magistrate like the District Magistrate, when charges are brought against a man for a serious offence like attempting to commit rape, etc QUEEN-EMPRESS v. NYAN NYEIN, **U.B.R. 1892—1896, Vol. 1, 231.**

(2277)—*Ss.* 354, 376, 511—*Rape—Difference between attempts to rape and assault to outrage modesty—First report to the police.*—*Held* that, where, in the first report to the police, the girl merely stated that the accused seized her by the arm and asked her to have connection with him, the conviction of having committed rape cannot be maintained. But where evidence proves that he stripped her nearly naked and was lying upon her, when her cries attracted

Penal Code (Act XLV of 1860)—*continued.*

people to the spot, he commits an offence under ss. 376, 511, and not merely under s. 354, Penal Code. KHADAM v. CROWN, **42 P.W.R. 1910, Cr.=8 Ind. Cas. 257=11 Cr. L.J. 611.**

(2278)—*Ss.* 354, 376, 511—*Assault upon a girl.*—*Held*, that a statement to the following effect of a woman amounts to an offence under s. 354 and not under ss. 376, 511, Penal Code. "The accused took off my clothes, threw me on to the ground and then sat down beside me. He said nothing to me. He did not do anything more to me." NUNA v. CROWN, **16 P.W.R. 1912, Cr.=116 P.L.R. 1912=15 Ind. Cas. 309=13 Cr. L.J. 469.**

(2279)—Ss. 354, 376, 511—Trial under s. 354—Prosecution and defence witnesses examined and cross-examined—Accused committed to Sessions on charges under ss. 376 and 511—Legality—*See* CRIM. PRO. CODE, 1898, s. 347, Ch. XVIII, 15 Cr. L.J. 366=23 Ind. Cas. 734.

——**S. 355.**

(2280)—S. 355—*See* Nos. 371, 1019 and 2183, *supra.*

(2281)—Ss. 355, 363—Offence committed in Nepal—Certificate granted by political officer —*See* CRIM. PRO. CODE, 1898, ss. 188, 227, 8 A.L.J. 525=10 Ind. Cas. 959=12 Cr. L J. 359.

——**S. 356.**

See ASSAULT.

See CRIMINAL FORCE.

(2282)—*S.* 356—*Criminal force with theft.* —S. 356 of the Penal Code applies only where criminal force is used in an attempt to commit theft and not where theft has been committed. The latter offence amounts to robbery. REG. v. MUKUN, **Rat. Un. Cr. C. 3.**

——**S. 357.**

(2283)—S. 357—*See* No. 2224, *supra.*

——**S 361.**

See ABDUCTION.

See KIDNAPPING.

(2284)—*S.* 361— "*Lawful guardian*"—*Necessity for liberal explanation—Guardianship of illegitimate child.*—The object of s. 361 and the cognate sections is at least as much to protect children of tender age from being abducted or seduced for improper purposes, as for the protection of the rights of parents and guardians. The liberal explanation of the words "lawful guardian" in s 361 is to obviate the difficulty which would otherwise arise, if the prosecution were required to prove strictly in cases of abduction that the person from whose care or custody a minor had been abducted came strictly within the meaning of a guardian according to the legal acceptation of the word. The mother of an illegitimate child is its proper and natural guardian during the period of nature ; and any person, to whose faithful care the child is committed during such period by the mother at her death, and who accepts the trust and maintains it, is "lawfully entrusted" with the care and custody of the minor within the meaning of the explanation in s. 361. EMPRESS v. PEMANTLE, **8 C. 971**=7 Ind. Jur. 69. [*F.*, 60 P.R. 1905. Cr.=21 P.L. R. 1906=3 Cr. L.J. 296, 7 P.R 1911, Cr.=12 Cr. L.J. 211=10 Ind. Cas. 97=154 P.L.R. 1911=31 P.W.R. 1911 ; *R.*, Rat. Un. Cr. 820. 10 C M.L.J. 405.]

(2285)—*S.* 361 —*Kidnapping from lawful guardianship—Girl driven out of house—Not under keeping of.*—Where a minor girl was driven from her parental roof and was found some days hence, in the company of the accused, no offence of kidnapping is established. To constitute the offence, she must have been taken by the accused from the keeping of her father ; and she was not under her father's keeping as he had driven her away from the house. PANDYARAM SASTRULU v. EMPEROR, **1912 M.W.N. 538=13 Cr. L.J. 598=16 Ind. Cas. 166.**

(2286)—*S.* 361—*Kidnapping—Offence when complete—Circumstances of each case to be considered—Jurisdiction.*—Where the two accused took a minor girl from her husband in Bikhanir, detained her there for a month, then brought her to Karachi by train, where they detained her for three days, and were taking her from there to Sehwan when they were arrested at the Kotri Railway Station, and where the accused were tried and convicted by the Kotri Magistrate. *Held*, that the Kotri Magistrate had no jurisdiction to try them, because the offence of kidnapping the minor girl was completed at Bikhanir. When the act of kidnapping is complete is a question of fact to be determined according to the circumstances of each case. CROWN v. KOOCHRI, **7 S.L R. 17=20 Ind. Cas. 599=14 Cr. L.J. 439.** (27 C. 1046, 6 Bom. L.R. 785, 2 S.L.R. 104, *R*)

(2287)—*S.* 361—*Lawful guardian—Hindu girl, custody of—Paternal uncles, setting up adverse title, kidnapping by—Guardians and Wards Act* (VIII *of* 1890)—*Order by Deputy Magistrate making over minor to lawful guardian*, ultra vires.—Where an orphan minor Hindu girl, who was entrusted to the care of her maternal uncles and had obtained mutation in her favour of certain property which was claimed by her paternal uncles after having lived for 18 months with the maternal uncles, was forcibly carried away by her paternal uncles and was caused to be married : *Held*, that the paternal uncles were rightly convicted under s. 361 of the Penal Code. *Held*, also, that, though, under the Hindu Law, paternal uncles are preferential guardians to maternal uncles, where paternal uncles claim an interest in the minor's property adverse to her, they are not entitled to the custody of the minor's person under the provisions of Act VIII of 1890. *Held*, further, that the order of the Deputy Magistrate making over the girl to the maternal uncles on certain conditions and entrusting the girl to a trustee until those conditions were fulfilled, was *ultra vires*, and it was open to them to take such legal steps for the minor's

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custody as they thought fit. BAIJ NATH v. EMPEROR, **15 Cr. L.J. 640 = 25 Ind. Cas. 840.**

(2288)—S. 361—*See* CRIM. PRO. CODE, 1898, s. 491, 8 M.L.T. 300 = 8 Ind. Cas. 393 = 21 M.L.J. 195.

(2289)—*S.* 361, *Expl.—Kidnapping married minor girl—" Lawful guardianship"—" Father entrusted with care of custody of the minor"—Judge to adhere to words of section and not to substitute phraseology of his own—Misdirection —Failure to place evidence fairly before jury—Sentence suffered under conviction set aside.*—In case of kidnapping from lawful guardianship under s. 363, Indian Penal Code, the Judge dealt with the question of guardianship, in his charge to the jury, as follows :—" Now, the lawful guardian of a married woman is no doubt her husband. But there is the evidence before you that she came with the consent of the husband into the house of her father, if you believe such evidence. Therefore, the father of the girl was her *de facto* lawful guardian for the time that the girl was residing in her father's house." *Held*, that in matters of this kind a Judge should adhere to the words of the particular section of the Penal Code with which he has to deal, and, not substitute phraseology of his own, and what should have been left to the jury was whether or not the father had been lawfully entrusted with the care or custody of the girl, instead of the form adopted by the Judge. *Held*, further, that where the Judge failed to place before the jury a fair and proper statement of the evidence that the girl came with the consent of her husband to the house of her father, his charge in this respect amounted to a misdirection. The Court in estimating what should be the proper sentence ought to have regard to the detention already suffered by the accused under a conviction which had been previously set aside. EMPEROR v. NAKUL KABIRAJ, **11 Cr. L.J. 9 = 4 Ind. Cas. 543 = 13 C.W.N. 754.**

(2289-*a*)—S. 361—*See* NO. 2301, *infra.*

(2290)—*Ss.* 361, 362 *and* 366—*Removing a minor Hindu girl by paternal guardian from the guardianship of a maternal relation for purposes of marriage.*—The right to dispose of a minor Hindu girl in marriage does not necessarily belong to the person who has the right of guardianship. The paternal relative's right to select the husband and perform the marriage is not absolute either as against the minor or as against the guardian ; and he is not, by the Hindu law, justified, if he removes the minor by fraud or force for the purpose of getting the marriage performed, without any consideration for her own wishes and in spite of the objections of the guardian. *Held*, upon the facts, that, the acts of the accused amounted to kidnapping, as defined in s. 361, Penal Code, and, also, to an abduction as defined in s. 362 of the Penal Code ; and that the case did not come within the exception of s. 361, as there was no evidence of good faith, and was not taken out of s. 366, as the girl objected to the marriage with his own nominee. QUEEN-EMPRESS v. BAI MAHAKOR, **Rat. Un. Cr. C. 820.**

(2291)—*Ss.* 361, 362 *and* 366—*Minor girl leaving her guardian of her own free will—Not induced by force or deceit—Whether abduction or kidnapping.*—Where a girl under sixteen years of age left the guardianship of her husband and father-in-law of her own free will and not for the first time, and after that stayed with the accused quite voluntarily and without any force having been exercised or deception practised upon her, *held*, it did not amount to taking or enticing the girl out of the keeping of her lawful guardian, nor did it amount to compelling her by force or inducing her by deceitful means to go from any place, and it was not an offence within the meaning of ss. 361, 362 and 366, Penal Code. KING-EMPEROR v. RAM CHANDER, **12 A.L.J. 265 = 23 Ind. Cas. 473 = 15 Cr. L.J. 265.**

(2292)—*Ss.* 361, 363—*Minor wife of Hindu sold to another—Minor living with latter—Whether latter is a lawful guardian—Pursuading the woman to leave latter—Offence of kidnapping—Conviction—Legality.*— Where a Hindu sold his wife, a girl under 16 years of age, to S, a barber, with whom she was living, and where the girl, while living with S, was pursuaded by the accused to leave the house of S and go away with another man : *Held*, that S was the lawful 'guardian' of the girl within the meaning of s. 361, I.P.C. (8 C. 971, *R.*; 2 N. W.P. 286, *D.*) and that, the accused was rightly convicted under s. 363, I.P.C. MUSAMMAT FATTI v. CROWN, **7 P.R. 1911 Cr. = 154 P.L R. 1911 = 10 Ind. Cas. 97 = 12 Cr. L. J. 211 = 31 P.W.R. 1911.**

(2293)—*Ss.* 361, 363—*Hindu minor widow—Lawful guardian, who is.*—According to Hindu Law, the husband's relations, if any exist within the degree of a *sapinda*, are the guardians of a minor widow in preference to her father and his relations (16 C. 584, *F.*) So, where the brother of the deceased husband of a minor Hindu widow was her lawful guardian, but she lived with her husband's mother with the consent, implied if not express, of her husband's brother, *held*, the mother-in-law was the 'lawful guardian' of the girl for purposes of s. 361, I.P.C., and a person taking the girl away from her guardianship is punishable under s. 363, I.P.C. CROWN v. TEK CHAND, **27 P.R. 1915, Cr.** (60 P.R. 1905, Cr., *F.*)

(2294)—Ss. 361, 363 — *See* CHARGE TO JURY—MISDIRECTION, 13 C.W.N. 754.

(2295)—*Ss.* 361 *and* 366—*Kidnapping from lawful guardianship—" Taking " to be physical.*—The word " taking " in s. 361, Penal Code, is nothing but physical taking. Where a father sent his daughter to live in a house with certain of his relations and one of those relations married in that house the daughter without the consent of the father : *Held*, that no offence under s. 366, Penal Code, was committed by the relative, because there was

Penal Code (Act XLV of 1860)—*continued.*

no taking out of lawful guardianship, inasmuch as the daughter never left the house where she was residing with the consent of her father. JAGAN NATH v. EMPEROR, **15 Cr. L.J. 630 = 25 Ind. Cas. 638.**

(2296)—*Ss.* 361, 366—*Hindu married girl—Running away from natural guardian to seek refuge with another relation—Effect—Whether passed out of the keeping of lawful guardian—Stranger inducing her to accompany and to go through form of marriage with another—Intent to seduce her to illicit intercourse—Offence committed.*—Where a Hindu married girl between 11 and 13 years of age, who has no intention of starting life independently, leaves her home where she was living with her aunt for the purpose of seeking refuge with another relation, she cannot, until she has, by some overt act, passed into the keeping of some one else, be considered to have passed out of the keeping of her aunt within the meaning of the explanation to s. 361, I.P.C. (6 Bom.L.R. 785, 6 S.L.R. 71, *R.*) Where a person persuaded the girl, shortly after she left her home to accompany him and enticed her to abandon all intention of returning to her relations, with intent to sell her as wife to the man with whom she should go through the form of a marriage, *held* that he kidnapped her with intent to seduce her to illicit intercourse. MULLO *wd.* BHAWANI v. CROWN, **8 S.L.R. 182 = 16 Cr. L. J. 117 = 27 Ind. Cas. 181.**

—— **S. 362.**

See ABDUCTION.

See KIDNAPPING.

(2297)—*S.* 362—"*Deceitful means.*"—Where a man by a promise of marriage induces a woman to leave her house, but does not marry her or get her married, he is guilty of deceiving her within the meaning of s. 362, I.P.C. MAHBUB v. KING-EMPEROR, **4 A.L.J. 482 = A.W.N. 1907, 199 = 6 Cr. L.J. 9.**

(2298)—*S.* 362—*Deceitfully marrying with intent to prostitute.*—Where an accused person deceitfully married a girl with the intention of prostituting her, *held*, that the fact of his marriage dishonestly contracted with an illicit view did not prevent his act of inducing the girl to leave her home from amounting to abduction under s. 362, or entitle the accused to be acquitted of an offence under s. 366, Penal Code. BAHADUR v. EMPRESS, **7 P.R. 1881, Cr.**

(2299)—*S.* 362—*Woman abetting her own abduction.*—Where an adult woman, alleged to have been adducted for illict intercourse, was found to have falsely passed herself off as the prisoner's niece and a *Khatrani* by caste, whereas she was really a *Chamar*, *held*, she was neither compelled by force nor induced by deceitful means to leave her husband's home, which is necessary for a conviction under s. 362, Penal Code, and there being no offence under that section, there could be no abetment by her. NATHA SINGH v. EMPRESS, **11 P.R. 1883, Cr.**

Penal Code (Act XLV of 1860)—*continued.*

(2300)—S. 362—*See* Nos. 2290 and 2291, *supra.*

(2301)—*Ss.* 362 *and* 361—*Kidnapping from lawful guardianship, elements constituting the offence of—Kidnapping from lawful guardianship not a continuing offence—" Taking" and " retaining" distinguished from " taking and detaining and concealing"—Abetment of the offence of kidnapping from lawful guardianship.*—*Held*, that, in order to make out an offence under s. 363, Penal Code, as defined in s. 361, Penal Code, where the minor is a girl, the prosecution has to establish the following facts:—(1) a taking or enticing away of the girl, (2) that the girl's age was less than 16, (3) that she was in the keeping of a lawful guardian; and (4) that, that lawful guardian did not consent to her removal. *Held*, further, that an offence under this section is not a continuing offence. It is complete as soon as the minor is enticed or taken out of the keeping of his or her lawful guardian. The Penal Code makes a distinction between "taking" and "retaining" and between "taking" and "detaining" and "concealing." *Held, therefore*, that, where there was no reliable evidence to show that any of the co-accused acted in concert with the principal accused at any time *before* the girl was taken away by the latter from or left her father's house, there could be no conviction of the co-accused for abetment, even if any offence against the principal accused were proved. HABIB-UL-LAH v. KING-EMPEROR, **15 O.C. 351 = 14 Cr.L J. 93 = 18 Ind. Cas. 653.**

(2302)—*Ss.* 362, 366—*Abduction an offence only when committed with certain intent or knowledge.*—The offence of abduction is a continuing offence and a girl is being abducted not only when she is first taken from any place but also when she is removed from one place to another. Chapter XIV, Penal Code, makes abduction an offence only when it is committed with certain intent, and the mere taking of a girl to an immigration recruiter is not necessarily the taking of the girl to his house with a knowledge that it was likely that she would be forced or seduced to illicit intercourse. GANGA DEI v. KING-EMPEROR, **12 A.L.J. 91 = 15 Cr. L J. 154 = 22 Ind. Cas. 730.**

(2303)—*Ss.* 362, 366 *and* 4—*Abduction — Using deceitful means—Inducing a woman in a Native State to go to a place in British India—Trial in British Indian Courts—Want of jurisdiction—Repeating the same means in British India to go to another place—Jurisdiction of British Indian Courts to try.*—The accused, who was a subject and resident of Kathiawar, and within a Native State, induced a woman, by promising to take her to her brother, to go to Sind, and committed the offence of abduction under s. 366, I.P.C. *Held*, that his conviction and sentence in Sind on a charge of abduction from Kathiawar must be quashed. He could only be tried in Sind for acts amounting to abduction committed in Sind, that is, within British India, in view of the provisions of s. 4, Penal Code. But if it should be proved, that the accused repeated the same deceitful means,

Penal Code (Act XLV of 1860)—*continued.*

namely, the promises to take the woman to her brother were used in Karachi to induce her to go on to another place, then it would appear that he committed an independent offence of abduction in Sind for which he would be liable to be tried and punished in British India under ss. 363 and 366, I P.C. CROWN v. ANANDGIR *wd.* JIWANGIR, **7 S.L R. 128 = 15 Cr. L.J. 511 = 24 Ind. Cas. 599.**

(2304)—*Ss.* 362, 366, 396, 506—*Compelling girl to go away—Intent to have sexual intercourse—Offence—Punishment.*—A person, who compelled a girl by force to go away from the place where her mother-in-law was, evidently with the intent to have sexual intercourse with her, is liable to be punished for committing an offence under s. 366, I.P.C., read with s. 362, I.P.C., and not under ss. 396 and 506, I.P C. KING-EMPEROR v. KALI UDAYAN, **9 M.L.T. 406 = 10 Ind. Cas. 290 = 12 Cr.L.J. 241.**

(2305)—Ss. 362, 368, 498, 116—*See* ABDUCTION, 1 W.R.Cr. 45.

——**S. 363.**

See ABDUCTION.

See KIDNAPPING.

(2306)—*S.* 363—*Applicability of section to unmarried and married female minors.*—Where the proceedings of a Magistrate with enhanced powers under s. 36, Crim. Pro. Code, 1872, convicting certain persons of knidapping a minor married girl from lawful guardianship for the purposes of prostitution and sentencing them under ss. 363, 372, Penal Code, were forwarded to the Sessions Court for confirmation and where the latter Court directed retrial of the accused under s. 498, Penal Code, on the ground that ss. 363, 372, Penal Code, were inapplicable to married female minors, *held* that the direction for retrial was illegal, as ss. 363, 372, Penal Code, were applicable to married as well as to unmarried female minors, as the Sessions Court was incompetent under s. 36, Crim. Pro. Code, 1872, to order a re-trial and as there was no complaint under s. 498, Penal Code. CROWN v. KAMMU, **12 P.R. 1879, Cr.** [*R.*, 16 P.R. 1881, Cr.]

(2307)—*S.* 363—*Kidnapping from British India—Consent of person kidnapped obtained by false representations.*—Where the accused induced certain women (the complainants) to leave British India for Ceylon, on the misrepresentation that they were to be married to his sons, and after arriving at Ceylon made them work as coolies on the estate: *Held*, that the women must be held to have been taken without their consent, and that the accused was guilty of an offence under s. 363, Penal Code. *In re* PERIASAMI KANGANI, **6 Ind. Cas. 503 = 1910 M.W N. 262 = 8 M L.T. 91 = 11 Cr. L.J. 368**

(2308)—*S.* 363—*Minor wife running out of husband's house—Husband's guardianship—Whether put an end to.*—Where a minor wife had run out of her husband's house in consequence of a beating and of her own accord, she

Penal Code (Act XLV of 1860)—*continued.*

does not cease to be under his keeping, *i.e.*, under his protection and maintenance. CROWN v. MANSHOMAL DEUMAL, **6 S.L.R. 71 = 16 Ind. Cas. 768 = 13 Cr.L.J. 736.** (6 Bom. L.R. 785, *F.*)

(2309)—*S.* 363—*Kidnapping—Minor girl going to a house of her own accord—Accused meeting her there—Denial of her presence there by accused—No offence.*—A girl under 16 years of age, whom the accused had seduced on more than one previous occasion in her mother's house and even in the mother's presence, went of her own accord to the house of a mutual friend, whither the accused also went and had connection with her. She stayed there and when her brother came to look for her, she hid herself and the accused denied her being there, and she eventually returned to her mother's house.—*Held*, that, under these circumstances, there was no taking of the girl, that, even if there was a constructive taking, it was effected with the mother's connivance, that it was therefore not done without her consent and that no charge was sustainable under s. 363, I.P.C. ABDUL RAHMAN v. K.E., **U.B.R. 1912, 2nd Qr. 136 = 14 Cr. L.J. 109 = 18 Ind. Cas. 669.** (U.B.R. 1907—1909, Vol I, Penal Code, 27, *D.*; U.B.R. 1907—1909, Vol. I, Penal Code, 1, Foster and Finlayson, 50, *R.*)

(2310)—*S.* 363—*Kidnapping—Lawful guardian—Complaint by* de facto *guardian.*—A *de facto* guardian of a minor, whose guardianship is not against the wishes of the *de jure* guardian, is a lawful guardian within the meaning of s. 363, Penal Code. Therefore, a charge of kidnapping is sustainable on the complaint of the father of a minor, alleged to have been kidnapped, the father acting as the minor's *de facto* guardian and such guardianship not having been proved to be against the wishes of the husband of the minor. VILAGUPUDI APPAYYA v. EMPEROR, **12 Cr. L.J. 239 = 10 Ind. Cas. 281.**

(2311)—*S.* 363—*Minority of Mahomedan girl when determines, under Mahomedan Law and under this section—S.* 3, *Act* IX *of* 1875 (*Majority*)—*Question atwhat stage offence was committed is one of fact—Revision.*—According to Mahomedan Law, the occurrence of puberty determines minority and the mother's right to custody. But for the purposes of s. 363, I.P.C., regard must be had only to the definition of minority in s. 3, Act IX of 1875. (5 B.L R. 557, *D.*) The question at what stage the offence was completed is one of fact and cannot be raised in revision for the first time. *In re* MUTHU IBRAHI, **37 M. 567.**

(2312)—*S.* 363—*Kidnapping—Indian Divorce Act—Decree* nisi *by District Judge for dissolution of marriage—Direction to deliver up child to husband—Removal of child from husband's custody before confirmation of decree by High Court, if offence.*—Where, on an application by the husband for divorce, the District Judge made a decree *nisi* for dissolution of marriage and also directed the petitioner (the wife) to

Penal Code (Act XLV of 1860)—*continued.*

deliver up to the husband the son born of the marriage, and subsequent to the decree the husband without the assistance of the Court obtained the custody of the son, but before the confirmation of the decree by the High Court under s. 17, Divorce Act, the petitioner removed the boy from the father's custody and was charged under s. 363, I.P.C. *Held*, that the order for custody which was made, not being intended to be an *ad interim* order which it is open to a District Judge to make at any time while a case is pending, was an order *nisi* without legal effect until confirmed by the High Court, and the petitioner committed no offence under s. 363, I.P.C, in removing the boy from the father's custody. MRS. ANNE ELIZABETH BARTHWICK v. HERBERT CHARLES BARTHWICK. **18 C.W.N. 484=15 Cr. L.J. 72=22 Ind. Cas. 424=41 C. 714.**

(2313)—*S.* 363—*Father when not liable for kidnapping his own child—Kumhar not bound by strict Hindu Law—Technical offence—Nominal sentence*—M betrothed his minor daughter to a minor son of B. Later on, B objected to marriage when arranged and in consequence M married the girl to C a minor. The girl returned almost immediately to the house of her father. On this B was convicted under s. 363, Penal Code, and M under s. 363/109, I.P.C. *Held*, that strict Hindu Law on the subject could not be applied to the parties and that neither B, nor M, committed any offence. Such a matter concerns the Civil rather than a Criminal Court. In such a case even if it be supposed that a technical offence has been committed, only a nominal sentence is appropriate. BALLIA v. CROWN, **24 P.W.R. 1914, Cr.=161 P.L.R. 1914=15 Cr. L. J. 639=25 Ind. Cas. 839.**

(2314)—S. 363—*See* ABETMENT, 13 P.R. 1893, Cr.

(2315)—S. 363—*See* Nos. 471, 481, 482, 1952, 2221, 2273, 2281, 2292, 2293 and 2294, *supra.*

(2316)—*Ss.* 363, 366—*Jurisdiction assumed by Magistrate by trying for a minor offence when major offence has been committed.*—Magistrates should not give themselves jurisdiction by trying under s. 363, cases which really fall under s. 366, I.P.C. The form of a kidnapping which is punishable by s. 366 is a seriously aggravated form, which only Sessions Courts and District Magistrates in the exercise of their special powers, have jurisdiction to try. KING-EMPEROR v. NGA PO SAU, **U.B.R. 1897—1901, Vol. I, 328.** [*F.*, 11 Cr. L.J. 185=4 Ind. Cas. 1089=U.B.R. 1907—1909, Penal Code, 29.]

(2317)—*Ss.* 363, 366—*Sexual intercourse with minor girl—Buddhist law—Marriage.*—Under the Buddhist law, a man cannot contract a valid marriage with a minor without her parents' consent, and, therefore, sexual intercourse without such consent is "illicit intercourse" within the meaning of s. 366, I.P.C. KING-EMPEROR v. NGA PO SAW, **U.B.R. 1897—1901, Vol. I, 328.**

Penal Code (Act XLV of 1860)—*continued.*

(2318)—*Ss.* 363 *and* 366.—Magistrates in Upper Burma are bound to follow the rulings of their own High Court. When a man kidnaps a minor girl from lawful guardianship and thereafter co habits with her without marriage, he has, subsequent to the kidnapping, seduced her to illicit intercourse, and he has kidnapped her in order that she may be seduced to illicit intercourse, and he has committed an offence under s. 366, Penal Code, quite independently of any intention or consent on the part of the minor girl, and quite independently of any question as to whether she had surrendered her chastity before the act of kidnapping. *Held* that, as regards s. 366, Penal Code, there was no difference between the Buddhists and races subject to another personal law. KING-EMPEROR v. NGA NI TA, **1 U.B.R. 1902-1903, Penal Code, 15.** (U.B. R. 1897—1901, 328, L.B.R. 1872-1892, 202, *R.*; L.B.R. 1900—1902, 297, *Diss.*)

(2319)—Ss. 363, 366, 498—*See* CHARGE—ADDITION OF CHARGE, 9 Bom. L.R. 148=5 Cr. L.J. 164=31 B. 218.

(2320)—Ss. 363, 417, 420—*See* COMMITMENT TO SESSIONS COURT, 2 A. 570.

(2321)—*Ss.* 363, 498—*Crim. Pro. Code (Act V of 1898), s. 403—Acquittal under s. 498, Penal Code—Opposite finding on same evidence under s. 363, Penal Code, illegal—Penal Code, s. 363—Kidnapping—Continuing offence—Abetment—Mother can be guilty of kidnapping her own child.*—The petitioner was alleged to have taken or enticed away a married woman from her father-in-law's house together with her two minor sons (one a child at the breast and the other aged two years). He was tried for an offence under s. 498, Penal Code, but was acquitted on appeal by the District Magistrate, who held that there was no evidence to show that he was present when the woman ran away with her infants. Then he was tried under s. 363, Penal Code, with having kidnapped the infants. The Magistrate who tried this latter case and the Sessions Judge on appeal held on the very same evidence, overruling the finding of the District Magistrate in s. 498 case, that the petitioner did take away the woman with her minor sons: *Held*, (1) that the petitioner, having been acquitted of the offence under s. 498, Penal Code, could not in this or in any other case, so long as the order of acquittal remained in force, be deemed to have committed that offence, and that the Sessions Judge was bound to take it as proved that the petitioner did not so take or entice away the woman; (2) that a directly opposite finding by the Magistrate and the Sessions Judge in the latter case, upon exactly the same evidence on which the petitioner had been acquitted in the previous case, was perverse and contrary to every recognized principle of law, neither the Magistrate nor the Sessions Judge having any power to arrogate to themselves the right to adjudicate upon the finding of the District Magistrate in the previous case; (3) *Obiter*: that even a

Penal Code (Act XLV of 1860)—*continued.*

mother can be guilty of an offence under s. 363, Penal Code, in respect of her own child; (4) *Obiter*: that the only person, who can possibly be said to have kidnapped the infant aged two years, was the mother; (5) that the petitioner's acquittal in the previous case would not necessarily prove his innocence in the matter of kidnapping the infant aged two years; (6) that the mere fact that, after the woman's departure from her father-in-law's house, the petitioner had something to do with her, and that he had knowledge of her whereabouts did not render the petitioner an abettor of the offence under s. 363, Penal Code, because kidnapping is not a continuing offence, and there could be no abetment of it after the minor (aged two years) had been taken completely out of the keeping of the guardian. GANESH DAS v. EMPEROR, **9 Ind. Cas. 511=56 P.L.R. 1911=12 Cr. L.J. 94.**

——S. 364.

(2322)—S. 364—*See* No. 224, *supra.*

——S. 365.

See ABDUCTION.

See KIDNAPPING.

(2323)—S. 365—*See* CRIM. PRO. CODE, 1898, ss. 235 and 403, A.W.N. 1906, 32=3 A.L.J. 2=3 Cr. L.J. 93.

(2324)—S. 365—*See* No. 224, *supra.*

(2325)—*Ss.* 365, 366—*Evidence, admissibility of—Previous incident, complaint as to—Evidence Act, s.* 14.—An accused cannot be convicted of the offence charged against him, simply because he has been guilty of another offence. When such evidence is offered to prove his commission of the offence on trial, evidence of his participation, either in act or design, in commission or preparation, in an independent crime cannot be received; in other words, proof cannot be offered of such independent offence to show that, by reason of such independent offence, the accused is more likely to have committed the one for which he is on trial; evidence of such collateral offence cannot be received as substantive evidence of the offence on trial. Evidence, however, may be given to prove the elements mentioned in s. 14, Evidence Act (intention and like matters). Evidence of previous incident is inadmissible in cases coming under s. 366, Penal Code. But when the charge is under s. 365 of the said Code, the fact that a complaint was preferred against the accused in respect of the first incident will be relevant as furnishing evidence of a motive for confining the person. To support a conviction under s. 365, Penal Code, it must be clearly proved that, at the time of the abduction, it was the intention of the accused to secretly and wrongfully confine the person. BAHARUDDIN MANDAL v. EMPEROR, **18 C.L.J. 578=22 Ind. Cas. 187=15 Cr. L J. 43.**

(2326)—Ss. 365, 366 and 376—*See* CRIM. PRO. CODE, s. 238, 22 C. 1006.

(2327)—*Ss.* 365, 498—*Charge of offence under s.* 365—*Conviction under s.* 498—*Validity.*—Persons charged with an offence under s. 365, I.P.C., cannot properly be convicted of an offence under s. 498, I.P.C., without a separate charge being framed and their being called upon to plead to it. KING-EMPEROR v. LAJJA, **A.W.N. 1901, 120.**

——S. 366.

See ABDUCTION.

See KIDNAPPING.

(2328)—*S.* 366—*Essentials of a charge under.*—A charge under s. 366, Penal Code, of abducting a woman with the intention of forcing or seducing her to illicit intercourse, can be sustained only by evidence to show the intent or to raise the presumption that illicit intercourse was likely to result from the abduction. MEER ALUM KHAN v. CROWN, **23 P.R. 1868, Cr.**

(2329) — *S.* 366 — "*Illicit intercourse,*" *meaning of the expression.*—The words "illicit intercourse" in s. 366 do not necessarily mean the sexual intercourse of a man with a married woman. Those words mean the sexual intercourse between a man and a woman, who are not husband and wife. MAHBUB v. KING-EMPEROR, **4 A.L.J. 482=A.W.N. 1907, 199=6 Cr. L.J. 9.**

(2330)—*S.* 366— *Kidnapping two girls—Separate offences—Sentence.*—A person kidnapping two girls should be awarded separate sentences, the offences of kidnapping being separate. RAM ADHIN v. QUEEN-EMPRESS, **1 O.C. 4.**

(2331)—*S.* 366—*Lawful guardianship—Effect of mother's consent to minor's removal from father's guardianship.*—A woman, marrying her minor daughter to another in the absence of her husband, kidnaps the minor from the lawful guardianship of her husband within the meaning of ss. 361, 366, Penal Code, her consent being of no value and the word woman in s. 366, Penal Code, includes a minor female. DHERA SINGH v. KAHNO, **8 P.R. 1878, Cr.** [*R.*, 12 Cr. L.J. 94=9 Ind. Cas. 511=56 P.L. R. 1911, Cr.]

(2332)—*S.* 366—*Kidnapping from lawful guardianship — Illicit intercourse—Buddhist law—Marriage of minor.*—As according to the Buddhist law, a person cannot contract a valid marriage with a minor girl without her guardian's consent, sexual intercourse without such consent is "illicit intercourse" within the meaning of s. 366, I.P.C., even though a marriage was intended. QUEEN-EMPRESS v. NGA NE U, **L.B.R. 1872—1892, 202.**

(2333)—*S.* 366—*Kidnapping—Taking out of custody.*—Where two girls ran away from their houses and remained for nearly one or two days in the house of a woman who belonged to the caste of *Naiks* in Kumaun, and no report was made to the *Padhan, held* that the offence under s. 366 of the Penal Code was complete. JASAULI v. KING-EMPEROR, **9 A.L.J. 307=34 A. 340=14 Ind. Cas. 764=13 Cr. L.J. 300.** (4 W.R. Cr. 6, *Diss.*)

Penal Code (Act XLV of 1860)—*continued.*

(2334)—*S. 366—Kidnapping girl from lawful guardianship—Child temporarily in custody of maternal uncle—Mother resuming custody—Taking with mother's consent, whether amounts to offence.*—Where the accused was charged with kidnapping a girl from the lawful guardianship of her maternal uncle and it appeared that the mother of the girl was present with the accused when he was leading the girl to a railway station, and consented to the girl's being so taken: *Held*, (1) that the maternal uncle had ceased to have the girl under his guardianship and the mother had again taken custody of the girl as her guardian; (2) that taking with her consent did not amount to an offence under s. 366 of the Penal Code. *In re* NATESA PADAYACHI, **16 Cr. L.J. 237 = 27 Ind. Cas. 909.**

(2335)—S. 366—*See* ABETMENT, 26 A. 197 = A.W.N. 1903, 233.

(2336)—S. 366—*See* COMPENSATION—GENERAL, L.B.R. 1893—1900, 443.

(2337)—S. 366—*See* JURISDICTION OF CRIMINAL COURTS—GENERAL, A.W.N. 1887, 139.

(2338)—S. 366—*See* MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION, L B. R. 1893—1900, 212.

(2339)—S. 366—*See* Nos. 353, 483, 595, 681, 2290, 2291, 2295, 2296, 2302, 2303, 2304, 2316 to 2319, 2325 and 2326, *supra*.

(2340)—Ss. 366, 368—*See* JURISDICTION OF CRIMINAL COURTS—GENERAL, 18 A. 350 = A. W.N. 1896, 96.

(2341)—*Ss.* 366 *and* 372—*Letting female minor for single act of sexual intercourse—Kidnapping from lawful guardianship.*—The words "sells, lets to hire," etc., in s. 372 import a complete making over of the possession of the minor to the person buying or hiring, and so, a person, who lets the minor to hire for a single act of sexual intercourse, cannot be convicted under s. 372. Where a girl meets a person in the street and goes away voluntarily with him, the girl is just as much in the possession of her lawful guardian when she is walking in the street, unless she has given up the intention of returning home, as if she had actually been in her guardian's house when taken off. NGA SHWE *alias* MI SHWE THWE v. KING-EMPEROR, **U.B.R. 1907, Penal Code, 1 = 6 Cr. L. J. 30.** (5 M.H.C. 473, 4 W.R. Cr. 6, 7 W.R. Cr. 93, 24 M. 284, 12 Cox, Cr. C. 29, *R.*) [*R.*, 18 Ind. Cas. 669 = U.B.R. 1912, 136, 11 Cr. L.J. 81 = 4 Ind. Cas. 901 = U.B.R. 1909, III, P.C. p. 27, U.B.R. 1907, Penal Code 11, 7 Cr. L.J. 210.]

(2342)—*Ss.* 366, 372, *minor girl voluntarily leaving her guardian—Kidnapping—Selling minor for purpose of prostitution*—A *Chamar* girl under sixteen years of age left the custody of her husband and his parents and voluntarily stayed with the accused Ewaz Ali for a month. After that she was made over to certain other persons who performed certain operations on her so as to make her appear as much as possible a *Jat* woman. She then changed hands several times and was finally made over to a person in order to be married to his brother. *Held*, that Ewaz was guilty neither of the offence of taking or enticing a minor out of the keeping of her lawful guardian nor of the offence of selling a minor with the intent that such minor should be employed or used for the purpose of prostitution. EWAZ ALI v. EMPEROR, **13 A.L.J. 848.** (12 A.L.J. 265, 2 A. 694, *F.*)

(2343)—*Ss.* 366, 372, 419 *and* 420—*Kidnapping—Abetment—Selling girl for prostitution.—Cheating.*—A Brahmin girl aged about sixteen years was abducted from the custody of her mother-in-law by one B, who, she alleged, professed to be taking her to her husband in Kohat. B took her to a village to one R, who brought her to where his sister lived and sold her to a woman K. Afterwards K brought the girl to her own husband D, who sold her to a person representing her as a Kirari girl. K was convicted of offences under ss. 366, 372 and 419, 109, Indian Penal Code, and her husband D of offences under ss. 372 and 419, Indian Penal Code. The Magistrate found that the girl was under sixteen years of age. On appeal to the Chief Court, *held*, that K was not guilty of any offence. The girl's statement that she was carried about from place to place on the promise of being taken to her husband must be received with great reserve, as she would naturally try to make out her own conduct seem as virtuous as possible; there was probably no intention of marrying her against her will or forcing or seducing her to illicit intercourse. Kidnapping not being a continuing offence, K could not be held guilty of abetting B. *Held*, also, that, as it was not proved satisfactorily that D knew that the girl was a married woman, his conviction under s. 372, Indian Penal Code, was illegal. *Held*, further, that D was not guilty of an offence under s. 419, Indian Penal Code, for, there was no cheating by personation, as to describe a Brahmin woman as a Kirari is not personation. But D's offence properly fell under s. 420, Indian Penal Code, for, he had obtained money by misrepresenting the caste of the girl. DURGA DAS v. EMPEROR, **114 P.L R. 1904 = 13 P.R. 1904, Cr. = 1 Cr.L.J. 949.**

(2344)—Ss. 366, 376—*See* CRIM. PRO. CODE, 1898, ss. 236, 237, 238, 8 Bom. L.R 120 = 3 Cr. L.J. 240.

(2345)—Ss. 366, 379, 498—Addition of charge—Practice—Complaint by husband—Deposition by husband not a complaint—*See* CRIM. PRO. CODE, 1898, ss. 199, 4 (*h*), 14 Bom. L.R. 141 = 1 Bom. Cr. C. 82 = 14 Ind. Cas. 671 = 13 Cr. L.J. 287.

(2346)—Ss. 366 and 498—*See* CRIM. PRO. CODE, 1898, s. 238, 20 C. 483.

——**S. 368**.

See ABDUCTION.

See KIDNAPPING.

Penal Code (Act XLV of 1860)—*continued.*

(2347)—*S.* 368—*Concealment of kidnapped person—Kidnapping—Concealment of kidnapper.*—S. 368 of the Penal Code evidently refers to some other party who assists in concealing any person who had been kidnapped, and does not refer to the kidnappers. QUEEN v. SHEIKH OOZEER, **6 W.R Cr. 17.**

(2348)—*S.* 368—*Wrongful concealment of abducted or kidnapped person.*—The withdrawal of a person from the actual observation of others by removal or otherwise is necessary to constitute the offence of wrongfully concealing a person kidnapped or abducted, the mere giving of false information about such person not being sufficient. PHULA SINGH v. CROWN, **10 P.R. 1874, Cr.**

(2349)—S. 368—*See* Nos. 2305 and 2340, *supra.*

(2350)—Ss. 368, 494, 109, 420—*See* ABETMENT. 7 P.R. 1894, Cr.

—— S. 369.

See ABDUCTION.

See KIDNAPPING.

(2351 to 2361)—S. 369—*See* SENTENCE—GENERAL, 7 M.H.C. 375.

(2362)—S. 369—*See* Nos. 1953 and 1954, *supra.*

(2363)—Ss. 369, 382—*See* SENTENCE—CUMULATIVE AND SEPARATE SENTENCES, 8 W.R. Cr. 84.

—— S. 370.

See SLAVERY.

(2364)—*S.* 370—*Slavery.*—Where a person transferred to another his rights over a girl of thirteen years for Rs. 25, whom he described as her *vellati, held,* that both were guilty of an offence under s. 370, as the use of the word *vellati* as understood by Mapillahs of North Malabar clearly showed the girl was sold as a slave. AMINA v. QUEEN EMPRESS, **7 M. 277 = 1 Weir 354.**

(2365)—S. 370—*See* JURISDICTION OF CRIMINAL COURTS—GENERAL, L B.R 1893—1900, 81.

(2366)—*Ss.* 370, 374—*Unlawful compulsory labour—Slavery.*—A person and his wife being unable to pay Rs. 10 on account of *thathameda*, the accused, the *thugyi*, paid that amount on their behalf, and, in consideration thereof, induced the wife to sign an instrument agreeing that her daughter should be pawned for the amount with interest, and that, in default of payment within a month, she should become the property of the accused. The girl was accordingly made over to the accused, and, when she had temporarily left his house, he dragged her back and forced her to work. The accused was convicted under s. 374. The Chief Court expressed a doubt as to whether the conviction should not have been under s. 370. QUEEN-EMPRESS v. NGA MYAING, **U.B R. 1897-1901, Vol. I, 337.**

(2367)—*Ss.* 370 *and* 417—*Sale of girl on misrepresentation as to her caste.*—The second accused, a *Chamarin,* sold her girl to the first accused who, representing the girl as a *Thakurasn*, gave her to a *thakur* for being married to the *Thakur's* son for a consideration of ten rupees. On the conviction of both the accused under s. 370, Penal Code, the conviction of the second accused was upheld, as she had sold her daughter unreservedly; *held,* with regard to the first accused, that though he was guilty of cheating under s. 417, I.P.C., the conviction under s. 370, I P.C, was wrong, as the Asura form of marriage was acknowledged among the Hindus. **Book Cir. 25 of 1865 (Oudh).**

—— S. 372.

See PROSTITUTION.

(2368)—*S.* 372—*Dedication of minor girl to temple—Offence—Guardian.*—The dedication of a minor girl to a temple as *Bhavin* with the knowledge that she is destined thereby to a life of prostitution, is an offence under s. 372 of the Penal Code. It is not necessary under the section that the accused should have given up present possession of the child. REG. v. JAILI BHAVIN, **6 B.H.C. Cr. 60.** [*F.*, 1 M. 164 = 1 Weir 1905, Edn. 358, 16 B. 737; *R.*, 24 B. 287 = 1 Bom. L R. 678]

(2369)—*S.* 372—*Ingredients of offence under.*—The ingredients of an offence under s. 372 of the Penal Code are (1) that the minor sold or otherwise disposed of must be under the age of sixteen, (2) there must be a sale or other disposal, (3) it must be with the guilty intent described in the section. Where a man without ceremony of any sort purchases a girl under sixteen from persons who are not her rightful custodians, and cohabits with her without prior marriage ceremonies, *held* that these facts are sufficient evidence of guilty intent." QUEEN-EMPRESS v. BHAGIRATT, **A.W.N. 1900, 133.** (2 A. 694, *Dist.*)

(2370)—*S.* 372—*Dedication of minor girl as dancing girl for temple—Prostitution.*—Where a dancing woman dedicated her minor daughter to the services of a temple as a dancing girl, and there was evidence that dancing girls, as a rule, lead immoral lives, *held* that the dedication amounted to a disposal of the minor girl knowing it to be likely that she would be employed for the purposes of prostitution within the meaning of s. 372, I.P.C. QUEEN-EMPRESS v. TIPPA, **16 B. 737.** [*R.*, Rat. Un. Cr. C. 644, 24 B. 287 = 1 Bom. L.R. 678.]

(2371)—*S.* 372—*Dedication of minor as 'Basini.'*—A girl, who is dedicated as a *Basini* by the performance of a marriage ceremony between her and an idol, becomes incapable of contracting a marriage which would be recognised as valid by the laws and customs of her caste; she is at liberty and is expected to have promiscuous intercourse with men generally, and she and any children born to her inherit in her father's family only. The dedication thus made effects a change in the circumstances of the minor and amounts to a "disposal" within the meaning of s. 372, Penal Code. QUEEN-EMPRESS v. BASAVA, **15 M. 75 = 1 Weir 372.** [*R.*, 24 B. 287, 1 Bom. L.R. 678.]

Penal Code (Act XLV of 1860)—*continued.*

(2372)—*S.* 372—*Letting girl to hire for prostitution.*—The words "let to hire" in s. 372, I.P.C., refer to a making over of a minor either in perpetuity or for a term and not for the commission of an immoral act of sexual intercourse. These words are the counterpart of the word "hire" in s. 373, I.P.C. QUEEN-EMPRESS v. AHMED KHAN, **Rat. Un. Cr. C. 962 = Cr. Rg. 16 of 1898.** (21 C. 97, *F.*)

(2373)—*S.* 372—*Meaning of the term "dispose of."*—The term "dispose of" has many meanings. It denotes (*inter alia*) "to bestow for an object or purpose," "to make a change in the circumstances;" it does not necessarily imply that there has been a transfer of possession, nor do the terms "sell or hire" necessarily connote a present or immediate transfer of possession; where a transfer of possession is contemplated, the offence is complete on proof of the sale or hiring without any proof of transfer of possession. In the dedication of a minor to the service of a temple, she is according to the belief of the sect, bestowed in marriage on the idol, and such a change is effected in her circumstances that she cannot thereafter contract a marriage which would be recognised as valid by the private law of the sect. This change in the circumstances of the minor is a "disposal" within the terms of s 372. The question whether or not the disposal of the minor was effected with the intention or knowledge which must be combined with the disposal to constitute the offence, is a question of fact which must be determined according to the circumstances of each case. In this case, the Court holding that the dedication of the children as *devadasis* to a temple and the observance of a ceremony of marriage to the idol, *viz.*, being invested with the *bottu*, constituted an offence under s. 372, and therefore that the order of discharge should be set aside, did not think it necessary to order a fresh trial of the case, if the several persons implicated would give an undertaking to the satisfaction of the Magistrate, that the children should not be devoted to a life of prostitution. HIGH COURT PROCEEDINGS, 11TH APRIL 1881, NO. 746, **9 Weir 359, F.B.** [*F.*, 1 Weir 364; *R.*, 1 Weir 373, 15 M. 75 = 1 Weir 372.]

(2374)—*S.* 372—*Transfer of possession or control over minor's person, whether necessary, to constitute an offence under the section.*—In order to constitute an offence under s. 372, it is not necessary that there should have been a disposal tantamount to a transfer of possession or control over the minor's person. In a case where a person made an application to the authorities of a temple for enrolment of his daughter under sixteen as a dancing girl and got her made into a *dasi* by the tying of the *bottu*, *held*, that the person was guilty of an offence under s. 372, Penal Code, inasmuch as *dasis* universally were getting their living by prostitution and that he knew that his daughter was likely to become a prostitute before she attained the age of sixteen. REG v. ARUNACHELLAM, **1 M. 164 = 1 Weir 358.** [*R.*, 4 B. 545, 1 Weir 359 = 19 M. 127, 24 B. 287, 1 Bom. L R. 678.]

(2375)—*S.* 372—*Illegal disposal of minor girl—Application to the manager of a temple by dancing girl to appoint her alleged daughter to* kothu miras.—A dancing-girl attached to a temple, falsely styling herself the mother of a minor girl, petitioned to the Devastanam manager to appoint the girl to her *kothu miras*. The manager indorsed on the petition that the request might be complied with, if there was no objection. The Tahsildar of the temple replied to the manager that he had ordered that the minor girl should be entered in the pay abstract like other dancing-girls. But the ceremony of tying the *bottu* did not take place. *Held* that the facts constituted *prima facie* such a disposal of the minor with a knowledge that it was likely that she would be employed or used for immoral purposes, as to justify the Magistrate in putting the manager, the dancing-woman and the parents of the girl upon their trial. *Held* also, that there may be such a disposal of a minor as was contemplated by s. 372 even though *bottu* was not tied. SRINIVASA v. ANNASAMI, **15 M. 41 = 1 Weir 365.** [*Appl.*, 16 B. 737; *R.*, 24 B. 287 = 1 Bom. L.R. 678, 14 Cr. L.J. 33 = 18 Ind. Cas. 257 = 24 M.L.J. 211 = 13 M.L T. 131 = 1913 M.W.N. 207.]

(2376)—*S.* 372—*Disposal of minor for purposes of prostitution—Manager appointing an adopted minor daughter of a dancing woman to latter's post—Duty of Magistrate to frame a charge under s. 372, Penal Code—Jurisdiction of High Court.*—A dancing-woman of a temple holding a *kothu miras* applied to have a girl, under sixteen years, appointed in her place and she was so appointed and attended to the temple work. Her name was also entered in the books of the temple. It was also found that *dasis* of the temple lived partly by prostitution and partly by temple wages. The Magistrate refused to frame a charge against the manager and the adoptive mother of the minor under s. 372. *Held* (by Collins, C.J., Parker, J., *dissenting*) that there was a sufficient disposal of the girl within the meaning of s. 372 of the Penal Code and the Magistrate should have framed a charge. *Held*, also, by Collins, C J., and Parker, J., that, as there was no evidence that the girl was debauched during the time she was at the temple and as the prosecution was not conducted by the Government, but by a former servant of the temple, who was prosecuting the accused, out of spite against the first accused and as the first accused had discharged the girl from her duties in the temple, the High Court was not bound to order the case to be retried. SRINIVASA v. ANNASAMI, **15 M. 323 = 1 Weir 366.** [*R.*, 14 Cr. L J. 33 = 18 Ind. Cas 257 = 24 M L.J. 211 = 13 M.L.T. 131 = 1913 M W.N. 207.]

(2377)—*S.* 372—*Disposal of minor for purposes of prostitution.*—Where minor girls were

Penal Code (Act XLV of 1860)—*continued.*

being taught singing and dancing and were made to accompany their grandmother, a *dasi*, to the temple to take part in the ceremonics of the temple with a view to qualify them as *dasis, held*, that the facts proved did not amount to a disposal under s. 372. *In re* DASI MARIMUTHU, **1 Weir 364.**

(2378)—*S.* 372—*Dedication of minor girl to temple.*—The mere fact that the *bottu* was not tied to a minor girl, who was dedicated to a temple, would not make the dedication the less an offence under s. 372. But in this case the High Court adopting the procedure laid down in 1 Weir 359, F.B., abstained from directing a fresh trial. *In re* MARAKATHAM, **1 Weir 364.**

(2379)—*S.* 372—*Guardian transferring a minor to another as concubine.*—In the absence of any special custom, it is unlawful for a guardian to enter into a transaction by which a minor may be transferred to another as his concubine. *In re* PONRANGAM, **1 Weir 373.**

(2380)—*S.* 372—*Obtaining possession and disposing of minor for purposes of prostitution.*—S, a married Mahomedan girl under sixteen, while living with N, her grandmother, and in the absence of her husband, formed an adulterous intrigue with two Hindus with the knowledge of N. S and N were then induced by the Hindus to remove to another village, that S might take up the trade of a prostitute ; they there met J, a public woman, with whom they went to reside, and who introduced visitors to S, and received the money paid by them in exchange for the board and food supplied to S and N. N was convicted under s. 372, Penal Code, of disposing of a minor for the purpose of prostitution, and J was convicted, under s. 373, Penal Code, of obtaining possession of a minor for the purpose of prostitution. *Held, per Jackson, J.*, that, on the facts proved, no offence was committed under the Penal Code. *per Glover, J.*—N and J were both guilty under ss. 372 and 373 respectively and their appeals should be dismissed. QUEEN v. NOWJAN, **6 B L.R. Ap. 34 = 14 W.R. Cr. 39.**

(2381)—*S.* 372—*Gist of the offence—Proof.*—Where there was no proof that the accused knew that the girl was a married woman or was likely to be employed for a purpose which was both unlawful and immoral, *held*, that he could not be convicted under s. 372, Penal Code. DURGA DAS v. KING-EMPEROR, **13 P.R. 1904, Cr. = 1 Cr.L.J 949 = 114 P.L.R. 1904.** (13 P. R. 1888, Cr., 27 P.R. 1880, Cr., *R.*) [*R.*, 12 Cr.L.J. 94 = 9 Ind. Cas. 511 = 56 P.L.R 1911.]

(2382)—S. 372—*See* Nos. 451, 457, 2341, 2342 and 2343, *supra.*

(2383)—*Ss.* 372, 373—*Object of the sections.*—Ss. 372 and 373 involve the declaration, as a matter of general law, that no person under the age of majority shall be devoted to a life of prostitution, nor employed in, nor used for, any unlawful or immoral purpose, nor placed in a position in which it is likely such person will be employed in, or used for any such purpose.

Penal Code (Act XLV of 1860)—*continued.*

This rule, which is obviously suggested by the highest considerations of justice and morality, must control the exercise of all private law, even in those cases in which the private law assumes to vindicate itself on the serious plea of religion. HIGH COURT PROCEEDINGS, 11TH APRIL, 1881, NO. 746, **1 Weir 359.**

(2384)—*Ss.* 372, 373—*Offences under the sections.*—The dedication of minor girls to the service of a temple and their registration as dancing girls amounts to such a disposing and obtaining as ss. 372 and 373 contemplate, inasmuch as it is abundantly clear that girls so sold and so registered are brought up as prostitutes, and as one principle purpose of such a transaction is that they shall be so brought up. *In re* PADMAVATI, **1 Weir 356 = 5 M.H.C. 415.** [*F.*, 1 Weir 359 ; *R.*, 4 B. 545, 19 M. 127.]

(2385)—*Ss.* 372, 373—"*Unlawful*"—*Meaning of—Sale of minor wife—Nagpur* Koshtis — *Custom.*—The word "unlawful" in ss. 372, 375 of the Penal Code must be *ejusdem generis* with "immoral." Where, therefore, the accused, Hindus of the Nagpur *Koshti* caste, set up a custom among their caste of selling wives (under sixteen years of age in this case) if the husbands are too poor to support them, *held* that the disposal being *prima facie* a wrong act, it must be established by good evidence of the custom that there is a defence of good faith so as to apply the doctrine of *mens rea.* QUEEN EMPRESS v. NARAYAN, **Rat. Un. Cr. C. 440.**

(2386)—*Ss.* 372 *and* 375—*Selling and buying minor girl for purposes of prostitution—Applicability of section, when the minor concerned belonged to the dancing-girl's caste.*—Prostitution is not the essential condition or necessary consequent of an adoption by a dancing-girl but is an incident due to social influences. It is a question to be determined, on the evidence and on the circumstances of each case, whether the prosecution has made out the criminal intention or whether the Judge can come to the conclusion on the evidence that the adoption was merely made to secure, to the person adopting, a person competent to perform her obsequies and to take her property. *Per Parker, J.*—Ss. 372 and 373 of the Penal Code do not cease to be applicable, merely because the minor concerned is of the dancing-girl's caste. In order to support a conviction under s. 372 or 373, it would be sufficient to show that the girl was given and accepted with the intention mentioned therein. It would be no offence if the intention was that the girl should be brought up as a daughter and that, when she attains her age, she should be allowed either to marry or to follow the profession of a prostitute mother. If, on the other hand, the intention was that the girl should be emyloyed as a prostitute while she continues to be a minor, the accused might then be liable. *Per Muttusami Ayyar, J:* QUEEN-EMPRESS v. RAMANNA, **12 M. 373 = 1 Weir 375.** [*R.*, 22 C. 164, 14 Cr. L.J. 33 = 24 M.L.J. 211 = 13 M.L.T. 131 = 1913 M.W.N. 207 = 18 Ind. Cas 257, 1 Weir 366, 19 M. 127.]

Penal Code (Act XLV of 1860)—*continued.*

(2387)—*Ss.* 372, 373—*False representation of a girl belonging to a lower caste, as of a higher caste and inducing one to contract marriage with her*—' Bona fide ' *belief.*—Where the accused, by falsely representing that a girl belonging to a low caste belonged to a higher caste, induced a member of a higher caste to take her in marriage and to pay money for her to the accused, in the full belief that the representations were true, *held* that the accused had not committed offences under ss. 372, 373, I.P.C. EMPRESS OF INDIA v. SRI LAL, **2 A. 694**, F.B. [*D.*, 22 A.W.N. 133.]

(2388)—*Ss.* 372, 373 — *Selling or buying minors for the purpose of prostitution—Minor already leading an immoral life—Protection of the sections to such minors.*—The offence of selling or buying a minor for the purpose of prostitution, punishable under ss. 372 and 373 of the Indian Penal Code, is committed even where the minor, prior to such transaction, has been leading an immoral life. EMPEROR v. ISMAIL RUSTOM KHAN, **8 Bom. L.R. 236 = 3 Cr. L.J. 334.**

(2389)—*Ss.* 372, 373—*Temple* dasi—*Adoption of minor girl by—Offence under s.* 373—*Guilty knowledge—Presumption*—Onus *of proof 'such minor' meaning and scope of term—Object of s.* 373.—K, a *devadasi*, took a minor girl in adoption, the girl being at the time of adoption below 16 years of age. The girl thereafter left her father and lived with K, who introduced her to temple officials as her daughter. The girl also obtained *prasadam* in the temple as the daughter of K. There was no finding that a formal adoption took place or that the ceremony of *bottu* tying was gone through. There was also no clear finding that the girl led during minority a life of prostitution. *Held* that the mere fact that the minor was taken for singing and dancing in the temple and received *prasadam* as K's daughter was sufficient to raise a presumption of guilt under s. 372, I.P.C, and also to cast upon the accused the burden of showing the absence of a guilty intention or knowledge. (15 M. 41, 15 M. 323, 5 M.H.C. 415 16 B. 737, 7 Bom. L.R. 562, 23 M. 159 ; *R* , 11 M. 273 ; *D.*, 19 M. 172, 23 M.L.J. 493, *Rel.*) Per *Miller, J.*—Cases obviously within the mischief of the sections can easily be imagined when children may be bought or sold to be trained to a life of immorality without an intention to actually submit them to carnal intercourse during minority, and it seems at least doubtful whether an adequate intent cannot be ascribed to the words "such minor" in ss. 372 or 373. I.P.C. by making them simply the equivalent of "such person" or "he" or "she" the view that all that is necessary in the interest of morality is to leave the minor a virgin till 16 years of age, so that she may then make her choice between prostitution and a decent life, seems to give too little weight to the probable effect of training and surroundings and those who acquire possession of minors in order to prostitute them on their reaching the age of 16 may be trusted to see that their training and surroundings are such as to assist the fulfilment of the intention. (22 C. 164, 18 A. 24, 19 M. 127, *doubted.*) Per *Sundara Iyer, J*:—The probable result of making a girl a temple *dasi* must certainly be taken to be that she would very probably lead the life of a prostitute while discharging her duties in the temple as a *dasi*. S. 373, Penal Code, does not require that a minor taken possession of by an accused person would necessarily be employed or used for the purpose of prostitution. It is quite enough that such employment or use would be the probable result of the detention of the girl, even though she might not have intended the result. (15 M. 41, 15 M. 323, 5 M.H.C. 415, 16 B. 737, 7 Bom. L.R. 562, 23 M. 159; *R.*, 11 M. 273; *D.*, 19 M. 172 ; 23 M.L.J. 493, *Rel.*) With regard to notorious facts of the social life of any class in the community, it is not necessary for the Court to have actual positive evidence, and the Judges are entitled to make use of the knowledge which they, in conjunction with all others, possess of such facts. (19 M. 127, *R.*) S. 114 of the Evidence Act gives statutory recognition to this principle. S. 373, I.P.C., does not require that the intention with respect to the employment or use of the minor for the purpose of prostitution should relate to her use or use during her minority. (22 C. 164, 18 A. 24, 19 M. 127, *doubted.*) The expression 'such minor' is intended to designate the person intended to be employed or used for immoral purposes, and not the time when such employment or use is to take place. The object of the Statute was to prevent the taking possession of minors for the purpose of degrading them. Such degradation would take place whether the use of the minor for immoral purposes is intended to be made whilst she is still a minor or after she ceased to be one. The words of the section are wide enough to cover cases where the immoral employment or use is not intended or contemplated to follow during minority of the girl. Such a construction of the section would not necessarily make every adoption by a temple woman criminal. It is quite open to her to prove that she took such measures for safeguarding the girl's training during her minority as to rebut the presumption that she either intended or knew it to be likely that the girl would be employed for immoral purposes. But it will not be sufficient for her to show that, while placing the girl in immoral surroundings and under improper influences, she intended to keep her physically pure until her attainment of the age of 16 and then to give her a practically useless choice of adopting an honest course of life. THE PUBLIC PROSECUTOR v. KANNAMMAL, **13 M.L.T. 131 = 24 M. L.J. 211 = 14 Cr.L.J. 33 = 18 Ind. Cas. 257.** (12 M. 273, *not Appr.*; 18 A. 24, 22 C. 164, *R.*)

(2390)—Ss. 372, 373—*See* CONFESSION—CONFESSIONS BY CO ACCUSED — ADMISSIBILITY, 22 C. 164

—— **S. 373.**

See PROSTITUTION.

Penal Code (Act XLV of 1860)—*continued.*

(2391)—*S.* 373—*Scope and object of section.*—The mischief, against which s. 373 is directed, is a trafficking in the prostitution or other unlawful and immoral use of minors. It is not intended to make punishable the buying, hiring or otherwise obtaining possession for a single act of sexual intercourse with the person so obtaining possession. Per *Innes, J.* QUEEN v. SHEIK ALI, **1 Weir 377 = 5 M.H.C. 473.** [*F.*, U.B.R., 1907, 1st Qr. Penal Code, p. 1.]

(2392)—*S.* 373—*What constitutes the offence under the section—Offence when complete.*—Before an offence under s. 373, I.P.C., can be established it must be proved (1) that a minor under sixteen years of age was bought, hired or otherwise obtained possession of by the accused, and (2) that the minor was bought, hired or otherwise obtained possession of by the accused with the intent that the same minor, while under sixteen years of age shall be employed or used for the purposes of prostitution, or with the knowledge that it was likely that the said minor, while still under the age of sixteen, will be employed or used for an unlawful or an immoral purpose. The offence would be, and is, complete as soon as the buying, etc., by the accused and the guilty knowledge or intent on his part are proved, though the person bought may not enter upon prostitution until years after she had attained maturity, or may never enter upon such profession at all. QUEEN-EMPRESS v. CHANDA, **18 A. 24 = A.W.N. 1895, 141.** [*R.*, 14 Cr. L.J. 33 = 18 Ind. Cas. 257 = 24 M.L.J. 211 = 13 M.L.T. 131 = 1913 M.W.N. 207.]

(2393)—*S.* 373—*Purchasing girl under sixteen years for purposes of prostitution.*—A dancing-girl was charged under s. 373, Penal Code, for purchasing a child under sixteen years of age with the intention of using her or knowing it to be likely that she would be used for the purpose of prostitution. It was proved by the purohit of the accused, who had known her since infancy, that the accused was herself, in her infancy, acquired by a dancing-girl, was brought up to become and became a dancing girl and that it was the practice among dancing-girls to acquire children for the purpose of bringing them up as dancing-girls, and that there was no case known to him of a girl so acquired being married. It was also found that the accused lived the life of a dancing-girl for twenty years and she gave a large sum of money for the purchase of the girl mentioned and it was not suggested that the accused acquired the girl for the purpose of adopting her. *Held*, that, in these circumstances, there was evidence to support a conviction under s. 373, Penal Code. QUEEN-EMPRESS v. PAPA SANI, **23 M. 159 = 1 Weir 381.** [*R.*, 23 A. 124 = 1901 A.W.N. 16, 14 Cr. L.J. 33 = 18 Ind. Cas. 257 = 24 M.L.J. 211 = 13 M.L.T. 131 = 1913 M.W.N. 207.]

(2394)—*S.* 373—"*Buys or hires, or otherwise obtains possession,*" *meaning of the term—Object of section.*—Per *Scotland, C.J.*—It is not essential to the offence, under s. 373, that the buying, hiring, or otherwise obtaining of the possession should be from a third person. The language of the section is quite applicable to an agreement or understanding come to with the minor, without the intervention of a third person, and the vice against which the section is directed is not of any less enormity in the latter case. But to bring a case within the section, it is essential to show that the possession of the minor has been obtained under a distinct arrangement come to between the parties that the minor's person should be for some time completely in the keeping and under the control and direction of the party having the possession, whether, ostensibly, for a purpose or not. The words, "buys" and "hires," convey the meaning according to their ordinary acceptation, and giving them due effect, it seems that the associated words, "or otherwise obtains possession," were not intended to do more than include other modes of obtaining the same kind of possession as that of a buyer or hirer. Therefore, complete possession and control of the minor's person obtained by buying, hiring or otherwise, with intent or knowledge that, by the effect of such possession and control, the minor should or would afterwards be employed or used for either of the purposes stated, is what the section is intended to make punishable as crime. The obtaining possession in the sense of merely having sexual connection with a man could not have been in the contemplation of the framers of the section. Per *Holloway, J.*—The construction of the bare words of s. 373 is in favour of the conclusion that there must be a transaction of which other parties are the subjects and the minor the object. The person aimed at in s. 373 is the other party to the transaction in s. 372. Ss. 372 and 373 deal with the case of trafficking in innocence. Per *Innes, J.*—The word "possession" in s. 373 means possession with a power of disposal. QUEEN v. SHAIK ALI, **1 Weir 377 = 5 M.H.C. 473.** [*F.*, 27 P.R. 1880, Cr.; 21 C. 97; *R.*, 11 C.P.L.R. 6, Cr., *D.* 1 Weir 373.]

(2395)—S. 373—*Soliciting a girl for sexual intercourse.*—S. 373, I.P.C., does not apply to a case where a man solicits a girl merely to have sexual intercourse with him. QUEEN v. MUSSAMUT BHUTIA, **7 N.W.P. 295.** [*R.*, 11 C.P.L.R. 6.]

(2396)—*S.* 373—*Separate trial—Buying of minor for purposes of prostitution.*—The accused was tried in one trial and convicted under s. 373 of obtaining possession of six young girls for the purposes of prostitution. But the evidence for the prosecution showed that she only enticed them to her house. *Held* that the words "otherwise obtains possession of" in s. 373, I.P.C., must be read together with the preceding words, and that the accused was not liable to be punished under the above section; *held* further that, the alleged abduction of each girl being a distinct offence, it required a separate trial. EMPRESS v. MUSSAMAT GANGA, **11 C. P.L.R. Cr. 6.** (5 M.H.C. 473, 21 C. 97, 7 N.W.P. 295, *Appr.*)

Penal Code (Act XLV of 1860)—*continued.*

(2397)—S. 373—*See* EVIDENCE ACT, 1872, s. 106, ill. (*a*), 22 C. 164.

(2398)—S. 373—*See* NOS. 2383, 2384 to 2390, *supra.*

(2399)—Ss. 373, 411—*See* ACT VI OF 1864, ss. 2 and 3, 1 A. 666.

(2400)—Ss. 373, 415, 416, 419—*See* CHEATING—FALSE PERSONATION, 7 W.R. Cr. 55.

— S. 374.

(2401)—S. 374 — *See* COMPENSATION — GENERAL, 5 W.R. Cr. 1.

(2402)—S. 374 —*See* No. 2366, *supra.*

—S. 375.

See RAPE.

(2403)—S. 375—*Sexual intercourse with wife above ten years not having attained puberty—Death caused by such intercourse—Nature of the offence.*—In the case of married women, the law of rape does not apply as between husband and wife, if the wife has attained the age of ten years. It does not follow therefrom that the law regards such a wife as a thing made over to be the absolute property of her husband, or as a person outside the protection of criminal law. No hard and fast rule can be laid down, that sexual intercourse with a girl under a certain age is dangerous and must be regarded as punishable, and over that age is safe and must be regarded as right. The real practical difference between the case of a wife under ten years of age, and the case of a wife over ten years of age is that, in the former case, there is a hard and fast line as to the condition of the wife, her age. In the latter case, the jury has nothing to do with any general question as to what is the usual age of puberty or what is the safe age for consummation of marriage. The jury, in such cases, have simply to consider the facts of each particular case on evidence, and to say whether, having regard to the physical condition of the girl, and to the intention, the knowledge, the degree of rashness or negligence, with which the accused is shown to have acted on the occasion in question, he has brought himself within the provisions of the criminal law. QUEEN EMPRESS v. HURREE MOHUN MYTHEE, 18 C. 49.

(2404)—S. 375—*See* No. 2274, *supra.*

—S. 376.

See RAPE.

(2405)—S. 376—*Charge of ravishing a child, evidence necessary for a conviction for—Absence of proper medical evidence, effect of.*—The accused was convicted of having committed rape on a girl of four years of age. The evidence showed that the child's injuries might have been caused by any accident and afforded no conclusive evidence of rape or an attempt to ravish. It was in evidence that, when the accused had gone away, the child made certain statements, to her grandmother, about her having been ravished by him. *Held*, the statement of the grandmother, as to the child's complaint to her, was entirely insufficient to support a conviction, especially, in the absence of any medical evidence, establishing that the injuries to the child could only have been caused by rape or an attempt to commit the same. NGA HLWA v. KING-EMPEROR, U.B.R. 1906, Penal Code 31=4 Cr. L.J. 288.

(2406)—S. 376—What amounts to plea of guilty under.— *See* EVIDENCE ACT, 1872, ss. 25, 26, 27, 30, 44 P.W.R. 1914, Cr.

(2407)—S. 376—*See* Nos. 306, 313, 2273, 2275, to 2279, 2326 and 2344, *supra.*

(2408)—Ss. 376 and 377—*See* CRIM. PRO. CODE 1898, ss. 233 and 537, 9 C.P.L R. Cr. 23.

(2409)— Ss. 376, 497— *Crim. Pro. Code, s.* 199—*Charge of rape—Offence not proved—Offence of adultery—Conviction for—Absence of complaint from husband — Illegality, I.P.C., ss.* 376, 497.—Where a charge of rape brought against the accused was found untrue, *held* that, in the absence of a complaint from the husband, the Court cannot, on the same evidence, take cognisance of the offence of adultery. NGA PO THAW v. KING-EMPEROR, U B.R. (1912), 4th Qr. 155=14 Cr. L.J. 284=19 Ind. Cas. 716. (5 A. 233, *R.*)

(2410)—Ss. 376 and 497—*See* RAPE, 29 C. 415=6 C.W.N. 677.

(2411)—Ss. 376, 511— *See* ATTEMPT, Rat. Un. Cr. C. 865=Cr. Rg. 31 of 1896.

(2412)—Ss. 376, 511—*See* SENTENCE—COMMUTATION OF SENTENCE, 1 B.L.R. A. Cr. 5 =10 W.R. Cr. 10.

— S. 377.

See UNNATURAL OFFENCE.

(2413)—*S.* 377—*Unnatural offence—Consent immaterial.*— To establish an offence under s. 377, Penal Code, the consent of the party upon whom the offence is committed is quite immaterial. *In re* MATHURANATH GHOSE, 1. G.J. 43.

(2414)—*S.* 377—*Unnatural offence—Proof.*—In cases of charges of unnatural offences, the Court should consider whether the evidence makes out only an attempt or a completed act. EMPRESS v. GHASITA, A.W.N. 1884, 25.

(2415)—S. 377—*Unnatural offence.*—It is doubtful whether the act of having connection with a woman in her mouth would amount to an offence under s. 377, Penal Code. *In re* GOVINDARAJULU NAICKEN, 1 Weir 382.

(2416)—*S* 377—*Unnatural offence.*—A mere filthy and indecent assault, without proof of attempted or intended penetration would not amount to an offence under s 377, Penal Code. *In re* TOTTITODIYIL AHMED KUTTI, 1 Weir 383.

(2417)—*S.* 377—*Evidence—Unnatural offence—Uncorroborated testimony of complainant—When prosecution not bound to produce all witnesses.*—*Held*, that in the case of unnatural offence under s. 377, Penal Code, conviction can safely be based on uncorroborated testimony of the boy, if it is not otherwise doubtful.

Penal Code (Act XLV of 1860)—*continued.*

Held also, that the prosecution is not bound to produce witnesses who are not expected to speak the truth. SARDAR AHMED v. CROWN, **42 P.W.R. 1914, Cr.**

(2418)—S. 377—*See* Nos. 149 and 2408, *supra.*

(2419)—*S.* 377, 79—*Dedication of a girl to a temple—Disposal for purpose of prostitution—Good faith.*—It may be regarded as settled law that the dedication of a minor girl to a temple in order that she might serve the temple as a dancing girl amounts to the disposal of the minor for the purposes of prostitution, especially when there is evidence of the kind of life that girls so dedicated have led. Nothing can be said to have been done in good faith which is done without due care and attention. PUBLIC PROSECUTOR v. RAJAMMAL, **1911, 2 M.W.N. 479 = 10 M.L.T. 501 = 12 Cr. L.J. 566.**

—— S. 378.

See THEFT.

(2420)—*S.* 378—*Theft—Running water-English and American law—Not subject of larceny—Water controlled effectively may be the subject of theft — Government channels—Water in—Subject of possession and theft.*—The prevailing view in England and America is that water in a pond or running in a channel is not the subject of larceny. The diversion of running water from its natural course is regarded as a nuisance and not theft. There is no case in India laying down that the diversion of water flowing in channel would amount to theft. (35 C. 437, *Cons.*) Where water has been cut off from the natural source and conveyed through pipes, and reduced to effective possession, it can be the subject of larceny. (11 Q.B.D. 21, *Cons.*) It should be regarded in this country that water in rivers, channels, etc., can be the subject of property of the Government and thus the subject of theft. (34 M. 295, 34 M. 366, *R.*) Per *Sundara Aiyar, J.*—It is necessary that the moving referred to in the section must be made with a view to obtain the possession of the property, and where there is no evidence that effective steps were taken to secure custody of the water, a conviction for theft cannot stand. Per *Benson, J.*—Control as shown by acts of ownership must vary according to the nature of the property concerned. CHOCKALINGAM PILLAI v. EMPEROR, **1912 M.W.N. 119 = 13 Ind. Cas. 819 = 13 Cr. L.J. 131.**

(2421)—S. 378—*Fish—Open and unenclosed water—Not subject of theft.*—Fish in open and unenclosed water are not capable of being possessed and cannot be the subject of theft. HAJI CHANGAL HALAPOTO v. BASARMAL CHANGOOMAL, **5 S.L.R. 122 = 13 Ind. Cas. 214 = 13 Cr. L.J. 22.** (15 C. 388; *F., and* 10 B. 193, *R.*)

(2422)—S. 378—*Theft—Fish in a pond—Possession—Nature of.*—The test of possession in all cases under s. 378 of the Penal Code, relating to fish or birds, is "could they escape." If they are unable to escape, they become the subject of theft. MANCHAU PAIDIGADU v. KADIMSETTI TAMMAYYA, **1914 M.W.N. 368 = 22 Ind. Cas. 429 = 15 Cr. L J. 77.**

(2423)—S. 378—*See* Nos. 39, 40, 41, 44, 46, 58, 399, 613 and 1801, *supra.*

(2424)—Ss. 378, 379—*See* ACT I OF 1871, s. 22, 22 C. 139.

(2425)—Ss. 378 and 403—*See* ACT XIV OF 1866, s. 48, 14 M. 229 = 1 Weir 860.

(2426)—*Ss.* 378, 424—*Property in one's physical possession—Removal of—No theft—Offence committed.*—Where the crop which was in the physical possession of the accused was removed, *held* that the removal, even if dishonest, could not constitute theft under s. 378, I.P.C., though it might amount to an offence under s. 424, I.P.C. LEKHRAJ (THE CROWN) v. IMAMBUX, **5 S.L.R. 130 = 12 Ind. Cas. 987 = 12 Cr. L.J. 611.** (1 Bom. L.R. 515, *R.*)

(2427)—*Ss.* 378, *illus.* (*a*), 425—*Theft—Trees, cutting of, to annoy—Offence—Mischief.*—Theft of trees will be committed only when they were cut to remove them from the possession of the owner, and not when the cutting was merely to annoy him. The act will amount only to mischief. *In re* KUTTIATH ODAYATH YEETIL KOMAR NAMBIAR, **16 Cr. L.J. 544 = 29 Ind. Cas. 672.**

(2428)—Ss. 378, 426, 447—*See* MISCHIEF, 15 C. 388.

(2429) Ss. 378, 442—*See* THEFT—GENERAL—WHAT CONSTITUTES THEFT, 16 W.R. Cr. 63.

—— S. 379.

See THEFT.

(2430)—*S.* 379—*Crop cut by landlord jointly with tenant—Theft—Not a case of.*—Where it appeared that a landlord had jointly cultivated land with a non-occupancy tenant and had cut and removed the crops, *held* that the landlord must be deemed to be part owner and in possession and could not be convicted of theft. PHUL SINGH v. KING EMPEROR, **10 A.L.J. 527 = 14 Cr. L.J. 3 = 18 Ind. Cas. 146.**

(2431)—*S.* 379—*Theft—Irrigation tank—Removal of fish—Facts of each case to be looked into.*—Whether the removal of fish from an irrigation tank amounts to theft depends upon the facts of each case. When the water is so slow that the fish could not escape, the removal may be theft. *In re* SUBBIAH SERVAI, **13 Cr. L.J. 38 = 13 Ind. Cas. 278 = 1912 M.W.N. 42 = 22 M.L.J. 184 = 11 M.L.T. 28 = 36 M. 472.** (24 M. 81, 10 B. 193, 15 C. 402, *R.*)

(2432)—*S.* 379—*Theft of fish from tank—Claim of title by the accused.*—Conviction for theft illegal, unless the Court finds the claim to be a pretence. In a case of alleged theft of fish from a tank which the accused claimed to have been in their possession and not in the complainant's. *Held* that, if the accused asserts a claim to the thing alleged to have been stolen by him, he should not be convicted, unless the

Penal Code (Act XLV of 1860)—*continued.*

Court is in a position to say that the claim is a mere pretence. DHIRENDRA MOHAN GOSSAIN v. EMPEROR, **14 C.W.N. 408 = 5 Ind. Cas. 794 = 11 Cr. L.J. 248.**

(2433)—*S.* 379—*Theft of grass—Dispute as to ownership of land—Compensation under s.* 545, *Crim. Pro. Code.—Held*, that a conviction for theft of grass under s. 379, I.P.C., cannot stand where, between the complainant and the accused, the dispute is as to the ownership of the land having the grass thereon, and the Court has failed to find definitely from what spot the grass is cut and whether the spot belongs to the complainant. In case of doubt the complainant should be left to resort to the Civil Court. *Held*, also that compensation exceeding the loss incurred by the complainant cannot be awarded to him under s. 545, Crim Pro. Code. SHIB DAS v. CROWN, **40 P.W.R. 1913, Cr. = 335 P.L.R. 1913 = 14 Cr. L.J. 659 = 21 Ind. Cas. 899.**

(2434)—*S.* 379—*Theft—Tenant's right to cut standing crop—Ejectment—Tenant not paid price of crop.*—A tenant was ejected from his holding under the provisions of the Agra Tenancy Act. Formal possession was delivered to the *zemindar*, but as he failed to tender the price of the standing crops, the tenant cut and removed them. *Held*, that the tenant was not guilty of theft. JODHA SINGH v. EMPEROR, **13 Cr. L. J. 298 = 14 Ind. Cas. 762 = 11 A.L.J. 270.**

(2435)—*S.* 379—*Theft—Possession in law—Theft of paddy.*—Where the tenant is accused of theft of paddy, reaped and stored up, his and the landlord's share not having been divided, a conviction for theft is bad, because until the delivery by the tenant to the landlord of the latter's share of the crop, the possession of the whole crop was with the tenant. ANNAMALAI ODAYAR v. EMPEROR, **1914 M.W.N. 106 = 15 Cr. L.J. 186 = 22 Ind. Cas. 762.** (26 M. 481, *F.*)

(2436)—*S.* 379—*Theft—Removal of goods from a person's custody—Larceny.*—In order to constitute larceny, there must be an intention to take entire dominion over the property, *i.e.*, the taker must intend to appropriate the property to his own use, but there may be theft without an intention to deprive the owner of the property permanently. Hence, where a person snatched away some books from a boy as he came out of school and told him that they would be returned when he came to his house, *held*, that the offence of theft had been committed. NAUSHE ALI KHAN v. KING-EMPEROR, **8 A.L.J. 1237 = 12 Ind. Cas. 844 = 12 Cr. L.J. 580.**

(2437)—*S.* 379—*Theft—Pledgee taking possession of things pledged.*—The complainant purchased a *tonga* and pony from the accused, and, to secure the price thereof, pledged the *tonga* and pony to the accused, covenanting that the accused should have a right to the possession of them until the price was paid. The *tonga* and the pony remained with the complainant and he was earning money by letting them for hire. When, however, the *tonga* and pony were being driven on the road by persons who had hired it, the accused seized and took possession of them. Subsequently, the accused got a decree against the complainant in a Civil Court with a declaration that they were pledged to him. *Held* that, as the accused was under the agreement legally entitled to the possession of the property, he could not be said to have acted "dishonestly" in seizing the property, and, therefore, could not be convicted of theft. EMPRESS v. MEGHRAJ MARWARI, **1 C.P.L.R. Cr. 100.**

(2438)—*S.* 379—*Servant acting under his master's bidding—Claim of right.*—A servant should not be held guilty of the offence of theft, when what he did was at his master's bidding, unless it should have been shown that he participated in his master's knowledge of the dishonest nature of the acts. There must be some evidence before the Court from which such knowledge on the part of the servant can be inferred. [*R.*, 12 P.R. 1906, Cr. = 4 Cr.L.J. 293 = 54 P.L.R. 1907.] A Criminal Court should not convict of theft any person who asserts a claim of right, unless it is in a position to say that the claim is a mere pretence. HARI BHUIMALI v. EMPEROR, **9 C.W.N. 974 = 2 Cr. L.J. 836.** [*F.*, 15 C.W.N. 414, 11 Cr. L.J. 248 = 14 C.W.N. 408 = 5 Ind. Cas. 794; *Rel. on*, 9 Ind. Cas. 46 = 12 Cr. L.J. 7; *R.*, 14 C.W.N. 410.]

(2439)—*S.* 379—*Accused found in possession of skin of missing goat—Charge of theft—Identification doubtful—Verdict of Jury, when can be set aside—Crim. Pro. Code, s.* 307 (3).—When the accused was found in possession of two freshly flayed skins of a goat and kid within 24 hours of the theft and was charged under s. 379 of the Penal Code: *Held*, (*Spencer, J., dissenting*), (1) that it was absolutely necessary for the prosecution to establish that the skins found on the accused were those of the goats recently stolen; (2) that, as the prosecution witnesses had not seen the skins for more than three weeks after the theft, the Jury were not wrong in holding that the identification was suspicious; (3) that the accused was entitled to the benefit of the doubt and ought to be acquitted. It is not necessary to show that the verdict of a Jury is perverse and manifestly unreasonable before the High Court can set it aside; but as the Jury are judges of fact, before their verdict is set aside, it must be established that the conclusion come to by them does not follow from the evidence recorded in the case. *In re* IRULA SADAYAN, **16 Cr. L.J. 440 = 29 Ind. Cas. 72.** (2 Ind Cas. 417 = 36 C. 629 = 13 C.W.N. 757 = 9 C.L.J. 638 = 10 Cr. L. J. 32, *R.*)

(2440)—*S.* 379—*Trustee—Possession.*—The possession of a trustee is a sufficient possession within the definition of theft in s. 378, I.P.C. QUEEN-EMPRESS v. NGA PO SAW, **L.B.R. 1872—1892, 410.**

Penal Code (Act XLV of 1860)—*continued.*

(2441)—*S* 379—*Taking of moveable property by a creditor from debtor's possession.*—A creditor, who takes the moveable property of his debtor, from the latter's possession, without his consent, with the intention of coercing him to pay his debt, commits theft. QUEEN-EMPRESS v. NGA SHWE MEIK, **U.B R. 1897-1901, Vol. I, 339** (22 C. 669, 22 C. 1017, 15 B. 344, 18 A. 88, *R.*)

(2442)—*S.* 379—*Theft—Sentence.*—A son who appropriates to his own use any part of the family property he thinks fit, against the will of his father who is the manager of the property, commits theft, and a sentence of fine only passed on him was held to be proper. EMPRESS v. GIRDHARI, **4 C.P.L R. 174.**

(2443)—*S.* 379—*Theft from railway train—Sentence—Deterrent sentence.* — In cases of thefts from a railway train, where the Magistrate is once satisfied that the accused has committed the offence, the sentence should be of a deterrent nature. EMPEROR v. ANANDA LAXMAN BABAJI, **14 Bom. L R. 504=15 Ind. Cas. 803=13 Cr. L.J. 531=1 Bom. Cr. C. 149.**

(2444)—*S.* 379—*Irregularity—Admission of evidence, when writing judgment—Charge of theft, assertion of right in answer to*—Bona fides, *how negatived.*—A Magistrate cannot, after a trial is closed and while he is writing his judgment, admit in evidence a document without giving the accused an opportunity of raising objections to its relevancy or admissibility. There cannot be a *bona fide* assertion of right in answer to a charge of theft when the accused knew that he had no possession of the property and gathered a produce grown by the complainant thereon. *In re* VAYALAPPRA KELAPPAN NAIR, **16 Cr.L.J. 458=29 Ind.Cas. 90.** (27 C. 504=4 C.W.N. 480, *F.*)

(2445)—S. 379—*See* ABETMENT, 8 C.W.N. 519, 18 W.R. 8, Cr.

(2446)—S. 379—*See* ACT VI OF 1864, s. 2, 16 B. 357.

(2447)—S. 379—*See* ACT VII OF 1878, ss. 25, 66, 10 P.R. 1885, Cr.

(2448)—S. 379—*See* CRIM. PRO. CODE, 1898, ss. 106 and 423, 29 C. 393=6 C.W.N. 678.

(2449)—S. 379—Postponement of sentence—*See* CRIM. PRO. CODE, 1898, ss. 123, 397, 14 Bom. L.R. 965=1 Bom. Cr. C. 209=13 Cr. L.J. 849=17 Ind. Cas. 785=37 B. 178.

(2450)—S. 379—Theft of chari—See CRIM. PRO. CODE, 1898, s. 439, 28 P.W.R. 1912, Cr. =16 Ind. Cas. 520=13 Cr.L.J. 712.

(2451)—S. 379—*See* FURTHER ENQUIRY, P.L.R. 1900, p. 31, Cr.

(2452)—S. 379—*See* WHIPPING, 21 W.R. Cr. 40.

(2453)—S. 379— *See* WRONGFUL DISTRAINT, 8 C.L.R. 204.

(2454)—S. 379—*See* Nos. 41, 42, 47, 59, 60, 203, 217, 225, 226, 227, 228, 277, 278, 279, 280,

Penal Code (Act XLV of 1860)—*continued.*

366, 441, 456, 484, 485, 486, 613, 614, 615, 616, 617, 682, 683, 684, 685, 1463, 1464, 1465, 1542 1543, 1802, 2110, 2345 and 2424, *supra and* No. 3030, *infra.*

(2455)—*Ss.* 379, 109—*Theft, abetment of—Claim of right set up by defence—Finding of absence of good faith without adjudication as to the existence or otherwise of right set up if sufficient for conviction.*—Where the petitioner was convicted of abetment of theft of wood from a forest, and the defence of the petitioner was that he had a right to take wood from the forest in question without a pass, but the Magistrate, without deciding whether the petitioner had such a right or not, found that the petitioner's claim to take wood without a pass could not possibly have been made in good faith, inasmuch as the petitioner had himself taken passes previously for the removal of wood from the forest. *Held*—that, whatever the intention and knowledge of the petitioner was, he could not be convicted of theft or abetment thereof, when it was not found as a matter of fact that he was not entitled to take wood from the forest. HARENDRA NARAYAN DASS v. RAMJAN KHAN, **18 C.W.N. 397=15 Cr. L.J. 298=23 Ind. Cas. 506=41 C. 433.**

(2456)—Ss. 379 and 143—*See* CRIM. PRO. CODE, 1898, ss. 367 and 424, 37 C. 194=11 C. L.J. 410.

(2457)—Ss. 379 and 143—*See* SECURITY TO KEEP THE PEACE—ON CONVICTION, 7 C.L.J. 172=7 Cr. L.J. 200.

(2458)—*Ss.* 379, 215—*Person taking gratification for helping to recover stolen property—No evidence as to who committed theft—Sentence.*—When a person offers to take any gratification on account of helping a person to recover property stolen from him, and, on receipt of the gratification, points out where the stolen property is concealed, he may properly be convicted of theft in the absence of any evidence to show that any one else had committed the theft. If he fails to point out or restore the stolen property, he may properly be convicted of an offence under s. 215, I.P.C. NGA OK GYI v. QUEEN-EMPRESS, **L.B.R. 1872—1892, 449.**

(2459)—*Ss.* 379 *and* 215 — *Theft — Taking gratification to restore stolen property—Cumulative sentence.*—The complainant in this case had a fishing net stolen from him, and the accused, after taking Rs. 30 from him as a gratification for recovering the net, produced it and restored it to the complainant. Upon these facts, the accused was charged (i) with the theft of the net (s. 379, I.P.C.); (ii) with having taken a gratification for the purpose of recovering stolen property (s. 215, I.P.C.). The Deputy Commissioner found the accused guilty on both the charges, and, there being previous convictions against him, sentenced him, on the first charge, to three years' rigorous imprisonment and thirty stripes, and, on the second charge, to one year's rigorous imprisonment

Penal Code (Act XLV of 1860)—*continued.*

Held, on revision that as the Court had convicted the accused of having stolen the property, the conviction and sentence under s. 215, I.P.C., was bad. NGA SHWE KYA v. QUEEN-EMPRESS, **L.B.R. 1872—1892, 461.**

(2460)—Ss. 379, 215—Distinct offences—Joint trial—*See* CRIM. PRO. CODE, 1898, s. 233, 12 Cr. L.J. 72=9 Ind. Cas. 421.

(2461)—*Ss.* 379, 215 *and* 71 — *Theft, and taking gift to help to recover stolen property—Conviction and punishment for both offences—Crim. Pro. Code* (1882), *s.* 235.—Though the ulterior object of a thief in committing theft may be to obtain money illegally in the manner contemplated in s. 215, Penal Code, still he is not the less liable to be convicted for the theft as well as for the offence under s. 215, Penal Code; but, as the fact that the thief has restored the property may well be taken into consideration in punishing him for the theft under s. 379, Penal Code, it is only in very exceptional cases that the punishment for both the theft under s. 379 and the taking an illegal gratification under s. 215, Penal Code, should be allowed to exceed the punishment which could be inflicted for the theft alone, even though s. 71 of the Penal Code be taken as inapplicable. QUEEN-EMPRESS v. NGA TUN BYU, **L.B.R. 1893—1900, 226.** (L.B.R. 1872—1892, 461, *D.*)

(2462)—*Ss.* 379, 380 — *Recent possession of property stolen from dwelling-house.*—Where the presumption of theft arising from recent possession of stolen property is correctly raised, the inference should, where the property was stolen from a dwelling-house, be an offence under s. 380 and not merely under s. 379 of the Penal Code. EMPRESS v. CHANDAN, **A.W.N. 1882, 143.** [*R.*, A.W.N. 1882, 224.]

(2463)—*Ss.* 379, 380—*Act* VI *of* 1864 (*Whipping*), *s.* 3—*Attempt—Whipping.*—An attempt to commit theft under s. 379 of the Indian Penal Code is not punishable with whipping, and a conviction first of an attempt under s. 379, and then a conviction of an effected theft under the same section will not justify a double sentence of imprisonment and whipping. QUEEN-EMPRESS v. ABDUL MASJID, **L.B.R. 1872—1892, 338.**

(2464)—Ss. 379, 380, 411—*See* ACT VI OF 1864, ss. 2 and 3, L.B.R. 1872—1892, 336.

(2465)—*Ss.* 379, 384—*Charge — Extortion —Charge of theft—Conviction for extortion, if legal.*—It is wholly illegal to punish a man for a grave offence, involving many totally different ingredients to a charge of theft, on a charge under s. 379. A conviction, therefore, for extortion on a charge of theft cannot stand. AMANULLAH v. EMPEROR, **13 Cr. L.J. 597=16 Ind. Cas. 165.**

(2466)—*Ss.* 379 *and* 390—*Theft and hurt—Crim. Pro. Code* (1882), *s.* 235.—Where the accused took a child of about four years outside the village, stripped him of his ornaments, and then, when the child threatened to tell his mother, beat him, *held* that the offence did not amount to robbery as defined in s. 390 of the Penal Code, though there was nothing to prevent the Magistrate from convicting the accused separately of the theft and the causing of hurt under s. 235, para. 1, Crim. Pro. Code, 1882. EMPRESS v. PADAM SINGH, **6 C.P.L.R. 36, Cr.**

Penal Code (Act XLV of 1860)—*continued.*

(2467)—*Ss.* 379 *and* 403—*Taking cattle, not knowing to whom they belonged.*—A person, who dishonestly misappropriates certain cattle, which he admitted having taken when they were with the herd of an adjoining village, not knowing to whom they belonged and thinking that they were without an owner, commits the offence of theft and not of criminal misappropriation. EMPRESS v. FUKIRA GOND, **7 C.P.L.R. Cr. 34.**

(2468)—Ss. 379 and 403—*See* CRIMINAL MISAPPROPRIATION, 1 L.B.R. 123.

(2469)—*Ss.* 379, 403, 406, 411—*Denial of loan by borrower—What it amounts to.*—A false denial of a loan is not in itself a misappropriation at all, and may amount to no more than an attempt to evade civil liability for the money or chattel lent. Attempt to evade civil liability does not necessarily imply that the property lent has been misappropriated. The false denial of a loan is compatible with the absence of criminal misappropriation, and no more constitutes that offence than possession of stolen property constitutes theft or dishonest receipt. The false denial may be evidence of an offence under s. 403, as possession of stolen property may be evidence of offences under s. 379 or s. 411. EMPEROR v. GIRJI KOM HARI, **6 Bom. L.R. 1093=1 Cr. L.J. 1109.**

(2470)—*Ss.* 379, 403, 424—*Theft—Possession of tenant—Exclusive or joint.*—When trees are in the possession of the accused, although the complainant is jointly interested, they must be considered to have been in the exclusive possession of the tenant accused and no offence of theft could be committed. To convert the conviction for theft into one for offences under s. 403 or 424, I.P.C., in revision, is undesirable, as it is prejudicial to the accused. THOPPULAN v. SANKARANARAYANA IYER, **1914 M.W.N. 483 =15 Cr. L.J. 440=24 Ind. Cas. 176.**

(2471)—Ss. 379, 403 and 424—*See* CRIMINAL MISAPPROPRIATION, 22 M. 151=1 Weir **424.**

(2472)—*Ss.* 379, 406—*Attachment of property —Removal from custody—Theft or criminal breach of trust.*—Where, in execution of a decree, certain moveable property belonging to the judgment-debtor is attached and placed in the custody of another person, and upon the death of the latter the judgment-debtor takes the property and appropriates it, *held* that the offence is not one of criminal breach of trust, but one of theft in that he has dishonestly taken the property out of the possession of the Court without the Court's consent. CHUNNU v. KING-EMPEROR, **8 A.L.J. 656=11 Ind. Cas. 142=12 Cr. L.J. 374.**

Penal Code (Act XLV of 1860)—*continued.*

(2473)—Ss. 379, 409—*See* THEFT, MISCELLANEOUS, Rat. Un. Cr. C. 928 = Cr. Rg. 36 of 1897.

(2474)—*Ss.* 379, 411—*Recent possession of stolen property, what is.*—The question as to what is recent possession of stolen property is to be considered with reference to the nature of the articles stolen. NGA E v. QUEEN-EMPRESS, **L.B.R. 1872—1892, 354.**

(2475)—*Ss.* 379, 411—*Recent possession of stolen property.*—Where a stolen article was not traced to the accused person until twelve months after the theft, *held*, it was not such recent possession as would justify the presumption, in the absence of explanation as to the manner in which the accused got the article, that the accused stole it. NGA YAUK v. QUEEN-EMPRESS, **L.B.R. 1872—1892, 366.**

(2476)—*Ss.* 379 *and* 411—*Possession of stolen property—Presumption of guilty knowledge—Property belonging to two different owners—Evidence Act* (I *of* 1872), *s.* 14, *ill.* (*a*).—The possession after recent theft raises ordinarily a presumption either that the person in possession is the thief or had dishonestly received the property knowing it to be stolen. The possession of the property stolen from two different owners is a circumstance which, under s. 14, ill. (*a*) of the Evidence Act, must be borne in mind in estimating the probability of guilty knowledge in the accused. EMPEROR v. HARI RAMJI, **9 Bom. L.R. 27 = 5 Cr.L.J. 63.**

(2477)—*Ss.* 379, 411—*Charge and conviction for offence under s.* 411—*Alternative conviction by appellate Court.*—Where, on an appeal from a conviction for an offence under s. 411, I.P.C., the appellate Court altered the conviction to one either under s. 379 or s. 411, *held* that such alternative conviction in appeal was illegal, the accused not having been charged with theft and having had no opportunity of meeting a charge. QUEEN-EMPRESS v. KRISHNA, **Rat. Un. Cr. C. 368 = Cr. Rg. 16 of 1888.**

(2478)—*Ss.* 379, 411—*Theft—Lapse of four months—Offence committed—Husband and wife not living together—Search of wife's house—Seizure of stolen articles—Husband not responsible.*—Where the case against an accused depends solely on the evidence connecting him with sundry articles of stolen property discovered nearly four months after the theft: *Held*, that the lapse of time is such that from no point of view could a conviction for a more serious offence than that under s. 411, I.P C., be upheld. Where it was proved that the accused was not living with his wife for considerable time past and that he was on bad terms with his wife and her people, and where the house of his wife was searched and certain articles alleged to be stolen were seized *Held* that the accused could in no way be held responsible for the possession of the articles by his wife. *In re* DUSTOO GULAM *alias* DUSTAGHIR, **10 M.L.T. 237. = 12 Ind. Cas. 585 = 12 Cr. L.J. 549.**

Penal Code (Act XLV of 1860)—*continued.*

(2479)—*Ss* 379, 411—*Crim. Pro. Code—joint trial—Different offences--Different accused.*—When one of two persons is charged with theft and the other with receiving stolen property, they cannot be jointly tried. GOVINDARAJULU MUDALI v. EMPEROR, **1914 M.W.N. 352 = 23 Ind. Cas. 208 = 15 Cr. L J. 256.** (2 Cr. L.J. 37, *F.*)

(2480)—Ss. 379, 411—Stolen property found in possession of accused next morning—Thief and receiver of stolen property—Joint trial—*See* EVIDENCE ACT, 1872, s. 114, 11 A.L.J. 94 = 18 Ind. Cas. 684 = 14 Cr. L.J. 124.

(2481)—Ss. 379, 411—*See* EVIDENCE ACT, 1872, s. 114, A.W.N. 1881, 155.

(2482)—Ss. 379, 411—*See* JOINT TRIAL, 3 S.L.R. 136.

(2483)—Ss. 379, 411—*See* RELEASE ON PROBATION OF GOOD CONDUCT, 1 L.B.R. 158.

(2484)—Ss. 379, 411—*See* THEFT—MISCELLANEOUS, 3 A. 181, 51 P.L.R. 1905 = 2 Cr. L. J. 230 = 20 P.R. 1905, Cr.

(2485)—*Ss.* 379, 414, 511—*Double conviction—Stealing—Disposing of stolen property.*—A person cannot be convicted both of stealing and of dishonestly attempting to dispose of such property. *In the matter of the conviction of* NGA PO KYAW, **L.B.R. 1872—1892, 334.**

(2486)—*Ss.* 379, 424—*Removal of crops prohibited from being removed—Land Revenue Code* (*Bom. Act* V *of* 1879), *ss.* 141, 142.—The accused was charged with having removed his wheat, the removal of which was prohibited and over which watchmen had been placed under s. 141, Land Revenue Code, and was convicted of theft under s. 379, I.P.C. *Held*, (1) that his conviction under s. 379, I.P.C., could not be sustained, because the very first requirement of the offence of theft—that there should be moving with an intention to take dishonestly property out of the possession of some person—was absent, and (2) that he could be dealt with under s. 142 of the Land Revenue Code and that if such removal be dishonest, he might be convicted under s. 424, I.P.C. QUEEN EMPRESS v. DAYA KARSAN, **1 Bom. L.R. 515.** [*Rel.*, 12 Cr. L.J. 611 = 12 Ind. Cas. 987 = 5 S. L.R. 130.]

(2487)—Ss. 379, 425—*See* THEFT—MISCELLANEOUS, 5 Bom. L.R. 460, 2 B.H.C. 392.

(2488)—Ss. 379 428—*See* THEFT—MISCELLANEOUS, Rat. Un. Cr. C. 129.

(2489)—*Ss.* 379, 429—*Stealing buffalo and killing it.*—A person who steals a buffalo and subsequently kills it cannot be convicted both of theft and of mischief. EMPEROR v. RATHI, **14 C.P.L.R. Cr. 139** (6 W.R. 5 Cr. and 8 W. R. 31 Cr., *Concurred in*; 2 B.H.C. 392, *D.*)

(2490)—*Ss.* 379 *and* 429—*Theft of a bullock and mischief by killing the animal—Double conviction.*—The law does not seem to contemplate that a thief should be more severely

Penal Code (Act XLV of 1860)—*continued.*

punished, because he renders the recovery of the stolen property impossible. Where the intention of the accused was to steal a bullock and to make it beef and not to cause mischief to the animal, a double conviction for mischief as well as theft under ss. 429 and 379 was held to be not justified. QUEEN EMPRESS v. NGA AUNG SO, **L.B.R. 1893—1900, 633.** (L.B.R. 1872—1892, 461, L.B.R. 1893—1900, 226, *R.*)

(2491)—*Ss.* 379, 429—*Conviction under — Appeal—Setting aside conviction in one but confirming the sentences in both—Effect—Enhancement of sentence.*—The appellate Court should reduce the sentence when setting aside the conviction for one of the offences in respect of which the sentence was imposed by the lower Court. Otherwise the upholding of the sentence would amount to an enhancement of the sentence, which is illegal. EMPEROR v. VARADAN, **8 M.L.T. 117 = 7 Ind. Cas. 415 = 11 Cr.L. J. 483.** (30 M. 48, 22 B. 760, *R.*).

(2492)—Ss. 379 and 430—*See* THEFT — THINGS IN RESPECT OF WHICH THE OFFENCE OF THEFT CANNOT BE COMMITTED, 12 C.W.N. 534 = 35 C. 437 = 7 Cr.L.J. 367.

(2493)—Ss. 379 and 430—*See* THEFT — THINGS WHICH MAY BE THE SUBJECT OF THEFT, Rat. Un. Cr. C. 136.

(2494)—Ss. 379, 447—*See* THEFT—THINGS IN RESPECT OF WHICH THE OFFENCE OF THEFT CANNOT BE COMMITTED, 15 C. 402.

(2495)—*Ss.* 379, 457—*Breaking open a chest by an inmate of the house.*—The accused, being an inmate of his uncle's house, broke open a chest and took out money from it. *Held*, that he was not liable to be convicted under s. 457, but under s. 379. QUEEN v. TASUDUK HOSSEIN, **6 N.W.P. 301.**

(2496)—Ss. 379, 457—*See* HOUSE TRESPASS, 57 P.R. 1887, Cr.

(2497)—Ss. 379, 511—*See* ATTEMPT, U.B.R, 1892—1896, Vol I, 293.

——**S. 380.**

See THEFT.

(2498)—*S.* 380—*Jurisdiction.*—A First-class Subordinate Magistrate has no jurisdiction to try an offence under s. 380, I.P.C. REG v. KUSHA, **1 B.H.C. 88.**

(2499)—*S.* 380—*Essential for the offence under.*—The essential point in the offence of theft in a building is that the property should be under the protection of the building and the offence may be committed by the owner of the building or other person who has lawful access to the building. Hence, there is nothing in the above section to prevent a person from being convicted under that section for a theft committed by him in his own house. QUEEN-EMPRESS v. NGA PAN E, **L B.R. 1872—1892, 367.**

(2500)—*S.* 380—*Aggravating circumstance—Dwelling house— Presence of owner.*—The entry of the accused into the house of the complainant in an aggravating circumstance under s. 380 of the Penal Code, where the accused took away some property of the complainant from his house in his presence, and the culpability is not diminished by the presence of the owner. REG. v. KASHINATH BHAUSHET, **Rat. Un. Cr. C. 56 = Cr. Rg. 7-9-1871.**

(2501)—*S.* 380—*Fine alone, propriety of.*—Case where a sentence of fine alone passed on an accused under s. 380, Penal Code, was annulled, and the Magistrate directed to pass a legal sentence. SADASUKH v. KANHIA, **Colm. Dig. Cr. 49 of 1876.**

(2502)—S. 380—Evidence Act, s. 30—Theft —Conviction without evidence—*See* NGA THIN GYI v. QUEEN-EMPRESS, **U.B.R 1897—1901, Vol. I, 159.**

(2503)—S. 380—*See* SENTENCE—FINE, 16 W.R. Cr. 17.

(2504)—S. 380—*See* SENTENCE— IMPRISONMENT—GENERAL, Rat. Un. Cr. C. 893 = Cr. Rg. 7 of 1897.

(2505)—S. 380—*See* Nos. 104, 147, 229 to 232, 237, 2116, 2163, 2462, 2463 and 2464, *supra and* Nos. 2609, 3027, 3028 and 3029, *infra.*

(2506)—*Ss.* 380, 75—*Previous conviction—Habitual offender — Trial.*—A subordinate Magistrate should not attempt to deal with an old offender, against whom there are two previous convictions under s. 380, I.P.C. In such a case, he should send the case to the District Magistrate for trial. QUEEN-EMPRESS v. NGA NE DUN, **L.B.R. 1872—1892, 335.**

(2507)—Ss. 380 and 204—*See* THEFT—MISCELLANEOUS, 3 M. 261 = 1 Weir 409.

(2508)—Ss. 380 and 215 — *See* DOUBLE CONVICTION, 14 Bur. L.R. 67.

(2509)—Ss. 380, 381—Theft by servant—Aggravation of offence—Making imputations on chastity of complainant's wife—*See* CRIM. PRO. CODE, 1898, s. 562, 13 P.L.R. 1913 = 14 Cr. L. J. 113 = 18 Ind. Cas. 673 = 27 P.W.R. 1913, Cr.

(2510)—*Ss.* 380, 381 *and* 457—*Trustee of temple whether liable to be punished for theft of temple property.*—The Devastanam Committee, appointed under Act XX of 1863, exercised the same powers of supervision that were formerly exercised by the Board of Revenue under Regulation VII of 1817, but the property of the temple is not vested in them, nor do they represent the property. The person, who represents the property, is the trustee or manager, who is indeed appointed, and may, no doubt, be removed by the Committee for sufficient cause. But the trustee or manager is not in the position of a clerk or servant removable at the pleasure of the Committee. He holds his office permanently, though subject to removal for misconduct. The deity is regarded as the owner of the temple property, and the trustee or the manager appointed by the Committee is the agent of the deity, subject to the Committee's control. The trustee or manager is, therefore, in possession of the temple and its jewels, and if he has made away with the

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property, his offence is criminal breach of trust by an agent punishable under s. 409, Penal Code, not theft. MUTHUSWAMI PILLAI *alias* KUNJU PILLAY v. QUEEN-EMPRESS, **6 M.L.J. 14=26 M. 243, Note.**

(2511)—Ss. 380, 409—*See* THEFT IN A BUILDING, 3 W.R. Cr. 29.

(2512)—Ss. 380 and 411—*See* CRIM. PRO. CODE, 1898, ss. 403, 236, 237, 10 C.W.N. 1031=4 Cr. L.J. 173.

(2513)—Ss. 380, 411, 414—Joinder of charges and persons—*See* CRIM. PRO. CODE, 1898, s. 236, 13 Cr. L.J. 59=13 Ind. Cas. 395=4 Bur. L.T. 263.

(2514)—Ss. 380, 412, 457—*See* SECURITY FOR GOOD BEHAVIOUR, 11 C.W.N. 413=5 Cr. L.J. 191.

(2515)—Ss. 380, 414 — *See* JOINDER OF CHARGES — MISJOINDER OF CHARGES, 6 Bom. L.R. 725.

(2516)—Ss. 380, 429 — Theft — Mischief — Separate sentences—*See* SENTENCE—CUMULATIVE AND SEPARATE SENTENCES, Rat. Un. Cr. C. 430=Cr. Rg. 1 of 1889.

(2517)—*Ss.* 380, 443, 453.—Where the accused was seized, while leaving a house, on a outcry being made by a female inmate of the house just before sunset, with the jewels of that female, which were ordinarily kept in an earthen pot, *held*, that the accused was not guilty of house-breaking or house-trespass, but was guilty of theft in a dwelling house. KHUDA BAKHSH v. EMPRESS, **10 P.R. 1886, Cr.**

(2518)—Ss. 380, 454—*See* ACT VIII OF 1897, s. 8, Rat. Un. Cr. C. 947=Cr. Rg. 53 of 1897.

(2519)—Ss. 380, 454—*See* SENTENCE, CUMULATIVE AND SEPARATE SENTENCES, 10 A. 146=8 A.W.N. 5, 3 W.R. Cr. 19.

(2520)—*Ss.* 380, 457—*Offence made up of several offences — Sentence.*—Certain persons were convicted by a Magistrate of committing house-trespass by night with intent to commit an offence, and of theft, both offences forming one connected act of theft or house-breaking, and were sentenced separately for each offence. *Held* that the double conviction under ss. 457, 380, I.P.C., was improper. EMPRESS v. BANDHU, **A.W.N. 1883, 228.**

(2521)—*Ss.* 380, 457—*Recent possession of stolen property—Possession of stolen article on the person of accused's sister 12 days after theft —Accused and his sister occupying same house—Property traced to accused's possession.*—Where stolen property was found on the neck of accused's sister 12 days after the theft, and accused and his sister were living in the same house, and the jury found accused guilty of being in possession of stolen property :—*Held*, that possession was rightly traced to the accused and that the High Court could not interfere with the jury's verdict. *In re* LAL SINGH, **9 Ind. Cas. 288=9 M.L.T. 291=12 Cr. L.J. 48.**

Penal Code (Act XLV of 1860)—*continued.*

(2522)—Ss. 380, 457—*See* ACT VI OF 1864, s. 2, 3 L.B.R. 161, F.B.

(2523)—Ss. 380, 457—*See* CRIM. PRO. CODE, 1898, s. 238, Rat. Un. Cr. C. 211=Cr. Rg. 26-4-1885.

(2524)—Ss. 380, 457—*See* CRIM. PRO. CODE, 1898, ss. 536, 537, 26 M. 243, note.

(2525)—Ss. 380, 457—*See* SENTENCE—CUMULATIVE AND SEPARATE SENTENCES, Rat. Un. Cr. Cr. 79=Cr. Rg. 11—12—1873.

(2526)—*Ss.* 380, 461—*Separate convictions—Legality.*—A person who breaks open an iron safe and removes and appropriates its contents can be separately convicted of offences under ss. 380 and 461 of the Penal Code, though the offences form part of the same transaction. QUEEN-EMPRESS v. RAM LALL, **A.W.N. 1896, 194.** (10 A. 146, 10 B. 493, *R.*)

——S. 381.

See THEFT.

(2527)—*S.* 381—*Servant—Unpaid apprentice.* —An unpaid apprentice is a "clerk or servant" within the terms of s. 381 of the Code. SOHAN LAL v. KING-EMPEROR, **157 P.L.R. 1905=50 P.R. 1905, Cr.=3 Cr. L.J. 70.**

(2528)—*S.* 381—*Evidence Act, ss.* 11, 32—*Ownership of alleged stolen property—Witness stating what a deceased person had said to him —Admissibility of such statement.*—A witness's statement as to what a deceased person had said to him regarding the ownership of the property alleged to be stolen is not admissible in evidence either under s. 11 or under s. 32 of the Evidence Act (14 Ind. Cas. 116=9 A.L.J. 351=34 A. 341, *F.*). In the absence of evidence as to the ownership of stolen property, a conviction under s. 381, Penal Code, cannot stand. *In re* DORASAMI AYYAR, **16 Cr. L.J. 640=30 Ind. Cas. 464.**

(2529)—S. 381—*See* Nos. 2509, 2510, *supra.*

(2530)—*Ss.* 381 *and* 407—*Theft by cart-owner hired to carry goods.*—The accused, the owner of a cart, was engaged to cart tamarind fruits from a forest to the complainant's house. He abstracted certain quantity of the fruits from the cart on his way to the complainant's house. *Held*, that the accused was not engaged as a common carrier, but he was hired to carry tamarinds of the complainant and that he was guilty of an offence under s. 381, inasmuch as the tamarinds were delivered to the custody and not to the possession of the accused, and as he was a servant, even though his employment was temporary. HIGH COURT PROCEEDINGS, 3RD JUNE 1881, No. 1102, **1 Weir 437.**

(2531)—*Ss.* 381, 408—*Offences under.*—The accused was sent up for trial by the police on a charge of theft by a servant of property valued at less than Rs. 50. He was tried summarily and convicted of the offence of theft by a servant under s. 381, I.P.C., and of criminal breach of trust under s. 408, I.P.C.: *Held*, that

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the conviction under s. 408 was void for want of jurisdiction. QUEEN-EMPRESS v. BUSTIEN, **U.B.R. 1897—1901, Vol. I, 75.**

(2532)—Ss. 381, 409—*See* THEFT—THINGS WHICH MAY BE THE SUBJECT OF THEFT, 2 W.R. Cr. 55.

(2533)—Ss. 381, 410, 411—*See* THEFT—MISCELLANEOUS, 10 B. 186.

(2534)—*Ss.* 381 *and* 411—*Irregularity—Joint trial of person charged with theft and of person charged with receiving stolen property—Misjoinder of parties — Crim. Pro. Code* (1898), *ss.* 233, 239 *and* 537.—Misjoinder of parties is not fatal to the proceedings, but is an irregularity which requires that the Court should consider whether, under the terms of s. 537, it has, in fact, occasioned a failure of justice. Where no objection was taken before the trying Magistrate for the joint trial of a person charged under s. 411 with a person charged under s. 381, Penal Code, and the evidence was that the former was handling the stolen property only a few hours after the theft, *held*, that the joint trial of him with the person charged with theft had not occasioned a failure of justice. KARU KULAL v. RAM CHARAN PAL, **28 C. 10.** (1 C.W.N. 35, *R.*; 27 C. 839, 28 C. 7, *F.*) [*Diss.*, U.B.R. 1907, 1st Qr., Cr. P.C., 5=14 Bur. L.R. 38; *R.*, 29 B. 449=7 Bom. L.R. 527.]

(2535)—Ss. 381, 411—*See* CRIM. PRO. CODE, 1898, ss. 233, 239, 537, 28 C. 104.

——S. 382.

(2536)—*S.* 382—*Whipping Act* (VI *of* 1864), *s.* 3—*Crim. Pro. Code* (1882), *ss.* 393, 439—*Enhancement of sentence.*—Where a person was convicted of an offence under s. 382 of the Penal Code and was sentenced to whipping which was duly administered, *held* that the sentence was legal and also that the sentence could not be enhanced either under s. 439 of the Crim. Pro. Code by the addition of imprisonment, since the offence was the first offence, or under s. 393 by the addition of more stripes, since no sentence of whipping could be administered by instalments. QUEEN-EMPRESS v. BALU NASIR, **Rat. Un. Cr. C. 537=Cr. Rg. 8 of 1891.**

(2537)—S. 382—*See* Nos. 441, 2363, *supra* and No. 2578, *infra.*

——S. 383.

See EXTORTION.

(2538)—S. 383—*See* Nos. 213, 224, *supra.*

(2539)—Ss. 383, 403—*See* CRIMINAL MISAPPROPRIATION, 3 W.R. Cr. 32.

——S. 384.

See EXTORTION.

(2540)—*S.* 384—*Arrangements among villagers to procure exemption by contribution of settled* quota *in money.*—The system of arrangement by which the villagers procure exemption from certain public duties by the contribution of a settled *quota* in money is a purely voluntary

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and perfectly legitimate bargain among the villagers, and no offence is committed by the accused accepting the *quota* of money in consideration of their discharging those duties on behalf of the villagers. NGA PO HLAING v. QUEEN-EMPRESS, **U.B.R. 1897—1901, Vol. I, 340.**

(2541)—S. 384—*See* JOINDER OF CHARGES—WHEN LEGAL, 132 P.L.R. 1902.

(2542)—S. 384—*See* SANCTION TO PROSECUTE—MISCELLANEOUS CASES, 7 B.H.C. Cr. 61.

(2543)—S. 384—*See* Nos. 129, 763 and 2465, *supra.*

——S. 387.

(2544 and 2545)—S. 387—*See* Nos. 224, 341 and 2143, *supra.*

——S. 389.

(2546)—S. 389—*See* MAD. ACT XXIV OF 1859, ss. 46, 50, 1 Weir 844.

——S. 390.

See DACOITY.

See ROBBERY.

(2547)—S. 390—*See* GRIEVOUS HURT, Rat. Un. Cr. C. 65=Cr. Rg. 27-6-1872.

(2548)—S. 390—*See* HURT, 4 L.B.R. 147=7 Cr. L J. 446.

(2549)—S. 390—*See* No. 2466, *supra.*

(2550)—*Ss.* 390, 391—*First report — When robbery is dacoity—Approver's testimony — Name of culprit not mentioned therein—Value of evidence of identification and production of stolen property.*—*Held*, that the offence of robbery cannot be converted into dacoity where there is simple allegation but not adequate proof on behalf of the prosecution that five or more persons have taken part in committing or attempting to commit the crime. *Held*, that an approver's testimony is not sufficiently corroborated so as to base a conviction thereon by: (*a*) the accused's producing stolen property from a place not in his possession as such an evidence can be easily fabricated; (*b*) the evidence of the witnesses alleging to have recognized the culprit at the time of committing the crime, where his name does not find a place in the first report to the Police made by a person, who had ample time, before doing so, to discuss the matter with them (witnesses). UDA v. CROWN, **26 P.W.R. 1915, Cr.=16 Cr. L.J. 634=30 Ind. Cas. 458.**

——S. 391.

See DACOITY.

See ROBBERY.

(2551)—S. 391—*See* Nos. 57, 2550, *supra.*

(2552)—*Ss.* 391, 392—*Six persons charged—Three acquitted — Conviction for dacoity — Nothing more than robbery disclossd in evidence —Alteration of conviction into one under s.* 392, *I.P.C.*—Where there were six robbers, of whom three were acquitted, and the rest were convicted of dacoity under s. 391, I.P.C., and

Penal Code (Act XLV of 1860)—*continued.*

where the Sessions Judge nowhere, in his charge to the jury, directed their attention to the evidence as to the number of the robbers so as to show that there were five or more offenders and that the offence amounted to dacoity, *held*, that the conviction under s. 391 was not sustainable, and the same was altered into one for robbery under s.392, I.P.C. PIDDA EMUMUNDUGARU *alias* ARULA RAMUDU v. EMPEROR, 7 **M.L.T. 340**=**5 Ind. Cas. 797**=**11 Cr. L.J. 249**=**1910 M.W.N** 52.

——**S. 392.**

See ROBBERY.

See THEFT.

(2553)—S. 392 — *See* COMMITMENT TO SESSIONS COURT, 1 S.L.R. 103, Cr.

(2554)—S. 392—*See* CRIM. PRO. CODE, 1898, s. 206, 6 A. 477.

(2555)—S. 392—*See* Nos. 101, 217, 222, 487, 2143 and 2552, *supra and* Nos. 2578, 2611, *infra.*

(2556) Ss. 392, 323—*See* SUMMARY TRIAL, 21 P.L.R. 1907.

(2557)—*Ss.* 392 *and* 394—*Theft, when robbery —Robbery without hurt and robbery with hurt.*— Theft is robbery under various conditions which do not involve the causing of hurt. Thus, theft may be robbery, because, in committing the theft, the offender attempts to cause hurt, or causes wrongful restraint, or fear of death, hurt or wrongful restraint. In none of these cases could a charge be framed under s. 394, Penal Code. S. 392, Penal Code, would be the only section applicable. But when the fact which transmutes theft into robbery is the voluntarily causing of hurt, then, while s. 392 still applies, in so much that a charge under that section should be framed, the Magistrate is not justified in disregarding the application of s. 394, and a charge of voluntarily causing hurt in committing robbery should be added under that section. The section imposes a specific penalty for the specified act ; and, if there is *prima facie* ground for believing that the accused has committed the act, he should be charged with it. CROWN v. PO LON, **1 L.B.R. 232.**

(2558)—Ss. 392, 394—*See* SENTENCE—CUMULATIVE AND SEPARATE SENTENCES, Rat. Un. Cr. C. 511=Cr. Rg. 31 of 1890.

(2559)—*Ss.* 392, 394 *and* 397—*Offences under the section—Jurisdiction of Magistrate.*—In cases of robbery, the Legislature has provided three different degrees of punishment which may be inflicted. Under s. 392, the punishment may be extended to fourteen years' imprisonment, under s. 394 to transportation for life and under s. 397 the imprisonment cannot be for less than seven years. S. 392 is a general section, and the two other sections specify the same offence under aggravated circumstances. Under Act VIII of 1866, a Magistrate with full powers has jurisdiction under s. 392, but he has not jurisdiction under ss. 394 and 397. With reference to s. 394, it is for the Magistrate in the exercise of his discretion, to decide whether he will dispose of the case himself under s. 392 or commit the accused to the Sessions Court. Similarly, with reference to s. 397, the offence is *prima facie* triable under s. 392, but the effect of a sentence of imprisonment of not less than seven years being provided takes the case out of the jurisdiction of the Magistrate. HIGH COURT PROCEEDINGS, 18TH MARCH 1868, No. 481, **1 Weir 448**=**2 Weir 258**=**2 Weir 20.** [*R.*, 16 C.P.L.R. 97.]

(2560) —*Ss.* 392, 411—*Crim. Pro. Code, s.* 181 — *Jurisdiction — Robbery committed outside British India—Stolen property brought into British territory.*—Two persons, B who was not a British subject, and R who was, were committed to the Court of Sessions at J, it being alleged against them that they had committed a robbery in an adjoining Native State and had brought the stolen property into British territory. *Held*, that, though, neither could be tried by the Sessions Judge of J for the robbery, B, because he was not a British subject, and R, because the certificate required by s. 188 of the Code of Criminal Procedure was wanting, yet both might be tried for the offence of retaining stolen property under s. 411 of the Indian Penal Code. EMPEROR v. BALDEWA, **A W.N. 1906, 52**=**3 A.L.J, 146**=**3 Cr.L.J. 247**=**28 A. 372.** (23 A. 266, *D.*; 10 B. 186, *F.*) [*R.*, 15 Cr. L.J. 207=22 Ind. Cas. 991=26 M.L.J. 235.]

(2561)—*Ss.* 392, 411, 395—*Charge—Amendment by Sessions Judge before hearing evidence —Crim. Pro. Code, s.* 227—*Evidence Act, ss.* 25, 27—*Pointing out places where stolen articles were concealed, if evidence of guilt—Police deposing to admission of guilt by accused, impropriety of.*—Where the appellants were committed to the Court of Sessions on a charge of dacoity, and the Sessions Judge, without assigning any reason, at the commencement of the trial amended the charge to one of robbery.—*Held*, that it was improper for the Sessions Judge to thus alter the character of the charge before hearing evidence.—That, under the circumstances of the case, the fact that the appellants pointed out the places where some of the articles stolen in a robbery were found, was not sufficient evidence to convict them under s. 392, I.P.C., or even under s. 411, I.P.C.—Where the Police Sub-Inspector, in his deposition before the Court, stated that one of the accused admitted before him his guilt, and that from the statement of that accused he (the Sub-Inspector), could understand the exact nature of the offences committed by the accused.—*Held*, that the Sub-Inspector ought never to have been allowed to make such statement before the assessors, whose minds must have been considerably prejudiced thereby. PAIMULLAH v. KING-EMPEROR, **16 C.W.N. 238**=**13 Ind. Cas. 783**=**13 Cr. L.J. 127.** (17 A. 576, *F.*)

——**S. 393.**

(2562)—S. 393—*See* No. 441, *supra.*

(2563)—*Ss.* 393, 398—*Charge—Crim. Pro. Code* (*Act* V *of* 1898), s. 537.—In a charge and

Penal Code (Act XLV of 1860)—*continued.*

finding under s. 398, Penal Code, the substantive s. 393 should be mentioned as well as the supplementary s. 398. The omission to specify the section would, however, be covered by s. 537 of the Code of Criminal Procedure. Where the heads of charge did not contain a mention of the allegation that two out of the three accused were carrying *das* and the Judge omitted to ascertain from the jury whether they found, as a fact, that the said two accused were armed with *das*. *Held*, that it was possible the jury overlooked the serious nature of the charge. The convictions were, consequently, altered to s. 393 from s. 398, and the sentences reduced. CHAN HOK v. EMPEROR, **12 Cr. L.J. 468 = 11 Ind. Cas. 1004.**

——S. 394.

See DACOITY.

See ROBBERY.

See THEFT.

(2564)—S. 394—*See* Nos. 101, 233, 2047, 2110, 2557, 2558, 2559, *supra*.

(2565)—*Ss.* 394 *and* 397—*Jurisdiction of Magistrate.*—A Magistrate, having jurisdiction to try a prisoner for an offence under s. 394, has not his jurisdiction taken away by the mere fact that the prisoner might also have been charged under s. 397. *In re* SURJI DOSS, **1 Weir 449.**

(2566)—*Ss.* 394 *and* 397—*Robbery with grievous hurt.*—If there is an element of doubt as to the identification of the accused in a robbery case, the accused should be given the benefit of the doubt and the conviction and sentence should be quashed and set aside. NGA SAN KO v. QUEEN-EMPRESS, **U.B.R. 1892—1896, Vol. I, 245.**

(2567)—Ss. 394, 397—*See* MAGISTRATE, JURISDICTION OF—COMMITMENT TO SESSIONS COURT, Rat. Un. Cr. C. 476 = Cr. Rg. 36 of 1889.

——S. 395.

See DACOITY.

See ROBBERY.

See THEFT.

(2568)—*S.* 395—*Recent possession of dacoited property—Presumption.*—The recent possession by an accused person of property stolen at a dacoity, even if there is no evidence identifying him as one present at the dacoity, will, in the absence of evidence to the contrary, give rise to the presumption that the accused participated in it. RAM NARAIN v. QUEEN-EMPRESS, **1 O.C. 1.**

(2569)—*S.* 395—*Dacoity — Proof — Identification of accused — Tracker—Evidence of—Benefit of doubt.*—The accused were convicted of the offence of dacoity on the statements of the complainants as to their identification and of the trackers as to the identification of their tracks. The dacoits had issued from the roadside jungle, made a sudden attack on the complainants and put dust into their mouths. The night was a dark one and each complainant was separately assaulted and overpowered, so that he did not and could not see what the dacoits did with the other. Two trackers were originally mentioned in the *chalan*, but only one was examined by the prosecution, the other was examined by the defence. Their evidence was found to be extremely suspicious. *Held*, that, though there were suspicious circumstances against the accused, they could not be convicted of the offence charged, as the evidence was not shown to be reliable. The Court observed that the tracker examined by the defence must be regarded for all practical purposes as a witness for the prosecution. JAHANA v. CROWN, **71 P.L.R. 1910 = 8 Ind. Cas. 239 = 11 Cr. L.J. 598.**

(2570)—*S.* 395— *Dacoity — Circumstantial evidence—Pointing out place where stolen property found.*—Where the sole evidence against a person charged with an offence under s. 395, Penal Code, consisted of the fact that the accused had pointed out the place where some remains of the stolen property were found: *Held*, that the above circumstantial evidence was not sufficient to show that the accused had committed the offence, inasmuch as it did not exclude other theories compatible with his innocence. SURAT SINGH v. EMPEROR, **15 Cr. L.J. 404 = 23 Ind. Cas. 1004.** (17 A. 576, *R.*)

(2571)—*S.* 395—*Dacoity committed in Lucknow District—Trial by jury and not by assessors — Government Notification No.* 1692, VI-545-*A*-9.—Under Government Notification No. 1692, VI-545-A-9, dated 10th December 1884, which is in force, no person can be tried on a charge under s. 395, Penal Code, by the Court of Session in Lucknow, when such person has been committed to that Court by a Magistrate exercising jurisdiction in Lucknow District with respect to an offence of dacoity alleged to have been committed in Lucknow District, except by a jury. RAMADHIN v. EMPEROR, **16 Cr. L.J. 169 = 27 Ind. Cas. 553.**

(2572)—S. 395 — *See* CRIM. PRO. CODE, 1898, s. 423, cl. 2, 2 Weir 517.

(2573)—S. 395—*See* EVIDENCE ACT, 1872, s. 27, 2 S.L.R. 27, Cr. = 10 Cr. L.J. 239.

(2574)—S. 395—*See* SENTENCE— IMPRISONMENT—GENERAL, 13 W.R. Cr. 27.

(2575)—S. 395—*See* Nos. 9, 86, 101, 150, 642, 1974, and 2561, *supra and* Nos. 2599, 2610, *infra*.

(2576)—*Ss.* 395 *and* 59—*Sentence of transportation for twelve years—Legality.*—Under s. 395, a sentence of transportation for life can be given or, by applying s. 59, a sentence of transportation from seven to ten years can also be given; but a term of transportation, under s. 395, between ten years and life, does not seem to be legal. NGA SHWE SIN v. EMPEROR, **4 Cr. L.J. 385 = 12 Bur. L.R. 237.**

(2577)—Ss. 395, 109—*See* CHARGE TO JURY, MISDIRECTION, 7 M.L.T. 191 = 5 Ind. Cas. 935 = 11 Cr. L.J. 334.

Penal Code (Act XLV of 1860)—*continued.*

(2578)—Ss. 395, 392, 382 and 458—Accused charged by Police under s. 395—Magistrate framing charges under ss. 392 and 382—Defence of *alibi* disbelieved—Conviction for offence under s. 458—Legality—*See* CRIM. PRO. CODE, 1898, ss. 236, 237, 238, U.B.R. 1911, 3rd Qr. 98=14 Ind. Cas. 973=13 Cr. L.J. 429.

(2579)—*Ss.* 395, 396 *and* 400—*Dacoity—Habitual association for purposes of committing dacoity—Crim. Pro. Code (Act V of* 1898), *s.* 239 *—Joint trial—Same transaction—Sentence.*—Fourteen persons were tried at one trial and convicted of an offence under s. 400, Penal Code, for having formed into a gang for the purpose of habitually committing dacoity. Between the 7th March, 1908 and 15th December, 1909, four serious dacoities were committed at four different places, and in two of these, dacoity was accompanied by murder. The accused, it was alleged by the prosecution and found proved, took part in one or more of these dacoities. *Held*, that the joint trial of all the accused for the offence under s. 400, Penal Code, though not illegal, was improper. It would have been better to try separately the accused persons for having committed offences under ss. 396 and 397, I.P.C., in respect of dacoities in which it was alleged they took part: *Held*, also, that if it is established that a gang, however small in number, was formed for the purpose of habitually committing dacoity, all persons who thereafter joined that gang in one or more cases came within the purview of s. 400, Penal Code. In cases under s. 400, Penal Code, against a gang consisting of desperate men prepared to proceed to all lengths in carrying out their crimes, the heaviest possible sentence, should be passed. In awarding the sentence, the Court ought to consider, not so much whether particular offenders were concerned in only one or more of the dacoities committed by the gang, as whether it was clearly established that they did in fact join a recognized gang. GHULAM MUSTAFA v. CROWN, **68 P.L.R. 1911=10 Ind. Cas. 833=45 P.W.R. 1911, Cr.=12 Cr. L.J. 260.**

(2580)—Ss. 395, 396, 412—*See* CRIM. PRO. CODE, 1898, s. 307, 22 M. 15=2 Weir 705.

(2581)—*Ss.* 395, 398—*Charge under s.* 395—*Sentence under s.* 398.—Where the accused are charged and convicted of an offence punishable under s. 395 of the Penal Code, they cannot be punished under s. 398. To support a conviction under the latter section, there must be a charge of an offence in which the carrying of arms is distinctly alleged. QUEEN-EMPRESS v. PUNYA SAKHARAM, **Rat. Un. Cr. C. 921=Cr. Rg. 25 of 1897.**

(2582)—Ss. 395 and 400—*See* CRIM. PRO. CODE, 1898, ss. 236, 237, 403, 1 Bom. L.R. 15.

(2583)—*Ss.* 395, 400, 216-*A*—*Gang of dacoits, belonging to—Meaning of—Approver, evidence of—Corroboration of an approver, evidence necessary for.*—A person cannot be said to belong to a gang of dacoits within the meaning of s. 400, Penal Code, in respect of whom the Court is satisfied that his connection with the gang was limited and was always intended to be limited to a series of acts, none of which amounted either to dacoity or to abetment of dacoity, though they might be punishable under s. 216-A, Penal Code. It is not necessary for a conviction under s. 400, Penal Code, that the person convicted must have taken part in any one dacoity. Evidence, showing the actual participation by an accused in any given dacoity, is evidence both of his association with the gang and of his object in such association. Evidence though not believed for the purpose of a conviction under s. 395, Penal Code, may yet be relied upon for the purpose of a conviction under s. 400, Penal Code. A conviction under s. 400, Penal Code, cannot be considered bad in law, merely because the evidence on the record would also have justified a conviction of a specific offence under s. 395, Penal Code. No conviction can be based on the evidence of an approver without clear and independent corroboration. Evidence in corroboration of the statement of an approver must be evidence tending to prove that the particular person to whom it relates was guilty of the offence charged; it is not sufficient that it should merely corroborate the general accuracy of the story told by the approver. Evidence dealing with facts outside the knowledge of the approver would amount to a corroboration of the approver's statement, if it tended to prove the guilt of the particular accused with reference to the offence charged. GAYA DIN v. KING-EMPEROR, **13 O.C. 235=7 Ind. Cas. 1006=11 Cr. L. J. 551.** [*R.*, 11 Cr. L.J. 554=7 Ind. Cas. 1012=13 O.C. 243.]

(2584)—Ss. 395, 401—*See* JOINT TRIAL, A.W.N. 1882, 178.

(2585)—*Ss.* 395, 411, 412—*Conviction under s.* 411, *I.P.C., bars conviction either under s.* 395 *or under s.* 412.—Where there was an extent and irreversible conviction under s. 411, I.P.C. the convict could not be convicted either under s. 395 or under s. 412, I.P.C., in connection with the same property and the same theft. QUEEN-EMPRESS v. OJHA, **A.W.N. 1898, 203.**

(2586)—Ss. 395, 411, 412—*See* JOINDER OF CHARGES—MISJOINDER OF CHARGES, 11 C.L.J. 182.

(2587)—*Ss.* 395, 412—*Separate convictions, under both sections, with reference to the same property.*—Separate convictions and sentences under s. 395 and s. 412, Indian Penal Code, with respect to the same property, are obviously improper, as s. 412 implies receipt from another person, or an act by one not himself the dacoit. QUEEN-EMPRESS v. BAHIRU, **Rat. Un. Cr. C. 312=Cr. Rg. 65 of 1886.**

(2588)—Ss. 395, 412—*See* CRIM. PRO. CODE, 1898, s. 237 (1), Rat. Un. Cr. C. 34=Cr. Rg. 16-6-1870.

(2589)—Ss. 395, 412—*See* JOINDER OF CHARGES—GENERAL, 13 W.R. Cr. 42.

Penal Code (Act XLV of 1860)—*continued.*

——**S. 396.**

See DACOITY.

See ROBBERY.

See THEFT.

(2590)—*S.* 396—*Scope and object of the section—Sentence.*—In enacting s. 396, I.P.C., it is the intention of the Legislature that the sentence of death should sometimes be inflicted on a person convicted of taking part in a dacoity, in the course of which a murder is committed, even although there is nothing to show that he himself committed the murder or that he abetted it within the meaning of s. 107, I.P.C., or that he even knew that it was likely to be committed in prosecution of the common object of his comrades. EMPRESS v. TANTIA BHIL, **4 C.P.L.R. 1, Cr.**

(2591)—*S.* 396—*"In so committing," meaning of.*—Murder committed by dacoits, when they were engaged in carrying off the stolen property, is murder committed while they were engaged in committing dacoity and is, therefore, punishable under s. 396. VITTI THEVAN v. VITTI THEVAN, **17 M.L.J. 118=5 Cr. L.J. 201.**

(2592)—*S.* 396—*Dacoity with murder.*—In this case, certain prisoners broke out of a police guard, and, after seizing the police rifles, ammunition, &c., effected their escape. One of them fired at a constable and killed him, the circumstances under which the shot was fired not being disclosed in the evidence. *Held*, that the accused were rightly convicted under s. 396, I.P.C. NGA KYAW v. QUEEN-EMPRESS, **L.B.R. 1872—1892, 502.**

(2593)—*S.* 396 — *Crim. Pro. Code*, 1882, *ss.* 289 *and* 342—*"No evidence," meaning of—Dacoity with murder.*—In a dacoity case, it is the duty of the Sessions Judge to record the evidence of the witnesses for the prosecution as well as for the defence. Even if there was no evidence against the accused on the prosecution side, the Judge could not acquit the accused without examining them, because the words "no evidence" in s. 289, Crim. Pro. Code, mean only "no legal evidence or proof" and not "no evidence worthy of belief." The accused, therefore, ought to be examined under s. 342, Crim. Pro Code, and called on to enter on his defence. QUEEN-EMPRESS v. BHARAT SINGH, **1 O.C. 84.** (S. C. 274, Oudh, *R.*).

(2594)—S. 396—*See* EVIDENCE — DYING DECLARATION, 25 B. 45=2 Bom, L.R. 331.

(2595)—S. 396—*See* MURDER, 4 P.R. 1900, Cr.

(2596)—S. 396—Dacoity with murder—*See* SENTENCE—CUMULATIVE AND SEPARATE SENTENCES, W.R. 1864, Cr. 30.

(2597)—S. 396—*See* Nos. 105, 1943, 1974, 2304, 2579 and 2580, *supra.*

(2598)—*Ss.* 396, 302, 109—*Dacoity after previous contemplation—Sentence.*—If, in a case of dacoity, the murder of the deceased was contemplated from the first and is committed, any person who joined in the conspiracy would be liable under s. 302, read with s. 109, I.P.C., to a punishment of no less severity than transportation for life, even if he had not eventually joined in the commission of the dacoity by the other conspirators. The provisions of s. 396 of the Code cannot override those of s. 302, so as to render a man liable to a less severe sentence under the former section than could legally have been inflicted under the latter. EMPRESS v. SUKHRA, **10 C.P.L.R. Cr. 20.**

(2599)—*Ss.*396 *and* 395—*Essence of the offence under.*—The first essence of an offence under s. 396 is that the dacoity is the joint act of the persons concerned; and the second essence is that the murder is committed in the course of the commission of the dacoity in question. The essence of the offence of robbery referred to in ss. 395 and 396 is that the offender for the end of committing theft, or carrying away or attempting to carry away properties obtained by theft, voluntarily causes or attempts to cause to any person death, hurt, or wrongful restraint, or fear of instant death, of instant hurt, or of instant wrongful restraint. KING-EMPEROR v. MATHURA THAKUR, **6 C.W.N. 72.**

(2600)—*Ss.* 396, 400—*Belonging to a band of dacoits—Sentence.*—If an accused takes part in any dacoity accompanied with murder, the proper section of the Penal Code to apply to him is s. 396, in addition to s. 400, and he is liable to be sentenced to death, or transportation for life, or ten years' rigorous imprisonment and fine. If he has not rendered himself liable to this extent, a distinction must still be made between those dacoits who, though belonging to an organized band, have only recently joined it, and have perhaps not taken part in more than one or two dacoities at the most, and those who have belonged to a gang for years and have taken part in many dacoities; between those who have belonged to the worst gangs, who go about armed, defying the authorities and inflicting grievous hurt upon the people, and those smaller and less dangerous gangs, who dacoit only because they are driven to do so by want and starvation, and because they are afraid to surrender and who inflict no injury upon the people beyond that of depriving them of a few fowls and baskets of paddy, the food they are in search of. NGA LU NGE GYI v. QUEEN-EMPRESS, **L B.R. 1872—1892, 441.**

——**S. 397.**

See DACOITY.

(2601)—*S.* 397—*Scope of the section.*—S. 397 applies only to the case of a person, who, in committing robbery and dacoity, actually uses any deadly weapon, or causes grievous hurt. It is not applicable to the case of persons, who are associated with him in committing robbery or dacoity, and who do not use any deadly weapon or cause grievous hurt. *In re* KOMALI VISWASAM, **1 Weir 450=2 Weir 515.**

Penal Code (Act XLV of 1860)—*continued.*

(2602)—*S.* 397—*Dacoity with deadly weapon.*—To sustain a conviction under s. 397, I.P.C., proof is necessary that, at the robbery, the accused was armed with a deadly weapon, and not merely that one of the dacoits who was with the accused at the time carried one. EMPEROR v. BHURA AHIR, **16 C.P.L.R. 97.** (2 W.R. Cr. 49, 21 A. 263, *R.*)

(2603)—*S.* 397—*Deadly weapon carried by one of the robbers.*—A robber cannot be convicted under s. 397, Penal Code, merely because one of his associates carried a deadly weapon. PO WIN v. EMPEROR, **7 L B.R. 26=20 Ind. Cas. 416=14 Cr. L.J. 432=6 Bur. L.T. 88.**

(2604)—*S.* 397—*Causing grievous hurt — Crim. Pro. Code, s.* 537—*Misdirection to the jury.*—Where the Judge points out that there is no evidence that the appellants caused grievous hurt, and yet directs the jury that they may convict the accused under s. 397, I. P.C., merely because grievous hurt was caused by some of the robbers, it is a misdirection to the jury, and they cannot be convicted of an offence under s. 397. ARUNACHALA TEVAN v. EMPEROR, **(1912) M.W N. 35=11 M.L T. 20=22 M.L.J. 186=13 Ind. Cas. 282=13 Cr. L. J. 42.** (28 A. 404, *F.*)

(2605)—S. 397 — *Lathi* whether a deadly weapon— *See* ACCOMPLICE — ACCOMPLICE EVIDENCE—NECESSITY FOR CORROBORATION, 19 P.W.R. 1912, Cr. =13 Ind. Cas. 998 =13 Cr. L.J. 182=17 P.L.R. 1912.

(2606)—S. 397—*See* CHARGE—FORM OF CHARGE, Rat. Un. Cr. C. 55=Cr, Rg. 31-8-1871.

(2607)—S. 397—*See* Nos. 101, 102, 103, 220, 2559, 2565, 2566 and 2567, *supra.*

(2608)—*Ss.* 397, 326—*Robbery—Robbery not proved— Conviction for grievous hurt under s.* 326.—A Jury, in a Sessions case, is competent, where a charge under s. 397, Penal Code, is not established, to convict the accused of an offence under s. 326, Penal Code, where the facts proved established the commission of that offence. *In re* ADABALA MUTHIYALU, **13 Cr. L.J. 739=17 Ind. Cas. 51=37 M. 236.** (22 M. 15, 24 M. 641, 26 M. 243, *R.*)

(2609)—*Ss.* 397, 380 *and* 457—*Whipping in case of previous conviction—Procedure.*—Where there is a previous conviction under s. 379, I.P.C., and a Magistrate in a subsequent case, under s. 457, I.P.C., in which theft has actually been committed, thinks it proper to pass a sentence of whipping in addition to imprisonment, he should convict under s. 380, I.P.C., as well as under s. 457. EMPRESS v. BHAGIRATH KACHI, **11 C.P.L.R. Cr. 1.**

(2610)—*Ss.* 397, 395—*Use of deadly weapon by one of a band of dacoits—Application of s.* 397.—One of the dacoits in the case carried a spear and made thrusts with it through the door into the inner room which was dark. The District Magistrate held that, because one of the dacoits used a spear, all of them were liable to conviction for dacoity under s. 397, I.P.C. *Held*, altering the conviction to one under s. 395, the fact that one of a band of dacoits uses a spear cannot by itself render the other dacoits of the band liable to punishment under s. 397, I.P.C. The words "such offender" in s. 397, plainly mean any offender who uses a deadly weapon and no other. NGA SEIN v. KING-EMPEROR, **3 L.B.R. 121=3 Cr. L.J. 354.** (21 A. 263, *D.*) [*R.*, 14 Cr. L.J. 432=20 Ind. Cas. 416=7 L.B.R. 26.]

(2611)—*Ss.* 397, 398, 392—*The term 'uses' in s.* 397—*Meaning—Intention of legislature.*—The word 'uses' in s. 397, I.P.C., should be construed in a wide sense, so as to include not merely cutting, stabbing, shooting (as the case may be) but also carrying the weapon for the purpose of overawing the person robbed. If the accused had merely attempted to take the complainant's property by overawing him with a dagger, but (owing to infirmity of purpose on his own part or resistance on the part of the complainant) had not carried out his design, he would undoubtedly be liable to the minimum punishment provided in s. 398. The legislature cannot have intended that, if the criminal goes farther and actually accomplishes his purpose, he should thereby establish a claim to more lenient treatment. It cannot have been intended that a criminal should be urged to complete his criminal purpose by the reflection that, if he stops short at an attempt he must get seven years, while if he completes the offence he may get off with imprisonment for two or three years. NGA I v. KING-EMPEROR, **6 L B R. 41=13 Cr. L.J. 267=14 Ind. Cas. 651=5 Bur. L.T. 9.** [*R.*, 7 L.B.R. 26=14 Cr. L.J. 432=20 Ind. Cas. 416.]

(2612)—*Ss.* 397, 398, 399, 402, 511—*Use of arms in endeavouring to effect escape by persons attempting to commit dacoity.*—Where several persons, being armed, were found endeavouring to break into the house of the complainant, and used violence against those who endeavoured to prevent their escape, and one of them was found on the spot with a loaded pistol upon him, *held*, that the latter was liable to be convicted under s. 398, and the former, under ss. 399, 402. *Held*, further, that, as no robbery or dacoity was committed, they could not be convicted under s. 397 coupled with s. 511. QUEEN-EMPRESS v. BENI, **23 A. 78=A.W.N. 1900, 202.** (7 W.R. Cr. 48, *R.*)

— **S. 398.**

See DACOITY.

See ROBBERY.

See THEFT.

(2613)—*S.* 398—*Dacoity with deadly weapons.*—To support a conviction under s. 398, I.P.C., as under s. 397, it is necessary to prove that at the robbery the accused was armed with a deadly weapon, and not merely that one of the robbers who was with the accused at the time carried one. QUEEN EMPRESS v. BHAVJYA, **Rat. Un. Cr. C. 797=Cr. Rg. 54 of 1895.**

(2614)—*S.* 398—*Robbery, armed with a deadly weapon.*—In this case, it was held in

Penal Code (Act XLV of 1860)—*continued.*

appeal, that the above section applied only to cases of attempt at robbery. A sentence of seven years' rigorous imprisonment passed by the Magistrate and confirmed by the Sessions Judge was reduced to four years' rigorous imprisonment. NGA SHWE WAW v. QUEEN-EMPRESS, L.B.R. 1872–1892, 280.

(2615)—S. 398—*See* Nos. 341, 2563, 2581, 2611 and 2612, *supra.*

—— S. 399.

(2616)—S. 399—Magistrate—Cognizance of offence under—Facts disclosing also an offence under s. 4 (*b*), Explosives Act (VI of 1908)—Jurisdiction—Scope of s. 399, I.P.C. and s. 4 (*b*), Act VI of 1908—Distinction—*See* JURISDICTION—GENERAL, 39 C. 119=15 Ind. Cas. 65=13 Cr. L.J. 433.

(2617)—S. 399—*See* No. 2612, *supra.*

(2618)—*Ss.* 399, 402—*Nature of defence which accused can set up—Duty of Court—Prosecution evidence, deficiency in, defence not bound to fill up—Right of defence to comment on such deficiency—Case of fraud set up by defence—Prosecution, opportunity of explanation to—Verdict of assessors, in answer to questions by Judge, impropriety of—Ss.* 399, 402, *I.P.C.—Acquittal under s.* 399 *if involves acquittal under s.* 402, *I P.C.—Repugnancy in judgment, conviction if can be set aside on such ground—Tenancy of modern legislation—Power of High Court to alter acquittal on one of two alternative charges into conviction—Distinction between ss.* 399 *and* 402, *I.P.C.—Crim. Pro. Code, s.* 47, *meaning and scope of—S.* 103, *cl.* (2) *—Search—Right of "occupant" to be present at search—Denial of this right, effect of—"Occupant of the place," meaning of—Omission of one Magistrate to take cognizance on suspicion, effect of, on subsequent proceedings—Finding of incriminating articles in a house, presumption of law arising from—Woodroffe, J. (Beachcroft, J. concurring.)*—An accused person is entitled to put forward any defence open to him, technical or otherwise, and to have the Court's judgment on it. It is no affair of the defence to supplement or explain deficiencies or suspicious circumstances appearing on the face of the prosecution evidence. It is open to it to say that the prosecution has not proved its case and to refer to such deficiencies in proof of the submission, or to other circumstances appearing on the face of the prosecution evidence which show that it is so open to suspicion that it would be unsafe to accept it. If, however, the defence puts forward a case of fraud or if the evidence for the prosecution is not ambiguous, the defence should give notice of the point they intend to take so that the prosecution may have an opportunity of explanation. If any charge of fraudulent practice was going to be based on a circumstance which, standing by itself, was not necessarily suspicious, the defence should have cross-examined witnesses on the point. Where the Sessions Judge, in taking the verdict of the assessors, put a large number of questions to them and then recorded their opinion on those questions: *Held*, that the Judge should have allowed the assessors in the first instance to have given their opinion in their own language and way, and then, when they had completed what they had to say, it would have been open to him to put to them such questions as were necessary to elucidate or supplement their opinion. Where the charge against the accused was of two separate offences laid in an alternative form, *viz.*, one under s. 399 and another under s. 402, I.P.C. but it appeared that the charges were treated not alternatively but as additional, and the Sessions Judge acquitted them of the charge under s. 399, I.P.C., and convicted them of the charge under s. 402, I.P.C. *Held*, that the acquittal under s. 399, I.P.C., did not involve an acquittal under s. 402, Civ. Pro. Code, and the conviction under the latter section was not wrong and the judgment of the Sessions Judge was not vitiated by repugnancy. That, even if there was any repugnancy, it was open to the High Court to alter the finding of acquittal under s. 399, I.P.C., into one of conviction maintaining the sentence. That the offences of commission of dacoity, preparation for it and assemblage for the same purpose, have this in common, that they presume an intention or agreement to commit dacoity by five or more persons. A mere assembly without further preparation is not a preparation within the meaning of s. 399, I.P.C., for if it were, s. 402, I.P.C., would be redundant. S. 402, I.P.C., applies to the case of mere assembling without proof of other preparation. A person can thus be not guilty of dacoity yet guilty of preparation and not guilty of preparation yet guilty of an assembly. *Beachroft, J.*—The tendency of modern legislation in general and of the Crim. Pro. Code in particular is to avoid technicalities, and there is no provision in that Code which would justify interference with a conviction on the ground of repugnancy in the record. *Woodroffe, J., (Beachcroft, J. concurring).*—Where the Police searched a hurt on suspicion and incriminating evidence was found, and after the search was over the Additional District Magistrate came to the spot and saw what had been found, and search-list was prepared which the Additional District Magistrate signed, and the accused were subsequently placed before another Magistrate who held an enquiry and committed the accused to the Court of Sessions for trial: *Held*, that the fact that the Additional District Magistrate did not take cognizance of the case at once did not render the subsequent proceedings before another Magistrate bad, nor could such subsequent proceedings be held to be prejudicial to the accused. That it was not the duty of the Additional District Magistrate to take cognizance of the case on the basis of what he found at the spot. Where the accused persons, who were inside the room searched by the Police, were, after the discovery in their presence of a gun and after search of their persons, sent out of the room and the search was continued: *Held* that the Code of Criminal Procedure permits the occupants of the place searched to be

Penal Code (Act XLV of 1860)—*continued.*

present at the search, and there was therefore a violation of this rule which is one not merely of technicality but of substance, in that it is enacted to guarantee the reality of the search and the discoveries made thereat. That this was an irregularity which the accused were entitled to ask the Court to consider and which made it incumbent on the Court to scrutinise the evidence carefully. *Beachcroft, J.*—The spirit of s. 103, sub-s. 3, is that the occupant of the place searched shall be present and it means that he is to be given the option of being present and not that he is to be allowed to be present only if he demands it. But the right of presence given by s. 103 applies only to the occupant of the place searched or some person in his behalf, and the words "occupant of the place" are not intended to cover every person who may happen to be in the place at the time, but they refer back to the person mentioned in s. 102, *i e.*, a person residing in or being in charge of the place. *Woodroffe, J.*—Where, after searching a hut, arms were found under a *machan* inside the hut and in the ceiling of the hut:—*Held* that knowledge of the existence of the arms would not without other evidence be imputable to any other than the lessee of the hut, nor would the presumption operate even against him if it were shown that the circumstances were such that arms might be in his place without his knowing it. *Beachcroft, J.*—Where an article is found in a man's house, the ordinary presumption is that he as owner of the house is aware of its contents. This is subject to the qualification that no other person has access to that particular place. It follows that, if the house is in the occupation of more persons than one having access to the particular place, there is no presumption against them individually that they have put the article where it is found; though, if it be proved that an article has been for a considerable period of time in a place to which all have frequent access, it might reasonably be presumed that all were aware of its existence. S. 47, Crim. Pro. Code, is not intended to restrict the powers of the Police to enter the place to be searched; on the contrary it is a provision compelling householders to afford the Police facilities in carrying out their duties, and s. 48 provides that if difficulties are placed in the way of a Police officer, he may use force to obtain ingress. ROMESH CHANDRA BANERJEE v. THE EMPEROR, **18 C.W.N. 498 = 41 C. 350 15 Cr. L.J. 385 = 23 Ind. Cas. 985.**

——S. 400.

See DACOITY.

See ROBBERY.

See THEFT.

(2619)—*S.* 400—*Belonging to a gang of dacoits—Proof for conviction under section—Evidence of accomplice, corroboration of.*—To support a conviction under s. 400, it is necessary to prove (1) that a gang of dacoits existed and (2) that the accused belonged to that gang. It is not sufficient to prove simply that the accused repeatedly gave shelter and assistance to the dacoits. QUEEN-EMPRESS v. VITHU *valad* RAYAJI, **1 Bom. L.R. 156.**

(2620)—*S.* 400—*Offence under—Accomplice evidence.*—In order to convict a person under s. 400, it is sufficient to establish that the person accused belongs to a gang whose business is the habitual commission of dacoity or, in other words, that he was associated with others for the habitual pursuit of that offence. The statement of an accomplice must be corroborated in some material particulars, so as to make it safe to act upon such other portions of his statements as to which there is no corroboration. EMPRESS v. KURE, **A.W.N. 1886, 65.** [*R.*, 8 A. 509, 10 Cr. L.J. 364 = 6 Ind. Cas. 492 = 18 P.L.R. 1910 = 63 P.W.R. 1910, 13 P.R. 1914, Cr., 13 Cr. L. J. 39 = 16 C.W.N. 69 = 13 Ind. Cas. 279.]

(2621)—*S.* 400—*Points to be considered in determining sentence upon accused convicted of offence falling under.*—There are many points which have to be considered in determining what is an adequate sentence to pass upon an accused convicted of an offence falling under s. 400, I.P.C. Among these may be noted the following:—(i) how long has the accused belonged to the gang; (ii) what dacoities have been committed by the gang since the accused joined it; (iii) in how many of these dacoities did the accused actually take part? (If the accused are being separately prosecuted for every dacoity in which they have been concerned as members of the gang, this point must be left out of consideration); (iv) what was the character of the dacoities in which the accused actually took part? Whether they were accompanied with murder, culpable homicide, grievous hurt, torture, or with any acts of a specially brutal character, or were they only dacoities of the ordinary character. NGA LU NGE GYI v. QUEEN-EMPRESS, **L.B.R. 1872—1892, 441.**

(2622)—*S.* 400 — *Dacoity—Belonging to a gang of dacoits—Proof—Evidence Act* (I *of* 1872), *s.* 30—*Confession—Accomplice—Corroboration.*—To sustain a conviction on a charge under s. 400, I.P.C., for having belonged to a gang of persons associated for the purpose of habitually committing dacoity, there must be (1) proof of association and (2) proof that the association was for purpose of habitually committing dacoity, and the habit must be proved by an aggregate of acts. Previous convictions of the accused for dacoity along with other dacoits is relevant against him, under expl. 2 of s. 14 of the Evidence Act. But the propriety of the accused's conviction must be judged exclusively by reference to the evidence adduced by the prosecution at the trial. The confessions made by the accomplices at previous trials for dacoity cannot be taken into consideration against the accused under s. 30 of the Evidence Act. Such confessions do not stand on a better footing than the sworn testimony of an accomplice, and cannot be treated as good evidence against the accused, without being corroborated *aliunde* by independent evidence in material particulars, and specially

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in respect of the identity of the accused. WALIA v. CROWN, 18 P.L.R. 1910, Cr. = 6 Ind. Cas. 492 = 11 Cr. L.J. 364 = 63 P.W.R. 1910, Cr. (9 P.R. 1880, Cr., 1 C.W.N. 146, *R.*) [*R.*, 13 P.R. 1914, Cr.]

(2623)—*S.* 400—*Approver's evidence, Corroboration necessary for—Accomplice—Confession of accused—Gang of dacoits, belonging to—Evidence Act, s.* 30.—The evidence of an approver cannot by itself be accepted as sufficient proof of the guilt of an accused. It must be corroborated by evidence independent of accomplices. A confession duly made at any time by one of several accused persons who are under trial jointly for the same offence can be taken into consideration under s. 30 of the Evidence Act, but the value of such a confession as evidence is very small and does not constitute legally sufficient corroboration of the testimony of an approver either as to the *corpus delicti* or the identity of the person affected. The term "belong" in s. 400, Penal Code, implies something more than the idea of casual association; it involves the notion of continuity and indicates a more or less intimate connection with a body of persons extending over a period of time sufficiently long to warrant the inference that the person affected has identified himself with a band, the common purpose of which is the habitual commission of dacoity. HIRA LAL v. KING-EMPEROR, 13 O.C. 243 = 7 Ind. Cas. 1012 = 11 Cr. L.J 554.

(2624)—*S.* 400—*Section to be strictly construed—Association for dacoity—Gist of offence — Kind of evidence sufficient to convict — Approver's testimony — Corroboration — Proof that accused members of a criminal tribe, value of — Previous conviction, value of, when no association established — Acquittal, effect of—Verification, evidence of, best evidence of Magistrate.*—The offence contemplated in s. 400 of the Penal Code is one of a very special character and entirely the creature of statute and should therefore be strictly construed (23 W.R.Cr. 18, *R.*). Association for the habitual pursuit of dacoity is the gist of the offence punishable under the section. Although the evidence need not show the same degree of particularity as to the commission of each dacoity as is required to support a substantive charge of that crime, it must be established, for the purpose of conviction under the section, that the accused belong to a gang whose business is the habitual commission of dacoity. The special conspiracy must be proved. (32 M. 179, A.W.N. 1886, 65, 66, 24 M. 523, *R.*) Corroboration of the testimony of an approver in a trial under s. 400 must connect the accused with the offence, *viz.*, the association of a gang of persons for the business of habitually committing dacoity. The general criminality of a tribe or caste cannot be imputed to individual members operating in gangs where the prosecution is under s. 400, and the fact that members of the tribe generally were alleged to have been implicated in several dacoities within a period of ten years preceding the trial was not sufficient proof against the persons under trial, when it appeared that the tribe contained within it thousands of human beings. Where association for the purpose of habitually committing dacoity had not been made out, the mere fact that some of the accused had been previously convicted of dacoity or theft or had been bound down to be of good behaviour under s. 110, Crim. Pro. Code, was of no consequence. The fact that some of the persons undergoing trial for an offence under s. 400 had once been sent up on a charge of dacoity of which they were acquitted could not be relied on to prove that they were habitual dacoits. No adverse inference can be drawn against accused persons after their acquittal. (15 C.W.N. 593 1902 2 K.B. 339, *F.*; 15 C.W.N. 461, *D.*) Where a confession was verified by a Magistrate, the proper course for the prosecution was to examine the Magistrate himself, and not the other verification witnesses whose evidence would be inferior to his. KADER SUNDAR v. EMPEROR, 16 C.W.N. 69 = 13 Ind. Cas. 279 = 13 Cr. L.J. 39.

(2625)—S. 400—*See* EVIDENCE ACT, 1872, ss. 14, 43, 53, 1 C.W.N. 146.

(2626)—S. 400—*See* Nos. 550, 2579, 2582, 2583 and 2600, *supra.*

——**S. 401.**

See DACOITY.

See ROBBERY.

See THEFT.

(2627)—*S.* 401—*Gist of the offence.*—To sustain a conviction on a charge under s. 401, I.P.C., there must be (1) proof of association and (2) proof that the association was for the purpose of habitual theft. The habit should be proved by an aggregate of acts. AFRIDI v. EMPRESS, 9 P.R, 1880, Cr. [*F.*, 13 Cr. L.J. 799 = 17 Ind. Cas. 543, 36 P.W.R. 1912, Cr.; *R.*, 13 P.R. 1914, Cr., 11 Cr. L.J. 364 = 6 Ind. Cas. 492 = 18 P.L.R. 1910, Cr.]

(2628)—*S.* 401 — *Gist of the offence.*—In order to sustain a conviction under s. 401, I.P.C., it is not sufficient to prove that the accused is simply a member of a robber tribe; it should also be shown that he actually consorted with persons who were themselves associated for the purpose of habitually committing theft or robbery. PEERA v. CROWN, 37 P.R. 1869, Cr. [*R.*, 13 P.R. 1914, Cr.]

(2629)—*S.* 401—*Gang of persons associated for the purposes of habitually committing theft —Sufficient evidence of belonging to the gang.* —There must be evidence that the accused were members of a gang associated for the purpose of habitually committing theft, before there could be a conviction of an offence under s. 401. The evidence that some of the several co-accused who have been charged with dacoity, were previously convicted of theft, is not sufficient to connect all the accused with association for habitually committing an offence within the meaning of s. 401, even if such evidence

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were admissible. MANKURA PASI v. QUEEN-EMPRESS, **27 C. 139=4 C W.N. 97.** [*F.*, 17 Ind. Cas. 543=36 P.W.R. 1912; *R.*, 13 P.R. 1914, Cr.; *D.*, 38 C. 408=15 C.W.N. 461=12 Cr. L.J. 97=9 Ind. Cas. 555.]

(2630)—*S.* 401—*Belonging to wandering gang of thieves—Scope, object and proof.*—S. 401 ought not be resorted to when the persons sought to be brought within its four corners might have been made responsible for distinct and individual offences; nor is it intended to affect them unless an association for the actual commission of theft or robbery is clearly made out. A resort to the provisions of s. 401, I.P.C., by the police for the purpose of sweeping into a wide net, a large number of persons whom they suspect, or who give them trouble, is not to be encouraged. EMPRESS v. JAHANGIRA, **A.W.N. 1886, 16.** [*R.*, 13 P.R. 1914, Cr.]

(2631)—*S.* 401—*Offence under—Evidence—Proof—Retrial.*—The case against the appellants arose out of one in which a number of other persons, Kunjurs, and members of a wandering gang of Kunjurs, were convicted by the Court of Sessions under s. 401, I.P.C., in 1883. That case arose out of the seizure by the police at an encampment of this band of a number of stolen cattle. Evidence was given at the trial of appellants to show that they belonged to this band when the cattle were seized; that one of the appellants and another person were subsequently in prison under a conviction for theft; and that another appellant had been convicted of highway robbery in 1878. At the time of their trial the appellants were each undergoing a sentence of two years' rigorous imprisonment for receiving stolen property. *Held* that the evidence, though sufficient to prove association, was not sufficient to prove that the association, was for the habitual commission of theft or robbery. The case was ordered to be tried *de novo.* EMPRESS v. SHIBBA, **A.W.N. 1886, 15.** [*R.*, 13 P.R. 1914, Cr.]

(2632)—*S.* 401—*Dacoits—Habitual offenders—Proof.*—To justify a conviction under s. 401 of the Penal Code, it is not enough to show that certain persons have been convicted of theft and that some other persons have lived with them. It is necessary to prove that the gang of persons have been associated for the purpose of habitually committing theft or robbery. This habit must be proved by several specific acts. QUEEN-EMPRESS v. SAVALDAS, **Rat. Un. Cr. C. 418.**

(2633)—*S.* 401—*Belonging to a gang—Proof.*—To establish the offence of belonging to a gang of persons associated for the purpose of habitually committing theft or robbery under s. 401, I P.C., it must be proved that there was a gang and that the accused were members of it, and that this gang was associated for the purpose of habitually committing theft or robbery. EMPRESS v. BALDEO, **5 C.P.L.R. Cr. 24.**

Penal Code (Act XLV of 1860)—*continued.*

(2634)—*S.* 401—*Offence under the section—Proof.*—The accused, who were convicted under the above section, were all members of one family. The only evidence against them was that two of them had been previously convicted under s. 454, I.P.C., that they had no ostensible means of subsistence, and that, during their progress through a certain local area, a number of petty crimes were committed within ten miles of their encampments; but no stolen property was traced to their possession, nor was the country traversed by them shown to be free from similar petty crimes before they moved about. *Held* that their conviction under s. 401 was bad. DUKHARAM v. KING-EMPEROR, **7 O.C. 163=1 Cr. L.J. 690.** [*R.*, 12 Cr. L.J. 204=10 Ind. Cas. 23.]

(2635)—*S.* 401—*Proof of association, for conviction under.*—In a case under s. 401, the evidence against the accused was of three kinds, *viz.*, (1) that they were seen together at midnight on a certain night in a particular place with implements of house-breaking; (2) that they were in the habit of committing theft together, and that some of them were seen together in different places, where offences such as house-breaking and theft were immediately afterwards committed; and (3) that they have been convicted at different times of theft. *Held*, that these were not sufficient to convict the accused of an offence under s. 401. *In re* SUBBAN, **1 Weir 452.**

(2636)—*S.* 401—*Association for the purpose of habitual theft—Proof.*—*Held*, that, to sustain a conviction on a charge under s. 401, Penal Code, there must be (1) proof of association, (2) evidence that the association was for the purpose of habitual theft and the habit should be proved by aggregate acts. Where the accused dressed as a *pathan*, and having on his person some matches, wax and string, was found near a village in company with three other *pathans* whose whereabouts were not known, and seeing the villagers they all began to run away, and, on their being pursued, one of them fired three shots at the villagers, but the accused was knocked down with a stone and arrested, his conviction under s. 401 was quashed and he was not convicted of any other offence also. The fact of his having been once bound under s. 110, Crim. Pro. Code, is immaterial. ISHAR DAS v. CROWN, **36 P.W.R. 1912, Cr.=13 Cr.L. J. 799=17 Ind. Cas. 543.** (9 P.R. 1880, Cr., 27 C. 139, *F.*) [*R.*, 13 P.R. 1914, Cr.]

(2637)—*S.* 401—*Gang associated for habitually committing theft or robbery—Proof—Wandering tribe—Liability of individual members—Parents and children.*—For the purposes of s. 401, Penal Code, it must be clearly established, either by direct evidence or by facts from which the inference may be legally drawn, that the members composing a gang have combined or come together for the purpose of habitually committing theft or robbery. The fact that several members of a gang of a wandering tribe were dishonest and did commit thefts and other crimes is not in itself

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sufficient to show that the purpose for which they had combined was to habitually commit theft. (7 O.C. 163, 32 M. 179, 5 M.L.T. 10, 9 Cr. L.J. 567, 2 Ind. Cas. 307, *R.*) The mere fact that the woman and children belonging to such gang lived with adult males of the gang, is insufficient for a Court to hold that they were associated with their husbands and parents for the purpose of habitually committing theft. The fact that some of the members of such gang were guilty of theft and burglary does not establish that the association of the gang was one which was brought about for the purposes contemplated by s. 401, Penal Code. AJITA v. EMPEROR, **10 Ind. Cas. 23=12 Cr. L.J. 204.**

(2638)—*S.* 401—*Habitual thieves—Gang, belonging to a—Evidence of previous conviction—Evidence.*—Under s. 401, Penal Code, for the purpose of determining whether a party of accused persons constituted a gang of persons associated for the purpose of habitual theft, the evidence that each individual of that party is a convicted thief is relevant. That evidence can be tendered before or after the prosecution have established the association. EMPEROR v. TUKARAM MALHARI, **14 Bom. L R. 373=15 Ind. Cas. 811=13 Cr. L.J. 539=1 Bom. Cr. C. 136.** (38 C. 408, *Com. on.*)

(2639)—*S.* 401 — *Association for habitually committing theft, etc.—Previous convictions for theft or in bad livelihood cases, when admissible —Character, evidence of, if admissible.*—In trials of offences under s. 401 of the Penal Code, where the other evidence in the case has established association for purposes of habitually committing theft, evidence of previous convictions whether for offences against property or for bad livelihood has always been admitted, not as evidence of character, but as evidence of habits. Of such evidence, convictions for bad livelihood would be more cogent than isolated thefts. BONAI v. KING-EMPEROR, **15 C.W.N. 461=9 Ind. Cas. 555=12 Cr. L J. 97=38 C. 408.** (27 C. 139=4 C. W.N. 97, *Dist. & Doubt.*; 1 C.W.N. 146, *F.*) [*Rel.*, 16 C.W.N. 69=13 Cr. L J. 39=13 Ind. Cas. 279; *Com. on*, 1 Bom Cr. C. 136=14 Bom. L.R. 373=13 Cr. L.J. 539=15 Ind. Cas. 811.]

(2640)—*S.* 401—*Persons accused of being members of gang formed in* 1910 *for habitually committing theft—Convictions for offences of theft and order under s.* 110, *Crim. Pro. Code, passed against some of them prior to* 1910—*Admissibility in evidence.*—In considering the question whether such of the appellants as have been previously convicted of theft did or did not belong to a gang of thieves formed in 1910 for the purpose of habitually committing theft, their previous convictions for offences of theft and house-breaking and previous orders passed against them under s. 110, Crim. Pro. Code, prior to the year 1910, are admissible in evidence. HIDAYATE v. CROWN, **3 P.R. 1915,**

Penal Code (Act XLV of 1860)—*continued.*

Cr.=16 Cr. L.J. 300=28 Ind. Cas. 524. (1 C.W.N. 146, 38 C. 408, 15 Ind. Cas. 811, 13 P.R. 1914, Cr., *R.*)

(2641)—*S.* 401—*British subject associating with foreign subjects in foreign State for the purpose of habitually committing theft.*—Where Her Majesty's native subjects are associated with others, who are British subjects, the place of association being in foreign territory and the purpose of association being that described in s. 401, I.P.C., *held* that the former was liable to be convicted under s. 401, I.P.C. LAL DEEN v. EMPRESS, **33 P.R. 1886, Cr.**

(2642)—S. 401—*See* CHARGE TO JURY—MISDIRECTION, 1 Weir 452=6 M.H.C. 120.

(2643)—S. 401 — *See* Nos. 550, 2163 and 2584, *supra and* 2769, *infra.*

(2644)—*Ss.* 401, 413—*Essentials of offence under s.* 401—*Position of the* Agoo *or receiver of the stolen property.*—To sustain a conviction on a charge under s. 401, Penal Code, it is necessary to prove (1) That there existed a gang of persons; (2) That those persons were associated for the purpose of committing theft or robbery; (3) That theft or robbery was to be committed habitually; (4) That the accused was a member of such gang. The habitual commission of theft necessarily implies an aggregate of acts by some members of the gang or by all of them, but it is not necessary that each individual member of the gang should be proved to have habitually committed theft in company with the other members. Once it is established that a gang, however small in number, was formed for the purpose of habitually committing theft, all persons who thereafter joined that gang in one or more cases of theft come within the purview of S. 401 (6 M. H.C. 120, 37 P.R. 1869, Cr., 9 P.R. 1880, Cr., 6 A.W.N. 15, 16, 65, 1 C.W.N. 146, 27 C. 139, 32 M. 179, 18 P.L.R. 190, 10 Ind. Cas. 833, 36 P.W.R. 1912, *R.*) The fact of association and that of the habitual commission of theft have however to be proved by evidence which would be admissible according to the Evidence Act, and therefore the fact that an accused person is of bad character or is reputed to be a thief or an habitual thief is no evidence against him for the purpose of a charge under s. 401, I.P.C. (1 C.W.N. 146, 27 C. 139, 32 M. 179, *R.*) The *Agoo* who is the habitual receiver of the stolen property, though not himself the thief, is a principal member of the gang of thieves in whose interests he receives the stolen property, and his case therefore falls within the purview of s. 401, I.P.C. The position of the *Agoo* in the Karnal district, discussed. BEJA v. EMPEROR, **13 P.R. 1914, Cr.**

——S 402.

See DACOITY.

See ROBBERY.

(2645)—*S.* 402—*Facts sufficient to justify a conviction — Proof — Evidence Act, s.* 106.—

Penal Code (Act XLV of 1860)—*continued.*

Where unlicensed persons heavily armed with guns and swords concealed under their clothes were found at about 11 p.m., on a road, and the district was notorious at that period as the scene of frequent and recent dacoities, *held*, that, from these facts, the existence of an intention to commit dacoity had been proved, in the absence of any explanation. The burden of proving the contrary would, in accordance with the provisions of s. 107, Evidence Act, rest upon the accused. QUEEN-EMPRESS v. BHOLU, **23 A. 124 = A.W.N. 1901, 16.**

(2646)—S. 402—*See* Nos. 550 and 2612, *supra.*

——S. 403.

See CRIMINAL BREACH OF TRUST.

See CRIMINAL MISAPPROPRIATION.

(2647)—S. 403—*See* CRIM. PRO. CODE, 1898, s. 439, 28 P.W.R. 1914, Cr. = 168 P.L.R. 1914 = 15 Cr. L.J. 591 = 25 Ind. Cas. 343.

(2648)—S. 403—*See* Nos. 281, 367, 432, 1285, 1801, 2425, 2467, 2468, 2469, 2470, 2471, and 2539, *supra.*

(2649)—Ss. 403, 406—*See* REVISION—RETRIAL, 4 B.H.C. Cr. 3.

(2650)—*Ss.* 403 *and* 409—*Conviction for minor offence—Evidence disclosing graver offence to appellate Court—Conviction, whether invalid.*—The conviction of a public servant by a second class Magistrate for the minor offence of criminal misappropriation was held not to be invalid, although the facts, established by the evidence, seemed to constitute the offence of criminal breach of trust by a public servant, not triable by the second class Magistrate; the interests of justice did not suffer by the conviction of the prisoner in respect of the minor charge. NARAYANA NAICKEN v. TAHSILDAR OF CONJEEVARAM, **2 M.L.T. 495 = 7 Cr. L.J. 215.**

(2651 to 2653)—*Ss.* 403, 410, 411—*Bull set at large in accordance with Hindu religious usage—Appropriation, whether amounts to an offence.*—A bull set at large by a Hindu at the time of performing funeral ceremonies in accordance with Hindu religious usage is not "property" capable of being misappropriated, for it is not only not the subject of ownership by any person, but the original owner has surrendered all his rights as its proprietor, and has given the beast its freedom to go whithersover it chooses. It is, therefore, *nullius proprietas*, and incapable of larceny being committed in respect of it, as if it has been "*ferae naturae.*" QUEEN-EMPRESS v. BANDHU, **8 A. 51 = A.W.N. 1885, 326.** [*F.*, 9 A. 348, 87 P.L.R. 1904 = 5 P.R. 1904, Cr.; *R.*, 17 C. 852, 18 B. 212; *D.*, 11 M. 145 = 1 Weir 498, 1 Weir 500, 4 Bom. L.R. 463; *Diss.*, 31 P.R. 1888, Cr.]

(2654)—*Ss.* 403, 426—*Reversioner of mortgagor selling fallen bricks.*—Where the reversioner of a mortgagor sold some of the bricks of the mortgaged property, that had tumbled down and appropriated the price, *held*, that the accused could not be convicted either under s. 403 or under s. 426, in the absence of a finding of dishonest misappropriation or of substantial deterioration of the property. BHUBAN MOHAN BANERJEE v. TANSUK ROY SERAOGI, **6 C.W.N. 34.**

(2655)—*Ss.* 403 *and* 429—*Bull dedicated to idol.*—A bull dedicated to an idol and allowed to roam at large is not *fere bestia* and therefore *res nullius.* Such animal would, *prima facie*, be the property of the temple. QUEEN-EMPRESS v. NALLA, **11 M. 145 = 1 Weir 498.** [*R.*, 17 C. 852, U.B.R. 1892—1896, Vol. I, 238, Cr.]

—— S. 404.

(2656) — S. 404 — *See* COMPOUNDING OFFENCE, 7 M.H.C. App. 34.

(2657)—*Ss.* 404, 424—*Scope of.*—S. 404, I.P.C., is intended only to punish servants and strangers who could possibly have no right to or interest in, the effects of a dead man, and who misappropriated such effects, but not to punish near relations who take possession of and deal with the effects under a claim of independent ownership or as heir to the deceased. S. 424 is intended to punish fraudulent debtors and their accomplices and not persons who claim as heirs and deal with the property. KARRI MANGADU v. EMPEROR, **1914 M.W.N. 791 = 15 Cr. L.J. 602 = 25 Ind. Cas. 514.**

——S. 405.

See CRIMINAL BREACH OF TRUST.

See CRIMINAL MISAPPROPRIATION.

(2658)—*S.* 405—*Cancelled cheques.*—Cancelled cheques are "property" within the meaning of s. 405, even assuming that they are of no more value than the paper upon which they are written. EMPEROR v. MAULA BAKSH, **27 A. 28 = A.W.N. 1904, 153 = 1 Cr. L J. 603.**

(2659)—*S.* 405—*Breach of trust—Advances to brokers for supply of paddy—Absence of pro-notes—Undertaking to apply advances to purchasing paddy for advancing firm—Loan or trust.*—Where money was advanced to an accused on the undertaking that he should buy paddy at what rate he could and should sell to the advancing firm at the market rate on the day of delivery, the property in the money passed to the accused and his contract to use the money in a particular way did not operate to create a constructive trust. The presence or absence of the pro-notes does not alter the character of these transactions. As the accused had to make good the loss of money in any circumstances, and as he had to bear any loss on a fall in the market price and to profit by any rise, the property in the money passed to him, and no beneficial interest remained with the advancing firm. HOCK CHENG AND CO. v. THA KA DO, **14 Cr L.J. 145 = 19 Ind. Cas. 145 = 7 L.B.R. 16 = 6 Bur. L.T. 13, F.B.** [*R.*, 15 Cr. L J. 452 = 24 Ind. Cas. 332.]

(2660)—*S.* 405—*Breach of trust—Advance to brokers on pro-notes—Loan or trust—Debtor and creditor — Trust.*—A, a paddy dealer,

Penal Code (Act XLV of 1860)—*continued.*

entered into an agreement with B, the object of which was that A should supply B with certain baskets of paddy to be bought at a particular place and to be delivered at B's mills. On the same day, B advanced A Rs. 10,000 to enable him to obtain this paddy and it was agreed that the account should be settled by B taking over the paddy at the ruling market rate on the day of delivery. A undertook to use this sum to no other purpose than the purchase of paddy for B. Simultaneously, A executed five promissory notes for Rs. 2,000 each in favour of B bearing no interest. A was to bear the loss, if any, and was to retain the profit, if any: *Held* (*Hartnoll, J., dissenting*) (1) that there was no entrustment of the money to A within the meaning of s. 405 of the Penal Code; (2) that the effect of the transaction was to create the relationship of debtor and creditor between A and B. *Per Fox, C.J.*—The property in respect of which criminal breach of trust can be committed must be either the property of some person other than the person accused, or the beneficial interest in or ownership of it must be in some other person, and the offender must hold such property on trust for such other person or in some way for his benefit; mere breach of contract is not made synonymous with criminal breach of trust. *Per Ormond, J.*—In a prosecution for criminal breach of trust, the fact of trust must be established beyond all reasonable doubt. NGA PO SEIK v. KING-EMPEROR, **6 L.B.R. 62 = 17 Ind. Cas. 824 = 5 Bur. L.T. 143 = 13 Cr. L.J. 888, F.B.** [*R.*, 15 Cr.L. J. 452 = 24 Ind. Cas. 332.]

(2661)—*S.* 405—*Criminal breach of trust—Offence—Jurisdiction—Intention—Consequences not essential—Crim. Pro. Code.* s. 179.—The offence of criminal breach of trust is completed by the misappropriation or conversion of the property dishonestly, *i.e.*, with the intention of causing wrongful gain or wrongful loss. It is only the intention that is essential. The wrongful gain or loss is only the consequence and is no essential part of the offence, and a person is not accused of the offence by reason of it. The offence would be committed where the dishonest use or disposal took place, not where the contract was made or should have been performed. (1914 M.W.N. 324, *D.*; 19 A. 111, 32 A. 397, 34 A. 487, *Diss.*) Where the accused living in the Bombay Presidency are charged before the Sub-Divisional Magistrate of Erode with committing criminal breach of trust in respect of the proceeds of certain hundis entrusted to them for encashment by the complainants, merchants of Dharapuram, *held* that the Sub-Divisional Magistrate has no jurisdiction to try the case by virtue of s. 179 of the Crim. Pro. Code read with s. 405 of the Penal Code, as the offence must be taken to have been committed in Bombay. RAMBILAS v. EMPEROR, **1914 M.W.N. 894 = 16 M.L.T. 505 = 15 Cr. L.J. 688 = 26 Ind. Cas. 136.**

(2662)—*S.* 405—*Criminal breach of trust—Money entrusted to broker—Broker to bear all loss—Ownership—Trustee—Agent.*—In pursuance of the following contract a Company advanced Rs. 4,500, to the petitioner who acted as the Company's broker. "Whereas the broker ....has requested the Company to entrust to him with advances of money.........and......... acknowledges that he will receive all such advances.........and hold the same in trust for the company.........it is............agreed that, (1) the broker is not the agent of the Company; (2) the broker shall employ the money of the Company in and about the purchase and transport of paddy to the Company's mill............; (3) the property in the money and paddy purchased therewith shall be and remain in the Company; (4) the broker shall.........upon arrival of the paddy......tender the same to the company; (5) the Company shall take delivery of the paddy and......either pay or credit the broker with price of the same at the current market rate; (6)......(7) the broker shall be responsible for the payment of the money or the supply of paddy to the value thereof, if either the money or the paddy shall be lost by any means, including the act of God, thieves or other causes over which the broker has no control; the broker shall indemnify the Company against all loss; *Held* (*by the majority, Hartnoll, Offg. C.J., dissenting*) that the money was not "entrusted" to the broker within the meaning of s. 405, Penal Code. *Per Twomey, J.*—A man cannot commit criminal misappropriation of his own property. The terms of cls. (5) and (7) of the agreement are incompatible with the view that the broker was employed as an agent at all. An agent would be required to exercise reasonable diligence but would not be responsible, as he is made responsible in this agreement, for loss in any event. *Per Ormond, J.*—The question whether A entrusted property to B is one which depends upon the actual facts of the case and not merely upon the legal terms employed by the parties. If the real nature of the transaction is a loan, the fact that the parties in writing call it a trust, or agree that, for the purposes of the Penal Code, the property in the money shall be deemed to remain in the original owner, or agree that the party receiving the money shall be liable for criminal breach of trust if he applies the money to a purpose other than that agreed upon, would not bring the transaction within the scope of s. 405, Penal Code. The Penal Code cannot be altered by agreement of parties so as to make s. 405 applicable to a transaction which is in its real nature a loan. If A receives money from B for certain specified purposes, the money is not entrusted to A within the meaning of s. 405, Penal Code, if A is liable to return the money in any event. Therefore, the trust, if any, in this case is merely a technical or colorable trust. *Per Parlett, J.*—The fact that the Company can under no circumstances bear the loss of the money implies that they are not the owners of it. *Per Robinson, J.*—The agreement merely shows that the Company employs the services of the broker and gives him an advance but it declines to make him its servant or agent. This being so, the

Penal Code (Act XLV of 1860)—*continued.*

ownership in the money is transferred to the broker and no entrustment is created, that is to say, the agreement in question evidences a loan accompanied by a promise to use the money in a particular way. *Per Hartnoll, Offg. C. J.*—Irrespective of whether a man is an agent or not he may be a trustee. The agreement evidences more than a loan with a condition attached and more than an advance with an undertaking to use it in the purchase of paddy. The money was advanced for a specified purpose and in consequence of confidence reposed in the broker by the Company. The mere fact that the broker has contracted to bear any loss that may be incurred does not make him the less a trustee. NGA PO YWET v. EMPEROR, **15 Cr. L.J. 452=24 Ind. Cas. 332=7 Bur. L.T. 209, F.B.**

(2663)—*S.* 405—*Stamp Act* (II *of* 1899), *ss.* 33, 35—*Instrument insufficiently stamped, examination of, optional—Stamped instrument admitted in evidence—Prohibition in* s. 35, *Stamp Act, does not apply to criminal proceedings—Breach of trust — Conversion, evidence of.*—Under s. 33 of the Stamp Act, it is optional to the Magistrate to examine or impound the instrument if it appears to be insufficiently stamped. But the prohibition contained in the first part of s. 35 that no instrument chargeable with duty shall be admitted in evidence for any purpose or acted upon unless it be duly stamped, does not apply to proceedings in a Criminal Court. Where it is proved that the two accused or either of them were in fact entrusted with certain property as servants, and they set up a claim that it belongs to them, and refuse to return it, that in itself is evidence of conversion to justify a conviction under s. 405, Penal Code. JAGAN NATH BAHATGIR v. PANDIT DEOKINANDAN, **16 Cr L J. 543=29 Ind. Cas. 671.**

(2664)—S. 405—*See* No. 368, *supra.*

(2665)—*Ss.* 405, 406, 409—*Goods entrusted to auctioneer for sale—S.* 405 *not applicable to misappropriation of sale proceeds—Liability of auctioneer for criminal breach of trust—Dishonest intention—Accused charged with criminal breach of trust in respect of property but convicted of embezzlement of sale proceeds—Legality.*—S 405, Penal Code, does not cover misappropriation by a person of the sale proceeds of property, *i.e.*, furniture entrusted to him. But assuming that the word, 'property' in s. 405, I.P.C., includes furniture or the value thereof, even then it could not be said that the accused had disposed of the furniture or the value thereof, namely, the sale proceeds, in violation of his contract, dishonestly, unless it were shown that he had the intention of dishonestly appropriating the sale proceeds at the time of the sale. An auctioneer cannot be said to be liable for criminal breach of trust if he does not punctually carry out every term in the agreement, *e.g.*, if he did not hold the sale on the agreed date, or if there was delay in payment. Where the charge against the accused is to the effect that he committed breach of trust in respect of some property which he took from the complainant and was therefore guilty of an offence punishable under s. 406, but at the trial he was convicted of embezzling not the property but the amount obtained by dealing with the property, *held*, the conviction was bad and must be set aside. BALTHASAR v. EMPEROR, **41 C. 844=15 Cr. L.J. 683=26 Ind. Cas. 131.** (12 C.W.N. 577, *F.*).

(2666)—Ss. 405 and 408 — *See* APPEAL—CASES WHERE APPEAL DOES NOT LIE, 3 Ind. Cas. 285.

(2667)—*Ss.* 405, 409—*Servant entrusted with money for payment to tradesmen—Misappropriation.*—Where a master entrusts money for the payment of tradesmen on an open account, that is, an account of which the items have never been checked or settled, if the transaction amounts to a taxation of the bill and a reduction of the price by the servant, it is obvious that the servant obtains the reduction for his master; that the money in his hands always remains his master's property, and that, if he appropriates it, he steals it. But if the master has settled the account with the tradesman for a specific sum, and he sends the servant with the money, and the servant after making the payment asks the tradesman for a present, then, if the servant takes the present and keeps it, he is not guilty of stealing, because he has no intention to steal; the money is given to him by a person whom he believes to have a right to give it, though, according to the strict equitable doctrines of the Court of Chancery, it was obligatory on him to render an account. QUEEN-EMPRESS v. IMDAD KHAN, **8 A. 120 =A.W.N. 1887.** [*R.*, 1 Weir 467.]

——S. 406.

See CRIMINAL BREACH OF TRUST.

See CRIMINAL MISAPPROPRIATION.

(2668)—*S.* 406—*Criminal breach of trust, what amounts to.*—To make out a case of criminal breach of trust, it is not sufficient to show that the money has been retained. It must also be shown that the accused disposed of it in some way other than that in which he was bound to apply it, and that he did so dishonestly. The mere fact that the accused did not at once apply the money to the purpose for which it was intended does not amount to a criminal breach of trust. There must be some dishonest use of money to constitute the offence. NGA HMU v. KING-EMPEROR, **U.B. R. 1897—1901, Vol. I, 345.**

(2669)—*S.* 406—*No presumption of dishonest misappropriation by mere retention of money—Such presumption, when may be inferred.*—*Held*, that mere retention of money did not necessarily raise a presumption of dishonest misappropriation to one's own use, but such dishonest misappropriation might sometimes be inferred from the circumstances, without direct evidence. Where money was given to the accused to collect plantain trees for the Government, and the accused had retained it for a period of three years without paying it to

Penal Code (Act XLV of 1860)—*continued.*

the owners of trees, *held*, that dishonest misappropriation could be presumed under the circumstances of the case. NGA THA ZAN v. KING-EMPEROR, **U.B.R. 1905, Penal Code, 19 = 2 Cr. L.J. 478.** (9 A. 666, 10 B. 256, U.B.R. 1897—1901, 345, *R.*) [*R.*, U.B.R. 1909, Penal Code, p. 21 = 11 Cr. L J. 44 = 4 Ind. Cas. 762.]

(2670)—*S.* 406—*Person on the pretence of being an heir taking forcible possession of and dealing with deceased's property.*—*Held* that no person, on the pretence of being an heir to a deceased, can take the law into his own hands by taking forcibly his property from the person in actual possession and dealing with it as he likes. RAM DITTA v. CROWN, **41 P.W.R. 1910, Cr. = 6 Ind. Cas. 490 = 11 P.L.R. 1910 = 11 Cr. L.J. 364.**

(2671)—*S.* 406—*Criminal breach of trust—Wagering transaction.*—Where a stake-holder receives money under an agreement to pay it to the winner of a race, he cannot be prosecuted for criminal breach of trust on refusal to pay it, but the person depositing the money can recover it at any time before it is paid to the winner. QUEEN-EMPRESS v. NGO PO TWE, **L.B.R. 1872-1892, 130.**

(2672)—*S.* 406—*Non-fulfilment of promise to let vaccinator take lymph from child.*—Where the mother of a child recently vaccinated was convicted of criminal breach of trust for having refused to take her child to another village, where the vaccinator wanted to take lymph out of this child to vaccinate another, though she had received two annas for the purpose, since her husband prohibited her doing so, *held* that the conviction was illegal. QUEEN-EMPRESS v. SATAWA, **Rat. Un. Cr. C. 557.**

(2673)—*S.* 406—*Criminal breach of trust—Purchase of motor car.*—The complainant gave money to the accused on condition that he would puchase a motor car and sell it and return her the money with half the profits. The accused applied the money to other purposes. *Held*, that the accused was not guilty of criminal breach of trust. WILLIAM CECIL KEYMER v. EMPEROR, **15 Cr. L.J. 284 = 23 Ind. Cas. 492 = 12 A.L.J. 730.**

(2674)—*S.* 406—*Criminal breach of trust—Sale of motor car on hire purchase system—Vendee pledging the car while the hire purchase agreement is in force.*—The accused hired a motor car of the complainant Company under the hire-purchase system, which provided that, until the car was fully paid for by the accused, the car was to remain the absolute property of the Company; and the accused agreed during the hiring not to "assign, underlet or part with the possession" of the car in any way. Whilst this agreement was in force, the accused pledged the car to three different persons on three different occasions. The accused was convicted of the offence of criminal breach of trust for making those assignments; *Held*, confirming the conviction, that the pledging of the car by the accused was a violation of the legal contract made by him in regard to the hire of the car and that that violation was dishonest on the part of the accused. EMPEROR v. SILAS MOSES, **17 Bom. L.R. 670 = 3 Bom. Cr. C. 84.**

(2675)—*S.* 406—*Crim. Pro. Code, ss.* 222, *cl.* (2), 234, 537—*Criminal breach of trust—Gross sum specified in charge—Particulars as to time—Defect in charge amounting to illegality—Applicability of s. 537, Crim. Pro. Code, to cure such defect—Re-trial if may be ordered where charge fails for want of evidence.*—Where the appellant, who was an executor to the estate of one D.M.R. under his will and who was finally called upon on the 15th August 1910 to deliver over to the complainant all money, valuables and papers belonging to the testator's estate, was placed on his trial on two charges under s. 406, I.P.C., and was charged in the first charge with having committed criminal breach of trust in respect of or having dishonestly misappropriated the gross amount specified in the charge between 17th August 1909, and 15th August 1910, and in the second charge with having committed the same offence in respect of the account books of the estate between the 11th July 1910 and the 15th August 1910, and it appeared that most of the sums making up the gross amount charged were received before the period specified in the charge, and the evidence did not disclose any completed act of breach of trust between the dates mentioned in the charge, and there was no evidence of any dishonest dealing with the account books before the 15th August, 1910. *Held* (as to the first charge)—that the error in the charge and the discrepancy between the dates specified therein and the actual dates on which the offence appeared to have been committed were not a mere irregularity which might be cured by the provisions of s. 537, Crim. Pro. Code. It vitiated the whole trial and the appellant was entitled to an acquittal. (5 C.W.N. 866 = 25 M. 61, P.C., *F*). It was not enough to know that there was embezzlement at some time before, during or after the period charged, because the charge was framed under the special provisions contained in cl. (2) of s. 222, Crim. Pro. Code, and the proviso thereto and it was at any rate necessary to show an act or acts of embezzlement in respect of the gross sum named in the charge or some part of it committed within the space of one year. *Held* (as to the second charge) —that the same objection applied to the second charge, which, however, was not bad on the ground that there was a separate offence as regards each account book and the appellant could not be tried for more than three of such offences, the books forming one set of account books of the estate and having been found together in two locked boxes, the keys of which were with the accused. No re-trial was ordered in this case, as the charges failed not because they were deficient in point of form, but because they were not supported by the evidence adduced. PROMOTHANATH RAY v. KING-EMPEROR, **17 C.W.N. 479 = 14 Cr. L.J. 219 = 19 Ind. Cas. 315.**

Penal Code (Act XLV of 1860)—*continued.*

(2676)—S. 406—*See* CRIM. PRO. CODE, 1898, ss. 222, 234, 24 A. 254 = A W.N. 1902, 44.

(2677)—S. 406—*See* CRIM. PRO. CODE, 1898, ss. 256, 258, 417, 18 C.W.N. 666 = 15 Cr. L.J. 160 = 22 Ind. Cas. 736.

(2678)—S. 406—*See* CRIM PRO. CODE, 1898, ss. 258, 248, 345, 15 Bom. L.R. 61 = 2 Bom. Cr. C. 17 = 18 Ind. Cas. 413 = 14 Cr. L J. 77 = 37 B. 369.

(2679)—S. 406—*See* CRIM. PRO. CODE, 1898, s. 562, U.B.R. 1897—1901, Vol. I, 138.

(2680)—S. 406.—*See* JURISDICTION—GENERAL, 10 A.L.J. 431 = 13 Cr. L.J. 856 = 17 Ind. Cas. 792 = 35 A. 29.

(2681)—S. 407—*See* Nos. 61, 153, 234, 525, 1280, 1373, 1445, 2048, 2469, 2472, 2649, 2665, *supra.*

(2682)—Ss. 406 and 116—*See* CHARGE—GENERAL, 12 C.W.N. 577 = 7 Cr. L.J. 372.

(2683)—*Ss.* 406 *and* 408—*Criminal breach of trust — Defective charge — Crim. Pro. Code, ss.* 222, 234 *and* 439—*Appellate Court not fully going into the evidence—Power of revision.*—*Held*, that, in the case of criminal breach of trust, a general charge of embezzlement, mentioning the gross sum misappropriated, as laid down in sub-s. (2) of s. 222 of the Code of Criminal Procedure, is sufficient, but it is defective and must fall through, where the accused appears to have been prejudiced by not having any definite charge to answer. *Held also*, that, where the appellate Court dismisses the appeal, and its order betrays little or no indication that it has examined the evidence or brought an independent judgment to bear on main points, it becomes necessary to examine the case in greater detail than would ordinarily be justified on revision. MOHAMMAD SHAH v. CROWN, **16 P.W.R. 1907, Cr. = 6 Cr.L.J. 137.** (2 P.R. 1895, Cr., 24 A. 254, 25 M. 61, *R.*)

(2684)—*Ss.*406, 408—*Criminal breach of trust —Water-works—Inspector — Misappropriating water—Money realised as tax—Non-payment to the Municipality—Water Works Act* (I *of* 1891) —*Conviction under.*—Where it is the duty of a Municipal Water Work Inspector to supervise and check the distribution of water from the Municipal water works, he has dominion over the water belonging to his employers. If he deliberately misappropriates such water for his own use or for the use of his tenants for which he pays no tax and gives no information to his employers, he is guilty of the offence of criminal breach of trust within the meaning of s. 408 of the Penal Code. *Held*, further that, when a Water-Works Inspector realizes money from his own tenants as water tax but does not pay the money in the Municipal Office, he is guilty of criminal breach of trust, and the fact that he may be punished under the Water-Works Act does not vitiate his conviction under the Penal Code. BIMATA CHARAN ROY v. KING-EMPEROR, **11 A. L J. 369 = 14 Cr. L.J. 415 = 35 A. 361 = 20 Ind. Cas. 239.**

Penal Code (Act XLV of 1860)—*continued.*

(2685)—*Ss.* 406, 409 — *Conviction under s.* 406 *by second class Magistrate—Conviction under s.* 409 *by District Magistrate on some proceedings—Crim. Pro. Code* (1882), *ss.*529, 530 537.—The accused was convicted under s. 406, I.P.C., by a second class Magistrate who submitted his proceedings to the District Magistrate under s. 349 of the Crim. Pro. Code. The District Magistrate found that the offence committed by the accused was one under s. 409 of the I.P.C., and convicted him of this offence. *Held* (reversing the conviction and sentence, and directing the re-trial of the accused by a competent Magistrate), that as soon as the District Magistrate came to the conclusion that the offence committed was one under s. 409, I.P.C., he should have held that the second class Magistrate had no jurisdiction to try the accused for that offence and should have passed an order accordingly, and it was not competent for him to accept the trial as a legal trial, and on it to sentence the applicant for an offence for which the second class Magistrate had no jurisdiction to try him. *Held*, also, that the proceedings of the second class Magistrate were void under s. 530 of the Crim. Pro. Code, and that there was no provision of the Code which cured such defect. QUEEN-EMPRESS v. SITARAM, **1 Bom. L.R. 27.** [*D.*, 1 Bom. L.R. 683.]

(2686)—Ss. 406, 409—*See* RE-TRIAL, 2 C.L. R. 515.

(2687)—*Ss.* 406, 417 —*Criminal breach of trust—Cheating—No fraudulent intention, but mere illegal demand not sufficient.*—The accused, who was the landlord of the complainant, sent for the latter, and on the latter appearing, demanded payment of rent. The complainant left for home to fetch money requesting the accused and his gomastha to have in the meantime his dues worked out and have *dakhilas* written. He returned soon with Rs. 90 and paid the same to accused, who drove him away refusing to give *dakhilas* or return the money unless and until Rs. 25 more were paid to make up the sum, the said amount having been deducted towards a *swadeshi* subscription. *Held* no criminal offence was committed. KUMEDA CHARAN GHOSE v. KING-EMPEROR, **15 C.L. J. 512 = 13 Cr. L.J. 512 = 15 Ind. Cas. 656.** (32 C. 941, *D.*)

——S. 407.

See CRIMINAL BREACH OF TRUST.

See CRIMINAL MISAPPROPRIATION.

(2688)—*S.* 407—*Criminal breach of trust by a carrier—Property given to a carrier could not have been accounted for.*—Where property is entrusted to a person as a carrier, it is necessary to show, at least, in order to convict him of criminal breach of trust, that some of the property could not be accounted for by him. EMPEROR v. PARABHU, **9 Bom. L.R. 229 = 5 Cr. L J. 235.**

(2689)—S. 407—*See* No. 2530, *supra.*

(2690)—Ss. 407 and 411—*See* CRIM. PRO. CODE, 1898, ss. 233 and 537, 28 C. 7.

Penal Code (Act XLV of 1860)—*continued.*

——S. 408.

See CRIMINAL BREACH OF TRUST.

See CRIMINAL MISAPPROPRIATION.

(2691)—*S. 408—Breach of trust—Temporary loss.*—The offence, under s. 408 of the Code, is committed, even where the act of the accused was to cause wrongful loss to the complainant for a time only. EMPEROR v. TULSHIDAS CHHAGAN LAL, 8 **Bom. L.R. 951=5 Cr. L.J. 5.**

(2692)—*S. 408—Charge under the section in respect of general deficiency in account.*—In a case of criminal breach of trust under s. 408, a count based upon a general deficiency was struck out of the indictment by the presiding Judge after consultation with the Chief Justice. QUEEN-EMPRESS v. PURSOTAM DASS MORARJEE, **24 C. 193.** [*Appr.*, 2 C.W.N. 341; *R.*, 33 A. 36=7 A.L.J. 897=7 Ind. Cas. 186=11 Cr. L.J. 442.]

(2693)—*S. 408—Criminal breach of trust—Cheating—Servant entrusted with money for use in particular way—Appropriation—Whether amounts to criminal breach of trust.*—Where the accused, the servant of a Company of coffee plants, misappropriated large sums of money made up of amounts which he received from the manager at various times on the false pretence that they were required for paying coolies who garbled coffee: *Held*, that the accused was guilty of the offence of criminal breach of trust.—When the accused received the money, he did so as a servant of the company for the express purpose of using it for his master's benefit in a particular way. He was therefore entrusted with the money, and his appropriating it to himself amounts to criminal breach of trust. *In re* THEOPHILUS RAMAPPA, **10 M.L.T. 517=22 M.L.J. 112=13 Ind. Cas. 108=13 Cr. L J. 15.** (33 L.J. Mc. 57, 40 L.J. Mc. 68, *R.*)

(2694)—S. 408—*See* CHARGE—WITHDRAWAL OF CHARGE, 9 C.L.J. 257.

(2695)—S. 408—*See* CRIM. PRO. CODE, 1898, ss. 182, 531, 7 A.L.J. 319.

(2696)—S. 408—*See* CRIM. PRO. CODE, 1898, ss. 222 (2) and 234, 31 C. 928=8 C.W.N. 807.

(2697)—S. 408—Hire-purchase agreement—Sale of article hired—Offence—*See* HIRE-PURCHASE AGREEMENT, 15 Cr. L.J. 425=24 Ind. Cas. 161=7 Bur. L.T. 222.

(2698)—S. 408—*See* Nos. 48, 2531, 2666, 2683 and 2684, *supra.*

(2699)—Ss. 408, 409—*See* CRIM. PRO. CODE, 1898, ss. 181 (2) and 531, 9 P.L.R. 1902.

(2700)—Ss. 408 and 420—*See* JOINDER OF CHARGES—MISJOINDER OF CHARGES, 13 C.W.N. 1089.

(2701)—Ss. 408, 465—Criminal breach of trust—Falsification of accounts—Joinder of charges—*See* CRIM. PRO. CODE, 1898, s. 235, cl. (1), 14 Bom. L.R. 306=15 Ind. Cas. 645=13 Cr. L.J. 501=1 Bom. Cr. C. 115.

Penal Code (Act XLV of 1860)—*continued.*

(2702)—Ss. 408 and 467—*See* JOINDER OF CHARGES—MISJOINDER OF CHARGES, 7 A.L.J. 225.

(2703)—Ss. 408, 477-A.—*See* CRIM. PRO. CODE, 1898, s. 213, sub-s. 2, 16 C.W.N. 1155=39 C. 885=17 Ind. Cas. 406=13 Cr. L.J. 774.

(2704)—Ss. 408, 477-A—Misjoinder of charges under—*See* CRIM. PRO. CODE, 1898, ss. 233, 234, 235, 40 C. 318=20 Ind. Cas. 412=14 Cr. L.J. 428.

(2705)—Ss. 408, 477-A—District Magistrate—Power to order commitment—*See* CRIM. PRO. CODE, s. 436, 16 Bom. L.R. 80=2 Bom. Cr. C. 179=15 Cr.L.J. 292=23 Ind. Cas. 500.

—— S. 409.

See CRIMINAL BREACH OF TRUST.

See CRIMINAL MISAPPROPRIATION.

(2706)—*S. 409—Criminal breach of trust—General deficiency in amount.*—An accused person may be charged with criminal breach of trust in respect of a general deficiency, and it is not necessary in all cases to charge the accused with the embezzlement of a particular sum received on a certain date from some particular person. It is enough if the accused person has sufficient notice of the accusation he has to meet. In such cases, it is not a good plea to urge that the accused's accounts are not incorrect, and that, therefore, there is no embezzlement, but merely a default of payment. It is not in respect of accounts that a charge is made in such cases; it is in respect of the disappearance of a certain sum of money. QUEEN-EMPRESS v. KELLIE, **17 A. 153=A.W.N. 1895, 37.** [*Diss.*, 2 C.W.N. 341; *Appr.*, 18 A. 116=A.W.N. 1896, 11; *R.*, 33 A. 36=7 A.L.J. 897=11 Cr.L.J. 442=7 Ind. Cas. 186.]

(2707)—*S. 409—General deficiency in accounts.*—A person accused under s. 409, I.P.C., might be legally convicted of the offence defined in that section in respect of a general deficiency in the accounts. BUDDHU v. BABU LAL, **18 A. 116=A.W.N. 1896, 11.** (17 A. 153, *Appr.*) [*Not Appr.*, 2 C.W.N. 341; *R.*, 33 A. 36=7 A.L.J. 897=11 Cr.L J. 442=7 Ind. Cas. 186.]

(2708)—*S. 409—Criminal breach of trust as a public servant—Criminal misappropriation—Dishonesty.*—When a person misappropriates to his own use property that does not belong to him, the misappropriation is dishonest even though he intended to restore it at some future time. Thus, where a *thugyi* collected Government revenue, and, without Government consent, lent it out to his friends temporarily, intending to recover it and pay it into the treasury at a future date, and his friends subsequently absconded and the *thugyi* was unable to pay into the treasury what he had collected, *held*, he was guilty under s. 409, I.P.C. QUEEN-EMPRESS v. NGA SHWE HLAING, **L.B.R. 1872-1892, 505.**

(2709)—*S. 409—Money deposited in a Bank.*—It is doubtful whether moneys deposited in

a Bank are "property" within the meaning of the section, so far as the depositors are concerned. When a depositor pays money on deposit, the money is not ear-marked so as to entitle him to receive the specific rupees he has paid in, and, consequently, after the deposit, the money deposited is not his property. The money so deposited might, however, be within the meaning of the section, the "property" of the Bank. QUEEN-EMPRESS v. MOSS, **16 A. 88 = A.W.N. 1894, 23.**

(2710)—*S.* 409—*Managing Director of Bank borrowing money in his own name—Subsequent transfer of liability to Bank, whether amounts to criminal breach of trust—Adequacy of motive.*—The accused, the Managing Director of the Hindustan Bank, executed in favour of the Amritsar Bank, four *hundis* for an aggregate sum of Rs. 5,000 payable six months after date, and after deducting the discount he received the balance Rs. 4,772-11-0 and got it credited in his floating account with the Hindustan Bank. Some months before due date the accused caused entries to be made in the books of the Hindustan Bank by which the liability for re-payment on the date of maturity of the *hundis* was transferred from himself to the Hindustan Bank: *Held*, that (1) the prosecution had failed to prove that the accused was guilty of the offence of criminal breach of trust, (2) the motive for the crime was under the circumstances of the case wholly inadequate, (3) the evidence on the record led to the inference that the loan was contracted *ab initio* for the Hindustan Bank for meeting immediate or prospective demands. DAULT RAI v. CROWN, **24 P. W.R. 1915, Cr. = 162 P.L.R. 1915 = 16 Cr. L.J. 454 = 29 Ind. Cas. 86.**

(2711)—*S.* 409—*Naib Nazir, whether a public servant.*—A Naib Nazir is a public servant within the meaning of s. 409, and not merely the private servant of the Nazir. QUEEN v. MAHOMOOD HOSSEIN, **2 N.W.P. 298.**

(2712)—*S.* 409—*Criminal breach of trust by a Police servant.*—Every case must be considered with its own special circumstances. Hence what constitutes sufficient evidence of misappropriation depends on the circumstances of the individual case. NGA PO SAN v. QUEEN-EMPRESS, **U.B.R. 1892-1896, Vol. I, 253.**

(2713)—*S.* 409—*Cheating—Directors of a Loan and Deposit Society—Issue of false balance-sheets — Balance sheet containing incorrect entries — Presumption of guilty knowledge—Wrong classification of bad debts—Failure to include Director's loans as a separate item—Position of auditors—Auditor's certificate about the existence of securities—Criminal liability.*—The mere fact that the Directors of a Deposit and Loan Society passed an incorrect balance-sheet is not sufficient to justify the framing of a charge of cheating against them and placing them on their defence. The guilty knowledge of each Director cannot be presumed from the mere fact that he authorised the issue of a balance-sheet containing false entries, but must be decided in view of all the circumstances of the case, *i.e.*, the nature of the false statements, the case or difficulty with which their truth or falsity could be ascertained, the course of business of the society, the position, experience and attainments of individual Directors, etc. Mistakes and omissions in the classification of debts as "doubtful" or "bad" cannot, in the absence of positive evidence of guilty knowledge, be taken to afford any presumption of cheating on the part of the Directors of a limited Company. Nor does the omission by Directors to show their debts as a separate item afford any presumption of guilt. The above acts and omissions, though by themselves would entail strong civil liability on the part of the Directors, will not make them criminally liable. Where an Auditor, who does not happen to be a trained Accountant, certifies to the existence of securities, and states that the balance-sheet is correct and according to law, he cannot be held liable criminally for failure to detect mistakes which would have revealed the financial unsoundness of the Company. GILES SEDDON v. S. J. LOANE, **8 Ind. Cas. 325 = 11 Cr. L.J. 624 = 9 M.L.T. 20.**

(2714)—*S.* 409—*Misappropriation—Burden of proof—Mode of misappropriation of money, prosecution not bound to prove.*—A peon was charged with misappropriation of money. The prosecution proved that he had not returned the money when it was his duty to return it: *Held*, that the prosecution had proved its case; and it lay on the accused to prove his defence. The prosecution is not bound to prove the actual mode of misappropriation of the money. EMPEROR v. KADIR BAKSH, **8 Ind Cas. 687 = 8 A.L.J. 88 = 11 Cr. L.J. 699.**

(2715)—*S.* 409—*Direction to sell goods and make over sale-proceeds to creditor—Misappropriation of sale-proceeds—Breach of trust—Criminal misappropriation—Dismissal of complaint, improper.*—Where it was alleged that the first accused, who was employed by a firm to sell certain bags and make over the sale-proceeds to a creditor of the firm, sold the bags, and that he and the second accused together misappropriated the money with a view to cause wrongful loss to the firm and gain to themselves: *Held*, that the allegations, if proved, would make the two accused guilty of the offences of criminal breach of trust and criminal misappropriation and that the complaint ought not to have been, dismissed. NARAYANASAMI CHETTY v. VADIVELU CHETTY, **9 M.L.T. 332 = 12 Cr. L.J 123 = 9 Ind. Cas. 726 = 1911 M.W.N. 125.**

(2716)—*S.* 409 — *Advance for purchase of paddy—Balance of—Criminal breach of trust in respect thereof—Transaction only a loan—No trust—No offence.*—W was given an advance of money for the purpose of buying paddy for the complainant C. At the time of advance, W signed an agreement under which he undertook to use the money solely in buying paddy and to deliver the same within a certain time at C's mill. He also signed at the same time a promissory note for the amount of the advance.

Penal Code (Act XLV of 1860)—*continued.*

W was convicted under s. 409, I.P.C., of criminal breach of trust in respect of balance of such advance. *Held*, that the transaction was mere loan and not a trust and that the conviction was illegal. WONG YONE MAIN v. KING-EMPEROR, 6 **L.B.R.** 46 = **14 Ind. Cas. 653 = 13 Cr.L.J. 269 = 5 Bur. L.T. 11.** (3 L.B.R. 200, *dis.*; 2 Bur. L.R. 9, 2 Bur. L.R. 11, 2 Bur. L.R. 18, 16 A. 88, *R.*)

(2717)—S. 409—*See* BAIL BOND, 55 P.L.R. 1902.

(2718)—S. 409—*See* CONVICTION, 3 B.H.C. Cr. 51.

(2719)—S. 409—*See* Nos. 487, 2473, 2511, 2532, 2650, 2665, 2667, 2685, 2686 and 2699, *supra.*

(2720)—Ss 409 and 411—*See* JOINT TRIAL, 6 Bom. L.R. 517.

(2721)—Ss. 409, 417, offences of criminal breach of trust and cheating punishable under —Place where offences committed and completed—Jurisdiction to try the offences—*See* JURISDICTION OF CRIMINAL COURTS — GENERAL, 12 A.L.J. 1022 = 15 Cr. L.J. 719 = 26 Ind. Cas. 167.

(2722)—*Ss.* 409, 420—*Crim. Pro. Code* (*Act* V *of* 1898), *s.* 215—*Commitment, quashing of.* —An accused was committed to the Sessions Court on a charge under s. 409, I.P.C. The Court threw out the charge under that section on the ground that it should have been brought under s. 420, and directed that separate trial should take place. *Held*, that the Court ousted its jurisdiction. The Sessions Judge could have amended the charge to one under s. 420, and he might then well have directed that that charge should be put before the jury at a separate trial. But having taken the charge as it was committed to him and not amended it, and having left it to some subsequent proceeding, he would now have no jurisdiction to try the accused on any other charge except s. 409. LAL BEHARY SINGH v. EMPEROR, **12 Cr. L.J. 66 = 9 Ind. Cas. 361 = 13 C.L.J. 331.**

(2723)—*Ss.* 409 *and* 424—*Criminal breach of trust of one's own property, when possible—Alteration of finding.*—A trader, to whom his creditors gave time for the payment of his debts, promised them to pay their dues in certain instalments, but, without doing so, absconded with all his property, account-books and valuable securities, and was convicted of criminal breach of trust. *Held*, that the conviction must be quashed, because there can be no criminal breach of trust, unless a person is entrusted with property, or dominion over the property of another, and cannot commit criminal breach of trust with reference to his own property, unless it has been assigned to another. *Held*, also, that the conviction, on the facts proved, should be for dishonestly or fraudulently concealing or removing his property, an offence punishable under s. 424, Penal Code. *Held*, further, that if the prosecution established certain acts constituting an offence, and the Court misapplies the law by charging and convicting an accused person for an offence other than that for which he should have been properly charged, and, if notwithstanding such error, the accused has, by his defence, endeavoured to meet the accusation or the commission of these acts, then, the appellate Court may alter the charge or finding and convict him for an offence which those acts properly constitute, provided the accused be not prejudiced by the alteration in the finding. KO SET SHEWIN v. KING-EMPEROR, **1 U.B.R. 1903, Penal Code, 9.** (8 A. 120, *D.*; 26 C. 863, *F.*) [*R.*, U.B.R. 1908, Penal Code, 13, 8 Cr. L.J. 24.]

(2724)—Ss. 409, 463—*See* CRIMINAL MISAPPROPRIATION, 6 Bom. L.R. 94.

(2725)—*Ss.* 409, 477-*A*—*Managing Director of Bank deceiving share-holders as to the real profits—Wrongful personal gain—Falsification of balance sheet—Balance sheet, whether a "writing" within the meaning of the section—Compensation to share-holders—Companies Act* (VI *of* 1882), *s.* 214.—Where the accused, the Managing Director of the Hindustan Bank, wishing the Bank to make a better show than the real facts of its working would warrant, in order to maintain the confidence of the share-holders and the public and so to make possible a project for increasing largely the Bank's capital. On the 17th December 1912, got his son to present a pro-note for Rs. 3,000 to the Bank, treated this Rs. 3,000 as a *pro tanto* addition to the profits of 1912 by reducing on paper to that extent his remuneration account for Rs. 4,050, which he had actually drawn, to Rs. 1,050 and thus deceiving the share-holders at their general meeting in the following March as to the real profits, induced them to declare a dividend of 6 per cent. instead of some 3 per cent, which would otherwise have been the most possible. *Held*, (1) that the accused was guilty under s. 409 of the Penal Code, because, being entrusted with the property of the Bank, he dishonestly used and disposed of some of that property contrary to the Bank's Articles of Association, causing the share-holders to declare a dividend larger than the profits warranted, (35 C. 450 = 12 C.W.N. 58 = 7 Cr. L.J. 378, 4 Ind. Cas. 416 = 14 C.W.N. 82 = 10 Cr. L.J. 581, 16 A. 88 = A.W.N. 1894, 23, *D.*) (2) that both the Managing Director and the Manager of the Head Office were guilty under s. 477-A of the Penal Code as they had "falsified" the balance sheet of 1912 and the books of the Bank by showing as profits Rs. 3,000 which were not profits, the falsification being none the less complete because they had first manufactured pro-notes, etc., in order to give to the falsified balance sheet and books an appearance of correctness; (16 A. 88 = A.W.N. 1894, 23, *R.*) (3) that a Bank's balance sheet is a paper or writing belonging to the Bank; and (4) that the Director was guilty of "misfeasance" "and breach of trust" and by inducing the share-holders to pay a dividend partly out of what was really capital, he "misapplied" the Company's money and, therefore, could be

Penal Code (Act XLV of 1860)—*continued.*

compelled by the Court to contribute a reasonable sum by way of compensation. DAULAT RAI v. EMPEROR, **23 P.W.R. 1915, Cr. = 167 P.L.R. 1915 = 16 Cr. L.J. 473 = 29 Ind. Cas. 105.**

(2726)—*Ss.* 409, 477-A—*Debtor executing* hundi *in favour of bank—Managing Director paying off his own debt in discounting* hundi, *whether amounts to criminal misappropriation—Falsification of document.*—A debtor of the Hindustan Bank executed in its favour certain *hundis* for Rs. 30,000 payable after six months. The Bank being in need of ready money, the Managing Director, the accused in the case, asked the Co-operative Bank to discount the *hundis.* But the Bank refused to do so unless the Director cleared his own account with it. In order to secure ready money the accused brought forward his own son, who put in an application for a loan from the Hindustan Bank for the exact amount of the accused's debt to the Co-operative Bank. The accused sanctioned the loan as agent on the security of his own moneys in the hands of the Hindustan Bank and then cleared his debit balance with the Co-operative Bank. This transaction formed the subject of the charges under ss. 409 and 477-A of the Penal Code : *Held* (1) that the prosecution had failed to establish the charge of criminal misappropriation, inasmuch as the accused, in his anxiety to secure ready money for his Bank, chose a method which could not be said to have injured it ; (2) that the prosecution had failed to prove that the application of the accused's son for loan and the accused's order thereon of sanction were really ante-dated, and the charge of falsification of documents could not, therefore, be sustained. DAULAT RAI v. EMPEROR, **164 P.L.R. 1915 = 25 P.W.R. 1915, Cr = 16 Cr. L.J. 443 = 29 Ind. Cas. 75.**

(2727)—Ss. 409, 477-A—*See* CRIM. PRO. CODE, 1898, ss. 179, 181 (2) and 190 (c), 4 M. L.T. 481 = 9 Cr. L.J. 92.

(2728)—Ss. 409, 477-A—Joinder of charges—Three different defalcations—Falsification of accounts—*See* CRIM. PRO. CODE, 1898, ss. 222, sub-s. 2, 233, 15 Cr. L.J. 153 = 22 Ind. Cas. 729 = 18 C.W.N. 1152 = 41 C. 722.

(2729)—Ss. 409, 477-A—Joinder of charges—Trial when vitiated—*See* CRIM. PRO. CODE, 1898, s. 234, 1911, 2 M.W.N. 536.

(2730)—Ss. 409, 477—*See* JOINT TRIAL, 30 M. 328 = 17 M.L.J. 141 = 2 M.L.T. 177 = 5 Cr. L.J. 341.

(2731)—Ss. 409, 511—*See* ACT I OF 1871, s. 27, Rat. Un. Cr. C. 632 = Cr. Rg. 2 of 1893.

——**S. 410.**

See STOLEN PROPERTY.

(2732)—S. 410—*See* Nos. 2533 and 2651, *supra.*

(2733)—*Ss.* 410, 411—*Receiving property stolen outside British India, in British India.*—*Held, by Sargent and Melvill, JJ., West, J. dissenting* :—Property is not stolen property within the meaning of s. 410, unless the act by which it has been acquired has been committed either in British India or elsewhere by a person who is liable to be tried in British India for offences committed elsewhere (Act XXI of 1879, s. 9). A bill of exchange stolen at Mauritius, where the Penal Code is not in force, cannot be regarded as "stolen property" within the provisions of s. 410, so as to render the person receiving it at Bombay liable under s. 411, I.P.C. EMPRESS v. S. MOORGA CHETTY, **5 B. 338, F.B.** [*Overruled,* 15 Cr. L.J. 207 = 22 Ind. Cas. 991 = 26 M.L.J. 235 ; *F.*, 19 B. 105 ; *R.*, 19 B. 72, 10 Cr. L.J. 571 = 4 Ind. Cas. 400.]

(2734)—*Ss.* 410, 414 *and* 411—*Assisting in concealing or disposing of stolen property—Conviction of thief, not necessary.*—A bale of merchandise was removed by a low caste man from a Railway Station to a river bed under a bridge in a cart hired for that purpose. This man having disappeared suddenly, the bale was found by a sepoy going to the bed of the river. He thereupon, put a man to watch it and returned with a police patel and saw the accused taking the bale down to a boat. The accused were charged under s. 414, I.P.C. They contended that the Station Master told them to take the bale across, but they could not prove the assertion. *Held* that the accused were properly convicted under s. 414, I.P.C., as they should have known that it was a bale of merchandise and as they would have had no reason for believing that it belonged to the Station Master. The fact that the persons alleged to have committed theft of property cannot be fixed with that offence does not exonerate persons charged with an offence under s. 414, I.P.C. REG. v. HARISHANKAR FAKIRBHAT, **2 B.H.C. 130.**

(2735)—*Ss.* 410 *and* 499—*Exceps.* 8, 9—*Defamation — Unadjudicated insolvent—Receiving property from him—Accusation of theft or of receiving stolen property—Not covered by Excep.* 8 *or* 9 *of the section.*—Where the creditors of a person who had made an application to declare him an insolvent suspected that the complainant was carrying away the properties given by the insolvent to him and made a charge of theft or of having stolen property against the complainant to the police. *Held,* that, because there was no adjudication of insolvency and therefore no vesting of the estate in the Receiver, the property was not stolen property, as it had not been transferred by theft or by robbery and could not be said to have been transferred either by criminal misappropriation or by breach of trust within the meaning of s. 410, I.P.C. *Held* also that the imputation and accusations of theft made against the complainant cannot be said to have been made in good faith within the meaning of exceps. 8 or 9 of s. 499, I.P.C. BULCHAND RAMCHAND v. CROWN, **8 S.L.R. 55 = 16 Cr. L.J. 675 = 25 Ind. Cas. 1003.**

Penal Code (Act XLV of 1860)—*continued.*

——**S. 411.**

See STOLEN PROPERTY.

(2736)—*S.* 411—*Possession of stolen property —Gist.*—In an offence of possession of stolen property, the question is whether the accused knew or has reason to believe that the property was stolen property. Mere suspicion is not enough. KANNIAPPA NAICKER v. EMPEROR. **1913 M. W.N. 696 = 21 Ind. Cas. 383 = 14 Cr. L.J. 591.**

(2737)—*S.* 411—*Stolen goods—Possession of —When to be explained.*—Where considerable time elapses between the theft and the discovery of the stolen article, possession by itself does not require any explanation. DISTRICT MAGISTRATE OF BELLARY v. OBBAYA, **1912 M.W.N. 529 = 13 Cr. L.J. 596 = 16 Ind. Cas. 164.**

(2738)—*S.* 411—*Receiving, or being in possession of, stolen property knowing it to be stolen.* —An accused was tried and convicted of an offence under s. 411, Penal Code. There was no evidence at all to show that the accused stole the goods or knew it to be stolen. *Held,* that, in the absence of any evidence on the side of prosecution to show this, the conviction should be set aside. It lies on the prosecution to show that the accused has committed an offence and not for the accused to show his innocence. KHUDA BAKSH v. EMPEROR OF INDIA, **11 P. L.R. 1905 = 2 Cr. L.J. 128.**

(2739)—*S.* 411—*Receiving stolen property—Accused found in possession of stolen property three years after it went out of owner's possession—Hasty trial improper—Revision—S.* 439, *Crim. Pro. Code—Concurrent finding of fact.*—*Held,* that where the property is alleged to have been stolen some three years before it is found in possession of a person, very clear evidence is required to show that he must have known it to be stolen. *Held,* also, that an accused person should not be tried in a hasty manner and there should be an adjournment of reasonable duration for enabling him to produce the whole of the evidence in support of his defence. In this case the concurrent finding of the courts below was set aside on the ground that there was no evidence to substantiate the charge. LAL SINGH v. CROWN, **18 P.W.R. 1914, Cr. = 113 P.L.R. 1914 = 15 Cr. L.J. 521 = 24 Ind. Cas. 833.**

(2740)—*S.* 411—*Receiving stolen property—Sweets — Identification.*—*Held,* that a conviction under s. 411, Penal Code, cannot possibly be maintained, unless the stolen property is undoubtedly identifiable. It is generally impossible to identify sweets. LAL v. CROWN. **35 P.W.R. 1912, Cr. = 194 P.L.R. 1912 = 16 Ind. Cas. 528 = 13 Cr. L.J. 720.**

(2741)—*S.* 411—*Receiving stolen property—Railway receipt of goods, production of, whether establishes possession of accused.*— Certain stolen goods were sent from one station to another. At the station of delivery, the accused returned the Railway receipt to the Railway office and paid the freight. The goods had not been removed by the accused when he was arrested, as he was not able to account for the fact of his receiving the goods. He was subsequently convicted under s. 411, Penal Code, for having received stolen property. *Held,* that the production of Railway receipt established the possession of the accused, and it was not necessary for the accused to have removed the goods from the Railway premises; that, after the delivery of the goods by the Station Master, they came to be not merely in the potential possession of the accused but actually within his power and unrestricted control, the possession of the Railway Company having from the moment of delivery ceased, and that of the accused having commenced; and that the conviction was right. SEWDHAR SUKUL v. EMPEROR, **14 Cr. L.J. 318 = 19 Ind. Cas. 1006 = 40 C. 990.** (3 Cox. C.C. 533 = 3 New. Ses. Cas. 348 = 1 Den. C.C. 453 = 7 T. & M. 150 = 2 Car. & K 978 = 18 L.J.Mc. 199 = 13 Jur. 545, *D.*)

(2742)—*S.* 411—*Pointing out stolen property —Evidence.*—*Held,* that the only evidence against an accused person that, in the presence of several persons, he pointed out a part of the stolen property buried in a grave-yard, is insufficient to establish his guilt under s. 411, Penal Code. MEHRU v. CROWN, **32 P.W.R. 1913, Cr. = 315 P.L.R. 1913 = 14 Cr. L.J. 602 = 21 Ind. Cas. 474.** (20 P.R. 1905, 17 A. 576, *F.*)

(2743)—*S.* 411—*Receiving stolen property—Evidence, sufficiency of—Knowledge, necessity for proof of.*—Where an accused was convicted of an offence under s. 411, I P C., and the evidence against him was that certain oxen were taken to his well and put up there for a night and that he subsequently promised to have the oxen restored to complainant but did not do so, the conviction was set aside on the ground that the evidence was not sufficient and that the oxen might have been taken to the well without the knowledge of the accused. AHMADA v. KING-EMPEROR OF INDIA, **32 P. L.R. 1905 = 2 Cr. L.J. 189.**

(2744)—*S.* 411—*Receiving stolen property—Evidence short of proving a repeated offence—Conviction bad.*—Where all that is proved against an accused person is that he is a receiver of stolen property knowing it to be stolen, and the evidence falls short of showing that this offence of receiving was a repeated offence, *held* that the conviction of the accused as having received the property of a particular person is bad in law. HIRA v. KING-EMPEROR, **9 A. L.J. 370 = 13 Cr. L.J. 254 = 14 Ind. Cas. 606.**

(2745)—*S.* 411, *offence under—Circumstantial evidence—Suspicious circumstances—Conclusive evidence of guilt.*—In a case, under s. 411, it was found that the accused was the father-in-law of one S, who was the cousin of the thief, that he was found in possession of the stolen property three days after the theft and that he disposed of them in a somewhat suspicious manner. *Held,* that the circumstances, though they form grounds for grave suspicion against

Penal Code (Act XLV of 1860)—*continued.*

the accused, do not furnish conclusive evidence against him for his conviction under s. 411. ASVINI KUMAR ROY v. EMPEROR, **10 C.W.N. 219=3 Cr. L.J. 195.**

(2746)—*S.* 411—*Evidence for conviction under.*—The mere fact that a person pointed out the place, the place not being under his control, where the stolen property is found concealed, is not evidence sufficient to sustain his conviction under s. 411 of the Penal Code. QUEEN-EMPRESS v. NIRPAT, **A.W.N. 1895, 229.** (A.W.N. 1895, 226, *F.*)

(2747)—*S.* 411—*Conviction under—Evidence.*—Where there is no evidence to show that a certain property has been actually stolen, a conviction under s. 411, with reference to such property, is not valid. QUEEN v. BULDEO PERSHAD, **2 N.W.P. 187.**

(2748)—*S.* 411—*Offence under, proof of.*—It is enough for the prosecution to prove facts which justify the inference that the accused either dishonestly received the property, or, having received it honestly, dishonestly retained it. MUHAMMAD v. EMPEROR, **15 P.R. 1889, Cr.**

(2748-*a*)—*S.* 411—*Receiving stolen property—Proof—Stolen property of several thefts found at one time on the accused—Crim. Pro. Code* (1882), *ss.* 435 *and* 439.—*Held*, that, where stolen goods apparently of two thefts are found on an accused person at one and the same search and there is no proof of two distinct acts of receiving, he cannot be convicted of two offences under s. 411, I.P.C. KAURA v. KING-EMPEROR, **4 P.W.R. 1907, Cr.=5 Cr. L.J. 122.**

(2749)—*S.* 411—*Stolen property produced by accused from a jungle—Whether such production sufficient to sustain conviction — Evidence—Proof.*—Where an accused produced the stolen property from a *nullah* in a jungle, which was neither in his possession, nor under his control. *Held* that such production was insufficient to establish his guilt under s. 411, I.P.C. PIR BAKSH v. EMPEROR, **46 P.L.R. 1912=13 Ind. Cas. 220=13 Cr. L.J. 28=29 P.W.R. 1912, Cr.**

(2750)—*S.* 411—*Stolen property—Its defective identification—Interference in revision—Irrelevancy of a statement of a person not examined in Court—Crim. Pro. Code, s.* 439.—*Held*, that, where the stolen article is of an ordinary make and there is nothing peculiar in it, the uncorroborated evidence of the complainant of an ordinary position alone as to its identification is not sufficient for finding that it does not belong to the accused, specially where it has been equally contradicted by a witness on the other side. *Held*, also, that even a unanimous finding of fact by the lower Courts, without due regard to the evidence on the record, is liable to be set aside on revision under s. 439, Crim. Pro. Code. MANI RAM v. CROWN, **22 P.W.R. 1912, Cr.=15 Ind. Cas. 971=13 Cr. L. J. 555.**

(2751)—*S.* 411—*Receiving and disposing of stolen property—Guilty knowledge necessary—*

Penal Code (Act XLV of 1860)—*continued.*

Concurrent finding—Revision—Crim. Pro. Code, s. 439.—*Held*, that the mere fact that a person was in possession of a stolen animal and he sold it to another is not in itself sufficient for his conviction under s. 411, Penal Code, and his denial of having any connection with the animal does not prove his guilty knowledge, especially when there is some enmity between the alleged vendor and the vendee. ALLU v. CROWN, **34 P.W.R. 1914, Cr.=229 P.L.R. 1914=15 Cr. L.J. 654=25 Ind. Cas. 982.**

(2752)—*S.* 411—*Person convicted of offence under s.* 409, *whether liable to be convicted under s.* 411, *on the same facts.*—A person, who has obtained possession of property by criminal breach of trust is liable to be punished for the breach of trust only, but not for an offence under s. 411, I.P.C. QUEEN v. SHUNKER, **2 N.W.P. 312.**

(2753)—*S.* 411—*Crim. Pro. Code* (1861), *s.* 435 *and schedule—Which Court to try an offence under s.* 411, *I.P.C.*—As shown by col. 7 of the schedule to the Crim. Pro. Code, an offence under s. 411 of the Penal Code is taken away from the operation of s. 435 of the Crim. Pro. Code, 1861. Where a First Class Magistrate has discharged the accused, the Sessions Court cannot order a commitment, since the Sessions Court can interfere only in serious cases. REG. v. RAMCHAND, **Rat. Un. Cr. C. 42=Cr. Rg. 1-12-1870.**

(2754)—*S.* 411—*Several stolen articles belonging to different persons found with accused—Conviction—Trial.*—If several articles of property belonging to different owners are found in the possession of an accused person, he cannot be convicted in one trial for the dishonest possession of stolen property belonging to one, and then convicted in another trial for the dishonest possession of stolen property belonging to another. QUEEN-EMPRESS v. MAIKU, **S.C. 167, Oudh.**

(2755)—*S.* 411—*Stolen property found in a room belonging to joint family—Liability of managing member of the family.*—Stolen property, consisting of a considerable quantity of cloth weighing about five maunds, was discovered, on search by the Police, in a locked room in a house belonging to and inhabited by a joint Hindu family composed of a father, son and grandson. The son was found to be the managing member of the family, and the key of the room, in which the stolen property was found, was produced by him. The circumstances were such that it was very improbable that the cloth could possibly have been placed where it was found, without the connivance of some or all of the members of the family. *Held*, that, under the above circumstances, the conviction of the managing member of the family under s. 411, was proper. EMPEROR v. BUDH LAL, **29 A. 598=A.W.N. 1907, 187=6 Cr.L.J. 23.** (15 A. 129, *R.*)

(2756)—S. 411—*See* ACT XV OF 1869, Rat. Un. Cr. C. 776=Cr. Rg. 41 of 1895.

Penal Code (Act XLV of 1860)—*continued.*

(2757)—S. 411—*See* BEN. ACT XXI OF 1857, s. 2 (1), 13 Cr. L.J. 492=15 Ind. Cas. 492.

(2758)—S. 411—*See* CHARGE TO JURY—MISDIRECTION, 15 B. 369.

(2759)—S. 411—Theft within British territory—Retention of stolen articles outside British territory—British Courts if have jurisdiction to try accused for such retention of stolen articles.—*See* CRIM. PRO. CODE, 1898, s. 180, 18 C. W.N. 1178=15 Cr. L.J. 537=24 Ind. Cas. 945.

(2760)—S. 411—*See* CRIM. PRO. CODE, 1898, s. 233, 36 P.L.R. 1910=8 Ind. Cas. 229=11 Cr. L.J. 597.

(2761)—S. 411—*See* CRIM. PRO. CODE, 1898, ss. 233, 239, 4 P.L.R 1905=2 Cr. L J. 30.

(2762)—S. 411—*See* CRIM. PRO. CODE, 1898, ss. 383, 439 and 562, 9 P.W.R. 1907, Cr.=5 Cr L.J. 217.

(2763)—S. 411—*See* JOINDER OF CHARGES—MISJOINDER OF CHARGES, 8 C. 634=10 C. L.R. 466.

(2764)—S. 411—*See* JOINT TRIAL, 11 Cr. L. J. 4=4 Ind. Cas. 481=3 S.L.R. 136, Cr.

(2765)—S. 411 — *See* JURISDICTION OF CRIMINAL COURTS—GENERAL, A.W.N. 1884, 85.

(2766)—S. 411—*See* SENTENCE—IMPRISONMENT—GENERAL, 9 P.W.R. 1907, Cr.=5 Cr. L.J. 217.

(2767)—S. 411—*See* Nos. 12, 47, 48, 281, 319, 432, 486, 487, 1465, 1481, 1530, 1890, 1955, 2088, 2163, 2399, 2464, 2469, 2474, 2475, 2476, 2477 to 2484, 2512, 2533, 2534, 2535, 2560, 2561, 2585, 2586, 2651, 2690, 2720, 2733, and 2734, *supra.*

(2768)—*Ss.* 411, 72—*North West Frontier Province Law and Justice—Reg. No.* VII *of* 1911—*S.* 11.—The two accused were convicted of receiving stolen property under s. 411, I.P. C., in the Court of a Magistrate of the 2nd Class and sentenced to 4 months' rigorous imprisonment and Rs. 40 fine each. On appeal the District Magistrate, while maintaining the convictions and the sentences of fine, enhanced the sentences of imprisonment from 4 months' to one year's rigorous imprisonment including 3 months' solitary confinement, on the ground that highway robbery was becoming too common on the Hassan Abdal-Haripur road. *Held*, that the order of enhancement passed by the District Magistrate was not justified by the reason on which it was based. The two accused were not charged with, and were not convicted of, having themselves stolen the goods found in their possession ; and as there were no previous convictions against them, the sentences passed by the Tahsildar Magistrate of 2nd Class, for the offences under s. 411, I.P.C., cannot be regarded as inadequate. The sentence of 3 months' solitary confinement passed by the District Magistrate was, moreover, illegal, as the maximum admissible under s. 72, I P.C., out of a substantive sentence of one year's imprisonment, was two months. The enhancement of sentences ordered by the District Magistrate was set aside and sentences passed by the Tahsildar were restored. DUNI CHAND v. CROWN, **3 P. W.R. 1913, N.W.F.P., Cr=161 P.L.R. 1913.**

(2769)—Ss. 411 and 401—*See* JOINT TRIAL, A.W.N. 1883, 179.

(2770)—*Ss.* 411, 414—*Dishonestly receiving stolen property—Assisting in the concealment of stolen property— Government currency note, received in the course of business—Jurisdiction—Code of Criminal Procedure, s.* 180, *ill.* (*b*).—Where a Government currency note of the value of Rs. 1,000 was traced, seven months after the loss, to a Shroff who carried on business in Bombay and through whose hands currency notes would find their way in the course of business, though he could not name the person from whom he had received the currency note : *Held*, on a complaint under ss. 411, 414, Penal Code, that the Chief Presidency Magistrate was right in refusing to issue process. RAM CHANDRA SAHA v. HAJI MEAH HAJI ABDULLAH, **17 C W.N. 1129=14 Cr.L J. 571=21 Ind. Cas 171.**

(2771)—Ss. 411 and 414—*See* EVIDENCE ACT, 1872, ss. 114, 54, U.B.R. 1897—1901, Vol. I, 171.

(2772)—Ss. 411 and 414—*See* JOINT TRIAL, 6 Bom. L.R. 361.

(2773)—Ss. 411, 414, 71—*See* SENTENCE—CUMULATIVE AND SEPARATE SENTENCES, Rat. Un. Cr. C. 449=Cr. Rg. 8 of 1889.

(2774)—Ss. 411 and 457—Distinct offences under—Confession of one co-accused—Effect as against another—*See* EVIDENCE ACT, 1872, ss. 30, 114, U.B R 1912, 4th Qr., 158=20 Ind. Cas. 136=14 Cr. L.J. 376.

(2775)—Ss. 411, 457—*See* JOINT TRIAL, A. W.N. 1883, 158.

(2776)—Ss. 411 and 458—*See* JOINT TRIAL, 165 P.L.R. 1905=51 P.R. 1905, Cr.=3 Cr. L.J. 76.

(2777)—Ss. 411, 489—*See* CRIM. PRO. CODE, 1898, s. 233, 29 C. 387=6 C.W.N, 550.

—— S. 412.

See STOLEN PROPERTY.

(2778)—*S.* 412—*Gist of offence.*—To support a conviction under s. 412, it is not sufficient to show that the accused knew the property to be stolen property ; it must be proved that they knew or had reason to believe that its possession had been transferred by the commission of dacoity or that, being stolen property, they received it from a person who they knew or had reason to believe belongs or belonged to a gang of dacoits. QUEEN-EMPRESS v. DAJI MAHADHU, **Rat. Un. Cr. C. 756=Cr. Rg. 19 of 1895.**

(2779)—*S.* 412—*Dishonestly receiving stolen property knowing or having reason to believe that the possession thereof had been transferred by the commission of dacoity—Proof required.*—The accused was convicted under the above

Penal Code (Act XLV of 1860)—*continued.*

section on her own confession and sentenced to one year's rigorous imprisonment for having purchased an article knowing it to be dacoited property. *Held*, that the confession was plainly made in pure ignorance of the law, the woman imagining that she had offended by merely having the property in her hands. *Held, also*, that there was no evidence whatever to show that the accused, when she bought the property, knew or had reason to believe, that it was stolen. Much less was there evidence that she knew that the property had been taken in dacoity, or even that any dacoity had occurred. Strictly speaking, the record did not even contain distinct proof of the commission of the dacoity alluded to by the witnesses. The conviction and sentence were consequently set aside. MI NYEIN v. QUEEN-EMPRESS, **U.B. R. 1897—1901, Vol. I, 72.** (U.B.R. 1897—1901, Vol. I, 78, *R.*)

(2780)—S. 412—*See* SENTENCE — TRANSPORTATION, 5 W.R. Cr. 16.

(2781)—S. 412—*See* Nos. 2514, 2580, 2585 to 2589, *supra.*

——**S. 413.**

(2782)—S. 413—*See* No. 2644, *supra.*

——**S. 414.**

See STOLEN PROPERTY.

(2783)—*S.* 414—*Stolen property—Concealing of—Owner not necessary to be traced.*—S 414, Penal Code, does not impose on the prosecution the requirement that it should, in all cases trace the owners of the property stolen. All that is needed is to show that the accused voluntarily assisted in concealing or disposing of property which he had reason to believe to be stolen property, EMPEROR v. BUDHANKHAN INAYATKHAN, **14 Bom. L.R. 893 = 1 Bom. Cr. C. 189 = 13 Cr. L J. 793 = 17 Ind. Cas. 537.**

(2784)—S. 414—*See* CRIM. PRO. CODE, 1898, s. 403, A.W.N. 1906, 22 = 3 Cr. L.J. 207 = 28 A. 313.

(2785)—S. 414—*See* Nos. 1206, 2485, 2513, 2515, 2734, 2770, 2771, 2772, 2773, *supra.*

(2786)—S. 414, 511—Theft and attempt to conceal stolen property—*See* SENTENCE—CUMULATIVE AND SEPARATE SENTENCES, 15 P.R. 1896, Cr.

——**S. 415.**

See CHEATING.

(2787)—*S.* 415—*Offence of cheating, what constitutes—Object of section.—Per Mookerjee, J.*—In order to bring a case within the first part of s. 415, it is essential in the first place, that the person who delivers the property should have been deceived before he makes the delivery, and in the second place, that he should have been induced to do so fraudulently or dishonestly. Where the complainant pays his first dues, it cannot be said that he was fraudulently or dishonestly induced to pay, within the meaning of ss. 24 and 25, I.P.C. The payment by the complainant, did not cause any wrongful loss to the complainant or wrongful gain to the accused, and assuming that the accused might have sued the complainant upon the original and genuine bond and sued successfully, in spite of the fact that the debt has been discharged, the wrongful loss of the complainant would be the result of enforcing such decree, and the fraud of the accused would consist in obtaining such decree. The damage or harm referred to in s. 415 must be the necessary consequence of the act done by reason of the deceit practised, or must necessarily be likely to follow from them; the possibility of a successful fraudulent litigation is too remote to have been in contemplation of the statute. *Per Woodroffe, J.*—To constitute the offence of cheating, there must be a deception which must precede and induce, under the first part of s. 415, the delivery or retention of property, or the act or omission referred to in the second part. The deception may be by words or conduct. As to what is sufficient to constitute deception must be decided in each case on its own facts. *Per Mookerjee, J.*—The object of s. 415 is to make it cheating to obtain property by deception in all cases where the property is fraudulently or dishonestly obtained. However immoral a deception may be, it does not constitute the offence of cheating, if its object is only to cause a distribution of property which the law recognises as rightful; there must be an intention to acquire or retain wrongful possession of that to which some other person has a better claim, and which that other person is entitled to recover by law; in all such cases the object is wrongful gain attended with wrongful loss. RAMANATH KALAPAHAR v. KING-EMPEROR, **2 C.L.J. 524 = 3 Cr. L.J. 160.** [*R.*, 16 C.L.J. 453 = 17 C. W.N. 379 = 13 Cr. L.J. 897 = 17 Ind. Cas. 993.]

(2788)—*S.* 415—*Cheating, what constitutes—Damage or harm.*—To constitute the offence of cheating, the 'damage or harm' must be the necessary consequence of the act done by reason of the deceit practised, or must be, necessarily, likely, to follow therefrom. MOJEY v. QUEEN-EMPRESS; SABYA NASHYO v. QUEEN-EMPRESS, **17 C. 606.** [*R.*, 26 A. 380, 10 P.L.R. 1905 = 25 P.R. 1904, Cr., 2 C.L.J. 524, 1 P.R. 1907, Cr. = 32 P.L.R. 1907.]

(2789)—*S.* 415—*"Fraudulently"—"Dishonestly"—"Defraud"—Meaning of the expressions.*—The word "fraudulently" used in s. 415 together with the word "dishonestly" means something different from "dishonestly." The word is not confined to transactions in which there is wrongful gain on the one hand, or wrongful loss on the other, either actual or intended. The word "defraud" may or may not imply deprivation, either actual or intended. BABURAM RAI v. EMPEROR, **32 C. 775 = 9 C.W.N. 807 = 2 Cr. L.J. 368 = 1 C.L.J. 469.**

(2790)—*S.* 415—*Purchase on credit—Intent to pay—Failure.*—Where goods were brought by the accused on credit with the intention to pay for the same, his subsequent inability or failure

Penal Code (Act XLV of 1860)—*continued.*

to pay would not constitute an offence under s. 415 of the Penal Code. QUEEN-EMPRESS v. LAKHMICHAND, **Rat. Un. Cr. C. 546.**

(2791)—*S.* 415—*Purchasing stamp in name of another.*—Purchasing stamp in the name of another representing himself to be that other—Cheating by personation. GIRDHAREE v. CROWN, **18 P.R. 1876, Cr.** [*F.*, 20 P.R. 1889, Cr.]

(2792)—*S.* 415—*Cheating — Silence.*— Mere silence on the part of the accused would not amount to deception within the meaning of s. 415 of the I.P.C. It cannot even be said that it amounted to dishonest concealment of facts constituting deception so as to bring it under s. 415, since the 'deception' mentioned therein refers to actual deception and not to concealment of facts constituting deception by some one else. NGA PO MAUNG v. QUEEN-EMPRESS, **U B.R. 1892 - 1896, Vol. I, 255.**

(2793)—*S.* 415—*Cheating—Complainant induced to deliver property on the representation that payment would be made the same day—Deceit—Fraud.*—To constitute the offence of cheating by taking delivery of property, there should be deceit at the time when delivery is taken and the seller should be fraudulently and dishonestly induced to deliver the property in consequence of such deceit. The accused induced the complainant to part with 98 bags of gram on the distinct representation that the price of the gram would be paid later in the course of the day, and that he would stay at the complainant's shop until the money arrived. But he decamped at the first opportunity and kept away till he was arrested several days later: *Held*, that, when the accused took delivery of the gram, he had no intention of paying, and that he induced the complainant to deliver the gram by fraudulent and deceitful means. NGA MYA v. EMPEROR, **12 Cr. L.J. 84 = 9 Ind. Cas. 458 = 4 Bur. L T. 14.**

(2794)—*S.* 415—*Evidence, admissibility of—Taking money by deceiving—Evidence showing accused had cheated other persons—Evidence Act (I of 1872), ss.* 14, 15.—A person employed as a clerk in charge of the renewal of licenses for handcarts received Rs. 2 for each such renewal, whereas he ought to have taken Rs. 1-14-0. He was charged with cheating and evidence was produced showing that he had taken two annas in excess from persons other than those named in the charge; *held*, that such evidence was inadmissible either under s. 14 or under s. 15 of the Evidence Act. KING-EMPEROR v. ABDUL WAHID KHAN, **8 A.L.J. 1269 = 12 Ind. Cas. 987 = 12 Cr. L.J. 611.**

(2795)—*S.* 415— *Acquittal — Reversion — Re-trial—Cheating—Facts constituting cheating —Crim. Pro. Code, s.* 439.—Where the facts admitted and proved, constituted the offence of cheating, but the Magistrate illegally acquitted the accused, the Chief Court set aside the acquittal on revision under s. 439, Crim. Pro. Code, and directed his re-trial. *Held*, that:—1. To constitute the offence of cheating, it is not necessary that the deception should be by express words but it may be by conduct or implied in the nature of the transaction itself. (32 C. 941, *R.*) The intention of cheating must be inferred from the previous or subsequent conduct of the accused. In order to find whether a person is guilty of cheating, the Court has to take into consideration the cumulative force and effect of all the surrounding circumstances. So where an accused after his application under O. XXI, r. 11, Civ. Pro. Code, had been rejected by the executing Court, induced the complainant to advance him money on the mortgage of his house under auction, representing that he was empowered to effect the mortgage in order to pay off the decree-holder, and paid the decree-holder out of the mortgage money he got from the mortgagee, but afterwards intentionally neglected to obey the directions of the executing Court and took no steps to prevent the sale being confirmed, but on the other hand received the sale-proceeds from the executing Court saying that he had paid the decree-holder from his own pocket and after receiving the money from the Court paid nothing to the complainant-mortgagee. *Held*, that the offence of cheating was complete. RAM CHAND v. JAI DIAL, **18 P.W.R. 1915, Cr.**

Penal Code (Act XLV of 1860)—*continued.*

(2796)—S. 415—*See* Nos. 49, 235, 486, 488, 926, 1004, 1624 and 2400, *supra* and Nos. 2848 and 3063, *infra.*

(2797)—*Ss.* 415 *and* 417—*Cheating—False representation by conduct.*—S. 415 does not in any manner limit the mode in which the deception may take place, nor is it necessary that the deception should be by express words, but it may be by conduct or implied in the nature of the transaction itself. Complainant offered to pay off a *zuripeshgi* debt which he owed to the accused, and the latter knowing for what purpose the money was being offered and knowing also that the money would not be paid if he did not accept it in payment of that debt and returned the *zuripeshgi* document, took the money without saying that he intended to take it in payment of a simple bond debt ,which, he alleged, the complainant and several others jointly owed to him, and then gave the complainant a document which was alleged to be the said simple bond, but refused to return either the *zuripesghi* document or the money. *Held*, that the accused's conduct amounted to a representation, which he did not intend to give effect to, that he would accept the money in payment of a *zuripeshgi* debt and would return the *zuripeshgi* document, and that the accused was guilty of the offence of cheating, inasmuch as it was his conduct that induced the complainant to pay the money. KHODA BUX v. BAKEYA MUNDARI, **32 C. 941 = 9 C.W.N. 1006 = 2 Cr. L J. 764.** (8 All. H.C. 17, *R.*) [*F.*, 13 Cr. L. J. 456 = 15 Ind. Cas. 88 = 10 P.W.R. 1912, Cr.; *R.*, 2 C.L.J. 524; *D.*, 15 C.L.J. 515 = 15 Ind. Cas. 656.]

(2798)—*Ss.* 415, 417, 511—*Crim. Pro. Code, s.* 439—*Attempt to cheat—Dishonest intention—*

Penal Code (Act XLV of 1860)—*continued.*

Facts proved not sufficient to support conviction —Evidence gone into in revision. — Where, according to the Rules regulating the levy of *octroi* on certain goods brought within the Sambalpur Municipality, the goods had to be presented in bulk at the exit station out-post, with an application for a pass in a prescribed form, such application being in the ordinary course handed by the applicant or his agent to the out-post *mohurer*, who made it over to the *daroga* whose duty it was to check the application and to certify the description and quantity of the goods actually presented and then to make out the *chalan* or pass which had to be signed by the *mohurer*, and one of the Rules provided that a Municipal member must attest the check at the exit station out-post, and in the absence of such attestation the exit *mohurer* shall not sign the *chalan*, and another Rule provided that the absence of the *mohurer's* signature on the *chalan* is one of the reasons for which an application for a refund of duty allowed in certain cases should be rejected; and where, on a certain day, the petitioner, at the request of the *daroga*, consented to act as Municipal member at the out-post in respect of goods brought there to be passed through, and among such goods brought to the out-post were some cart-loads of goods belonging to the petitioner's firm, and in the application for a pass in respect of these goods which was not signed by the petitioner himself, but in which his name was written by a gomasta (which application according to the case for the prosecution, the petitioner himself handed to the *daroga* with whom he was in collusion) the goods were entered as 460 bags of linseed and 40 bags of rice, but as a matter of fact only 230 bags of linseed were actually brought to the out post, and according to the evidence of the *daroga* the petitioner assured him that he would make good the deficiency on the following day; and it was found that the petitioner was cognizant of the application, of the details therein entered and of the number of bags brought to and passed through the out-post, but the petitioner did not attest the check in respect of his own goods and did not attempt to induce the *mohurer* to sign the *chalan* (which the *mohurer* in fact did never sign), nor did he do anything further to carry out the purpose imputed to him and made no attempt to obtain a receipt for 500 bags as representing the number actually passed through the out-post, and on the next day when he tried to send goods to the railway station some of his carts were intercepted and prevented from reaching the railway station by the Municipal authorities: *Held*, the facts proved were not sufficient to support the conviction of the petitioner for an offence of cheating. The evidence on the record fell short of the evidence required to prove dishonest mind or dishonest purpose on the part of the petitioner. BIRJRAJ MARWARI v. KING-EMPEROR, **17 C.W.N. 294=18 Ind. Cas. 660 =14 Cr. L.J. 120.**

(2799)—*Ss.* 415, 418—*Statements— True but creating false impression—Whether fraudulent.* —Where the general effect of statements which are literally true is to create a false impression. *Held*, that the statements were none the less fraudulent. CROWN v. KAKA, **5 S.L.R. 95= 12 Ind. Cas. 641=12 Cr. L.J. 553.** (1896 A. C. 273, *R.*)

(2800)—*Ss.* 415, 419—*Sale of mare at a fair—Inducing the* muharrir *to write wrong names in the certificate of sale—Offence—Two thumb-marks exactly agreeing—Opinion of experts.*—In this case, the accused A and L were *challaned* upon s. 419, I.P.C., for cheating one S, a *muharrir* at a fair by persuading him, in the exercise of his duty, to write in a *parchi* or certificate of sale of a mare, that L was the purchaser and T the seller, and affixing his thumb-mark. The Sessions Judge found that the mare was not proved to be stolen property, but that it was come by in some doubtful fashion and that the *muharrir* was deceived. *Held*, that the absence of proof that the mare had actually been stolen is immaterial, and that, as the accused *did* deceive the *muharrir* and induce him to write a false certificate, they were guilty of cheating by personation. (36 P. R. 1888, Cr., 20 P.R. 1889, Cr., *F.*; 17 C. 606, 12 C.W.N. 750, *R.*) The deliberate opinion of an expert that two thumb-marks exactly agree is on quite a different plan from an opinion as to handwriting. It is a reasonable deduction from experience that no two human beings have the same thumb-markings, and, if no differences whatever can, after the most careful examination, be found between one thumb-mark and another, the conclusion is irresistible that the same thumb made both. AHMADA AND LALU v. CROWN, **9 P.R. 1914, Cr.** (18 P.W.R. 1912, 1 C.L.J. 385, 32 C. 759, *R.*)

(2801)—Ss. 415, 420—*See* CHARGE—AMENDMENT OF CHARGE, 1 M.H.C. 31=1 Weir 471.

(2802)—Ss. 415 and 463—*See* CHEATING—GENERAL, 1 P.R. 1907, Cr. =32 P.L.R. 1907.

(2803)—Ss. 415, 471, 24 and 25—*See* FORGERY, 19 C. 380.

(2804)—*Ss.* 415 *and* 511—*Attempt to cheat.*—An attempt to deceive by a false representation of facts, involves that the person charged should have taken some steps towards the communication of the representation to the person whom it was intended to deceive. HURJEE MULL v. IMAM ALI SIRCAR, **8 C.W.N. 278=1 Cr. L.J. 124.**

—— **S. 416.**

(2805)—S. 416—*See* Nos. 1286, 2400, *supra.*

—— **S. 417.**

See CHEATING.

(2806)—*S.* 417—*Cheating, what constitutes —Intention.*—When the accused made an offer to mortgage his property in order to pay off his creditors and thus averted the institution of a suit against him, but subsequently would not complete the transaction unless a certain amount not originally stipulated were paid, *held* that, as the accused had no intention, under the circumstances of the case, to cheat

Penal Code (Act XLV of 1860)—*continued.*

at the time when the promise was made, he was not guilty of the offence of cheating. REG. v. HARGOVANDAS, 9 **B.H.C. 448.** [*R.*, 15 C. P.L R. 97.]

(2807)—*S.* 417—*Accused receiving money in lieu of three bonds but returning only two—Whether amounts to cheating.*—Where admittedly the sum of Rs. 170 was due on three bonds, but the story for the prosecution was that the creditor accepted Rs. 116 in full payment of all these bonds and after receiving the amount he returned only two bonds and not the 3rd, which the accused denied: *Held*, that, such a dispute is of the civil nature, particularly when the evidence in the case is not very satisfactory. Even if the creditor by a trick induces his debtor to pay him money less than what is actually due to him in full settlement of the account, and then refuses to abide by the arrangement, it is doubtful whether his act would amount to cheating. MANSA RAM v. CROWN, 25 **P.W.R. 1913**, **Cr.** = **14 Cr. L.J. 524** = **20 Ind. Cas. 1004** = **327 P.L.R. 1913.**

(2808)—S. 417—*See* ACT XVIII OF 1854, 1 B.H.C. 140.

(2809)—S. 417—*See* BEN. ACT III OF 1884, s. 133, 22 C. 131.

(2810)—S. 417—*See* Nos. 234, 282, 489, 985, 1624, 1630, 2320, 2367, 2657, 2721, 2797. and 2798, *supra* and Nos. 2848, 3063, and 3071, *infra*.

(2811)—Ss. 417 and 419—*See* ABETMENT, 4 P.R. 1905, Cr.

(2812)—*Ss.* 417, 420—*Suit for pre-emption—Consent decree—Omission to disclose previous mortgage not cheating.*—In a suit for pre-emption, a consent decree was passed on plaintiff's agreeing to pay a certain sum in cash and to discharge a prior incumbrance. The plaintiff subsequently discovered that the defendant, the vendee, had, after the purchase, but before the suit, mortgaged the property. But, there was no evidence to show that the plaintiff would not have consented to pay the consideration, had he been aware of the charge created by the vendee. *Held*, that there was no obligation on the vendee to disclose the existence of the mortgage, and that, consequently, his omission to do so would not constitute the offence of cheating. GENDAN LAL v ABDUL AZIZ KHAN, **27 A. 302** = **A.W.N. 1904, 265** = **1 Cr. L. J. 1044.** [*R.*, 11 Cr. L.J. 610 = 8 Ind. Cas. 256 = 40 P.W.R. 1910, Cr.]

(2813)—Ss. 417, 420—Civil and criminal proceedings together—Stay of criminal proceedings—*See* CRIM. PRO. CODE, 1898, ss. 205, 435, 439, 44 P.W R. 1911, Cr. = 12 Cr. L.J. 615 = 12 Ind. Cas. 991.

(2814)—Ss. 417, 420—Conviction under—Applicability of s. 562, Crim. Pro. Code—*See* CRIM. PRO. CODE, 1898, s. 562, 155 P.L R. 1911 = 10 Ind. Cas 114 = 12 Cr.L.J. 213 = 16 P. R. 1911, Cr.

(2815)—*Ss.* 417, 420, 467 *and* 468—*Using false name with intent to defraud postal authorities.*—The accused advertised that a work on English idioms by one W was ready and that intending purchasers might remit the price of the book by money orders to W at Calcutta. Subsequently, the accused signing a letter as W wrote to the postal authorities at Calcutta asking that all money orders for W might be directed to him at Rajam, Vizagapatam District. Signing himself again as W, he wrote to Post Master at Rajam to say that the value of the money orders might be paid to his clerk S. He subsequently called in person at the Post Office and received the value of the money orders signing his name, as S, producing also a writing authorising payment to S signed by himself as W. Both W and S were fictitious persons, and no such book was ready. *Held*, that the accused was guilty of forgery and cheating. QUEEN EMPRESS v. PERA RAJU, **13 M. 27** = **1 Weir 545.**

(2816)—*Ss* 417, 468 *and* 511—*Application to University for duplicate certificate by person not entitled—Forgery committed in order to secure that object.*—Where a person wrote a letter to the Registrar of the University of Madras for the purpose of obtaining a duplicate of Matriculation certificate and signed the letter with the name of another person who had really passed, and enclosed with the letter a forged certificate which purported to have been issued by the Headmaster of the local High School corroborating his statement as to the loss of the original certificate, *held*, that the charge of cheating must fail inasmuch as there was no proof that the deception practised by the accused on the Registrar caused harm or damage to him or to the University which he represented. *Held* also, that there was nothing to show that the accused acted dishonestly in obtaining a duplicate certificate, inasmuch as he had no intention of causing wrongful gain to himself or wrongful loss to the University; but, on the other hand, he paid three rupees in cash for the certificate which was certainly greatly in excess of its cost price. *Held*, further, that the charge of forgery was also not maintainable inasmuch as the accused, even though he had forged the Headmaster's signature, he did not do so fraudulently or dishonestly and with intent to cause damage or injury to the public or to any one. KING-EMPEROR v. SRINIVASAN, **25 M. 726** = **1 Weir 481** = **12 M.L.J. 68.** [*Diss.*, 28 M. 90 = 1 Weir 538-A.]

(2817)—Ss. 417, 511—*See* ACT IX OF 1890, ss. 68, 112, 11 C.W N. 100 = 4 Cr. L.J. 439 = 5 C.L.J. 47.

(2818)—Ss. 417, 511—*See* ATTEMPT, 8 A. 303 = A.W.N. 1886, 126.

(2819)—Ss. 417 and 511—*See* CHEATING—GENERAL, 7 C.L.J. 375 = 12 C.W.N. 750 = 7 Cr.L.J. 342, 2 A.L.J. 718 = 2 Cr. L.J. 788.

——**S. 418.**

(2820)—S. 418—*See* Nos. 488 and 2799, *supra*.

Penal Code (Act XLV of 1860)—*continued.*

——S. 419.

See CHEATING.

(2821)—*S.* 419—*Registration of false divorce —Bengal Act* I *of* 1876.—Where a person falsely personating another caused a Registrar to register a fictitious divorce, whereby the personated person purported to divorce his wife, *held* that the registering the deed did not, or was not likely to cause damage or harm to the Registrar in body, mind, reputation or property, and, therefore, the accused was not guilty of an offence under s. 419 of the Code. MOJEY v. QUEEN-EMPRESS, SABYA NASHYO v. QUEEN-EMPRESS, **17 C. 606.** [*R.*, 9 P.R. 1914, Cr.]

(2822)—*S.* 419—*Crim. Pro. Code* (*Act* V *of* 1898), *ss.* 233, 239 *and* 537—*Joinder of charges —Illegality.*—A person cannot be convicted of an offence under s. 419, Penal Code, for disposing of a girl representing her to be of a caste different from that to which she belongs. The provisions of ss. 233 and 239 of the Crim. Pro. Code, as to the framing of charges must be strictly observed. Any violation of them is an illegality and cannot be remedied by s. 537. A person accused of kidnapping a girl, or of having kept a kidnapped girl in confinement, cannot be tried jointly with a person who is found disposing her off on a subsequent date and is charged with an offence under s. 419, Penal Code. Similarly a person accused of theft cannot be tried jointly with a person who is alleged to have dishonestly received from the alleged thief the property stolen by him. SINGHARA v. KING-EMPEROR, **149 P.L.R. 1903 = 17 P.R. 1903.**

(2823)—S. 419—*See* ACT XX OF 1866, ss. 93 and 94, 11 W.R.Cr. 24 = 2 B.L.R. 25.

(2824)—S. 419—*See* Nos. 1004, 1005, 2343, 2400, 2800 and 2811, *supra.*

(2825)—*Ss.* 419, 511 — *Travelling with a forged pass—Pass not presented before completion of journey — Presentation on completion — Offence of attempt to commit cheating—Punishment under* s. 112, *Railways Act,* 1890.—Where it was not proved that the accused, who was travelling with a forged pass, showed the pass at any time to a Ticket Examiner or any other Railway Official before the completion of his journey, and where the charge was laid under s. 419, I.P.C., and s. 112, Railways Act, *held,* that he could not be convicted of cheating by personation under s. 419, I.P.C. The presentation of the pass on the completion of the journey can only be regarded as a dishonest attempt to induce the Railway Officials to omit to collect the fare from him, and he can only be convicted under ss. 419 and 511, I.P.C. *In re* GOVINDASWAMY NAIDU, **12 Cr. L J. 406 = 11 Ind. Cas. 590 = 12 M.L.J. 748.**

——S. 420.

See CHEATING.

(2826)—*S.* 420 —*Immoveable property, application of section to.*—S. 420 of the Penal Code has no application to the delivery of immoveable property. QUEEN-EMPRESS v. ABDUL AHAD, **A W.N. 1882, 6.**

(2827)—*S.* 420—"*Property,*" *scope of the word.*—Property in s. 420 includes money. BIRENDRA DAL BHADURI v. EMPEROR, **32 C. 22 = 8 C.W.N. 784 = 1 Cr. L.J. 794.**

(2828)—*S.* 420—*Cheating—Representation of a future event—Belief as to falsity of representation.*—Where a charge of cheating rests upon a representation which is impugned as false and which relates not to an existing fact but to a certain future event, it must be shown that the representation was false to the accused's knowledge at the time when it was made. It is but little to the purpose to show that in fact the representation has turned out to be untrue. EMPEROR v. EBRAHIMJI, **15 Bom. L.R. 297 = 2 Bom. Cr. C. 48 = 14 Cr. L.J. 232 = 19 Ind. Cas. 328.**

(2829)—*S.* 420—*False representation—Complainant should be deceived.*—The accused falsely represented to a *kunbi* that a woman Harkha of the *koli* caste was of a higher caste, namely, a *kunbi*, and thereby induced him to re-marry her and to pay to them some money. The Magistrate convicted them under s. 420, I.P.C. The Joint Sessions Judge in appeal reversed the conviction and sentence. On appeal by the Government: *Held,* that, as the Joint Sessions Judge had found that the complainant was not really deceived, the order of acquittal was right. QUEEN-EMPRESS v. BHAIJI, **Rat. Un. Cr. C. 301 = Cr. Rg. 49 of 1886.**

(2830)—*S.* 420—*Wrongful gain to accused—Honest belief in the representation—Crim. Pro. Code* (*Act V of* 1898), *s.* 363—*Demeanour of witnesses—Rejection of their evidence.*—Where it was found that an unknown person, representing himself to be a *Fakir* and alleging to possess the powers of an alchemist, came to live in the vicinity of the accused and performed experiments of transforming copper into gold, at which both the complainant and the accused were present, and during the first few experiments produced a metal which was found on testing to be pure gold, and on the last occasion he produced a metal which was purchased by the complainant for Rs. 22,000 out of which Rs. 12,000 were paid to the *Fakir*, and Rs. 10,000 were to be credited to the accused in payment of his debts due to the complainant, and that if the metal so purchased proved to be real gold, it was fully worth Rs. 33,000 or 34,000, but it was afterwards found to be mere brass; *held,* that the accused could not be convicted of cheating under s. 420, Indian Penal Code, as there was evidence to show that the accused may himself have been duped by the preliminary experiments of the *Fakir*, and with a hope of getting his debt wiped off became a zealous tool of the *Fakir*, and that he had received no gain whatever, except worthless book entries. *Held,* further, that it was dangerous to reject the evidence of defence

Penal Code (Act XLV of 1860)—*continued.*

witnesses, who were admittedly respectable men, on the sole ground that their demeanour in Court was not satisfactory, specially when the statements made by them were in themselves probable, and were made under the sanction of an oath. CROWN v. FAZUL MUHAMMAD, 9 **Cr. L.J. 261 = 1 S.L.R. 20, Cr.**

(2831) — *S.* 420—*Cheating—Mortgagor not disclosing his defective title.—Held*, that mere suppression of some facts at the time of borrowing money does not amount to cheating, where there is no evidence of either active deception or dishonest or fraudulent action. So where a person mortgaged to another for Rs. 1,000, a mortgage executed in his favour of a house for Rs. 2,000, and also agreed that, in case of his mortgagee not being able to recover his money from the mortgage rights, he would make good the money from his other property, there is no element of cheating in that person's act, even if he knew at the time of borrowing money that his mortgagor's title to the house was defective, and did not disclose this defect to his creditor. A mortgage of a mortgage of a house is not a re-mortgage of the house. HARI KISHAN v. CROWN, **40 P.W.R. 1910, Cr. = 8 Ind. Cas. 256 = 11 Cr.L.J. 610.** (27 A. 302, *R.*)

(2832)—*S.* 420—*Cheating—Judgment-debtor raising money on the mortgage of his house already sold in execution of decree—Discharge—Re-trial—Crim. Pro. Code.* s.439.—To constitute the offence of cheating, it is not necessary that the deception should be by express words, but it may be by conduct or implied in the nature of the transaction itself. So, where the application made by a judgment-debtor in the execution case, and O. XXI, r. 83 of the Civ. Pro. Code, 1908, praying for permission to raise the amount of the decree by a private transfer of his house which had already been sold in auction, is rejected by that Court and yet he induces a person to advance to him money on the mortgage of the house in question on the representation that he is empowered to affect the mortgage in order to pay off the decretal amount due to the decree-holder, receives a portion of that money himself and induces the mortgagee to pay the rest to the decree-holder, and allows the sale to be confirmed by the Court and receives from the executing Court the sale-proceeds stating that he had paid the decree-holder out of his own pocket, he commits an offence of cheating under s. 420, I.P.C. The order of discharge was set aside on revision under s. 439, Crim. Pro. Code. RAM CHAND v. JAI DIAL, **10 P.W.R. 1912, Cr. = 114 P.L.R. 1912 = 15 Ind. Cas. 83 = 13 Cr.L.J. 456.** (32 C. 941, *F.*)

(2833) - *S.* 420—*Cheating—Cotton bales—Fraudulent admixture of inferior cotton.*—The accused contracted to supply to the complainants 200 bales of fully good machine-ginned cotton. In fulfilment of this contract, he delivered 200 bales largely composed of cotton-seed, raw cotton and rubbish, carefully packed into the middle, while all round the sides was placed good ginned cotton. The percentage of the admixture was from 6 to 15 per cent. as against the normal admixture of half or one per cent. The accused was shown to have business relations with a factory which owned ginning machines which were capable of making the admixture, and was found to be present there whilst the machines were ginning such adulterated cotton. *Held*, that the accused was under the circumstances guilty of the offence of cheating. EMPEROR v. KANJI SHIVAJI, **14 Bom. L.R. 137 = 1 Bom. Cr. C. 78 = 14 Ind. Cas. 669 = 13 Cr. L.J. 285.**

Penal Code (Act XLV of 1860)—*continued.*

(2834)—*S.* 420—*Cheating—Intention to sell paddy — False representation — Obtaining advance of money—Execution of pro-note—Failure to deliver paddy — Cheating — Intention to deliver—Not embodied in promissory note—Oral evidence—Admissibility to prove representation of intention to deliver—Evidence Act, s.* 92.—P sold a boat of paddy to M & Co., through their broker K. P asked K for an advance of Rs. 1,500, stating that he had two more boat loads in an adjoining creek and that he would bring them to M & Co's mill the next day. K obtained for P an advance of Rs. 1,500 for which both of them jointly executed a pro-note in favour of M & Co. The pro-note contained the words : "for value received this day in cash advanced for the supply of grain." P absconded on a charge of cheating and was convicted under s. 420, I.P.C. *Held*, that the facts pointed to the conclusion that P's representation was false, that he, at the time of obtaining the advance, had no intention of performing his promise and that his conviction under s. 420, I.P.C., was proper. The intention of the accused to bring and offer for sale the paddy would be a fact independent of any contract embodied in the promissory note and would not be inconsistent with a contract of loan, though it might have been induced by, and was an inducement for the loan, and evidence is admissible to prove the representation of such intention, though not embodied in the promissory note itself. PO YON v. MESSRS. MOHR BROTHERS & CO. LTD., **6 L.B.R. 38 = 13 Ind. Cas. 386 = 13 Cr. L.J. 50 = 4 Bur. L.T. 79.** (5 L.B.R. 241, *R.*)

(2835)—*S.* 420—*Cheating—Immoral contract—Cheating in respect of the contract.*—The accused agreed to let her daughter on hire to the complainant for concubinage for one year in consideration of Rs. 70, out of which she received Rs. 35 in advance. Later, she refused to carry out the contract or to return the advance. She was convicted of cheating. *Held*, reversing the conviction, that a party to an immoral contract should not be allowed to prosecute on a criminal charge, when he could not get performance of the contract in a Civil Court. EMPEROR v. JANI HIRA, **14 Bom. L.R. 503 = 15 Ind. Cas. 793 = 13 Cr. L.J. 521 = 1 Bom. Cr. C. 148.**

(2836)—*S.* 420—*Cheating—Evidence—Previous and subsequent conduct of accused—Civil law principles when applicable to criminal cases*

Penal Code (Act XLV of 1860)—*continued.*

—*False pretence—Promise to do something in future—Evidence Act, ss.* 14, 15.—In a case of cheating, it is open to the prosecution to show that the acts charged against the accused were parts of a series of similar acts committed by him, or in which he was concerned, at or about the time in question. Evidence of such other acts, whether previous or subsequent to the frauds charged against the accused, is relevant for the purpose of showing whether or not the intention of the accused was honest or fraudulent. Evidence merely to prove that the accused person's character is such that he is likely to commit the act with which he is charged is not admissible. A principle of Civil law can equally apply to a criminal case, provided it is not in any way against any of the principles of Criminal law. *Per se* a promise to do something in the future may not amount to a false pretence or to cheating, but, it may, at the same time, in certain cases, involve a false pretence that the promisor has the power to do that thing for which false pretence the promisor may be indictable. GIRDHARI LAL v. EMPEROR, **269 P.L.R. 1914.**

(2837)—*S.* 420—*Cheating—Evidence of the previous and subsequent conduct of accused when and in what cases relevant—Principle of Civil Law when applies to Criminal case—Indian Evidence Act* (I *of* 1872), *ss.* 14, 15 *and* 54.—*Held*, that G, by falsely representing to L, that G had been instructed by a competent authority to recruit unskilled labour for service in Africa, and that G would, on payment of a certain sum of money as a fee for registering L's name, would be able to engage L for service in that country, induces L to pay him G the said fee; G commits an offence punishable under s. 420, I.P.C., *Held*, also, that, in a case of the above description, it is open to the prosecution under ss. 14 and 15 of the Indian Evidence Act (I of 1872) to show that the act, charged against the accused, was a part of a series of similar acts committed by him, or in which he was concerned at or about or before or after the doing of the said act in question, and that evidence of such other acts is relevant for the purpose of showing whether or not the intention of the accused was honest or fraudulent. But the evidence merely to prove that the accused person's character is such that he is likely to commit the act of cheating with which he is charged is not admissible. The distinction between those two propositions is quite apparent and has been well brought out in *Reg.* v. *Fisher* (26 L.T.R. 122). *Held*, further, that evidence of previous and subsequent conduct on other similar occasions, of a person accused of any of the following offences, is admissible :—(1) Arson—*Reg.* v. *Gray* (4 Foster and Finlason N.P. 1102). (2) Embezzlement. —*Reg.* v. *Richardson* (2 Foster and Finlason N.P. 343=8 Cox's Criminal Cases 448) (3) False pretence.—*Reg.* v. *Francis* (Law Journal Magistrate's cases, page 97=2 Law Reports, Criminal Cases, page 128 and *Reg.* v. *Rhodes* (1 Q.B. 77.) (4) False coining.—*Reg* v. *Fuller* (Russel and Rayan, page 308 and *Reg.* v. *Waulls*). (5) Forgery.—*Reg.* v. *Whiley* (Russel and Rayan, p. 90) and *Reg.* v. *Colebrough* (6) Obtaining credit by fraud.—*Reg.* v. *Wyalt* (1 K.B. 188). *Held*, further, that a principle of Civil Law can equally apply to a criminal case, provided it is not in any way against any of the principles of Criminal Law. *Held*, further, that *per se* a promise to do something in the future may not amount to a false pretence or to cheating. GIRDHARI LAL v. CROWN, **26 P.W.R 1910, Cr.=6 Ind. Cas. 964=11 Cr. L.J. 428.** (36 C. 573, 16 B. 414, *F.*; 19 B. 51, *D.*)

(2838)—S 420—*See* BOM. ACT III OF 1867, s. 11, Rat. Un. Cr. C. 367=Cr. Rg. 14 of 1888.

(2839)—S. 420—Offences under—Joint trial—*See* CRIM. PRO. CODE, 1898, s. 239, 122 P.L.R. 1911=10 Ind. Cas. 63=12 Cr. L.J. 208=28 P.W.R. 1911, Cr.

(2840)—S. 420— *See* CRIM. PRO. CODE, 1898, s. 562, 23 P.W.R. 1908, Cr., 3 L.B R. 95=3 Cr. L.J 21, F.B.

(2841)—S. 420—*See* EVIDENCE ACT, 1872, ss. 14, 15, 9 C.L.J. 610=36 C. 573=13 C.W.N. 973=2 Ind. Cas. 601.

(2842)—S. 420—*See* FALSE PERSONATION, 1 L.B.R. 356.

(2843)—S. 420—*See* REVISION—QUESTION OF FACT, 106 P.L.R. 1909.

(2844)—S. 420—*See* Nos. 62, 235, 236, 250, 486, 531, 1466, 1591, 1630, 2320, 2343, 2350, 2700, 2722, 2801, 2812, 2813, 2814 and 2815, *supra* and No. 3083, *infra.*

(2845)—*Ss.* 420, 71—*Cheating—Gist of offence—Right of shareholders—Duty of auditors—Summing up of Sessions Judge to be read as a whole.*—*Held* that the summing up of a Sessions Judge must be read as a whole. *Held* also that the principal duty of the auditors is to protect the shareholders and to see that the Directors and the Manager are issuing true balance sheets. The shareholders are therefore entitled to rely on the auditor as a check on the Directors. *Held* also that the three separate acceptances of deposits from three persons at different times cannot be said to be parts of one composite offence under the first part of s. 71, Penal Code, since the dishonest intention which is the gist of the offence of cheating was present not only at the time the balance sheet was issued but also at the time of accepting each of the deposits. G.S. CLIFFORD v. KING-EMPEROR, **6 Bur. L. T. 201=15 Cr. L.J. 80=7 L B.R. 143=22 Ind. Cas. 432.**

(2846)—Ss. 420 and 116—*See* ABETMENT, 9 P.R. 1884, Cr.

(2847)—*Ss.* 420 *and* 161—*Vaccinator taking illegal gratification.*—The accused were charged with having taken illegal gratification in connection with their vaccination duties. *Held* that the conviction under s. 161 was wrong, as the vaccinators had no right to touch the children without their parents' consent, and, therefore, in refraining from lancing the children's arms, they can scarcely be said to

Penal Code (Act XLV of 1860)—*continued.*

have been forbearing to do any official act. Whether it was their duty, that is, whether they were instructed to procure lymph from the children's arms or not, they had no power to do so, unless the parents consented, and, therefore, by threatening to do so and thereby to cause pain to the children unless they received money, they were guilty of extortion and should have been convicted under s. 384. I.P.C. It is immaterial whether they are public servants or not, though they certainly appeared to be so. EMPRESS v. HARI HAR, **1 C.P.L.R. 24, Cr.**

(2848)—*Ss.* 420, 415, 417 511—*What amounts to attempt or preparation to cheat.*—In this case, the findings of facts are that the petitioner, who was indebted to the complainant, despatched from Benares to the latter in the Guzerat district an envelope insured for Rs. 530, containing two pieces of waste paper, apparently post office forms, that the envelope was delivered in the presence of the postal officials to the complainant, who found that it contained only the two pieces of paper; that he then instituted criminal proceedings against the petitioner and two others, the theory of the prosecution being that the petitioner's object was to use the receipt for the insured letter as evidence of payment by him of Rs. 530. *Held that the facts did not justify a conviction* under s. 420. I.P.C., but constituted an attempt to cheat within the definition contained in ss. 415 and 511. I.P.C. ARURA v. CROWN. **10 P.R. 1913. Cr.=14 Cr.L. J. 436=20 Ind. Cas 596=30 P.W.R. 1913, Cr. =299 P.L.R. 1913.**

(2849)—*Ss.* 420, 467—*Stolen property—Money—Current coins of the realm—Proceeds of cheating—Payment to creditors in satisfaction of debts due by accused—Recovery by Police from creditors—Latter not bound to return—Title to money—Passing by delivery.*—Where, during the police investigation, a sum of money was recovered, as part of the proceeds of cheating, from certain creditors of the accused to whom the accused, after the commission of the offence of cheating, paid the money: *Held*, that the creditors are not bound to return the money to the persons from whom their debtor acquired it by committing the offence of cheating, and that they are entitled to the money recovered from them by the Police. Title to money which is current coin of the realm passes by mere delivery to a person who receives it in satisfaction of a lawful debt due to him. CROWN v. BAIJ NATH, **1 P R. 1915, Cr.** (7 M.H C. 233, 3 C. 379, 83 P.R. 1890, 1884, 14 Q.B.D. 32, *R.*)

(2850)—*Ss.* 420, 467, 468—*Forging hundi for the purpose of cheating*—Where the offence complained of was forging a *Hundi* for the purpose of cheating. *Held*, (1) that a *Hundi* is a valuable security, and the offence falls under s. 467, Indian Penal Code, which is triable only by the Sessions Court or by a Magistrate invested with enhanced powers; (2) that an ordinary First Class Magistrate had no jurisdiction to try the case, by framing charges for minor offences punishable under ss. 420 and 468. Indian Penal Code. LEKHRAJ v. CROWN. **31 P.R. 1910. Cr. =8 Ind. Cas. 389=194 P.L R. 1910=11 Cr. L. J. 639.**

(2851)—*Ss.* 420, 511—*Cheating — Attempt—Preparation—Sale of cotton.*—The accused, having contracted to deliver a certain quantity of good cotton to the complainants, delivered instead for acceptance by the complainants 30 *dokras* of bad cotton, that is, cotton heavily adulterated with rubbish, in such a manner that the fraud would be likely to escape the ordinary inspection. The complainants' agent, to whom delivery was offered, suspected the character of the goods and declined to accept them. The accused were, on these facts, convicted of the offence of attempting to cheat. On appeal, they were acquitted by the Sessions Judge on the ground that the acts of the accused did not amount to an attempt to cheat but only to a preparation for cheating. *Held*, setting aside the order of acquittal, that there was on the facts a complete case of an attempt to cheat, and the only reason why the offence stopped short at an attempt and did not proceed to the cheating itself was because the party who was sought to be cheated was cautious and not confiding. *Held* also, that the accused did all they could do to perfect their offence, that is to say, overt act was begun which would have led to the finished offence but for an interruption arising independently of the will of the accused, EMPEROR v. MANSING DAJI PATIL, **15 Bom. L R 568=2 Bom. Cr. C. 80=14 Cr. L.J. 433=20 Ind. Cas. 593.**

(2852)—*Ss.* 420. 511—*Cheating—Attempt to—Definition of "Attempt"—Spurious trinkets—False representation—Untrue statement to support.*—A manufactured spurious trinkets, and took them to N saying that they were of gold, and that they were stolen property (which was also not true) and that he (A) does not like to sell them in bazar and asked him to buy. N did not buy, but A was arrested. It was argued that no attempt to cheat had been proved, because more had to be done by A, such as weighing the articles, &c. before wrongful loss would fall upon N. *Held*, that the act of A amounted to an attempt of cheating punishable under ss. 420, 511, I.P.C. *Held*, also that, in cases of cheating, the essential thing is the deception of the victim, the dishonest causing to arise in the victim's mind of an impression, the reverse of truth, calculated to induce him to give up something which he would not otherwise give up, or to do or refrain from doing something which he would not otherwise do or refrain from doing, or to enter into a bargain which he would not enter into, if he knew the real facts. "Attempt" is an act with intent to commit a crime and forming part of a series of acts which would constitute its actual commission if not interrupted. *Held*, further that the definitions in such matters are dangerous things, and the only safe way of deciding in any particular case whether an "attempt" to commit a crime has been made or not, is to consider the facts of

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that particular case, and to decide in accordance with the dictates of common sense. ABDULLAH v. CROWN, **13 P.W.R 1914, Cr. = 66 P.L.R. 1914 = 15 Cr L.J. 265 = 23 Ind. Cas. 473 = 14 P.R. 1914, Cr.** (8 A. 304, 13 P.R. 1879, Cr., 13 P.R. 1881, 40 P.R. 1885, Cr., 25 P.R. 1902, Cr., 15 P.R 1907, Cr. = 44 P.W.R. 1907, A.W.N. 1886, 290, 16 C. 310, 16 A. 409, 15 A. 173, *R.*)

——S. 421.

(2853)—*S.* 421—*Fraudulent transfer of property.*—This section is intended to cover *benami* transactions in fraud of creditors rather than fraudulent preferences given to one *bona fide* creditor over another. In order to support a conviction under s. 421, it is necessary to prove that a transfer was (1) fraudulent, (2) without adequate consideration and (3) with intent to prevent a rateable distribution among creditors. ABDUL GANI SULEMAN v. QUEEN-EMPRESS, **L.B.R. 1893—1900, 593.**

——S. 422.

(2854)—*S.* 422—*Creditor — Debt — Compromise—Dishonestly—Fraudulently.*—Where the accused entered into an agreement with the prosecutor, to the effect that he would not compromise a certain suit between himself and another party which was then pending, the reason why he entered into this contract being that he had assigned the benefit of this suit to the prosecutor as a security for the due payment of some monthly instalment of money, but notwithstanding this agreement, he did afterwards compromise the suit, and was for this breach of contract found guilty of an offence under s. 422 of the Penal Code, *held*, that the conviction was bad, as it is necessary, in order to constitute the compromise complained of, an offence under this section, that that compromise should have been made dishonestly or fraudulently towards the prosecutor. *In the case of* NOBIN CHUNDER MUDDUCK, **22 W.R. Cr. 46.**

(2855)—*S.* 422—*Fraudulent transfer.*—In order to secure a debt, A hypothecated a house and got the deed duly registered. A year afterwards, he sold the house to another person. *Held*, that A was not guilty of an offence under s. 422, Penal Code. MUSAL LAL v. KASHI PRASAD, **14 Cr. L.J. 141 = 18 Ind. Cas. 893.**

(2856)—*Ss.* 422 *and* 511—*Dishonestly or fraudulently preventing debt being available for creditors—Application to withdraw money paid into Court.*—Petitioners' estate was under mortgage and in the management of certain persons under certain conditions as to payment of moneys realised by them. In execution of a decree obtained by the managers in a suit brought by them in the name of the petitioners, certain under-tenure was sold for Rs. 3,000. The judgment-debtor arranged with the petitioners that on payment of Rs. 1,000, the sale should be set aside and he accordingly paid that sum into Court, and an application was made by the petitioners to draw out the money upon which no order was made. They were thereupon convicted, at the instance of the managers, of an attempt to commit an offence under s. 422, I.P.C. *Held*, that the application to obtain the money paid into Court might have been a breach of their contract with the mortgagors, but such conduct cannot necessarily be regarded as dishonest or fraudulent so as to render the petitioners liable to punishment, their attempt to get the money being more to put an end to the management than to prevent the money from being available to the payment of their debt under the mortgage. HARA KUMARI CHOWDHURANI v. R. SAVI, **28 C. 314 = 5 C W.N. 174.** (22 W R. Cr. 46, *R.*)

——S. 423.

(2857)—*S.* 423—*False statement of consideration in a sale-deed—Cheating.*—False statement of consideration in a sale-deed of immoveable property, made in order to forestall a coparcener's right of pre-emption, amounts to cheating. EMPEROR v. MAHABIR SINGH, **25 A. 31 = A W N. 1902, 173.** [*R.*, 37 M. 47 = 12 Cr. L.J. 547 = 12 Ind. Cas. 523 = 10 M.L.T. 383 = 1911, 2 M.W.N. 413.]

(2858)—*S.* 423—*Execution of fictitious sale-deed for defeating pre-emption.*—The execution of a fictitious sale-deed for the purpose of defeating a suit for pre-emption, being clearly fraudulent and dishonest, amounts to an offence under s. 423 of the Code: LACHHMAN DAS v. KING-EMPEROR, **16 P.R. 1907, Cr = 42 P.W.R. 1907 = 54 P.L.R. 1908 = 6 Cr. L.J. 111.** (10 P.R. 1902, Cr., *F.*)

(2859)—*S* 423—*Sale-deed—Pre-emption.*—In order to sustain a charge under this section, for stating a false consideration in a sale-deed, the existence of a right of pre-emption must be proved in respect of the subject-matter of the sale. If there is no right of pre-emption, there can be no deprivation of a pre-emptor of that right which may be a wrongful loss to him or wrongful gain to the purchaser, and the same remark applies to the word "fraudulently" in the section. CHHAJJU v. KING-EMPEROR, **16 P.R. 1908, Cr = 34P W.R. 1908, Cr. = 8 Cr L. J. 486** (23 P.R. 1869, Cr., 10 P.R. 1902, Cr., *R.*)

(2860)—*S.* 423—*Dishonest execution of instrument of transfer—Civil suit.*—The institution of a civil suit is not a condition precedent to the maintenance of a charge in a Criminal Court, under s. 423, for dishonest and fictitious execution of an instrument of transfer. EMPRESS v. UMRAO SINGH, **A.W.N. 1883, 209.**

(2861)—*S.* 423—*Sale-deed with false statement of consideration.*—A false and exaggerated declaration of consideration in a sale-deed, with the consent of the purchaser, for the purpose of defeating the claims of a pre-emptor is an offence punishable under s. 423, I.P.C., the purchaser being guilty under s. 423. GURDITTA MALL v. EMPEROR OF INDIA, **10 P.R. 1902, Cr. = 75 P L.R. 1902** (23 P.R. 1869, Cr., 13 B. 506, 25 C. 512, F.B., 21 A. 113, *R.*) [*R.*, 60 P. L R. 1903, 8 P.L R. 1904, 54 P.L.R. 1908 = 16 P.R. 1907, Cr. = 42 P.W.R. 1907, Cr., 16 P.R. 1908, Cr. = 8 Cr. L.J. 486.]

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(2862)—*S. 423—False recital—Nature of—Sentence altered—Enhancement—Illegality.*—The law does not make punishable every false statement in an instrument of transfer. The false statement must relate to the consideration or to the person to be benefited by it in order to become criminal. A statement that the vendee purchased the whole land while the vendor could only sell a part of it, is not one coming under the section. (33 A. 421, 25 A. 31, *R.*) Alteration of sentence amounting to an enhancement is illegal. MANIA GOUNDAN v. EMPEROR, **1911, 2 M.W.N. 413=10 M.L.T. 383=12 Ind. Cas. 523=12 Cr. L J. 547=37 M. 47.** (17 A. 67, *F.*)

(2863)—S. 423—*See* No. 1287, *supra.*

——**S. 424.**

(2864)—*S. 424—Dishonest removal of property to avoid distraint for arrears of rent under the Rent Recovery Act—Legality of distraint for arrears of rent—Presumption—*Onus *of proving legality.*—A distraint made under the Rent Recovery Act is not presumed to be a legal distraint. It lies on the prosecution to prove that the distraint is legal and especially so when its legality is challenged. Where certain persons were charged under ss. 147 and 424, Penal Code, for having resisted the distraint of property under the Rent Recovery Act and for having removed the property in order to avoid it, *held*, that in the absence of proof by the prosecution that the distraint was legal, no offence under either s. 147 or s. 424, Penal Code, had been committed, inasmuch as they had the right of private defence of property unless the distraint was legal. KING-EMPEROR v. GOPALASAMY, **25 M. 729=1 Weir 57.**

(2865)—*S. 424—Legal distraint of property under Madras Rent Recovery Act—Removal of that property.*—Where a Revenue Collector lawfully distrained property, but the property was removed by the defaulter with the assistance of another person, *held*, that the two persons were guilty of an offence under s. 424, Penal Code, inasmuch as the distraint was legal under the Madras Rent Recovery Act. *In re* APPAIYA GOUNDAN, **1 Weir 485.**

(2866)—*S. 424—Dishonest removal of crops by ryots holding on* varam *tenure.*—In the case of ordinary ryots in a zemindari holding on a *varam* tenure, until delivery by the tenant to the zemindar of the share of the crop payable to the latter, the possession of the whole crop, inclusive of such share, is, clearly, with the tenant. This being so, the removal of even the whole crop by the tenant is not the taking of anything out of the possession of the zemindar. Consequently, the first element in the offence of theft is wanting. But the removal, if dishonest or fraudulent, constitutes an offence under s. 424 of the Penal Code, even though the zemindar acquires no property in the share to him until delivery by the ryots. SUBUDHI RANTHO v. BALARAMA PUDI, **26 M 481=1 Weir. 425=1 Weir 487=13 M.L.J. 123.** [*F.*, 15 Cr. L.J. 186=22 Ind. Cas. 762=1914 M.W.N. 106, 15 Cr. L.J. 440=24 Ind. Cas. 176=1914 M.W.N. 483.]

(2867)—*S. 424—Illegal order prohibiting removal of property.*—Where a Kurnam had forbidden the removal of certain crops, prior to the payment of Government assessment, the removal of crops in violation of the order would not amount to an offence under s. 424, inasmuch as the Kurnam had no authority to make such an order. *In re* BAVURI MAGATA, **1 Weir 483.**

(2868)—*S. 424—Application of section.*—In the application of s. 424, care should be taken that civil rights are not made the basis of a criminal prosecution. HIGH COURT PROCEEDINGS, 15TH AUG. 1868, **1 Weir 483.**

(2869)—*S. 424—Gist of the offence under.*—To sustain a charge under s. 424, there must be evidence of the persons intended to be defrauded by the concealment. CROWN v. RAM DWAYA, **16 P.R. 1868, Cr.**

(2870)—*S. 424—Change in the customary mode of paying the rent—Tenant not agreeing to the terms and reaping the crop disregarding the order, effect of.*—The accused, holding inam land under a pagoda, were in the habit of paying a fixed money rent, except so much grain as it was convenient for the pagoda to receive in kind. In order to avoid the probability of the tenants not paying their full amount of rent, the trustees of the pagoda resolved to divide the crop, which was just ripe, with the tenants. The petitioners had notice of this change immediately before the crop was reaped and they were ordered not to reap the crop except in the presence of the pagoda servant. But the petitioners did not agree to this alteration in the mode of paying the rent; and they paid no attention to the order prohibiting the reaping of the crop except in the presence of the servants, and reaped the crop as usual. *Held* that the petitioners were not guilty of theft or of an offence under s. 424, inasmuch as the trustees had no power to introduce a new system of assessing and collecting the rent without the consent of the tenants. *In re* ANANDA MUTTUSAMI AIYAN, **1 Weir 484.**

(2871)—*S 424—Deputy Magistrate, jurisdiction of, to question legality of attachment by Civil Court—Subsequent distraint for arrears of Municipal tax—Fraudulent removal of wheels and axles—No offence under s. 424.*—Where a decree was given against one P at the suit of S, the wife of the accused; and where execution of this decree being sued out, the carriage and other moveable property of P were attached and placed in the custody of the accused; and where subsequently, an officer of the Municipal Commissioners distrained the goods of P for arrears of Municipal tax, and seized the carriage in question, after which the accused removed the wheels and axles and concealed them, the Deputy Magistrate considered that the attachment of the carriage by placing it in the custody of the accused, who was the husband of th

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judgment-debtor, was illegal and *ab initio* null and void, and that the circumstances of the removal were such as indicated fraud and convicted the accused under s. 424, I.P.C. *Held* that the conviction was bad. The legality or formality of the mode of attachment allowed by a Civil Court is not a matter for a Deputy Magistrate's consideration. *Held*, also, that the Deputy Magistrate could not order the arrears of Municipal tax due from P to be paid out of the fine imposed on him. QUEEN v. BROJO KISHORE DUTT, **8 W.R. Cr 17.**

(2872)—S. 424—Penal provisions of Madras Estates Land Act whether exclusive — *See* MAD. ACT I OF 1908, ss. 73, 212, 15 Cr. L.J. 295 = 23 Ind. Cas. 503.

(2873)—S. 424—*See* Nos. 2426, 2470, 2471, 2486 and 2657, 2723, *supra.*

——**S. 425.**

See MISCHIEF.

(2874)—*S.* 425—*Mischief— Knowledge—Intention—Sentence.*—The terms of s. 425 are satisfied where there is a distinct finding as to the prisoner's knowledge. The question of intention is material only as regards the sentence. QUEEN-EMPRESS v. REVISING, **Rat. Un. Cr. C. 690 = Cr. Rg. 13 of 1894.**

(2875)—*S.* 425—*Easement, whether "property."*—The word "property" in s. 425, I.P.C., means some tangible property capable of being forcibly destroyed, but does not include an easement. QUEEN-EMPRESS v. KERU, **Rat. Un. Cr. C. 387.**

(2876)—*S.* 425—*Removing barricade placed by Municipality.*—It is no mischief if a person innocently removes a barricade placed by Municipality on a piece of land in front of his house, which impairs his ingress and egress to or from the said house. QUEEN-EMPRESS v. ABDUL AZIZ, **Rat. Un Cr. C. 745 = Cr. Rg. 10 of 1895.**

(2877)—*S.* 425—*Mischief— Blocking up a channel—Civil rights—Tort.*—Where the accused blocked up a channel, the result of which was that the surplus water flowed direct on to the complainant's land and damaged his crop, and the site of the channel was the common property of all the accused: *Held*, that the act of the accused did not constitute the offence of mischief and that complainant's remedy for any damage he had sustained lay in an action in the Civil Courts. *In re* KONDI CHETTY, **8 M L.T. 383 = 8 Ind. Cas. 128 = 11 Cr. L J. 566.**

(2878)—S. 425—*See* ACT III OF 1857, s. 17, 10 W.R. Cr. 29.

(2879)—S. 425—*See* Nos. 369, 401, 1801, 2427, 2487, *supra.*

(2880)—*Ss.* 425, 23 — *Mischief — Wrongful loss — Right to drainage waters.*—Where drainage water from the higher grounds and from other Government tanks was flowing in a defined channel above an embankment overflowing the same and flowed without diminution also in a defined channel below, and the bed of the channel was *poramboke*, *held*, that the owners of the embankment had no right to raise the same to intercept the flow for irrigating their own lands. Where the surface water of the upper land has once fallen into the defined channel, nobody has a right to obstruct the flow of the same as usual over the embankment into the lower channel. The accused, the owner of the embankment, applied to the Government to arise the bund and did so. Under the circumstances, it was held that the accused cannot be presumed to have done the same with wrongful intention or knowledge, and hence cannot be held to be guilty of mischief. KANDA KAMARIA VENKATA REDDI v. KUMARI RAO, **1913 M.W.N. 179 = 19 Ind. Cas. 305 = 14 Cr. L J. 209.**

(2881)—*Ss* 425, 426—*Servant allowing cattle to stray—N.W.P. and Oudh Municipalities Act, s.* 167 —Where certain cattle in charge of a servant strayed or were driven on various occasions into the Government gardens and there caused damage, *held* that the master could not be convicted of the offence of mischief. *Held* also that s. 167 of the Municipalities Act did not apply, that section being one dealing with offences against the person. EMPEROR v. MEHDI HASAN, **29 A. 565 = A.W.N. 1907, 170 = 6 Cr. L J. 13.** (14 W.R. 31, 7 B. 126, A. W.N. 1905, 19, *F.*)

(2882)—*Ss.* 425, 430 — *Conviction under s.* 430—*Condition precedent for—Crim. Pro. Code (Act* V *of* 1898), *s.* 417—*Object.*—A condition precedent to a conviction under s. 430, I.P.C., is that the accused has committed mischief, as defined in s. 425, and it must be proved that he caused destruction of some property or some such change in any property or in any situation thereof, as destroyed or diminished its value or utility or, affected it injuriously. The mere fact that he has dealt with water does not constitute an offence punishable under s. 430, I.P.C. The object of s. 417, Crim. Pro. Code, is not to enable the Local Government to obtain from the Chief Court opinions on abstract points which do not arise on the facts established. The object of the section is to enable the Local Government to have a wrongful acquittal converted into a conviction or to have a retrial. EMPEROR v. FATEH DIN, **11 Cr. L J. 65 = 4 Ind. Cas. 863 = 14 P.R. 1909, Cr. = 34 P.W.R. 1909, Cr. = 25 P.L R 1910.**

(2883)—Ss. 425, 441—*See* CRIMINAL TRESPASS, 2 A. 101.

——**S. 426.**

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(2884)—*S.* 426 –*Mischief, what constitutes.*—The essence of the offence of mischief is that the property must be destroyed or have some change caused in it or its situation, which destroys or diminishes its value or utility or affects it injuriously. KING-EMPEROR v. NGA THAZAN, **U B.R. 1897—1901, Vol. I, 347.**

(2885)—*S.* 426—*Damage to crops by cattle—Owner of cattle when liable.*—In order to

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convict of mischief, under s. 426, the owner of an animal which has done damage to crops, it is not sufficient to show that he was guilty of carelessness in allowing it to stray but the prosecution is bound to show an intention on his part to cause wrongful loss or damage. QUEEN-EMPRESS v. BAI BAYA, **Rat. Un. Cr. C. 187.**

(2886)—*Damage by cattle.*—Negligently allowing one's cattle to stray into another man's garden does not amount to mischief within the meaning of s. 426, I.P.C. QUEEN-EMPRESS v. NARSU, **Rat. Un. Cr. C. 185.**

(2887)—*S. 426—Accused's buffaloes causing damage to road-side trees in his presence.*—Where the accused was present when his buffaloes destroyed some road side trees, and being able to prevent the buffaloes from destroying the trees, failed to do so, *held* that he was properly convicted under s. 426, I.P.C. Driving of cattle on the road and then not controlling them in doing what they were almost certain to do unless prevented, might be regarded as a causing of damage. QUEEN-EMPRESS v. VITHU, **Rat. Un.Cr. C. 318=Cr. Rg. 5 of 1887.** [*R.*, Rat. Un. Cr. C. 357.]

(2888)—*S. 426 — Allowing goats enter a garden.*—The allowing of goats to enter a garden whereby they do damage, cannot be made punishable under s. 426, I.P.C., in the absence of proof to show that any act was done causing the cattle to enter with knowledge that damage would ensue. QUEEN-EMPRESS v. HYDERALLY, **Rat. Un. Cr. C. 199.**

(2889)—*S. 426—Cutting of paddy belonging to another.*—The cutting of paddy belonging to another, which is unripe and not fit to be cut, amounts to mischief. But if it is not proved that the paddy was not in a fit state to be cut, the accused cannot be convicted of mischief. *In the matter of* MIRAS CHOWKIDAR, **7 C W. N. 713.**

(2890)—*S* 426—Bona fide *claim of right.*—Where the accused put up a hut on a land in order to protect their disputed right to the land which they honestly believed they possessed, *held*, that they were not guilty under s. 426 of the Penal Code. QUEEN-EMPRESS v. NANDU, **Rat. Un. Cr. C. 465.**

(2891)—*S. 426—Ploughing* bona fide *on widowed daughter's husband's land—Whether an offence.*—The accused was the father of the sonless widow of the deceased brother of the complainant and was charged with criminal trespass on the lands of the complainant by ploughing them without right. He admitted that he entered the lands, as they belonged to his daughter. He was convicted on the presumption of criminal intent. *Held* that, as there was no evidence that the entry on the land was with intent to commit an offence or to intimidate, insult, or annoy any person, the conviction must be set aside. MANIKKA VEERA RAGHAVA CHARIAR v. EMPEROR, **8 M.L.T. 246=8 Ind. Cas. 318= 11 Cr. L.J. 623.**

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(2892)—*S. 426—Mischief—Wrongful loss—Mortgagee cutting trees to repair house, whether guilty.*—A mortgagee openly cutting a few trees on the land mortgaged to him in order to repair another part of the mortgaged premises is not guilty of mischief. *In re* C. M. RAMASAMIER, **15 Cr. L.J. 290=23 Ind. Cas. 498.**

(2893)—*S. 426— Canal and Drainage Act* (VIII *of* 1873), *ss.* 7, 70—*Cutting walls of canal —Wilful mischief—Act punishable under the Canal Act—Whether punishable under Penal Code.*—To make a breach in the wall of a canal is an act which causes such a change in the property as destroys or diminishes its value or utility or affects it injuriously, and, as such, it is an act of wilful mischief punishable under s. 426, Penal Code. S. 70 of the Canal and Drainage Act does not bar the prosecution of an accused person under any other law of any offence punishable under the Canal Act. Where, therefore, an accused person cut the walls of a canal for the purpose of stealing water, *held* that he could be punished under the Penal Code. BANSI v. KING-EMPEROR, **9 A.L.J. 162=13 Ind. Cas. 829=13 Cr. L.J. 141=34 A. 210.**

(2894)—S. 426—*See* CRIM. PRO. CODE, 1898, s. 190 (c), 37 C. 221=14 C.W.N. 589=11 C.L.J. 415=6 Ind. Cas. 276.

(2895)—S. 426—*See* CRIM. PRO. CODE, 1898, ss. 203, 204, 437, 27 C. 658.

(2896)—S. 426—*See* JURISDICTION OF CRIMINAL COURTS—GENERAL, 7 B.H.C. Cr. 1.

(2897)—S. 426—*See* Nos. 77, 366, 618, 1690, 2201, 2428, 2651 and 2881, *supra.*

(2898)—*Ss. 426, 143, 447—Accused entering for the purpose of building the wall of one of them —Trespass—Unlawful assembly—Conviction—Legality.*—Where the accused were convicted under ss. 426, 143 and 447, I.P.C., for having entered into a vacant *manai* forming themselves into an unlawful assembly, broke down a wall and rebuilt it, and where it appeared from the evidence that one of the accused continued to remain in possession of the wall on his own right, and that the accused went to the place neither to commit any offence, intimidate, insult nor annoy the complainant, *held*, that the accused did not form themselves into an unlawful assembly and that their conviction was wrong. *In re* SARAVANA PILLAI, **8 M.L. T. 222=7 Ind. Cas. 858=11 Cr. L.J. 533.**

(2899)—*Ss. 426, 298, 504—Pollution by accused of food served at a caste feast.*—At a certain feast, which had been precluded by recitals from some religious books, the Brahmins having first taken their food, a number of persons of the same caste as the accused took their seats to the south to partake of the food. The accused wanted the persons who were seated to move from the south to the north. On their refusal, the food which was going to be eaten being on the spot, the accused threw a shoe on the adjacent ground, the effect of which would be to render the food impure from the point of view of Hindus of the caste of the persons who were there assembled. They were thus, on

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account of their conscientious scruples, unable to eat it. *Held* that the act of the accused was not an offence either under s. 426, or under s. 298, or under s. 504. *Held*, further, that s. 426 dealt only with a physical injury from a physical cause. KING-EMPEROR v. MOTI LAL, **24 A. 555 = A.W.N. 1901, 212.**

(2900)—*Ss.* 426, 429—*Wounding an animal.*—Where a person inflicts wounds on an animal with a spear whereby it is disabled for some days, his offence falls within s. 426, and not within s. 429, I.P.C. KING-EMPEROR v. SUBRAO SUKHAL, **3 Bom. L.R. 503.**

(2901)—*Ss.* 426, 441—*Who may complain.*—In s. 441, I.P.C., " any person in possession " does not mean only " a complainant in possession." There is no authority for taking the offences of mischief and criminal trespass out of the general rule which allows any person to complain of a criminal act. IMPERATRIX v. KESHAV LAL, **21 B. 536.** [*R.*, U.B.R. 1897—1901, Vol. I, 352.]

(2902)—*Ss.* 426, 447—*Criminal trespass—Mischief*—Bona fide *claim of title.*—Where the complainant was all along in possession of the land which he had sowed with paddy, and the accused had failed in certain proceedings before the Assistant Superintendent of the Survey to have the land included in his holding. *Held*, that the mere fact that the accused set up a title to the land would not take the case outside the jurisdiction of a Criminal Court, and that the accused's going upon the land with a body of men and ploughing it up, in spite of the complainant's remonstrances, constituted offences under ss. 426, 447, I.P.C. CHHAKOO MANDAL v. EMPEROR, **11 C.W.N. 467 = 5 Cr. L.J. 278.**

(2903)—*Ss.* 426 *and* 447 — *Mischief and criminal trespass.*—If one commits the offence of mischief by intentionally causing wrongful loss or damage to another by entering on his land, he commits also *criminal trespass.* MAUNG TO MAUNG v. QUEEN-EMPRESS, **U.B.R. 1892—1896, Vol. I, 259.** (2 A. 465, *R.*)

(2904)—*Ss.* 426, 447—*Mischief—Trespass—Trespasser's entry, whether gives him juridical possession — Removal of obstruction, whether offence — Pathway — Obstruction.*— A mere trespasser cannot obtain what is known in law as possession by the act of entry, or by the continuance of that act, so long as the act is disputed and resisted. Therefore, if a person takes possession of the site of a public road and builds upon it to the obstruction of the public, it is no offence for a member of the public to pull down that obstruction and exercise his right of way. *In re* DHARMALINGA MUDALI, **15 Cr. L.J. 723 = 26 Ind. Cas. 171.**

(2905)—Ss. 426, 477—*See* MISCHIEF, 12 M. 54 = 2 Weir 22 = 1 Weir 552.

—— **S. 427.**

See MISCHIEF.

(2906)—*S.* 427—*Mischief—Intention—Motive—Cutting a channel through railway to let out water from fields.*—Where tenants finding their fields flooded cut a channel through a railway in order to let the water run off their fields: *Held*, that the act, having been intentionally done, amounted to mischief, and it was no defence to say that their motive in doing it, *viz.*, to free their fields from water, was an innocent one. DEPUTY SUPERINTENDENT AND REMEMBRANCER OF LEGAL AFFAIRS v. CHULHAN AHIR, **16 C.W.N. 263 = 13 Ind. Cas. 826 = 13 Cr. L.J. 138.**

(2907)—S. 427—*See* Nos. 366 and 1691, *supra.*

—— **S. 428.**

See MISCHIEF.

(2908)—*S* 428—"*Maiming*" *meaning of.* — In its primitive meaning, the verb "to maim" involves the notion of mutation of some part of the body useful for fighting. The framers of the Code did not intend this restricted meaning only of this expression. The expression would fairly include the amputation of any member, or the injury, of an animal by which its speed, or endurance, or use, was permanently diminished. Where a pony's ribs were broken in such a way as permanently to diminish its usefulness and value, it was held that it had been "maimed." QUEEN-EMPRESS v. NGA SAN YAN, **L.B R. 1872—1892, 404.**

(2909)—S. 428—*See* No. 2488, *supra.*

(2910)—*Ss.* 428, 429 —*Maiming—Permanent injury to a limb or member necessary to constitute —S.* 425—*Mischief—Offence of—Intention or knowledge of causing wrongful loss or damage essential.*—In order to drive a bulllock away from his cowshed, accused threw a stick at it, which his and hurt one of its eyes. It was not definitely shown that the eye was blinded but the accused was convicted by the Magistrate under s. 429 of the Code. *Held*, reversing the conviction, the term 'maiming' as used in ss. 428 and 429 signifies the permanent privation of the use of a limb or member and so, in the absence of evidence, against the accused, that the sight of the bullock's eye was permanently impaired by his act, his conviction under s. 429 cannot stand. Further, the provisions of ss. 428 and 429 require that the offence of mischief must have been committed as a result of the acts specified therein and in order to constitute that offence it is necessary that the accused should either intend to cause or know that he is likely to cause wrongful loss or damage. In the present case, there is no evidence as to whether the accused threw only a small stick at the bullock merely for driving it away and intending no harm or whether he made use of such a stick as at the time of using it, he knew or had reason to believe that it would be likely to injure the animal. If it had been proved that he used a stick of the latter description, his present conviction could be supported as one under s. 426. But as the case stands, the conviction cannot be sustained either under s. 429 or as under s. 426. NARAIN SINGH v. KING-EMPEROR, **U.B.R. 1905, Penal Code, 26 = 3 Cr. L.J. 107.** (25 W.R. Cr. 69, *R.*)

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——S. 429.

See MISCHIEF.

(2911)—*S.* 429—*Meaning of expression "bull" and "cow" "and any other animal."*—The words "bull" and "cow" in s. 429 include the young of those animals, and the expression "any other animal" does not mean an animal of the kind already mentioned, but refers to an animal of a different genus altogether. The section specifies the more valuable of the domestic animals, without any regard to the age, but in respect of other kinds of animals not so specified, the section would not apply, unless the particular animal in question was shown to be of the value of fifty rupees or upwards. HARI MANDLE v. JAFAR, **22 C. 457.**

(2912)—*S.* 429—*Meaning of 'Maiming'—Whether cutting off the ears of a horse amounts to maiming.*—The cutting off the ears of a horse amounts to 'maiming' within the meaning of s. 429, I.P.C. MARI GOWDA v. EMPEROR, **1911 2 M.W.N. 141=10 M L T. 192=21 M.L.J. 343=12 Cr. L.J. 482.**

(2913)—S. 429—*See* Nos. 2489, 2490, 2491, 2516, 2655, 2900 and 2910, *supra.*

——S. 430.

See MISCHIEF.

(2914)—*S.* 430—*Act VIII of* 1873, *s.* 70—*Mischief—Definition.*—Certain persons having been found to have cut through the bank of a canal distributory and irrigated their own fields therefrom, it was *held* that they would be more properly convicted of an offence under s. 70 of Act No. VIII of 1873 than of an offence under s. 430 of the Indian Penal Code, in the absence of evidence to establish the one essential element of an offence, that by the act done a diminution of the supply of water for agricultural purposes had been caused. EMPEROR v. TAJ-UD-DIN, **A.W.N. 1908, 55=5 A.L.J. 159=7 Cr. L.J. 296.**

(2915)—*S.* 430—*Scope of the section.*—S. 430, Penal Code, is applicable equally to irrigation channels, as to other sources of irrigation such as tanks and ponds. *In re* SYPU CHINNA MANGAIYA, **1 Weir 510.**

(2916)—*S.* 430—*Scope of section.*—To bring an act under this section, it must be shown to cause, or be likely to cause, a diminution of the supply of water for agricultural purposes. MAUNG SEIN v. MG HMO, **U.B.R. 1897—1901, Vol. I, 349.**

(2917)—*S.* 430—*Illegal taking of water for agricultural purposes.*—Where the accused took water, which he was not entitled to, and his act, in diverting it, lessened the quantity which other ryots were entitled to receive for agricultural purposes, *held*, that he was guilty of an offence under s. 430, Penal Code. *In re* AIYANNA GOWD, **1 Weir 507.**

(2918)—*S.* 430—*Mischief by causing diminution of water supply.*—Where petitioners had taken more water than they were entitled to, in violation of the order as to terms issued by the Tahsildar, so as to cause a diminution of water supply to other ryots, *held*, the petitioners were rightly convicted of the offence of mischief under s. 430, Penal Code. P. CHENGANA NAIDU v. EMPEROR, **1911, 2 M.W.N. 349=12 Cr. L.J. 551=12 Ind. Cas. 527.** (1 M. 262, *F.*; 7 M.H.C. App. 39, *Diss.*; Cr. Rev. Case 648 of 1884, *R.*)

(2919)—*S.* 430—*Intention to cause wrongful loss essential—Sessions Judge dismissing appeal on reasons given in a theft case—Irregularity.*—Where an accused is charged with an offence punishable under s. 430, Penal Code, his intention to cause wrongful loss is the essential element to be considered. Where the Sessions Judge dismissed an appeal against a conviction under s. 430 by referring to the reasons given in the judgment in a connected case, in which the accused's conviction was upheld under s. 379: *Held*, that the Sessions Judge had acted irregularly in not taking into consideration the intention requisite for constituting offence under s. 430. T.V.R. INDRA TALAVAR v. R. NARASIMHA RAU, **16 Cr. L.J. 542=29 Ind. Cas. 670.**

(2920)—S. 430—*See* Nos. 50, 1178, 2492, 2493 and 2882, *supra.*

—— S. 431.

See MISCHIEF.

(2921)—*S.* 431—*Jungle-path, whether a road.*—A path through a jungle is not a road in the sense in which that word is used in s. 431. QUEEN-EMPRESS v. NGA SHWE LAUKKE, **L.B.R. 1893—1900, 629.**

(2922)—S. 431—Order for removing encroachment not dealt with as local nuisance—*See* JURISDICTION OF CIVIL COURTS, 2 W.R. 287.

—— S. 432.

(2923)—*S.* 432—*Scope of the section.*—In order to constitute an offence under s. 432, it is not sufficient to prove probable consequential damage to other property. HIGH COURT PROCEEDINGS. 22ND OCTOBER 1868, NO. 1235, **1 Weir 512=4 M.H.C. App. 15.** [*R.*, 1 Weir 511, 1 Weir 492.]

—— S. 434.

(2924)—S. 434—Offence involving a breach of the peace—Removing landmark—Security for good behaviour—*See* CRIM. PRO. CODE, 1898, s. 106, 8 A.L.J. 925=12 Cr. L.J. 405=11 Ind. Cas. 589.

(2925)—S. 434—*See* CRIM. PRO. CODE, 1898, s. 145, 27 A. 300=1 A.L.J. 619=A.W.N. 1904, 264.

(2926)—S. 434—*See* No. 37, *supra.*

—— S. 435.

(2927)—*Ss.* 435, 436—*Conviction and sentence for same act, ss.* 435 *and* 436—*Legality.*—When, in the same penal statute, there are two clauses applicable to the same act of an accused, cumulative punishments are not to be awarded unless it is so expressly provided in

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the statute. *Held*, accordingly, that the same act of the accused should not be punished with cumulative sentences under the graver offence in s. 436 of the Penal Code and the lighter offence under s. 435. The case may be different where different statutes provide separate punishments for the same act, for, the intention of the Legislature is to guard two distinct interests of different species. REG v. DOD BASAYA, **11 B.H.C. 13.** [*F.*, Rat. Un. Cr. C. 852 ; *D.*, Rat. Un. Cr. C. 430.]

—— **S. 436.**

(2928)—*S.* 436—*Destroying a "building" by fire.*—The accused was convicted of an offence under s. 436, Penal Code, and sentenced to seven years' rigorous imprisonment including three months' solitary confinement for setting fire to the thatch-wall of an enclosure in which there were several thatched huts. It was contended on appeal that the offence was not one under s. 436, Penal Code, as the wall set fire to was not a "building" within the meaning of the section. *Held*, that the conviction and the sentence were right. KEHAR v. EMPEROR, **68 P.L.R. 1903 = 7 P.R. 1903, Cr.** (57 P.R. 1887, 35 P.R. 1879, *R.*)

(2929)—S. 436 — *See* Nos. 713, 1716 and 2927, *supra.*

—— **S. 440.**

(2930)—S. 440—*See* CRIMINAL TRESPASS, Rat. Un Cr. C. 122.

(2931)—S. 440—*See* No. 48, *supra.*

—— **S. 441.**

See CRIMINAL TRESPASS.

See TRESPASS.

(2932)—*S.* 441 — *Criminal trespass, what constitutes.*—A certain tenant of a village went and resided in another village, leaving his house in the former village shut up, but looked after by some of his relatives. After his death, the accused, the zemindars of the former village, took possession of the house adversely to the tenant's widow, asserting their right to do so as zemindars. *Held*, that the action of the accused could not amount to criminal trespass under s. 441, as they had no intention to commit an offence or to intimidate, insult or annoy any one, as their action was in the assertion of a right in themselves, however wrong that assertion might be. EMPEROR v. BAZID, **27 A. 298 = A.W.N. 1904, 235 = 1 Cr. L.J. 919.** (26 A. 194, *R.*) [*R.*, 35 M. 186 = 12 Cr. L.J. 30 = 9 Ind. Cas. 152 = 21 M.L.J. 161 = 9 M.L.T. 283, 10 Cr. L.J. 385 = 3 Ind. Cas. 828 = 6 M.L.T. 262, 4 Cr. L.J. 293 = 54 P.L.R. 1907, Cr. = 12 P.R. 1906, Cr.]

(2933)—*S.* 441—*Criminal trespass—Claim of title.*—The building of a hurt on land which the accused claimed as his own, and which was also claimed by another person, cannot amount to criminal trespass, as the accused in erecting the hut could not have intended to annoy. Although any loss or injury would naturally cause annoyance, yet every loss or injury would not constitute the annoyance contemplated by s. 441. SHUMBHU NATH SARKAR v. RAM KAMAL GUHA, **13 C.L.R. 212.** [*R.*, 54 P.L.R. 1907 = 12 P.R. 1906, Cr. = 4 Cr. L.J. 293 ; *D.*, 22 C. 391.]

(2934)—*S.* 441—*Alternative finding as to intent—Conviction.*—An alternative finding that a trespass was committed with one or other of two intents, either of which would make it a criminal trespass as defined in s. 441, I.P.C., is sufficient for a conviction under s. 367, Crim. Pro. Code. BURA v. EMPRESS, **5 P.R. 1886, Cr.** (2 P.R. 1877, Cr., 11 P.R. 1885, Cr., *R.*) [*Disc.*, 12 P.R. 1906, F.B.]

(2935)—*S.* 441—*Criminal trespass—Possession, meaning of.*—'Possession' within the meaning of s. 441 of the Penal Code must be actual possession. KUNJI LAL v. EMPEROR, **14 Cr. L.J. 633 = 21 Ind. Cas. 681 = 12 A.L.J. 151.** (2 A. 465, *F.*)

(2936)—*S.* 441—*Trespass over property in the possession of another—Intent to annoy.*—*Held* by the Full Bench (*Rattigan, J., dissenting*) that where a person claiming a title to property, whether his title be good or bad, enters without any legal justification upon property in the established possession of another, he must be inferred to have had an intent to annoy the person in possession within the meaning of the above section, even though he had no primary desire to annoy, and his only object was to obtain possession for himself. *Held, per Rattigan J.* (*contra*), that it is not enough for the prosecution to prove, or for the Court to find, that the accused knew that his entry would probably annoy the person in possession, but that it is absolutely essential to affirmatively establish and find that the accused acted with an intention to annoy. Mere knowledge that annoyance is likely to result is not sufficient. RAM SARAN v. EMPEROR, **12 P.R. 1906, Cr. = 4 Cr.L.J. 293 = 54 P.L.R. 1907, Cr.** (2 N.W.P. 82, 24 W.R. Cr. 58, 14 W.R. Cr. 25, 17 W.R. Cr. 47, 7 W.R. Cr. 28, 11 W.R. Cr. 11, 2 A. 101, 13 C.L.R. 212, B.H.C. Un. C. 390, 5 M.H.C. App. 17, 5 M.H.C. App. 19, 5 M. 382, 2 M. 20, 2 A. 465, 6 C. 579, A.W.N. 1902, 6, 42, 26 A. 194, 27 A. 298, 28 C. 123, 26 B. 558, 9 C.W.N. 974, 16 C. 715, 22 C. 404, 994, 19 M. 240, 1 P.R. 1884, Cr., 29 P.R. 1882, Cr., 18 P.R. 1888, Cr.; *R.*, 5 P.R. 1886, Cr., 42 P.R. 1881, Cr., 13 P.R. 1905, Cr., 18 P.R. 1905, Cr., *D.*) [*F.*, 32 P.W.R. 1908, Cr. = 17 P.R. 1908, Cr. = 8 Cr. L.J. 488.]

(2937)—*S.* 441— *Criminal trespass—Entry as a practical joke.*—Where a police officer enters a house in order to surprise a gambling party, causes them to disperse and enjoys their alarm and confusion, such entry is criminal trespass, notwithstanding that it is intended as a practical joke, inasmuch as the accused's object cannot be attained except by intimidating the persons surprised, and an intent to intimidate is necessarily involved. J. SKILLING v. EMPRESS, **18 P.R. 1888, Cr.** [*Disc.*, 12 P.R. 1906, F.B.]

Penal Code (Act XLV of 1860)—*continued.*

(2938)—*S.* 441—*Criminal trespass, distinguished from civil trespass—Placing haystacks and manure on another man's land—Intention to cause annoyance must be found.*—The placing of haystacks and manure on another man's land may be civil trespass. It may cause annoyance in fact, but the act cannot be treated as criminal trespasss, unless it is found that it was intended by the accused to be annoyance. "The distinction between civil and criminal trespass is one which is lost sight of by too many of the Subordinate Magistrates." MEAJAN v. SHARAFATULLAH KHAN, **16 C.W.N. 1007 = 13 Cr. L J. 783 = 17 Ind Cas. 415.**

(2939)—S. 441—*See* SECURITY TO KEEP THE PEACE, ON CONVICTION, 25 C. 623 = 3 C.W.N. 18.

(2940)—S. 441—*See* Nos. 1179, 1703, 1820, 1821, 2883 and 2901, *supra.*

(2941)—*Ss.* 441, 442, 443, 445, 447 *and* 458—*Entry upon roof of a house—Criminal trespass—House-breaking.*—An entry upon the roof of a house may be criminal trespass, but cannot be the subject of a conviction for lurking house-trespass or house-breaking. ALLA BAKHSH v EMPRESS, **9 P.R. 1887, Cr.** [*R.*, 16 P.R. 1907, Cr. = 56 P.L.R. 1905 = 44 P.W.R. 1907 = 6 Cr. L J. 444.]

(2942)—*Ss.* 441 *and* 447—*Criminal trespass—Intention to cause annoyance.*—The mere re-entry upon a land from which the accused was ejected, without any proof of an intention to commit any of the objects mentioned in s. 441, I.P.C., would not constitute the offence of criminal trespass. A mere knowledge on the part of the accused, that his re-entry upon the land might cause annoyance to the complainant is not sufficient to constitute the offence. An intention to annoy ought not to be inferred from a knowledge that annoyance is likely to be caused. SHAH MUHAMMAD v. GANESHDAS, **13 P.R. 1905, Cr. = 81 P.L.R. 1905 = 2 Cr. L.J. 13.** (42 P.R. 1881, Cr., 4 B L R 284, *Not F.*; 1 P.R. 1884 Cr., *F.*; 42 P.R. 1881 Cr., 29 P. R. 1882 Cr., 14 W.R. Cr. 25, 9 B.L R. App., 6 M.H.C.R. App. 19, 2 A. 101, 2 A. 465, 19 M. 240, 6 C 579, *R.*) [*D. & Expl.*, 12 P.R. 1906, Cr., 72 P.L.R. 1908.]

(2943)—*Ss.* 441, 447—*Erection of shed on another's ground.*—The erection of a shed on another person's land is not an offence under s. 447 of the Indian Penal Code, unless it be done with such intent as is set out in s. 441 of the Code. An intention to annoy, which must be distinguished from an intention to obtain improper gain, does not follow necessarily from an intention to obtain land unlawfully, but must be made out by some independent evidence. QUEEN-EMPRESS v. GANPAT, **Rat Un. Cr. C. 390 = Cr. Rg. 43 of 1888.** [*R.*, 4 Cr. L J. 293, F.B. = 54 P.L R. 1907 = 12 P.R. 1906, Cr.]

(2944)—*Ss.* 441 *and* 447—*Criminal trespass—Specific Relief Act, s.* 9.—Constructive entry upon property by a servant is not an entry within the meaning of s. 441 of the Code. To constitute an offence under that section, there must be an actual personal entry by the person accused. Again, to hold a mere cooly, acting under the orders of his employer, guilty of criminal trespass, and thereby to assign to him an intent to annoy a person, who had a dispute with his employer as to the right to the land, would be an extravagant straining of s. 447. Where it is open to the complainant to regain possession of the land, by instituting a suit under s. 9, Specific Relief Act, Magistrates should not entertain complaints charging criminal trespass on culturable land, except when it is made very clear, upon the examination of the complainant, that the alleged trespasser must have entered on the land with one of the intents mentioned in s. 441 of the Code. SHWE KUN v. KING-EMPEROR, **3 L. B.R. 278 = 5 Cr. L J. 415.**

(2945)—*Ss.* 441 *and* 448—*Criminal trespass—Intention—Entry into a cattle-pen—House trespass.*—The accused entered the complainant's cattle-pen to prosecute an intrigue with the complainant's niece, who was an unmarried woman of 16 years. *Held*, that the accused had none of the intentions necessary to constitute criminal trespass. Further entry into a cattle-pen did not constitute house-trespass. KING-EMPEROR v. RAMZAN, **28 P.R. 1905, Cr = 118 P.L.R 1905 = 2 Cr. L.J. 420.** (57 P.R. 1887, Cr., 14 P.R. 1901, Cr., *R*)

(2946)—*Ss.* 441 *and* 448—*Criminal trespass—Being in one's premises with permission.*—Where the accused was found on the premises of a widow with whom he was prosecuting an intimacy, and he was on those premises with her permission, it was held that he was not guilty of an offence under s. 448, Penal Code. GOKAL CHAND v. CROWN, **14 P.L R. 1901.**

(2947)—*Ss.* 441, 448, 509—*Insult—Trespass, what amounts to.*—The accused caused the roof of a house belonging to him, which the complainant occupied as his tenant, to be removed while the complainant's wife, a *purdanashin* woman, was in it, and without giving any notice beforehand. The woman had to leave the house to be out of the way of the fragments of the roof falling in upon her, and was thus exposed to public view. The accused admitted that his intention was to force the complainant to leave the house and stated that he had sent the complainant a notice to quit which reached him after the removal of the roof. There was nothing on the record to show that the accused intended to insult the woman's modesty. The Court was of opinion that the removal of the roof under the above circumstance amounted to criminal trespass under s. 441, as it was clear that the accused intended to annoy the complainant, and house-trespass (s. 448, I.P.C.), was thus established; but that, as the accused wished to compound, he ought to have been acquitted and accordingly set aside the conviction and sentence. KING-EMPEROR v. DHERAMAL, **U.B.R. 1897—1901, Vol. I, 350.**

Penal Code (Act XLV of 1860)—*continued.*

(2948)—*Ss.* 441 *and* 456—*Criminal trespass —Breaking into neighbour's house—Intention.* —Where a person broke into his neighbour's house, where women were living, at a late hour of the night, in the absence of the owner of the house, and, when discovered, gave an absurd explanation to account for his presence, and, where from the position of the accused, it was found that he could not have intended theft, *held*, that the Court was entitled to hold that the object was to commit an offence under s. 509, and that the accused was, therefore, guilty of an offence under s. 441, I.P.C. RAM RANG v. EMPEROR, **18 P.R. 1905, Cr. = 127 P.L R. 1905 = 2 Cr. L.J. 279.** (22 C. 404, 22 C. 994, *F.*) [*R.*, 12 P.R. 1906, Cr.]

(2949)—*Ss.* 441, 457—*House-trespass—Trespass to establish title—Intention to annoy or intimidate—Inference of intention from acts.*—Where the accused broke open into a house during the owner's absence, assaulted his servants and took forcible possession of it with the object of establishing their title to the house: *Held* (per *Benson, J.*).—That the accused must be deemed to have intended that their act was likely to annoy the complainant and that they were rightly convicted under s. 457, Penal Code. When an act is done with the knowledge amounting to practical certainty that a certain result will follow, the doer of the act must be deemed to have intended to cause that result. (26 B. 558, *F.*; 19 M. 240, 1868, L.R. 3 Q.B. 360, 37 L.J.M.C. 89, 18 L.T. 395, 16 W.R. 801, 11 Cox. C.C. 19, 8 M. and S 11, 4 Camp. 12, 15 R.R 381, 1839; 9 C. and P. 462, *R.*) Per *Sankaran Nair, J.*—Though the offence cannot be said to have been committed with intent to annoy the complainant, the conviction was right as the act was done with the intent to commit the offence of using criminal force to the servant. SELLAMUTHU SERVAIGARAN v. PALLAMUTHU KARUPPAN, **9 Ind. Cas. 152 = 21 M.L.J. 161 = 9 M.L.T. 283 = 12 Cr. L.J. 30.** (26 A. 194 = A.W.N. 1903, 230, 27 A. 298 = A.W.N. 1904, 235 = 1 Cr. L.J. 919, *D.*)

——S. 442.

See CRIMINAL TRESPASS.

See HOUSE TRESPASS.

(2950)—*S.* 442—*Building used for custody of property.*—A yard, originally walled on four sides, but having in one wall, which had fallen out of repair, a gap stopped with a thorn, was held to be a building used as a place for the custody of property (*viz.*, cattle in the particular case). QEEN v. DULLEE, **6 N.W.P. 307.**

(2951)—*S.* 442—*Building.*—A courtyard consisting of a walled enclosure with four *kothos* or chambers opening into it, and an outer door or gate leading into a side street is a "building" within the meaning of s. 442. SHERA v. EMPRESS, **35 P.R. 1879, Cr.** [*R.*, 7 P.R. 1903, Cr.]

(2952)—*S.* 442—*Entering open space under a house—Entering unwalled compound—Not house-trespass.*—Where the space under a house is not enclosed in any way, going under the house is not an act of entering a building within the meaning of s. 442. So also, entering an ordinary unwalled compound, such as both Europeans and Burmans commonly use in Burma, is not house-trespass. PO THET *alias* THET SHE v. KING-EMPEROR, **4 L.B.R. 24 = 6 Cr. L.J. 134.**

(2953)—S. 442—*See* Nos. 108, 428, 2429 and 2941, *supra* and Nos. 2970 and 3030, *infra.*

(2954)—*Ss.* 442, 447, 457, 511—*Entry on the roof of a building with a stick and* sandheva—*Attempt to commit house-breaking by night.*—The accused, who had mounted upon the roof of the complainant's house armed with a stick and a *sandheva*, was convicted of an attempt at house-breaking by night under ss. 457 and 511 of the Penal Code. *Held*, that he was not guilty of the offence charged, as the mere presence on the roof of the house could not be construed into an attempt to commit an offence under s. 511, but that he was guilty of criminal trespass punishable under s. 447 of the Penal Code. WALIDAD v. KING-EMPEROR, **15 P.R. 1907, Cr. = 44 P.W.R. 1907, Cr. = 6 Cr. L.J. 444 = 56 P.L.R. 1908.** (9 P.R. 1887, Cr., *F.*) [*R.*, 14 P.R. 1914, Cr. = 13 P.W.R. 1914 = 66 P.L.R. 1914 = 15 Cr. L.J. 265 = 23 Ind. Cas. 473.]

——S. 443.

(2955)—S. 443—*See* Nos. 2517 and 2941, *supra.*

——S. 445.

See CRIMINAL TRESPASS.

See HOUSE-BREAKING.

(2956)—S. 445—*See* No. 2941, *supra.*

(2957)—Ss. 445, 457, 460—*See* HOUSE-BREAKING, L.B.R. 1893-1900, 267.

——S. 447.

See CRIMINAL TRESPASS.

See TRESPASS.

(2958)—*S.* 447—*Intention of the accused.*—Although an accused person might have a genuine belief in the soundness of his title, he could not be considered to be acting in good faith, if he be aware that he was not entitled to immediate possession and that he was invading the rights of the person or persons in possession for the time being, who were not holding under him and were not bound to let him have the fruit. It is not necessary that intimidation, insult, or annoyance should be the primary intent with which the entry is made. It is sufficient if the intent to commit one or other is involved in the action. The presumption is against a person entering on property in the possession of another without that other's consent except in strict accordance with law. MAUNG KADO v. QUEEN-EMPRESS, **U.B.R. 1892—1896, Vol. I, 264.**

(2959)—*S.* 447—*Trespass — Criminal force not an essential element—Crim. Pro. Code,*

Penal Code (Act XLV of 1860)—*continued.*

s. 422—*Dispossession must be accompanied by Criminal force.*—No action can be taken under s. 522 of the Crim. Pro. Code, unless the dispossession of the property was attended with criminal force. In criminal trespass, criminal force may be used as a matter of fact, but the use of criminal force is not an essential of the offence. IBRAHIM KHAN v. EMPEROR, **8 Ind. Cas. 219 = 11 Cr L.J. 594.**

(2960)—*S.* 447—*Forest Act,* VII *of* 1878, *s.* 32 —*Criminal trespass—Cutting reserved forest trees.*—Where a man enters a forest and cuts down reserved trees, he cannot be convicted both under s. 32 of the Forest Act, for cutting down reserved trees, and s. 447, Penal Code, for criminal trespass, the latter offence being included in the former. RUP DEB v. KING-EMPEROR, **11 A.L.J. 340 = 14 Cr. L.J. 424 = 20 Ind. Cas. 408**

(2961)—*S.* 447—*Entry on another's land*—Bona fide *exercise of claim of right—No offence —Not criminal trespass.*—Where the accused, who had been claiming the right to take water from the complainant's land, entered the land for the purpose of exercising that right, without being actuated with the intention referred to in s. 447, I.P.C. *Held,* that the accused's act did not amount to criminal trespass. IMPERATOR v. ABDUL LATIF, **5 S.L.R. 135 = 13 Ind. Cas. 219 = 13 Cr. L.J. 27.** (2 A. 101, *F.*)

(2962)—*S.* 447—*Entry in order to assert a right in the land is not criminal trespass—Intention to intimidate, etc., must be found.*—Where certain persons enter on land in another man's possession solely in order to assert the right which they claimed in the land, such an entry does not constitute 'criminal trespass' within s. 447, I.P.C. The intention to intimidate, insult or annoy, or to commit an offence, must be distinctly found. AMAVASYA CHINNA KRISHNA REDDY v. MARRI POLLIAH OF CHIAMANUR, **1912 M.W.N. 395 = 15 Ind. Cas. 317 = 13 Cr. L.J. 477.**

(2963)—*S.* 447—*Criminal trespass—Co-sharer building on the common land without permission of the other co-sharer—Permission asked for and refused.*—Where one of the co-sharers asked the permission of the other co-sharer to build upon the common land and the permission was refused and he built in spite of the refusal, *held* he could not be convicted of the offence of criminal trespass within the meaning of s. 447, Penal Code. The mere fact that a co-sharer asked the permission of the other co-sharer to his appropriating to his own use a portion of the common waste land, would not necessarily imply that the co-sharer whose consent was asked for, was admitted to be the sole owner of the land in question. RAM SARUP v. KING-EMPEROR, **12 A.L.J. 790 = 36 A. 474 = 15 Cr. L.J. 584 = 25 Ind. Cas. 336.** (2 A. 165, 26 B. 558, *R.*)

(2964)—*S.* 447—*Punjab Land Revenue Act* (XVII *of* 1887), *s.* 101 *(A) (B)*—*Land transferred from one district to another—Failure to pass order of suspension at the time of transfer.*—The petitioners were convicted of an offence under s. 147, I.P.C. They were in possession of certain land formerly included in the Gujrat District but transferred under the operation of s. 101 (A) of the Punjab Land Revenue Act to Gujranwala district. The land was fit for cultivation and it appeared that the Collector apparently at the time of transferring the area failed to pass an order of suspension under s. 101 (B) of the Act, though such an order appeared to have been passed at a much latter date. *Held,* that the petitioners were entitled to be acquitted, for the transfer did not affect their proprietary rights and the transfer would not have justified their ejectment otherwise than in the manner prescribed by law. WIR SINGH v. CROWN, **170 P.L.R. 1915 = 31 P.W.R. 1915, Cr. = 16 Cr. L.J. 631 = 30 Ind. Cas. 455.**

(2965)—S. 447—*See* ACQUITTAL, 13 P.W.R. 1907, Cr. = 5 Cr. L.J. 438.

(2966)—S. 447—*See* ACT VII OF 1870, s. 31, 1 Weir 721.

(2967)—S. 447—Complaint under—Application for possession under s. 522, Crim. Pro. Code—Lapse of time—Cause of delay explained —Legality of order under s. 522—*See* CRIM. PRO. CODE, 1898, s. 145, 15 P.W.R. 1914, Cr. = 68 P.L.R. 1914 = 15 Cr. L.J. 27 = 23 Ind. Cas. 487.

(2968)—S. 447—*See* Nos. 431, 619, 686, 687, 688, 739, 1180, 1708, 1762, 2428, 2494, 2898, 2902, 2903, 2904, 2941, 2942, 2943, 2944 and 2954, *supra.*

(2969)—Ss. 447, 352—*See* CHARGE—FORM OF CHARGE, 7 M.L.T. 202 = 5 Ind. Cas. 974 = 11 Cr. L.J. 340.

(2970)—*Ss.* 447, 442 — *Criminal trespass—Mischief — Damage of one's own property by himself—Intention.*—The accused, a *peadah,* acting solely in the interest of his master R, removed or damaged certain bamboos belonging to R, which were in the possession of the Court of Wards. He was convicted of criminal trespass and mischief. *Held,* that the conviction of criminal trespass was wrong, as the accused entered upon property in the possession of his master without intending to commit an offence or to intimidate, insult or annoy the Court of Wards. *Held,* also, that the conviction of the accused of mischief was unsustainable. Although a man may commit mischief by damaging his own property provided he does so in order to cause wrongful loss, it can hardly be said that a man, who damages his own estate —though he has at present a qualified interest —damages the trustees in possession, whose only object is to preserve the estate for the benefit of the owner. PARMESHWAR SINGH v. EMPEROR, **7 Ind. Cas. 812 = 13 C.W.N. 224 = 11 Cr. L.J. 532.**

(2971)—*Ss.* 447 *and* 448 — *Offence under—Criminal intention.*— In order to constitute the offence of criminal trespass, it must be proved that some criminal intent was present in the mind of the accused, and it does not

Penal Code (Act XLV of 1860)—*continued.*

follow that, because an act is unlawful and is one that the Civil law will restrain, or for which it will compensate the injured party in damages, it is necessarily criminal. ALLA DITTA v. EMPRESS. **29 P.R. 1882, Cr.** [*F.*, 13 P.R. 1905, Cr.; *Discussed*, 12 P.R. 1906, F.B.]

(2972)—*Ss.* 447, 448.—Necessity for a clear finding as to the specific intent of the accused in committing criminal trespass pointed out. ASA MAL v EMPRESS, **1 P.R. 1884, Cr.** [*F.*, 13 P.R. 1905, Cr; *Discussed*, 12 P.R. 1906, F.B.] WARIAMA v. EMPRESS. **11 P R. 1885, Cr.**

(2973)—Ss. 447, 453—*See* RIOTING, 22 W. R. Cr. 17.

(2974)—*Ss.* 447, 454—*Entry—Meaning of.*—A person who gets on to the roof of a house and conceals himself there "enters" into the house within the meaning of s. 454 of the Penal Code. *In the matter of* MULLUA, **A.W.N. 1900, 151.**

(2975)—*Ss.* 447, 457 *and* 511—*Entry on the roof of a house with house-breaking implements —Attempt to commit house breaking.*—The accused was found in the roof of the complainant's house, armed with an implement used for the purpose of committing burglary. It was not shown that he had either commenced to dig a a hole on the roof, for the purpose of effecting his entrance inside the room, or, had otherwise commenced any act of jumping or getting into any portion of the premises. *Held*, that the mere presence of the accused on the roof of the house could not be construed into an attempt to commit house breaking, under ss. 457 and 511 of the Code, but that he was merely guilty of criminal trespass, under s. 447 of the Code. In order to apply s. 511 of the Code, it is necessary not merely that there should be an attempt to commit an offence, but likewise that an act was done, as such attempt towards the commission of the offence. WALIDAD v. KING-EMPEROR, **15 P R. 1907 Cr. = 44 P.W R. 1907, Cr. = 6 Cr. L J. 444 = 56 P L R. 1908.** (9 P R. 1887, Cr., *F.*) [*R.*, 14 P.R 1914, Cr. = 13 P.W. 1914 = 66 P.L R. 1914 = 15 Cr. L. J. 265 = 23 Ind. Cas. 473.]

(2976)—*Ss.* 447 *and* 509 — *Intrusion on privacy.*—Where the accused was on the complainant's premises with intent to peep into the apartments occupied by the ladies of the household, *held*, that the accused was not guilty of criminal trespass. *Quære*; Whether the facts would justify a conviction for an offence under s. 509, I.P.C. THOMAS HOPPER v. EMPRESS, **6 P R. 1892, Cr.**

——**S. 448.**

See CRIMINAL TRESPASS.

See HOUSE TRESPASS.

(2977)—*S.* 448—*Elements of offence.*—Considering the mode of life among the common people in this country, it is straining the language of s. 441 of the Penal Code to hold that a man entering the compound of an uninhabited house merely to commit nuisance, intends to "annoy" the owner and that he is guilty under s. 448 of the Penal Code. EMPRESS v. SURJA, **A.W.N. 1882, 224.**

(2978)—*S.* 448 — *Trespass.*—A warrant for the attachment of property issued by a Civil Court to certain process-servers would be no authority for the decree-holder and his companions to enter any house other than the judgment-debtor's house against his will and abuse and insult him. A conviction of them, therefore, for entering any such other house under s. 448, I.P.C., would be legal. DEBI DIN v. HAR PRASADA, **2 O.C. 65.**

(2979)—*S.* 448 — *Trespass—Trespass after decree for possession under s. 9 of the Specific Relief Act*—Bona fide *claim.*—On the complaint of Rani Bhagwan Kaur, the widow of Sardar Dayal Singh, Majithia, Mrs. Gill, who alleged herself to be also the widow of the sardar, and her son were convicted of an offence under s. 448 of the Indian Penal Code for having forcibly taken possession of a house in the occupancy of the complainant, on the 12th November, 1903. On the 12th June, 1902, Rani Bhagwan Kaur had obtained a decree for the possession of the house in suit, against Mrs. Gill under s. 9 of the Specific Relief Act. On the 25th June, 1902, she had applied for execution by an order for possession against the tenant who was in actual possession of the house. On the 8th July, 1902, a notice under s. 264 of the Civil Procedure Code was served on the tenant. Mrs. Gill took over possession after the tenant vacated the house by breaking the locks put on at the instance of the complainant. The executors to the Will of the Sardar brought a civil suit for possession of the house among other property. It was contended for the accused in revision that as the complainant's right to the house was still in dispute and Mrs. Gill *bona fide* claimed title to it, the conviction was bad in law. *Held*, that the conviction was right and the contention was not valid. The suit of the executors did not affect the question. CROWN v. GILL, **138 P.L R. 1904 = 1 Cr. L J. 1068.**

(2980)—*S.* 448—*Intent to commit offence—Nature of intention.*—The intent required by s. 448, I.P.C., may be of two kinds; (*a*) to commit an offence; (*b*) to intimidate, insult or annoy. It is sufficient if the evidence leaves no reasonable doubt that the accused intended to commit an offence of some kind, and the Court need not be in a position to say what specific offence it was. *In re* KURNAM SESHAYYA, **10 M.L T. 118 = 1911 2 M W.N. 71 = 21 M. L.J. 781 = 12 Cr. L J. 453 = 11 Ind. Cas. 797.** (6 M L.T 262, 19 M. 240, 21 M L J. 161, 26 B. 558, 16 C. 715, *R.*)

(2981)—*S.* 448—*Criminal trespass—Act causing annoyance—Finding as to intent to cause annoyance, necessary.*—The accused entered a house belonging to the complainant without permission and continued in it though asked to vacate. The lower Court convicted him under s. 448, Penal Code, holding that his acts were annoying. There was, however, no express finding that the accused intended to cause

Penal Code (Act XLV of 1860)—*continued.*

annoyance: *Held*, that, though intent to cause annoyance may be inferred from the circumstances of the case, the conviction was unsustainable, in the absence of an express finding that the accused had any criminal intention. THARU v. EMPEROR, **9 Ind. Cas. 895 = 12 Cr. L.J. 148 = 5 S.L R. 29.** (19 M. 240, 26 B. 558, *R.*)

(2982)—S. 448—*See* RESTORATION OF PROPERTY, 7 C.L.J. 175 = 12 C.W.N. 269.

(2983)—S. 448—*See* SECURITY TO KEEP THE PEACE—LIKELIHOOD OF BREACH OF THE PEACE, 4 M.L.T. 468 = 9 Cr. L.J. 68.

(2984)—S. 448—*See* Nos. 663, 2216, 2945, 2946, 2947, 2971 and 2972, *supra* and No. 3031, *infra*.

(2985)—*Ss.* 448, 511 — *Attempt to commit criminal trespass—Crim Pro. Code, s.* 227—*Charge, amendment of.*—Entry on a verandah may not amount to house-trespass, but such entry coupled with an attempt to push open the door does amount to an attempt to commit the offence. Those who accompany the accused but remain looking on without entering on the complainant's property are not guilty of criminal trespass even if they abuse. When a Magistrate amends the charge, he should not write over the original charge but should leave it on the file for reference, if necessary, and should write the new charge separately and correctly date it. NGA PAN HLAING v. EMPEROR, **16 Cr L J. 2 = 26 Ind. Cas. 306 = 8 Bur. L.T 17.**

— **S. 451.**

See CRIMINAL TRESPASS

See HOUSE-BREAKING.

See HOUSE-TRESPASS.

(2986)—*S.* 451—*House-trespass for committing adultery—Proof.*—Where in a case of house-trespass for committing adultery, on the complaint of the husband's nephew, the husband was not called as a witness, and there was no evidence to show that the accused had gone to the house to have connection with her without the connivance and without the consent of the husband, *held*, that the accused was entitled to be released, as it lay upon the prosecution to prove that there had been no consent or connivance on the part of the husband. BRIJ BASI v. QUEEN EMPRESS, **19 A 74 = A.W.N. 1896, 178.** [*F.*, 10 Cr. L J. 410 = 3 Ind. Cas 895 = 3 S.L.R 86, 15 Cr. L.J. 351 = 23 Ind. Cas. 703; *D.*, 23 A. 82, 29 A. 46 = 3 A.L.J. 652 = A.W.N. 1906, 279 = 4 Cr. L.J 291.]

(2987)—*S.* 451—*House trespass with intent to commit adultery—Husband's possession of house essential—Connivance or consent of husband, effect of.*—If the entry in a house is made with the consent of the owner and possessor of the house, no offence under s. 451, Penal Code, can be deemed to have been committed. Where, in a case under s. 451, Penal Code, the husband appeared neither as a complainant nor as a witness, and there was nothing to show that the house was in his possession or that he had not consented to or connived at the entry of the accused: *Held*, that the charge under s 451, Penal Code, could not be sustained. JAGANNATH v. EMPEROR, **15 Cr. L J. 351 = 23 Ind. Cas. 703.** (19 A. 74, *F*; 23 A. 82, *D.*)

(2988)—S. 451—*See* CHARGE—FORM OF CHARGE, 16 W R. Cr. 63.

(2989)—S. 451—*See* COMPLAINT—PROCEDURE ON RECEIPT OF COMPLAINTS, 1 Weir 532 = 5 M.H.C App. 5.

(2990)—Ss. 451, 452—Summary trial—Legality—*See* CRIM. PRO. CODE, 1898, s. 260, Chap. XXII, 14 Cr. L.J. 462 = 20 Ind. Cas. 622 = 6 Bur. L T. 137.

(2991)—*Ss.* 451, 456 *and* 509—*Intention to commit an offence.*—Where the accused was found in the complainant's house at night, having gone there with the intention of visiting the complainant's daughter-in-law, a woman of loose character, and probably with her connivance, *held*, that he was not guilty of an offence under s. 456, I.P.C. LAJJE RAM v. EMPRESS, **12 P.R. 1898, Cr.**

—**S. 452.**

See CRIMINAL TRESPASS.

See HOUSE-TRESPASS.

(2992)—S. 452—*See* CRIM. PRO. CODE, 1898, ss. 235 and 403, A.W.N. 1906, 32 = 3 A.L. J. 2 = 3 Cr. L J. 93

(2993)—S. 452—*See* WRONGFUL CONFINEMENT, 14 Bur.L R. 258.

(2994)—S. 452—*See* No. 2990, *supra.*

— **S. 453.**

See CRIMINAL TRESPASS.

(2995)—S 453—*See* Nos. 2517, 2973, *supra.*

(2996)—Ss. 453, 454—*See* SUMMARY TRIAL, 14 C.P.L.R. 158.

(2997)—*Ss.* 453 *and* 456—*Lurking house-trespass by night.*—A Magistrate should not convict under s 453 when an offence punishable under s. 456, I P.C, is established. KING-EMPEROR v. BABUDIN, **U B R. 1897—1901, Vol I, 139**

— **S. 454.**

See CRIMINAL TRESPASS.

(2998)—S. 454—*See* Nos. 2518, 2519, 2974 and 2996, *supra.*

(2999)—Ss. 454 and 308—*See* CRIM. PRO. CODE, 1898, s. 562, 2 Weir 731.

(3000)—Ss. 454, 325—Joinder of charges under—Legality—*See* CRIM. PRO. CODE, 1898, ss. 235, 537, 13 Cr. L.J. 485 = 15 Ind. Cas 485.

— **S. 456.**

See CRIMINAL TRESPASS.

See HOUSE TRESPASS.

(3001)—*S.* 456—*Lurking house-trespass by night—Intention.*—In a prosecution for lurking house-trespass by night under s. 456 of the Code, the burden of proving what his intent

Penal Code (Act XLV of 1860)—*continued.*

was lies upon the accused. ISHRI v. KING-EMPEROR, **3 A.L J 652=29 A. 46=A.W N. 1906, 279=4 Cr.L J. 291.** (19 A. 74, *D.*; 23 C. 391. *F.*) [*F.*, 10 Cr.L.J.410=3 Ind. Cas. 895 =3 S.L.R. 86.]

(3002)—*S.* 456—*House-breaking by night—Execution-creditors with bailiff breaking open complainant's door to distrain property.*—Where the prisoners, execution-creditors of the complainant, accompanied by a bailiff of the Court, burst open the closed doors of the complainant before sun rise, in order to execute a warrant of attachment of property, *held* that, as the act of the accused was an act which they had a legal right to do, no intention such as is necessary to constitute criminal trespass could be inferred from it, and that, therefore, they had not committed any offence under s 456, Penal Code. *In the matter of* JATHARAM DAVAY, **2 M 30=1 Weir 525.** [*D.*, 1 Weir 528 ; *R.*, 12 P.R. 1906, Cr.=4 Cr. L.J. 293=54 P.L R. 1907, F.B.]

(3003)—*S.* 456—*Specification of intention.*—In this case where the accused was convicted of house breaking by night, the effect of the Court's omission to find the specific intent with which the accused entered the house discussed MUHAMMAD SHAH v. EMPRESS, **42 P R. 1881, Cr.** (2 P.R. 1877, Cr. *R.*) [*R.*, 14 P.R.1883 ; *Dis.*, 12 P.R. 1906, F.B.; *Expl.*, 13 P.R. 1905, Cr.]

(3004)—*S.* 456.—House-trespass or house breaking is punishable with whipping, only when committed in order to commit an offence punishable with whipping. QUEEN-EMPRESS v. NGA TUN BYE, **U.B.R. 1897—1901, Vol. I, 354.**

(3005)—*S.* 456—*Burden of proof—Accused found in complainant's house—Lurking house-trespass.*—The accused was found inside the complainant's house at 2 A.M., and when arrested made no statement as to his intention. On being put up for trial, he stated, but could not prove to the satisfaction of the Court, that he had an intimacy with a widow living in the house. *Held* that the presence of the accused in the house at that hour pointed to a guilty intent and it was for him to rebut that presumption. MULLA v. EMPEROR, **13 A.L J. 625** (29 A. 46, *F.*; 26 A. 194, 21 M.L.J. 161, 19 M. 240, 22 C. 994, *R.*)

(3006)—S. 456—*See* CRIM. PRO. CODE, 1898, ss. 15. 16, 261, 403, 529 *(f)*, 530, U.B.R. 1910, 4th Qr., p. 70=11 Ind. Cas. 247=12 Cr. L.J. 383.

(3007)—S. 456—*See* Nos. 1531, 2948, 2991, 2997, *supra.*

(3008)—*Ss.* 456, 457—*Criminal intention.*—Though, in order to support a conviction under s. 457, I.P.C., it is necessary to prove that lurking house-trespass or house-breaking by night was committed "in order to the committing of any offence punishable with imprisonment," still the criminal intention which is thus made the essential element can, generally speaking, only be inferred from the circumstances of the case, and it is from those circumstances that the Court trying an offender must find whether the intention to commit some such offence as is contemplated by the section is made out or not. SHER SINGH v. EMPRESS, **14 P.R. 1883, Cr.** (42 P.R. 1881, Cr., *R.*)

(3009)—*Ss.* 456, 457—*Imprisonment—Whipping—Previous conviction.*—An accused, who having been convicted of an offence under s. 456 is again convicted of an offence under s. 457 of the Penal Code, is not liable to imprisonment and whipping. EMPRESS v. TITROO, **14 C.P.L. R. 16.**

(3010)—*Ss.* 456, 457—*Misjoinder of charges—Charge under s.* 457, *I.P.C.—Conviction under s.* 456, *illegality of—Crim. Pro. Code, s* 263—*Summary trial, charge in a case of.*—An accused person, who was being tried on a charge under s. 457 for house-breaking with intent to commit theft, could not be convicted under s. 456, I.P.C., without amendment of the original charge. Although it is not necessary under s. 456, I.P.C., to specify any particular offences intended to be committed, when a particular offence is specified under s. 457, I.P.C., it is incompetent for the Court to convict the accused of house-breaking with some other intent. Although, in a summary trial, the Magistrate need not frame a formal charge, still he must specify the offence charged in such a way as will give sufficient notice to the accused. JHARU SHEIKH v. KING EMPEROR, **16 C.W.N. 696=13 Cr. L.J. 224=14 Ind. Cas. 320.**

——S. 457.

See CRIMINAL TRESPASS.

See HOUSE-BREAKING.

See HOUSE-TRESPASS.

(3011)—*S.* 457—*Lurking house-trespass by night—What constitutes.*—Where the accused entered the complainant's house at night without invitation and committed acts which *prima facie* constituted an assault punishable under s. 354, I.P.C., on the complainant's daughter, a girl of 13, it was held that, in the absence of anything to show that the accused entered the house by appointment, and that his acts did not amount to an assault, but were done with the girl's consent, he must be held liable to a conviction for lurking house-trespass by night. QUEEN-EMPRESS v. NGA YUN THA, **U.B.R. 1897—1901, Vol. I, 355** (U.B.R. 1897—1901, 354, *D.*)

(3012)—*S.* 457 — *Evidence Act,* I *of* 1872, *s.*114—*Recent possession of stolen property—Presumption.*—Where, soon after a house-breaking by night had been committed and property stolen from the house, the property is found in the possession of the accused and his explanation as to the same is found untrue, the presumption that s. 114 of the Evidence Act raises therefrom is sufficient to warrant a conviction under s. 457 of the Penal Code. EMPRESS v. AJUDHIA, **A.W.N. 1882, 224.**

Penal Code (Act XLV of 1860)—*continued.*

(3013)—*S. 457—Trespass with intention to commit adultery—Omission to prosecute for adultery—Effect.*—Where the accused committed house-breaking by night with intent to commit adultery with a woman, the owner of the house not being the husband of the woman, *held*, that the omission of the husband to prosecute for adultery did not absolve the accused from criminal liability under s. 457. QUEEN EMPRESS v. BANDHU, **Rat. Un. Cr. C. 689 = Cr. Rg. 11 of 1894.**

(3014)—*Chap.* XVII *and s.* 457—*Previous conviction under Ch.* XVII—*Subsequent conviction under s.* 457—*Sentence.*—When a person who has been previously convicted of an offence punishable under Ch. XVII, Penal Code, is convicted subsequently under s. 457, Penal Code, the sentence, which can be passed by a Magistrate, should not exceed two years HIGH COURT PROCEEDINGS, 16TH NOVEMBER, 1870, **6 M.H.C. App. 2.**

(3015)—*S.* 457—*Criminal trespass.* — An offence under the latter part of the above section of the Penal Code is more serious and is punishable with very severe sentence, especially when committed by an old offender. When once any case has been sent up to the District Magistrate under s. 349 of the Crim. Pro. Code for a severe sentence, it should be disposed of by himself and should not be returned to the referring Magistrate for disposal. QUEEN-EMPRESS v. NGA PO THIT, **U.B.R. 1892—1896, Vol. I, 274.**

(3016)—*S.* 457—*Revision—Criminal cases—Finding of fact—Evidence inconclusive.*—The accused was convicted of an offence under s. 457, I.P.C. The whole case against him was that in his house a nose-ring and two *lungis* were found which were claimed by the complainant as his and that on his person were a few scratches which might have been caused by his crawling through the small hole in the wall made by the burglars. It appeared that the accused according to the prosecution was enemy of the complainant already, and the evidence on the whole as to ownership of the nose-ring, which was not mentioned in the list of stolen property, was better for the accused than that for the prosecution and the *lungis* seemed to be incapable of certain identification. The Chief Court on revision set aside the conviction as based on inconclusive evidence. KHALAS v. CROWN, **79 P.L.R. 1915.**

(3017)—*S.* 457—*Revision—Finding of fact—Unreliable evidence—S.* 439 *of the Crim. Pro. Code—First Report to the Police—Accused not found in possession of the stolen property.*—Where the persons who restored the stolen property to its owner deposed that it was recovered from the petitioner and he was consequently convicted under s. 457, I.P.C., but no name of any burglar was given in the first report to the Police. *Held* that their evidence was not reliable under the circumstances of the case. MACHHIA v. CROWN, **28 P.W.R. 1915, Cr.**

Penal Code (Act XLV of 1860)—*continued.*

(3018)—S. 457—*See* ACCUSED PERSON, 34 P.R. 1885, Cr.

(3019)—S. 457—*See* ACT VI OF 1864, ss. 2, 3, 2 A.L.J. 173 = 2 Cr. L.J. 105.

(3020)—S. 457—*See* ACT VI OF 1864, s. 3, 3 L.B.R. 112 = 3 Cr. L.J. 348.

(3021)—S. 457—*See* APPELLATE COURT, Rat. Un. Cr. C. 293 = Cr. Rg. 37 of 1886.

(3022)—S. 457—*See* CRIM. PRO. CODE, 1898, ss. 233, 239, 4 P.L.R. 1905 = 2 Cr. L.J. 30.

(3023)—S. 457—*See* CRIM. PRO. CODE, 1898, s. 562, 19 P.W.R. 1910, Cr = 6 Ind. Cas. 639 = 11 Cr. L.J. 389.

(3024)—S. 457—*See* SENTENCE—CUMULATIVE AND SEPARATE SENTENCES, 5 W.R. Cr. 49.

(3025)—S. 457—*See* SENTENCE—POWERS OF APPELLATE COURT—MITIGATION, 17 P. L.R. 1905.

(3026)—S. 457—*See* Nos. 104, 108, 228, 229, 230, 231, 232, 237, 283, 1288, 2129, 2495, 2496, 2510, 2514, 2520, 2521, 2522, 2523, 2524, 2525, 2609, 2774, 2775, 2949, 2954, 2957, 2975, 3008, 3009 and 3010, *supra.*

(3027)—Ss. 457, 380—*See* CRIM. PRO. CODE, 1898, s. 35, 8 Bom. L.R. 850 = 4 Cr. L.J. 445.

(3028)—Ss. 457 and 380—*See* JOINDER OF CHARGES—MISJOINDER OF CHARGES, U.B. R. 1904, 1st Qr., Crim. Pro. Code, 2.

(3029)—Ss. 457 and 380—*See* SENTENCE—CUMULATIVE AND SEPARATE SENTENCES, 1 B. 214.

(3030)—*Ss.* 457, 442, 379, 511 — *Entering cattle enclosure — Cattle enclosure whether a 'building'—Attempt to commit theft—'Attempt' defined.*—Accused was charged with having committed lurking house trespass by night by entering into the cattle enclosure of the complainant with the intent to commit theft of his cattle and he was convicted for the same under s. 457, I.P.C. The cattle enclosure in question was not attached to any house, but was merely a piece of ground enclosed on one side by a wall and on the other three sides by a thorn hedge. *Held* that the mere surrounding of an open space of ground by a wall or fence of any kind cannot be deemed to convert the open space into a building, and that therefore the conviction under s. 457 cannot be maintained (35 P.R. 1879, Cr., 57 P.R. 1887, 28 P.R. 1905, Cr., *R.*) *Held*, however, that the accused was guilty of an attempt to commit theft under ss. 379 and 511, I.P.C., because he really did make his way into the enclosure by making a hole in the hedge and his intention was to commit theft. An 'attempt' to commit a crime is an act done with intent to commit that crime, and forming part of a series of acts which would constitute its actual commission if it were not interrupted. The point at which such a series of acts begins cannot be defined, but depends upon the circumstances of each particular case. KOHMI v. CROWN, **24 P.R. 1914, Cr.**

Penal Code (Act XLV of 1860)—*continued.*

(3031)—*Ss.* 457, 448—*Separate convictions under sections—Legality.*—The accused was convicted of house-breaking by night and of house-trespass in respect of the same acts: *Held* that the second head of the charge was superfluous, inasmuch as it involved the same intention substantially as the first, which intention ought not to be applied to support two different charges. QUEEN EMPRESS v. KHANDU, **Rat. Un. Cr. C. 302 = Cr. Rg. 50 of 1886.**

(3032)—Ss. 457, 458—*See* MAGISTRATE, JURISDICTION OF—MISCELLANEOUS, A.W.N. 1885, 297.

(3033)—*Ss.* 457 *and* 497—*Finding that offence intended to be committed was adultery—Sentence.*—When the charge is that the accused committed an offence under s. 457, I.P.C., with a view to commit an offence under s. 497, it is only fair to him that the offence with which he is charged should be fairly stated, in order that he may meet it. But when a charge is made of an offence under s. 457, with a view to commit theft, and the Court finds that there was no intention to commit theft, the Court should be chary of convicting and punishing for an offence under s. 457, with a view to commit an offence under s. 497, when the prosecution has not alleged such an offence and the accused has had no real chance of meeting such a charge. MANGAL SINGH v. EMPEROR OF INDIA, **32 P L.R. 1902 = 31 P.R 1901, Cr.** (41 P.R. 1882, Cr., *R.*)

(3034)—*Ss.* 457, 511—*House-breaking—Attempt—Preparation—Burglars digging a hole in a wall but not digging it through owing to interruption by third parties.*—The accused dug, during the night, a hole in the wall of the complainant's dwelling-house with intent to complete that hole in order to make their entry into the house through it, and, having so entered, to commit theft in the house. The hole was not in fact completed, that is, it did not completely penetrate from one side of the wall to the other; for the accused were interrupted before they could complete it. The trying Magistrate convicted the accused of the offence of attempting to commit house-breaking by night (ss. 457 and 511, Penal Code). On appeal, the Sessions Judge acquitted the accused on the ground that the acts of the accused amounted only to a preparation and not to an attempt to commit house-breaking by night: *Held* reversing the order of acquittal, that the accused's act amounted in law to an attempt, inasmuch as the actual transaction, the distinct overt act was begun and to a certain extent carried through, though not to completion by reason of the accused being interrupted by other people. EMPEROR v CHANDKHA SALABATKHA, **15 Bom. L.R. 564 = 2 Bom. Cr. C. 76 = 14 Cr. L.J. 451 = 20 Ind. Cas. 611 = 37 B. 553.**

(3035)—Ss. 457, 511—*See* CRIM. PRO. CODE, 1898, s. 565, 35 P.W.R. 1907, Cr. = 17 P.R. 1907, Cr. = 6 Cr. L.J. 378.

Penal Code (Act XLV of 1860)—*continued.*

——**S. 458.**

(3036)—S. 458—*See* MAGISTRATE, JURISDICTION OF—MISCELLANEOUS, 1 W.R. Cr. 34.

(3037)—S. 458—*See* Nos. 2578, 2776, 2941 and 3032, *supra.*

——**S. 459.**

See CRIMINAL TRESPASS.

(3038)—*S.* 459—*House-breaking and resistance to capture.*—Where an accused, disturbed in the act of house-breaking attempted to escape, and when he was overtaken and seized, forcibly resisted his capture, and was charged under ss. 457 and 459, Penal Code, *held* that he had not committed any offence under s. 459, I.P.C., as the section did not define when the act of house-breaking should be deemed to commence or end. EMPRESS v. RAMDIN, **13 C.P.L R. 125.** (8 A. 649, 26 C. 863, *R.*).

(3039)—*Ss.* 459, 460—*Scope.*—Ss. 459 and 460 provide for a compound offence, the governing incident of which is that either "lurking house-trespass" or "house-breaking" must have been completed, in order to make the person, who accompanies that offence either by causing grievous hurt or attempt to cause death or grievous hurt, responsible under those sections. In other words, the causing of the grievous hurt, or the attempt to cause death or grievous hurt, must be done in the course of the commission of the offence of lurking house-trespass or house-breaking, and at the time when it is being committed. The provisions of the sections must be construed strictly, and it is not contemplated that where the principal action done by accused persons amounts to no more than a mere attempt to commit the offences of lurking house-trespass or house-breaking, the sections should be applicable. QUEEN-EMPRESS v ISMAIL KHAN, **8 A. 649 = A.W N. 1896, 253.** [*R*, 13 C P.L R. 125.]

(3040)—Ss. 459, 460—*See* GRIEVOUS HURT, 17 P.R. 1876, Cr.

——**S. 460.**

See HOUSE-BREAKING.

(3041)—*S.* 460—*Scope.*—The expression "at the time of committing house-breaking by night" must be limited to the time during which the criminal trespass continues which forms an element in the house-trespass, which is itself essential to house-breaking, and cannot be extended so as to include any prior or subsequent time. JAFFIR v. EMPRESS, **2 P. R. 1882, Cr.** (17 P.R. 1876, Cr. *Cited* and *Appr.*)

(3042)—*S.* 460—*Murder while committing burglary.*—S. 460, Penal Code, intended to provide for the punishment of persons who were jointly concerned in the committing of the house-trespass or house breaking altogether irrespective whether they were the persons who caused or attempted to cause grievous hurt. It never intended that, if a person while he was committing a burglary happened also to commit murder, that he should be punished only for

Penal Code (Act XLV of 1860)—*continued.*

burglary and not murder. CHATUR v. KING-EMPEROR, 8 A L.J. 574 = 11 Ind. Cas. 570 = 12 Cr. L.J. 395.

(3043)—S. 460—*See* APPROVER, 8 A. 509 = A.W.N. 1886, 176.

(3044)—S. 460—*See* Nos. 2957, 3039 and 3040, *supra.*

——**S. 461.**

(3045)—S. 461—*See* No. 2526, *supra.*

——**S. 463.**

See FALSE DOCUMENT.

See FORGERY.

(3046)—*S.* 463—*Forgery, what constitutes—Acting dishonestly or fraudulently—Act V of* 1861, *s.* 29.—A beat constable who writes in his notebook the signature of a headman, whose village he has not visited, does not commit thereby the offence of forgery. But the facts were, however, held to amount to an offence under s. 29, Act V of 1861. QUEEN-EMPRESS v. NGA AUNG BA, U.B.R. 1897—1901, Vol. I, 356. (U.B.R. 1892—1896, 279, 6 A. 42, *R.*)

(3047)—S. 463—*See* Nos. 51, 66, 486, 1289, 2724 and 2802, *supra.*

(3048)—Ss. 463, 464, 470, 471, 23, 24, 25, 29—*See* FORGERY, 15 A. 210 = A.W.N. 1893, 96.

(3049)—*Ss.* 463, 467 *Forgery—Fraudulent intent.*—In this case, a *thugyi* substituted two men for two other persons who had been recommended for agricultural advances; the substituted men signed receipts in the name of the latter and drew the money. The *thugyi* also signed the receipts, and, taking the money himself, spent it as it pleased him, partly in agricultural advances. The *thugyi* was a surety and himself repaid the advance. *Held* that a conviction under ss. 467 and 109, Indian Penal Code, was proper. QUEEN-EMPRESS v. NGA KYAW NYA, U.B.R. 1892—1896, Vol. I, 276.

(3050)—*Ss.* 463, 467—*Forgery—Forgery committed to conceal fraud already committed—Intent to commit fraud—Interpretation.*—A village Kulkarni misappropriated certain sums which the *raiyats* had paid to him for irrigation cesses. To prevent the *raiyats* from complaining and to protect the fraud, the Kulkarni forged with the help of the accused certain *chalans* showing that the sums had been paid over to the Government Treasury. The accused was paid Rs. 25 for the work. He was, on these facts, charged with the offence of forgery. The Sessions Judge acquitted him on the ground that the forgery was committed to conceal the fraud that had already been fully committed, whereas s. 463 of the Penal Code required that forgery should be "with intent to commit fraud or that fraud may be committed." *Held*, setting aside the order of acquittal, that the offence of forgery was complete although it was effected to conceal a fraudulent or dishonest act previously committed. *Per Batchelor, J.*—The term "fraud," as used in the Penal Code, is used in its ordinary and popular acceptation. Hence a man, who deliberately makes a false document with false signatures, in order to shield and conceal an already perpetrated fraud, is himself acting with intent to commit fraud. It is a fraud to take deliberate measures in order to prevent persons already defrauded from ascertaining the fraud practised on them, and thus to secure the culprit who practised the fraud in the illicit gains which he secured by the fraud. EMPEROR v. BALKRISHNA VAMAN KULKARNI, 15 Bom L R. 708 = 2 Bom. Cr. C 115 = 14 Cr. L J 518 = 20 Ind. Cas 998 = 37 B 666. (22 C 313, 35 C. 450, 11 M. 411, *F.*; 5 A. 221, 553, 8 A. 658, *Diss.*)

(3051)—Ss. 463, 467—*See* SANCTION TO PROSECUTE—CONDITIONS REQUISITE FOR GRANT OF SANCTION, ETC., 14 C.W.N. 479.

(3052)—Ss. 463, 467—*See* SANCTION TO PROSECUTE—MISCELLANEOUS CASES, 12 B. 36.

(3053)—Ss. 463, 468—*See* CRIM. PRO. CODE, 1898, ss. 177, 195, 213, 531, 10 M L.T. 563 = 1912 M.W.N. 3 = 36 M. 385.

(3054)—Ss. 463 and 471—*See* FALSE RECEIPT, 12 C.W.N. 1113 = 8 C.L.J. 317.

(3055) Ss. 463, 471—*See* SANCTION TO PROSECUTE—MISCELLANEOUS CASES, 8 B.H.C. Cr. 28.

(3056)—Ss. 463, 471, 475, 476—*See* CRIM. PRO. CODE, 1898, s 195 (1) (c), (3), 4 Ind. Cas. 105 = 6 A.L.J. 983 = 32 A. 74.

——**S. 464.**

See FALSE DOCUMENT.

See FORGERY.

(3057)—*S.* 464—*Section interpreted.*—The concluding words "or at a time at which he knows that it was not made, signed, sealed or executed," in s. 464 are to be read distributively, and are not governed by the preceding words "by or by the authority, etc." QUEEN-EMPRESS v. GANESH BHIKAJI, Rat. Un. Cr. C. 772 = Cr. Rg. 36 of 1895.

(3058)—*S.* 464—"*Making*" *of a document, meaning of*—The "making" of a document, or part of a document, does not mean "writing" or "printing" it, but signing or otherwise executing it. The falsity (of a false document) consists in the document, or part of a document, being signed or sealed with the name or seal of a person, who did not in fact sign or seal it. *Per Garth, C J. In the matter of the petition of* RIASAT ALI. EMPRESS v. RIASAT ALI, 7 C. = 8 C L R. 572 = 4 Shome L R. 155.

(3059) *S.* 464—*Making a false document, what is—Persons signing bail bond with names not their own, whether guilty of offence under.*—A person makes a false document, who dishonestly or fraudulently signs a document with the intention of causing it to be believed that the document was signed by a person by whom he knows it was not signed. So, where two persons signed a bail bond with names not their own and before signing the bail bond said to the Magistrate that their names were the names they afterwards signed to the bail bond.

Penal Code (Act XLV of 1860)—*continued.*

Held, that, since there was no intention on the part of the accused to cause the Magistrate to believe that the bail bond was signed by any person real or fictitious other than the accused, the accused were not guilty of an offence under s. 464. VENKARAJU VENKATASAMI v. EMPEROR, **8 M.L T. 124 = 11 Cr. L J. 404 = 7 Ind. Cas. 176.**

(3060)—*S.* 464 —*Forgery — Alteration of document—Intent to defraud—Securing existing rights.*—Where the accused altered a document without the authority of the executants after its execution, and it was proved that the alteration was made to prevent the other people from setting up a claim to property which was admittedly in the possession of the accused, the object cannot be said to be dishonest and the man is not guilty of forgery under s. 464, I.P C. An intent to defraud implies something more than mere deceit. The advantage intended to be secured or the harm intended to be caused need not have relation to property or be such as is implied in the term 'dishonestly', but it must be something to which the party perpetrating the deceit is not entitled either legally or equitably. There can be no intention to defraud where no wrongful result was intended or could have arisen from the act of the accused. A man cannot be convicted of forgery where his intention has been merely to secure something to which he was legally entitled. MANIKA ASARI v. EMPEROR, **1915 M.W.N. 278 = 16 Cr L J. 246 = 28 Ind. Cas 102.**

(3061) S. 464—*See* Nos. 51, 54, 63, 66, 1209 and 3048, *supra.*

(3062)—*Ss.* 464, 465, 467—*Crim. Pro. Code,* ss. 221. 225-*A*, 223, 342— *Making of false document—Forgery of valuable security—Falsification of part of a document which is surplusage —Evidence—* Onus—*Defect in charge—Omission to set out intention in charge—Cross-examination of accused.*—Where the accused was convicted of having forged a kabuliyat executed by himself in favour of his landlord C B. whose name appeared on the document as a witness, and there were two other witnesses to the document and it was admitted that the accused who was an illiterate man did not "make the false document" himself and it was not established that the intention of the accused was to fraudulently bind the landlord by his alleged signature as witness, and the case for the defence was that it was not the landlord C.B., who signed the name as witness but another person of the same name, and the Sessions Judge held that the *onus* was on the defence of showing that this C.B. whose name appeared on the document was a real person and signed the deed, and where the Sub Registrar, who registered the document and held an inquiry in connection therewith and saw with his own eyes that the accused was in possession of the land covered by the document, gave evidence of that fact, but the Sessions Judge held that his statement was not evidence: *Held*, a charge of forgery cannot lie against a person who was not the writer of the forged document or who did not sign the forged name. Making a false document is one thing and causing a false document to be made is another. One is an offence under s. 465, I.P.C., the other is an act, at most, of abetment. The part of a document, in order to come within the definition of false document, must be dishonestly or fraudulently made, signed, sealed, or executed by the person who is charged, and it must be made with the intention of causing it to be believed that such document or part of a document was made, signed, sealed, and executed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed or executed. Even supposing that part of a document is false, that part must have some material effect on the transaction. A mere surplusage would not invalidate a document. In the present case, even admitting that the name of C.B. was a fictitious name, it would not make the document a false document. There being two other witnesses to the document besides C.B., it would have no effect on the validity of the document whether this name was or was not fictitious. If it was the intention of the accused that the document should be used in future as evidence that the landlord himself was a witness to it, that might bring the case within the definition of fabricating false evidence for the purpose of being used in a judicial proceeding, or it might be a preparation for the offence of cheating, but certainly does not amount to forgery. *Held*, further, that the Sessions Judge was wrong in throwing the *onus* on the defence and in holding that the statement of the Sub-Registrar was not evidence. Where the charge under s. 467, I.P.C., did not set out the intention of the accused: *Held*, that this vitiated the charge. Cross-examination of the accused by putting questions with a view to induce him to incriminate himself, condemned. HARIDAR ALI PRADHANIA v. EMPEROR, **17 C.W.N. 354 = 18 Ind. Cas. 881 = 14 Cr. L.J. 129.**

(3063)—*Ss* 464, 465, 468, 415, 417 *and* 511 —*Intention to cause it to be believed that a document was made at a time when it was not made—Attempt to cheat.*—Where a servant of the creditor of the accused presented a bill which contained a stipulation that any payment on account of the bill would not be admitted, unless endorsed on its back, and the accused took the bill and wrote in the presence of the servant an endorsement of payment, alleged to have been made on a previous date, whereupon the servant snatched the bill away from the accused and asked for payment of the amount entered on the bill, to which the accused answered that he had paid, *held*, that the accused could not be convicted of forgery, as the circumstances of the case did not justify an inference that the endorsement was made with the intention of causing it to be believed that it was made on the date on which the payment was alleged to have been made and not on the date when, in fact, it was made. *Held* also, that he was not guilty of an attempt to cheat, as the bill was snatched away from

Penal Code (Act XLV of 1860)—*continued.*

the accused before he had given any indication of what he meant to do with it. HURJEE MULL v. IMAM ALI SIRCAR, **8 C.W.N. 278.**

(3064)—Ss. 464, 468—*See* FORGERY, 12 P. R. 1895, Cr.

(3065)—Ss. 464, 470, 471, 192, 196—*See* FORGERY, 5 A. 217.

—— **S. 465.**

See FORGERY.

(3066)—*S* 465—*Intention—Forgery.*—S. 465 cannot apply except where the dishonest or fraudulent intent embraced in the definition given in s. 464 is made out and such an intention is not made out merely by establishing, however clearly that, under conceivable circumstances, a particular error might be used to support some false claim. QUEEN-EMPRESS v. RAMACHANDRA, **Rat. Un. Cr. C. 201.**

(3067)—*S.* 465—*Intention—Primary intention of the accused.*—In cases under s. 465 of the I P.C., the immediate and more probable intention of an accused is that to which the Court must look, and not some more remote and less probable intention. A Registrar Kanungo, having received an order for the realisation of a certain fine, altered the amount stated in the order, primarily as it was found, with the intention of concealing the fact of his disobedience to a previous order for the realisation of the same fine. *Held* that under the circumstances he could not be convicted of an offence under s. 465 of the I P.C. QUEEN-EMPRESS v. KEDAR NATH, **A.W.N. 1892, 243.**

(3068)—*S.* 465—*Correction of false entries to conceal attempted misappropriation.*—Where a person in charge of a toll gate entered a smaller sum in the counterfoil of a receipt, and, in the account book, first entered the smaller sum which he subsequently corrected into the correct figure, *held*, that no offence of forgery was committed, the false entry being unaltered and the altered entry being not false. QUEEN-EMPRESS v BALWANT, **Rat. Un. Cr. C. 595 = Cr. Rg. 15 of 1892.**

(3069)—*S.* 465—*Signing telegram in another's name—No intent to injure—Forgery—Denial of fact by accused—Defence inconsistent with denial.*—The mere signing a telegram in another's name, where it is not shown to have been done with intent to injure him and where it does not actually injure him, does not constitute the offence of forgery, even though the signature may have been made without the authority of such person. An accused is not bound by any statement denying any fact against him if he desires subsequently to take a further defence inconsistent with the denial KALI PRASAD BANERJEE v. EMPEROR, **16 Cr.L J. 76 = 26 Ind. Cas 668.**

(3070)—S. 465—*See* Nos. 51, 55, 236, 1006, 1290, 2701, 3062 and 3063, *supra.*

(3071)—Ss. 465, 417, 511—*See* CHEATING—GENERAL, 12 M. 114 = 1 Weir 539.

(3072)—*Ss.* 465, 466, 471, 474—*Forgery—Using forged document—Presumption—Guilty knowledge—Interest in establishing contents of document—Conduct—Filing of document, if user—Penal Code, ss.* 471, 474—*Convictions under both sections, whether legal—Charge under ss* 465, 471—*Conviction under ss.* 466, 471, *if legal.*—The fact that a man who files a document is interested in establishing its contents, does not raise a presumption that he filed it knowing it to be forged. Conduct is the principal criterion of guilty knowledge. Where a man filed a document upon which he relied, but when it was discovered that the document had been forged, he fled away. *Held*, that his conduct was in no way consistent with his innocence. The filing of a document as the basis of a plaint or as a necessary sequel to the pleas in the plaint is itself an user; and it then becomes incumbent on the person using it to show that he filed the document in all good faith believing it to be genuine. (35 C. 820, 8 Cr. L.J. 398, *Expl.*). Convictions under ss. 471 and 474, Penal Code, cannot stand together (6 N.W.P. 39, *F.*) Where a charge is laid against an accused under s. 465 read with s. 471, Penal Code, he cannot be convicted and sentenced under s. 466 read with s. 471. MOBARAK ALI v. EMPEROR, **13 Cr. L.J 449 = 15 Ind. Cas. 81 = 17 C W N. 94.**

(3073)—*Ss.* 465, 477-*A*—*Falsification of a register to conceal a fraud—Intention at time of offence*—The accused, a postal clerk, retained the proceeds of a V.P.P. for three months, and only then remitted it to the vendor. Meanwhile he made a false entry in the Register of V.P.P. articles, to the effect that the parcel in question had been refused by the addressee and returned to the vendor. *Held* that, if the accused committed any offence at all, it was one falling under s. 477-A, and was triable only by the Court of Sessions. The Magistrate could not give himself jurisdiction by charging and convicting under s. 465. *Held*, also that the falsification of books with the object of concealing a fraud previously committed would be an offence. *Held*, further in the present case that, as the accused was merely withholding the money with the apparent intention of misappropriating it, the offence of criminal breach of trust was incomplete. In such circumstances the falsification of the books would not be done to conceal an offence previously committed, but to assist in the completion of the offence; it would be part of the scheme. *Held*, also, that, if the accused subsequently thought better of it and remitted the money, that would not alter the character of the falsification, which must be judged by the accused's intention at the time he made it. KING-EMPEROR v. W.C. DAS, **U.B.R 1909, 4th Qr. Penal Code, 28 = 11 Cr. L.J 188 = 4 Ind. Cas. 1089.** (5 A 221, 533 8 A. 653, 4 B. 657, 23 C. 313, 35 C. 450, 11 M. 411, 2 N.W.P 11 6 N W. P. 56, U B.R 1892-1896, I, 279; U.B.R. 1897-1901, I, 328, 1 Weir. 554, *R.*)

—— **S. 466.**

See FORGERY.

(3074)—*S* 466—*Public servant making false entry in a register—Fraud.*—Where the

Penal Code (Act XLV of 1860)—*continued.*

accused, a public servant, who had committed criminal breach of trust made a false entry in an account book and was convicted of the offences under ss. 409 and 466 of the Indian Penal Code, and it appeared that the entry was not made with intent to defraud—*held*, that the conviction under s. 466 of the Indian Penal Code must be set aside. HARI CHAND v. EMPEROR, 8 **P L.R. 1904=1 Cr. L.J. 41.** (5 A. 221, 22 C. 313, 11 M. 411, 10 P.R. 1902, Cr. =75 P.L.R. 1902, *R.*)

(3075)—S. 466—*See* Nos 14, 51, 63, 490, 520, 776 and 3072, *supra*.

(3076)—*Ss.* 466, 467—*Scope.*—A rough sketch to serve as practice for a finished forgery, but which has not been used and which could not be used in its then form, would not, apparently, come under the provisions of s. 466 or s. 467. QUEEN-EMPRESS v. ABAJI RAMACHANDRA, **16 B. 165.**

(3077)—*Ss.* 466, 468, 471—*Several offences whether forming the same transaction, substantial test to determine.*—The real and substantial test by which to determine whether several offences are so connected as to form the same transaction depends on whether they are so related to one another in point of purpose, or as cause and effect or as principal and subsidiary acts as to constitute one continuous action, irrespective of the persons by whom the same may have been committed. ABBAS QULI KHAN v. KING-EMPEROR, **17 O.C. 276=15 Cr. L.J 643=25 Ind. Cas 843.**

(3077-*a*)—*Ss.* 466 *and* 471—*Elements of fraud or dishonesty.*—The elements of fraud or dishonesty, as explained in the Penal Code, must be present in the mind of the person accused to bring his act under ss. 466 and 471 of the Penal Code. REILY v. KING-EMPEROR, **28 C. 434=5 C.W.N. 602.**

(3078)—*Ss.* 466 *and* 471—*Public servant forging a certificate and using it as genuine.*—Alteration of name and age in an education certificate and using it as a genuine one with a view to obtain an official appointment constitute, in the absence of a satisfactory explanation, offences under ss 466 and 471, Penal Code. NGA PYE v. KING-EMPEROR, **2 L.B. R. 316=1 Cr L J. 1124** (L.B.R. 1893–1900, 52, *R.*)

——S. 467.

See FORGERY.

(3079)—*S.* 467—*Forgery—Party of a registered deed denying knowledge of any of its contents—Presumption—Burden of proof—Benefit of doubt to accused.*—*Held*, that, in the case of a registered document, the presumption is that a party to it knows what is contained therein, and that the burden of proving, in the clearest way, that he did not know any of its contents when he set his hand to it, lies very heavily upon him, particularly in a criminal charge. *Held*, also, the benefit of doubt should be given

Penal Code (Act XLV of 1860)—*continued.*

to accused. MUNSHI SANT SINGH v. CROWN, **34 P.L R 1907=1 P.W.R. 1907, Cr.=5 Cr. L. J. 67.**

(3080)—S. 467—*See* Nos. 51, 468, 486, 489, 1291, 1292, 2224, 2702, 2845, 2849, 2850, 3049, 3050, 3051, 3052, 3062, 3076, *supra*, and No. 3110, *infra*.

(3081)—*Ss.* 467, 109—*Forgery—Abetment of forgery—Conspiracy—Acquittal of fellow-conspirator—Conviction of the conspirator.*—The accused was tried along with his partner A, in that they conspired to get up a *Khata*, and in furtherance of that conspiracy A went to S. a professional forger, and got it prepared. A was acquitted; but the accused was convicted and sentenced under ss. 467 and 109, Penal Code. The accused appealed contending that, as the case against his fellow-conspirator was not successful, the charge of conspiracy broke down and he was entitled to acquittal. *Held* that the charge against the accused was that he abetted S's offence of forging a *Khata*, and if that abetment was proved against the accused, he must be convicted of that charge, even though the prosecution were not successful in establishing the particular means of instrument selected by the accused for the abetment of S's offence. EMPEROR v. CHOTTALAL BABAR, **14 Bom. L.R. 367=15 Ind. Cas. 814=13 Cr. L J. 542=1 Bom Cr. C. 130**

(3082)—*Ss.* 467, 167—*Selling a note with forged endorsement.*—Where a person sells a note, purporting by an endorsement on it to have been sold to his firm, and it is proved that it was not sold to his firm by the persons named in the endorsement, it must be held that the person sells the note knowing or having reason to believe it to be forged, and is liable to be punished under ss. 467 and 471 of the Penal Code. QUEEN-EMPRESS v. ITWARI SAHO, **15 C. 269.**

(3083)—*Ss.* 467, 468, 420—*Jurisdiction—Ordinary First-class Magistrate—Offence exclusively triable by Sessions but including minor offences triable by Magistrate—No power to try—Power to discharge or to commit to Session—Conviction by himself illegal.* Forgery of a *hundi* is an offence under s. 467, I.P.C., which is exclusively triable by a Court of Session. A First class Magistrate, not holding powers under s. 30, Crim. Pro. Code, could not dispose of the case himself, even though the offence charged includes minor offences under ss. 420 and 468, I P.C., triable by him. The Magistrate can only dispose of the case either by a committal to sessions or by an order of discharge. LEKHRAJ v. CROWN, **31 P.R. 1910, Cr.=194 P.L R. 1910=8 Ind. Cas. 389=11 Cr. L J. 639.**

(3084)—*Ss.* 467, 471—*Forgery of document—Forgerer of document charged under s.* 467, *whether can be charged under s.* 471—*Proof of forgery.*—The fact that a person charged with an offence under s. 471, Penal Code, is himself the forgerer of the document, is no reason why he should not be charged under s. 471, Penal

Penal Code (Act XLV of 1860)—*continued.*

Code, especially when he cannot be charged under s. 467, Penal Code, owing to the latter offence having been committed beyond the jurisdiction of the Court. The forgery must be proved in order to establish the offence under s. 471, Penal Code, though it is not itself the subject of a charge. *In re* BHAGAVATTY PERUMAL PILLAY, **13 Cr. L J 862=17 Ind. Cas. 798.**

(3085)—*Ss.* 467, 471—*Using as genuine forged rent receipts—Charge, framing of, in respect of two different documents -Separate charge for every act of forgery, if necessary—User, evidence of, independent, in each case, if necessary—Admission of guilt, what is—Rent, rate of, if can be decided entirely upon accused's conduct.*—There must be a separate count for every alleged item of perjury or forgery or, in other words, there must be independent evidence of user in the case of each document. The use of the expression "Hasur kasur maf kiya jai, abaisa kabhi nahin hoga" (Your Honour will please pardon the fault, in future no such thing will happen) is not in itself an incriminating statement, and when used in reference to alleged forged receipts, the words in themselves are not an admission of forgery or of using forged documents and the statement in itself is not a confessional statement. The conduct of the accused is not evidence upon which the question as to the rate of rent can be decided in a Civil Court. JANG BAHADUR LAL v. KING-EMPEROR, **14 C L J. 652=13 Cr. L.J. 62=13 Ind. Cas. 398.**

(3086)—*Ss.* 467, 471 - *Forged document produced before Registrar for registration, effect of —Document, subsequently found to be forged by Court—Crim. Pro. Code, s. 195—Sanction to prosecute.*—The accused presented before the Registrar a certain document for registration, the execution of which was denied by the complainant, but the Registrar directed it to be registered. Thereafter, as the result of a civil suit instituted by the complainant, the document was found by the Court to be a forged one. A complaint was then presented before the Sub-Divisional Officer under ss. 67, 471, Penal Code, and process was issued under s. 467, Penal Code. *Held* that the Magistrate could proceed under s. 471, Penal Code, without obtaining the sanction of the Civil Court, but that so far as the proceedings founded on the offence under s. 467, Penal Code, were concerned, he could not proceed without the previous sanction of the Civil Court. (5 Ind. Cas. 879=14 C W.N. 479=11 Cr.L J. 280, *R.*). Sanction of the Civil Court is not necessary in the case of an offence that was committed by a prior use of the forged document outside the Court; ABDUL GANI v. EMPEROR, **16 Cr. L. J 617=30 Ind. Cas. 441.** (4 Bom. L.R. 268, *F.*).

(3087)—Ss. 467, 471, 477—Forgery—Using forged document — Separate sentences—*See* CRIM. PRO. CODE, 1898, ss. 195, 537, 4 P.R. 1913, Cr.=14 Cr.L.J. 183=19 Ind. Cas. 183=52 P.L.R. 1913.

Penal Code (Act XLV of 1860)—*continued.*

(3087-*a*)—Ss. 468, 471, 477-A—*See* JOINDER OF CHARGES—MISJOINDER OF CHARGES, 4 Bom. L.R. 440.

(3088)—*Ss.* 467 *and* 475—*Counterfeiting a device or mark—Document.*—Before a charge under s. 475 is upheld, the following points are to be proved :—there must be some counterfeit device or mark upon the document that the accused has in his possession ; he must have the document in his possession with the intent of using such device or mark for the purpose of giving it the appearance of authenticity and it must be of the nature mentioned in s. 467 of the Code. QUEEN v RUGHOONUNDUN PUTTRONUVEES, **15 W.R. Cr. 19.**

(3089)—*Ss* 467, 477—*Forgery—Expert evidence alone insufficient for conviction—Evidence —Government expert how far reliable—Evidence Act, ss* 45 *and* 47.—*Held*, that, to base a conviction simply upon the opinion of an expert, is, as a general rule, very unsafe. It may be used to corroborate other evidence in itself sufficient for conviction. (9 C.L.J. 385, 2 A L J. 444, *F*) *Held*, also, that the evidence of a witness supposed to be acquainted with the handwriting of a person is not admissible under s. 47, Evidence Act, where he does not state any of the facts which, according to the explanation to this section, would make his opinion relevant. So also, where a witness as to identity of handwriting is not positive, his evidence is of no value. *Held*, further that, in the present case, the evidence of the expert (Mr. Hardless) is not sufficient to convict the accused either under s. 467 or s 477, Penal Code. JALAL-UD-DIN v. CROWN, **18 P.W R. 1912, Cr.=147 P.L R. 1912 =15 Ind Cas. 979=13 Cr. L J. 563.** [*R.*, 9 P. R. 1914, Cr.]

(3090)—Ss. 467, 511—*See* ATTEMPT, 16 A. 409=A.W.N. 1894, 150.

—— **S. 468.**

(3091)—S. 468—*See* Nos. 51, 489, 2815, 2816, 2850, 3053, 3063, 3064, 3077 and 3083, *supra*.

—— **S. 469.**

(3092)—S. 469—*See* Nos. 51 and 491, *supra*.

—— **S. 470.**

(3093)—S. 470—*See* Nos. 51, 3048 and 3065, *supra*.

—— **S. 471.**

See FORGERY.

(3094)—*S.* 471—*Using as genuine a forged document.*—In order to sustain a conviction under s. 471 for using a forged document as genuine, it is not sufficient to prove that the accused was responsible for its use and should have been aware of its contents. It should also be proved that the accused himself used the document, that is, put in the document. *In re* MUKER SRINIVASA PADAYACHI, **1 Welr 550.**

(3095)—*S* 471—*Ingredients of the offence.*—To constitute an use within the meaning of s. 471, it is not necessary that the forged document should either be used as evidence in a

Penal Code (Act XLV of 1860)—*continued.*

Court of Justice or used for the purpose of obtaining money. It is sufficient that it is used in order that it may ultimately appear in evidence or used dishonestly or fraudulently. *In re* RAMAPPA HEBBARA, **1 Weir 550.**

(3096)—*S.* 471 — *Scope — Crim. Pro. Code,* 1898, *s.* 202.—The use of forged documents contemplated by s. 471 is such use as causes wrongful gain or wrongful loss. That is to say, the section applies to the case of a person, who appears before some other person, or before a Court, with a document, and endeavours to induce that person or Court to do some act which he or it would not do, if the document was known to be a forgery. When in a judicial inquiry under s. 202, Crim. Pro. Code, against a person accused of having forged a document, the accused states before the inquiring Magistrate that the document is genuine, he cannot be said to have used the document so as to make himself amenable to the provisions of s. 471, Penal Code, even though he knew the document to be a forged one. ASIMUDDI SHAIKH v. KING-EMPEROR, **11 C W.N. 838=5 C.L J. 454=5 Cr. L J. 351.** [*R.*, 36 M. 392=22 M. L.J. 181=11 M.L.T. 21=1912 M.W.N. 455=13 Ind. Cas. 286=13 Cr L.J. 46, 15 C.W.N. 565=12 Cr.L J. 101=9 Ind. Cas. 577.]

(3097)—*S.* 471—*Deprivation of property.*—Deprivation of property, actual or intended, is not a necessary ingredient of the pretext to defraud in s. 471, I.P.C. KEDAR NATH CHATTERJEE v. KING-EMPEROR, **5 C.W.N. 897.** [*R.*, 9 Cr. L.J. 15=4 L.B.R. 315.]

(3098)—*S.* 471—*Forged document produced in suit by plaintiff's pleader—" Uses," scope of the word.—Quære* :—Whether s. 471, I.P.C., is applicable to a case in which a pleader or a counsel, engaged on behalf of a party to civil litigation acting under strict instructions from his client, presented to the Court a document of a suspicious appearance as evidence in the cause? Whether the word " uses " as it occurs in s. 471, I.P.C., would cover a case of this character? EMPRESS v. JIWAN, **A.W.N. 1887, 195.**

(3099)—*S.* 471—*Copy of false document—Whether false document—Conviction—Legality.*—A copy of a document alleged to be false does not come within the definition of a " false document " and a conviction under s. 471, I.P.C., upon such copy, cannot stand. *In re* GOPALAKRISHNA HEGGADE, **7 M.L.T. 428=20 M.L.J. 534=6 Ind. Cas. 776=11 Cr. L.J. 401.**

(3100)—*S.* 471—*Summons from Court—Production of document in obedience thereto—Document found to be forged—Giving testimony as to its genuineness—Whether amounts to user as genuine—No offence.*—Where the accused, who was only a witness but not a party to the suit, produced a document in obedience to a summons from the Court, and gave evidence as to its genuineness, and the document was not found by the Court to be genuine. *Held*, that the accused did not commit an offence under s. 471, I.P.C. The production by a party of a document which he is bound by law to produce cannot by itself constitute a user of that document by him. (10 M.L.T. 563=1912 M. W.N. 3, *F.*) The mere fact that he subsequently gave false evidence, with the fraudulent intention of causing loss to one of the parties, cannot amount to a fraudulent user of the document with reference to which the evidence was given. MUTHIA CHETTY v. EMPEROR, **11 M.L.T. 21=22 M.L.J. 181=1912 M.W.N. 455=13 Ind. Cas. 286=13 Cr. L.J. 46=36 M. 392.** (11 C. W.N. 838, *F.*)

(3101)—*S.* 471—*Using a forged document, whether handing a document to a muktear who then makes it over to a witness and asks him whether it is genuine—Crim. Pro. Code* (*Act* V *of* 1898), *s.* 195—*Sanction granted to the agent of a landlord whose seal was counterfeited, whether valid—Sanction by successor of trying Magistrate if valid—Sentence, mitigating circumstances.*—The appellant, in the course of the hearing of a criminal case against him, had made over a receipt for rent to his muktear, who then handed it to a witness asking him whether it was a receipt for rent granted by the landlord in favour of the appellant. On the witness saying it was not genuine, the trying Magistrate initialled it and kept it on the record as one of the documents produced on behalf of the defence. *Held* that the appellant was guilty under s. 471, I.P.C., as, in the circumstances of the case, what he did constituted used within the meaning of that section. (35 C. 820, *D*). The sanction for the prosecution of the appellant granted to the agent of the landlord, whose seal was counterfeited on the forged receipt, was a valid sanction according to law, and the fact that this sanction was granted by the successor in office of the Magistrate who had tried the criminal case against the appellant, did not invalidate it. The fact that the primary object of the appellant in using the forged receipt was to get out of the difficulty in which he was put by the criminal case and that he did not support the document by production of perjured evidence, may be taken into account in mitigation of punishment. RATE JHA v. KING-EMPEROR, **16 C.W.N. 623=15 C L.J. 509=39 C. 463=14 Ind. Cas. 201=13 Cr. L.J. 201.**

(3102)—*S.* 471—*Using a forged document as genuine, what amounts to.*—Accused purchased, *inter alia*, a 1/9th share of certain property, which 1/9th amounted to 48 *kanals*, 12 *morlas*. The sale-deed was somehow tampered with so that the 1/9th share was made to appear to be a 2/9th share. But there were no corresponding alterations in the area or other recitals and figures in the deed. Eleven years after the purchase, the accused presented the deed to the mutation officers with a request that mutation should be entered " according to the terms in the deed." There was no evidence that the accused had himself altered the figure 1/9 into 2/9. *Held* that, though the accused used the sale-deed as a genuine document, there was nothing to show that he used it fraudulently

Penal Code (Act XLV of 1860)—*continued.*

or dishonestly, knowing or having reason to believe it to be a forged document, and that, under the circumstances, the accused had not committed the offence under s. 471, I.P.C. KARIM DAD v. CROWN, **25 P.R. 1913, Cr. = 14 Cr. L.J. 667 = 21 Ind. Cas. 907.** (35 C. 820, *R.*).

(3103)—S. 471—*See* CHARGE TO JURY—MISDIRECTION, 8 C.L.R. 542.

(3104)—S. 471—Forgery—When sanction for prosecution to be accorded—*See* CRIM. PRO. CODE, 1898, s. 195, 8 Ind. Cas. 995 = 11 Cr. L. J. 749.

(3105)—S. 477—*See* LEGAL PRACTITIONERS—PLEADER, 22 A. 49, P.C. = 26 I.A. 242 = 3 C.W.N. 736.

(3106)—S. 471—*See* SANCTION TO PROSECUTE—CONDITIONS REQUISITE FOR GRANT OF SANCTION, ETC., 4 Bom. L.R, 268.

(3107)—S. 471—*See* Nos. 51, 54, 56, 64, 335, 489, 490, 491, 1205, 1270, 1290, 1292, 1304, 2803, 3049, 3054, 3055, 3056, 3065, 3072, 3077, 3078, 3084 to 3087-*a*, *supra*.

(3108)—Ss. 471 and 109—*See* CRIM. PRO. CODE, 1898, s. 35, 8 C P.L.R. Cr. 1.

(3109)—*Ss.* 471, 196—*Fraudulent use of forged document as genuine.*—A person, who in a civil suit, is alleged to have used as genuine, a document which he knew to be a forged one, should be charged under s. 471 and not under s. 196 of the Penal Code. EMPRESS v. KHERODE CHUNDER MOZUMDAR, **5 C. 717 = 6 C.L R. 118.** (3 W.R. cr. 17, *D.*) [*R.*, 7 Cr. L.J. 319 = 4 N.L.R. 18, 15 Cr. L.J. 344 = 23 Ind. Cas. 696 = 1 P.R. 1914, Cr. = 139 P.L.R. 1914.]

(3110)—Ss. 471 and 467—*See* CHARGE—FORM OF CHARGE, 6 B.H.C. Cr. 43.

(3111)—*Ss.* 471 *and* 474—*Registration Act* (III *of* 1877), *s.* 82 (*a*)—*Stay of criminal proceedings pending civil suit.*—Where, the alleged executant of a document having denied execution before the Sub-Registrar, an enquiry was held and the District Magistrate directed the prosecution of the person presenting the document for registration and the said person filed a civil suit under s. 77 of the Registration Act, the High Court directed the criminal proceedings to be stayed pending the disposal of the civil suit. RAM CHARAN SINGH v. KING-EMPEROR, **5 C L.J. 233 = 5 Cr. L J. 199.** [*F.*, 13 Cr. L.J. 175 = 13 Ind. Cas. 927, 115 P.L.R. 1912, 21 P.W.R. 1912, Cr.]

(3112)—*Ss.* 471, 474—*Ss.* 195, 476, *Crim. Pro. Code*—*Using as genuine a forged document*—*Filing a forged document as coming from the custody of the person by whom it purported to be held, if constitutes 'user'*—*Offence committed by such act, sanction if necessary for prosecution for*—*Possession of forged document, knowing it to be forged and intending to use it as genuine, prosecution for, if lies without sanction*—*Stay of criminal proceedings pending determination of civil suit.*—Where, in a case under s. 474, I.P.C. the prosecution story was that the accused who was the plaintiff in a rent suit himself filed a *kabuliyat* and an *amalnama* which were forged and which purported to be filed by the complainant, the defendant in the rent suit. *Held*, that the act constituted a user within the meaning of s. 471, I.P.C., and the offence committed was one under that section, and in respect of that offence sanction under s. 195 or an order under s. 476, Crim. Pro. Code, was necessary. That no sanction is necessary for a prosecution under s. 474, I P.C. That the decision of the issues in the rent suit being largely dependent on the question whether the documents in question were or were not genuine, it was expedient that the criminal proceeding should be deferred pending the final disposal of the rent suit. ASRABUDDIN SARKAR v. KALIDAYAL MULLIK, **19 C W.N. 125.**

(3113)—Ss. 471, 474—*See* DOUBLE CONVICTION, 6 N.W.P. 39.

(3114)—Ss. 471, 476—Alternative charge—*See* SESSIONS TRIAL, 10 A.L.J. 473 = 13 Cr.L. J. 861 = 17 Ind. Cas. 797 = 35 A. 63.

(3115)—Ss. 471, 477—*See* SANCTION TO PROSECUTE — MISCELLANEOUS CASES, 9 Bom. L R. 735 = 6 Cr. L.J. 78.

(3116)—*Ss.* 471, 511—*Client handing a false document to pleader.*—Where a person gave his pleader a copy of a false document for the purpose of using it in the trial of his suit, *held*, that he was guilty of an offence under s. 471, and not merely an attempt to commit that offence. LALA OJHA v. QUEEN-EMPRESS, **26 C. 863 = 3 C.W.N. 653.**

(3117)—*Ss.* 471, 511—*Filing forged document though not tendering in evidence*—*Attempt to use forged document*—*Proceeding under s.* 195, *Crim. Pro. Code*—*Costs.*—The filing of a forged document in a Court, with the intention of relying on it at the trial of a case, amounts to an attempt to use such document, though the document itself was not actually used; and the person filing it may be prosecuted for offences under ss. 511 and 471, Penal Code (35 C. 820, 8 Cr. L.J. 398, *Diss.*). It is improper to award costs to a person who applies for sanction under s. 195, Crim. Pro. Code. KRISHNA PRASHAD v. RABINDRA NATH DINDA, **13 Ind. Cas. 99 = 13 Cr L.J. 6.8** [illegible]

—S. 474. [illegible]

(3118)—*S.* 474—*Gist of offence.*—To support a charge under s. 474, I.P.C., it is necessary for the prosecution to prove, (1) that the documents, the subject of the charge, were forged; (2) that the accused knew them to be forged; (3) that he was in possession of them; (4) that he intended that they should be fraudulently or dishonestly used as genuine; and (5) that each of the documents was of the description mentioned either in s. 466 or in s. 467. QUEEN-EMPRESS v. ABAJI RAMCHANDRA, **16 B. 165.**

(3119)—*S.* 474—*Possession of forged document*—*Intention.*—It is not sufficient for a conviction under s. 474 of the Penal Code to say that the prisoner might possibly have used an altered document in his defence in a civil suit.

Penal Code (Act XLV of 1860)—*continued.*

The guilty intent cannot be suspected or surmised. QUEEN v. LOKENATH SHAHA, **W.R. 1864, Cr. 12.**

(3120)—S. 474—*See* Nos. 67, 3072, 3111, 3112 and 3113, *supra.*

(3121)—Ss. 474 and 475—*See* CHARGE TO JURY—MISDIRECTION, 16 B. 165.

— **S. 475.**

(3122)—*S.* 475—*Illegal admission of evidence —Misdirection— Form of charge.*—Where a person was charged with forgery under s. 475, I.P.C., *held* that it was not proper to admit in evidence against him a bundle of suspicious documents in the possession of a person whose only connection with him, was that he was called as his witness and was alleged to belong to the same faction. The circumstance that forgery was common in the village where the accused lived, and that the witness was in possession of forged documents, could not be evidence against the accused for possession of document on a different date. *Held* also that the direction of the Judge to the jury regarding those papers, that they threw much light on the connection of the accused and the witnesses belonging to the same faction, that they showed the extent to which the practice of forgery had gone in the village, and that they were relevant on the question of guilty knowledge or intention, was a misdirection which had prejudiced the accused. A charge under s. 475, I.P.C., should distinctly specify the particular papers bearing a counterfeit mark or device which the accused is alleged to have had in his possession with the intent mentioned in the section. QUEEN EMPRESS v. ABAJI RAM CHANDRA, **15 B. 189.**

(3123)—*S.* 475—*Gist of offence.*—To support a charge under the latter part of s. 475, it is necessary to prove, (1) that the accused was in possession of the papers referred to in the charge; (2) that the devices or marks on those papers were counterfeited on them; (3) that the devices or marks were such as are used for the purpose of authenticating any document described in s. 467, I.P.C.; (4) that the accused intended that the devices or marks should be used for the purpose of giving the appearance of authenticity to documents either then forged or thereafter to be forged. QUEEN-EMPRESS v. ABAJI RAM CHANDRA, **16 B. 165.**

(3124)—*S.* 475—"*Intention to defraud,*" *meaning*.—Where a person was convicted of forging a document in that he erased the name of another to whom along with himself a receipt had been granted by a poundkeeper in respect of cattle trespassing into a forest, with a view to take the sole credit for himself, *held* that there was no "intention to defraud" within the meaning of s. 475 of the Penal Code. QUEEN-EMPRESS v. BALA, **Rat. Un. Cr. C. 627.** (4 B. 65, 10 C. 584, 19 C. 380, 13 C. 351, 12 M. 153, *R.*).

(3125)—S. 475—*See* Nos. 3056, 3088 and 3121, *supra.*

Penal Code (Act XLV of 1860)—*continued.*

— **S. 476.**

(3126)—S. 476—*See* Nos. 3056 and 3114, *supra.*

(3127)—Ss. 476, 40—*See* CRIM. PRO. CODE, 1898, s. 195 (1) (*c*), 12 Bom. L.R. 383 = 6 Ind. Cas. 529 = 11 Cr. L.J. 368.

— **S. 477.**

(3128)—*S.* 477—*Scope of.*—The words "purports to be" in s. 477 make the law of India upon this matter what it has, in a long succession of cases, been held to be in England. In order to constitute an offence under s. 477, it is not necessary that the document must be stamped and receivable in evidence. HIGH COURT PROCEEDINGS, 5TH AUG 1873, NO. 1411, **1 Weir 552 = 7 M.H.C. App. 26.** [*R.*, Rat. Un. Cr. C. 467.]

(3129)—*S.* 477—*Document without consideration*.—Where a document purports to be a valuable security under s. 477, the question whether it is invalid for want of consideration is immaterial. *In re* KOTHA GOUNDAN, **1 Weir 554.**

(3130)—*S.* 477—*Destruction of unstamped document.*—It is not necessary to constitute forgery that the instrument should be available in support of a claim in a Court of law. Though a compulsory payment by Courts of law could not be enforced, if the document was not properly stamped, yet a man might equally be defrauded by a voluntary payment being lost to him. The same principle applies to cases falling under s. 477 in consequence of the use of the words "purports to be." Where an accused person, being indebted to the complainant to the amount of Rs. 164, wrote a rough account containing figures with no particulars, and signed the total, the document not being stamped, and the document being presented sometime afterwards to the accused for payment was torn up after an altercation between them, *held*, that the document was a valuable security, although unstamped, and that the accused was guilty under s. 477, Penal Code. QUEEN-EMPRESS v. RAMASAMI, **12 M. 148 = 1 Weir 553.** [*F.*, 25 C. 207 = 1 C.W.N. 681.]

(3131)—S. 477 — *See* CRIM. PRO. CODE, 1898, ss. 209, 436, 24 M. 136 = 2 Weir 544.

(3132)—S. 477—*See* OFFENCES RELATING TO DOCUMENT, 3 W.R. Cr. 38.

(3133)—S. 477—*See* Nos. 2905, 3087, 3089 and 3115, *supra.*

— **S. 477 A.**

(3134)—*S.* 477-*A*—*Scope of the section—Alteration of accounts made after embezzlement —"Fraud," meaning of.*—It is sufficient to satisfy the words of the section, that the person charged under the section is one who undertakes to perform and does perform the duty of a clerk or servant, whether, in fact, he is a clerk or servant, or not, and though he is under no obligation to perform such duties and receives no remuneration. By fraud is meant an intention to deceive: whether it be from

Penal Code (Act XLV of 1860)—*continued.*

any expectation of advantage to the party himself or from ill-will towards the other, is immaterial. Where after embezzlement of Government money, a person made an alteration in the Government books, the effect of the alteration being to make it appear from the books that certain monies, which had in fact been embezzled, were paid into the Government treasury and so to deceive the Government into the belief that they were not outstanding but had been received, *held*, that the act of the accused would amount to a fraud and would satisfy all the requirements of s. 477-A, Penal Code, inasmuch as the alteration was to be a necessary part of the scheme whereby the Government was to be deprived of their money and the fact was to be concealed by false entries in the books. *In re* ANNASAMI AIYANGAR, **1 Weir 554.** [*F.*, 35 C. 450=7 Cr. L.J. 378=12 C.W.N. 581; *R.*, 11 Cr. L.J. 185=4 Ind. Cas. 1089=U.B.R. 1909, Penal Code, p. 29.]

(3135)—*S. 477-A—Falsification of accounts by partner appointed as manager.*—Where a partner in a firm is appointed as such to manage the business of the firm or to write its accounts, he acts as its servant; and if he falsifies the accounts, he is liable to be punished under s. 477-A, I.P.C. EMPEROR v. LALLOO GHELLA, **6 Bom. L.R. 553=1 Cr. L.J. 757.**

(3136)—*S. 477-A—Crim. Pro. Code, ss. 233, 234, 235—Falsification of accounts—Separate falsifications—Same transaction—Non-specification of entries charged as false—Omission to object in first Court—Accused not prejudiced.*—Where an accused, a public servant, was charged with nine separate falsifications of account. *Held*, that the charge was not illegal under s. 235, Crim. Pro. Code, as all the false entries were made by the accused in the course of one transaction. *Held*, also, that non-specification of the alleged false entries in the charge did not vitiate the trial as the accused knew the subject of the charge and was not prejudiced in his defence and did not object to it in the Court of Session. AIYAGIRI VENKATARAMIAH v. EMPEROR, **13 Cr. L.J. 251=14 Ind. Cas. 603=1912 M.W.N. 548.**

(3137)—S. 477-A—Charge under the above section of falsification of a book or account, more than three in number—*See* CRIM. PRO. CODE, 1898, s. 234, 26 C. 560=3 C.W.N. 412.

(3138)—S. 477-A—*See* FALSE ENTRY, 12 C. W.N. 581=7 Cr.L.J. 378=35 C. 450.

(3139)—S. 477-A—*See* Nos. 63, 2703, 2704, 2705, 2725 to 2730, 3073 and 3087-*a*, *supra.*

——**S. 478.**

See TRADE-MARK.

(3140)—S. 478—*See* No. 73, *supra.*

(3141)—*Ss. 478, 480 — Trade-mark — False mark appearing on box containing goods.*—A person, who sells soap, not manufactured by Pears, in a box, upon which the name of Pears appeared as a maker of soap, uses, by so doing, a false trade-mark under s. 480; and the mark is none the less a false mark, because it appeared upon the box, in which the goods were sold, and not upon the goods themselves. P. MANAVALA CHETTY v. EMPEROR, **1 M.L.T. 409=29 M. 569=5 Cr. L.J. 94.**

(3142)—*Ss. 478, 482—Merchandise Marks Act, IV of 1889, ss. 4, 6—Using title of book—Trade mark—Trade description.*—The complainant, a descendant of Shri Chandu, used to prepare calendars bearing the name of "Shri Chandu Panchang" at Jodhpur and to send each year a copy of such calendar to the publishers in different parts of India allowing them to use the name of "Shri Chandu Panchang" to denote calendars prepared in Jodhpur by descendants of Chandu. These calendars had acquired the reputation that they were prepared by those descendants and under their authority. The defendant, a publisher in Bombay, published a calendar, and used the words "Shri Chandu Panchang" on the cover, although it was not prepared by the descendants of Chandu. The complainant, therefore, proceeded against the defendant under s. 482, I.P.C., and s. 6 of Act IV of 1889. *Held* that the defendant, at best, could not come under s. 482, I.P.C., for the title "Shri Chandu Panchang" could not fall within the definition of trade-mark under s. 478, I.P.C., *Held*, also, that as it was not alleged that the defendant's calendars differed as to the text from the complainant's or were compiled on different principles, the mere fact that they were unauthorized would not bring the defendant's act within the definition of "false trade description" under s. 4 of Act IV of 1889. RADHA KRISHNA v. KISSONLAL SHRIDHAR, **26 B. 289=3 Bom. L.R. 883.** [*R.*, 31 M. 512=17 M.L.J. 490.]

(3143)—Ss. 478, 486—Design or pattern covering whole goods—Not a trade-mark—Copying—No offence—*See* TRADE-MARK, 8 S. L.R. 39=15 Cr.L.J. 670=25 Ind. Cas. 998.

——**S. 479.**

(3144)—*S. 479—Property mark, what constitute.*—A property-mark is intended to denote ownership over all moveable property belonging to a person whether it is all of one kind or different kinds. So long as the person owns moveable properties, his property-mark impressed upon them remains his, though any particular article out of it may, after such impression, pass out of his hands and cease to be his. The function of a property-mark to denote certain ownership is not destroyed because any particular property on which it was impressed has ceased to be of that ownership. The National Bank of India was importing from England for sale in India bars of gold, each bar being of a uniform size, weight and touch, with the words "National Bank of India" impressed upon it in Gujarati character as their property-mark. The gold so imported was, on account of the property mark, known as "Nasraana Bak" among the people, and it obtained a special value in the market. The

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accused placed on the market gold of their own manufacture impressed with the words "Nasranna Bak" in Gujarati. *Held* that the National Bank of India owned a property-mark in the bars of gold imported and sold by them; and that the accused were guilty of counterfeiting that mark. EMPEROR v. DAYABHAI CHAKASHA, **6 Bom. L.R. 513 = 1 Cr. L.J. 581.**

——**S. 480.**

See TRADE-MARK.

(3145)—*S.* 480—*False trade-mark— Offence or a wrong.*—Where the trade-mark used by the accused is a crescent encircling a crown, and the one used by the complainant is a crescent encircling a star, no offence of using a false trade-mark or selling goods under a counterfeit trade-mark is committed. A civil action for damages may lie. A. M. RASOOLKHAN SAHEB v. EMPEROR, **1912 M.W.N. 85 = 13 Ind. Cas. 927 = 13 Cr. L.J. 175.** (11 C.W.N. 887, 31 C. 411, 32 C. 431, *R.*)

(3146)—S. 480—*See* No. 3141, *supra.*

——**S. 482.**

See COUNTERFEITING TRADE-MARK.

See TRADE-MARK.

(3147)—*S.* 482—*Merchandise Marks (Act* IV *of* 1889), *s.* 15—*Prosecution time-barred—Interpretation of statutes.*—The accused was prosecuted once in 1908 and then in 1910 under s. 482, Penal Code, for using a false trade-mark, the charge against him being that he sold oil which was not oil manufactured by the Burma Oil Company, Limited, in second hand tins of that Company's make, without obliterating the Company's trade-mark on the tins, and he was both times acquitted. When the Company by their Agent lodged a fresh complaint alleging the commission of a fresh offence by the accused. *Held*, that the complaint was barred under s. 15 of the Merchandise Marks Act. When the language of a statute, its ordinary meaning and grammatical construction leads to a manifest contradiction of the apparent purpose of the enactment, a construction may be put upon it which modifies the meaning of the words. The intention of the Legislature will be frustrated if it is held that the owner of a trade-mark can stand by for several years while his trade-mark is being infringed continuously, and then bring a criminal complaint in respect of some recent instance in which there has been an infringement. To interpret the section in that way would reduce its provision to a nullity, for it would entirely remove the bar of limitation except in cases where the series of infringements has actually ceased. MAHOMED JEWA MOTELLA v. H.S. WILSON, **12 Cr. L.J. 246 = 10 Ind. Cas. 787 = 4 Bur. L.T. 83.** (22 M. 488, *F.*)

(3148)—S. 482—*See* No. 3142, *supra.*

(3149)—*Ss.* 482, 485, 486— *Trade-mark, counterfeiting, charge for—Trade-mark and trade-name, distinction between—Change of case for prosecution—Merchandise Marks Act* (IV *of* 1889), *ss.* 6 *and* 7—*Dispute of civil nature, if should be brought in the Criminal Court.*—A trade-mark must be some visible concrete device or design affixed to goods, to indicate that they are the manufacture of the person whose property the trade-mark is. It may consist of a name impressed in some distinctive way. Where, however, a manufacturer of umbrellas complained that a rival trader had been passing off his umbrellas as the complainant's manufacture by affixing a mark or design closely resembling the complainant's and containing the name "Butto Kristo Pal," but at the trial the complainant's property in the mark was not established, but the case was pressed as if the offence lay in the accused using the name "Butto Kristo Pal," and, although the accused was charged in the alternative with offences under ss. 6 and 7 of the Merchandise Marks Act, the case was not dealt with on that footing. *Held*—That a conviction under ss. 482, 485, or 486 of the Penal Code could not stand. *Held* further, that the case ought not to have been brought in the Criminal Court, as the dispute in the case was of a civil nature. ANATH NATH DEY v. EMPEROR, **17 C.W.N. 227 = 18 Ind. Cas. 404 = 14 Cr. L.J. 68 = 40 C. 281.**

(3150)—*Ss.* 482 *and* 486—*Using a false trade-mark or selling goods with a counterfeit trade-mark.*—Where the accused, who had opened a shop in close proximity to the shop of the complainant, sold rose water in bottles similar to those which contained the rose water sold by the complainant, and had applied labels to his bottles similar to those used by the complainant, but on closer examination great differences in the labels were discernible, *held* that the accused was not guilty under ss. 482 and 486. SURJA PRASAD v. MOHABIR PROSAD, **11 C.W.N. 887 = 6 Cr. L.J. 151.** [*R.*, 13 Cr. L.J. 175 = 13 Ind. Cas. 927 = 1912 M.W.N. 85.]

(3151)—*Ss.* 482, 486—*Existence of differences not likely to mislad—Conviction under ss.* 482, 486—*Maintainability—Use of the word 'copy-right'—False description.— Conviction under ss.* 6, 7, *Act* IV *of* 1889.—Where the title page of the alleged piracy and the title page of the complainant's book are so different that no one is likely to have been misled, a conviction under ss. 482, 486, Penal Code, cannot be sustained; where, in the title page of his book, the accused has put the word 'copy-right' which is proved to be a false trade description, he is guilty under ss. 6 and 7 of Act IV of 1889. *In re* KANCHI DORASAMY MUDALIAR, **7 M.L.T. 309 = 6 Ind. Cas. 683 = 11 Cr. L.J. 393.**

(3152)—*Ss.* 482, 486—*Gold bar — Marks thereon—Imitation— Unwary and ignorant purchaser likely to be deceived—No ground for deception on close observation—Offence committed —Punishment under s.* 482—*False trade-mark —False property-mark—Difference between— 'National Bank of India' impressed on gold bars—Object—Nature of mark.*— Where the differences between the marks put upon the

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gold bars sold by the accused and those on the bars sold by the Bank would be obvious on ordinary observation even to an unintelligent person who could read either Gujarathi or English, and where, unless he could read one of the languages, the inscription would convey nothing at all, a conviction under s. 486, I.P.C., cannot stand. But where the marks on the accused's bars constitute such an imitation as is sufficiently close to deceive an ignorant and unwary purchaser, the accused could be convicted under s. 482, I.P.C., which covers the case of using a false trade-mark. A property-mark is a mark used for denoting that moveable property belongs to a particular person, whereas a trade-mark is a mark used for denoting that goods are the manufacture or merchandise of a particular person. The object of stamping gold bars with the words 'National Bank of India' is not to inform the public that the gold belongs to the Bank, but to give the assurance that the gold, no matter to whom it belongs for the time being, was originally imported and sold and guaranteed by the Bank; that is, the mark is a 'trade-mark' and not a 'property-mark.' LOKUMAL v. CROWN, **8 S.L.R. 199 = 16 Cr. L.J. 230 = 27 Ind. Cas. 902.**

(3153)—*Ss.* 482, 486—*Merchandise Marks Act* (IV *of* 1889), *ss.* 6, 7—*Person—Limited Company—Liability of, to be convicted and punished—Words "he" and "whoever," meanings of*—Mens rea—*Innocence—Proof—Interpretation of Statutes—Ambiguous language—Penal Act.*—A body corporate can be lawfully prosecuted and on conviction punished for an offence under s. 482 or s. 486, Penal Code. The word "he" in ss. 6 and 7 of the Indian Merchandise Marks Act includes "she" and "it." *Per Hartnoll, Offg. C.J.*—The word "whoever" in ss. 482 and 486, Penal Code, does not refer only to a definite individual or definite individuals and can apply to a corporate body. Where the language of a Statute is not clear, to ascertain the real meaning, the cause or necessity of the law being made should be considered. Every clause of a Statute should be construed with reference to the context and the other clauses of the Act so as, so far as possible to make a consistent enactment of the whole Statute or series of Statutes relating to the subject-matter. Under ss. 482 and 486, Penal Code, the prosecution has not to prove the *mens rea*; and, as the burden of proving innocence is thrown on the accused under those sections, when once a *prima facie* case has been established, a Limited Company, when accused, can prove its innocence by the evidence of its agents or servants or otherwise as it thinks fit. *Per Ormond, J.*—The word "whoever" with which ss. 482 and 486 begin means the same thing as "every person who" in s. 2 (2) of the English Merchandise Marks Act and shows that the provisions of the sections apply to persons generally. The scope of a penal section in an Act would (so far as the language is concerned) be the same whether it began with the words "every person who" or with the word "whoever," unless the word "person" is defined so as to have a more restrictive or a more extended meaning than it in fact has. Limited Companies are not excluded from the operation of ss. 482 and 486, Penal Code, and there is nothing inherent in the nature of a Limited Company which would prevent it from proving its innocence either by showing that it acted without intent to defraud under s. 482, or under s. 486 in any of the ways prescribed in that section. SEENA M. HANIFF & CO. v. LIPTONS LIMITED, **15 Cr. L J. 337 = 23 Ind. Cas. 689 = 7 Bur. L.T. 116.** (1889 24 Q B.D. 90 = 59 L.J. M.C. 13 = 62 L.T. 73 = 38 W.R. 204 = 17 Cox C. C. 55 = 54 J.P. 436, 1898 2 Q.B.D. 19 = 62 J.P. 439 = 67 L.J. Q.B. 601 = 78 L.T. 658 = 14 T.L.R. 395 = 46 W.R. 573 = 19 Cox C.C. 127, (1902) 2 K.B. 1 = 71 L.J K.B. 656 = 66 J.P. 774 = 87 L.T. 51 = 18 T.L.R. 533 = 20 Cox C.C. 279, *F.*)

—— **S. 485.**

(3154)—S. 485—*See* No. 3149, *supra.*

(3155)—*Ss.* 485 *and* 486—*Merchandise Marks Act* (IV *of* 1889), s. 3—*Trade mark—Property-mark—Evidence of user and of property in the mark.*—A mark to be a trade or property mark must be a mark used for denoting that the goods are the manufacture of the merchandise of a particular person. The mark, in itself, does not denote anything of the kind and it is not necessary that it should do so. The mere fact, that a certain firm imported and sold goods with the mark of a firm which had ceased to exist, in the absence of proof of any transfer or assignment of the mark or of the former having succeeded to the business or the good-will of the latter, is not sufficient to warrant a conviction for infringement of trade or property-mark. ANOOKOOL CHUNDER NUNDY v. QUEEN-EMPRESS, **27 C. 776 = 4 C. W.N. 423.**

—— **S. 486.**

See COUNTERFEITING TRADE MARK.

See TRADE-MARK.

(3156)—*S.* 486—*Trade-mark—Counterfeiting a trade-mark—Representation.*—In order to prove that a trade-mark is an imitation of the other, it is not necessary that there should be a resemblance in every case. It is sufficient if the resemblances are of such a nature as to be calculated to mislead an unwary purchaser. A representation that the goods of the manufacture of A are those of B need not be made orally or in writing, but it may be made by the manner in which the goods are made up, by the wrapper, or by the name or design. The counterfeit is itself a representation. EMPEROR v. TAPIDAS DURLABHDAS, **9 Bom. L.R. 732 = 6 Cr. L.J. 73.** (1882, 7 Ap. Cas. 219, *R.*)

(3157)—*S.* 486—*Selling books with counterfeit property-mark—Indian Merchandise Marks Act* (IV *of* 1889), s. 2 (4).—Books are the subject of trade and are covered by the word "goods" in s. 2, cl. 4 of Act IV of 1889. Therefore, a

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person selling a book with a counterfeit property-mark is liable to be convicted under s. 486 of the Penal Code. KANAI DAS BAIRAGI v. RADHA SHYAM BASACK, **26 C. 232=3 C.W.N. 97.** [*F.*, 17 M.L.J. 490 ; *R.*, 3 Bom. L.R. 883=26 B. 289.]

(3158)—*S.* 486—*Burden of proving good faith.*—Under s. 486, the *onus* is not thrown upon the complainant to show that the accused acted dishonestly, but it is thrown upon the accused to bring himself within the exceptions to the section. HOLLAND BOMBAY TRADING COMPANY v. BUKTEAR MULL, **8 C.W.N. 421 =1 Cr. L.J. 300.**

(3159, 3160)—*S.* 486—*Counterfeiting trade-mark—Merchandise Marks Act* (IV *of* 1884), *s.* 14—*Costs of successful party—Costs in appeal.*—A person who employs a lable which in general resembles the lable used by another manufacturer is guilty of counterfeiting the trade-mark under s. 486, Penal Code, irrespective of the circumstance that the registered trade-mark of the one is quite different from the trade-mark of the other. An appellate Court can award the costs of appeal, under s. 14 of the Merchandise Marks Act. EMPEROR v. GANPAT SITARAM MUKADAM, **16 Bom. L.R. 78=2 Bom Cr. C. 177=15 Cr. L.J. 522=24 Ind. Cas. 834.**

(3161, 3162)—S. 486—*See* Nos. 73, 3143, 3149 to 3153 and 3155, *supra.*

—— **S. 489.**

(3163)—S. 489—*See* No. 2777, *supra.*

—— **S. 489-D.**

(3164)—*S.* 489-*D*—*Instruments and materials for counterfeiting found in possession—Counterfeiting currency notes—Evidence, necessary to prove—Nature of—Articles such as would be used for purposes of counterfeiting—Expert evidence — Burden of proof - Difference between English Law and Indian Law—Possession of articles for the study of art of counterfeiting—No offence under s.* 489-*D of the Penal Code.*—A was tried and convicted under s. 489-D, I.P.C., on a charge of being in possession of materials and instruments for the purpose of forging or counterfeiting currency notes. *Held* (*Per Abdur Rahim, J.*)—In order to establish a charge under s. 489-D what the prosecution has to prove in the first place, is that the machinery, instrument or material found in the possession of the accused person is such as would be used in the production of a counterfeit note, and if that is proved, the next element which is to be proved is that the accused knew or intended that such article would be used for the purpose of counterfeiting currency notes. It may be that, in some cases, a mere inspection of the article would satisfy the Court that they are capable of being used in the making of counterfeit notes. But where that is not the case, it is the duty of the crown to adduce evidence of a competent and qualified witness, who would be able to explain to the Court the process by which the instruments or the materials in question could

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be used in making a counterfeit note. The word " counterfeit " should be understood in the sense that the resemblance must be such as may in circulation ordinarly impose upon the world. But the standard of resemblance must not be judged in the light of the intelligence of the most primitive people who may be found in the country. Though the resemblance need not be perfect, yet it must be sufficient to deceive people of ordinary intelligence who are familiar with currency notes. The fact that the instruments and materials found in the possession of the accused are actually of any use in producing a counterfeit note must be proved by evidence of experts. (1 Moody P. 122 and 1 East P.C. 171, *R.*) *Per Sundara Aiyar, J.*—Before the Court could come to the conclusion that the accused had the objects found in his possession *for the purpose of counterfeiting*, the Crown should establish that he has formed in his mind the purpose or intention of counterfeiting currency notes. It is not necessary that all articles required for counterfeiting should be found on him, to hold him guilty of an offence under the section (1 East P.C. 171, *R.*) (concurring with *Ayling, J.*, on this point). A man may not be able to command all the articles required for the purpose, but he may be actually proved to be in possession of only some. This would not deter the Court from convicting him of an offence under the statute. The burden lies on the prosecution to prove that the accused had the purpose of using the articles for counterfeiting. The accused is not called upon as under the English Law to show that he had the articles for an innocent purpose (*Ayling, J., contra*). *Per Ayling, J.*—There is absolutely nothing in s. 489-D.I.P.C, to indicate that the possession of a complete outfit for the manufacture of counterfeit notes is necessary to constitute an offence thereunder. The possession of even a single implement would be sufficient, provided it were shown that such implement was intended for the work of counterfeiting. This intention must, in almost every case, be a matter of inference dependent on facts particularly on the nature and the number of the articles found, their suitability for counterfeiting work and for innocent purposes. It is always open to the accused person to show that he possessed them for innocent purposes, and even if he does not, where the nature of the articles is consistent with innocent as well as guilty purposes, no Court would draw an inference adverse to the accused. Where, on the other hand, the nature of the articles is such as to render them peculiarly and specially suitable for counterfeiting work, and useless for any other that can be suggested, the intention to use them for counterfeiting may be fairly inferred, subject to rebutment by the accused. There may be cases where, though the ultimate object of the possessor be counterfeiting, the particular articles found are of such ruder or imperfect nature as to indicate unmistakably that the work was only in an experimental stage, and that they could not be intended for utilization in the preparations of the finished

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counterfeit, or there may be cases where the articles found, though fit for counterfeiting, have been broken or otherwise rendered incapable of further use. In either of these cases, no offence under s. 489-D could be said to have been committed. *In re* ABDUL RAHIMAN, 10 M.L.T. 108 = 11 Ind. Cas. 241 = 21 M L J. 766 = 12 Cr. L.J. 377. (1 Weir 219, *Commented on.*)

——S. 490.

(3165)—*S.* 490—*Scope of.*—S. 490, Penal Code, does not apply to a servant hired by the month and under a continuing implied contract to serve until the engagement is terminated by a month's notice. The first branch of the section clearly points at a specific contract to convey or conduct in accordance with the terms of a special contract for one particular act of hiring and conducting. This seems clear, because where the word "servant" occurs, he is rendered liable if he fails in his contract to act as servant during a voyage or journey. HIGH COURT PROCEEDINGS, 27TH MARCH 1863, 1 Weir 559. [*R.*, U.B.R. 1892—1896, Vol. I, 288.]

(3166)—*S.* 490—*Offence under.*—Where the accused was engaged in Madras to be a mety in the complainant's service on a monthly salary, and after arriving at Cuddapah, absconded, *held*, that the accused was not guilty of an offence under s. 490. HIGH COURT PROCEEDINGS, 7TH JANUARY 1868, NO. 28, 1 Weir 559. [*R.*, U.B.R. 1892—1896, Vol. I, 288.]

(3167)—*S.* 490—*Engagement to serve somebody when at head-quarters and also when in camp.*—Where the accused was engaged to serve the complainant as a butler, both when the latter was at his head-quarters and when his duty called him to go into camp, *held*, that the engagement was not an engagement for a journey within the meaning of s. 490, Penal Code. *In re* VIRASAMI, 1 Weir 560. [*R.*, U.B.R. 1892—1896, Vol. I, 288.]

(3168)—*S.* 490—*Contract to supply carts.*—S. 490, I.P.C., being a penal enactment, must not be extended by construction beyond its obvious scope. It applies properly not to a contract to go from one place to another in order, at the latter, to give the use of a cart at a particular rate of remuneration to carry goods for a particular distance, but applies only to a contract to take particular goods or a particular load of goods from one specified point to another. *In re* KESHAV RAMCHANDRA, Rat. Un Cr. C. 349 = Cr. Rg. 39 of 1887.

(3169)—*S.* 490—*Conveying paddy in machhwa.*—A failure of a contract to convey paddy in one's *machhwa* is not an offence under s. 490 of the Penal Code. QUEEN-EMPRESS v. VITHU, Rat. Un. Cr. C. 608 = Cr. Rg. 26 of 1892.

(3170)—*S.* 490—*Charge under, when sustainable.*—A charge under s. 490 of the Penal Code, can only stand when there is proof that the accused omitted to perform some one of the specific acts named in that section, he being bound to do so by lawful contract; merely abandoning service before an advance of wages has been earned is no offence under that section. QUEEN-EMPRESS v. RAM NIDH, S. C. 87, Oudh.

(3171)—*S.* 490—*Offence under, may be committed by hired servant paid by the month—Ill-treatment.*—An offence under s. 490, I.P.C., may be committed on or in connection with a journey just as much by a hired servant paid by the month as by a person hired for a single occasion. Ill-treatment of course is an excuse for a breach of contract under the above section. But whether an abuse amounts to an ill-treatment to enable the servant to break his contract, is a question of fact in each case. QUEEN-EMPRESS v. NANET KHAN, U.B.R. 1892—1896, Vol. I, 288.

——S. 491.

(3172)—*S.* 491—*Cook leaving service suddenly.*—S. 491, I.P.C., does not apply to a person who is engaged only as an ordinary cook to a family and is not bound by a contract to attend on or to supply the wants of any helpless person. QUEEN-EMPRESS v. SOLOMON, Rat. Un. Cr. C. 354 = Cr. Rg. 43 of 1887.

——S. 492.

(3173)—S. 492—*See* ACT XIII OF 1859, s. 2, 20 P.R. 1876, Cr., 28 P R. 1904, Cr.

——S. 493.

(3174)—S. 493—*See* No. 412, *supra.*

——S. 494.

See BIGAMY.

(3175)—*S.* 494—*Native Christian marrying a Hindu woman during the lifetime of his first wife.*—A Native Christian having a Christian wife married a Hindu woman, according to Hindu rules, without renouncing his religion. *Held*, that the second marriage of the accused should be treated in law as an adulterous union, and, therefore, void within the terms of s. 494 of the Code, by reason of its having taken place during the lifetime of the first wife. He was, therefore, guilty of bigamy under s. 494 of the Code. EMPEROR v. LAZAR, 30 M 550 = 2 M.L.T. 345 = 17 M.L.J. 476 = 6 Cr. L J. 338. (10 M. 218, 18 C. 264, 3 M.H.C. App. 7, *F.*). [*R.*, 11 Cr. L J. 682 = 8 Ind. Cas. 572 = 33 M. 371.]

(3176)—*S* 494—*Invalid divorce — Second marriage, validity of.*—Although among Rajput Guzaratis, a husband is allowed to divorce his wife for sufficient reasons, such as incontinence, yet, where it is not proved there is any sufficient reason for the divorce, if the wife goes through the ceremony of second marriage with another person, both the parties, as well as the priest who officiates at the marriage, are guilty of an offence under s. 494, I.P.C. EMPRESS v. UMI, 6 B. 126. [*R.*, Rat. Un. Cr. C. 440.]

(3177)—*S.* 494—Pat *marriage in the Central Provinces.*—*Pat* marriage is well recognized amongst many of the lower castes in the

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Central Provinces, and the legitimacy of children born of a *pat* marriage is never questioned. A woman who contracts a *pat* marriage with another man during the lifetime of her first husband and without his consent is punishable under s. 494 of the Code. RAMJEE TELI v. RAGHO TELI, **12 C.P.L.R. Cr. 19.**

(3178)—*S.* 494—*Bigamy—Marriage during infancy—No consummation.*—The parties contracting a second marriage will not be held guilty of bigamy, if the marriage is solemnised in their infancy and has never been consummated by cohabitation. CROWN v. NAIN SUKH, **S.C. 16, Oudh.**

(3179)—*S.* 494—*Re-marriage of Hindu when Christian wife alive—Whether bigamy.*—The accused, a Hindu convert to Christianity, married a Christian woman according to the rites of Roman Catholic religion. Subsequently he reverted to Hinduism, and during the lifetime of his Christian wife, married a Hindu woman in accordance with Hindu rites. *Held*, the offence of bigamy was not committed. EMPEROR v. ANTONY, **33 M. 371=8 Ind. Cas. 572 =11 Cr. L.J. 682.**

(3180)—*S.* 494—*Bigamy—Authority of caste.*—The Court does not recognize the authority of the caste to declare a marriage void, or to give permission to a woman to re-marry. A *bona fide* belief that the authority of the case made a second marriage valid, although it was not so according to law, is no defence to a charge under s. 494, I.P.C., but it may be taken into account in mitigation of punishment. REG. v. SAMBHU RAGHU, **1 B. 347.** [*F.*, 4 B. 330; *R.*, Rat. Un. Cr. C. 440; *Expl.*, 4 B. 545; *D.*, 17 B. 400.]

(3181)—*S.* 494—*Bigamy—Good faith, marriage contracted in—Belief in legal consequences—Commitment, quashing of—Crim. Pro. Code, s.* 215—*Mahomedan Law of the Hanafi sect—Iddut, marriage during period of, if valid—Apostacy of husband, if renders marriage void—Status of parties during Iddut—Marriage, dissolution of—Separation, effect of.*—Marriage of a Mahomedan man and woman is rendered *ipso facto* void by the apostacy of the former, though there are certain methods by which the marriage tie may be renewed. *Per Sharfuddin, J.*—From the date of his apostacy, the husband ceases to be her husband and he can re-marry her during the period of *Iddut* if he reverts to Islam. In every form of separation caused either by *Talaque* or apostacy, the woman has to observe the period of *Iddut*. A woman's marriage during *Iddut* is illegal, but in case of *Talaque Rajai*, the husband can continue his conjugal rights, without a re-marriage, if he relents during the *Iddut*. If a Mahomedan woman marries another during the period of *Iddut*, while yet her former husband remains an apostate, although her second marriage, if it can be called a marriage, is not a legal marriage, she cannot be said to have gone through the form of a second marriage while her legal husband was alive. *Per Holmwood, J.*—Her second marriage is not void by reason of its taking place during the life of a prior husband but by reason of a special doctrine of the Mahomadan law of *Iddut* with which the Indian Penal Code has nothing to do. Where parties act in good faith on what they believe to be a sound interpretation of a very difficult point of Mahomedan law, even though they are mistaken, the consequence cannot be visited upon them in a Criminal Court administering the penal laws against bigamy; the consequence is a purely civil one, namely, the nullity of the second marriage. ABDUL GANI v. AZIZUL HUB, **15 C.L.J. 263=16 C.W.N. 481=39 C. 409=13 Cr. L.J. 257=14 Ind. Cas. 641.**

(3182)—*S.* 494—*Crim. Pro. Code, s.* 192—*Bigamy by minor wife—Complaint—'Person aggrieved.'*—Where the offence of bigamy is committed by a girl having a husband who is of age, the husband, and not the father of the girl, is the 'person aggrieved,' within the meaning of s. 198, Crim. Pro. Code, and as such entitled to institute complaint of an offence under s. 494, Penal Code. SESSIONS JUDGE OF KISTNA v. GUDRU SUBBAMMA, **13 Cr.L.J. 204=14 Ind. Cas. 204.**

(3183)—*S.* 494—*Bigamy—Person aggrieved—Code of Criminal Procedure* (*Act* V *of* 1898), *s.* 198—*Procedure—Commitment.*—In a case of bigamy, the person aggrieved is either the first husband or the second husband, and not the father. Hence, where, in such a case, a complaint was preferred by the father of the husband, under s. 494, Indian Penal Code, but not by either of the husband, *held*, there was no valid complaint before the Court and the commitment was bad. KING-EMPEROR v. LALA, **7 A.L.J. 10=32 A. 78=5 Ind. Cas. 176 =11 Cr. L.J. 51.**

(3184)—*S.* 494—*Institution of proceedings by husband's brother.*—The brother of a lunatic whose wife is charged with bigamy is not a "person aggrieved" by such offence within the meaning of s. 198, Crim. Pro. Code, 1882. *In the matter of* BAI RUKHMANI, **Cr. Rg. 7 of 1886.**

(3185)—*S.* 494—*Adultery—Woman going to accused of her own accord—Sentence.*—When the accused is convicted of an offence under s. 498 of the I.P.C., and it appears that the woman, being not on good terms with her husband, went to accused of her own accord, a sentence of one year's rigorous imprisonment is too severe. RASUL KHAN v. KING-EMPEROR OF INDIA, **33 P.L.R. 1910=24 P.R. 1910, Cr.=8 Ind. Cas. 226=11 Cr. L.J. 597.**

(3186)—S. 494—*See* ABETMENT. 4 P.R. 1888, Cr.

(3187)—S. 494—*See* COMPLAINT—INSTITUTION OF COMPLAINT—PRELIMINARIES, 1 C.L R. 523.

(3188)—S. 494—*See* CRIM. PRO. CODE, 1898, s. 198, 3 C.L.J. 38=3 Cr. L.J. 187.

(3189)—S. 494—*See* CUSTOM, 1 Weir 568.

Penal Code (Act XLV of 1860)—*continued.*

(3190)—S. 494—*See* Nos. 134, 492, 493, 494 and 2350, *supra.*

(3191)—*Ss.* 494, 496—*Ceremony of marriage gone through by parties.*—S. 496 of the Penal Code applies to cases in which a ceremony is gone through which does not constitute, but is believed by one of the parties to constitute, a marriage ; where the ceremony gone through, constitutes a lawful marriage but for previous marriage, s. 494 properly applies. REG. v. RAMA SONA, **Rat. Un. Cr. C. 77=Cr. Rg. 24-7-1873.**

(3192)—*Ss.* 494, 497, 498—*Complaint under* ss. 494 *and* 498—*Trial under s.* 497—*Legality.*—Where the husband of a woman preferred a complaint of offence under ss. 494 and 498 of the Penal Code, *held*, that the complaint did not include an offence under s. 497, and that the Magistrate had no jurisdiction to try the accused for such offence. QUEEN-EMPRESS v. NALYA, **Rat. Un. Cr. C. 531=Cr. Rg. 65 of 1890.**

(3193)—*Ss.* 494 *and* 498—*Legality of conviction under s.* 498 *while complaint made under* s. 494.—The Chief Court declined to interfere with a conviction in a case where a husband charged a wife with bigamy and her father and another H with abetment of it—these latter being convicted under s. 498, because the facts complained of as constituting an offence under s. 494, Penal Code, were held sufficient to bring the proceedings under s. 498, Penal Code, within the Magistrate's jurisdiction. EMPRESS v. HASHMAT, **19 P.R. 1882, Cr.** (5 P.R. 1879, Cr., *R.*)

——**S. 495.**

(3194)—S. 495—*See* No. 320, *supra.*

——**S. 496.**

(3195)—*S.* 496—*Illegal marriage—Bigamy.*—A conviction under s. 496, Penal Code, for falsely undergoing a marriage ceremony must be supported by proof or fraudulent or dishonest intent. The mere act of permitting an illegal marriage to take place in one's house does not constitute the abetment thereof, as the law construes abetment. QUEEN v. KUDUM, **W.R. 1864, Cr., 13.**

(3196)—S. 496—*See* MURDER, 6 Bom. L.R. 248.

(3197)—S. 496—*See* Nos. 250 and 3191, *supra.*

—— **S. 497.**

See ADULTERY.

See ENTICING AWAY MARRIED WOMAN.

(3198)—*S.* 497—*Adultery—Criminal intention.*—Where after a decree had given an option to the wife to return to her husband or to pay him money, the accused contracted *Natra* marriage with the woman, after payment of the money mentioned in the decree, *held* that the accused could not be convicted for adultery, as it could not be held that the accused and the woman did not believe that the latter was at liberty to re-marry. REG. v. MANOHAR RAJI, **5 B.H.C. Cr. 17.** [*R.*, 1 B. 97, 4 B. 545.]

Penal Code (Act XLV of 1860)—*continued.*

(3199)—*S.* 497—*Offence under—Omission by husband to take steps for a long time—Effect.*—Where a husband omits to take any steps against the accused for six or seven years, *held*, that the offence under the section has been condoned by the husband and the accused cannot be convicted under the section. JASIMADDIN SHEIKH v. ICHOHAK MISTRI, **1 C.W.N. 498.**

(3200)—*S.* 497—*Evidence of adultery.*—The evidence in a case of adultery consisted of the statements of the woman, the statements of witnesses who said they had seen the accused and the woman talking and laughing together ; the statements of witnesses as to the allegations made by the woman before a *panchayat*, and of witnesses who said they had heard the accused say before the *panchayat* that he was in fault.—*Held* that the fact that the accused and the woman had been seen laughing and talking together was no proof of sexual intercourse ; that the allegations of the woman before the *panchayat* and the admission of the accused should not have been admitted in evidence, and the statement of the woman, though evidence, was not reliable. EMPRESS v. GAURI, **A.W.N. 1883, 129.**

(3201)—*S.* 497—*Adultery—Proof of marriage between complainant and the woman—Evidence Act, s.* 50.—To justify a conviction under s. 497, Penal Code, the actual fact of the marriage between the complainant and the woman must be proved in some way or another. EMPEROR v. BAHU DHONDI, **17 Bom. L.R. 75=3 Bom. Cr. C. 8=16 Cr. L.J. 213=27 Ind. Cas. 837.**

(3202)—S. 497—*See* ABATEMENT OF PROSECUTION, 4 M.H.C. App. 55=2 Weir 235.

(3203)—S. 497—*See* ATTEMPT, 13 P.R. 1879, Cr., 25 P.R. 1902, Cr.

(3204)—S. 497—*See* CHARGE—ALTERATION OF CHARGE, A.W.N. 1882, 165.

(3205) — S. 497— *See* COMPENSATION — GENERAL, 9 Cr. L.J. 502=2 Ind. Cas. 159.

(3206) — S. 497 — *See* COMPOUNDING OFFENCE, 2 A. 339.

(3207)—S. 497—*See* CULPABLE HOMICIDE NOT AMOUNTING TO MURDER, A.W.N. 1885, 197.

(3208)—S. 497—*See* JUDGMENT, A.W.N. 1885, 31.

(3209)—S. 497—*See* Nos. 134, 495, 2238, 2409, 2410, 3033, 3192, *supra.*

(3210)—*Ss* 497 *and* 498—*Scope of the sections—What constitute offence under.*—Ss. 497 and 498 are, evidently, intended for the protection of husbands who alone can institute prosecution for offences under them. It is the taking or enticing of the wife from the husband or the person having the care of her on his behalf for illicit purpose that constitutes the offence under s. 498. If, whilst the wife is living with her husband, a man, knowingly, goes away with her in such a way as to deprive the

Penal Code (Act XLV of 1860)—*continued.*

husband of his control over her with the intent stated in the section, there is a taking within the meaning of the section. The wife's complicity in the transaction is no more material under this section than it is on a charge of adultery. The offence is committed, although the advances and solicitations proceeded from the woman, and the accused had, for some time, refused to yield to her request. QUEEN v. KUMARASAMI, **1 Weir 569=2 M.H.C. 331.** [*F*., 4 M.H.C. 20=1 Weir 571.]

(3211)—*Ss.* 497, 498—*Crim. Pro. Code* (1872), *ss.* 296, 297, 478—*Conviction for enticing away married woman—Alteration of conviction to one for adultery by Sessions Judge—Procedure.*—On a complaint by the husband, the accused was convicted by the Magistrate under s. 498, of enticing away the complainant's wife. The Court of Sessions altered the conviction to one under s. 497 for adultery. The same Court subsequently referred the case to the High Court, observing that the alteration by it of the conviction to one under a section relating to an offence triable by the Court of Sessions was an oversight, and requesting that the order may be annulled and another order substituted. *Held*, that, although the Sessions Judge's order was illegal, it was not possible, to cancel it and direct the Sessions Judge to act under the provisions of the second clause of s. 296, Crim. Pro. Code, 1872, and direct a committal, for, the proceedings showed that no complaint under s. 497, I.P.C., had been instituted in terms of the Crim. Pro. Code. The only possible procedure was to set aside the order, to quash the conviction and sentence, and to leave the husband to his remedy by complaint under s. 497, I.P.C., or as otherwise advised. EMPRESS v. BADON, **A.W.N. 1881, 112.** [*R*., A.W.N. 1892, 112.]

(3212)—*Ss.* 497 *and* 498—*Discharge of accused for want of proof of marriage—Re-trial for the examination of the wife.*—Where a Sessions Judge ordered a re-trial of a case of adultery and enticing away a married woman, on the ground that the wife, whom the complainant refused to call as witness, should have been examined, the High Court set aside the order of re-trial as it was admitted that the prosecution had failed to prove the fact of marriage, and as it was not alleged that any evidence tendered by the prosecution was not taken by the Magistrate. CHUNDER NATH GHOSE v. NUNDOLOLL CHATTERJI, **11 C. 81.**

(3213)—*Ss.* 497 *and* 498—*Validity of the marriage — Mahomedan Law.*—The question of the validity of the marriage is vital to the commission of an offence under Ch. XX of the Penal Code. The proof of a *de facto* marriage is not sufficient for a conviction under ss. 497, 498, Penal Code. A marriage between a Mahomedan and his wife's sister in the *nika* form during the lifetime of the wife and within four months and ten days of the death of the woman's husband is not valid according to Mahomedan Law. The mere fact of the marriage being celebrated is not sufficient to prosecute an accused person either under s. 497 or s. 498. DANESH SHEIKH v. TAFIR MANDAL, **7 C.W.N. 143.** [*R*., 25 M.L.J. 370.]

(3214)—*Ss.* 497, 498—*Complaint by husband of an offence under s.* 497—*Conviction under s.* 498 — *Validity.*—Case where a conviction under s. 498, on a complaint by the husband of an offence under s. 497, I.P.C., was set aside by the Chief Court. SHER SINGH v. CROWN, **18 P.R. 1873, Cr.** (11 P.R. 1872, Cr., *R*.)

—— **S. 498.**

See ADULTERY.

See ENTICING AWAY MARRIED WOMAN.

(3215)—*S.* 498—*Scope of.*—The words "such woman" in s. 498 do not mean "such woman so enticed as aforesaid," but do mean "such woman whom he knows or has reason to believe to be the wife of any other man" and the detention of such woman with the intent therein provided is one of the offences comprehended by the section. EMPRESS v. NIADAR, **10 A. 580=A.W.N. 1888, 217.** [*R*., 16 P.R. 1891, Cr.]

(3216)—*S.* 498—*Gist of the offence.*—It is the taking away of a woman from her husband and not the enticement to any person that is the gist of the offence under s. 498, Penal Code. It does not matter whether a person, who entices a woman away, is her paramour, or, if he is only a third party, whether she will ever meet a paramour; it is enough that she is induced to actually leave her husband's protection with the intention that she may have illicit intercourse with any person or with intent to remain away from her husband indefinitely. QUEEN-EMPRESS v. GAMAN, **9 P.R. 1899, Cr.**

(3217)—*S.* 498 — "*Conceals or detains,*" *meaning of.*—Physical constraint of the wife is not essential to the offence under s. 498. The words of the section "conceals or detains" may be and were intended to be applied to the enticing or inducing a wife to withhold or conceal herself from her husband and assisting her to do so, as well as to physical restraint or prevention of her will or action. Depriving the husband of his proper control over his wife, for the purpose of illicit intercourse, is the gist of the offence of concealing or detaining a wife, as it is of the offence of taking away a wife under the same section and a detention occasioning such deprivation may be brought about simply by the influence of allurements and blandishments. CRIMINAL PETITION NO. 12 OF 1868, **1 Weir 571=4 M.H.C. 20**

(3218)—*S.* 498 —"*Detention*" *under section, nature of.*—A husband lodged a complaint against an accused person alleging certain conduct on the accused's part towards his wife, which, if proved, would render the accused liable to punishment under s. 498, Penal Code; but in the complaint, the accused was charged with an offence under s. 371, Penal

Penal Code (Act XLV of 1860)—*continued.*

Code. The accused being convicted under the first mentioned section, or, in the alternative, under ss. 498 and 109, applied for revision on the grounds that there was no complaint by the husband under s. 498, Penal Code, as prescribed by s. 199, Crim. Pro. Code, 1882, that there was no legal evidence of marriage and that there had been no detention of the woman under s. 498, Penal Code. *Held*, that the complaint as lodged was sufficient to support a conviction under s. 498, as the complainant has only to state his facts to which the Magistrate must apply the law, that the statements of the husband and wife were sufficient legal evidence of the marriage, and that detention of the kind required by s. 498, Penal Code, was proved, the gist of the offence being that a woman should be kept away, by force or by persuasion, inducements or promises from her husband against his, as distinguished from her own will, and such a detention being possible notwithstanding the acquiescence of the woman therein. PIRAN DITTA v. QUEEN-EMPRESS, **23 P.R. 1895, Cr.**

(3219)—*S.* 498—"*Any such woman*," *meaning of the expression.*—The expression "any such woman" in s. 498, Penal Code, means any woman who is, to the knowledge of the offender, the wife of another man, not any woman who has been taken or enticed away. ALA BAKHSH v. EMPRESS, **16 P.R. 1891, Cr.** (4 A. 251, 10 A. 580, *R.*).

(3220)—*S.* 498—*Evidence Act* (I *of* 1872), *s.* 50—*Proof of marriage in case of offences under s.* 498, *Penal Code.*—Where proof of marriage is an essential element of a crime, as is the case with s. 498, Penal Code, the marriage must be proved in the ordinary way, *i.e.*, by other and more reliable evidence than that of the mere "opinion" expressed by conduct, of a person who, as a member of the family or otherwise, has special means of knowledge (exception to s. 50 of the Evidence Act). Where, in a charge of enticing away a married *Maravar* woman, the witnesses for proving the marriage were the complainant, his wife, and her mother, and none of them were cross-examined as to the *factum* or validity of the marriage, the accused person not impugning its validity, *held*, that the marriage was sufficiently established. QUEEN-EMPRESS v. SUBBARAYAN, **9 M 9 = 1 Weir 572 = 9 Ind. Jur. 464.** (5 C. 566, *Disc.*) [*R.*, 36 A. 1 = 11 A.L.J. 994 = 15 Cr. L J. 78 = 22 Ind Cas. 430, 5 P.R 1891, Cr.; *D.*, 13 Cr. L.J. 541 = 15 Ind. Cas. 813 = 5 S.L.R. 270.]

(3221)—*S.* 498—*Charge of enticing of taking away married woman—Marriage to be proved.*—The fact and the legality of the marriage is a material element in a case of enticing or taking away or detaining with criminal intent a married woman, and must be proved as strictly as any other material fact, but it is not necessary to prove it in any particular way. NAZIR KHAN v. KING-EMPEROR, **11 A.L.J. 994 = 22 Ind. Cas. 430 = 15 Cr. L.J. 78 = 36 A. 1.**

Penal Code (Act XLV of 1860)—*continued.*

(3222)—*S.* 498—*Charge of enticing away married woman—Evidence of marriage* —Where a charge is made of enticing away a married woman, the Court should require some better evidence of the marriage than the mere statement of the complainant and the woman. QUEEN EMPRESS v. DAL SINGH, **20 A. 166 = A W.N. 1898, 7.** [*F.*, 13 Cr. L.J. 541 = 15 Ind. Cas. 813 = 5 S.L.R. 270; *R.*, 36 A. 1 = 11 A. L.J. 994 = 15 Cr. L.J. 78 = 22 Ind. Cas. 430, 31 B. 218 = 9 Bom. L.R. 148 = 5 Cr. L J. 164, A. W.N. 1898, 186, 10 Cr. L.J. 235 = 2 S.L.R. 22.]

(3223)—*S.* 498—*Proof of marriage.*—Where the marriage of a woman is as essential element of the crime charged, as in bigamy, adultery and enticing away a married woman, the marriage must be strictly proved in the regular way, that is, not merely by the admission of the complainant and his wife, but by the direct evidence of the witness speaking to the facts said to constitute the marriage, in order that the Court may determine whether what they (witnesses) state to have taken place did take place in fact, and, if so, whether it constitutes a marriage in point of law. QUEEN EMPRESS v. PIRTHI, **3 O C. 342.**

(3224)—*S.* 498—*Valid marriage to be strictly proved—Definite finding of criminal intimacy essential.*—In a prosecution for an offence under s. 498, I.P.C., the witnesses must depose to the facts pertaining to the marriage, and leave the Court to decide whether such facts constitute a valid marriage. Statements which are mere assumptions of what is to be proved are irrelevant. Marriage is a mixed question of law and fact. The finding by the Magistrate that "the accused took away two young women with intent to have criminal intercourse with one of the girls" is not a valid finding. There must be express finding as regards intention to have criminal intercourse with the girl who is the object-matter of the offence. IMPERATOR v. M. PETERS, **2 S L.R. 22, Cr = 10 Cr. L J. 235.** [*F.*, 13 Cr. L.J. 541 = 15 Ind. Cas. 813 = 5 S.L. R. 270.]

(3225) —*S.* 498—*Proof of marriage—Magistrate to decide question of marriage.*—A Magistrate, trying a charge under s. 498, Penal Code, ought to decide the question of marriage for himself, and not refer the complainant to the Civil Court to prove his marriage before taking further steps on the criminal side. CROWN v. BAZAI, **2 P.R. 1879, Cr.**

(3226)—*S.* 498—*Wife must be lawful wife—Marriage must be a legal one.*—As there could be no legal marriage between a Bania by caste and a Jhiwari woman, such Bania could not make a valid complaint, under s. 498, that his wife was enticed away. MOKANDI v. MOHRI, **17 P.R 1893, Cr.**

(3227)—*S.* 498—*Marriage according to Aliyasantana Law—Proof of co-habitation, whether sufficient.*—It is not sufficient to prove that the co-habitation of a man and a woman under Alyasantana Law constitutes such a marriage as is intended in those sections of the Penal

Penal Code (Act XLV of 1860)—*continued.*

Code which provide for the punishment of offences against the marriage right. That the Alyasantana Law did not recognise such co-habitation as marriage appears to be shown by the circumstance that it founds upon it no rights of property or inheritance. The customary co-habitation of the sexes under that law does no more than create a casual relation, which the woman may terminate at her pleasure subject, perhaps to certain conventional restraints among the more respectable classes, such as money payment and the control of relations, etc., which may be prescribed as a check upon a capricious conduct. KORAGA v. QUEEN, **6 M. 374 = 1 Weir 560 = 8 Ind. Jur. 35.**

(3228)— S. 498—*Question of marriage — Evidence—Question of fact or law.*—Where, in a conviction under s. 498, Penal Code, it was contended that the statements of the enticed woman and of her husband that they were married to one another were insufficient to prove their marriage, *held*, that such statements were direct evidence of the marriage and were, in point of law, not legally insufficient to prove it; *held*, also, that in a proceeding under s. 498, Penal Code, where there is legal evidence, not consisting only of evidence of opinion that the woman, to whom the charge related, was at the time of the commission of the offence, the wife of a man other than the accused, the sufficiency of such evidence was a question of fact and not of law. WADHAWA v. FATTEH MUHAMMAD, **5 P.R. 1894, Cr.** (5 A. 233. 5 C. 566, 40 P.R. 1882 Cr. *N. F.*) *See also* PIRAM DITTA v. EMPRESS, **23 P. R. 1895, Cr.**

(3229)—*S.* 498—*Enticing away of married woman—Essentials of the offence—Marriage—Proof of—Statements of complainant and woman —Insufficiency.*—The two essential ingredients of an offence under s. 498, I.P.C., are that the woman enticed away is the wife of the complainant, and that the fact of the marriage is known to the accused. Courts should require some better evidence of the marriage than the mere statement of the complainant and the woman. CROWN v. BECHAR, **5 S.L.R. 270 = 15 Ind. Cas. 813 = 13 Cr. L.J. 541.** (9 M. 9, *D.*, 20 A. 166, 2 S.L.R. 72, *F.*)

(3230)—*S.* 498—*Proof of enticing away.*—A conviction under s. 498 cannot be had unless there is evidence to show that the accused enticed the complainant's wife from her husband's or her father's house with intent to have illicit intercourse with her. JASIMADDIN SHEIKH v. ICHOHAK MISTRI, **1 C.W.N. 498.**

(3231)—*S.* 498—*Enticing away a married woman—Intention.*—A person who entices away a married woman from her husband's house with intent that he may dispose her of in marriage to some one else commits an offence under S. 498, Penal Code. NAURANG v. EMPEROR, **13 A.L.J. 251 = 16 Cr. L.J. 315 = 28 Ind. Cas. 651.**

Penal Code (Act XLV of 1860)—*continued.*

(3232)—*S.* 498—*Enticing or taking away of wife living with her mother.*—Where a wife was in charge of her mother and where there was no quarrel between the husband and the wife, *held*, that the charge of the mother could only be on behalf of the husband and a person who took the woman away from the mother would be guilty under s. 498, Penal Code. *In re* NATTARA MUNISAMI, **1 Weir 573.**

(3233)—*S.* 498—*Enticing away a married woman—Whether a valid marriage may be contracted between a Banya and a woman born of connexion between a Brahman male and a Banya woman.*—*Held*, that a marriage between a Banya and a woman born of a Brahman father and Banya mother, which is recognized by the caste to which her husband belongs, is valid and a person who entices away such a woman is guilty of an offence under s. 498 of the Penal Code. MADAN GOPAL v. KING-EMPEROR, **10 A.L.J. 82 = 34 A. 589 = 13 Cr. L.J. 705 = 16 Ind. Cas. 513.**

(3234)—*S.* 498—*Enticing away a married woman—Divorce—Khatiks—Low class Sudras.* —*Held*, that, as Khatiks are low class Sudras they do not follow strict Hindu Law, consequently there was no prohibition among them of divorcing a wife by a written deed. BHOLAR v. CROWN, **31 P.W.R. 1914, Cr. = 181 P.L R. 1914 = 15 Cr.L.J. 539 = 24 Ind.Cas. 947.**

(3235)—*S.* 498—*Enticing or taking away wife temporarily living alone.*—A wife living in her husband's house, or in a house hired by him for her occupation and at his expense, is, during his temporary absence, living under his protection so as to bring the case within the meaning of s. 498, Penal Code, provided the seducer knew, or had reason to know, that she was the wife of the man from whose house he took her, or on whose behalf the person from whom he took her had charge, and also provided that he took her with the intent specified in the Act. MUTTY KHAN v. MUNGLOO KHANSAMA, **5 W.R. Cr. 50.**

(3236)—*S.* 498—*Husband turning wife out of doors—Enticing.*—Where a husband turns his wife out of doors prior to an alleged act of enticing her away, she could not be held to have been taken away from her husband within the meaning of s. 498, Penal Code, which requires that the woman should, at the time, be living under the protection of her husband or some one acting on his behalf. MIHAN SINGH v. EMPRESS, **15 P.R. 1883, Cr.**

(3237)—*S.* 498 — *Enticing away a married woman—Discarded wife living in her father's house—Protection—Knowledge or belief of her being the wife of another man—Revision—Crim. Pro. Code, s.* 439.—*Held*, that a husband who openly discards his wife for many years and has recognised her as a free agent to go where she likes has no ground for complaining under s. 498, Penal Code, even if she is enticed away by another man from her father's house where she lives. In such a case it cannot be said either

Penal Code (Act XLV of 1860)—*continued.*

that her father has the care of her on behalf of her alleged husband or the man enticing her away had the knowledge or belief of her being the wife of the complainant. Thus the two essential elements of the offence are wanting. PAALWAN v. CROWN, **5 P.W.R. 1915, Cr.= 16 Cr. L. J. 216=27 Ind. Cas. 840=129 P.L.R. 1915.**

(3238)—*S.* 498—*Enticing away unmarried woman.*—If the woman enticed away was not a married woman, it is no offence punishable under s. 498, Indian Penal Code. GOOLAB v. GOHUR, **78 P.R. 1866, Cr.**

(3239)—*S.* 498 — *Enticing away married woman—Absence of complaint of offence under—Institution of proceedings on police charge sheet —Validity.*—If no complaint is made by any person of an offence under s. 498, proceedings cannot be initiated on a police charge sheet. *In re* CHIDAMBARA KALINGARAYAN, **2 Weir 235.**

(3240)—*S.* 498—*Crim. Pro. Code, ss.* (4) *b,* 199—*Enticing away married woman—Complaint—Report of Police Officer.*—*Held*, that a Magistrate is not competent to entertain a case under s. 498 of the Penal Code on the report of a police officer, and in the absence of a complaint by the husband or guardian of the woman alleged to have been enticed away by the accused. BHANA v. CROWN, **39 P.L.R. 1911=32 P.R. 1910=12 Cr. L.J. 50=8 Ind. Cas. 1160.** (4 P.R. 1888, Cr., 30 C. 910, F.B., 31 B. 218, *F.*)

(3241)—*S.* 498—*Enticing away a married woman—Her detention—Defective charge when immaterial — Amount of punishment where woman is an abettor.*—*Held*, that a defective charge is of no consequence if the accused has not been prejudiced thereby. *Held*, also, that, in a case under s. 498, Penal Code, a light sentence is sufficient to meet the ends of justice when the abducted woman is an active abettor. *Held*, further, that a finding of fact cannot be questioned in revision when there is some evidence to support it. LAL KHAN v. CROWN, **20 P.W.R 1914 Cr.=123 P.L.R. 1914=15 Cr. L.J. 524=24 Ind. Cas. 836.**

(3242)—*S.* 498 — *Enticing away married woman—Finding in words of section.*—Where a conviction followed the words of s. 498, I.P.C., adopting all the different alternatives in that section, finding that the prisoner took or enticed away a married woman from her husband, or some person having the care of her on his behalf, with intent that she should have illicit intercourse with some person, or concealed or detained such woman with a like intent, *held* that a finding in that form, though perhaps not actually illegal under certain circumstances, namely, when it is doubtful which of the several offences has been committed, is a finding which ought not to be restored to if it could possibly be avoided and it can be decided under what part of the section the prisoner is guilty. QUEEN v. MOTHOORA NATH ROY, **22 W.R. Cr. 72.**

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(3243)—*S.* 498—*Offence under—Woman, if abettor.*—A woman cannot be convicted of abetting the offence described in s. 498, Penal Code. NATHA SINGH v. EMPRESS, **11 P.R. 1883, Cr.** (*But see* CROWN v. SYUD AHMUD, **17 P. R. 1868, Cr.** *contra.*)

(3244)—*S.* 498—*Enticing away a married woman—Whether the woman can be charged of abetment.*—When a man is convicted of enticing away a woman under s 498, Penal Code, the woman cannot be guilty as an abettor. *Quære.*—Whether a woman could be convicted of abetting "the taking away" of herself within the meaning of s. 498. *In re* BALAMBAL, **26 M. 463=1 Weir 574.**

(3245)—*S.* 498—*Conviction under s.* 498, *while complaint under s.* 497.—A conviction by a Magistrate under s. 498, Penal Code, while the husband made a specific complaint under s. 497, Penal Code, was held to be untenable. SHER SINGH v. CROWN, **18 P.R. 1873, Cr.** *See also* SOHNA v. MOSAM, **23 P.R. 1895, Cr.**

(3246)—*S.* 498—*Complaint after divorcing wife.*—Where a husband had divorced his wife before making a complaint under s. 498, Penal Code, an order of acquittal of the offence under that section was held valid. HUKAM DIN v. ALLACHI, **27 P.R. 1879, Cr.**

(3247)—*S.* 498—*Adultery—Woman going to accused of her own accord—Sentence.*—When the accused is convicted of an offence under s. 498 of the I.P.C., and it appears that the woman, being not on good terms with her husband, went to accused of her own accord, a sentence of one year's rigorous imprisonment is too severe. RASUL KHAN v. KING-EMPEROR OF INDIA, **33 P.L.R. 1910=24 P R. 1910, Cr.= 8 Ind. Cas. 226=11 Cr. L J. 597.**

(3248)—*S.* 498—*Proof of offence under the section—Evidence—Burden of proof.*—In a charge under s. 498 of the Penal Code, the proof that the woman and a man, other than the accused, were living together, is sufficient to throw the burden of proof on the accused that they were not man and wife. Evidence taken before the Magistrate, but not used at the trial, cannot be referred to on appeal. QUEEN v. WAZIRA, **8 B.L.R. Ap. 63=17 W.R. Cr. 5.**

(3249)—*S.* 498—*Woman of bad character—Husband of immature age—Value of first report —Admission of its certified copy in revision—Punishment.*—(*a*) Where the first report to the Police falsifies the story for the prosecution, the accused is entitled to an acquittal even on revision. Certified copy of the first report to the Police overlooked by the Courts below was admitted in evidence by the Chief Court in revision. (*b*) In the case of abduction of a woman admittedly of bad character married to an immature boy, the accused is to be treated very leniently, even if all the ingredients of an

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offence under s. 498, Penal Code, are technically proved. RAM CHAND v. THE CROWN, **29 P.W.R. 1911 = Cr., 224 P.L.R. 1911 = 12 Cr. L.J. 500 = 12 Ind. Cas. 220.**

(3250)—*S.* 498—*Detention—Crim. Pro. Code, s.* 439—*Finding of fact—Revision.*—*Held*, that, where a man keeps a woman under his protection in a house provided by him, with the knowledge and intent specified under s. 498, he detains her within the meaning of the said section. *Held*, also, that ordinarily a finding of fact cannot be interfered with on revision under s. 439, Crim. Pro. Code. BANSI LAL v. CROWN, **36 P.W.N. 1913, Cr = 319 P.L.R. 1913 = 21 Ind. Cas. 467 = 14 Cr. L.J 595.**

(3251)—S. 498—*See* ABDUCTION, 3 P.R. 1881, Cr.

(3252)—S. 498—*See* CRIM. PRO. CODE, 1898, s. 199, 2 Weir 235.

(3253)—S. 498—*See* CRIM. PRO. CODE, 1898, ss. 199, 238, 27 M. 61 = 2 Weir 236.

(3254)—S. 498—Marriage of a woman before expiry of *iddat*—Enticing her away—Effect—*See* CRIM. PRO. CODE, 1898, s. 250, 1 P.W.R. 1912, Cr. = 83 P.L.R. 1912 = 13 Cr. L.J. 136 = 13 Ind. Cas. 824.

(3255)—S. 498—*See* DISCHARGE OF ACCUSED, Colm. Dig. Cr. 73 of 1877.

(3256)—S. 498 — *See* MAHOMEDAN LAW—MARRIAGE, 2 C.W.N. 245.

(3257)—S. 498—*See* WITNESS—MISCELLANEOUS CASES, 22 P.W.R. 1907, Cr. = 6 Cr.L.J. 275.

(3258)—S. 498—*See* Nos. 412, 2226, 2238, 2305, 2319, 2321, 2327, 2345, 2346, 3192, 3193, 3210 to 3214, *supra.*

——**S. 499.**

See DEFAMATION.

(3259)—*S.* 499—*Defamation — Headmen of caste—Notice to member to meet charge.*—The headman of a caste issued a notice to a member of that caste, intimating that a complaint had been received by the caste that his daughter had committed adultery with a certain person, and requiring him to appear before the caste with his daughter in order to clear her character. *Held* that the notice would not furnish the basis of a charge of defamation, as it contained no imputation, by the persons who signed it, against the daughter, and was clearly issued in good faith, on information received by them, with a view to such an enquiry as it was apparently competent to the caste to make. QUEEN-EMPRESS v. BHIKAJI, **Rat. Un. Cr. C. 387 = Cr. Rg. 39 of 1888.**

(3260)—*S.* 499—*Defamation—Right to complain.*—Where the complainant prosecuted the accused person for defaming his sister-in-law, *held* that, as there was no imputation made against the complainant, there was no defamation of him within the meaning of s. 499, and that his sister-in-law, being the person defamed, ought herself to have made the complaint. QUEEN-EMPRESS v. LAKSHMAN, **Rat. Un. Cr. C. 392 = Cr. Rg. 48 of 1888.**

(3261)—*S.* 499 — *Defamation — Calling a* Parsutia Kaisth "Kori Chamar."—The accused referred to the complainant, who was a *Parsutia Kaisth*, as a "*Kori Chamar*" with the result that none of the priests attended the religious ceremony which had to be performed at the complainant's house: *Held*, that the accused were guilty of an offence under s. 499, Penal Code. BACHA PARAGWAL v. EMPEROR, **6 Ind. Cas. 876, Cr. = 11 Cr. L J. 413.**

(3262)—*S.* 499—*Defamatory statement before District Registrar by person opposing registration of will—Not privileged—Registration Officer whether a Court.*—A defamatory statement made by a person opposing the registration of a will in his petition to the Registrar, objecting to the registration, is not absolutely privileged so as to exempt the party making it from liability to be punished for an offene under s. 499, I.P.C. How far a Registration Officer is a 'Court' discussed. KRISHNAMAL v. KRISHNAIYANGAR, **1912 M.W.N. 473 = 23 M.L J. 50 = 15 Ind. Cas. 652 = 13 Cr.L.J. 508.**

(3263)—*S.* 499 — *Defamation — Statements made to caste—Privileged communication—Good faith—Statements made in protection of interest.*—The accused having suspected that the complainants were given to drinking liquor made an application to the caste calling for an enquiry into their conduct. For this, they were convicted of defamation: *Held*, (1) that the accused were not guilty of defamation, for, as members of the caste, they had every right to do what they had done, so long as they acted in good faith and for the protection of the interests of the caste. (2) That the communication was privileged, inasmuch as it was not communicated to anybody beyond the caste, and all that the accused did was to complain to the caste which had jurisdiction to enquire into the complaint. A privileged communication means a communication which is made by a member of a caste to the other members, inviting an inquiry into the conduct of persons against whom the allegations are directed. EMPEROR v. PADMAN BABUL MHATRE, **14 Bom. L.R. 585 = 13 Cr. L.J. 687 = 16 Ind. Cas. 335 = 1 Bom. Cr. C. 152.**

(3264)—*S.* 499—*Defamation—Statement by accused person in answer to a question by Court — Absolutely privileged—Cases of privilege not exhaustive—Indian Law based on English Law—Mode of construction.*—The statement of a person charged with an offence in answer to a question by the Court trying him, is an absolutely privileged one, so as to make him not liable to be punished for an offence under s. 499, I.P.C., in respect of the statement. The exceptions to s. 499, I P.C, would seem to have been drafted with reference to the question of qualified privilege as recognised by the law of England, omitting all reference to the question of privilege in connection with

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statements made in judicial proceedings or to the other classes of absolute privilege recognised by the law of England. The provisions of the I.P.C., and also those of the Evidence Act of 1872 are mainly based upon the English Law. Whenever the legislature in this country intended to depart from the English Law, they made their intention clear by express enactment. In considering the intention of the Legislature, the law of England at the time of the passing of the Indian enactment can be taken into consideration. The canons of construction laid down by Lord Herchell are applicable only where it is intended to codify existing law, but not where new law is created. The English Common law right of absolute privilege in respect of Judicial Proceedings is applicable to India. POTARAJU VENKATA REDDI v. EMPEROR, **1912 M.W.N. 476 = 14 Ind. Cas. 659 = 13 Cr. L.J. 275 = 23 M.L.J. 39 = 11 M.L.T. 416 = 36 M. 216.** (1881 Ap. cases at p. 145.) [*Diss.*, 40 C. 433 = 17 C.W.N. 297 = 14 Cr.L.J. 100 = 18 Ind.Cas. 660; *R.*, 13 L.J. 293 = 14 Ind. Cas 757 = 11 M.L.T.431; *Rel. on.* 14 Cr. L.J. 61 = 17 C.W.N. 449 = 18 Ind. Cas. 349 = 40 C. 441, 13 Cr. L J. 508 = 15 Ind. Cas. 652 = 23 M L.J. 50 = 1912 M.W.N, 473.]

(3265)—*S.* 499— *Defamation— Justification —Fair comment—Matter of public interest.*— Where a matter is of public interest, the Court ought not to weigh any comment on it in a fine scale ; some allowance must be made for even intemperate language, provided, however, that the writer keeps himself within the bounds of substantial proof, and does not misrepresent or suppress any facts. EMPEROR v. F.P. FERNANDEZ, **13 Bom. L.R. 1187 = 12 Cr. L.J. 595 = 12 Ind. Cas. 971.** (1907, 1 K.B. 371, 380, *F.*).

(3266)—*S.* 499—*Defamation— Privileged— Imputation contained in petition to higher authorities for redress of grievances.*—A statement made by a villager casting imputation on the character of a co-villager in a complaint to the higher authorities is privileged *only* if the imputation is *substantially true* and made in good faith. PARVATANENI KAMAYYA v. KASINADUNNI TRIPURANTAKAM, **15 Cr. L.J. 281 = 23 Ind. Cas. 489.** (3 A. 815 = 1 A.W.N. 81 = 16 Ind. Jur. 320, *F.*)

(3267)—S. 499—*See* CHARGE— FORM OF CHARGE, 9 B.H.C. 451.

(3268)—*S.* 499, *cl.* 3—*Defamation—Publication—Privilege—Statement substantially correct —Details not justifiable—Privilege not lost— Criminal Court—Abuse of process—Object to harass accused—Inconvenience to public officers — No probability of charge being established— Power to quash proceedings—S.* 439, *Crim. Pro. Code—Powers of revision.*—Where the accused, a Municipal Councillor, published in a newspaper a letter giving what purported to be a verbatim account of an incident that took place in a municipal meeting between the complainant, also a Municipal Councillor, and the President, in the course of which the complainant put certain questions to which the President gave certain answers, and where the complainant himself had, prior to the letter written by the accused published in the same newspaper certain questions which he intended to put with an obvious *innuendo* defamatory of the accused and where on complainant's own admission the report was substantially true. *Held* that the occasion was privileged and the accused was not guilty of defamation. Where the occasion is privileged, it is not necessary to justify every detail of the charge, provided that the gist of the libel is proved to be in substance correct, and that the details, etc., which are not justified, produce no different effect on the mind of the reader than the actual truth would do. (20 Q.B.D. 275, 1907, 1 K.B. 371, *R.*) Where the real object of the complainant is not to vindicate his own character or to exact from the defendant the substantive penalty for his offence, but subject him to heavy financial loss and very serious long continued annoyance by the very process of the trial, and where the trial, if allowed to proceed, would cause serious inconvenience to a very large number of public officers and leading citizens without even a remote probability of any public good resulting, the proceedings will be quashed, in exercise of the wide powers conferred by s. 439, Crim. Pro. Code. A Court of revision should be most reluctant to interfere in a pending case, but such interference will be justified and necessary in cases like the present one, in order to prevent a clear abuse of the right to resort to a criminal Court. Where there is no justification for the charge of defamation brought against the accused, he should not be left for a moment longer than it is necessary in the position of a person accused of an offence and forced to defend himself against a charge for which there is no legal evidence to establish. MURLIDHAR JERAMDAS v. NARAINDAS, **8 S.L.R 143 = 16 Cr. L.J. 141 = 27 Ind. Cas. 205.** (26 C. 786, *R.*)

(3269)—S. 499, expl. (1)—*See* CRIM. PRO. CODE, 1898, s. 198, 15 M.L.J. 224 = 2 Cr. L.J. 381.

(3270)—*S.* 499, *Exceps.* 1, 8—*Truth of imputation—Actual harm unnecessary— Public good.* — In order to establish the offence of defamation under s. 500, Penal Code, it is not necessary to prove that actual harm has been caused. It is sufficient to show that harm was intended to the complainant's reputation or that the accused person knew or had reason to believe that the imputations made by him would harm his reputation. Where a complainant was described as a man with whom not even Turks, let alone Brahmins, could associate, and the wedding of his daughter was characterised as a sinful carnival worthy of perdition—a moral crime involving disgrace, degradation and degeneration, it was held that the language used was unrestrained, the object of the writer being to hold the complainant up to public execration. To entitle a person to the benefit of exception (1), the statements made must not only be proved to be true, but it must be shown that

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their publication was for the public good. Public good is the good of the general public as contra-distinguished from that of an individual. The denouncing of a Brahmin for providing alcoholic refreshment at a wedding reception, for those of his guests who desired to partake of such beverages, is not "for the public good." V. MADANJIT v. EMPEROR, **9 Ind. Cas. 775 = 12 Cr. L.J. 129.**

(3271)—*S.* 499, *exceps.* 1 *and* 9—*English Law— Defamation — Justification — Qualified privilege—Good faith, necessity of—Due care and caution.*—Where the accused, in response to a letter from the committee of the Panjibhai Jamayat calling upon him to show cause why he should not thenceforth be regarded as no longer a member of the Jamayat and be debarred from its privileges, forwarded and published in two newspapers a letter which contained the following among other allegations, *viz.*—(1) that the Panjibhai Jamayat is a "dangerous society giving every encouragement to murder and assassination and (2) that the real object of the notice is 'to incite' and arouse the intolerance and murderous feelings of the 'ignorant, deluded and fanatic members of your society to the necessary pitch for, and for the express object of, taking my life';" *held* that these imputations were highly defamatory and were not only wholly unjustifiable either for the protection or for public good, but were also calculated greatly to enhance the fanatical resentment of the Panjibay community against the senders therefrom. Exceps. 1 and 9 of s. 499, I.P.C., codify those portions of the law of libel and slander treated in English text books under the heads of justification and qualified privilege. Under excep. 1, it is a good defence in criminal cases that the words complained of are in fact true, and that it was for the public benefit that the matters charged should be published, even though the actual motive of publication was malevolence. The defence of qualified privilege extends to communications made by a person who has a legal, moral or social duty to some particular person or persons, who have a corresponding interest or privilege to receive it, and such communications might be not only allegations of fact that could be proved to be true but also expressions of opinion and personal inferences. The use of the expression "imputation on the character" in excep. 9 cannot be taken to imply that allegations of definite acts are excluded. Excep. 9 for all practical purposes covers excep. 1. In order to be entitled to the benefit of the exceptions, the accused must show that he in *good faith* made the imputation in self-defence or for public good. He must have acted with due care and caution, and the actual words used, the manner in which the words are published, the persons to whom they are communicated, must all be limited to the reasonable requirements of the occasion. JAFFER FADU v. CROWN, **4 S.L.R. 67 = 8 Ind. Cas. 209 = 11 Cr. L.J. 588.**

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(3272)—*S.* 499, *expl.* 4—*Scope.*—Expl. 4 of s. 499 does not apply where the words used and forming the basis of a charge are *per se* defamatory. When an expression, used verbally or in writing, is doubtful as to its significance, and some evidence is necessary to decide what the effect of it will be, and whether it is calculated to harm a particular person's reputation, it is possible that the principle enunciated in the explanation might, and would, with propriety, be applied. QUEEN-EMPRESS v. MC-CARTHY, **9 A. 420 = A.W.N. 1887, 39.**

(3273)—*S.* 499, *expl.* 4—*Imputation of a Mahomedan having killed a cow.*—An imputation that a Mahomedan had killed a cow in his compound cannot be said to harm his reputation, or lower his moral or intellectual character, or lower his character in respect of his caste or calling, or lower his credit, within the meaning of s. 499, expl. 4. SIKANDARKHAN v. JAMMU, **5 C.P.L.R. Cr. 53.**

(3274)—*S.* 499, *Exception* 9—*Defamation—Pleader asking question in cross examination making imputation under instructions from client —Liability of pleader—Presumption of good faith—How to rebut presumption.*—A pleader is entitled to the presumption that the questions he asks in cross-examination are asked in good faith for the protection of the interest of his client. The presumption, therefore, is that a question asked in cross examination making an imputation, affords no ground for a criminal prosecution. To rebut this presumption, it is not sufficient merely to allege that the client knew the imputation to be untrue. To rebut the presumption of good faith, there must be convincing evidence that the pleader was actuated by an improper motive personal to himself and not by a desire to protect or further the interest of his client in the cause. Therefore, where a pleader for an accused asked a prosecution witness in cross-examination whether he smoked *ganja*, he is not liable to be prosecuted for defamation by the witness, where no improper motive on the part of the pleader is alleged. NIKUNJA BEHARI SEN v. HARENDRA CHANDRA SINHA, **14 Cr.L.J. 528 = 18 C.W.N. 424 = 20 Ind. Cas. 1008 = 41 C. 514.** (1 Ind. Cas. 147 = 13 C.W.N. 340 = 36 C. 375 = 9 C.L.J. 259 = 9 Cr.L.J. 165, *Rel. on.*)

(3275)—*S.* 499, *excep.* 9—*Petition for divorce —Allegations made in — No defamation— English law, not applicable.*—Where the accused made, in a petition for divorce which was subsequently withdrawn, certain allegations against his wife and the complainant who was made co-respondent in the divorce proceedings, *held*, that the allegations cannot be made the subject of a prosecution for defamation under s. 499, I.P.C. That the English rule of absolute privilege does not apply *proprio vegore* in India is apparent from the proviso to s. 132, Indian Evidence Act, and the case must be decided with reference to s. 499, I.P.C. MR. MCGILL v. MR. BYRNE, **5 S.L.R. 133 = 13 Ind. Cas. 217 = 13 Cr.L J. 25.** (22 A. 234, 29 A. 685, *F.*; 1891, A.C. 107, 23 C. 563, *R.*)

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(3276)—S. 499, excep. 9—*See* ACT XVIII OF 1862, s. 27, 4 W.R. Cr. 22.

(3277)—S. 499—*See* Nos. 7, 136, 289 and 2735, *supra.*

(3278)—*S.* 499, *excep.* 9, *and s.* 52—*Defamation—Magistrate, allegation against, of corruption and conspiracy, to save an accused under trial, by manipulating procedure—Magistrates' and Judges' public acts if above criticism—Press if specially privileged in criticising such acts—Limits of legitimate comment—Libel, no plea of justification, yet truth of charges asserted by* innuendo, *propriety of—Defence of good faith—Matters relevant to the enquiry and proper to be placed before jury—Judge's right to state his own views, without withdrawing case from the jury—Charge to jury — Misdirection when sufficient for interference by Privy Council—Privy Council, practice of, in interfering with criminal trials—Libel published under mistake—Duty of apologising on discovery of mistake—Bail, discretion as to granting.*—No privilege attaches to the profession of the Press as distinguished from the members of the public. The freedom of the journalist is an ordinary part of the freedom of the subject, and to whatever lengths the subject in general may go, so also may the journalist; but, apart from statute law, his privilege is no other and no higher. No privilege or protection attaches to the public acts of a Judge which exempts him, in regard to these, from free and adverse comment. A, as District Magistrate, having declined to commit one M for trial on a charge of having abducted and committed rape upon a Malay girl of about 11 years of age, the appellant wrote an article in a newspaper charging A with being engaged with others in a corrupt plot to defeat justice in order to save M, with having bailed him out for a non-bailable offence and with having manœuvred his procedure to that end. M had himself admitted that, being informed that the child was suffering from gonorrhœa, he had taken her to his house and himself had personally examined her—although there was a hospital 8 miles away. A, in declining to commit M, had further stated that in his opinion M's conduct was pure and philanthropic: *Held*, that this declaration by the Magistrate with which the enquiry before him concluded, laid the whole trial open to searching and severe observations, and no blame could be attached to these. But it was not open to the appellant to make against the Magistrate charges of corruption and conspiracy, which were admitted to be untrue, and were grossly libellous, and the appellant could not justify them in a criminal proceeding for defamation, unless he was able to establish affirmatively that he believed them to be true and that on reasonable grounds, as provided in the ninth exception to s. 499, Penal Code. That the conduct of M referred to above and of the Magistrate at the enquiry were relevant for a consideration of the question of accused's *bona fides* and were properly submitted to the Jury in support of the defence. That the Judicial

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Committee was not prepared to say that the granting of bail to M was an improper exercise of the Magistrate's discretion, but in any case it was a difficult and delicate point of law which could not have been viewed as a substantial element weighing with any reasonable writer in justification of his belief in the truth of the libel. That the fact that every officer, judicial or administrative, except one, had agreed with the conclusion to which the Magistrate had arrived, and that an investigation in the department of a Lieutenant-Governor of great experience had, to the appellant's knowledge, resulted in exonerating the Magistrate from blame, and the attitude of the appellant who neither defended the articles as true nor gave any assistance on the subject of what were the actual things upon which he founded his own beliefs and what steps, if any he took to investigate the truth of the charges before giving them publicity, were also matters for consideration by the jury. A charge to a jury must be read as a whole. If there are salient propositions of law, in it, these will be subjects of separate analysis, but in a protracted narrative of fact, the determination of which is ultimately left to the jury, it must needs be that the view of the Judge may not coincide with the views of others who look upon the whole proceedings in black type. It would, however, not be in accordance either with usual or with good practice to treat such cases as cases of misdirection, if, upon the general view taken, the case has been fairly left within the jury's province. In the region of fact, the Privy Council will not interfere, unless something gross amounting to a complete misdescription of the whole bearing of the evidence has occurred. Where, in answer to a charge of defamation, the accused did not plead justification, but nevertheless the truth of the libels continued throughout the trial to be urged by way of repeated *innuendo*, the Judge was justified in stating his own view of the facts, in order to counteract the improper use which was being made of the procedure, provided he did not withdraw the case on facts from the jury. When during the trial the accused was apprised from materials placed before the Court that certain serious charges against the complainant were quite without foundation, he should have at once acknowledged his mistake and should not have adhered to the libel. The power of the Privy Council to review proceedings of a criminal nature, unless such power and authority have in any local area been parted with by Statute, is undoubted. But there are reasons, both constitutional and administrative, which make it manifest that this power should not be lightly exercised. Before they will interfere, it must be established demonstrably that justice itself in its very foundation has been subverted, and that it is therefore a matter of grave imperial concern that by way of an appeal to the King, it be restored to its rightful position in that particular part of the Empire. The authority of *Dillet's* case does not justify interference by the Privy

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Council in a criminal case wherever there has been misdirection, leaving it uncertain whether that misdirection did or did not affect the jury's mind. That would be to convert the Judicial Committee into a Court of Criminal Review or Appeal for the Indian and Colonial Empire. The practice of the Committee in respect of criminal trials is to the effect it is not guided by its own doubts of the appellant's innocence or suspicion of his guilt. It will not interfere with the course of criminal law, unless there has been such an interference with the elementary rights of an accused as has placed him outside the pale of regular law, or within that pale has been a violation of the natural principles of justice so demonstrably manifest as to convince their Lordships *first*, that the result arrived at was opposite to the result which their Lordships would themselves have reached, and, *secondly*, that the same opposite result would have been reached by the local tribunal also, if the alleged defect or misdirection had been avoided. CHANING ARNOLD v. KING-EMPEROR, 18 **C.W.N. 785=26 M.L.J. 621=15 Cr. L J. 309=23 Ind. Cas. 661=16 M.L.T. 79=1914 M.W.N. 506=12 A.L.J. 1042=20 C.L J. 161=16 Bom. L.R. 544=2 Bom. Cr. C. 207=7 Bur. L.T. 167=41 C. 1023 P.C.**, (1887 12 A.C. 459, *considered*; 1894 A.C. 57, 1893 40 I.A. 193=17 C.W N. 1110, L.R. 1914 A.C. 221=18 C.W.N. 98, 40 I.A. 241=18 C.W.N. 374, *R.*; 1 Moo. P.C N. S. 272, 1862, 1 Moo. P.C.N.S. 299, 312, 1863, *F.*)

(3279)—*Ss.* 499 *and* 500—*Defamation, what constitutes.*—It is not necessary to constitute the offence of defamation that there should be evidence to show that the complainant has been injuriously affected by such alleged defamation. The law requires merely that there should be an intent and that the person, who makes or publishes any imputation, should do so intending to harm or having reason to believe such imputation will harm the reputation of such person. GOBINDA PERSHAD PANDEY v. G. L. GARTH, **28 C. 63=5 C.W. N. 819.**

(3280)—*Ss.* 499, 500—*Defamation—Liability of a party or witness for making defamatory statement in judicial proceeding—Revision—S.* 439 *of Act* V *of* 1898.—*Held*, that a person making a *prima facie* defamatory statement as a party or witness in a judicial proceeding is responsible for defamation under s. 500, I.P.C. irrespective of his liability to be prosecuted for perjury; and he is only protected if he is able to establish that he comes within any of the exceptions to s. 499, I.P.C. PHUNDI RAM v. CROWN, **7 P.W.R. 1911, Cr.=10 Ind. Cas. 682 =12 Cr. L J. 193.** (31 P.R. 1899, Cr., 14 P.R. 1893, *R.*)

(3281)—*Ss.* 499, 500—*Crim. Pro. Code, s.* 528—*Defamatory statement in application for transfer.*—Where the petitioner, in an application filed before the District Magistrate for the transfer of a case brought against him by the servant of one Mr. Macpherson, made the following statement—"That, on the date fixed for hearing of this case, Mr. Macpherson and the Manager of Maujhaul Kothi where some properties of the trying Honorary Magistrate have been leased out came to the Court of the trying Magistrate and had some private talk with the Honorary Magistrate, and the petitioner apprehends that the Manager of the Maujhaul Kothi was brought to put additional pressure on the trying Magistrate to induce him to convict the petitioner, and that he cannot get a fair and impartial trial in that Court or in any other Court in Begusari;" and on the complaint of the said Manager of the Maujhaul factory, the petitioner was charged and convicted under s. 500, I P.C., and it was found that the allegation was untrue to the knowledge of the petitioner. *Held*, that, in view of the undermentioned cases the propriety of the conviction was at least open to serious doubt. KORI SINGH v. MR. J. FINCH, **17 C.W.N. 449 =18 Ind. Cas. 349=40 C. 441, Note.** (13 Cr. L.J. 275, 38 C. 880.)

(3282)—Ss. 499 and 500—*See* ACT XXV OF 1867, s. 5, 9 M. 387=1 Weir 576.

(3283)—*Ss.* 499, *Exceptions* 8 *and* 9, *and* 500 —*Defamation—Good faith—Justification — Sentence.*—*Held*, that a person who defames another is liable under s. 500, Penal Code, and it is not necessary that there should be an intention to harm the reputation. It is sufficient if there was reason to believe that the imputation made would harm the reputation. *Held*, also, that, under exceptions 8 or 9, it is essential that the imputation shall have been made in good faith, *i.e.*, with due care and caution, and where there are *prima facie* materials for malice, the exceptions will not operate (as in the present case). *Held*, further, that Courts should, at the time of passing the sentence, keep in view the position of the parties. The Chief Court reduced the sentence to 3 months from 8 months awarded by the lower Courts. KEWALA NAND GIR v CROWN, **34 P.W.R. 1913 Cr.=317 P.L.R. 1913=21 Ind. Cas. 478=14 Cr. L J. 606.**

(3284)—*Ss.* 499, *Ex.* (9), 500—*Defamation—Party to suit—Privilege—Good faith—Crim. Pro. Code, s.* 198—*Person aggrieved—Master cannot sue for defamation of servant.*—Plaintiff to a suit is not privileged under exception 9 to s. 499, Penal Code, unless the allegations made in the plaint were made in good faith (26 M. 43, 12 M.L.J. 413, *R.*) A plaintiff in a rent suit made the following allegation in his plaint:—"In 1310 F. the plaintiff gave evidence in defence of Sub-Inspector, G. In consequence of this, defendant M became exceedingly annoyed with the plaintiff and the servants of the defendant began to oppress the plaintiff in all manner of ways......and by threats of confining him and of having him disgraced by beating realized this amount from him." On the basis of the above allegation M made a complaint under s. 500, Penal Code; *Held*, that the allegation defamed not M but his servants, and

Penal Code (Act XLV of 1860)—*continued.*

action for defamation could not be sustained at the instance of M. TIL KANCHAN v. EMPEROR, **8 Ind. Cas, 220 = 11 Cr. L.J. 594.**

——S. 500.

See DEFAMATION.

(3285)—*S.* 500—*Defamation—Defamatory statement of a witness in judicial proceeding not privileged.—Held* that witnesses as a class are not exempt from the operation of s. 499, Penal Code, in respect of defamatory statements, simply because they have made them in judicial proceedings. MIRAN SHAH v. CROWN, **31 P W. R. 1912, Cr. = 13 Ind. Cas. 494 = 13 Cr. L.J. 494 = 244 P.L.R. 1912 = 5 P.R. 1913, Cr.** (34 P.R. 1889, Cr., 14 P.R. 1893, Cr , 29 A. 633, *F.*; 17 B. 573, *R.*; 17 B. 127, 27 C. 263, 11 M. 477, 16 M. 235, 30 M. 222, *Not F.*)

(3286)—*S.* 500—*Defamation — Receiver—Charge of defamation against Receiver—Sanction of Court, whether necessary—Defamation arising out of matter of repairs of estate under charge of Receiver.*—It is not a general rule of law that, in all criminal proceedings, the leave of the Court is not necessary to prosecute a Receiver (30 C. 593, 7 C.W.N. 390, 30 C. 721, 7 C.W.N. 706, *Rel. on*). Sanction is required to proceed against a Receiver when he acts for the protection of the estate in his hands. Therefore, where the alleged act of defamation arises out of a matter of repairs of the estate in the possession of the Receiver and is based upon a letter in which he claims that he is acting on behalf of the estate, a charge of defamation against the Receiver is incompetent without the leave of the Court. As the Receiver in this case was appointed by the original side of the High Court, the case was sent to that Court for disposal of the question whether leave of the Court is required. ANATH NATH DEY v. MOHENDRA NATH, **13 Cr. L.J. 489 = 15 Ind. Cas. 489.**

(3287)—*S.* 500—*Libel--Publication of – Statements made in a memorial to Lieutenant-Governor—Repeated before officers deputed to make enquiry.*—The applicant made certain defamatory statements about one K in a memorial to the Lieutenant-Governor who ordered an enquiry. The applicant was called by the officers who were appointed to enquire into the truth of the allegations and repeated the statements. *Held* that there was a publication of the libel made in the memorial and the applicant was guilty of both making and publishing the libel. JAI DEBI v. EMPEROR, **13 A.L.J. 681 = 16 Cr. L.J. 482 = 29 Ind. Cas. 322.**

(3288)—S. 500—*See* ABETMENT, 8 P.R. 1891, Cr.

(3289)—S. 500—*See* COMPLAINT, WHAT IS, AND WHO SHOULD INSTITUTE, 15 P.R. 1878, Cr.

(3290)—S. 500—*See* EVIDENCE ACT, 1872, s. 132, 3 O.C. 80.

(3291) — S. 500—*See* JURISDICTION OF CIVIL AND CRIMINAL COURTS, 6 C.L.J. 713 = 6 Cr. L.J. 405.

Penal Code (Act XLV of 1860)—*continued.*

(3292)—S. 500—*See* Nos. 7, 289, 370, 1007, 1008, 1009, 1010, 1439, 2225, 3279, 3280 to 3284, *supra.*

(3293)—*Ss.* 500, 506—*Further inquiry — Process issued and trial held under s.* 506, *Penal Code—Discharge of accused for offence under s.* 500, *if legal — Defamation— Discharge of accused — Magistrate thinking there may be grounds for making defamatory remarks—Crim. Pro. Code, ss.* 242, 437.—Process was issued against the accused under s. 506, Penal Code, and he was tried under that section. He was discharged of an offence under s. 500, Penal Code and his plea to the charge under s. 506 was not recorded. *Held* that the proceedings were irregular; that the plea of the accused ought to have been taken under s. 506, as the law provides that, in summons cases, the first thing to be done is to ask the accused what he has got to say; and that the discharge of the accused under s. 500, when he was charged under s. 506, was without jurisdiction. The accused cannot be discharged of an offence under s. 500, because the Magistrate thinks that there may be some substance in the defamatory remarks made by the accused. ANATH NATH DEY v. MOHENDRA NATH, **13 Cr. L.J. 488 = 15 Ind. Cas. 488.**

— S. 501.

(3294)—S. 501—*See* DEFAMATION, 18 P.R. 1889, Cr.

——S. 503.

See CRIMINAL INTIMIDATION.

(3295)—*S.* 503—*Gist of offence.*—Where the accused, Musalmans, threatened the Hindu population (1) to obstruct and stop the Hindu religious procession, (2) to commit a riot, (3) to do that in or by which people might happen to be killed. *Held* that such a threat was one contemplated by s. 503, I.P.C. QUEEN-EMPRESS v. AMIR KHAN, **Rat. Un. Cr. C. 273.**

(3296)—*S.* 503—*Criminal intimidation.*—An advice given to others not to trade with a particular individual is indeed an injurious act. But it is no threat and the harm caused is only to his opportunities of future gain and not to property already possessed by him. Hence the above section of the Penal Code could not apply to a case where the accused advises others not to trade with the complainant. *In the matter of* GHISA MAL, **S. C. 146, Oudh.**

(3297)—*S.* 503—*Criminal intimidation, what amounts to.*—In order to constitute the offence of criminal intimidation, the harm threatened must be illegal. NGA SHWE WAING v. QUEEN-EMPRESS, **U.B.R. 1897-1901, Vol. I, 359.**

(3298)—S. 503—*See* No. 130, *supra.*

(3299)—Ss. 503, 507, 511—*See* CRIMINAL INTIMIDATION, 11 B. 376.

— S. 504.

See INSULT.

(3300)—*S.* 504—*Scope of.*—An offence may be committed under s. 504, Penal Code, although

Penal Code (Act XLV of 1860)—*continued.*

the person, to whom the insult is directly offered, is not a person likely to be provoked to commit a breach of the peace ; and an offence may be committed under the section although the person likely to be provoked to commit a breach of the peace is not in fact provoked. *In re* SYED MAHOMED, **1 Weir 622**.

(3301)—*S.* 504—*Scope of.*—To charge a person with an offence under the above section, it is sufficient that there is intentional insulting provocation which, under ordinary circumstances, would cause a breach of the peace or other offence to be committed. Judges and Magistrates should keep a watchful eye on frivolous and vexatious complaints and actions ; and, at the same time, they should be careful to give a ready and attentive ear to all who seek the protection and remedy of the law against wrong-doers. QUEEN-EMPRESS v. MI TE, **U.B.R. 1892-1896, Vol. I, 290.**

(3302)—*S.* 504—*Essence of the offence under.* —The essence of the offence of insult, intended to provoke a breach of the peace, consists in the effect which it is likely to produce upon the person to whom the provocation is addressed, not upon any other person who may come to know it. QUEEN-EMPRESS v. MI MYE MI, **U.B.R. 1897—1901, Vol. I. 360.** (U.B.R. 1892-1896, Vol. I, 299, *F.*)

(3303)—*S.* 504 — *Offence under — Abuse.*— The offence punishable under s. 504, I.P.C., is intentionally insulting and thereby giving provocation to any person intending or knowing it to be likely that such provocation will cause such person to break the public peace or to commit any other offence, not merely to indulge in the mere use of abusive language towards a person. Abuse does not necessarily, though it often may, constitute an offence under this section. QUEEN-EMPRESS v. NGA NGUE NYUN, **U.B.R. 1897—1901, Vol. I, 67.** (U.B.R. 1892—1896, Vol. I, 290, *R.*)

(3304)—*S.* 504 — *Ingredients of the offence under—Duty of Judges and Magistrates.*—In order to sustain a charge under s. 504, Penal Code, it is sufficient for the complainant to prove that the abusive language used was such as would ordinarily provoke a man of his position and character to commit a breach of the peace. It is not necessary for the complainant to prove that he was provoked to commit an assault. *In re* CHIDAMBARA PILLAI, **1 Weir 620.** [*F.*, U.B.R. 1892—1896, Vol. I, 290, 1 Weir 622.]

(3305)—*S.* 504—*Punishment.*—*Held*, that for committing an offence under s. 504, I.P.C., by using abusive language, the sentence of imprisonment is uncalled for ; a small fine is quite sufficient to meet the ends of justice. CHET SINGH v. CROWN, **21 P.W.R. 1911, Cr.=11 Ind. Cas. 619=12 Cr. L J. 435.**

(3306)—S. 504 — *See* SECURITY TO KEEP THE PEACE—ON CONVICTION, 1 L.B.R. 262.

(3306-*a*)—S. 504—*See* Nos. 371, 429, 1497, 2201, 2217 and 2899, *supra*.

Penal Code (Act XLV of 1860)—*continued.*

——**S. 505.**

(3307)—*S.* 505—*Scope of the section.*—The mere causing of fear or alarm to the public or to a section of the public does not constitute an offence under s. 505 ; but it is necessary that the fear or alarm should be caused in such circumstances as to render it likely that a person may be induced to commit an offence against the state or against the public tranquillity. Account cannot be taken of a vague possibility that the state of mind which is caused by alarm may easily induce a person to commit an offence against the public tranquillity. *In the matter of* MANBIR, **3 C.W.N. 1.**

(3308)—S. 505—*See* No. 574, *supra.*

——**S. 506.**

See CRIMINAL INTIMIDATION.

(3309)—S. 506 — *See* WITHDRAWAL OF PROSECUTION, Rat. Un. Cr. Cas. 330=Cr. Rg. 20 of 1887.

(3310)—S. 506—*See* Nos. 130, 223, 1078, 2175, 2225, 2304 and 3293, *supra.*

(3311)—*Ss.* 506, 507—*Two offences evolved out of one act.*—Where there was substantially only one offence of criminal intimidation committed, and the Magistrate convicted the accused under ss. 506 and 507 of the Code and imposed sentences for both offences, *held* that the conviction under one of the sections was bad. REG v. ZORA KARUBEG, **4 B.H.C. Cr. 12.**

——**S. 507.**

(3312)—*S.* 507—*Punishment—Practice.*—The punishment provided in s. 507, Penal Code, cannot be awarded until there has been a conviction under s. 506. E. CHARDE v. MAHOMED HOSAIN, **99 P.R. 1866, Cr.**

(3313)—S. 507—*See* Nos. 3299, 3311, *supra*.

——**S. 508.**

(3314)—*S.* 508—*What constitutes an offence under the section.*—Where the accused, a Brahmin widow, left her illegitimate child exposed at the door of the dwelling of its reputed father, who was then inside, in order to induce him to give her some money, or to give her some food or to let the child die, *held* that she was liable to be convicted under s. 508, I.P.C., as pressure was brought to bear to induce him to do an act which he was not legally bound to do, for, even if he were the father of the child, he was not bound to support the mother. EMPRESS v. GANGI, **A.W.N. 1886, 63.**

(3315)—*S.* 508—*Threat of divine displeasure.* —Where the accused voluntarily attempts to cause a person to omit to do what he was legally entitled to do, by attempting to induce the latter to believe that he would otherwise be rendered by an act of the accused an object of divine displeasure, the accused commits the offence under s. 508 of the I.P.C. QUEEN EMPRESS v. MHADNACK, **Rat. Un. Cr. C. 376.**

(3316)—*S.* 508—*Elements of the offence.*—To constitute the offence punishable under s. 508,

Penal Code (Act XLV of 1860)—*continued.*

it must be shown that the person accused of such offence threatened to do a future act or illegally omit to do an act, and that by such threat he induced or attempted to induce the person threatened by that act or illegal omission, the person threatened or some one in whom the person threatened was interested, would become an object of divine displeasure. QUEEN v. SIR VIDYA SANKARA NARASIMHA BHARATH GURUSWAMULU, **6 M. 381 = 1 Weir 595.**

——S. 509.

(3317)—*S. 509—Insulting the modesty of a woman.*—S. 509 of the Penal Code makes intention to insult the modesty of a woman the essential ingredient of the offence. The intention was held wanting where the accused, in the middle of the night, entered the room of the complainant, a woman with whom he had previous acquaintance and who used to speak to strangers and give *pan supari* to visitors. EMPEROR v. PHIAZ MAHAMAD, **5 Bom. L.R. 502.**

(3318)—*S. 509 – Gist of the offence.*—To constitute an intrusion upon the privacy of a woman, an offence under s. 509, I.P.C., the intruder must be intending to insult the modesty of such woman. THOMAS HOPPER v. EMPRESS, **6 P.R. 1892, Cr.**

(3319)—S. 509—*See* Nos. 1781, 2947, 2976, 2991, *supra.*

——S. 511.

See ATTEMPT.

(3320)—*S. 511—Attempt to commit an offence —Preparation to commit an offence.*—Where a person attempted fraudulently to obtain the duplicate of a University certificate, when he was not really entitled to it, *held*, that his intention, if it could be so presumed, to use the certificate subsequently in order to obtain some temporal advnatage by pretending that he has passed the Matriculation examination was a mere preparation not chargeable as an attempt to commit an offence within the meaning of s. 511, Penal Code. KING EMPEROR v. SRINIVASAN, **25 M. 726 = 1 Weir 481 = 1 Weir 548 = 12 M.L.J. 68.**

(3321)—*S. 511—Attempt to commit an offence.* —A person cannot be convicted of attempting to commit an offence, unless the offence would have been committed had the attempt proved successful. CHANDI PERSHAD v. ABDUR RAHMAN, **22 C. 131.** [*R.*, 38 C. 68 = 7 Ind. Cas. 747 = 13 C.L.J. 43 = 11 Cr. L.J. 525.]

(3322)—*S. 511—Attempt, what constitutes.*—S. 511, Penal Code, which relates to attempts to commit offences, is confined to attempts to commit offences punishable under the Code. *In re* SONDI DONNAI SAHU, **1 Weir 624 = 1 Weir 640.**

(3323)—*S. 511—Attempt to commit an offence —Preparation.*—A greater degree of determination distinguishes an attempt to commit an offence from a mere preparation. MANGAL v. QUEEN-EMPRESS, **S.C. 76, Oudh.**

Penal Code (Act XLV of 1860)—*concluded.*

(3324)—S. 511—*See* ACT VI OF 1864, s. 3, 3 B.H.C. Cr. 37.

(3325)—S. 511—Attempt to export opium—Whether punishable—*See* ACT I OF 1878, s. 9 (*e*), 2 P.R. 1911, Cr. = 6 P.W.R. 1911, Cr. = 108 P.L.R. 1911 = 9 Ind. Cas. 682 = 12 Cr.L.J. 116.

(3326)—S. 511—*See* Nos. 236, 283 to 286, 455, 457, 473, 489, 496, 985, 1004, 1281, 1293, 1294, 1841, 2044, 2045, 2046, 2049, 2164, 2221, 2274 to 2279, 2411, 2412, 2485, 2497, 2612, 2731, 2786, 4498, 2804, 2816, 2817, 2818, 2819, 2825, 2848, 2851, 2852, 2856, 2954, 2975, 2985, 3030, 3034, 3035, 3063, 3071, 3090, 3116, 3117, 3299, *supra.*

Penal Code (Berar).

Chap. XII or XVII — Conviction under—Whether such conviction falls within purview of s. 75, Berar Penal Code, or s. 165, Berar Crim. Pro. Code.—S. 75 of the Berar Penal Code cannot be applied to a previous conviction for offences under Chap. XII or Chap. XVII of the Indian Penal Code or s. 565, Crim. Pro. Code, but only to a conviction under the chapters of the Berar Penal Code or Berar Crim. Pro. Code itself. A Sessions Court of Berar convicted an accused person under s. 379 of the Berar Penal Code, and sentenced him to rigorous imprisonment for seven years, supplemented by a direction under State, Berar Crim. Pro. Code, to notify his residence for five years after the expiry of the said sentence, for the reason that there were six previous convictions against him in British Indian Courts of the Bombay Presidency, under various sections of Chap. XVII of the Indian Penal Code. *Held*, that so much of the sentence and order as depended for its legality on s. 75 of the Berar Penal Code or upon s. 565, Berar Crim. Pro. Code, was *ultra vires*, and must be set aside. GANGARAM v. EMPEROR, **4 N.L.R. 177 = 9 Cr L.J. 97.**

Penal Code Amendment Act.

See ACT XXVII OF 1870.

See ACT XIX OF 1872.

See ACT VIII OF 1882.

See ACT VI OF 1896.

Penal Servitude.

See PENAL CODE, s. 56.

See SENTENCE.

—*Penal Code, s 56.*—The punishment of penal servitude is only applicable to Europeans and Americans. QUEEN-EMPRESS v. DINA BAIDYA, **19 M. 483 = 1 Weir 298.**

Penal Statutes, Construction of.

See STATUTES, CONSTRUCTION OF.

Penalty.

(1)—*Act XXVI of 1850, ss 7 (5), 10—Municipal rate—Penalty.*—A person is not liable to a penalty for non-payment of a municipal rate, though the rate is recoverable in the same manner as a penalty. REG. v. FAKIRA, **Rat. Un. Cr. C. 77.**

Penalty—*concluded.*

Remission of—under recognizance bond—*See* CRIM. PRO. CODE, 1898, s. 106, 8 C.L.R. 72.

Pendency of Civil Proceedings.

See STAY OF CRIMINAL PROCEEDINGS, 12 C.L.J. 270=38 C. 106.

Pending Case.

Power of High Court to interfere in a—*See* ACT VI OF 1882, s. 74, 35 P.W.R. 1910, Cr.=8 Ind. Cas. 190.

Comment on—*See* CONTEMPT OF COURT, 14 Cr. L.J. 321=20 Ind. Cas. 81=17 C.W.N. 1253=18 C.L.J. 452, F.B.

See HIGH COURT, JURISDICTION OF—REVISIONAL POWERS OF HIGH COURT, 26 C. 786=3 C.W.N. 491.

See REVISION—GENERAL PRINCIPLES, 1 P.W.R. 1909, Cr.=36 P.L.R. 1909=9 Cr. L.J. 151=1 Ind. Cas. 93, 25 C. 233.

Pending Proceedings.

Newspaper—Comment on—*See* CONTEMPT OF COURT, 14 Bom. L.R. 231=15 Ind. Cas. 93 =13 Cr. L.J. 461=1 Bom. Cr. C. 106.

See CRIM. PRO. CODE, 1898, s. 537, 23 C. 983=1 C.W.N. 57.

Pending Suit.

Stay of criminal proceedings during—*See* CRIM. PRO. CODE, 1898, s. 344, 2 Weir 415.

Pending Trial.

See REFERENCE TO HIGH COURT, Rat. Un. Cr. C. 214.

Peon.

(1)—*Abka peon whether abkari officer.*—An abkari peon is not an abkari officer under s. 62 of Mad. Act I of 1886. *In re* PACHAPPA CHETTI, **4 M.L.T. 107=18 M.L.J. 455=8 Cr. L.J. 405.**

See PENAL CODE, ss. 23, 186, 22 C. 759.

Of Collector's Court—*See* PUBLIC SERVANT, 7 B.L.R. 446=16 W.R. Cr. 27.

Perim.

See BOM. ACT II OF 1864, 10 B. 258.

If part of Aden—*See* ADEN, 10 B. 263.

Perjury.

See FALSE EVIDENCE.

See PENAL CODE, s. 193.

See SANCTION TO PROSECUTE.

(1)—*Crim. Pro. Code*, *ss.* 236, *ill.* (*b*) *and* 476 —*Penal Code, s.* 193—*Perjury—Prosecution of a witness.*—The prosecution of the petitioner was directed by the Sessions Judge under s. 476 of Crim. Pro. Code, for having made three different statements on the same fact at three different stages of the proceedings: *Held*, that, under the circumstances of the case, it was not expedient that the petitioner should be

Perjury—*continued.*

prosecuted. MAUNG THA NA v. EMPEROR, **11 Cr. L.J. 734=8 Ind. Cas. 947=3 Bur. L.T. 119.** (L.B.R. 1893—1900, 79, 3 L.B.R 204= 4 Cr. L.J. 469, *F.*)

(2)—*Penal Code, s.* 193—*Perjury—English law—Indian law.*—The law of England requires that a false statement, in order to support a charge of perjury, should be material to the question in dispute; but this qualification is not imposed by the Indian Penal Code. According to the criminal law of England, the assignment of perjury must be proved by two witnesses or by one witness and the proof of other material and relevant facts confirming his testimony. This is not a mere technical rule, but a rule founded on substantial justice. The Indian Evidence Act does not provide that there must be corroboration to support a conviction, but in ordinary cases and where the provisions peculiar to the Indian law do not apply, a rule which is founded on substantial justice may well serve as a safe guide to those who have to administer the criminal law of India. EMPEROR v. BAL GANGADHAR TILAK, **28 B. 479 =6 Bom. L.R. 324=1 Cr. L. J. 305.**

(3)—*Criminal prosecution against parties or witnesses—Need for further enquiry — Crim. Pro. Code* (1872), *s.* 471.—If, in the course of a proceeding, either civil or criminal, a Judge or Magistrate finds clear ground for believing that either the parties to it or their witnesses have committed perjury, or any other offence, against public justice, he is justified in directing criminal proceedings against such persons under s. 471 of the Crim. Pro. Code (of 1872), without any further enquiry than that which he has already held in his Court. *In the matter of* MUTTY LALL GHOSE, **6 C. 308.** [*R.*, Rat. Un. Cr. C. 895, *see, also*, 20 C. 474 and 19 C. 315, 6 C.W.N. 295.]

(4)—*Penal Code, ss.* 162 *and* 193—*Statement made to Police — Admissibility in evidence—Sanction to prosecute for perjury—Crim. Pro. Code* (1898), *ss.* 474 *and* 476—*Revision.*—Statements made to police officers and recorded by them in their diaries cannot be used in evidence except for the sole purpose of contradicting the police officer. Where a person denied having made a particular statement to a police officer in whose diary it was to be found, *held* that prosecution for perjury against that person could not successfully be maintained: *held* further that the High Court has power to interfere in revision in a case where the Magistrate sanctions a prosecution, under the above circumstances, even if the order was passed under s. 476, Crim. Pro. Code. MUHAMMAD USMAN v. KING-EMPEROR, **4 A.L.J. 811=A.W.N. 1908, 22=7 Cr. L.J. 3.** (19 A. 390, *F.*)

(5)—*Penal Code, s.* 193—*Statement of a witness recorded by a police officer—Intentionally giving false evidence—Proof necessary.*—It is irregular, in a charge of intentionally giving false evidence, to put the whole of a long statement bodily to a witness at once, and, in such a case, no conviction can properly be had except

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on proof that the accused person had made to the police officer each and every one of the statements contained in the document. ISAB MANDAL v. QUEEN-EMPRESS, 28 C. 348=5 C.W.N. 65.

(6)—*Penal Code, s.* 193—*Perjury what must be proved to support a conviction for—Contradictory statements.—Per Jenkins, C.J*—To convict an accused of giving false evidence, it is necessary to show not only that he has made a statement which is false, but also that he either knew or believed it to be false, or did not believe it to be true. In the case of contradictory statements, although the Court may believe that, on the one or the other occasion, the prisoner swore what was not true, it is not a necessary consequence that he committed perjury ; for there are cases in which a person might very honestly and conscientiously swear to a particular fact from the best of his recollection and belief, and from other circumstances, at a subsequent time, be convinced that he was wrong and swear to the reverse without meaning to swear either time falsely. Per *Chandavarkar, J.*—In the case of perjury arising out of contradictory statements, the Court dealing with them should not convict unless fully satisfied that the statements are, from every point of view, irreconcilable, and if the contradiction consists in two statements opposed to each other as to matters of inference or opinion on which a man may take one view at one time and a contrary view at another, there can be no perjury, unless on oath he has stated *facts* on which his first statement was based and then denied those facts on oath on a subsequent occasion. Per *Aston, J.*—Where the statements charged are *per se* irreconcilable or absolutely contradictory, the accused cannot be convicted if he can satisfy the Court by evidence or reliable information that neither statement was false to his knowledge or intentionally false. EMPEROR v. BANKATRAM LACHIRAM, 28 B. 533=6 Bom. L.R. 379=1 Cr. L.J. 390. [*Rel.*, 13 Cr. L.J. 23=13 Ind. Cas. 215=5 S.L.R. 129.]

(7)—*Penal Code, s.* 193—*Contradictory statements in the course of examination as complainant and subsequent examination as a witness—Crim. Pro. Code* (1898), *ss.* 200, 533.—A conviction on the alternative charges of making two statements, one in the examination under s. 200, Crim. Pro. Code, of the accused as a complainant, and the other in his examination subsequently as a witness, both the statements contradicting each other, is bad, if the statement recorded under s. 200, Crim. Pro. Code, does not bear the signature of the complainant, as required by that section. BAIJOO MANDAL v. EMPEROR, 6 C.W.N. 840.

(8)—*Penal Code, s.* 193—*False evidence—Contradictory statements by a witness before the same Court and in the same trial.—Held* by *Benson, J.*, concurring with *Moore, J.*—A conviction upon an alternative charge of giving false evidence, consisting of contradictory statements before the same Court and in the same trial can be legally maintained, without alleging which of the statements was in fact false. Per *Bhashyam Aiyangar, J., contra*:—A witness who has intentionally made contradictory statements in one and the same deposition cannot be charged in the alternative and convicted under s. 193, Penal Code, by reason of his having made such statements, one or other of which must, if the two are construed as independent and separate statements, be false. No statement made by a witness in a deposition can be regarded as a completed statement until the deposition is finished and corrected, if necessary ; for, till then every statement is liable to be retracted, corrected, varied, or qualified, and until his examination *viva voce* is finished, neither the whole nor any portion of his deposition becomes evidence. If a later statement in the deposition be contradictory to, or at variance with, a prior statement, the whole deposition must be read and construed as one, and the statement made by the witness must be taken to be the earlier statement as subsequently modified, or the subsequent statement itself if it intentionally contradicts and thus retracts the earlier, and the statement so modified or the later statement intentionally retracting the earlier is the statement or evidence made or given by him, and if that be proved to be false, he can of course be convicted of perjury or giving false evidence on that count. A witness deposed in examination-in-chief that he saw a person committing an offence and stated the exact time and place and other particulars. The deposition, after it was recorded, was read over to the witness and acknowledged to be correct. When cross-examined a fortnight afterwards, the witness denied that he knew that person or had ever seen him commit the offence. He did not plead that his former statement was made under any misapprehension, and did not make any attempt to reconcile the two statements or to explain them in any way consistent with an honest intention on his own part, but simply denied having made the former statement attributed to him. *Held* by *Benson* and *Moore, JJ.*, (*Bhashyam Ayyangar, J.*, contra), that the conviction of the accused under s. 193, Penal Code, was legal. *In the matter of* PALANI PALAGAN, 26 M. 55=1 Weir 166. [*R.*, 14 Cr. L.J. 280=19 Ind. Cas. 712=16 O. C. 81].

(9)—*Penal Code, s.* 193—*Making contradictory statements—When amounts to an offence.*—The gist of an offence under s. 193, Penal Code, in which the accused is charged with making two contradictory statements, one of which he must have known to be false, is that the two statements, taking the words of those statements in their ordinary and natural meaning in the light of the context in which they are used, must be irreconcilable. Where the accused was charged with perjury, in that he made a statement on the first occasion that he saw one L, son of R, run away from the custody of the peon, and, on the second

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occasion, that he saw one man going eastward and that he was not certain whether that man was the accused: *Held*, that the accused could not be charged or convicted for perjury, as, at the time of his second deposition, the accused was not asked to explain his first deposition in the light of his second statement. *In re* NARAYANAN NAIR, **6 Ind. Cas. 409 = 8 M. L.T. 86 = 1910 M.W.N. 397 = 11 Cr. L.J. 353.**

(10)—*Perjury—Two contradictory statements, basis of the charge—Reconciliation—Presumption in favour of.*—Where the two statements forming the basis of a charge of perjury cannot be said to be irreconcilable, the conviction on that charge must fail. In cases where the charge is based on two contradictory statements, every possible presumption in favour of the reconciliation of the two statements should be made. CROWN v. IMAMBUX *wd.* KHUDABUX, **7 S.L.R. 96 = 15 Cr. L.J. 379 = 23 Ind. Cas. 747.** (7 A. 44, 10 B. 124, *R.*) [*R.*, 7 S.L.R. 108 = 15 Cr. L.J. 488 = 24 Ind. Cas. 576.]

(11)—*Perjury—Sanction to prosecute—Two contradictory statements—Reconciliation of—Presumption in favour of—Penal Code, s.* 193.—In case of a prosecution in the alternative based on two contradictory statements, every possible presumption must be in favour of the reconciliation of the two statements. CROWN v. TIKHAM LAKHI, **7 S.L.R. 108 = 15 Cr. L.J. 488 = 24 Ind. Cas. 576.** (7 S.L.R. 96, 7 A. 44, *R.*)

(12)—*Witness—Deliberate false statement—Prosecution for perjury.*—A witness, who deliberately gives false evidence but who, when confronted with incontestable proof of his falsehood, admits it to be false, is guilty of perjury and may be prosecuted therefor. PUBLIC PROSECUTOR v. ARUMUGAM CHETTY, **1912 M.W.N. 944 = 17 Ind. Cas. 64 = 13 Cr. L.J. 752.**

(13)—*Crim. Pro. Code, s.* 476—*Order for prosecution for perjury during pendency of original proceedings.*—It is not competent to a Magistrate to order the prosecution of a witness for perjury while the proceedings, in which the witness has given his deposition, are pending before him. EMPEROR v. RUSTOMJI HORMUSJI TARWALLA, **4 Bom. L.R. 778.**

(14)—*Penal Code, s.* 192—*Fabricating false evidence—False statement by implication—Sanction—S.* 195, *Crim. Pro. Code, necessity of—Excise Collector, whether a Court.*—Where the accused made an application to the Excise Collector, saying that two persons, U and R, who held license for selling ganja and opium, and, long before that application, had executed a *zaminnama*, in which he made certain false statements implying that the said U and R had executed a sub-lease in his favour, which, if they had done, would render their license liable to be cancelled, *held*, that no sanction, under s. 195 of the Crim. Pro. Code, was necessary for prosecuting the accused for the offence of fabricating false evidence, by means of the *zaminnama*, under s. 193 of the Penal Code. That offence was completed when the *zaminnama* was executed which was long before the application to the Excise Collector. Further, the *zaminnama* was intended to be used before the Collector, who was not a Court, within the meaning of s. 195, cl. (*b*) of the Crim. Pro. Code. A person commits the offence of fabricating false evidence, if he makes a document, which, though it may not contain any false statement in express terms, yet contains false recitals, which imply such a false statement. MOHADEO MISSER v. NARAYAN RAM SHA, **10 C.W.N. 220 = 3 Cr. L.J. 196.**

(15)—*Penal Code, s.* 193—*Perjury*—Benamee *transactions—Alleged false statements involving questions of* benamee—*Impropriety of criminal trial for perjury—Charge, vagueness of.*—Where the accused was prosecuted on a charge of an offence under s. 193 of the Code, for having, in a judicial proceeding, made the statement, alleged to be false, that one D was not his *benamidar* but was the real *thikadar*, *held*, that a criminal prosecution for perjury, in respect of such a statement, ought not to have been allowed to go on in this case, as it involved the determination of questions of *benamee* transactions, which, from their peculiar nature, cannot be properly decided in a criminal case. In order to convict a person of the offence of perjury, it must be shown that the statement said to have been false, could not but be false. It is not sufficient to show that the probabilities are that the statement was false. Where the charge was, "you on or about the seventh day of May, 1904, at L, gave false evidence in a judicial proceeding, namely, in a case under s. 133 of the Code, and thereby committed an offence punishable under s. 193 of the Code within my cognizance.; *held* that a criminal prosecution cannot go on such a vague charge. HIRA NAND OJHA v. KING-EMPEROR, **10 C.W.N. 1099 = 4 C.L.J. 558 = 4 Cr. L.J. 227.**

(16)—*Contempt, summary proceeding for, against witness who has perjured—Criminal offence—Opportunity to explain should be given—Formulation of specific allegations of perjury, if essential, when the whole evidence on a particular issue alleged to be a tissue of false hoods.*—Ordinance No. 3 of 1873 of Hong Kong, which empowers the Court to commit a witness who has given false evidence in Court, as for contempt, as an alternative to formal proceedings for perjury, contemplates summary proceedings on the spot, not involving a statement or trial of specially formulated issues. But this does not do away with the necessity, before passing sentence, of giving the witness an opportunity for explanation and possibly the correction of misapprehension as to what had been in fact said or meant, contempt of Court being a criminal offence. Where, in such a proceeding, the Court stated that the whole evidence of the witnesses convinced him of a conspiracy on their part to make it appear that a certain person was at a certain date a partner of a firm, and that all they had said material

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to that issue was a tissue of deliberate falsehoods, *held*, that, having regard to the nature of the charge the Judge was making against the witnesses, it did not admit of being formulated in a series of specific allegations of perjury, and that the gist of the accusation ought to have been sufficiently clear to them from the language employed. *In re* ZAI HING FIRM, **11 Cr. L.J. 277=4 Ind. Cas. 539=13 C.W.N. 685=6 M.L.T. 9=19 M.L.J. 324, P.C.**

(17)—*Indian Penal Code* (*Act* XLV *of* 1860), s. 193—*False statement made in a deposition which was not read over to the witness in presence of the accused or his pleader—Crim. Pro. Code* (*Act* V *of* 1898), s 360—*Non-compliance with, effect of—Indian Evidence Act* (I *of* 1872), ss. 91 *and* 80—*Proof of statement.*—A witness cannot be convicted under s. 193, I.P.C., for having made false statements in his deposition before a Criminal Court when the deposition was not read over to him in the presence of the accused or his pleader in accordance with the provisions of s. 360, Crim. Pro. Code. Where the deposition of a witness in a criminal trial is not read over to him in the presence of the accused or his pleader in accordance with the provisions of s. 360, Crim. Pro. Code, it is not admissible in evidence, and no other evidence is admissible in proof of the statements made therein. MOHENDRA NATH MISSER v. EMPEROR, **12 C.W.N. 845=8 Cr. L.J 116.** (28 M. 308, *F.*) [*R.*, 18 C.W.N. 1242, 13 Cr. L.J. 569=15 Ind. Cas. 985=U.B.R. 1912, 1st Qr. p. 123; *D.*, 36 C. 808=9 C.L.J. 690=13 C.W.N. 942=10 Cr. L.J. 150=2 Ind. Cas. 697.]

(18)—*Crim. Pro. Code*, s. 360—*Deposition irregularly recorded—Effect—Witness acknowledging correctness of deposition—Conviction for perjury—Validity.*—A deposition irregularly recorded without compliance with the provisions of s. 360, Crim. Pro. Code, is not necessarily to be treated as a nullity for all purposes, even as against the man who made it and who has admitted that it represents what he said If the deposition has been read over to the witness and he has admitted it to be correct, a conviction for perjury may be upheld, though the reading over was not in the presence of the Judge, the accused and the pleaders on both sides. *In re* BOGRA, **8 M L.T. 117=7 Ind. Cas. 414=11 Cr. L.J. 482=1910 M.W.N. 435=20 M L.J. 943.**

(19)—*Penal Code, s.* 193—*Perjury—Charge based upon deposition of accused not taken in manner required by law* —Where a deposition given in the Munsiff's Court was not properly taken in accordance with the requirements of the Code of Civil Procedure, inasmuch as it was found in this case that the petitioner was taken aside by the clerk and his evidence read over to him in a place where neither the Judge nor the Vakils were present and the petitioner signed the deposition, *held*, that a conviction for perjury could not be sustained inasmuch as the deposition not having been taken in accordance with law could not be admitted in evidence nor could oral or secondary evidence be admissible when the document itself existed. KAMATCHINATHAN CHETTY v. EMPEROR, **28 M. 308=2 Cr. L.J. 756.** [*R.*, 8 Cr. L.J. 116 =12 C.W.N. 845, 13 Cr.L.J. 569=15 Ind. Cas, 985=U B R. 1912, 1, 123, 36 C. 808=9 C.L.J. 690=13 C.W.N. 942=10 Cr. L.J. 150=2 Ind. Cas. 697, 34 M. 141=8 M.L.T. 117=7 Ind. Cas. 414=11 Cr. L.J. 482.]

(20)—*Penal Code, s.* 193—*False evidence—Investigation under Ch.* XIV, *Crim. Pro. Code—"Judicial proceeding"—Act* X *of* 1873 (*Oaths*), s. 4.—The accused was charged with, and convicted of, giving false evidence, an offence under s. 193, I.P.C. The evidence was given by the accused in a proceeding under Ch. XIV of the Crim. Pro. Code before a Sub-Magistrate. It appeared that oath had been administered to the accused when his statement was taken down. It was contended for the accused, on appeal, (1) that it was not competent for the Magistrate to administer oath to the accused; (2) that the conviction was unsuitable because proceedings under Ch. XIV, Crim. Pro. Code, were not judicial proceedings: *Held*, the Sub-Magistrate, acting under Ch. XIV of the Crim. Pro. Code, was a Court acting in the discharge of a duty imposed on him by law and was therefore authorized to administer oath under s. 4 of the Indian Oaths Act (X of 1873). *Held*, also, that an investigation under Ch. XIV of the Crim. Pro. Code is a step of a judicial proceeding and that, therefore, the accused committed an offence under s. 193, I.P.C. SUPPA TEVAN v EMPEROR, **29 M. 89 =3 Cr.L.J. 370** (16 M. 421, *F.*) [*R.*, 13 Cr.L.J. 33=13 Ind. Cas. 273=5 S.L.R. 174.]

(21)—*Perjury—Form of question—Witness not allowed an opportunity of explaining his reply—Indian Penal Code* (*Act* XLV *of* 1860), s. 193—*Crim. Pro. Code*, *ss.* 195 *and* 439.—*Held*, that, where it is not known in what form a question is put to a witness and no opportunity is given to him for explaining his reply, it is unreasonable to assume that he has intentionally made a false statement so as to make him liable to be prosecuted under s. 193, I.P.C. HARNAM SINGH v. CROWN, **16 P.W.R. 1908, Cr.=7 Cr. L.J. 460.**

(22)—*Penal Code, ss.* 193, 194—*Illegal withdrawal from prosecution—Prosecution of prosecution witnesses for perjury.*—After the withdrawal from prosecution of a case by the Government pleader, the Sessions Judge directed that a Magisterial enquiry should be made into charges against some of the witnesses in that case under ss. 193, 194, I.P.C. The accused, one of those witnesses, was convicted of that offence. In the original case, out of which the prosecution for perjury arose, the High Court set aside the acquittal and ordered a retrial on the ground that a Government pleader had not the power of a public prosecutor with regard to withdrawal under s. 494, I.P.C. *Held* that under those circumstances, the Sessions Judge's

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orders with regard to the accused were premature and should be quashed. EMPRESS v. BENI, **A.W.N. 1886, 94.**

Sanction to prosecute for—*See* ACT VI OF 1884, ss. 31, 32, 33, 34, 35, 12 Cr. L.J. 577 = 12 Ind. Cas. 841 = 4 Bur. L.T. 130.

See BEN. ACT I OF 1848, 5 W.R. Cr. 8 = 1 Ind. Jur. N.S. 97.

See AFFIDAVIT, 14 C. 653.

See APPEAL—GENERAL, B.L.R. Sup. Vol. 426.

See CHARGE—FORM OF CHARGE, 9 W.R. Cr. 54, 66, 5 B H.C. Cr. 55, 23 W.R. Cr. 28.

See CRIM. PRO. CODE, 1898, ss. 164, 191 (c), 202, 7 S.L.R. 75 = 21 Ind. Cas. 472 = 14 Cr.L.J. 600.

See CRIM. PRO. CODE, 1898, s. 192, 2 N.W. P. 21.

See CRIM. PRO. CODE, 1898, s. 195, 36 M. 471 = 22 Ind. Cas. 187 = 15 Cr. L.J. 43, 8 Ind. Cas. 996 = 11 Cr. L.J. 479.

Perjury committed before a Munsiff—Power of successor in office to order prosecution —*See* CRIM. PRO. CODE, 1898, s. 476, 9 C.W. N. 859 = 4 Cr. L. J. 209.

See CRIMINAL PROCEEDINGS, 16 B. 729, 18 B. 581, 9 W.R. Cr. 54.

Evidence—Witnesses produced by accused in defence—Evidence not believed—Accused convicted—Witnesses tried for acquitted—Conviction of accused set aside for irregularity—Fresh trial—*See* EVIDENCE—GENERAL, 41 P.L.R. 1914 = 17 P.W.R. 1914, Cr. = 15 Cr.L.J. 62 = 22 Ind. Cas. 334.

See EVIDENCE—GENERAL, 9 W R. C.R. 69.

See JOINT TRIAL, 26 M. 592 = 2 Weir 297.

See JURISDICTION OF CIVIL COURTS, 7 W. R. 482.

See MAGISTRATE, JURISDICTION OF — COMMITMENT TO SESSIONS COURT, 7 W.R. Cr. 68.

See MALICIOUS PROSECUTION, 5 W.R. 134.

Sanction to prosecute—False charge of witness made voluntarily and irrelevantly—*See* PENAL CODE, ss. 182, 193, 13 Cr.L.J. 56 = 13 Ind.Cas. 392 = 4 Bur.L.T. 262.

See TRANSFER OF CRIMINAL CASES — TRANSFER BY HIGH COURT, 5 M.H.C. 212.

Permanent Residence.

Settled abode of kept mistress—Occasional visits with intention of continuance—Whether becomes residence of accused—*See* CRIM. PRO. CODE, 1898, s. 488, cl. (9), 5 S.L.R. 220 = 15 Ind. Cas. 794 = 13 Cr.L.J. 522.

Permissive Possession.

Of lands—*See* CRIMINAL TRESPASS, 1 Weir 521.

Perpetual Injunction.

See CRIM. PRO. CODE, 1898, s. 144, 8 C. 580 = 11 C.L.R. 414.

Perpetual Injunction—*concluded.*

Powers of Magistrate to pass an order under s.518, Crim. Pro. Code, 1872—*See* CRIM. PRO. CODE, 1898, s. 144, 5 C. 7 = 4 C.L.R. 309, F.B.

Person Aggrieved.

See CRIM. PRO. CODE, 1898, s. 198.

See DEFAMATION, 26 M. 43 = 2 Weir 232 = 12 M.L.J. 413.

See PENAL CODE, s. 494, 7 A.L.J. 10 = 32 A. 78 = 5 Ind. Cas. 176, 13 Cr.L.J. 204 = 14 Ind. Cas. 204.

Personal Appearance.

See CRIM. PRO. CODE, 1898, ss. 205, 438 and 439, 5 P.W.R. 1909, Cr. = 9 Cr.L.J. 158 = 1 Ind. Cas. 101.

Personal Attendance.

Women charged with abetment of bigamy—Vague complaint—No allegation of specific acts —Exemption from personal attendance—Right to be allowed—*See* CRIM. PRO. CODE, s. 205, 7 S.L.R. 161 = 15 Cr.L.J. 539 = 24 Ind. Cas. 947.

Personal Interest.

See MAGISTRATE, JURISDICTION OF.

See BOM. ACT VII OF 1867, Rat. Un. Cr. C. 433.

Personal Interest of Magistrate.

See TRANSFER OF CRIMINAL CASE — GROUNDS OF TRANSFER.

(1)—*Trial—Magistrate having personal interest.*—It is not proper that a Magistrate should try a case in which he has any personal interest. QUEEN-EMPRESS v. NYAN ON GAING, **L.B.R. 1872—1892, 153.**

See CRIM. PRO. CODE 1898, ss. 190 (1) (c), 191, 556, U.B.R. 1902—1903, Vol. I, Criminal Procedure, 21.

See CRIM. PRO. CODE 1898, s. 556, 27 A. 25 = A.W.N. 1904, 154, 27 A. 33 = A.W.N. 1904, 157.

See CRIM. PRO. CODE, 1898, ss. 556, 195, 8 S.L.R. 41 = 15 Cr. L.J. 649 = 25 Ind. Cas. 977.

See CRIM. PRO. CODE, 1898, ss. 556, 435, 439, 9 N.L.R. 81 = 14 Cr.L.J. 385 = 20 Ind. Cas. 209.

Municipal meeting directing prosecution of accused—District Magistrate presiding over—Personal interest—Incapacity to order further enquiry under s. 437.—The words ' try any case' — Whether includes proceedings under s. 437—*See* CRIM. PRO. CODE, 1898, ss. 556, 437, 5 S. L.R. 137 = 13 Ind. Cas. 222 = 13 Cr.L.J. 30.

See CRIM. PRO CODE, 1898, s. 558, Rat. Un. Cr. C. 631 = Cr. Rg., of 1892.

See MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION, Rat. Un. Cr. C. 321 = Cr. Rg. 7 of 1887, 14 B. 572, 7 A.L.J. 749 = 32 A. 635, 20 B. 502.

See PRACTICE AND PROCEDURE, U.B.R. 1897—1901, Vol. I, 123.

Personal Knowledge.

(1)—A Judge is not justified in proceeding in a case on his own personal knowledge, EMPRESS v. DHAULIA BHILL, **5 C.P.L.R. Cr. 3.**

Cognisance of case by Magistrate on personal knowledge—*See* CRIM. PRO. CODE, 1898, s. 190, 13 A. 345=A.W.N. 1891, 102.

Personation.

See CHEATING—FALSE PERSONATION.

See FALSE PERSONATION.

Petition.

Statement in—to Magistrate—Defamation—*See* PRIVILEGED COMMUNICATION, 1 Agra 38, Cr.

Petition-writer.

Not a public servant—*See* PENAL CODE, s. 170, U.B R. 1897—1901, Vol. 1, 265.

Petroleum Act.

See ACT XII OF 1886.

See ACT VIII OF 1899.

Petty Offences.

See SENTENCE—GENERAL, 1 Weir 894, F.B.

Petty thefts, punishment by heads of Villages of—Police.

See MAD. REG. IV OF 1821.

Photographing.

Of under-trial prisoners by the Police—Propriety—*See* PENAL CODE, s. 121-A, 15 C.W.N. 593=10 Ind. Cas. 582=12 Cr. L.J. 286.

Pilgrims.

Houses used by Pragwal for accommodating—License—*See* U.P. ACT I OF 1892, s. 5 (2), 20 A. 534=A.W.N. 1898, 142.

Immoveable property, dispute relating to—Fees paid by, for performing Sradh ceremony at Gaya, are not profits of immoveable property.—*See* DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 3 C.L.J. 137=3 Cr.L.J. 214.

Place of Inquiry.

See CRIM. PRO. CODE, 1898, s. 179.

Plague.

(1)—*Madras Plague Reg.* 14 (3)—"*Local Plague Authorities,*" *meaning of.*—The words "Local Plague Authorities" in Reg. 14 (3) of the Madras Plague Regulations refer to the plague authorities of the port of disembarkation. *In re* ATCHUTHA MENON, 3 Ind. Cas. **734=10 Cr. L J. 366=6 M.L.T. 300.**

See MAGISTRATE, JURISDICTION OF—MISCELLANEOUS, Rat. Un. Cr. C. 958.

Leaving—Shed and travelling by rail against order—*See* NUISANCE UNDER PENAL CODE, 22 P.R. 1902, Cr.

Removal of plague patient to another house—Resident in latter house attacked with plague—Offence committed — *See* PENAL CODE, s. 268, 12 M.L.T. 664=14 Cr.L.J. 45=18 Ind. Cas. 269.

Plaint.

Is a proceeding of a Court of justice—Alteration of plaint after it is filed—*See* CRIM. PRO. CODE, 1898, ss. 4 (8), 337 (4), 13 Cr. L.J. 588=15 Ind. Cas. 1004.

Statement made in—*See* DEFAMATION, 5 C.W.N. 293.

False verification of—*See* PENAL CODE, ss. 193, 209, Rat. Un. Cr. C. 25=Cr. Rg. 23-9-1869.

Plan.

Proof of—*See* EVIDENCE—GENERAL, 11 B.H.C. 242.

Plea.

See AUTREFOIS ACQUIT, PLEA OF.

See AUTREFOIS CONVICT, PLEA OF.

See PLEA OF GUILTY.

(1)—*Nature of plea—Charge of grievous hurt—Illegal conviction—Misconstruction of statement of accused.*—Where, in a case of causing grievous hurt, the prisoner, on the charge being read out to him, stated that he had a quarrel with the person on whom he inflicted the hurt and struck him twice with a stick in anger, *held* that that statement could not be taken to be a plea of guilty. QUEEN v. JAIPAL KOIREE, **11 W.R. Cr. 6.**

(2)—*Qualified plea—Denial of commission of offence.*—A prisoner pleading guilty proceeded to say that he did not commit the offence with which he was charged ; *held* that the plea was really one of not guilty. QUEEN v. SONAOLLAH, **25 W.R. Cr. 23.** QUEEN v. MUTTUN CHOWDHRY, **11 W.R. Cr. 53.**

(3)—*Plea of not guilty—Procedure—Plea by counsel.*—The legal course is that an accused person should *plead* by his own mouth and not through his pleader, though of course his counsel or pleader may, at the proper time, address the Court on his behalf. QUEEN v. ROOPA GOWALLA, **15 W.R. Cr. 42=6 B.L.R. Ap. 148.**

Pleader.

See LEGAL PRACTITIONERS—PLEADER.

Pleader and Client.

See EVIDENCE ACT, 1872, s. 126.

See LEGAL PRACTITIONERS—PLEADER.

See LEGAL PRACTITIONERS—PLEADER AND CLIENT.

Pleaders, Caste-questions.

See BOM. REG. II OF 1827.

Pleaders, Lower Provinces, Act.

See BEN. ACT XVIII OF 1852.

Pleaders, Mookteears, and Revenue Agents, Act.

See ACT XX OF 1865.

Pleader's Clerk.

Presentation of appeal by—*See* APPEAL—APPEAL—PRACTICE AND PROCEDURE, 20 M. 87=2 Weir 470.

Pleader's Clerk—*concluded.*

See APPEAL—APPEAL— PRACTICE AND PROCEDURE, 21 M. 114 = 2 Weir 470.

Alteration of the date of decree by a—*See* PENAL CODE, ss. 193, 467, 471, 1 Weir 551.

Pleadings.

Defamation by a pleader in—*See* DEFAMATION, 2 N.W.P. 473, 3 L.B.R. 265.

Opportunity to plead being European British subject—Plea not taken till too late—*See* EUROPEAN BRITISH SUBJECT, 5 W.R. Cr. 53.

In criminal cases—Effect—*See* LIBEL, 10 M.L.T. 506 = 1911, 2 M.W.N. 576 = 12 Ind. Cas. 961 = 12 Cr. L.J. 585 = 36 M. 457.

See SANCTION TO PROSECUTE—CONDITIONS REQUISITE FOR GRANT OF SANCTION, ETC., 3 Ind. Cas. 723 = 6 M.L.T. 346.

Plea of Autrefois Acquit.

See AUTREFOIS ACQUIT, PLEA OF.

Plea of Autrefois Convict.

See AUTREFOIS CONVICT, PLEA OF.

Plea of Guilty.

See MURDER.

(1)—*Essentials of—Murder.*—Before a prisoner can be convicted of murder on his own plea, he should have admitted that he intended to cause the death of the deceased or did so with a knowledge such as is described in s. 300 of the Penal Code. Where a prisoner admits that he killed the deceased but adds that he did so in a struggle arising from the deceased having first attacked him, the plea cannot be treated as a plea of guilty. EMPRESS v. VAIMBILEE, **5 C. 826.** [*F.*, Rat. Un. Cr. C. 698 ; *R.*, Rat. Un. Cr. C. 229.]

(2)—*Plea of guilty, what amounts to.*—Where the accused does not formally plead guilty, the fact that he throws himself on the mercy of the Court should not prejudice him. DEPUTY LEGAL REMEMBRANCER v. UPENDRA KUMAR GHOSE, **12 C.W.N. 140 = 6 Cr.L.J. 434.**

(3)—*Plea of guilty in capital cases.*—Where it is doubtful whether the person, charged with murder, pleading guilty to that charge, has understood the meaning and effect of such plea, the Judge should proceed with the trial and take evidence. QUEEN-EMPRESS v. BHADU, **19 A. 119 = A.W.N. 1896, 192.** [*F.*, 3 Cr. L.J. 80 = 54 P.R. 1905, Cr. = 169 P.L.R. 1905; *R.*, 5 A.L.J. 157 = A.W.N. 1908, 54 = 7 Cr. L.J. 295.]

(4)—*Plea of guilty or not guilty, to be made by accused personally.*—Per *Batty*, J.—No pleader can be called upon to plead, on behalf of his client, "guilty" or "not guilty," and it is improper for a Magistrate to act on such plea. —Per *Aston*, J.—It would be more regular in form if a Magistrate were to call on the accused to say with his own lips whether he denies the truth of the complaint. EMPEROR v. SURSING MATHURADAS, 6 Bom. L.R. 861 = 1 Cr.L.J. 939.

Plea of Guilty—*continued.*

(5)—*Plea of guilty by the accused—Discretion of Judge to go into evidence.*—It is open to a Judge to go into the evidence despite the plea of guilty. But if he is determined to convict on the plea of guilty, there is no question for the jury. HIGH COURT PROCEEDINGS, 20TH DEC. 1866, **2 Weir 335.**

(6)—*Plea of guilty—Record.*—When an accused person makes an exculpatory statement before the framing of a charge, the Magistrate should take down the plea of guilty in the form of question and answer and in the exact words used by the accused in answer to the charge. EMPEROR v. ABDUL HOOSEIN SHAMSUDDIN, **5 Bom. L.R. 999.**

(7)—*Plea of accused—Sessions Judge's duty in recording.*—The accused, being charged with murder, pleaded guilty but, questioned as to the circumstances, added that he killed his wife having seen her commit adultery. *Held* that the Sessions Judge was wrong in convicting him of murder after making some inquiry into the added circumstances. The plea amounted to one of not guilty of murder and the Sessions Judge could convict only after a regular and complete trial. QUEEN-EMPRESS v. LAKSHMAN, **Rat. Un. Cr. C. 532.**

(8)—*Crim. Pro. Code. s.* 309—*Plea of guilty—Trial.*—The accused at a trial pleaded not guilty, and the trial proceeded on that footing. At the close of the prosecution evidence, the accused, when asked, admitted the offence. The Judge thereupon, without taking the opinion of the assessors, found her guilty on her own admission and sentenced her. *Held,* reversing the conviction and sentence, that it was the duty of the Judge to proceed with the trial as provided in s. 309, and hear the defence and take the opinion of the assessors on the case. EMPEROR v. BAI NANI, **7 Bom. L.R. 731 = 2 Cr. L.J. 609.**

(9)—*Penal Code, ss.* 300, *excep.* 1, 302—*Charge of murder—Statement by accused—Plea of guilty—Crim. Pro. Code* (1882), s. 299.—Where an accused person admitted, in answer to a charge of murder, that he had killed his deceased wife, but followed it up with an explanatory statement, which was in effect, a plea that he committed the murder under grave and sudden provocation, *held* that the whole statement taken together did not amount to a plea of guilty on the charge of murder, and that it was the duty of the jury to decide, whether the provocation was sufficiently grave and sudden so as to reduce the offence. NETAI LUSKAR v. QUEEN-EMPRESS, **11 C. 410.** [*F.*, Rat. Un. Cr. C. 532 ; *Expl.*, 9 M. 61.]

(10)—*Accused pleading guilty to a charge of murder—Conviction for culpable homicide—Illegality.*—The conviction of an accused, who has been committed to the Sessions Court on a charge of murder, and who has pleaded guilty to that charge, of culpable homicide not amounting to murder, is illegal. CROWN v. WATU *wd.* LALBUX, 3 **S.L.R. 58 = 2 Ind. Cas. 372 = 10 Cr. L.J. 5.**

Plea of Guilty—*continued.*

(11)—*Plea of guilty to charge of murder.*—Where a person charged with murder pleaded guilty, and the Judge convicted him of culpable homicide not amounting to murder, *held*, that the Judge was not right in convicting the accused of an offence other than that on which he had been committed and to which he had pleaded guilty. HIGH COURT PROCEEDINGS, 14TH SEPTEMBER 1881, No. 1893, **2 Weir 335.**

(12)—*Charge of murder—Admission by an accused person that he killed deceased, effect of.*—A bare admission by an accused person that he had killed the deceased would not amount to an admission of murder. Where certain persons, accused of murder, admitted that they killed the deceased and added that they made the admission of their own accord without being persuaded by others, *held*, that they could not be convicted under s. 302, Penal Code, inasmuch as they were not asked in their examination whether they intended to kill, or in what circumstances they killed, and their statements did not disclose on their part a knowledge of the elements constituting the offence of murder. AIYAVU v. QUEEN-EMPRESS, **9 M. 61 =2 Weir 337.** [*R.*, L.B.R. 1893—1900, 328.]

(13)—*Plea of guilty by accused—Desirability of the accused understanding what he pleads guilty to.*—In cases where the accused person pleads guilty, it is most desirable, if not absolutely necessary, that the accused should fully understand what it is that he is admitting and pleading guilty to. Where a person was charged with culpable homicide not amounting to murder, and it was alleged that he had pleaded guilty, but it appeared that he merely admitted the facts (1) that he beat his wife, and (2) that she died after beating, *held*, that it did not amount to a plea of guilty on the charge, and that the accused could not be convicted merely on it. *In re* GURRAPU MARIGADU, **2 Weir 336.**

(14)—*Plea of guilty by accused—Validity of conviction without assessors.*—Where a prisoner pleads guilty, his conviction upon that plea is valid, although there are no assessors. QUEEN v. SREE KANT CHARAL, **10 W.R. Cr. 43**=**2 B. L.R. F.B. 23.**

(15)—*Pleading guilty to a charge defectively framed—Appeal, if barred.*—When an accused pleads guilty to a charge defectively framed in material respects, and there is nothing on the record to show that the charge was properly explained to the accused and that he pleaded guilty understanding the real nature of the offence with which he was charged, the plea should not be regarded as a plea of guilty creating a bar to an appeal. NGA NGE v. QUEEN-EMPRESS, **L.B.R. 1893—1900, 328.** (5 C. 826, 9 M. 61, 11 C. 410, *F.*)

(16)—*Unqualified plea of guilty—Conviction.*—It has not been laid down in 6 A.W.N. 192 that in no case should a Sessions Judge act upon an unqualified plea of guilty. That case only impresses upon the Sessions Judge the necessity of seeing, in cases of murder, whether or not the man understood what the charge was, to ascertain what he meant by his plea of guilty. QUEEN-EMPRESS v. DHIYAN SINGH, **A.W.N. 1898, 16.**

(17)—*Plea of not guilty — Procedure.*—Where a person, who was described as a Native Indian Subject, was charged with the murder of another Native Indian Subject at a foreign territory, admitted the causing of death, but alleged that he was not punishable for the act, as it was committed outside British India, *held*, that the accused's plea was really a plea of not guilty, entitling him to a regular trial with the aid of assessors, in which it would be necessary to take evidence upon the question whether the accused was a Native Indian Subject of Her Majesty. FAKIR v. EMPRESS, **22 P.R. 1883, Cr.** *on appeal*, **1 P.R. 1885, Cr.** [*R.*, 30 P. R. 1889, 9 P.R. 1893, Cr.]

(18)—*Crim. Pro. Code*, ss. 271, 342—*Plea of guilty by one of the co-accused—Value of his confession against the other accused—Evidence Act*, s. 30.—Where an accused person has pleaded guilty, and the Court is prepared to convict on that plea, it is contrary to the spirit of the law to postpone the conviction, so that the person who has pleaded guilty may technically be said to be tried jointly for the same offence with the other co-accused, and any statement in the nature of a confession, that he may make may be used against them. EMPEROR v. KHEARAJ, **30 A. 540**=**A.W.N. 1908, 241**=**4 M.L.T. 398**=**8 Cr. L.J. 380.** (23 A. 53, *F.*) [*R.*, 9 C.L.J. 291=13 C.W.N. 552=10 Cr. L.J. 484=4 Ind. Cas. 57.]

See ACCUSED PERSON, 9 C.L J. 291=13 C. W.N. 552.

Effect of, on right of appeal—*See* ACT IV OF 1877, s. 167, 5 B. 85.

See ADMISSION, A.W.N. 1908, 54=5 A.L.J. 157=7 Cr. L.J. 295, 9 Bom. L.R. 1346=6 Cr. L.J. 424.

See ASSESSORS, 4 M.H.C. App. 39, 5 N.W.P. 110, 10 W.R. Cr. 43.

See CONFESSION—GENERAL, U.B.R. 1897—1901, Vol. I, 72.

See CONFESSION, CONFESSION BY CO-ACCUSED, 19 B. 195.

See CONFESSION—MISCELLANEOUS, 14 B. 564.

See CONVICTION, Rat. Un. Cr. C. 413=Cr. Rg. 79 of 1888, 10 W.R. Cr. Cir. 5.

See CRIM. PRO. CODE, 1898, ss. 164, 289, 342, 364, 367, 533, 9 C.L.J. 55.

See CRIM. PRO. CODE, 1898, s. 215, 9 Cr. L. J. 250=1 S.L.R. Cr. 6.

See CRIM. PRO. CODE, 1898, s. 217, U.B.R. 1897—1901, Vol. I, 78.

See CRIM. PRO. CODE, 1898, s. 271, 23 M. 151=2 Weir 747, U.B.R. 1897—1901, Vol. I, 76, 169 P.L.R. 1905=54 P.L.R. 1905, Cr.=3 Cr. L.J. 80, A.W.N. 1908, 54=5 A.L.J. 157=7 Cr. L.J. 295.

Plea of Guilty—*concluded.*

See CRIM. PRO. CODE. 1898, s. 272, Rat. Un. Cr. C. 19 = Cr. Rg. 9-8-1869.

Pleading 'not guilty' and 'autrefois acquit' at one and the same time if proper—Plea of 'not guilty' not recognized by Indian Crim. Pro. Code—*See* CRIM. PRO. CODE, 1898, ss. 403, 305, 308, 271, 272, 18 C.W.N. 723 = 15 Cr. L.J. 460 = 24 Ind. Cas. 340 = 41 C. 1072.

See EVIDENCE ACT, 1872, s. 30, 15 P.R. 1911, Cr. = 12 Ind. Cas. 981 = 12 Cr. L.J. 605.

See PENAL CODE, s 178, U.B.R. 1907, 3rd Qr., Penal Code, 9 = 7 Cr. L.J. 208 = 14 Bur. L. R. 216.

A conviction, which is illegal and therefore liable to be set aside (on appeal), cannot be sustained merely on the ground that the accused pleaded quitly to the charge in the lower Court—*See* PENAL CODE, ss. 182, 415 and 419, 4 M.L T. 324 = 19 M.L.J. 271 = 8 Cr. L. J. 421.

Recording of—by Magistrate—Affidavit of accused, whether admissible in High Court, to show that he had not pleaded guilty—*See* PRACTICE AND PROCEDURE, 19 M. 209 = 1 Weir 850.

See PRACTICE AND PROCEDURE, 8 Bom. L.R. 240 = 3 Cr. L.J. 337.

See REVISION—DELAY, A.W.N. 1907, 204 = 6 Cr. L.J. 153.

See SECURITY PROCEEDINGS, L.B.R. 1893—1900, 637.

See SENTENCE—GENERAL, 2 Weir 305 = 4 M.H.C. App. 66.

See SESSIONS JUDGE, JURISDICTION OF, 2 N.W.P. 479, 22 B. 759.

See SESSIONS TRIAL, 6 Bom. L.R. 671, Rat. Un. Cr. C. 698 = Cr. Rg. 27 of 1894.

Pledge.

See CRIMINAL BREACH OF TRUST, 1 Weir 461 = 6 M.H.C. App. 28.

See JURISDICTION OF CIVIL AND CRIMINAL COURTS, 4 L B.R. 25 = 6 Cr. L J. 135.

Theft—Pledgee taking possession of things pledged—*See* PENAL CODE, s. 379, 1 C.P.L.R. 100, Cr.

See RESTORATION OF PROPERTY, 4 L.B. R. 13 = 6 Cr. L.J. 125.

See THEFT — THINGS IN RESPECT OF WHICH THE OFFENCE OF THEFT CANNOT BE COMMITTED, 4 Bom. L.R. 56.

Pledgee.

Compensation for pledgee of stolen property—*See* CRIM. PRO. CODE, 1898, ss. 519, 545, 2 Weir 672.

Poddar.

See PUBLIC SERVANT, 4 C. 376.

Poison.

See PENAL CODE, s. 302, 6 A.L.J. 129 = 31 A. 148 = 9 Cr. L.J. 383 = 1 Ind. Cas. 765.

Poison—*concluded.*

Putting into food something found to be—No evidence of quantity or probable effect—Nature of intention presumable—*See* PENAL CODE, ss. 307, 328, 511, 5 L.B.R. 79.

Administering of—*See* PENAL CODE, ss. 328, 302, 4 Bom. L.R. 425.

Administration of, but without knowledge of its noxious nature—*See* RASH AND NEGLIGENT ACT, CAUSING DEATH BY, 60 P.R. 1887, Cr.

Poisoning.

Murder—Retracted confession, corroboration—Sulphate of copper— *See* PENAL CODE, s. 302, 43 P.W.R. 1910, Cr.

Death caused by *dhatura*—*See* PENAL CODE, ss. 302, 307, 32 P.L.R. 1911.

Poisons, Sale of, Act.

See BOM. ACT VIII OF 1866.

Police.

See CHIEF CONSTABLE.

See CHOWKIDAR.

See CONSTABLES.

See DETENTION OF ACCUSED BY POLICE.

See EVIDENCE—STATEMENTS MADE TO POLICE.

See MAD. REG. XI OF 1816.

See MAD. REG. IV OF 1821.

See MYSORE POLICE.

(1)—*Evidence—Respective duties of the Police and the Magistrate.*—The Police perform their duty in *collecting evidence* and it is the function of the Magistrate alone to decide upon the sufficiency or credibility of the evidence when collected. GOVERNMENT v. KARIMDAD, **6 C. 496 = 7 C.L.R. 467 = 3 Shome L.R. Cr. 48.** [*R*, 11 M.L.T. 367 = 1912 M.W.N. 499 = 22 M.L.J. 419 = 14 Ind. Cas. 405 = 13 Cr. L.J. 209, 10 Cr.L.J. 225 = 2 S.L.R. 11.]

(2)—*Charges against a Police officer—Inquiry by Police Superintendent.*—It is not admissible to direct a District Superintendent of Police to inquire into the truth of the charges laid against a Sub-Inspector of Police. HALADHAR BHUMIJ v. SUB-INSPECTOR OF POLICE, HURA OUTPOST, **9 C.W.N. 199 = 2 Cr. L.J. 51.** [*F*, 12 Cr. L.J. 539 = 12 Ind. Cas. 15 = 2 P.R. 1912, Cr. = 11 P.L.R. 1912; *Rel.*, 11 Cr. L.J. 205 = 5 Ind. Cas. 714 = 4 P.W.R. 1910, Cr.; *R.*, 13 Cr. L.J. 609 = 16 C.W.N. 1105 = 15 C.L. J. 517 = 16 Ind. Cas. 257.]

(3)—*Offence committed, when policeman not on duty.*—An offence committed by a Police constable, when not on duty, is punishable under the Penal Code, and not under the Police Act. AUTAR v. NARAIN SINGH, **96 P.R. 1866, Cr.**

(4)—*Functions of Court Inspector and investigating Police officer.*—The Court-Inspector should not be allowed by Magistrates to assume the functions of a Public Prosecutor, nor should a subordinate Police officer, who

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had investigated the case, be allowed a seat on the bench or at the Magistrate's table. EMPRESS v. RAM PRASAD, **A.W.N. 1882, 24.**

(5)—*Crim. Pro. Code, Act* X *of* 1882, *ss.* 60, 61—*Suspected person not arrested—Practice.*—The practice of Police officers not arresting suspected persons but keeping them under such surveillance as amounts to Police custody and delaying their arrest till they have got confessory statements from them, is highly objectionable and illegal. EMPRESS v. MADAR, **A.W.N. 1885, 59, F.B.**

(6)—*Cross-examination by accused of witnesses on statements made by them to the Police.*—The accused are entitled to cross-examine witnesses on their former statements to the Police and by calling the Police officers they could obtain the same information which they could have obtained from the grant of copies. *In re* SHIDLINGAPPA, **Cr. Rg. 51 of 1897.**

(7)—*Order of Police.*—The orders of the Police are not binding on the Magistracy. QUEEN-EMPRESS v. KANAPPA PILLAI, **20 M. 387 = 2 Weir 240.**

(8)—*Oppressive conduct—Striking an accused person.*—Oppressive conduct on the part of the Police must be somewhat severely punished, as the evils it occasions are greater than in ordinary assaults. QUEEN-EMPRESS v. NGA SHWE O, **L.B.R. 1872-1892, 150.**

(9)—*Liability of Police officer for carrying out illegal order of his superior.*—A Police officer, who commits a wrongful act under the orders of his superior officer, is liable to punishment as his mistake of law in supposing himself authorized cannot be accepted as a good defence. But it may be a ground for the mitigation of punishment. QUEEN-EMPRESS v. NGA MYAT THA, **L.B.R. 1872—1892, 164.**

(10)—*Confession to a Police officer—Evidence Act, s.* 25—*Act* II *of* 1880 (*Burma Rural Police*).—A confession to a village headman or *gaung*, appointed under the Burma Rural Police Act, is inadmissible under s. 25 of the Evidence Act. LU BEIN v. QUEEN-EMPRESS, **L.B.R. 1872—1892, 479.**

(11)—*Police patel, whether Criminal Court.*—A Police patel is not a Criminal Court. IMPERATRIX v. IRBASAPA, **4 B. 479.**

(12)—*Limit to answers by investigating Police officer in his examination-in-chief.*—The Investigating Police Officer should not be allowed to depose in his examination-in-chief as to what the witnesses said to him. It opens up an undesirably wide field for cross-examination and leads to the attention of the Court being diverted and distracted from the true issues. Moreover, it is contrary to the plain intention of s. 162 of the Code of Criminal Procedure, which is, that such statements should be used, if at all, on behalf of, and not against, the person under trial. EMPEROR v. AKBAR BADU, **12 Bom. L.R. 663 = 7 Ind. Cas. 933 = 34 B. 599 = 11 Cr L.J. 542.**

Police—*continued.*

(13)—*Admissibility in evidence of statements made to the Police.*—Statements made to the police by accused persons, which tell against them but do not amount to admissions of guilt are admissible in evidence. The question whether the particular statement concerned, whether it be positive or negative, verbal or expressed by conduct, is or is not a confession, depends upon the circumstances of each case. BARINDRA KUMAR GHOSE v. EMPEROR, **37 C. 467 = 14 C.W.N. 1114 = 7 Ind. Cas. 359 = 11 Cr. L.J. 453.** [*R.*, 12 Cr. L.J. 60 = 8 Ind. Cas. 1181 = 6 N.L.R. 180.]

(14)—*Crim. Pro. Code, s.* 162—*Evidence Act* (I *of* 1872,) *ss.* 91, 157—*Statement made to investigating Police Officer, admissibility of—Interpretation of statutes—" Writing."* — *Per Knox, J.*—The general provisions of the Evidence Act contained in s. 157 are controlled by the special provisions of s. 162, Crim. Pro. Code, which followed it, and which is a special enactment, as against the wider and more general enactment in the Evidence Act. When a Police Officer makes use of a writing, whether in the special diary or on a separate piece of paper, to refresh his memory, and on the strength of it deposes to what he states was a statement made by a witness to him, he is in reality using that writing which he then made as evidence against the accused, and the Court, which accepts the statement made by the Police Officer in such circumstances, whether it be upon the basis of s. 157, Evidence Act, or otherwise, is really using that writing as evidence against the accused. A literal construction of the word used in an Act has in general *prima facie* preference, but, in order to arrive at the real meaning of those words, it is equally necessary to get at the exact aim, scope and object of the law, to consider what was the law before the Act was passed, what was the mischief or defect for which the law did not provide, what is the remedy provided and the reason for the remedy. *Per Karamat Husain, J.* (*differing*).—S. 162, Crim. Pro. Code, prohibits only the use, as evidence, of the writing which records the statements of the witnesses made to the investigating Police Officer; that section, so far as oral statements of the witnesses are concerned, is not in conflict with s. 157, Evidence Act, and those oral statements made to the Police Officer may be proved by calling him as a witness in order to corroborate the testimony of the witnesses. The present law is highly unsatisfactory and calls for immediate amendment. The distinction between the oral statement made by a witness and the entry in the diary of the Police Officer is a distinction in substance rather than of form. Where, by the use of clear and unequivocal language capable of only one meaning, anything is enacted by the Legislature, it must be enforced, even though it be absurd or mischievous. The duty of a Court is not to make the law reasonable, but to expound it as it stands, according to the real sense of the words. The provisions of s. 162, Act X of 1882, and

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of s. 91 of Act I of 1872, discussed. RUSTAM v. KING EMPEROR, **7 A.L.J. 468 = 11 Cr. L.J. 235 = 6 Ind. Cas. 101.** (36 C. 281, *Diss & Appr.*; 23 C. 563, *R.*) [*R.*, 35 M. 247 = 13 Cr. L.J. 305 = 14 Ind. Cas. 849 = 22 M.L.J. 490 = 11 M.L.T. 1 = 1912 M.W.N. 207, 35 M. 397 = 13 Cr. L.J. 352 = 14 Ind. Cas. 896 = 12 M.L.T. 1 = 1912 M.W.N. 549, 16 Bom. L.R. 603.]

(15)—*Crim. Pro. Code, s. 157—Failure by police to send report under—Serious neglect of duty.*—Failure to send to the Magistrate the report required by s. 157 (1), Crim. Pro. Code, and also by the Police Manual, is a serious neglect of duty which may lead to failure of justice. Such conduct on the part of the police would lead to a grave suspicion that the police were concocting false evidence CROWN v. BALOCHKHAN *wd.* KANDERO, **4 S L.R. 38 = 7 Ind. Cas. 601 = 11 Cr. L.J. 498.** (30 B. 111, *R.*) [*Expl.*, 12 Cr. L.J. 489 = 12 Ind. Cas. 209 = 5 S.L.R. 31.]

(16)—*Ordering a person not to leave home without permission of police not lawful.*—It is not a lawful order to direct a man not to leave his home without a ticket of leave or the permission of the police. CROWN v. HURNAM SINGH, **45 P.R. 1867, Cr.**

(17)—False evidence given to the police—Whether constitutes offence under s. 193 or s. 203 of the Penal Code—*See* CRIMINAL REVISION NO. 906 of 1892, U.B.R. 1892—1896, Vol. I, 195.

Omission to inform—When an offence had been committed if abetment—*See* ABETMENT, 4 B.L.R. A. Cr. 7.

Rawana, endorsement of, by, or customs officers—*See* BEN. ACT VII OF 1864, s. 16, 23 W.R. Cr. 6.

Prohibition by police of music in private houses—*See* BOM. ACT VII OF 1867, s. 27, 9 B.H.C. A.C.J. 153.

See BOM. ACT VIII OF 1867, s. 61, Rat. Un. Cr. C. 533 = Cr. Rg. 1 of 1891.

Power of—To regulate the playing of music in private houses—*See* BOM. ACT IV OF 1890, s. 48 (*b*), 19 B. 737.

Gambling in a public place—Power of to arrest without warrant—*See* BUR. ACT I OF 1899, s. 5, 1 L.B.R, 267.

See ARREST, 8 W.R. Cr. 28.

False statement as to place of residence for facilitating recruitment to the—*See* CHEATING—GENERAL, 6 A. 97.

Duty of Magistrate on receiving complaint—Reference to—*See* COMPLAINT—PROCEDURE ON RECEIPT OF COMPLAINTS, 12 B. 161.

See CONFESSION—CONFESSIONS TO MAGISTRATES—ADMISSIBILITY—RECORD OF CONFESSIONS, Rat. Un. Cr. Cas. 720 = Cr. Rg. 46 of 1894.

See CRIM. PRO. CODE, 1898, ss. 1 (2) (*a*), 4 (*p*) and (*s*), 55 (*b*), 31 C. 557 = 7 C.W N. 691.

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Direction to—to assist party to remove obstruction, whether legal—*See* CRIM. PRO. CODE, 1898, s. 147, 13 Cr. L.J. 184 = 39 C. 560 = 13 Ind. Cas. 1000.

Station House Officer receiving information of commission of cognizable offence outside his station limits—Procedure—*See* CRIM. PRO. CODE, ss. 154, 157, 1914 M.W N. 382 = 15 Cr. L.J. 622 = 25 Ind. Cas. 630.

Object of first information—Object of special diaries—*See* CRIM. PRO. CODE, 1898, ss. 154, 167, 172, 13 Cr. L.J. 65 = 16 C.W.N. 145 = 13 Ind. Cas. 721.

Power of Magistrate to direct investigation —*See* CRIM. PRO. CODE, 1898, s. 155, 12 B. 161.

Police report submitted in non-cognizable case—Examination of police officer as if he was a complainant—Legality — Magistrate doubting correctness of report—Proper procedure—*See* CRIM. PRO. CODE, 1898, ss. 155, 190 (1) (*b*), U.B.R. 1914, 2nd Qr., 19, Cr.

Statements made to police when reduced to writing are not admissible—Police officer can depose to the statements—*See* CRIM. PRO. CODE, 1898, s. 162, 16 Bom. L.R. 603 = 2 Bom. Cr. C. 234 = 15 Cr. L.J. 690 = 26 Ind. Cas. 138.

Right of accused to get copies of statements made to—*See* CRIM. PRO. CODE, 1898, s. 162, 26 M.L.J. 182 = 15 Cr. L.J. 289 = 23 Ind. Cas. 497 = 1914 M.W.N. 484.

Case-diary, admissibility of statements in—*See* CRIM. PRO. CODE, 1898, ss. 162, 172, 7 C.P.L.R. Cr. 22.

Evidentiary value of police diaries—*See* CRIM. PRO. CODE, 1898, ss. 162, 172, 1 P.W. R. 1914 N.W.F.P. Cr.

Statement reduced to writing by Police during investigation—List of property taken by Sub-Inspector—Admissibility in trial for dacoity—*See* CRIM. PRO.CODE, 1898, s. 167, 13 Cr. L.J. 244 = 14 Ind. Cas. 596.

Complaint against Police officer — By whom to be inquired into—Effect of Bengal Government circular—*See* CRIM. PRO. CODE, 1898, ss. 195, 203, 13 Cr. L.J. 482 = 15 Ind. Cas. 482 = 40 C. 41.

Cognizance of case by Magistrate—Reference to—for investigation—*See* CRIM. PRO. CODE, 1898, s. 202, A.W.N. 1902, 195.

Effect of Government Circular as to charges against the—Nature of judicial investigation thereunder—*See* CRIM. PRO. CODE, 1898, ss. 202, 203, 476, 529 (*f*), 16 C.W.N. 885 = 15 Ind. Cas. 484 = 13 Cr. L.J. 484.

Prosecution under s. 211, I.P.C., sanctioned by Asst. Superintendent of—Station House Officer presenting charge-sheet through a constable—Order directing constable to pay compensation—Illegality—*See* CRIM. PRO. CODE, 1898, s. 250, 10 M.L.T. 191 = 21 M.L.J. 844 = 12 Cr. L.J. 482.

Where and at what stage the direct connection of the Police ceases in a case in which

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they have arrested an accused—Whether they can make a second arrest or a second investigation without the authority of the Magistrate —*See* CRIM. PRO. CODE, 1898, s. 437, U.B.R. 1892—1896, Vol. I, 48.

Who can withdraw, from prosecution—Powers of Police officers—Discretion of Magistrate—Revision—*See* CRIM. PRO. CODE, 1898, ss. 497, 495, 1914 M.W.N. 776=15 Cr. L.J. 614=25 Ind. Cas. 841.

Disposal of property seized by—*See* CRIM. PRO. CODE, 1898, s. 523, 4 Cr. L J. 203=3 L.B.R. 197.

Seizure of property by, on suspicion—Duty of Magistrate—*See* CRIM. PRO. CODE, 1898, ss. 523, 524, 22 C. 761.

Seizure of property by—officer—Claim of person in possession—*See* CRIM. PRO. CODE, 1898, s. 550, 2 S.L.R. Cr. 32=10 Cr. L.J. 198.

Respective duties of the—and the Magistrate —*See* EVIDENCE—GENERAL, 6 C. 496=7 C.L. R. 467.

See EVIDENCE ACT, 1872, s. 25, 12 Bom. L.R. 899=8 Ind. Cas. 622.

Statements made by accused to Police constable, not amounting to admission of guilt—*See* EVIDENCE ACT, 1872, ss. 25, 26, 5 Bom. L.R. 312.

Confession— Foreign Police— Evidence — Inadmissibility—*See* EVIDENCE ACT, 1872, ss. 25, 26, 11 M.L.T. 407=15 Ind.Cas. 800=13 Cr. L.J. 528.

Police officers—Statements made by the accused to—Admissibility in evidence—*See* EVIDENCE ACT, 1872, ss. 25, 33, 41 C. 601=15 Cr. L.J. 713=26 Ind. Cas. 161.

Information given by accused to Police officer, how far admissible in evidence—Admission by accused of his guilt before Sub-Inspector —Effect—*See* EVIDENCE ACT, 1872, s. 27, 15 Cr. L.J. 474=24 Ind. Cas. 562.

See EVIDENCE ACT, 1872, s. 105, 8 Ind.Cas. 259=11 Cr. L.J. 612.

Discrepancies between the statements of witnesses before the—and Court—*See* EVIDENCE ACT, ss. 114, 133, 36 P.W.R 1910, Cr. =8 Ind. Cas. 193=11 Cr. L.J. 580.

Departmental enquiry into conduct of — Statements made by witnesses at the enquiry —Trial of Police officer—Right of accused to cross examine witnesses—Such statements whether privileged—*See* EVIDENCE ACT, 1872, ss. 123, 124, 125, 155, 162, 163, 16 C.W.N. 431=13 Cr L.J. 445=15 Ind. Cas. 77.

Complaint to Police is instituting a criminal proceeding—*See* FALSE CHARGE, 5 W.R. Cr. 32.

Statement to—of mere suspicion—*See* FALSE CHARGE, 8 C.L.R. 233.

See FALSE CHARGE, 9 P.W.R. 1908, Cr.=7 Cr. L.J. 391.

Summoning of—as witnesses—*See* MAGISTRATE, DUTY OF, 1 W.R. Cr. Letters, 12.

Police—*concluded.*

Confession made to zaildar—Confession nominally to third party—Presence of—Inadmissibility—S. 25, Evidence Act—*See* MURDER, 14 P.R. 1911, Cr.=12 Ind. Cas. 973=12 Cr. L. J. 597.

Admissibility of previous statements to Police Inspector—Corroborative value of such statements—Meaning of "legally competent to investigate"—Position of officer of the C.I.D. —*See* PENAL CODE, s. 121-A, 1912 M.W.N. 207=13 Cr. L.J. 305=22 M.L.J. 490=35 M. 247=14 Ind. Cas. 849.

Ordering presence at Police station — *See* PENAL CODE, ss. 174, 186, A.W.N. 1885, 43.

Applicant for renewal of license producing carriage not his own before Police Superintendent—*See* PENAL CODE, ss. 177, 182, A.W.N. 1887, 268.

Laying false information to—Offence—*See* PENAL CODE, s. 211, 10 A.L.J. 429=13 Cr. L. J. 855=17 Ind. Cas. 791.

First report to the—*See* PENAL CODE, ss. 354, 376, 511, 42 P.W.R. 1910, Cr.

Police deposing to admission of guilt by accused — Impropriety — *See* PENAL CODE, ss. 392, 411, 395, 16 C.W N. 238=13 Ind. Cas. 783=13 Cr. L.J. 127.

Value of first report to the—Admission of its certified copy in revision—*See* PENAL CODE, s. 498. 29 P.W.R. 1911, Cr.=12 Cr.L.J. 500=224 P.L.R. 1911=12 Ind. Cas. 220.

Duty of Magistrate to give notice to Police officer in charge of a case before disposing of it—*See* PRACTICE AND PROCEDURE, 1915 M.W.N. 554.

See SANCTION TO PROSECUTE—AUTHORITIES COMPETENT TO GRANT SANCTION, ETC., A.W N. 1895, 152.

See WRONGFUL CONFINEMENT, 4 Bom. L.R. 79.

Police Act.

See ACT V OF 1861.

Police Act—Amendment Act (1861).

See ACT VIII OF 1895.

Police Act (Calcutta).

See BEN. ACT IV OF 1866.

Police Act (Bombay City).

See BOM. ACT IV OF 1902.

Police Act (Bombay District).

See BOM. ACT VII OF 1867.

See BOM. ACT IV OF 1890.

Police Act (Bombay Town).

See BOM. ACT XIII OF 1856.

See BOM. ACT XLVIII OF 1860.

Police Act (Bombay Village).

See BOM. ACT VIII OF 1867.

Police Act (District Cesses and Rural).

See BUR. ACT II OF 1880.

Police Act (Madras).

See MAD. ACT XXIV OF 1859.

Police Act Amending Act XXIV of 1859.

See MAD. ACT V OF 1865.

See MAD. ACT I OF 1885.

Police Act (Madras City).

See MAD. ACT III OF 1888.

Police Act (Rangoon).

See BUR. ACT IV OF 1899.

Police Act—Village and Road, N.W.P.

See U.P. ACT XVI OF 1873.

Police Charge Sheet.

(1)—*Crim.Pro.Code* (1882), *s.* 246—*Dismissal of complaint made by a Police charge-sheet.*—Where a complaint is made by a Police charge-sheet, it is not necessary to examine the complainant before dismissing the complaint. *In re* L. M. SOARES, **2 Weir 246.**

See CRIM. PRO. CODE, 1898, s. 199, 2 Weir 235.

Police Code.

See ACT V OF 1861, 30 C. 97=6 C.W.N. 342.

Police Constable.

See CRIMINAL INTIMIDATION, 20 B. 794.

Abusing, arresting and dragging a person for not giving his name—*See* PENAL CODE, ss. 220, 323 and 504, 5 Bom. L.R. 597.

See WRONGFUL CONFINEMENT, 14 Bur. L.R. 258.

Police Custody.

See CONFESSION.

See REMAND.

See CRIM. PRO. CODE, 1898, s. 167, 23 B. 32.

See EVIDENCE ACT, 1872, s. 26, Rat. Un. Cr. C. 855=Cr. Rg. 22 of 1896.

Incriminating statement of accused in, while pointing out or producing instrument with which or the spot where the offence is alleged to have been committed—Blood stains on a zemindar's clothes—*See* EVIDENCE ACT, 1872, s. 27, 15 P.W.R. 1913, Cr.=19 Ind. Cas. 190=14 Cr. L.J. 190=171 P.L.R. 1913.

Police Diary.

(1)—*Improper use of Police diary.*—Police diaries were read out in Court "to consider whether there was anything in them tending to detract from the merits of the evidence for the prosecution as given in the Sessions Court." The Sessions Judge recorded that "the assessors having heard the diary, are unanimously of opinion that the evidence for the prosecution in this Court is reliable." *Held* that such use of Police diaries was equivalent to corroborating the oral testimony by the diaries. It would have been equally illegal to have discredited such testimony by reason only of anything found in the Police memoranda. EMPRESS v. CHUNNI, **A.W.N. 1883, 37.**

Police Diary—*continued.*

(2)—*Statements recorded under s.* 162, *Crim. Pro. Code* (1882), *ss.* 162, 172.—Statements recorded under s. 162, Crim. Pro. Code, except dying declarations, and embodied in the Police diary, become part of the diary and are entitled to the qualified protection given by s. 172, to the diary. KALLU v. EMPRESS, **17 P.R. 1894, Cr.** (10 C. 610, 20 C. 642, *N. F.*)

(3)—*Form of.*—It is important for a criminal trial that a Police diary should be kept in strict accordance with the provisions of the Crim. Pro. Code, notwithstanding that it is not evidence against the accused. CROWN v. SHERA, **39 P.R. 1867, Cr.**

(4)—*Particulars to be recorded in.*—The particulars, which s. 126, Crim. Pro. Code, 1872, requires to be recorded in a police diary, do not include any written statement taken down under s. 119 of the Code. [*R.*, 19 A. 390=17 A.W.N. 174, F.B.] The Judge is not bound to compel the witness to look at the so-called diary in order to refresh his memory, and it is wholly within his discretion whether he should do so or not. EMPRESS v. JHUBBOO MAHTON, *In the matter of the petition of* JHUBBOO MAHTON, **8 C. 739=12 C.L.R. 233.** [*R.*, 33 C. 1023=10 C.W.N. 890=4 Cr. L.J. 79.]

(5)—*Police diary—Evidence — Crim. Pro. Code* (1872), *s.* 126 (=*s.*172 *of the Code of* 1898).—Diaries kept by Police officers are not original evidence. *In re* NERAVATI NANDAIYA, **2 Weir 143.**

(6)—*Crim. Pro. Code* (1882), *s.* 172—*General order by Appellate Court for production of Police diaries—Police diaries—Evidence.*—A Court of Sessions has no power to make any general order that Police diaries shall be produced before it in criminal appeal. Any order which a Court of Sessions as a Court of criminal appeal considers it necessary to make, for the production before it in an appeal of Police diaries, must be an order made in and confined to the particular case. The Sessions Judge is not empowered to draw any presumption against the regularity of the procedure of the Police from non-production before him of the Police diary or diaries, more specially when he has not specifically called for the same. When a Court, under the authority conferred on it by s. 172, Crim. Pro. Code, uses a Police diary to aid it in an enquiry or trial, the Court must be careful to bear in mind that the diary in itself is not evidence and does not supply in itself any evidence on which a Court can act in such enquiry or trial. EMPRESS v. MOHAN, **A.W.N. 1894, 181.**

Special diary—Right of accused person or his agent to see it or have copies of it—*See* ACCUSED PERSON, 19 A. 390, F.B.

Cognizance of offence by Magistrate on perusing—Jurisdiction to try the offence—*See* COGNISANCE OF OFFENCE, Rat. Un. Cr. C. 951.

Police Diary—*concluded.*

First information, when should be recorded in—Admissibility—*See* CRIM. PRO. CODE, 1898, s. 154, 7 C.W.N. 345.

See CRIM. PRO. CODE, 1898, s. 161, 19 A. 390, F.B. = A.W.N. 1897, 174.

See CRIM. PRO. CODE, 1898, ss. 161, 172, A.W N. 1896, 193, L.B.R, 1893—1900, 47, 16 C. 610.

See CRIM. PRO. CODE, 1898, ss. 162, 172, 10 C.W.N. 890 = 4 Cr. L.J. 79 = 33 C. 1023.

Their nature—Admissibility as evidence—When police proceedings could be placed before Jury—*See* CRIM. PRO. CODE, 1898, s. 172, 27 C. 295 = 4 C.W.N. 129.

See CRIM. PRO. CODE, 1898, s. 172, A.W.N. 1894, 155, 10 C.W.N. 600 = 3 Cr.L.J. 408.

See EVIDENCE—GENERAL, 8 W.R. Cr. 68, 87, 11 W.R. Cr. 25, 13 W.R Cr. 22.

See FORGERY, 11 W.R. Cr. 44

Relevancy of—*See* HABITUAL OFFENDER, 5 O.C. 203.

See PERJURY, 4 A.L.J. 811 = 7 Cr. L.J. 3 = A.W.N. 1908, 22.

Accused's right to see—*See* WITNESS—MISCELLANEOUS CASES, L.B.R. 1893—1900, 42.

Police Duties and Powers of Magistrates.

See BOM. REG. XII OF 1827.

Police Enquiry.

(1)—*When to be directed—Crim. Pro. Code* (1882), s. 202.—The police ought not to be directed in petty cases of assault and the like to make enquiries. The Magistrate ought to take action at once on such cases. GANESHA v. EMPRESS, **19 P.R. 1894, Cr.**

(2)—*Duty of police where ordered to make an enquiry.*—A police officer is bound to make an enquiry into an offence, even if it is not cognizable by him when ordered by the Magistrate to do so. CHAMUN v. LULLEE, **21 P. R. 1868, Cr.**

(3)—*Power of Magistrate—Crim. Pro. Code* (*Act* XXV *of* 1861), ss. 133, 180.—*Held* (*Per Glover, J.*)—That under s. 133, Act XXV of 1861, a Magistrate may order a police inquiry "into any offence punishable under the penal Code," *held* (*Per Loch, J.*), that the Magistrate had no authority to order a police inquiry in a case under ch. XIV of the Crim. Pro. Code, s. 180, not having been extended to cases under that chapter. *In the case of* FOKTU SHAH, **2 B.L.R. S.N. 6 = 10 W R. Cr. 49.**

(4)—*Irregular inquiry—Cases under ch.* XIV, *Crim. Pro. Code* (1891).—An inquiry by the police into complaints falling under ch. XIV of the Code of Criminal Procedure was held to be not warranted by law. QUEEN v. HARRAK CHAND NOWLAKA, **8 W.R. Cr. 12.** [*R.*, 10 W. R. Cr. 49.]

See COMPLAINT—PROCEDURE ON RECEIPT OF COMPLAINTS, 9 M. 282 = 2 Weir 243 = 2 Weir 430, 20 M. 387 = 2 Weir 240.

Police Enquiry—*concluded.*

See CRIM. PRO. CODE, 1898, ss. 157 and 159, 4 C.W.N. 351.

See CRIM. PRO. CODE, 1898, s. 160, 7 M. 274, F.B. = 2 Weir 120.

See CRIM. PRO. CODE, 1898, ss. 163, 61, 3 N. W.P. 275.

See CRIM. PRO. CODE, 1898, s. 202, 9 M. 282 = 2 Weir 243 = 2 Weir 430.

See PENAL CODE, ss. 191, 193, 8 C.L.R. 236.

See REMAND, 11 M. 98 = 2 Weir 142.

See WITNESS—MISCELLANEOUS CASES, 24 C. 320 = 1 C.W.N. 154.

Police Information to.

See EVIDENCE ACT, 1872, ss. 24 to 27, U.B. R. 1892—1896, Vol. I, 83.

Police Inquiry.

See POLICE ENQUIRY.

Police Inspector.

Evidence of—regarding approver's confession —*See* EVIDENCE—GENERAL, A.W.N. 1881, 164.

Police Investigation.

(1)—*Crim. Pro. Code* (1882), *ss.* 162 *and* 155—*Signature of prisoner—Police officers—Delegation of power by.*—A police officer, in an investigation of a case, cannot take the signature of a prisoner to a statement made by him, under s. 162 of the Crim. Pro. Code. A police officer cannot investigate a non-cognisable case without the order of a Magistrate. *Quære*:—Whether a Police Inspector specially appointed to investigate a case can depute a chief constable to do so. QUEEN-EMPRESS v. KALIDAS, **Rat. Un. Cr. C. 488 = Cr. Rg. 57 of 1889.** (8 B.H.C. Cr. 36, *R.*)

See CRIM. PRO. CODE, 1898, ss. 4, 495 (4), 537, 4 Bom. L R. 271 = 26 B. 533.

See CRIM. PRO. CODE, 1898, ss. 161 and 162, 36 C. 560 = 2 Ind. Cas. 591.

See CRIM. PRO. CODE, 1898, ss. 161, 174, 27 P.R. 1903, Cr. = 9 Cr. L.J. 105.

See DISCHARGE OF ACCUSED, 2 C.L.R. 374.

See FALSE EVIDENCE, 7 C. 121 = 8 C.L.R. 300. F.B., 8 B. 216.

See FALSE IMPRISONMENT, A.W.N. 1906, 263 = 3 A.L.J. 650.

Delay in—*See* MAGISTRATE, DUTY OF, 2 Bom. L.R. 1092.

See SANCTION TO PROSECUTE — CONDITIONS REQUISITE FOR GRANT OF SANCTION, ETC., 37 C. 250 = 14 C.W.N. 330 = 10 C.L.J. 564 = 4 Ind. Cas. 710 = 11 Cr. L.J. 37.

Police Lock-up.

Sentencing accused to suffer imprisonment in a Police lock up—Legality *See* CRIM. PRO. CODE, 1898, ss. 383, 541, 7 L.B.R. 62.

Police Magistrate.

See BEN. ACT IV OF 1866, s. 26, 1 B.L.R. O. Cr. 39.

Police Magistrate—*concluded.*

See BOM. ACT XLVIII OF 1860, s. 2, Bourke O.C. 186.

Policeman.

Procuring illegal sale of liquor to obtain conviction—Procuring evidence for conviction—*See* ACCOMPLICE—ACCOMPLICE EVIDENCE—NECESSITY FOR COROBORATION, L.B.R. 1872—1892, 146.

See WRONGFUL CONFINEMENT, 1 Weir 341.

Police Methods.

Depreciating—Request that case should not be tried by Magistrate—*See* CONTEMPT OF COURT, 14 Cr. L.J. 321=20 Ind. Cas. 81=17 C.W.N. 1253=18 C.L.J. 452, S.B.

Police Officers.

See CONFESSION.

See CRIM. PRO. CODE, 1898, ss. 160 to 164.

See EVIDENCE ACT, 1872, ss. 25, 26.

(1)—*Penal Code, s.* 380—*Violence used by police constable for the purpose of extorting confession.*—Nothing but fear of instant death is a defence for a policeman who tortures a man or woman by superior order. When the law places a duty to act on a person, his illegal omission to act is to be judged by the same principles. It may be a form of abetment under s. 107, Penal Code; while s. 116, Penal Code, takes particular notice of the omission of police officer whose duty it is to prevent crime. The maxim *respondeat superior* has no application in such a case. QUEEN-EMPRESS v. LATIFKHAN, **20 B. 394.**

(1-*a*)—"*Police officer," meaning of.*—The words "police officers" in ss. 25 and 26, of the Evidence Act include also Foreign Police officers. PUBLIC PROSECUTOR v. VEERARAGHAVA PILLAI, **11 M.L T. 407=15 Ind. Cas. 800=13 Cr.L.J. 528.** (1 C. 207, 22 B. 235, *F.*)

(2)—*Evidence Act, ss.* 25 *and* 26—*Police officer being also Magistrate.*—The term "Police officer" should be read, not in any strict technical sense, but according to its more comprehensive and popular sense—A Police Officer, who is also a Magistrate, is a Police Officer. QUEEN v. HURRIBOLE CHUNDER GHOSE, **1 C. 207=25 W.R. Cr. 36.** [*F.*, 17 B. 485=13 Cr. L.J. 528=15 Ind. Cas. 800=11 M.L.T. 407; *Appr.*, 22 B. 235, 26 C. 569; *R.*, 37 C. 467=14 C.W.N. 1114=7 Ind. Cas. 359=11 Cr. L.J. 453; *D.*, 2 C.W.N. 71.]

(3)—*Admission to police officer before arrest.*—An admission to a police officer made by an accused before arrest is admissible in evidence. EMPRESS v. DABEE PERSHAD, **6 C. 530=7 C.L.R. 541.** [*R.*, L.B.R. 1893—1900, 42, 3 N.L.R. 51, 11 Cr. L.J. 453=7 Ind. Cas. 359=37 C. 467=14 C.W.N. 1114, 12 Cr. L.J. 60=8 Ind. Cas. 1181=6 N.L.R. 180.]

(4)—*Statement made by accused as a witness in a police investigation.*—S. 162, Crim. Pro. Code, 1882, does not provide that a statement made by an accused person to the Police as a witness in a police investigation and reduced to writing, shall not be proved against him in any way. KESAR v. EMPRESS, **5 P.R. 1891, Cr.**

Police Officers—*continued.*

(5)—*Crim. Pro. Code* (1882), *s.* 162—*Statement to a police officer investigating a case under chap.* XIV.—It is not a correct interpretation that statements, made by an accused person to a police officer investigating a case under the provisions of chap. XIV, cannot be proved against him, whether they are reduced to writing or not. But the true meaning is that a statement reduced to writing under s. 161, that is, the document containing such statements shall not be used as evidence against the accused, but not that the statement made by an accused person shall not be proved. LALJI v. EMPRESS, **15 P.R. 1886, Cr.**

(6)—*Detention of witnesses and accused unduly.*—Responsibility of police officers in detaining witnesses unduly or disobeying directions of law concerning the detention of accused or suspected persons in custody, whether by actual physical restraint or practical coercion through fear. MAUNG TUNG HLA v. QUEEN-EMPRESS, **U.B R. 1892—1896, Vol. I, 221.** (8 C. 121, *R.*)

(7)—*Power of arrest—Detention of prisoners—Torture.*—A police officer's powers of arrest and detention of accused persons and witnesses, for the purpose of suppressing the practice of torture explained. QUEEN v. BEHARY SINGH, **7 W.R. Cr. 3.** [*Ap.*, 1 C.L.R. 275, 20 W.R. Cr. 41; *Cons.*, Rat. Un. Cr. C. 222, 254, 850, 10 B. 506, 20 B. 394.]

(8)—*Powers in discharge of his duties—Rioting.*—If a man is grievously wounded in a riot, the police are bound to act without taking into consideration who was the aggressing party. In the discharge of their duties and in the absence of any proof that they exceeded their duty, the police are entitled to the protection of the High Court. QUEEN v. DAMOO SINGH, **8 W.R. Cr. 36.**

(9)—*Liability of police officer—Penal Code, s.* 79—*Crim Pro. Code* (1861), *s.* 100, *cl.* 5—*Illegal arrest by police officer.*—The general exception to s. 79 of the Penal Code, and the power conferred by cl. 5, s. 100 of the Code of Criminal Procedure, could not protect a police officer not acting in good faith, that is, with due care and attention. Cl. 5, s. 100, Code of Criminal Procedure, contemplates property actually shown to have been stolen, and not to anything that a police officer may fancy has been stolen. SHEO SURAN SAHAI v. MOHOMED FAZIL KHAN, **10 W.R. Cr. 20.**

Zemindar lending house to—Putting illegal pressure in extorting confession, knowledge of the zamindar of that purpose—Zemindar an abettor—Penal Code, ss. 107, 330—*See* ABETMENT, A.W.N. 1896, 194.

Power of arrest under Act XIII of 1857 and Crim. Pro. Code, 1882—*See* ACT XIII OF 1857, s. 24, 24 C. 691.

Jurisdiction of—*See* ACT V OF 1861, 5 C. P.L.R. 92.

Police Officers—*continued.*

Making negligent or incorrect report of local investigation—*See* ACT V OF 1861, s. 29, 11 W.R. Cr. 17.

Invested with powers under s. 44, Excise Act whether Excise officer—*See* ACT XII OF 1896, ss. 36, 37, 38, 44, 57, 49 52, 13 P.R. 1910, Cr = 27 P.W.R. 1910 = 6 Ind. Cas. 717 = 11 Cr. L.J. 394.

Whether on Excise officer—*See* ACT XII OF 1896, ss. 44, 57, 36, 37, 38, 2 P.R. 1914, Cr. = 138 P.L.R. 1914 = 15 Cr. L.J. 336 = 23 Ind. Cas. 688.

Power of Commissioner of Police to prohibit processions or public assembly—Competency of Indian Legislatures to make regulations for the purpose—*See* BEN. ACT IV OF 1866, s. 62-A cls. 4, 6, s. 102, 17 C.W.N. 505 = 18 Ind. Cas. 685 = 14 Cr. L.J. 125 = 40 C. 470.

See BOM. ACT VI OF 1873, ss. 11, 26, Rat. Un. Cr. C. 53 = Cr. Rg. 3-8-1871.

Officer of Salt Department whether—*See* BOM. ACT VII OF 1873, Rat. Un. Cr. C. 183 = Cr. Rg. 20-7-1882.

See BOM. ACT IV OF 1887, s. 6, 4 Bom. L R. 946.

Duty to protect persons in custody — *See* BOM. ACT IV OF 1890, s. 52, 20 B. 394.

See BOM. ACT IV OF 1902, s. 63, 9 Bom. L. R. 789, F.B. = 6 Cr. L.J. 164 = 2 M.L.T. 414 = 32 B. 111.

Village talayari, whether a police officer—*See* MAD. ACT XXIV OF 1859, ss. 1, 8, 11, 1 Weir 342 = 1 Weir 837.

See MAD. ACT III OF 1864, s. 26, 9 M. 97 = 1 Weir 630.

Non-bailable case—Admission to bail by—*See* BAIL, Rat. Un. Cr. C. 121.

Village Chowkidar, whether a police officer—*See* CHOWKIDAR, 27 C. 366 = 4 C.W.N. 252.

See COMPENSATION—GENERAL, 7 C.W.N. 206.

Absence of officer in charge of police station—Senior constable in Madras whether such officer—*See* CRIM. PRO. CODE. 1898, s. 4 (*p*), 9 M L.T. 414, 9 Ind. Cas. 1067 = 12 Cr.L.J. 190 = 10 Ind. Cas. 667.

Power of—to demand aid of chowkidar in arresting an accused person—*See* CRIM. PRO. CODE, 1898, s. 42, 6 C.W.N. 337.

Village chowkidar if a—*See* CRIM. PRO. CODE, 1898, s. 59, 17 C.W.N. 978 = 14 Cr. L.J. 494 = 20 Ind. Cas. 750.

A—is a "public officer"—*See* CRIM. PRO. CODE, 1898, s. 154, U.B.R. 1892—1896, Vol. I, 24.

Cases of imputations against influential—Duty of District Magistrate — Practice—*See* CRIM. PRO. CODE. 1898, ss. 195, 200, 202, 203, 476, 12 Cr. L.J. 539, 12 Ind. Cas. 515 = 2 P.R. 1912, Cr. = 11 P.L.R. 1912.

Tahsildar whether—*See* CRIM. PRO. CODE, 1898, ss. 288, 364, 533, 11 A.L.J. 286 = 14 Cr. L.J. 211 = 19 Ind. Cas. 307 = 35 A. 260.

Police Officers—*continued.*

Power of a police officer to allow compounding offences himself—*See* CRIM. PRO. CODE, 1898, ss. 345, 170, 63, U.B.R. 1892—1896, Vol. I, 42.

Contradictory or self-incriminating statements made by accused to—Admissibility in evidence against accused—*See* CRIM. PRO. CODE, 1898, s. 497, 6 L.B.R. 172 = 19 Ind. Cas. 171 = 14 Cr.L.J. 171 = 6 Bur. L.T. 73.

See CRIM. PRO. CODE, 1898, s. 561, A.W.N. 1895, 9.

Statement made by witnesses to police officers in investigation by police—*See* DEFAMATION, 16 M. 235 = 1 Weir 587.

Malicious report by a—*See* DEFAMATION, 4 P.W.R. 1910, Cr.

Statements of accused overheard by police officer—*See* EVIDENCE—GENERAL, 7 W.R. Cr. 56.

See EVIDENCE—REFRESHING MEMORY, 8 C. 154 = 10 C.L.R. 51.

Panchayat not—*See* EVIDENCE ACT, 1872, s. 24, 11 C.W.N. 904 = 6 Cr. L.J. 154.

Police diaries—Evidentiary value—*See* EVIDENCE ACT, 1872, s. 27, 15 P.W.R. 1913, Cr. = 171 P.L.R. 1913 = 19 Ind. Cas. 190 = 14 Cr. L.J. 190.

Evidence of a—how taken—*See* EVIDENCE ACT, 1872, s. 118, 6 C.P.L.R. Cr. 1.

See EVIDENCE ACT, 1872, s. 155, 27 A. 469 = A.W.N. 1905, 64.

Liable to be convicted for false charge—*See* FALSE CHARGE, 11 W.R. Cr. 2.

False entry by police officer in a special diary—*See* FALSE EVIDENCE, 21 A. 159 = A.W.N. 1899, 5.

Alternative charges—False statement before an investigating—and before a Magistrate on oath—Penal Code, s. 193—Contradictory statements—*See* FALSE EVIDENCE, 23 M. 544, Foot-note = 1 Weir 166.

False statement to—*See* FALSE EVIDENCE, 10 C. 405.

Not subordinate to Magistrate—*See* FALSE EVIDENCE, 1 L.B.R. 101.

See FALSE EVIDENCE, Rat. Un. Cr. C. 468 = Cr. Rg. 26 of 1889, 20 A. 307 = A.W.N. 1898, 52.

See PENAL CODE, ss. 99, 147, 323, 332, 18 A. 246 = A.W.N. 1896, 48.

False report by police officer—*See* PENAL CODE, s. 177, 20 A. 151 = A.W.N. 1897, 227.

To enlist under his own name—*See* PENAL CODE, s. 177, S C. 11, Oudh.

See PENAL CODE, s. 177, 21 W.R. Cr. 30.

Functions of Court Inspector and investigating—*See* POLICE, A.W.N. 1882, 24.

Delegation of powers by—*See* POLICE INVESTIGATION, Rat. Un. Cr. C. 488 = Cr. Rg. 57 of 1889.

Police Officers—*concluded.*

False information to—*See* SANCTION TO PROSECUTE—AUTHORITIES COMPETENT TO GRANT SANCTION, ETC., 2 Weir 156.

Whether subordinate to District Magistrate —*See* SANCTION TO PROSECUTE— CONDITIONS REQUISITE FOR GRANT OF SANCTION, ETC., 27 C. 452=4 C.W.N. 594.

See SECURITY FOR GOOD BEHAVIOUR, 10 O.C. 168=6 Cr. L.J. 256.

See TRESPASS, 13 C.W.N. 485=9 C.L.J. 298.

See WRONGFUL CONFINEMENT, 19 B. 72.
See WRONGFUL RESTRAINT, 12 B. 377.

Police Papers.

Judicial notice— *See* EVIDENCE— GENERAL, 8 W.R. Cr. 35.

Police Patel.

See BOM. ACT VIII OF 1867, ss. 6, 16.

See ACCUSED PERSON, 1 Bom. L.R. 435.

See BOM. ACT V OF 1879, s. 189, Rat. Un. Cr. C. 488=Cr. Rg. 52 of 1889.

See CONFESSION—CONFESSIONS MADE TO POLICE OFFICERS, 17 B. 485.

See FALSE EVIDENCE, 4 B. 479.

Omission of—to report arrival of dacoits—*See* PENAL CODE, s. 202, Rat. Un. Cr. C. 160.

Failure to report suspicious death— Liability of police patel—*See* PENAL CODE, s. 202, Rat. Un. Cr. C. 783=Cr. Rg. 44 of 1895.

See SANCTION TO PROSECUTE—CONDITIONS REQUISITE FOR GRANT OF SANCTION, ETC., Rat. Un. Cr. C. 147=Cr. Rg. 17-6-1880.

Police Proceedings.

See REFERENCE TO HIGH COURT, Rat. Un. Cr. C 133.

Police Punishment by heads of villages of petty thefts.

See MAD. REG. IV OF 1821.

Police Report.

(1)—*Use of police report.*—Police papers are no evidence in a case, and the only use that can be made of a police report is that set out in s. 172 of the Crim. Pro. Code. EMPRESS v. MAHESHRI, A W.N. 1900, 130.

(2)—*Admissibility in evidence.*—The record of statements made by witnesses during a police investigation is not admissible as an independent evideoce. But such statements may be proved either to contradict or to corroborate the testimony of the same witnesses in Court. BAHAWALA v. EMPRESS, 17 P R. 1886, Cr.

(3)—*Police report of crime*—*Evidence.*—The report of crime made by a constable is no evidence. REG. v. SUNDAR BHIM, Rat. Un. Cr. C. 23=Cr. Rg. 17 9 1869.

(4)—*Written information by police officer, if a police report—Crim. Pro. Code* (1898), s. 190. —A written information by a police officer, not himself a witness, who was not examined as a complainant, is not a police report such as is

Police Report—*continued.*

meant in s. 190, Crim. Pro. Code. The police report is a report made by a police officer in a case which he may investigate under Ch. XIV, Crim. Pro. Code. QUEEN-EMPRESS v. NGA SHWE E, 1 L.B.R. 58.

(5)—*Crim. Pro. Code* (1898), *s.* 190 (1) (*b*).—The words "police report" in the above section include all kinds of reports, and not only reports under Ch. XIV of the Code or reports in cognizable cases. KING-EMPEROR v. NGA THAUNG, U.B.R. 1904, 3rd Qr., Crim. Pro. Code, 25=1 Cr. L J. 1047. (10 B.H.C. Cr. 70, 2 L.B.R 146, U B.R 1892—1896, Vol. I, 328, U.B.R. 1897—1901, Vol. I, 54, *R.*)

Report made by subordinate police officer—Right of accused to copies—*See* ACCUSED PERSON, 20 M. 189=2 Weir 763, F.B.=7 M. L.J. 167=2 Weir 120, 142.

See BOM. ACT III OF 1867, ss. 11, 13, 14, 7 B.H.C. Cr. 87.

See COMPENSATION — GENERAL, A.W.N. 1883, 257.

See COMPLAINT — DISMISSAL OF COMPLAINT, 17 W.R. Cr. 2, 4 C.W.N. 242.

See COMPLAINT — PROCEDURE ON RECEIPT OF COMPLAINTS, 5 M.L.T. 1=32 M. 3=9 Cr.L.J. 108=1 Ind. Cas. 22, 8 B.H.C. Cr. 113.

See CRIM. PRO. CODE, 1898, ss. 4 (1) (*b*), 190 (1) (*b*), 2 L B.R. 146.

See CRIM. PRO. CODE, 1898, ss. 4 (*h*), 250, 173, 6 S.L.R. 82=17 Ind. Cas. 64=13 Cr. L. J. 152.

See CRIM. PRO. CODE, 1898, ss. 87, 88, 90, 3 L.B.R. 116.

Joint trial of more persons than one definite evidence required in, against each person—Person said to be of bad character not necessarily a dacoit—Sureties not to be rejected merely on—*See* CRIM. PRO. CODE, 1898, s. 110, 15 O.C. 263=17 Ind. Cas. 72=13 Cr. L. J. 760.

See CRIM. PRO. CODE, 1898, s. 145, 6 C.W. N. 340.

See CRIM. PRO. CODE, 1898, s. 162, 27 P.L. R. 1902.

See CRIM. PRO. CODE, 1898, s. 172, 2 Weir 142.

See CRIM. PRO. CODE, 1898, ss. 173, 190, (1) (*b*), 351, 12 Cr. L.J. 92=9 Ind. Cas. 492= 5 S.L.R. 1.

See CRIM. PRO. CODE, 1898, ss. 173, 200, 202, 439, 17 C.W.N. 1004=14 Cr. L.J. 297= 19 Ind. Cas. 953=40 C 854.

See CRIM. PRO. CODE, 1898, s. 190, 1 L.B. R. 59.

See CRIM. PRO. CODE, 1898, ss. 190, 170, 200, 205, 11 A.L.J. 331=19 Ind. Cas. 314=14 Cr. L.J. 218.

See CRIM. PRO. CODE, 1898, ss. 190 and 173, 14 C.W.N. 304=37 C. 49.

Police Report—*continued.*

Complaint in the form of police report—*See* CRIM. PRO. CODE, 1898, ss. 190 (1) (*b*) and 203, 2 Weir 246.

Power of Magistrate to refuse to initiate proceedings in cases initiated by Police report—*See* CRIM. PRO. CODE, 1898, ss. 190 and 253, 1 A.L.J. 609.

See CRIM. PRO. CODE, 1898, ss. 195 (1) (*a*) 144, 17 C.W.N. 976=19 Ind. Cas. 948=14 Cr. L.J. 292.

Sanction based on—and complainant's sworn statement whether legal and valid—Difference of opinion—*See* CRIM. PRO CODE, 1898, ss. 195, cl. (6), 429, 439, 1912 M.W.N. 439, F.B.=14 Ind. Cas. 305=11 M.L.T. 367=22 M.L.J. 419 =13 Cr. L.J. 209.

See CRIM. PRO. CODE, 1898, ss. 200 and 202, 10 C.W.N. 773=3 Cr. L.J. 471.

See CRIM. PRO. CODE, 1898, s. 550, 14 P.W.R. 1909, Cr.

See DEFAMATION, 11 W.R. 534.

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 20 C. 513, 7 B.L.R. 329, 11 C.W.N. 835=6 Cr. L.J. 36, 33 C. 352, F.B., 9 C.W.N. 1068=2 C.L.J. 259, 7 C. 46, 8 C.L.R. 245, 2 C.L.J. 271=2 Cr. L.J. 670=10 C.W.N. 257=33 C. 33, F.B., 25 W R.Cr. 2.

See EVIDENCE—GENERAL, 6 B.L.R. App. 148=15 W.R. Cr. 42.

Are not evidence except, against the reporting police officer—*See* EVIDENCE—GENERAL, 6 W.R.Cr. 52.

See EVIDENCE—NON-ADMISSIBILITY OF EVIDENCE, P.L.R. 1900, p. 71, Cr.

See EVIDENCE ACT, 1872, s. 32, 5 O.C. 246.

See FALSE CHARGE, 6 C. 582=8 C.L.R. 255, 5 A. 36, 14 C. 707, F.B., 7 C. 87=8 C.L.R. 387.

Suppression by police officer of a report of an offence and substitution of another report—*See* FALSE EVIDENCE, 20 A. 307=A.W.N. 1898, 52.

See HIGH COURT, JURISDICTION OF, REVISIONAL POWERS OF HIGH COURT, 11 C. W.N. 198=5 Cr. L.J. 32.

See MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION, 17 C.P L.R. 105.

See MAGISTRATE, JURISDICTION OF—TRANSFER OF CASES — REFERENCE TO OTHER MAGISTRATES, ETC., A.W.N. 1907, 93 =5 Cr. L J. 275.

See NUISANCE UNDER CRIM. PRO. CODE, 21 W.R.Cr. 26.

See PENAL CODE, s. 182, 6 A.L.J. 236=9 Cr. L.J. 518=2 Ind. Cas. 199.

See PENAL CODE, s. 211, 12 Bom. L.R. 229.

Enticing away married woman—Complaint—Report of police officer—*See* PENAL CODE, s. 498, 39 P.L R 1911=32 P.R. 1910, Cr.=12 Cr. L.J. 50=8 Ind. Cas. 1160.

Police Report—*concluded.*

If a complaint — *See* SANCTION TO PROSECUTE—CONDITIONS REQUISITE FOR GRANT OF SANCTION, ETC., 6 O.C. 1.

Rejection of surety upon police report—*See* SECURITY FOR GOOD BEHAVIOUR, 7 O.C. 113.

See SECURITY FOR GOOD BEHAVIOUR, 3 C. L.J. 575=3 Cr. L.J. 468.

See SECURITY TO KEEP THE PEACE—EVIDENCE AND PROCEDURE, 10 W.R.Cr. 55, 4 B L.R.F.B. 46=12 W.R.Cr. 60.

See SECURITY TO KEEP THE PEACE ON CREDIBLE INFORMATION, 21 W.R.Cr. 28.

See SURETY, 11 O.C. 267, 2 S.L.R. 11, Cr. =10 Cr. L.J. 225, 2 S.L.R. 15, Cr.=10 Cr. L. J. 228.

Police Rules.

Scope of constable's duties—Table of punishment—Fatigue duty — Extra fatigue duty—Departmental punishment how far affects punishment by Courts—*See* ACT V OF 1861, s. 29, 9 Ind. Cas. 831=12 Cr. L.J. 143=15 P. W.R. 1911=184 P L.R. 1911.

See DEFAMATION, 4 P.W.R. 1910, Cr.

Police Station.

Removal of women to—for examining—*See* WOMEN, 9 C.W.N. 199=2 Cr. L.J. 51.

Police Superintendant.

Pardon tendered by, to accomplice — *See* ACCOMPLICE — ACCOMPLICE EVIDENCE—NECESSITY FOR CORROBORATION, L.B.R. 1872–1892, 246.

Applicant for renewal of license producing carriage not his own before—*See* PENAL CODE, ss. 177, 182, A.W.N. 1887, 268.

Police Torture.

Suicide—Attempt—Leaping into well to avoid—*See* PENAL CODE, s. 309, 14 Bom. L.R. 146 =1 Bom. Cr. C. 87=14 Ind. Cas. 598=13 Cr. L.J. 246.

Political Agent.

See CRIM. PRO. CODE, 1898, s. 188.

(1)—*Crim. Pro. Code, s.* 188—*Offence committed in a Native State—Certificate of the Political Agent.*—The certificate of a Political Agent, required under s. 188 of the Crim. Pro. Code, 1898, can be obtained after the complaint has been filed and the inquiry has begun. EMPEROR v. SAKHARAM PANDU, 12 Bom. L.R. 667=7 Ind. Cas. 934=11 Cr. L.J. 543.

(2)—*Crim. Pro. Code, s.* 188—*Certificate by Political Agent—Charge not mentioned in the certificate—Order of commitment, whether good.*—Where a Political Agent, under s. 188, Crim. Pro. Code, certified that the offence which the accused was alleged to have committed out of British India was one which ought to be inquired into in British India, and the accused was committed in connection with such offence, *held*, the order of commitment is good, notwithstanding it is an order of commitment on

Political Agent—*concluded.*

a charge which is not specified in the certificate. *In re* SESSIONS JUDGE OF SOUTH ARCOT, **8 M.L.T. 203 = 7 Ind. Cas. 802 = 11 Cr.L J. 531.**

Validity of warrant issued by, of Native State against British Indian subject—*See* ACT XXI OF 1879, ss. 1, 11, 12, 18, 5 O.C. 55.

See ACT XV OF 1903, s. 7, 36 P.W.R. 1908, Cr. = 3 P.R. 1909, Cr. = 9 Cr. L.J. 3.

See ACT XV OF 1903, ss. 7, 10, 15, 14 Cr. L.J. 673 = 21 Ind. Cas. 993.

See ACT XV OF 1903, ss. 7, 15, 7 Bom. L.R. 463 = 2 Cr. L.J. 439.

Warrant issued by Political Agent endorsement in—Jurisdiction of Magistrate to release arrested person on bail, where no such endorsement—*See* ACT XV OF 1903, s. 8, 7 C.L.J. 171 = 7 Cr. L.J. 198 = 12 C.W.N. 602.

See ATTEMPT, 24 B. 287 = 1 Bom. L.R. 678.

Effect of want of Political Agent's certificate where offence committed in foreign territory—*See* CRIM. PRO. CODE, 1898, ss. 135, 537, 4 P.R. 1902, F.B. = 21 P.L.R. 1902, F.B.

See ENTICING AWAY MARRIED WOMAN, 21 P.L.R. 1902.

Order made by—in his executive capacity—*See* JUDICIAL OFFICERS, LIABILITY OF, 7 B.L.R. 452, Note.

Native Indian subject of Her Majesty—Offence committed outside British India—Want of certificate of—*See* JURISDICTION OF CRIMINAL COURTS—GENERAL, 11 P.R. 1899, Cr.

Trial by British Courts of offences committed in foreign territory without certificate of the—*See* JURISDICTION OF CRIMINAL COURTS—GENERAL, 13 M. 423 = 2 Weir 147.

See SESSIONS JUDGE, JURISDICTION OF, Rat. Un. Cr. C. 773 = Cr. Rg. 37 of 1895.

Political Agent's Certificate.

Offence committed in Native State—S. 181 (2) if applicable to—Necessity of—*See* CRIM. PRO. CODE, 1898, ss. 181 (2), 188, and 12, 5 S L.R. 266 = 15 Ind. Cas. 802 = 13 Cr. L J. 530.

Political Offence.

Application for pardon for—*See* PARDON, 7 W.R. Cr. 64.

See PENAL CODE, ss. 34, 141, 142, 147, 149, 11 Cr. L.J. 30 = 4 Ind. Cas. 700 = 6 M.L.T. 17.

See UNLAWFUL ASSEMBLY, 6 M.L T. 17 = 11 Cr. L.J. 30 = 4 Ind. Cas. 700.

Political Resident.

Appeal from the Resident's Court, Bangalore—Limitation—*See* ACT XV OF 1877, art. 155, 15 M. 414 = 1 Weir 588 = 2 M.L.J. 142.

See JURISDICTION OF CRIMINAL COURTS—GENERAL, 10 B. 258.

Political Resident at Aden.

See ACT XIV OF 1874, ss. 3, 5, 6, 10 B. 274.

Pollution.

Of well—*See* PENAL CODE, s. 295, Rat. Un. Cr. C. 979 = Cr. Rg. 40 of 1898.

Polygamy.

Burmese Buddhists—Right of first wife to personal maintenance — *See* MAINTENANCE, 4 L.B.R. 146 = 7 Cr. L.J. 444.

Poramboke.

Building erected on, land—*See* MAD. ACT V OF 1884, s. 98, 1 Weir 794.

Ports Act.

See ACT XII OF 1875.

See ACT X OF 1889.

Ports and Port-dues Act.

See ACT XXII OF 1855.

Port-dues Act.

See MAD. ACT VII OF 1867.

Ports Landing and Shipping Fees Out-ports Act.

See MAD. ACT III OF 1885.

Portuguese Treaty Act.

See ACT IV OF 1880.

Possession.

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY.

(1)—*Ownership and possession of moveable property.*—Ownership and possession of immoveable property are not so easily separated as ownership and possession of moveable property. KING-EMPEROR v. NAWTARA SINGH, **U.B.R. 1904, 1st Qr., Penal Code, 7 = 10 Bur. L.R. 356 = 1 Cr. L.J. 558.** (U.B.R. 1897—1901, 137, 139, L.B.R. 1903, 65, *R.*)

(2)—*S.* 146—*Possession, suit for—Previous possession for eleven years* —Jalkar— *Attachment by Criminal Court under s.* 146, *Crim. Pro. Code.*—A *jalkar* was attached by the Criminal Court under s. 146 of the Code. The plaintiff brought this suit for recovery of possession and proved undisturbed and peaceable possession for eleven years before the attachment, and the defendant was proved not to have been in possession before the Magistrate's order. *Held,* that the plaintiff was entitled to maintain the possession which he had against all but the true owner; the defendant had not shown himself to be the true owner, and therefore, the plaintiff was entitled to a decree. SHAMA CHARAN ROY v. SURJA KANTA ACHARYA BAHADUR, **6 Ind. Cas. 806.**

(3)—*Order of Criminal Court as to possession—Nature and effect of decision—Tenant dispossessed by order of Magistrate under s.* 318, *Crim. Pro. Code,* 1861—*Obligation to sue for reversal of order.*—Where the order of a Magistrate under s. 318, of the Code of Criminal Procedure, 1861, dispossessed a tenant, *held,* that he was not bound to sue for the reversal of that order to entitle him to recover possession. SREMUTTY LUKHEE DEBEA CHOWDHRAIN v. GOOROO DOSS SEIN, **W.R. 1864, Act X, 54.**

(4)—*Likelihood of breach of the peace—Crim. Pro. Code,* 1861, *s.* 318.—Before instituting proceedings under s. 318, Crim. Pro. Code, 1861, a Magistrate must first satisfy himself on lega

Possession—*continued.*

evidence that there exists a likelihood of a breach of the peace and must also record a proceeding stating the grounds of his being so satisfied. TARAFDI MUNDUL v. CHUNDER BHOOSAN BANERJEE, **16 W.R. Cr. 74.**

(5)—*Crim. Pro. Code*, 1861, *s.* 318—*Likelihood of breach of the peace—Order regarding possession of land.*—In order to give a Magistrate jurisdiction regarding the possession of land, he must be first satisfied that there exists a dispute likely to induce a breach of the peace and he must record the grounds which must be based upon evidence, and not derived merely from his own moral consciousness. HIGH COURT PROCEEDINGS, 15TH MAY 1869, **4 M.H.C. App. xlix.**

(6)—*Likelihood of breach of the peace.*—Under the Codes of 1861 and 1872, it was generally held that a proceeding by a Magistrate, stating the grounds of his belief in the probability of a breach of the peace, must be recorded by him and that his omission to do so completely nullified his proceedings. EMAMBANDEE BEGUM v. TEK BAHADOOR, **17 W.R. Cr. 53**; HARVEY v. BRICE, **4 W.R. 26**; *In the matter of the petition of* KUNUND NARAIN BHOOP, **4 C. 650 = 3 C.L.R. 551 = 2 Shome L. R. Cr. 26.**

(7)—*Order of Criminal Court as to possession —Likelihood of breach of the peace.*—Where a Magistrate recorded that he was satisfied that the long-standing disputes between the parties were likely to induce a breach of the peace, and was of opinion that the only way of bringing those disputes to a satisfactory settlement was by a proceeding under s. 318, Crim. Pro. Code, 1861, *held* that he had substantially complied with the provisions of that section. Under the present Code, the Magistrate need not record any proceeding, but must record on the order for the attendance of the parties, the grounds which satisfied him. BISSESHUR v. NARAIN MAHTAB, **8 W.R. Cr. 83.**

(8)—Evidence of possession—Dispute as to possession between purchaser from heir and grantee from widows — Effect of decision of Magistrate as to possession—*See* SHEROO KOOMAREE DEBIA v. KESHUB CHUNDER BOSOO, **18 W.R. P C. 1.**

See ACT XI OF 1878, s. 19, 4 N.L.R. 146.

See ACT XI OF 1878, s. 19 (*f*), 13 C.W.N. 124 = 4 Ind. Cas. 333.

See ACT XI OF 1878, s. 19 (*f*) and s. 14, 12 C.W.N. 272 = 3 M.L.T. 190 = 7 Cr. L.J. 112 = 7 C.L.J. 242 = 35 C. 219.

Doctrine of constructive possession—Application to Criminal Jurisprudence—*See* BEN. ACT V OF 1909, ss. 2 (12), 46, 52, 61, 18 C.L.J. 514 = 18 C.W.N. 309.

Suit by real owner for, and mesne profits and damages—*See* CRIM. PRO. CODE, 1898, s. 88, 28 C. 540 = 6 C.W.N. 175.

Restoration to—*See* CRIM. PRO. CODE, 1898, . 522, 14 Cr. L.J. 172 = 19 Ind. Cas. 172.

Possession—*concluded.*

Under an inferior title—*See* CRIMINAL TRESPASS, 1 Weir 522.

Of stolen property — Presumption — *See* EVIDENCE ACT, 1872, s. 114 (*a*), 15 P.R. 1891, Cr.

And custody—*See* MASTER AND SERVANT, U.B.R. 1897—1901, Vol. I, 232.

Party in possession—Attempt to dispossess—Use of force—Death caused—Liability of party in possession—Right of private defence—*See* PENAL CODE, ss. 99, 100, 304, 15 Cr. L.J. 447 = 24 Ind. Cas. 327.

Maintenance of existing peaceful possession with or without title—Enforcement of right by person out of possession—Unlawful assembly—*See* PENAL CODE, s. 141, cl. (4), 17 O C. 21 = 23 Ind. Cas. 184 = 15 Cr. L.J. 232.

See PENAL CODE, s. 379, L.B.R. 1872—1892, 410.

Of recently stolen property — *See* PENAL CODE, ss. 379, 411, L.B.R. 1872—1892, 354.

See PENAL CODE, ss. 379, 411, L.B.R. 1872—1892, 366.

See PENAL CODE, s. 441, 14 Cr.L.J. 633 = 21 Ind. Cas. 681.

See PRIVATE DEFENCE—RIGHT OF, 21 C. 392.

See STOLEN PROPERTY, 2 Weir 664 = 7 M. H.C. 233.

Conversion of joint possession into separate possession—*See* THEFT—THINGS WHICH MAY BE THE SUBJECT OF THEFT, 1 Weir 408.

Possession of foreign liquor.

When an offence—*See* ACT XII OF 1896, ss. 3, 30 and 38, U.B.R. 1892—1896, Vol. I, 92.

Possession, Order of Criminal Court as to.

See CRIM. PRO. CODE, 1898, ss. 144 to 147.

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY.

Possessory Suit.

(1)—*Order in possessory suit—Effect against persons not parties.*—A *Mamlatdar's* order in a possessory suit is operative only as against the parties. Where, in pursuance of such an order against a brother of the accused, symbolical possession of a field with crops was taken, and the accused cut and took away the crops, *held* that neither theft nor any offence was committed. QUEEN-EMPRESS v. SHAIKH HUSSAIN, **Rat. Un. Cr. C. 866 = Cr. Rg. 35 of 1896.**

Post.

Appeals sent by post—*See* APPEAL—GENERAL, 2 Weir 467.

See APPEAL— APPEAL— PRACTICE AND PROCEDURE, 15 M. 137 = 2 Weir 468.

Petitions relating to criminal charges transmitted by post—*See* CRIM. PRO. CODE, 1898, s. 119 (1) (c), 2 Weir 149.

False complaint sent by—*See* SANCTION TO PROSECUTE—MISCELLANEOUS CASES, A.W. N. 1900, 189.

Postage.

Person assisting sorting clerk secreting bearing letters to be given to delivery peon for the purpose of sharing the bearing—*See* ACT XIV OF 1866, s. 48, 14 M. 229=1 Weir 860.

Postage Stamps.

See ACT XIV OF 1866, s. 37, 5 C.P.L.R. 43, Cr.

See PENAL CODE, s. 262, 5 C.P.L.R. Cr. 43.

Postal Authorities.

Using false name with intent to defraud Postal authorities—*See* PENAL CODE, ss. 417, 420, 467 and 468, 13 M. 27=1 Weir 545.

Postal Receipt.

Destruction of—*See* MISCHIEF, 24 P.R. 1905, Cr.

Postal Stamp.

Affixing used—to letter—*See* PENAL CODE, s. 262, Rat. Un. Cr. C. 145.

Post-master.

Absenting himself from the station without notice—*See* ACT XIV OF 1866, s. 47, 1 Weir 72.

Embezzlement by—*See* FORGERY, 11 M. 411=1 Weir 549.

***Post mortem* Examination.**

(1)—Post mortem *examination--Observations, external and internal—Record of results necessary—Statements of witnesses examined at the inquest*—Verbatim *report—Value.*—Considering the important nature of the evidence which is generally supplied by the results of the *post-mortem* examination, it is necessary that, in such cases, the results of the observation, external and internal, should be fully recorded. A *verbatim* report of the statements of witnesses examined at the inquest may often be of great use to the Court in testing the value of evidence subsequently given. *In re* PACHUDAYAN, 9 M.L.T. 321=9 Ind. Cas. 730=12 Cr. L.J. 124=1911 1 M.W.N. 138.

Reports of—no evidence—*See* EVIDENCE—NON-ADMISSIBILITY OF EVIDENCE, 9 C. 455 =11 C.L.R. 569.

Expert medical opinion—Opinion of surgeon conducting *post mortem* examination—Difference—Benefit of doubt to accused—*See* PENAL CODE, ss. 161, 304, 330-A, 26 P.W.R. 1911, Cr.=12 Cr L.J. 485=12 Ind. Cas. 93.

***Post-mortem* Report.**

(1)—*Admissibility of, as evidence.—A post-mortem* report is not admissible as evidence, except to contradict the officer who made it, and it may be used by that officer, when under examination, for the purpose of refreshing his memory. QUEEN EMPRESS v. JADUB DAS, 27 C. 295=4 C.W.N. 129.

Post Office.

Opening of a newspaper by a person employed in the—*See* ACT XIV OF 1866, s. 48, 19 W.R. Cr. 4.

Post Offices Act.

See ACT XVII OF 1854.

See ACT XIV OF 1866.

See ACT VI OF 1898.

Postponement.

Of case *sine die*—*See* CRIM. PRO. CODE, 1898, s. 145, 11 Cr. L.J. 7=4 Ind. Cas. 537= 13 C.W.N. 601.

Ground for—of case—*See* WITNESS—SUMMONS TO WITNESSES, 9 B.L.R. Ap. 39=18 W. R. Cr. 54.

See TRIAL, 9 W.R. Cr. Cir. 5.

Postponing Proceedings.

See ADJOURNMENT.

See SECURITY TO KEEP THE PEACE—EFFECT OF SIGNING WRONG BOND AND POSTPONING PROCEEDINGS FOR CIVIL SUIT.

Pottah.

Destruction of—*See* OFFENCES RELATING TO DOCUMENTS, 3 W.R. Cr. 38.

Pound-Keeper.

(1)—*Act* XXVI *of* 1850—*Fine under s.* 6 *of Act* III *of* 1857.—A fine levied by a pound-keeper under Act III of 1857, is not a punishment imposed on conviction for an offence, and does not bar a trial for an offence, under Act XXVI of 1850 for letting a cow stray without a keeper. REG. v. DURGARAM MADHAVRAM, 7 B.H.C. Cr. 55.

See ACT I OF 1871, s. 21, 9 B.H.C.A.C. 164.

Falsifying accounts—*See* ACT I OF 1871, s. 27, Rat. Un. Cr. C. 632=Cr. Rg. 2 of 1893.

Powers of Legislature.

See LEGISLATURE, POWERS OF.

Practice and Procedure.

See APPEAL—APPEAL TO PRIVY COUNCIL.

See APPEAL — APPEAL—PRACTICE AND PROCEDURE.

See PRIVY COUNCIL, PRACTICE OF.

See SECURITY TO KEEP THE PEACE—EVIDENCE AND PROCEDURE.

(1)—*Law, how to be administered.*—To prevent unfairness, justice must be administered according to the existing law, whatever it is. The right discretion is not *scire quid sit justum*, but *scire per legem*, as Coke insisted. It is the duty of the High Court to keep the Magistrates within the precise limits of their duty. QUEEN-EMPRESS v. CHAGAN DAYARAM, 14 B. 331. [*R.*, 35 M. 247=13 Cr.L.J 305=14 Ind. Cas. 849=22 M.L.J. 490=1912 M.W.N. 207=11 M.L.T. 1, 13 Cr.L.J 352=14 Ind. Cas. 896= 12 M.L.T. 1=1912 M.W.N. 549, Rat. Un. Cr. C. 786.]

(2)—*Law applicable in the Presidency town and in the mofussil.*—From 1862 until now, the doctrines of the Courts of Equity have uniformly been applied in civil suits brought on the original side in the High Court of Bombay. With regard to the mofussil of the

Practice and Procedure—*continued.*

Presidency, although the English law is not obligatory on the mofussil Courts, they ought, in proceeding according to justice, equity and good conscience, as directed by Mountstuart Elphinstone's Regulation, No. IV of 1827, cl. 26, to be governed by the principles of English law applicable to a similar state of circumstances. *In the matter of* SAITHRI, **16 B. 307.**

(3)—*Practice—Criminal Courts—Statements of complainants—Court not limited to the statement—Court to find out truth.*—It is not necessary that the case started by the complainant must be the one which the Court should find proved, before it arrives at a conclusion of the guilt of the accused. The Court is not bound by all the statements of the complainant. Its duty is to find out the truth in the midst of the conflicting evidence. EMPEROR v. SOMNATH KARUNASHANKAR, **14 Bom. L.R. 135 = 1 Bom. Cr. C. 76 = 14 Ind. Cas 764 = 13 Cr L.J. 300.**

(4)—*Practice — Magistrate after conviction communicating with Judge in appeal—Propriety.*—It is not desirable that Magistrates whose decisions are under appeal, or officers engaged in promoting the prosecution, should sit beside or near the Judge or should communicate with him verbally or by notes with reference to the case REG. v. KASHINATH DINKAR, **8 B.H.C. Cr. 126.**

(5)—*Practice—Procedure—Order of Sessions Judge addressed to Magistrate—Refusal of the District Magistrate to forward order.*—The District Magistrates should forward orders of Sessions Judges to the Magistrates to whom they are addressed, and they cannot withhold them on the ground of their being illegal. A revision of such orders can, however, be obtained by moving the High Court through the Law Officers of the Crown. GANGADHARA PADAYACHI v. VELAYUDA PILLAI, **6 Ind. Cas. 358 = 8 M.L.T. 88 = 11 Cr. L.J. 327.** (9 A. 362, 18 C. 186, *R.*)

(6)—*Criminal law—Notice to Police Inspector in charge before disposing of case.*—The Magistrate is bound to give notice to the Police Inspector in charge of the case before disposing of it. CHEMIKKALA CHINNA BALI v. EMPEROR, **1915 M.W N. 554.**

(7)—*Petition containing defamatory and scandalous matter—Duty of Courts.*—The accused appealed to the High Court against his conviction and applied to be admitted to bail. In his petition of appeal, he complained of the manner in which a former application of his had been disposed of by a Divisional Bench of the High Court. The petition also contained attacks, which were quite irrelevant, on the trying Magistrate and on the private and public conduct of other officers of high rank in the service of the Government of India. The Court refused the filing of the petition and ordered its return, as it contained defamatory matter. *In re* CLIVE DURANT, **13 B. 488** [*Appl.*, 22 M. 155; *R.*, 19 B. 51, Rat-Un Cr. C. 786.]

(8)—*Magistrate showing cause against rule issued by High Court.*—A Magistrate, called upon to show cause against a rule issued by the High Court, must apply to the Legal Remembrancer to cause an appearance to be made for him (Magistrate) in Court, and must not address the Registrar by letter. *In the matter of the petition of* HURRO SOONDERY CHOWDHRAIN, **4 C. 20 = 3 C.L.R. 93.**

(9)—*Misjoinder of parties—Objection raised by Crown in High Court when dealing with the case on petitioner's application.*—Where the Crown raised an objection on the ground of misjoinder of parties, for the first time, at the High Court when it was dealing with the case on the application of petitioner and not of the Crown, *held*, that the objection ought not to be given effect to. EMPEROR v. LUCHMUN SINGH, **31 C. 710 = 1 Cr. L.J. 797.** [*D.*, 13 Cr. L.J. 457 = 15 Ind. Cas. 89 = U.B.R. 1911, 100.]

(10)—*Conviction on improperly originated trial—Power of High Court to set aside.*—The High Court may, without a reference to the Local Government, itself set aside a conviction made upon a trial improperly originated. *In the matter of the petition of* NOBIN CHUNDRA BANIKYA; EMPRESS v. NOBIN CHUNDRA BANIKYA, **8 C. 560 = 10 C L R. 369 = 4 Shome L R. 232.** [*R.*, 32 M. 173 = 9 Cr.L.J. 571 = 2 Ind. Cas. 343.]

(11)—*Rule to show cause—Explanation by Magistrate—Supplementing the judgment.*—An explanation submitted by the Magistrate, who tried a case, to the High Court, on a rule *nisi* being issued by the High Court, without any body appearing to show cause, cannot be given effect to as supplementing the judgment passed by the Magistrate. ABHOY CHARAN DASS v. MUNICIPAL WARD INSPECTOR, **25 C. 625 = 2 C.W.N. 289.** [*R.*, 2 C.L.J. 524.]

(12)—*Discharge of rule on the ground of error as to parties with liberty to apply for a fresh rule.*—Where a rule was discharged on the ground that there was some error as to the parties to the rule, and it was expressly stated that the petitioner was to have liberty to apply for another rule, *held* that the objection that the rule so obtained could not be heard was not a valid one, and that the Court could not go behind the decision of the bench which gave the petitioner liberty to apply for another rule. RAI RADHA GOBIND RAI SHAHEB BAHADUR v. GOSSAIN MOHENDRA GIR, **6 C W.N. 340.** [*D.*, 38 C. 933 = 15 C.L.J. 325 = 12 Cr. L.J. 407 = 11 Ind. Cas. 691.]

(13)—*Rulings of High Court—Duty of subordinate Court.*—Judges of subordinate Courts are bound to accept the law as laid down by the High Court. It is at all times improper for a subordinate tribunal to lay down the law to a superior Court. SUNDARAM CHETTY v. QUEEN, **6 M. 203, F.B. = 2 Weir 77.**

(14)—*Recording of plea of guilty by Magistrate—Affidavit of accused, whether admissible in High Court, to show that he had not pleaded guilty*—Where a Magistrate has recorded that the accused had pleaded guilty, the High Court

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cannot admit the affidavit of the accused for the purpose of showing that he did not plead guilty. If there has been any mistake in the matter, it is the vakil, and not the client, who ought to make an affidavit. QUEEN-EMPRESS v. BASHYAM CHETTI, **19 M. 209=1 Weir 850.**

(15)—*Bringing convicts to Court in chains, propriety of—Prisoner brought before Court in fetters—Procedure.*—As a general rule, a convict should be relieved of his chains when brought before a Court for trial or as a witness. A Judge should not refuse to try a prisoner, on the ground that he was brought before the Court in chains, but he should direct the removal of the fetters, unless satisfied by representation from the proper officer that they were necessary. HIGH COURT PROCEEDINGS, 24TH AUGUST 1869, **4 M.H.C. App. 69.**

(16)—*Alteration of sentence.*—A Magistrate is at liberty to alter his sentence at any time before the despatch of the Calendar to the appellate authority. HIGH COURT PROCEEDINGS, 29TH MARCH 1870, **5 M.H.C. App. 19.**

(17)—*Criminal proceeding — No vakalat—Memorandum of appearance, whether necessary when party present along with vakil.*—Whenever a pleader, in any criminal proceeding, does not file a vakalat from his client, he shall be required to file a memorandum of appearance containing a declaration that he had been duly instructed to appear by or on behalf of the party whom he represents; but it is not necessary to ask for such memorandum if the party is present in person along with his vakil. *In re,* MUNIRAMA REDDI, **5 M.L.T. 290=9 Cr. L. J. 305=1 Ind. Cas. 546.**

(18)—*Judge considering an accused innocent contrary to verdict of jury.*—Where a Judge considers an accused innocent, contrary to the verdict delivered by the jury, he should pass a sentence commensurate with the nature of the offence of which the jury found the accused guilty, and then refer the case to the Government under s. 54, Crim. Pro. Code, 1861, for remission of the punishment awarded. **1 W.R. Cr. Letters, 9.**

(19)—*Persons conducting prosecution or defence not to occupy seat on* dais *of the Court.*—No person conducting the prosecution or defence in a case should, under any circumstances, be allowed to occupy a seat on the *dais* of the Court. If a Court Inspector occupies a seat beside the Magistrate, witnesses may be induced to believe that his position is similar to that of the Magistrate. MUKTA PERSHAD v. KING-EMPEROR, **7 O.C. 82=1 Cr. L.J. 273.**

(20)—*Opening proceedings afresh.*—The High Court is naturally reluctant to open up proceedings afresh, and to put the parties, witnesses and public authorities to more trouble and inconvenience than necessary. QUEEN-EMPRESS v. NGA LU, **U.B.R. 1897--1901, Vol. I, 84.**

(21)—"*Personally interested*"— *Meaning.*—It is essential not only that there should be no personal interest or prejudice on the part of the judicial officer which would disqualify him from trying a particular case, but also that the mere appearance of prejudice should be avoided for the sake of protecting the administration of justice from the possibility of an imputation of partiality or unfairness. NGA THAW v. QUEEN-EMPRESS, **U.B.R. 1897—1901, Vol. I, 123.**

(22)—*Same person must not be at the same time accuser and Judge.*—It is desirable that, when it could be avoided without inconvenience, the trial of an offence should not be had before a Judge or Magistrate who, in another capacity, has had to deal with the institution of the prosecution, and it is the general practice to make arrangements accordingly. QUEEN-EMPRESS v. NGA AUNG GYI, **U.B.R. 1897—1901, Vol. I, 127.**

(23)—*Irregularity in arrest.*—When accused persons are brought before a Criminal Court, it is the duty of the Court to try them for the offences with which they are charged and any irregularity in the arrest is not in itself a ground for acquitting them. QUEEN-EMPRESS v. NGA SU, **U.B.R. 1897—1901, Vol. I 211.** (U.B.R. 1892—1896, Vol. I, 2, 123, 153, 317 and U.B.R. 1897—1901, Vol. I, 182, *F.*)

(24)—*Crim. Pro. Code* (1882), *s.* 239—*Charges involving conspiracy between the accused — Joint trial.*—Where the charges involve conspiracy between the accused, they should be tried jointly. QUEEN-EMPRESS v. MOSS, **16 A. 88=A.W.N. 1894, 23.**

(25)—*Undefended prisoner—Duty of the Court.*—Where a prisoner is not defended, the Court ought, in the interests of justice, to test the accuracy of statements made by witnesses, by questions in the nature of cross-examination. QUEEN-EMPRESS v. KALLU, **7 A. 160=A.W. N. 1884, 314.**

(26)—*Weakness of defence, if conviction can be based upon.*—A conviction is not to be based on the weakness of the defence, but on the strength of the prosecution. ABDUL GHANI v. KING-EMPEROR, **2 A.L.J. 411=2 Cr. L.J. 352.**

(27)—*Crim. Pro. Code* (1861), *s.* 171—*Power to send case to Magisterial authorities for enquiry*—A Court could not order that a case be sent to the Magisterial authorities for investigation, but should specify the Magistrate to whom it is sent. QUEEN v. NURPUT SINGH, **4 N.W P. 86.**

(28)—*Crim. Pro. Code* (1869), *s.* 296—*Separate proceedings — Security for good behaviour.*—Action under s. 296 of the Crim. Pro. Code, 1861, should be quite irrespective of any proceedings on account of any offence committed. REG. v. SUNDAR BHIM, **Rat. Un. Cr. C. 23=Cr. Rg. 17-9-1869.**

(29)—*Magistrate—Jurisdiction — Procedure.*—Where a subordinate Magistrate finds, before the trial of a case has commenced, that he has no jurisdiction to try the case, he should direct the police to take it on to a Magistrate who

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is competent. SATTARA MAGISTRATE'S LETTER NO. 335 OF 1870, **Rat. Un. Cr. C. 29 =Cr. Rg. 16-2-1870.**

(30)—*Miscellaneous proceedings — Code of Criminal Procedure, s. 146—Ordinary rules of procedure — Reference by the Sub-divisional Magistrate—Revision.*—Miscellaneous proceedings under the Code of Criminal Procedure are governed as far as may be by the ordinary rules of procedure. Magistrates are solely and entirely responsible for a case so long as it remains upon their files and no references which are not allowed by the Code can be made or can be acted on in the case either of regular trials or of miscellaneous proceedings. The jurisdiction of the High Court to revise an order passed under Chap. XII of the Code of Criminal Procedure is barred. MURAT SINGH v. MT. PAIKA BAI, **1 Cr. L.J. 877=17 C P.L R. 133.**

(31)—*Crim. Pro. Code* (1882), *s.* 238—*House-breaking in order to the commission of an offence —Theft in dwelling house—Separate convictions and sentences.*—The accused were charged with the offence of house-breaking in order to the commission of an offence, and on a conviction by the Magistrate, First Class, sentenced each to six months' rigorous imprisonment under s. 454, Indian Penal Code, though the facts showed that thay had not only committed house-breaking in order to the commission of an offence, punishable with imprisonment, but had also committed theft in a dwelling house (s. 380, I.P.C.). *Held,* (1) that the law did not require more than a single conviction and sentence, the case being one of something done which fell under two penal sections and therefore one to which s. 71, I.P.C., applied ; and (2) that the accused could have been tried under two heads of charge (see s. 275, Crim. Pro. Code), but this is not imperative, only enabling. QUEEN-EMPRESS v. UGRA, **Rat. Un. Cr. C. 307=Cr. Rg. 59 of 1886.**

(32)—*Prosecution witnesses' oath—Oath of accused.*—There must be something in the case to make the oath of the prosecution witness preferable to that of the accused. EMPEROR v. BAL GANGADHAR TILAK, **28 B. 479=6 Bom. L.R. 324=1 Cr. L.J. 305.**

(33) — *Crim. Pro. Code, s.* 416 — *Person examined as accused cannot be made accused in the same trial.*—A witness, after he has given evidence to a certain extent, cannot be made an accused and tried along with the other accused, though his name might have been mentioned by the Magistrate. A procedure like this is highly calculated to intimidate other witnesses. EMPEROR v. KRISHNA RAVJI GAIKAR, **7 Bom. L.R. 472=2 Cr. L.J. 448.**

(34)—*Plea of guilty—Murder cases.*—It is not in accordance with the usual practice to accept a plea of guilty in a case where the natural sequence would be a sentence of death. A man may plead that he hit some one who thereby died, and that he did it for the purpose of taking away the ornaments of the person injured without necessarily admitting that he

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committed murder, for murder under the Penal Code requires a certain intention or a certain knowledge. EMPEROR v. CHINIA BHIKA KOLI, **8 Bom. L.R. 240=3 Cr. L J. 337.**

(35)— *Findings by Magistrates in criminal cases.*—Magistrates are bound to record translations of their findings in criminal cases. REG. v. RATANJI BHUKAN, **1 B.H.C. 17, Cr.**

(36)— *Finding of fact as to jurisdiction.*—Magistrates should carefully find the facts which support their jurisdiction. MAHRAM, ON BEHALF OF HIS BROTHER BAHWUL, **111 P.R. 1866, Cr.**

(37)—*Crim. Pro. Code* (*Act* V *of* 1898), *s.* 421 —*Admission of appeal under—Pleader, reasonable opportunity of, to be heard.*—Where, the very moment that a petition of appeal was filed, the Sessions Judge called upon the pleader to support the appeal, and summarily rejected it under s. 421, without hearing the pleader, when he said he was not prepared, *held,* that the pleader had no reasonable opportunity of being heard. If the Court desires to hear the appellant under s. 421, Crim. Pro. Code, before admitting an appeal, he should be given reasonable notice. The practice in the mofussil explained. RAMTOHAL DUSADH v. EMPEROR, **36 C. 385=13 C.W.N. 684=9 Cr. L.J. 401=1 Ind. Cas. 868.** [*R.*, 10 Cr. L.J. 491=4 Ind. Cas. 37=6 M L.T. 309.]

(38)—*Practice—Advocate, hearing granted—Stopping counsel's arguments with promise to hear him further—Order passed to his client's prejudice without hearing—District Magistrate —Order of discharge.*—In hearing an application to set aside an order of discharge, a District Magistrate fully heard the applicant's counsel, and next heard the opponent's counsel only on some points, remarking that, if he thought any arguments necessary on the remaining points, he would fix a day and hear them. After some time, the District Magistrate, without hearing any further the opponent's counsel, passed an order setting aside the order of discharge :—*Held,* setting aside the District Magistrate's order, that his act in stopping the opponent's counsel with a promise to hear him further, if necessary, amounted to an undertaking that the decision should not go against the opponent without affording him further opportunity for presenting his case to the Magistrate *In re* ANAPRAM KIRPARAM, **13 Bom. L R. 27=9 Ind. Cas. 350=12 Cr. L. J. 64.**

(39)—*No witnesses called for defence—Reply by prosecutor—Right of reply.*—Where the defence calls no witnesses, the prosecutor ought not, properly speaking, to be allowed to have a reply ; the object of the law is to let each side have an opportunity of commenting on the evidence of the other, and not to give an additional advantage to either side. HURRY CHURN CHUCKERBUTTY v. EMPRESS, **10 C. 140=13 C.L.R 358.** [*F.*, 17 C. 930 ; *R.*, 8 Cr. L.J. 215=1 S.L.R. 91 ; *Cons.*, 8 Bom. L.R. 421=4 Cr. L.J. 1=30 B. 421.]

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(40)—*S. 437—Crim. Pro. Code—Order for re-trial after discharge of accused—Reasons for the order to be stated—Notice to accused not peremptory.*—As a matter of law it is not obligatory on a Court to serve a notice on the accused person before ordering his retrial under s. 437 of the Code, but, according to the general principle of criminal jurisdiction, no order prejudicially affecting the accused person should be passed without giving him an opportunity of being heard. In passing such an order, it is not ordinarily necessary that the Court should make a detailed examination of the evidence and give elaborate reasons, because that might prejudice the trial afterwards; but it is desirable that the Court should give enough in the shape of reasons to show that its order is a proper one. WAHED ALI v. EMPEROR, **32 C. 1090 = 3 C.L J. 43 = 3 Cr. L J. 120.** [*R.*, 8 C.L.J. 73 = 12 C.W.N. 822 = 8 Cr. L.J. 51, 9 Cr. L.J. 446 = 3 S.L.R. 7, 1 Ind. Cas. 938.]

(41)—*Crim. Pro. Code* (1872), *ss.* 295, 504—*Orders by First Class Magistrate—Submission of copies.*—Copies of orders passed by a First Class Magistrate should be submitted to the District Magistrate and not to the Sessions Judge, in cases where the appeal lies to the District Magistrate. HIGH COURT PROCEEDINGS, 14TH JULY, 1873, **7 M.H.C. App. 23.**

(42)—*Procedure of Sessions Judge where sentence is not appealable, and where he considers fine imposed too heavy.—Crim. Pro Code* (1898), *s.* 413.—Where a Sessions Judge, in cases where s. 413, Crim. Pro. Code, 1898, does not allow an appeal against a sentence differs from the Magistrate passing the sentence as to the amount of fine that should be imposed, he should return the case to the Magistrate with the remark that the fine is too severe. The law allows Magistrates a very wide discretion as to the sentence they may inflict. QUEEN-EMPRESS v. YELAYA, **L B.R 1893-1900, 535.**

(43)—*Finding of guilty—Conviction—Sentence.*—Where a finding of the Magistrate is one of guilty, he is bound to pass some sentence, if only a nominal one. HIGH COURT PROCEEDINGS, 12TH AUGUST 1869, NO. 1513, **2 Weir 305 = 4 M.H.C. App. 66.**

(44)—*Conviction—Sentence.*—If the accused is convicted, some sentence must be passed. QUEEN-EMPRESS v. MI BAUK, **L.B.R. 1872-1892, 409.**

(45)—*Crim. Pro. Code* (1867), *s* 196 (= *s.* 357 *of the Code of* 1898)—*Scope of the section.*—The authority conferred on an officer by s. 196 is personal to that officer, and is in force only so long as he remains in the particular district in which it has been conferred. HIGH COURT PROCEEDINGS, 25TH NOVEMBER 1869, NO. 2330, **2 Weir 434 = 5 M.H.C App. 9.**

(46)—*Crim. Pro. Code* (1882), *s.* 421—*Duty of Appellate Court to write judgment.*—A Court, on rejecting an appeal under s. 421, is not bound to write a judgment. *In re* BALA SUBBANNA, **2 Weir 473.** [*F.*, 2 Weir 473 = 25 M. 534; *R.*, 21 C. 92, U.B.R. 1906, 2nd Qr., Crim. Pro. Code, 49.]

(47)—*Procedure to be adopted under s.* 8, *Reformatory Schools Act, and s.* 562, *Crim. Pro. Code.*—Under s. 8 of the Reformatory Schools Act, a substantive sentence of transportation or imprisonment has to be first passed, and the Court may then direct that, instead of undergoing that sentence, the accused shall be sent to a Reformatory School. Under s. 562, the Court may, *instead of sentencing him at once* to any punishment, direct that he be released on his entering into a bond to appear and receive sentence when called upon, and, in the meantime, to keep the peace and be of good behaviour. KING-EMPEROR v. THA TUN AUNG, **2 L.B.R. 216 = 1 Cr. L.J. 485.**

(48)—*Crim. Pro. Code* (1872), *ss.* 367, 369—*Magistrate discovering that sentence passed by him is illegal.*—Where a Magistrate discovers that a sentence passed by him is illegal, he should not attempt to amend it, but should report through the Sessions Judge, for the orders of the High Court. NGA E v. QUEEN-EMPRESS, **L.B.R. 1872—1892, 354.**

(49)—*Duty of appellate Court to weigh evidence.*—In every appeal, and *a fortiori* in every reference under s. 34 of the Code of Criminal Procedure, it is obviously the duty of the Sessions Judge to carefully weigh the evidence himself and not to rely solely upon the weight attached to it by the Court whose order is appealed against or is referred for confirmation. No doubt an appellate Court is right in attaching in all cases a certain weight, and in some cases every considerable weight, to the fact that the lower Court believed the witnesses for the prosecution; but, even in such cases, the appellate Court is not justified in placing complete reliance upon the lower Court's view as to the credibility of the witnesses. It is bound to look into all the circumstances of the case and to see whether they in any way impugn the statements made by them. KYAWZAN v. QUEEN-EMPRESS, **L.B.R. 1872-1892, 516.**

(50)—*Practice of appellate Courts.*—In this case though there was a good deal of falsehood mixed up yet there were some very suspicious circumstances, which told strongly against the supposition of innocence on the part of the appellants; under such circumstances as the Commissioner's investigation was a searching and careful one, appeal dismissed. MOHUN LAL v. CROWN, **20 P.R. 1866, Cr.**

(51)—*Taking of evidence in criminal cases—Irregularities in procedure.*—Various irregularities in matters of procedure and faults in regard to evidence commonly committed in the trial of criminal cases commented on and pointed out for the guidance of the Courts. NGA PO KE v. QUEEN-EMPRESS, **U.B R. 1897 1901, Vol. I, 31.** (U.B.R. 1892—1896, 195, 9 C. 455, 11 B. 657, 11 B. 702, *R.*)

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(52)—*Interference by appellate Court, when necessary.*—Under the Criminal Justice Regulation, sch. XV, it is only where a failure of justice has been occasioned that interference on account of an irregularity of procedure is requisite. NGA PO SIN v. QUEEN-EMPRESS, **U.B.R. 1897—1901, Vol. I, 47.**

(53)—*Crim. Pro. Code, ss.* 200, 243, 244, 252—*Case instituted on complaint—Magistrate bound to examine complainant in presence of accused.*—In a case instituted on complaint, the Magistrate is bound to examine the complainant (if any) in the presence of the accused. This is prescribed in summons cases under s. 244, Crim. Pro. Code, (unless the accused is convicted on his own admission under s. 243), and in respect of warrant cases under s. 252. The not uncommon practice of examining the complainant only under s. 200, Crim. Pro. Code, and omitting to examine him at the trial, is contrary to law. QUEEN-EMPRESS v. NGA NGWE NYUN, **U.B.R. 1897—1901, Vol. I, 67.** (U.B. R. 1892—1896, Vol. I, 290, *R.*)

(54)—*Order of acquittal—High Court's powers of revision—Order for retrial by High Court.*—As a general rule the High Court will not interfere with an order of acquittal, but it has the power to do so and this power may be properly exercised in particular cases. Where a trial has been held without jurisdiction, it appears to be very proper that an order in revision should direct a new trial. NGA PO HAN v. NGA THA LE NI, **U.B R. 1897—1901, Vol. I, 91.**

(55)—*Gambling Act (I of* 1899), *s.* 6—*Information and grounds of belief.*—As a matter or practice, the information and grounds of belief recorded under s. 6, Gambling Act I of 1899, should always be filed with the record of the trial. NGA PYI v. QUEEN-EMPRESS, **U.B.R. 1897—1901, Vol. I, 213.**

(56)—*Discharge by Magistrate—Retrial for a charge a month later and ultimate conviction—No notice given to accused—Legality of subsequent proceedings.*—S. 437, Crim. Pro. Code, does not expressly require notice to be given to an accused person. But it has been well enough understood that ordinarily notice should be given. The District Magistrate's omission to give applicant notice before passing his order directing further enquiry was regrettable, but it did not make the retrial illegal. NGA PO GAUNG v. KING-EMPEROR, **U.B.R. 1897—1901, Vol. I, 96.**

(57)—*Crim. Pro. Code (Act X of* 1882), *ss.* 366, 367—*Sessions Judge—Judgment delivered by Magistrate—Correspondence with surgeon.*—Where a Sessions Judge sent his judgment to be delivered by the District Magistrate, the procedure was illegal. Where, after a trial for murder had closed and the opinion of the assessors had been given, the Judge, without adjourning the case to a particular day for judgment, began correspondence with a surgeon about the mental state of the accused, and afterwards prepared a judgment incorporating the opinion of the surgeon, *held* that the procedure was extremely irregular. EMPRESS v. JIA LAL, **A.W.N. 1889, 181.**

(58)—*Criminal appeal—View of evidence—Practice.*—Where a criminal appellate Court dismissed an appeal saying that the only ground of appeal being that the lower Court had taken a wrong view of the evidence and that the lower Court was a better judge on the evidence, *held* that the procedure was improper and that the appellate Court should exercise an independent judgment in reviewing the evidence as well as in determining points of law and procedure. QUEEN-EMPRESS v. BISHAN, **A.W.N. 1890, 148.**

(59)—*Plea of right.*—Where the objection raised is based on a *bona fide* claim of right, the Magistrate should refer the parties to a Civil Court. EMPRESS v. KHUSHALI, **A.W.N. 1900, 204.** (25 C. 278, *R.*)

(60)—*Crim. Pro. Code (Act* X *of* 1872), *s.* 297—*Appellate Court finding more serious offence—Procedure.*—Where an appellate Court finds that a more serious offence than the one of which the appellant has been convicted was committed, the proper course is not to allow the appeal and direct further enquiry but to refer the matter to the High Court under s. 297 of the Crim. Pro. Code. EMPRESS v. SHAHMAT, **A.W.N. 1882, 47.** [*R.*, A.W.N. 1882, 112.]

(61)—*Appeal in criminal cases—Production of material objects.*—It is most desirable that cases which come up to the High Court upon appeal should come complete. Where the accused is alleged to have caused the death of the deceased with a "piece of wood," *held* that that piece of wood should be produced before the High Court in appeal. QUEEN-EMPRESS v. RAMADHIN, **A.W.N. 1894, 205.**

(62)—*Act* XXV *of* 1867, *s.* 16—*Breach of penal provisions of Act—Procedure.*—The non-compliance with s. 16 of Act XXV of 1867 is not a criminal offence; although, a penalty or forfeiture may be imposed under it, it is necessary for a Magistrate acting under the section to follow some recognized procedure and to ascertain by evidence or admission whether or not the non-compliance has been made out. QUEEN-EMPRESS v. AMBA PRASAD, **A.W.N. 1897, 25.**

(63)—*Crim. Pro. Code (Act X of* 1882), *s.* 338—*Tender of pardon after close of defence.*—Where a Sessions Judge granted a pardon to one of two people accused of murder and examined her as a witness after the close of the prosecution and the defence and after the opinion of the assessors had been given, *held* that the procedure was open to grave objection, if not illegal. EMPRESS v. HULLIA, **A.W.N. 1884, 147.**

(64)—*Sole judge of law and fact coming as a witness—Such judge himself convicting the accused subsequently—Conviction bad.*—A Magistrate cannot himself be a witness in a case in

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which he is the sole judge of law and fact. *Per Markby, J.*—Where, in such a case, he has given his evidence and convicted the accused, his having so acted makes the conviction bad. *Per Prinsep, J.*—The conviction is not absolutely bad ; it is open to the Court to uphold the conviction if it is of opinion that, after rejecting the Magistrate's evidence, there is other evidence sufficient, if believed, to support the conviction. *In re* DONNELLY, **1 J.G. 22.**

(65)—*Two persons jointly tried for different offences—Evidence of one against the other irrelevant and illegal.*—Where two prisoners are tried jointly for different offences committed in the same transaction, it is improper and illegal to examine one prisoner as a witness against the other. **3 J.G. 18.**

(66)—*Criminal cases—Caution to accused—Warning accused before hearing his statement.*—A Magistrate must not merely record having warned an accused person before taking down his statements, but should also state how the prisoner was warned before he made his statement. He should use his own handwriting for his signature and not a lithographed stamp thereof. QUEEN v. DEDAR NUSHYO, **14 W.R. Cr. 81.**

(67)—*Criminal cases—Judgments, copies of—Copies of judgments for prisoners.*—A copy of a judgment should be made out at once without waiting for written applications from prisoners under sentence. *In re* RAM CHUNDER MUNDLE, **9 W.R Cr. 19.**

(68)—*Criminal cases—Record in Sessions cases—Proper contents of record.*—There should be but one record of the trial in the Court of Sessions which should be continuous, and should contain accurately and consecutively the whole of the proceedings in the trial, annexing to it the examination of the accused. QUEEN v. BILASH MOSULMANY, **14 W.R. Cr. 46.**

(69)—*Criminal cases—Principal documents on record in Sessions cases.*—Documents which are dakhilas and which are really parts of the indictment against the prisoner should be put either with the calendar or by themselves in an envelope, or in some conspicuous part of the record where they would be at once seen and should not be buried in a mass of papers. QUEEN v. RUTTON MEAH, **8 W.R. Cr. 57.**

(70)—*Criminal cases—Principal documents on record in Sessions cases.*—The principal documents in a Sessions case on which the entire case turns should be put in a prominent place on the record so as to be easily available at once, and not buried among a mass of less important papers in the *nuthee.* QUEEN v. SHEIKH BHEEKUN, **8 W.R. Cr. 30.** QUEEN v. BROOND SHAHOO, **7 W.R. Cr. 112.**

(71)—*Criminal cases—Form of application for revision—Motion.*—An application for the revision of an order passed in an appeal by a Sessions Judge from the decision of a Magistrate must be by motion by the parties interested or their pleaders. SHEIKH HAZARI v. CHUNDI CHURN CHUCKERBUTTY, **16 W.R. Cr. 72.**

(72)—*Criminal cases—Transmission of record to High Court—Record of proceedings prior to commitment.*—The record of the proceedings prior to commitment in the Magistrate's Court should always be forwarded to the High Court, and the Sessions Judge has no authority to change this practice without special orders or sanction from the High Court. QUEEN v. KASIM ALI, **15 W.R. Cr. 67.**

(73)—*Nature of the defence to be recorded—Crim. Pro. Code,* 1861, *ss.* 372-374.—The record is not complete unless it shows the nature of the defence set up. If the accused refuses to answer when called upon by the Court to enter upon his defence, a note should be made accordingly and when there is nothing to show the nature of the defence set up, a note of the address to the Court (if any) should be recorded. *In re* GOPAL HAJJAIN, **15 W.R. Cr. 16.** [*R.*, Rat. Un. Cr. C. 581.]

(74)—*Adjournment of trial by public proclamation—Validity.*—The adjournment of a trial by public proclamation is irregular and objectionable. In all pending cases it is the duty of the Magistrate to give special notification to the parties of the date to which the case is adjourned. HIGH COURT PROCEEDINGS, 1ST AUGUST 1871, NO. 1313, **1 Weir 83 = 6 M.H.C. App. 29.**

(75)—*Right of counsel in cross examination.*—No hard and fast rule can be laid down as to the right of counsel to demand in cross-examination that a witness should repeat the story which he has told in the examination-in-chief. LAKHA SINGH v. EMPEROR, **89 P.L.R. 1914 = 15 Cr. L.J. 148 = 22 Ind. Cas. 724 = 30 P.W.R. 1914, Cr.**

(76)—*Who is to determine if leading questions should be permitted.*—*Per Jenkins, C.J.*—It is the Court, and not the counsel for the Crown, who can determine whether leading questions should be permitted, and the responsibility for that permission rests on the Court. BARINDRA KUMAR GHOSE v. EMPEROR, **37 C. 467 = 14 C W.N. 1114 = 7 Ind. Cas. 359 = 11 Cr. L.J. 453.**

(77)—*Procedure where appeal Judges differ in opinion.*—*Per Mookerjee, J.*—Where the Judges composing the Court of appeal are equally divided in opinion upon the question of the guilt of an accused person, though upon certain aspects of the case they may be agreed, the case of the accused is, under s. 429, Crim. Pro. Code, laid before a third Judge, whose duty it is to consider the whole case and the points involved, and it will be according to the opinion of such Judge that the judgment will follow. SARAT CHANDRA MITTER v. KING-EMPEROR, **12 C L.J. 294 = 7 Ind. Cas. 741 = 15 C.W.N. 18 = 11 Cr. L.J. 515.**

(78)—*Practice—Procedure—Order of Sessions Judge addressed to Magistrate—Refusal of the District Magistrate to forward order.*—The

Practice and Procedure—*continued.*

District Magistrates should forward orders of Sessions Judges to the Magistrates to whom they are addressed, and they cannot withhold them on the ground of their being illegal. A revision of such orders can, however, be obtained by moving the High Court through the Law Officers of the Crown. GANGADHARA PADAYACHI v. VELAYUDA PILLAI, **6 Ind. Cas. 358 = 8 M.L.T. 88 = 11 Cr. L.J. 327.**

(79)—*Crim. Pro. Code, s.* 144—Ex parte *order—When can be passed.*—An *ex parte* order under s. 144 can only be passed in cases of emergency or when there is no time to serve notice. VENKATARAYA GOUNDAN v. VERY REVEREND N. RONDY. **8 M.L.T. 180 = 7 Ind. Cas. 343 = 11 Cr. L.J. 449.**

(80)—*Crim. Pro. Code, s.* 100—*Complaint against husband for keeping wife in confinement —Procedure to be adopted by the Magistrate.*—*Held*, that, on a complaint against a husband for keeping his wife in confinement, the Magistrate taking its cognizance is not allowed to pass an hasty order to the following effect :—"S. B. states that her husband is keeping her in confinement. She wishes to go to her mother. She is at liberty to go where she pleases." Before finally disposing of the proceedings, he is bound to hear both sides, and after making such inquiry as may seem necessary, he should pass such order as may seem right. If he finds the confinement amounted to an offence, he should let the wife go and warn the husband against interfering with her except through a Civil Court. If on the other hand he arrives at the conclusion that such is not the case, he should advise the wife to go home with her husband, warning the husband at the same time against using any coercion in taking the wife with him. SHER SHA v. MUSSAMMAT SAKINA BEGAM, **29 P. W.R. 1910, Cr. = 7 Ind. Cas. 354 = 11 Cr. L.J. 450.**

Claims to attached property—Remedy by Civil Suit—*See* ABSCONDING OFFENDER, 17 W.R. Cr. 10.

See ACCUSED PERSON, 6 M.H.C. App. 45.

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See ACQUITTAL, 1 W.R. Cr. Circular 9, 1 W.R. Cr. Letters, 2, 9 Bom. L.R. 156 = 5 Cr. L.J. 171.

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Preliminary Enquiry.

(1)—*Preliminary enquiry, when necessary—Commitment to jail before charge is framed—Validity* —A preliminary enquiry is necessary for the purpose of determining whether there is a *prima facie* case against the person accused; it is improper and illegal for a Sessions Judge to have a person arrested and committed to jail in view of an enquiry preliminary to commitment before a charge is actually framed or a commitment made REILY v. KING-EMPEROR, **28 C 434=5 C.W.N. 609.**

(2)—*Crim. Pro. Code* (1872), s. 146—*Preliminary enquiry, whether a trial.*—A preliminary enquiry by a Magistrate held under the provisions of s 146 is not a trial subject to the rules in Chs. XVI and XVII of the Code of 1872. NUSIBUNNISSA BIBEE v. SHEIKH ERAD ALI, **4 C.L.R. 413.**

(3)—*Crim. Pro. Code, ss.* 209 *and* 210—*Conditions under which accused may be committed to the Sessions*—Prima facie *case—Sufficient grounds for committing accused for trial.*—The duties of the Court which holds a preliminary inquiry into a case are defined by ss. 209 and 210, Crim. Pro. Code, and, where there is credible evidence, which, if believed, *prima facie* shows grounds for thinking that the accused has committed the offence charged, it is the Magistrate's duty to commit him to the proper tribunal, and the Magistrate exercises a wrong discretion if he takes upon himself to discharge the accused in those circumstances. The words "sufficient grounds" in s. 209 do not mean sufficient grounds for convicting. HAZARA SINGH v. BISHEN SINGH, **14 P.R. 1908, Cr.=30 P.W.R. 1908, Cr.=8 Cr.L.J. 263.** (27 B. 84, 11 B. 372, *R.*; 7 C W N 77, *D.*) [*R*, 11 Cr. L.J. 18=4 Ind. Cas. 612=10 P.R. 1909, Cr.=32 P.W.R. 1909, Cr.=155 P.L.R. 1909, 11 Cr. L.J 751=8 Ind. Cas. 1044=215 P.L.R. 1910, 58 P.W.R. 1910, Cr.]

(4)—*Order sending case to Magistrate.*—An order ought not to be made by a Civil Court sending a case to a Magistrate for enquiry into

Preliminary Enquiry—*continued.*

an offence of giving false evidence without holding a preliminary enquiry. Where such an order is made, there must be indication of a specific charge and of the particular statements alleged to be false. QUEEN v BAIJOO LALL, **1 C 450.** [*R.*, 3 A. 62, 16 C. 730, 40 C. 477=17 C.L.J. 245=17 C W N. 647=19 Ind. Cas. 197=14 Cr. L.J. 197, 8 C.L.R. 148; *Expl.*, 6 C. 308; *D.*, 20 C. 474.]

(5)—*Crim. Pro. Code*, ss. 207, 215, 233—*Joint enquiry prior to commitment.*—There is no provision in the Code which requires a separate *enquiry* in respect of each accused person, as the provisions contained in s. 233 relate to separate *trials* only. The trial no doubt could not be joint; but there could be no objection to proceedings prior to commitment on the ground that the enquiry was conducted against the accused jointly with others. EMPEROR v. SITA *kom* RAMASA, **7 Bom. L R. 457=2 Cr. L.J. 432.**

(6)—*Crim. Pro. Code* (1882), *ss.* 202, 203, 476—*Dismissal of complaint—Penal Code, ss.* 193 *and* 211.—Where a Magistrate who held a preliminary enquiry into a complaint under s. 202, Crim. Pro. Code, after examining the complainants and two witnesses produced by them, dismissed the complaint under s. 203 of the Code, and, at the same time, ordered the prosecution of the two complainants under s. 211, Penal Code, and of the two witnesses under s. 193, Penal Code, *held*, that the order of the Magistrate was not illegal, simply because there was no preliminary enquiry under s. 476, Crim. Pro. Code, or no evidence on the record of his proceedings under s. 202 contradicting the case which he thought to be false and that, considering the contradictions in the statements not only of the two complainants but also of their two witnesses, the discretion vested in the Magistrate under s. 476 was not exercised on insufficient grounds, and the order passed by him was not bad by reason of the fact that he did not examine two of the witnesses for the complainants. *In the matter of* SALTANAT BEG, **S.C. 284, Oudh.** [*F.*, 20 C. 474.]

See ACT IV OF 1871, s. 25, 16 B. 159.

See COMMITMENT TO SESSIONS COURT, 12 C.W.N. 117=6 C.L.J. 760.

See COMPLAINT—WHAT IS, AND WHO SHOULD INSTITUTE, L.B.R. 1893—1900, 388.

See CRIM. PRO. CODE, 1898, ss. 188, 537, 8 Bom. L.R. 507=4 Cr. L.J. 49.

See CRIM. PRO CODE, 1898, s. 202, 10 Ind. Cas. 33=12 Cr. L.J. 207.

See CRIM. PRO. CODE, 1898, s. 350, 5 M.L. T. 218=9 Cr. L.J. 146= 32 M. 218=1 Ind. Cas. 54.

See CRIM. PRO. CODE, 1898, s. 476, 12 Cr. L.J. 85=8 Ind. Cas. 1197, 9 A L.J. 231=13 Ind. Cas. 829=13 Cr. L.J. 141=34 A. 267.

See CRIMINAL PROCEEDINGS, 9 W.R. Cr. 54.

Preliminary Enquiry—*concluded.*

See DISCRETION, 20 C 349.

See FALSE CHARGE, 6 C.W.N. 295.

Preliminary enquiry—Examination of witnesses—Powers of Magistrate—*See* PENAL CODE, ss. 354, 363, 376, 14 Cr. L.J. 149=19 Ind. Cas. 149=6 Bur. L.T. 21.

See SANCTION TO PROSECUTE—CONDITIONS REQUISITE FOR GRANT OF SANCTION, ETC., 19 C. 345, 15 A. 392=A.W.N. 1893, 146, Rat Un. Cr. C. 132.

See SANCTION TO PROSECUTE—NATURE AND FORM OF SANCTION, 6 A. 101, 20 C. 474.

Preliminary Inquiry.

See PRELIMINARY ENQUIRY.

Premeditation.

Premeditated and unpremeditated acts, difference between—*See* PENAL CODE, ss. 34, 302, 304, 16 O.C. 19=19 Ind. Cas. 497=14 Cr. L.J. 241.

Preparation.

See ATTEMPT.

See PENAL CODE, s. 511.

Attempt to cheat — *See* CHEATING—GENERAL, Rat. Un. Cr. C. 470.

See OFFENCE, 24 B. 287=1 Bom. L.R. 678.

What amounts to attempt or—to cheat—*See* PENAL CODE, ss. 420, 415, 417, 511. 10 P.R. 1913, Cr.=14 Cr. L.J. 436=20 Ind. Cas. 596=30 P.W.R. 1913=299 P.L.R. 1913.

See PENAL CODE, ss. 420, 511, 15 Bom. L. R. 568=2 Bom. Cr. C. 80=14 Cr. L.J. 433=20 Ind. Cas. 593.

House breaking—Attempt—Burglars digging a hole in a wall but not digging it through owing to interruption by third parties—*See* PENAL CODE, ss. 457, 511, 15 Bom. L.R 564=2 Bom. Cr. C. 76=14 Cr. L.J. 451=20 Ind. Cas. 611=37 B. 553.

Prerogatives of Crown in India.

See CROWN, 25 M. 457=12 M.L.J. 208=1 Weir 800.

As to remission of sentence—*See* SENTENCE—GENERAL, 1 L.B.R. 359.

Presidency Jails Act.

See ACT XII OF 1867.

Presidency Magistrates.

See BENCH OF HONORARY PRESIDENCY MAGISTRATES.

(1)—*Crim. Pro. Code*, 1882, *s.* 19—*Jurisdiction of Presidency Magistrate.*—The Presidency Magistrate of Bombay has jurisdiction over the port of Bombay up to high water mark. His jurisdiction and the jurisdiction upon which it borders are mutually exclusive. QUEEN-EMPRESS v. JOOMABHAI, **Rat. Un. Cr. C. 193.**

(2)—*Presidency Magistrate — Review of predecessor's order.*—It is not competent to a Presidency Magistrate to review and cancel an

Presidency Magistrates—*continued.*

order passed by his predecessor in office. QUEEN-EMPRESS v. RANCHHOD HARI, **Rat. Un. Cr. C. 877.**

(3)—*Crim. Pro. Code*, s. 21, *Rule* 9, *framed under—Complaint of theft to a Presidency Magistrate—His competency to direct the preferring of the complaint to the Chief Presidency Magistrate.*—An information of theft was laid by the applicant before the Third Presidency Magistrate, who examined the applicant, and then thinking that the case would more conveniently be tried by the Chief Presidency Magistrate, returned it to the applicant for presentation to the latter Magistrate. The action was sought to be justified under rule 9 of the rules framed under s. 21. *Held* that rule 9 did not justify the action of the Magistrate. The rule only applies to a division of work, that is to say, an allotment of particular cases on particular days and hours of work or it may be of localities. *In re* CLIVE DURANT, **Rat. Un. Cr. C. 968=Cr. Rg. 24 of 1898.**

(4)—*Crim. Pro. Code*, s. 557—*Appointment of pleader as Presidency Magistrate.*—The appointment of a pleader to act as a Presidency Magistrate is not forbidden by any provision of the Code. The only thing required of him is to give up practice on appointment. *In re* JIVANJI ADAMJI, **23 B. 490.**

(5)—*Crim. Pro. Code* (1898), *s.* 370—*Duty of Presidency Magistrate—Record of reasons in passing sentence of imprisonment.*—A Presidency Magistrate is required by s. 370 of the Code to record a brief statement of the reasons for the conviction in a case where he passes a sentence of imprisonment. It is not sufficient for him to record that the offence is proved, for that may necessarily be implied to be his opinion from the fact that he has convicted the accused. The law contemplates something further as "the reasons for the conviction." NATABAR GHOSE v. PROVASH CHUNDER CHATTERJEE, **27 C. 461=4 C.W.N. 467.**

See ACT IV OF 1871, s. 25, 16 B. 159, Rat. Un. Cr. C. 540=Cr. Rg. 14 of 1891.

See ACT X OF 1875, s. 147, 2 C. 278.

See ACT IX OF 1890, s. 7, 11 Bom. L.R. 1181=34 B. 252=10 Cr. L.J. 543.

See ACT IX OF 1894, s. 52, 32 M. 303.

See BOM. ACT III OF 1888, ss. 394, 471, Rat. Un. Cr. C. 729=Cr. Rg. 57 of 1894.

See APPEAL—CASES WHERE APPEAL DOES NOT LIE, 3 Ind. Cas. 285, 20 B. 145.

See COMMISSION, 24 C. 551=1 C.W.N. 333.

See COMPLAINT—WITHDRAWAL AND REVIVAL OF COMPLAINT, 4 C.W.N. 46, 24 C. 528=1 C.W N. 370.

See CRIM. PRO. CODE, 1898, ss. 252, 436, 437, 28 C 211=5 C.W.N. 169.

See CRIM. PRO. CODE, 1898, s. 362, 33 C. 1036=4 C.L.J. 408=4 Cr. L.J. 368.

See CRIM. PRO. CODE, 1898, s. 362, 370, 31 C. 983=8 C.W.N. 839.

Presidency Magistrates—*concluded.*

See CRIM. PRO. CODE, 1898, s. 370, 8 C.W. N. 587.

Power of Presidency Magistrate to refer a dispute to arbitration—*See* CRIM. PRO. CODE, 1898, ss. 403, 436, 437, 439, 1 C.W.N. 49.

See CRIM. PRO. CODE, 1898, ss.476, 190, 195, 9 Bom. L.R. 1160=6 Cr. L.J. 326.

See CRIM. PRO. CODE, 1898, s. 487, 12 C.W. N. 246=7 C.L.J. 70=3 M.L.T. 154=7 Cr. L. J. 103.

Courts of Chief Presidency Magistrate and other Presidency Magistrates—Nature of their jurisdiction—Power to transfer case from the file of—*See* CRIM. PRO. CODE, 1898, s. 526, 1911, 2 M.W.N. 50=11 Ind. Cas. 795=12 Cr. L.J. 451=10 M.L.T. 518.

See FURTHER ENQUIRY, 13 C.W.N. 1221=36 C. 994, 33 C. 1282=5 Cr. L.J. 83.

See HIGH COURT, JURISDICTION OF—REVISIONAL POWERS OF HIGH COURT, 26 C. 746=3 C.W.N. 598.

See HIGH SEAS, OFFENCES COMMITTED IN, 25 B. 636=3 Bom. L.R. 253.

See MAINTENANCE, 5 C. 558=5 C.L.R. 21.

See REFERENCE TO HIGH COURT, 19 C. 380.

See REVISION—JUDGMENTS, DEFECTS IN, 13 C. 272.

See SANCTION TO PROSECUTE — NATURE AND FORM OF SANCTION, 7 C.L.J. 49=7 Cr. L.J. 10=35 C. 141=2 M.L.T. 500.

See SANCTION TO PROSECUTE—MISCELLANEOUS, CASES, 26 C. 359.

See SESSIONS JUDGE, JURISDICTION OF, 22 B. 759.

Presidency Magistrates' Court Fees Act.

See ACT IV OF 1877.

Presidency Small Causes Courts Act.

See ACT XV OF 1882.

Press.

Forfeiture of—*See* ACT VII OF 1908, s. 3, 12 Bom. L.R. 120.

Press if specially privileged in criticising public acts of Magistrate and Judges—Limits of legitimate comment— *See* PENAL CODE, s. 499, excep. 9, and s. 52, 18 C.W.N. 785=26 M.L.J. 621=15 Cr. L.J. 309=23 Ind. Cas. 661=16 M.L.T. 79=1914 M.W.N. 506=12 A.L. J. 1042=20 C.L.J. 161=16 Bom. L.R. 544=2 Bom. Cr. C. 207=7 Bur. L.T. 167=41 C. 1023, P.C.

Press and Registration of Books Act.

See ACT XXV OF 1867.

Presumption.

See EVIDENCE ACT, 1872, s. 114.

(1)—*Presumption of innocence.*—Where the facts found proved in a case are perfectly consistent either with the innocence or with the guilt of the accused, the presumption of

Presumption—*continued.*

innocence should prevail. EMPEROR v. RAMCHANDRA DHONDOO, **6 Bom. L.R. 551 = 1 Cr. J. 610.**

(2)—*As to knowledge and as to intention—Ordinarily intention to be inferred from knowledge but not when it is a mere legal fiction.*—Although an accused committing an offence, while under the influence of liquor, must be presumed to have known what was to be the likely result of his act, he is not to be presumed to have had the intention to cause such result. The Legislature makes a distinction between presumption as to knowledge and the presumption as to intention and though ordinarily intention is to be inferred from knowledge, it is not to be inferred when knowledge is merely a legal fiction. ABDUL KARIM v. QUEEN-EMPRESS, **L B.R. 1872—1892, 650.**

(3)—*Nobleman committing a crime—No presumption to be drawn from his high or sacred position.*—No presumption should be made as to the improbability of a nobleman committing a crime from the mere fact of his high sacred position, without proof that his actual character is such that it renders its commission probable. *In the matter of* RAJA DRIBYA SINGH, **1 J.G. 59.**

(4)—*Murder—Possession of stolen property belonging to deceased—Presumption.*—The mere fact of possession of property, which has been stolen from the body of a person who has recently been murdered, standing by itself, is not sufficient to establish that the person in possession of such property must necessarily have been concerned in the murder. It is most undoubtedly material from and upon which a Court may reasonably hold the person guilty of having stolen the articles or of having received them knowing them to have been stolen. But it requires a very long and dangerous leap to jump to the conclusion that the possession of the property, standing by itself, is necessarily adequate proof of participation in murder. EMPRESS v. PARBATI, **A.W.N. 1887, 130.** [*R.*, 20 A. 107 = A.W.N 1897, 210.]

(5)—*Presumption of innocence.*—Where facts are as consistent with a prisoner's innocense as with his guilt, innocence must be presumed; and criminal intent or knowledge is not necessarily imputable to every man who acts contrary to the provisions of the law QUEEN v. NOBOKISTO GHOSE, **8 W.R. Cr. 87.**

See ACCUSED PERSON, 3 C.L.R. 406.

See ACT III OF 1867, ss. 5, 6, 6 N.L.R. 168.

See ACT I OF 1878, ss. 9 (c), 10, 4 L.B.R. 314.

As to Burman when to be raised—*Onus*—*See* ACT I OF 1878, r. 1, cl. 20, U.B.R. 1892—1896, Vol. I, 144.

See BOM. ACT IV OF 1887, ss. 4, 5, 6, 7, 5 Bom. L.R. 805 = 28 B. 129.

See BOM. ACT IV OF 1887, ss. 512, 15 Bom. L.R. 331 = 2 Bom. Cr. C. 74 = 20 Ind. Cas. 143 = 14 Cr. L.J. 383.

Presumption—*concluded.*

See BUR. ACT I OF 1899, ss. 6, 7, 1 L.B.R. 120, 4 L.B.R. 134 = 7 Cr. L.J. 411.

Bye-laws of municipality, validity of—*See* U. P. ACT XV OF 1883, s. 55, 19 A. 493 = A.W. N. 1897, 133.

Proof of adultery—Sexual intercourse—of knowledge that woman is married—*See* ADULTERY, 21 W.R. Cr. 13.

Husband and wife only living together — Death of wife—Cause of death not ascertained — Presumption against husband—*See* CONFESSION—GENERAL, 19 P.W.R. 1907, Cr. = 6 Cr. L.J. 260.

Of Criminal habit—*See* HABITUAL OFFENDER, A.W.N. 1881, 153.

As to Imperial Parliament being aware of Laws and Regulations made in India—*See* LEGISLATURE, POWERS OF, 3 C. 63 = 1 C.L. R. 161, F.B.

See MURDER, 6 M.L.T. 123.

Of death — Throwing into river — Non-appearance afterwards—*See* MURDER, 7 W.R. Cr. 14.

Presumption regarding counterfeit coins —*See* PENAL CODE, ss. 28, 231, 239. 30 A. 93 = A.W.N. 1907, 289 = 4 A.L.J. 776 = 3 M.L.T. 56.

See PENAL CODE, s. 83, 5 M.L.T. 296 = 1 Ind. Cas. 807 = 9 Cr. L.J. 392.

See PENAL CODE, ss. 85, 86, 387, 398, 6 L. B.R. 100 = 5 Bur. L.T. 193 = 17 Ind. Cas. 800 = 13 Cr. L.J. 864, F.B.

See PENAL CODE, ss. 86, 300, 4 L.B.R. 306 = 9 Cr. L.J. 5.

As to liability of proprietor of newspaper—*See* PENAL CODE, s. 124-A, 5 M.L.T. 415 = 32 M. 338 = 9 Cr. L.J. 506 = 2 Ind. Cas. 193.

Murder combined with robbery — Recent and unexplained possession of stolen property is presumptive evidence against the prisoner on the charge of murder as well as that of robbery—*See* PENAL CODE, s. 302, 1911, 2 M. W.N. 478 = 21 M L.J. 1071 = 12 Cr. L.J. 564.

See PENAL CODE, s. 302, 7 M.L.T. 314 = 6 Ind. Cas. 51 = 11 Cr. L.J. 322 = 20 M.L.J. 657.

See PENAL CODE, ss. 307, 323, 5 Ind. Cas. 138 = 11 Cr. L.J. 48.

Recent possession of part of property stolen at dacoity—Presumption of participation—*See* PENAL CODE, s. 395, 1 O.C. 1.

See STOLEN PROPERTY, 6 C.P.L R. Cr. 29, 11 C. 160, 12 C.P.L R. Cr. 5, 4 M.L.T. 415 = 9 Cr. L.J. 52 = 19 M.L.J. 301.

Possession of stolen currency notes—Guilty knowledge—*See* STOLEN PROPERTY, 1912 M. W.N. 362 = 11 M.L.T 186 = 15 Ind. Cas. 315 = 13 Cr. L.J. 475.

See THEFT — MISCELLANEOUS, L.B.R. 1893—1900, 507.

See UNLAWFUL ASSEMBLY, 6 M.L.T. 17 = 1 Cr. L.J. 30 = 4 Ind. Cas. 700.

Prevention of Coffee-Stealing Act.

See MAD. ACT VIII OF 1878.

Prevention of Cruelty to Animals Act.

See ACT XI OF 1890.

Prevention of Gambling Act.

See BOM. ACT IV OF 1887.

Previous Acquittal.

See AUTREFOIS ACQUIT, PLEA OF.

See ACT III OF 1877, s. 81, 6 O.C. 153.

See CRIM. PRO. CODE, 1898, s. 403 (1), 6 A.L.J. 262=9 Cr. L.J. 526=31 A. 317=2 Ind. Cas. 219.

Previous Conviction.

See ACT VI OF 1864.

See AUTREFOIS CONVICT, PLEA OF.

See CRIM. PRO. CODE, 1898, ss. 221, 222, 225, 226, 227, 229, 232, 233, 234, 235. 236, 237, 238, 239, 240, 242, 243, 244, 245, 246, 247, 248, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 263, 264, 269, 270, 271, 272, 273, 276, 282, 284, 285, 286, 287, 288, 289, 291, 292, 294, 297, 298, 299, 300, 301, 303, 304, 306, 307, 309, 310.

See PENAL CODE, s. 75.

See SENTENCE.

(1)—*S. 75, I.P.C.—Ss. 3 and 4, Whipping Act—Previous conviction, meaning of.*—The previous conviction of an offence referred to in s. 75, I.P.C., and ss. 3 and 4 of the Whipping Act means, conviction under the Penal Code. QUEEN-EMPRESS v. NGA KYA GAING, **L.B. R. 1893—1900, 315.**

(2)—*Object of considering previous conviction.*—Except under very special circumstances, the proper object of using previous convictions is to determine the amount of punishment to be awarded, should the prisoner be convicted of the offence charged. ROSHUN DOOSADH v. EMPRESS, **5 C. 768=6 C.L.R. 219.** [*R.*, L.B. R. 1893—1900, 93.]

(3)—*Penal Code, s. 75—Previous conviction—Proof—How sentence is affected.*—In cases wherein a previous conviction subjects a person convicted of a subsequent offence to additional or different punishment, the previous conviction should form the subject of a separate head of charge, and if the prisoner does not plead guilty, the conviction and also the identity of the prisoner should be proved. REG. v. TUKARAM, **Rat. Un. Cr. C. 52=Cr. Rg. 1-8-1871.** [*R.*, 10 Bom. L.R. 973=9 Cr. L.J. 226=4 M.L.T. 450.]

(4)—*Previous conviction—Charge—Proof.*—Where the fact of previous convictions is not stated in the charge, such convictions could not be used to enhance the sentence. REG. v. ANNAJI KRISHNA, **Rat. Un. Cr. C. 70=Cr. Rg. 24-4-1873.**

(5)—*Proof of.*—Where it is intended to prove a previous conviction for the purpose of affecting punishment, it should be entered in the charge, and the accused should be called on to plead thereto; his mere admission that he has been in jail once is insufficient to show that he pleaded guilty to a previous conviction. KING-EMPEROR v. GOVIND SAKHARAM, **4 Bom. L.R. 177.**

Previous Conviction—*continued.*

(6)—*Whipping added to imprisonment on account of previous conviction must be set out in charge.*—When a previous conviction is used for the purpose of affecting the punishment which the Court is competent to award, and a sentence of whipping is added to the imprisonment on account of the previous conviction, such previous conviction should be set out in the charge. QUEEN-EMPRESS v. NGA PAN BON, **L.B.R. 1893—1900, 241.**

(7)—*Extract from a calendar.*—The extract from a calendar, recording a previous conviction, is not evidence of that conviction, without proof of identity, and, in no case, will it be proof of alleged earlier convictions. *In re* CHUNDI PERUGADU *alias* JILLARIGADU, **2 Weir 393.**

(8)—*Jail certificate no proof of previous conviction—Crim. Pro. Code, s. 511.*—The jail certificate of previous convictions, though coming under cl. (*b*) of s. 511, Crim. Pro. Code, is not by itself proof of a previous conviction. The concluding words of the section provide that, unless the accused admits the correctness of the particulars set out in the certificate, evidence of his identity with the person referred to in the certificate must be recorded. NGA WAN YE v. KING-EMPEROR, **2 L.B.R. 53.** (1 L.B. R. 8, *R.*)

(9)—*Proof of—Crim. Pro. Code (1898), s. 342—Evidence Act, ss. 11, 54.*—*Held, per Chandavarkar and Aston, JJ. (Jacob, J, Diss.)* that in a trial for the offence of keeping a common gaming house under s. 4, Prevention of Gambling Act, 1887, evidence that the accused had been previously convicted of the same offence is admissible to show guilty knowledge or intention. (*Per Jacob, J., Diss.*)—In a trial for an offence under s. 4 (*a*), Prevention of Gambling Act, 1887, the evidence that he was previously convicted of a similar offence cannot be let in either under s. 54 or s. 11, Evidence Act. *Per Aston, J.*—"It is not competent to a Magistrate to ask an accused, under s. 342, Crim. Pro. Code, 1898, before his conviction, about the previous convictions, either with a view to take them into consideration for the purposes of conviction or with a view to dispense with formal evidence as to an alleged previous conviction and as to the identity of the accused, in the event of a conviction." EMPEROR v. ALLOOMIYA, **5 Bom. L.R. 805=28 B. 129.**

(10)—*Proof of—Right of accused.*—Before considering previous convictions as proved, simply on the evidence adduced in proof of them, the accused should be allowed an opportunity of rebutting such evidence. POLICE v. SHEO RAM, **Colm. Dig. Cr. 12 of 1873.**

(11)—*Proof of, to be produced at the time of trial—High Court not authorized to take cognizance of it after conviction.*—The proof of the previous conviction of an accused person must be produced at the time of his trial. Where it

Previous Conviction—*continued.*

is not done so, the law does not authorize the High Court to take cognizance of it in a reference after conviction. QUEEN EMPRESS v. NGA BA, L B.R. 1872—1892, 601.

(12)—*Penal Code, s.* 75—*Previous conviction, evidence of—Evidence Act, s.* 54—Evidence of previcus conviction cannot be allowed except where, after the accused has been found guilty, it is necessary for the purposes of s. 75, I.P.C., or where the accused having given evidence of good character, the prosecution desires to adduce such evidence as proof of his bad character. EMPEROR v. ITUR PED DUMING, 5 Bom. L. R. 1034. [*R.*, 6 Bom. L.R 548].

(13)—*Penal Code, ss.* 75 *and* 114—*Previous conviction — Abetment — Subsequent offence—Enhancement of sentence.*—A previous conviction of an accused for an offence cannot be taken into consideration at a subsequent conviction for abetment for the purposes of enhancing punishment under s. 75 of the Indian Penal Code. The effect of s. 114 of the Indian Penal Code is that, if a man is present at the commission of an offence, he is *to be deemed to have committed it,* not that he *has committed it.* EMPEROR v. KASHIA ANTOO, 10 Bom L.R. 26 =7 Cr. L.J. 32=3 M L T. 122. (5 B. 140, 3 A. 773, 14 C. 357, 17 A. 120, 123, 31 B. 480, *R.*)

(14)—*Penal Code, s.* 75—*Previous conviction of offence under Ch.* XII *or* XVII, *I.P.C.—Subsequent conviction for like offence—Sentence.*—The accused having been previously convicted of an offence punishable under Ch. XII or XVII, I.P.C., with imprisonment for a term of three years or upwards, was subsequently convicted for an offence under one of the chapters punishable with imprisonment which may extend to three years. *Held* that a sentence of ten years' transportation was an illegal one. Under s. 75, the accused may be transported for life, but he cannot be imprisoned for a longer period than six years. REG. v. GOPALA, Rat. Un. Cr. C. 117=Cr. Rg. 21-11-1876.

(15)—*Crim. Pro. Code* (1898), *ss.* 307, 310—*Accused not to be asked to plead guilty to prior convictions until convicted on the charge under trial—Effect of reference to High Court under s.* 307—*S.* 310 *requires amending.*—Ss. 307 and 310, Crim. Pro. Code, clearly provide that an accused is not to be asked to plead to prior convictions, until he has been convicted on the charge under trial. In a case referred to the High Court under s. 307, there is no conviction or acquittal in the Sessions Court. It is the High Court, which, in such cases, acquits or convicts, and it is not until after conviction by the High Court, that the accused can be asked to plead the prior convictions. S. 310 requires to be amended, so as to allow the Sessions Judge, in a case under s. 307, after the jury has given its verdict, to record the plea of the accused in regard to prior convictions charged against him, and, if necessary, to take evidence in regard thereto, before reporting the case for the orders of the High Court. EMPEROR v. KANDASAMI GOUNDAN, 30 M. 134=5 Cr. L. J. 422.

Previous Conviction—*continued.*

(16)—*Proper sentence for the offence charged—Magistrate being influenced by previous conviction—Validity of sentence.*—Where a Magistrate passes a sentence which he is competent to pass for the offence charged, the mere fact that the Magistrate has, in passing the sentence, been influenced by a previcus conviction of which the accused has not been formally charged, will not render the sentence illegal. *In re* RAMANJULU NAIK, 2 Weir 264. [*F.*, 2 Weir 265.]

(17)—*Previous conviction, charge of—Discretion of Magistrate.*—In deciding whether, for the purposes of punishment the accused should be charged or not with a previous conviction, a Magistrate should exercise a careful discretion having regard to all the circumstances of the case. HIGH COURT PROCEEDINGS, 23RD SEPTEMBER, 1878, No. 1537, 2 Weir 324.

(18)—*Evidence discovered after the trial—Revision of sentence by High Court.*—The mere fact that evidence of previous convictions has been discovered after a trial does not justify the High Court in revising the sentence. EMPEROR v. ABDULLA, 15 C.P.L.R. 87.

(19)—*Duty of Courts in cases where the accused with previous conviction are concerned.*—A man, with several previous convictions, is singularly liable to be the victim of a false case. It is both easier to obtain a conviction against such a man, and his punishment is heavier. These are facts well known to people and they are apt to take advantage of them, and Courts should be on their guard when dealing with a previously convicted offender. GOKHA SINGH v. EMPEROR, 32 P.R. 1905, Cr. =2 Cr.L.J. 692 =114 P.L.R. 1905.

(20)—*Penal Code* (*Act* XLV *of* 1860), *s.* 75—*Crim. Pro Code, Act* V *of* 1898, *s.* 310—*Previous conviction under Punjab Frontier Crimes Regulation—Punishment.*—A conviction under the Punjab Frontier Crimes Regulation is not a conviction under the Penal Code and the provisions of s. 75 of the Indian Penal Code cannot be applied with reference to such a conviction. KING-EMPEROR v. KHAN MAHAMMAD, 125 P.L.R. 1904=17 P.R 1904,Cr.=1 Cr.L.J. 1061. [*R.*, 199 P.L.R. 1910=28 P.R. 1910.]

(21)—*Priority of date of, to render the accused liable to enhanced or additional punishment.*—In order that a previous conviction may render the accused liable to enhanced punishment or to whipping, the previous conviction must have been had before the commission of the offence for which it is proposed to inflict an enhanced punishment or whipping as an additional punishment. QUEEN EMPRESS v. NGA PO SHEIN, L.B.R. 1893—1900, 479. (1 A. 637, 5 W.R. 66, *F.*)

(22)—*Penal Code, s.* 75—*Act* VI *of* 1864, *s.* 3.—Previous conviction under s. 75, I.P.C. and s. 3, Act VI of 1864, explained. EMPRESS v. BENI CHAMAR, 8 C.P.L.R. Cr. 17.

(23)—*Previous conviction—Proof.*—When the previous conviction has been put to an accused and he admits it, no further proceedings are

Previous Conviction—*continued.*

necessary; but, if he denies it, the certified extract from the records of the Court in which he was convicted should be put in evidence; proof should be given that he and the person named therein are one and the same, and the Court should record a specified finding upon that point. EMPRESS v. MUNDAR, **A.W.N. 1881, 144.**

(24)—*Penal Code, s. 75—Previous convictions —Sentence.*—Under s. 75, I.P.C., the Judge is not bound to sentence a prisoner to transportation for life or to double the amount of punishment to which he would otherwise be liable for the offence. It is competent for him to sentence the accused under s. 75 to less than double the amount of punishment. EMPRESS v. KALLU, **A.W.N. 1883, 98.**

(25)—*Crim. Pro. Code* (1882), *s.* 221—*Penal Code, s. 75— Previous conviction—Defective charge.*—In cases of previous conviction, the charge should, as required by s. 221, Crim Pro. Code, state the fact, date, and place of previous convictions severally. An omission to do so may prejudice the accused. EMPRESS v. HAIDAR, **A.W.N. 1883, 110.**

(26)—*Previous conviction — Evidence Act, s. 54—Penal Code, s. 75—Crim. Pro. Code* (1882), *s.* 310.—A previous conviction should not be allowed, unless it has been proved and is relevant within the meaning of s. 54 of the Evidence Act to influence the minds of the Judges or the assessors in determining the guilt of a person on his trial; such previous conviction is not to be put to the accused, and his plea taken to it, until *after* he has been convicted of the offence for which he is being tried; nor is it to be acted upon for the purpose of enhancing punishment under s. 75, I.P.C., unless the accused has admitted it, or it is found proved against him as provided by para. (c) of s. 310, Crim. Pro. Code. EMPRESS v. SUKHA, **A.W.N. 1886, 47.** [*R.*, A.W.N. 1891, 206.]

(27)—*Penal Code, s. 75—Proof of previous conviction.*—In proving previous conviction, it is necessary that evidence should be given of the identity of the accused with the person previously convicted. *In the matter of* MULLUA, **A.W.N. 1900, 151.**

(28)—*Penal Code, s. 75—Previous conviction —Imprisonment for default in payment of security.*—Where an accused person had suffered a term of imprisonment ordered in default of his giving security for his good behaviour, *held* that this was not a matter which can be taken into consideration under s. 75, I.P.C. QUEEN-EMPRESS v. KHUDA BAKHSH, **A.W.N. 1893, 43.**

(29)—*Second conviction for attempt—Penal Code, s. 75*—S. 75, I.P.C., is not applicable to cases of second conviction for an attempt to commit the offence after a previous conviction for committing the substantive offence. EMPRESS v. NIHAL SINGH, **37 P.R. 1882, Cr.** (27 P.R. 1872, Cr., *F.*)

Previous Conviction—*continued.*

(30)—*Penal Code* (*Act* XLV *of* 1860), *s.* 75—*Previous convictions before Code.*—Where the previous convictions in consideration of which a heavier punishment is sought to be imposed under s. 75 of the Penal Code, were before the passing of the Code, the section does not apply. REG. v. KUSHYA *bin* YESU, **4 B.H.C. Cr. 11.** [*R.*, 125 P.L.R. 1904 = 17 P.R. Cr. 1904.]

(31)—*Previous conviction—Procedure.*—Where a person has already been several times convicted of similar offences as that charged, the Magistrate should commit the accused to the Court of Sessions with a view to his being punished adequately. REG. v. GAM LADU, **2 B.H.C. 126.**

See BAD CHARACTER, 7 P.R. 1895, Cr.

See CHARGE TO JURY—MISDIRECTION, 2 Ind. Cas. 434.

See CRIM. PRO. CODE, 1898, s. 35, 7 C.P.L. R. Cr. 29.

Non-liability of Manager of a shrine freely open to public where thieves resort—Of gambling and of offences not relating to property—*See* CRIM. PRO. CODE, 1898, s. 110 (c), 37 P. W.R. 1910, Cr. = 8 Ind. Cas. 249 = 11 Cr.L.J. 603.

See CRIM. PRO. CODE, 1898, ss. 235, 236 and 403, 23 C. 174.

Previous convictions how to be proved — Examination of accused to prove such convictions, where proper—*See* CRIM. PRO. CODE, 1898, ss. 310, 343 and 511, 28 C. 689 = 5 C. W.N. 670.

See CRIM. PRO. CODE, 1898, ss. 342, 310, U.B R. 1902—1903, Vol. I, Crim. Pro. Code, 23.

See CRIM. PRO. CODE, 1898, s. 346, A.W.N. 1894, 200.

See CRIM. PRO. CODE, 1898, s. 423, Colm. Dig. Cr. 26 of 1875.

How to be proved—*See* CRIM. PRO. CODE, 1898, s. 511 (*a*), 11 C.P.L.R. Cr. 5.

See CRIM. PRO. CODE, 1898, s. 562, 24 A. 306 = A.W.N. 1902, 69.

See CRIM. PRO. CODE, 1898, s. 565, 8 M.L. T. 352 = 8 Ind. Cas. 300 = 11 Cr.L.J. 636 = 1910 M.W.N. 567.

Admissibility of evidence—*See* EVIDENCE —GENERAL, 7 W.R. Cr. 7.

See EVIDENCE—GENERAL, 6 B.L.R. App. 151 = 15 W R. Cr. 53.

See EVIDENCE—EXPERT EVIDENCE, 4 L. B.R. 125 = 7 Cr. L.J. 406.

Evidence of—When relevant—*See* EVIDENCE ACT, 1872, ss. 14, 15, U.B.R. 1897—1901, Vol. I, 144.

See EVIDENCE ACT, 1872, ss. 14, 43, 53, 1 C.W.N. 146.

See EVIDENCE ACT, 1872, s. 54, 5 C. 768 = 6 C.L.R. 219, 14 C. 721, L.B.R. 1893—1900, 93.

See PENAL CODE, ss. 397, 380 and 457, 11 C.P.L.R. Cr. 1.

Previous Conviction—*concluded.*

Association for habitually committing theft, etc.,—for theft or in bad livelihood cases, when admissible—Character, evidence of, if admissible—*See* PENAL CODE, s. 401, 15 C.W.N. 461=9 Ind. Cas. 555=12 Cr. L J. 97=38 C. 408.

Belonging to a gang—Evidence of—*See* PENAL CODE, s. 401, 14 Bom. L.R. 373=15 Ind. Cas. 811=13 Cr. L J. 539=1 Bom. Cr. C. 136.

See REVISION—MATTERS PERTAINING TO EVIDENCE, Rat. Un. Cr. C. 461=Cr. Rg. 19 of 1889.

See REVISION—RETRIAL, 21 P.R. 1902, Cr.

See SECURITY FOR GOOD BEHAVIOUR, 10 B. 174.

Non-liability of manager of a shrine freely open to public where thieves resort—Of gambling and of offences not relating to property—*See* SECURITY FOR GOOD BEHAVIOUR, 37 P. W.R 1910, Cr.=8 Ind Cas. 249=11 Cr. L.J. 603.

Principal and Agent.

(1)—*Principal, liability of, for tortious acts of agent.*—A principal is liable for the misfeasance or tort of his servant if it has been done or committed with the subsequent assent, adoption or ratification of the principal. Assent may be inferred from the fact that the principal was cognizant of and countenanced the act of his servant. RAI KISHEN CHAND v. SHEOBARAN RAI, **7 N W P. 121.**

Liability of principal for acts done by agent.—*See* ACT VIII OF 1899, ss. 11, 15(*a*), 17 C.W. N. 207=17 C.L J. 390=13 Cr. L.J. 792=17 Ind. Cas. 536=40 C. 356.

See BEN ACT VII OF 1864, s. 18, 23 W.R. Cr. 7.

See BOM. ACT II OF 1890, ss. 3, 47, Rat. Un. Cr. C. 576=Cr. Rg. 40 of 1891.

Parties in the position of—Proceedings under s 145, Crim Pro. Code, whether can be taken—*See* CRIM. PRO. CODE, 1898, s. 145, 15 Cr. L.J. 708.

Criminal liability of principal for acts of agent—*See* ORDINANCE VI OF 1914, s. 3, 19 C.W.N. 1239.

See PENAL CODE, s. 292, A.W.N. 1890, 175.

See TAZI MANDI CHITTIS, 8 B.L.R. 412.

Principal Sadr Amins, Munsifs and Sadr Amins.

See BEN. REG. V OF 1831.

Printer.

Imprint of name — Printer of a portion of the book should have his imprint—*See* ACT XXV OF 1867, s. 3, 14 Bom. L.R. 40=13 Ind. Cas. 827=13 Cr. L.J. 139=1 Bom. Cr C. 70.

See ACT XXV OF 1867, ss. 3 and 12, 5 P.R. 1909, Cr.=15 P.W R 1909=10 Cr. L.J. 195=2 Ind. Cas. 978.

Printer—*concluded.*

Declaration by — Liability of—*See* ACT XXV OF 1867, s. 7, 7 C.L.J. 49=7 Cr. L.J. 10=35 C. 141=2 M.L.T. 500.

Liability of declared—and publisher when absent during the period of publication of seditious articles—*See* ACT XXV OF 1867, s. 7, 38 C. 227=10 Ind. Cas. 954=12 Cr. L.J. 354.

Liability of printer of newspaper—*See* PENAL CODE, s. 124-A, 22 B. 112.

See PENAL CODE, s. 124-A, 8 Ind. Cas. 531=15 C.W.N. 141.

Printing Press.

See ACT VII OF 1908, 9 C.L.J. 143=13 C. W N. 672=36 C. 405=9 Cr L.J. 545=2 Ind. Cas. 285.

See CONFISCATION, 34 C. 986=11 C.W.N. 1046=6 C.L.J. 754=6 Cr. L J. 293.

Prisoner.

(1)—*Prisoners—Execution of vakalatnama.*—The fullest opportunity should be given to prisoners to execute vakalatnamas to whomsoever they please, and without reference to the mode in, or circumstances by, which they may be influenced to do so. *In the matter of the petition of.* SHEK DADABHAI *valad* SHEK MUHAMMED, **1 B.H.C 16.**

(2)—*Crim. Pro. Code (Act XXV of 1861), s. 277—Accused to be present.*—Where a case is referred to a District Magistrate by a subordinate Magistrate under s. 277 of the Crim. Pro. Code, the accused is entitled to be present before the former so that he may be at liberty to show such cause against the conviction or severe sentence as he can. REG v. RAGHA NARANJI, **7 B.H.C.Cr. 31.** *See also* QUEEN v. GUNESH SIRCAR, **7 W.R Cr. 38.**

(3)—*Prisoner brought before Court in fetters—Procedure.*—A Judge should not refuse to try a prisoner on the ground that he was brought before the Court in chains, but he should direct the removal of the fetters, unless satisfied by representation from the proper officer that they were necessary. HIGH COURT PROCEEDINGS, 24TH AUGUST 1869, **4 M.H.C. App 69.**

(4)—*Rights and privileges of—Preparation of petition of appeal.*—Convicts in jail must be allowed every facility to prepare their petition of appeal. *In re* NITTO GOPAL PAULIT DINOBUNDOO SURMOKAR, **13 W.R Cr. 69.**

(5)—*Right of accused to have charge read and to appear by mukhtear Commitment to Sessions Court.*—It is the duty of the Magistrate, when he has prepared the charge against the accused, to read it to the accused, and to ask him if he wishes to have any witnesses summoned to give evidence on his behalf before the Sessions Court. A Magistrate could not pass an order refusing an accused person to attend at the Sessions by *mukhtear.* It is not illegal to commit an accused to the Sessions Court without examining him or his witnesses. QUEEN v. HURNATH ROY, **2 W.R Cr. 50.**

(6)—*Right to copies of documents—Right of prisoner on trial Evidence.*—A prisoner applied for copies of certain documents filed in Court

Prisoner—*concluded.*

for the purpose of his defence. *Held* that the Magistrate had erred in refusing his application. *Per Loch, J.*—A prisoner in entitled to have copies of all documents for which he asks, and which he thinks necessary for his defence, and it is for the officer trying the case, whether Magistrate or Judge, to determine at the hearing whether the documents filed by the prisoner are or are not admissible as evidence. *In the matter of* SHIB PRASAD PANDA, **6 B.L.R. Ap. 59 = 14 W.R.Cr. 77.**

(7)—*Cases of escaped prisoners not to be returned as pending.*—The cases of escaped prisoners should not be regarded or returned as pending upon the files of Sessions Judge, as such persons cannot be said to be awaiting trial. CRIMINAL CIRCULAR ORDER NO. 13 OF 1867, **9 W.R.Cr. Cir. 1.**

See CONSENT, 9 B.H.C. 358.

Appeal by, in jail—Power to dispose of appeal in the absence of the appellant—*See* CRIM. PRO. CODE, 1898, ss. 420, 421, 422, 423, 13 A. 171 = A.W.N. 1891, 48.

See EVIDENCE—GENERAL, 10 C. 140 = 13 C.L.R. 358.

Criminal cases—Copies of judgments for—*See* PRACTICE AND PROCEDURE, 9 W.R. Cr. 19.

Wrongful confinement—Confinement in a cell of a—in jail, whether illegal—*See* WRONGFUL CONFINEMENT, 30 C. 95 = 6 C.W.N. 511.

Prisoners Act.

See ACT V OF 1871.

See ACT III OF 1900.

Prisoner's Testimony Act.

See ACT XV OF 1869.

Prisons Act.

See ACT XXVI OF 1870.

See ACT IX OF 1894.

Privacy.

Notice to erect wall to secure, of neighbour's backyard—*See* MAD. ACT IV OF 1884, s. 207, 1 Weir 747.

See CRIM. PRO. CODE, 1898, s. 147, Rat. Un. Cr. C. 357.

Private Defence, Right of.

See PENAL CODE, ss. 96 to 106.

(1)—*Penal Code, s. 102—Private defence, right of, when it commences*—When the applicants apprehending opposition went armed to appraise crops, and on the arrival of the opposite party similarly armed, did not wait till the opposite party had actually attacked, but proceeded to meet them, and a fight took place, *held*, that the applicants had acted within the right of private defence, which commenced as soon as the opposite party appeared with arms and began to move towards them, which was a distinct threat to attack them and, as they had not inflicted injuries more than were necessary under the circumstances, their conviction could not be sustained.

Private Defence, Right of—*continued.*

Held, further, that, when a person is attacked while doing a lawful act, he is entitled to stand his ground and defend himself, and that the law does not intend that he must run away to have recourse to the protection of the public authorities. HAFIZ ALI v. KING-EMPEROR, **10 O.C. 196 = 6 Cr. L.J. 271.** (20 A. 459, *D.*)

(2)—*I.P.C.*, s. 100—*Right of private defence of body—Extent of right.*—A person will be justified, in the exercise of his right of private defence of his person, in stabbing the assailant, when the latter attacks him with a knife inflicting a serious wound, even though the person exercising the right of private defence may have escaped further injury by resorting to less violence or by running away. Whether a person has exceeded the right of private defence of his person or not will depend, not on the actually continuing danger, but on whether there was a reasonable apprehension of such danger. ALINGAL KUNHINAYAN v. EMPEROR, **28 M. 454 = 3 Cr.L.J. 43.**

(3)—*Extent of right.*—Where the deceased, a sturdy and dissolute young man, upon a quarrel with the accused, his uncle and his uncle's son, aged seventy and thirty-five years, respectively, after an exchange of abuse, snatched up a heavy *jatu* (side post of a cart), three feet long and aimed a blow with it at his uncle and possibly another at his uncle's son, and his uncle's son, the accused, seized a second *jatu* two feet long, and struck the assailant twice on the head with it, in consequence of which he died; *held*, there was no excess of the right of private defence and the accused had committed no offence. PURAN v. KING-EMPEROR OF INDIA, **8 P.L.R. 1906 = 3 Cr. L.J. 232.**

(4)—*Penal Code*, s. 97—*Nature of right of private defence.*—The law must not be invoked to oppress persons, who, when there is no time to have recourse to the public authorities, find themselves in a position in which they must either exert the privilege of private defence as provided and restricted by the law, or submit to a forcible invasion of a right of person or property in cases, where under s. 97, Penal Code, the law does not require any such submission. NGA HLA TUN U v. QUEEN-EMPRESS, **L.B.R. 1893—1900, 219.**

(5)—*Proper application of the law regulating the right of self-defence—Incidents and stages of quarrel to be ascertained.*—For the proper application of the law regulating the right of self-defence, greater pains should be exercised to record the incidents and stages of the fight, so far as they are material. NGA TAW KO v. QUEEN-EMPRESS, **L.B.R. 1893—1900, 262.**

(6)—*Penal Code, ss. 99 (3), 105—Scope—Private defence of property.*—The right of private defence of property commences when a reasonable apprehension of danger to the property commences. Before such apprehension commences, the owner of the property is not called upon to apply for protection to the public authorities.

Private Defence, Right of—*continued.*

The apprehension which justifies a recourse to the authorities ought generally to be based on some information of a definite kind, as to the time and place of the danger actually threatened. The accused, being informed that the complainants were committing a raid on his crops, proceeded to the spot, followed by the other accused, and remonstrated with the complainants. The latter, without paying any attention to the remonstrances, attacked the accused. In the fight which ensued, the leader of the complainant's party was killed. *Held*, that the complainants being the aggressors, the accused had a right of private defence, and that they had not exceeded that right. QUEEN-EMPRESS v. NARSANG PATHABHAI, **14 B 441.** [*R.*, 24 C. 666, 35 C. 368 = 7 C.L.J. 359 = 12 C.W.N. 384 = 7 Cr. L.J. 256 = 3 M.L.T. 385, U.B.R. 1905, 2nd Qr, Penal Code, p. 21; *D.*, 21 A. 122, 24 A. 143.]

(7)—*Penal Code*, ss. 96, 97, 99, 100, 304—*Limits of the right of.*—The deceased S and three others who formed his party attacked with *lathies* the accused B and his party, three in number, as the result of a quarrel. One of the party of the deceased struck a blow on the accused which felled him to the ground. The accused rose up and inflicted a blow on the head of S., which fractured his skull causing death within a short time. *Held*, that, under the circumstances of the case, the accused did not exceed his right of private defence by inflicting the blow on the head of the deceased, as the circumstances were such as reasonably caused the apprehension that grievous hurt would, but for his action, have been the consequence of the attack that was being made upon him. A man in the predicament of the accused could not be expected to judge too nicely. BHUT NATH DOME v. KING-EMPEROR, **13 C.W.N. 1180 = 3 Ind. Cas. 867 = 10 Cr. L.J. 391.**

(8)—*Penal Code*, ss. 96, 147—*Rioting—Body of men going armed to pick a quarrel*—If a body of men go down to meet another body of men evidently intent upon picking a quarrel, armed with a loaded gun, and use it within a short interval of their arrival, it is for them to rebut the inference which at once arises that their intention was by means of criminal force, or show of criminal force, to enforce their rights or supposed rights. When a body of men are determined to vindicate their rights, or supposed rights by unlawful force, and when they engage in a fight with men who, on the other hand, are equally determined to vindicate by unlawful force their rights or supposed rights, no question of self-defence arises. QUEEN EMPRESS v. PRAG DAT, **20 A. 459 = A.W.N. 1898, 117.** (4 A. 148, 9 A. 528, *R.*) [*F.*, 24 A. 143, 21 A. 122, A.W.N. 1901, 113, 35 C. 368 = 7 C.L.J. 359 = 12 C.W.N. 384 = 3 M.L.T. 385 = 7 Cr. L.J. 256; *D.*, 10 O.C. 196.]

(9)—*Vindicating supposed rights by unlawful force—No right of private defence.*—When a body of men are determined to vindicate their rights, or supposed rights, by unlawful force, and when they engage with men, who, on the other hand, are equally determined to vindicate by unlawful force their rights, or supposed rights, no question of self-defence arises. KING-EMPEROR v. KALIJI, **24 A. 143 = A.W.N. 1901, 193.** (20 A. 459, *F.*; 14 B. 441, *D*; 24 C. 686, *Not F.*) [*R.*, 35 C. 368 = 12 C.W.N. 384 = 7 Cr. L.J. 256, 7 C.L.J. 359 = 3 M.L.T. 385, A.W.N. 1904, 113.]

(10)—*Penal Code*, ss. 100, 201—*Attempt to commit rape—Concealing dead body.*—Where the accused, husband and wife, in attempting to protect the latter from attempted rape by the deceased, killed him, *held* that the right of private defence extended to the causing of death in such a case and that no offence was committed. There can be no offence under s. 201 of the Penal Code in concealing the dead body in the above case, since no offence had been committed. QUEEN-EMPRESS v. RAMZAN SHAKEBHAI, **Rat. Un. Cr. C. 867.**

(11)—*Penal Code*, ss. 99, 100, 147 *and* 148—*Rioting—Right of private defence, where the parties of the complainant and accused engaged in a free fight and when the accused knew that they would be resisted in their acts—Jury, misdirection in the charge to.*—When a body of men go out armed to exercise a right or a supposed right, knowing that they will be resisted by another body of men in their act, and when the former is engaged in the exercise of that right or supposed right, the latter resisting, a free fight ensues between the rival parties, in defence of the remonstrances of police constables present on the spot, with the result that a man is killed and others wounded, questions of right and who are the aggressors and who are the defending party do not arise for consideration. No person has the right to take the law into his own hands for the protection of his person or property, if there is a reasonable opportunity of redress by recourse to the public authorities. The right of self-help when it causes or is likely to cause damage to the person or property of another person must be restricted and recourse to public authorities must be insisted on. KABIRUDDIN v. EMPEROR, **35 C. 368 = 7 C.L.J. 359 = 12 C.W.N. 384 = 7 Cr. L.J. 256 = 3 M.L.T. 385** (1 C. L R. 521, 35 C. 103, *F.*) [*F.*, 35 C. 443 = 8 Cr. L.J. 54; *R.*, 16 C.L.J. 440 = 13 Cr. L.J. 905 = 17 Ind. Cas. 1001, 15 Cr. L.J. 447 = 24 Ind. Cas. 327; *D.*, 15 Cr. L.J. 209 = 18 C.W.N. 275 = 22 Ind. Cas. 993.]

(12)—*Persons in possession, though unlawful.*—Where the complainants were in possession, though it may have been a wrongful possession, the accused were not entitled to go in force to turn them out, much less were they entitled to take a spearman, for that purpose, as the accused could not, in such a case, be considered to have the right of private defence of property. MOHER SHEIKH v. QUEEN-EMPRESS, **21 C. 392.** [*D.*, 3 N L R. 177 = 7 Cr. L.J. 49, 7 Cr. L.J. 256 = 12 C.W.N. 384 = 7 C.L.J. 359 = 3 M.L.T. 385 = 35 C. 368, 15 Cr. L.J. 209 = 18 C.W.N. 275 = 22 Ind. Cas. 993.]

Private Defence, Right of—*continued.*

(13)—*Penal Code, ss.* 96 *to* 106, 147, 149 *and* 325—*Complainant's party removing bund erected on land of accused's master—Accused to the number of fifty or sixty armed with* lathis *attacking complainant's party—Beating a man to death—Unlawful assembly—Rioting—Right of private defence—Exceeding such right.*—The complainant's party, about twelve or thirteen in number, proceeded with *kodalis* to make an opening in the new embankment, erected on the land of a zemindar, the accused's employer, for the purpose of removing the *bund* which interrupted the flow of water from the complainant's land and caused the destruction of his crops. The accused's party learning of this at once assembled to the number of fifty or sixty, armed with *lathis* and proceeded to drive off, chase and beat the complainant's men, who were chased right up to the well of their village. The complainant's party had either finished cutting the opening in the *bund* or *ceased doing so*, when they saw the accused's party coming up in overwhelming numbers. Some of the accused's party also beat a man who was standing there, but who was not connected with the cutting of the *bund*, and attacked him not only at the time of the first attack, but returned and beat him again as he lay on the ground when they came back from their chase, so that his skull was fractured, and he, consequently, died soon after. *Held* that the accused's party was, from the beginning, an unlawful assembly, as they went up armed with *lathis*, which are so often used with fatal effect as to be necessarily regarded as deadly weapons, intending to enforce their rights at all hazards; that, even if the party should be considered a lawful assembly at first, it became an unlawful assembly the moment the complainant's party stopped cutting the opening in the *bund*, and the accused chased and beat the complainant's party and killed the deceased; that no question about the right of private defence arose, and that, even if the accused ever acted in the exercise of any such right, they far exceeded these rights, by attacking the complainant's party, beating, and chasing them, and killing the deceased. EMPEROR v. AMBIKA LAL, **35 C. 443=8 Cr. L.J. 54.** (23 W.R. Cr. 25, 24 C. 686, *D*; 35 C. 368=12 C.W.N. 384, *F.*)

(14)—*Penal Code, ss.* 99, 101, 104 *and* 147—*Rioting—Unlawful assembly—Taking possession by force—Temporary possession, effect of—Right of private defence, nature of.*—The complainant was in possession and had the right to possession of a certain piece of land. The accused went upon the land, ploughed it up, uprooted the castor plants thereon, and thus actually occupied it. The complainant and his party subsequently came and protested and tried to unyoke the cattle, whereupon a riot took place on the spot, and the complainant and his party were beaten. *Held* (1) that the action of the accused in entering the land, and ploughing it, and uprooting the plants, was not justified, (2) that they were clearly members of an unlawful assembly, the common object of which was to enforce a right, or supposed right, for the exercise of which they were prepared to use force, (3) that the action of the accused in beating the complainant's party could not be justified by the fact of their having obtained temporary occupation of the land, and, (4) that the accused had been properly convicted under s. 147, I.P.C. The right of private defence of property under the Penal Code is a restricted one. JAIRAM MAHTON v. EMPEROR, **35 C. 103=7 Cr. L.J.** 123. (16 C. 206, 24 C. 686, 33 C. 295, 14 M. 126, *R.*; 7 M H.C. App. 35, *Appr.*) [*R.*, 35 C. 368=12 C.W.N. 384=7 C.L.J. 359=7 Cr. L.J. 256; *Rel. on*, 16 C.L.J. 440=13 Cr.L.J. 905=17 Ind. Cas. 1001.]

(15)—*Private defence, right of — Unlawful assembly—Unlawful common object, exceeding the right of private defence, if is.*—Once an attack is made on persons in the lawful exercise of their rights over a property, they are entitled to the right of private defence; and the only question which can arise after that is whether any member of the party individually exceeded that right. People who were in the exercise of lawful rights cannot be held to have been members of an unlawful assembly, nor can that assembly become unlawful by reason of their repelling the attack made upon them by persons who had no right to obstruct them or by reason of their exceeding the lawful use of the right they had. The fact, of exceeding the right of private defence which a man has, cannot make him a member of an unlawful assembly, and he can only be convicted and punished for the individual act which he himself has done in excess of the right of private defence. KUNJA BHUNIYA v. KING-EMPEROR, **16 C.W.N. 1053 =15 Ind. Cas. 481=13 Cr. L J. 481=39 C. 896.** [*R.*, 15 Cr. L.J. 385=18 C.W.N. 498= 23 Ind. Cas. 985.]

(16)—*Penal Code, ss.* 99, 147, 148 *and* 326—*Members of an unlawful assembly—Excessive violence by some—Right of private defence, if exceeded—Abetment, if continuing to be in the assembly, amounts to.*—Where the accused, who were armed with *lathies* and swords, went in a body to a disputed plot, attacked and severely wounded men of the opposite party, who were reaping some crops, *held*, that the accused, who ordered the attack and those who used the swords and *lathies*, were members of an unlawful assembly and had exceeded the right of private defence. In a case of rioting, if the accused were justified in resisting the theft of their crops, they are not members of an unlawful assembly, even though some members thereof have exceeded the right of private defence. But if persons continue to be in the assembly, even after knowing that some have exceeded the right of private defence, they are members of an unlawful assembly; and if they aid and abet those who have exceeded the right, they have also exceeded the right. BAIJ NATH DHANUK v. EMPEROR, **36 C. 296=13 C.W.N. 677=1 Ind. Cas. 973=9 Cr L J. 443** (10 C.L.R. 278, *R.*) [*D.*, 10 Cr. L.J. 245=3 Ind. Cas. 96=13 C.W.N. 827=36 C. 827.]

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(17)—*Penal Code, ss.* 99, 100, 101, 102 *and* 147—*Rioting—Right of self-defence.*—Where L and others made an assault upon P and others, who stood against L and others to fight and were consequently convicted of rioting ; *held*, that P and others committed no offence as they acted in the exercise of the right of private defence. POKHAR v. KING-EMPEROR, **10 P. W.R. 1907, Cr. = 5 Cr. L.J. 218.**

(18)—*Plea of "not guilty" by accused—Plea of private defence by pleader—Duty of Court—Penal Code, s.* 96 —Where the accused pleads not guilty, but the accused's pleader advances the plea of the right of private defence, the duty of the Court is to accept the plea advanced before him and to say, upon the entire facts of the case, if any offence, and what offence has been committed. PASUPAT GOPE v. RAM BHAJAN OJHA, **1 C.W.N. 545.**

(19)—*Penal Code, s.* 99—*Obstruction to the execution of illegal warrants—Crim. Pro. Code* (1898), *ss.* 96, 100.—Where, on the complaint of the husband that his wife was wrongfully confined, a search warrant was issued under s. 96, Crim. Pro. Code, for the arrest of the wife, and the Police attempted to execute this warrant at the house of the father-in-law, and was obstructed by him and several others, *held* that the accused were not deprived of the right of private defence under s. 99, Penal Code, as the warrant issued was wholly illegal. BISU HALDAR v. EMPEROR, **11 C.W N. 836 = 6 C.L. J. 127 = 6 Cr. L J. 38.**

(20)—*Penal Code, ss* 99 *and* 147—*Rioting—Common object—Difference between common object charged and common object found—Conviction, validity of—Right of private defence.*—Where the accused were convicted on a charge of rioting committed with intent to dispossess the complainant, and, on appeal, the Sessions Judge upheld the conviction but found that the common object was enforcement of their right or supposed right, *held*, that although there was a difference between the common object charged and the common object found, the difference was very slight and as both common objects raised the same question of law and the accused had not been in any way prejudiced in their defence, the conviction was not bad, and that under the circumstances of the case, the right of private defence under s. 99, I.P.C., could not arise. MANIRUDDIN v. EMPEROR, **12 C.W.N. 579 = 35 C. 384 = 7 Cr. L J. 374.**

(21)—*Penal Code, ss.* 99 *and* 141—*Persons lawfully in possession of land offering resistance.*—The third clause of s. 99 allows no right of private defence in cases in which there is time to have recourse to the authorities. The clause does not mean that a person in actual possession of property is, when attacked, to abandon it to the mercy of marauders, with a view to making application to the Police for assistance. Where persons, who were lawfully in possession of a field, were suddenly attacked, *held*, that the right of private defence existed in this case and that they were justified in resisting the attack, because they had no time to have made an application to the Police for assistance, owing to the sudden nature of the attack. EMPRESS v. ANUMANTAN, **1 Weir 44.**

(22)—*Penal Code, ss.* 97, 101 *and* 104—*Assembly to protect a right—Unlawful assembly.*—Persons belonging to a village went in procession to worship a Goddess in an adjoining village carrying with them a pot of consecrated water. When returning after performing their acts of devotion, they were attacked by the people of that village and the attack was resisted violently, causing simple hurt to some persons and grievous hurt to one of them. The members of the procession were convicted. *Held*, on appeal, that the convictions were wrong. They were acting legally in carrying the water in the pot and were justified, under the circumstances, in exercising the right of private defence of body and of property and in resisting the villagers in the obstruction they offered in the carrying of the pot of water. They had not inflicted more harm than was necessary under the circumstances to inflict for the purpose of self-defence. REGULA BHEEMAPPA v. EMPEROR, **26 M. 249 = 1 Weir 63.**

(23)—*Penal Code, ss.* 141 *and* 143—*Assertion of* bona fide *claim of right.*—Where there was a dispute between two villages, one of them being under the care of the Court of Wards, regarding the supply of water, and the Collector, as the Agent of the Court of Wards, made an order to his manager to cause a temporary work to be erected with a view to carry out the distribution of the water in the proportions which he had decided to be fair and proper, *held*, that the inhabitants of the other village had a right, in defence of their property, to resist the execution of that order, and that they had not used greater force than was necessary for that purpose. *In re* NIKKA JOGI, **1 Weir 64.**

(24)—*Penal Code, ss.* 79 *and* 99—*Constable obeying an illegal order of Magistrate—Right of self-defence.*—A constable would not be justified in obeying an illegal order of a Magistrate unless, by a mistake of fact, and not by a mistake of law, he, in good faith, believed that he was justified in obeying such order. But, persons affected by such order would not be justified in resisting the act of the constable, though in itself illegal, if the constable was acting in good faith under colour of his office, unless they had a reasonable apprehension of death or grievous hurt. *In re* PERUMALU, **1 Weir 344.**

(25)—*Penal Code, ss.* 141 *and* 143—*Dispute as to right to pass in procession over vacant village-site — Temporary injunction by Civil Court against one of the disputants—Procession formed contrary to injunction—Right of other party to assemble in numbers to obstruct it against orders of the Inspector of Police.*—There was a dispute among two village parties about the right to go in procession over a vacant piece of land on the new year's day to hunt in the

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hills adjoining the village. In a civil suit instituted by one of the parties, the Court prohibited the other party, by temporary injunction, which was in force at the time of the occurrence, from going in procession over the ground in dispute until the disposal of the suit. The other party, contrary to the injunction, formed a procession and proceeded a short distance. Meanwhile, the rival party assembled a large number of men on the vacant ground to prevent the procession by force. The Inspector of Police ordered them to disperse, but they did not obey the order. Thereupon the Inspector induced the other party to abandon their intention of going in procession. *Held*, that, in the case, the persons who disobeyed the Inspector's order had no right of private defence of property, and that they were guilty of the offence of being members of an unlawful assembly. QUEEN-EMPRESS v. TIRAKADU. **14 M. 126 = 1 Weir 59.** [*R.*, 35 C. 103 = 7 Cr. L J. 123, U.B.R. 1905, 2nd Qr., Penal Code, p. 21.]

(26)—*Penal Code, ss.* 99 *and* 186 —*Crim. Pro. Code,* 1882, *s.* 366—*Resistance to Court's process.*—A process-server, entrusted with a warrant of arrest in the execution of a decree, would be acting illegally and not in discharge of his public functions, if he tries, in contravention of s. 366, Crim Pro. Code, 1882, to force open the outer door of the accused's (judgment-debtor's) house with a view to arrest him. Hence the judgment-debtor, who resists such a process-server, commits no offence. EMPRESS v. BHAWANI-LALA, **2 C.P.L.R. 73.**

(27)—*Penal Code, ss.* 105 (2), 141, 143 *and* 447—*Stolen property—Common ground—Entry by number of persons for recovery—Trespass—Unlawful assembly.*—Though a person may have temporary possession of a common plot of ground, or a part thereof so as to make a criminal trespass thereon possible, yet, any thief, who places stolen rice crops on a thrashing floor common to a village, cannot by that act be said to be in legal possession of the floor ; and an entry thereon by anybody, let alone the true owner, to deprive the thief of such stolen property could not in law amount to a trespass. Where, in such a case, an accused person, entered the thrashing-floor with a number of persons and carried away his crops, *held*, that his object, in assembling the persons, being the recovery of his stolen grain, was lawful, and that, therefore, the assembly did not constitute an unlawful assembly. Immoveable property cannot be made the subject of theft, and cannot be stolen property however illegally and clandestinely it may have been seized. The right of private defence, while it exists in all other cases for the purpose of *prevention* of the offences named, in the particular case of *theft* the right continues for the recovery of the property even after the theft has been accomplished. Where a person whose property has been stolen finds the thief or the property, he is not bound to put off the capture of the thief or the property, until he can find assistance from public authority. JARAH CHAMAR v. SURIT RAM, **3 N.L R. 177 = 7 Cr. L.J. 49.**

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(28)—*Stabbing in evasion of legal arrest, whether exercise of right of self-defence—Crim. Pro. Code,* 1882, *ss.* 59 *and* 46—*Penal Code, ss.* 97-102.—An accused cannot set up any right of private defence, unless a reasonable apprehension of danger to himself arises from an attempt or threat to kill him· Any injury short of death and necessary to effect the arrest of the accused is no offence. S 59 of the Crim. Pro. Code, 1882, empowers any private person to arrest any person who, in his view, commits a non-bailable and cognisable offence. Under s. 46, Crim. Pro. Code, 1882, when such an arrest is resisted or sought to be evaded, such person may use all means necessary to effect the arrest. The pursuer is not bound to desist from making the arrest when the accused, by offering no submission and by retaining his weapon, gives reasonable cause for an apprehension of grievous hurt or death if the pursuit is continued, and the pursuer having a right to persist in his efforts to arrest, the accused cannot in turn set up the plea of self-defence. The right of private defence of the body is a right of defence against any offence affecting the human body. QUEEN-EMPRESS v. NGA TAUNG, **L.B.R. 1893—1900, 136.**

(29)—*Right of private defence—Plea not set up—Effect—Evidence Act, s.* 105.—When, on an appeal from a conviction for rioting, the Sessions Judge, holding that the complainant's party were the aggressors, and the accused were merely exercising their right of private defence of property, confirmed the conviction, on the ground that the accused had not set up that plea, *held* that the accused were entitled to an acquittal. Although s. 105 places on the accused the burden of proving in a criminal trial, that they have acted within their legal rights in the exercise of the right of private defence of property, still this burden can be discharged by the evidence of witnesses for the prosecution as well as by evidence for the defence, on such a plea being set up ; and the accused are clearly entitled to claim an acquittal if, on the evidence for the prosecution, it is shown that they have committed no offence. *In the matter of* KALI-CHARAN MOOKERJEE, **11 C L.R. 232.**

(30)—*Penal Code, s.* 300, *except* 4—*Murder—Sudden fight — Private defence — Common intention—S.* 149—*Difference of effect.*—When the accused's party pursued the complainants in three boats for a long distance and then when they had them in their power, landed and attacked them with spears and killed three of them, their action does not come within exception 4 to s. 300 and certainly amounts to murder. There is no right of private defence against persons who are merely taking refuge in the offender's land from other persons trying to take their lives. Members of an unlawful assembly may have a common object only up to a certain point and the criminality of each variess according to the information at his command and also to the extent to which he shares the community of object. The effect of s. 149 may be different on different members

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of the same unlawful assembly. ADIL MOHAMED v. EMPEROR, **8 C.L.J. 561=9 Cr. L J. 32,** (22 C. 306, *F.*)

(31)—*Private defence, right of, set up for the first time in appeal—Validity.*—Where the plea of private defence of property was not raised by the appellant, and never could have been raised, having regard to the pleas put forward by him, *held*, that he could not raise such a plea for the first time in the appellate Court. QUEEN-EMPRESS v. TIMMAL, **21 A. 122=A.W.N. 1898, 208** (20 A. 459, *R.*) [*R.*, 32 A. 451=7 A.L J. 438=11 Cr. L J. 374=6 Ind. Cas. 589, A.W.N. 1904, 113, 10 Cr. L.J. 102.]

(32)—*Penal Code, ss. 96, 105—Right of private defence.*—People whose rightful possession and enjoyment of a certain land is interfered with are justified in opposing such interference by using force even to the extent of causing grievous hurt if they could not help it. EMPEROR v. DHARAMRAJ, **A.W.N. 1882, 42.**

(33)—*Penal Code, s. 100—Right of private defence of body*—The sister-in-law of the deceased had a quarrel with the son and the nephew of the accused. The deceased went there armed with a *lathi* to protect his son and nephew from the deceased and others. The deceased and the accused exchanged abusive language; the deceased then struck the accused on the head with his *lathi* and the accused returned the blow. Apparently he felled the deceased with a blow of his *lathi*, and the deceased was struck a second blow by another accused person, when he was lying on the ground. *Held*, that the accused's right of private defence of the body extended to even to causing the death of his assailant, notwithstanding that he had a friend armed with a *lathi* at his side. EMPRESS v. BISAMBHAR RAI, **A.W.N. 1886, 135.**

(34)—*Penal Code, s. 99—Search without warrant—Obstruction if an offence—Crim. Pro. Code, s. 135.*—Where a police constable subordinate to a station-officer, deputed to make an inquiry under s. 135 of the Crim. Pro Code, entered a house for search without a warrant, which he had no right to do, *held* that obstruction to him was nevertheless an offence in the absence of proof that he did not act in good faith under colour of his office. REG. v. VYANKATRAV SHRINIVAS, **7 B.H.C. Cr. 50.** [*Diss.*, L.B.R. 1872—1892, Vol. I, 152; *R.*, 12 B. 377.]

(35)—*Penal Code, s. 103—Acts done in self-defence no offence.*—*Held*, on the facts of the case, that the acts of the accused, who were in peaceable possession of their property and were attacked in such possession, amounted to self-defence and that they did not exceed the right of private defence of property under s. 103, Penal Code. *In re* SYKES, **3 J.G. 37.**

(36)—*Penal Code, s. 99—Right of private defence—Practice—Evidence—Act I of 1872, s. 105.*—Where the accused did not themselves set up the plea of the right of private defence, and the evidence did not suggest that the accused were acting in exercise of such right, the Court could not set up such a defence on behalf of the accused. EMPEROR v. GULLU, **A.W.N 1904, 113=1 Cr. L.J. 427.**

(37)—*Penal Code, s. 103—Private defence.*—The appellants and one K were at feud in regard to a field, both claiming possession under a mortgage. A suit was instituted in a Civil Court, but they agreed to arbitrate the dispute between them. The arbitrators were assembling on the day the offence was committed, and the appellants had assembled armed with clubs when K's son passed by another side, with some bullock and ploughs. The appellants, believing that he was going to plough the field in dispute, rushed upon him, assaulted him and caused the death of one of his party. *Held* that, under the circumstances, the appellants were properly convicted of rioting. There was no question in this case of the right of private defence. EMPRESS v. RAM SARAN, **A.W.N. 1887, 74.**

(38)—*Arrest without a warrant—Right of private defence.*—Where some Policemen arrested the accused at midnight, who were lurking armed in a village of professional dacoits, *held*, that the arrest was justifiable. Even if it be not, the resistance which he offered was not in the exercise of a right of private defence. CROWN v. GATEEA MEENA, **7 P.R. 1869, Cr.**

(39)—*Penal Code, s 97—Private defence as to property.*—Where the accused found some others taking away moveable property in which they were interested, *held* that they had a right to reclaim the same by force where it appeared that the property would have been carried off if they had merely applied to the police for help. QUEEN-EMPRESS v. SHAMSHER KHAN, **A.W N. 1896, 170.**

(40)—*Right of—Police officer arresting under ss. 45 (6) and 54 (1), Crim Pro. Code (1898)—Resistance—Penal Code, s. 99.*—Where a police sergeant called on the accused, who were armed with guns and whom the police officer believed to be dacoits, to surrender, but the accused resisted and fired several shots wounding and killing several persons, who were assisting in their arrest, *held* that the police sergeant was justified in arresting the accused, under ss. 45 (6) and 54 (1), Crim. Pro. Code, and that the accused had no right of private defence. BHANGA SINGH v. EMPRESS, **21 P.R. 1900, Cr.**

(41)—*Of property and of person.*—The accused, on finding a man in his fields stealing melons, challenged him, but the latter ran away without replying The accused pursued him into a deserted village and struck him a blow on the cheek with his sword. The man suddenly turned round. The accused, thinking that the man might lay hold of his sword and stab him with a knife, inflicted another wound in his side, thereby causing his death. *Held,*

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that the accused had not any right of private defence of property or of person under the circumstances of the case. EMPRESS v. GULBADAN, 25 P.R. 1885, Cr.

(42)—*Right of—Circumstances justifying killing of assailant—Proof of.*—Where the deceased, who, missing his wife who was sleeping with him, went to the place where he suspected that she would be with a hatchet and attacked her paramour, the accused, whereupon the latter stabbed him with a knife thereby causing his death, *held*, that he had not established circumstances which would give rise to the right of private defence, as he had failed to explain either how it became necessary that he should kill him, or the precise circumstances under which he killed him. HAKIM v. EMPRESS, 41 P.R. 1884, Cr.

(43)—*Circumstances under which blow can be inflicted.*—A girl of 16 years was first betrothed to the accused and then to another. The girl, a few days before the date fixed for her marriage, took her abode in her married sister's house, when her father, fearing that an attempt to carry her away would be made by the accused, caused a watch, consisting of a number of his persons, to be placed outside the village. The accused with a number of men went to that village, was joined there by the girl and left the village with two servants. Outside the village, one of the girl's father's party resisted his going, whereupon the accused struck a blow upon his head. Then a general fight ensued between the two parties, *Held* that the accused was not acting in the exercise of the right of private defence and was not justified in striking the man. GURDIT SINGH v. CROWN, 12 P.R. 1872, Cr.

(44)—*Assault upon a public servant conveying person arrested with sufficient authority—Penal Code, ss. 80, 99, 101.*—Where the conveyance, in which a public servant acting in the execution of his duty and a prisoner who had been legally arrested were travelling, was stopped by the accused, camel-drivers, whose camels were trespassing on the canal banks belonging to the Government, thereby forcibly rescuing the prisoner in charge of the public servant, or enabling him to escape, and the public servant, who had good reasons to apprehend personal violence, discharged his gun either accidentally or without taking careful aim at his assailants thereby wounding one of the assailants, *held*, that the accused was entitled to an acquittal, as, if the discharge was accidental, there was no offence at all, or if otherwise, the accused was protected by s. 110, I.P.C. MUKERJI v. EMPRESS, 5 P.R. 1901, Cr. = 51 P.L.R. 1901.

(45)—*Commencement of, and restrictions on, right of—Penal Code, ss. 97, 99.*—The right of private defence, as described in s. 97 of the Penal Code, is subject to the restrictions mentioned in s. 99, that is, it should be exercised only in defence of one's own body or that of another person against an offence affecting the human body. Under s. 102, the right commences only on a reasonable apprehension of danger to the body caused by an attempt or threat to commit an offence, and by s. 99, cl. 4, the right is restricted to not inflicting more harm than is necessary to inflict for the purpose of defence. QUEEN v. GOBARDHAN BHUYAN, 4 B.L.R Ap. 101 = 13 W.R. Cr. 55.

(46)—*Extent of right—Penal Code, ss. 103 and 99.*—The right of private defence of property is subject to the restrictions mentioned in s. 99 of the Code and that it in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence. QUEEN v. DHUNANJOY LOLY, 14 W R. Cr. 68.

(47)—*Pleading right—Persons inviting attack.*—There is no right of private defence where persons believing they will be attacked, court such attack. QUEEN v. NOWABDEE, W.R. 1864, Cr. 11.

(48)—*Exercise of right—Possession.*—A party in possession of land is legally entitled to defend his possession against another party seeking to eject him by force. QUEEN v. TULSI SING, 2 B.L R.A. Cr. 16 = 10 W R. Cr. 64. *See* QUEEN v. MOKEE, 12 W.R. Cr. 15.

(49)—*Dispute as to possession of land.*—Where the prisoner was at the time of affray in actual peaceable possession of land, any act to recover possession of it by force is clearly an illegal act which the prisoner would be entitled to resist, and if force is used in carrying out this intention of recovery by force, the prisoner would have a right to oppose force to force and to inflict such injury as might be necessary to compel the opponent to desist. QUEEN v. SACHEE, 7 W.R. Cr. 112

(50)—*Criminal trespass—Penal Code, ss. 99 and 104.*—Where an offence which occasioned the exercise of the right of private defence of property was criminal trespass, the right would only extend (subject to the restrictions of s. 99, I.P.C.) to voluntarily causing to the wrongdoers some harm other than death. QUEEN v. GOBURDHAN PARI, 14 W.R. Cr. 74.

(51)—*Culpable homicide.*—A person who is attacked by another with a spear, and who in self-defence strikes a blow with a *lathee*, which results in the death of the party attacking, does not exceed the legal right of private defence of person and property and such right extends, under s. 100 of the Penal Code, to the taking of life where grievous hurt is reasonably apprehended. QUEEN v. MOIZUDIN, 11 W.R. Cr. 41.

(52)—*Penal Code, ss. 148, 304—Culpable homicide.*—The prisoners, who, in resisting a sudden attack made upon them by certain persons for the purpose of cutting their crops and when they had no time to complain to the police, inflicted a wound on one of them with a bamboo, from the effects of which the man died, were convicted by the Sessions Judge, under ss. 148 and 304 of the Penal Code. The

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High Court acquitted the prisoners, holding that the force used, or the injuries inflicted, were not such as to exceed their rights of private defence of property. QUEEN v. GURU CHARAN CHANG, **6 B.L.R. Ap. 9 = 14 W.R. Cr. 69.**

(53)—*Penal Code*, s. 100, *cl.* 2, *and* s. 103, *cl.* 4.—Case where a person was held to have properly exercised the right of private defence as contemplated in cl. 2, s. 100, and cl. 4, s. 103, Penal Code, though in the exercise of such right he happened to kill one of his aggressors. QUEEN v. RAM LAL SINGH, **22 W.R. Cr. 51.**

(54)—*House-breaking—Limits of right of defence.*—The right of private defence of property against house-breaking does not extend to causing the death of the house-breaker when he has made his escape from the premises empty-handed, and is at some distance from the place. No more harm should be done than is necessary to effect his capture. QUEEN v. BOLAKI JOLAHAD, **1 B.L.R.S.N. 8 = 10 W.R. Cr. 9.**

(55)—*Premeditated riot.*—There can be no right of private defence, either on one side or the other, in a case where both parties were evidently aware that a riot was likely to happen. QUEEN v. JEOLALL, **7 W.R. Cr. 34.**

(56)—*Penal Code*, s. 104—*Persons acquitted of culpable homicide but convicted of rioting.*—Where the accused who caused death in the exercise of the right of private defence were acquitted by the jury of culpable homicide but convicted of rioting, *held* that the accused not being legally guilty of culpable homicide were not legally guilty of any other offence, and not being rioters or members of an unlawful assembly could claim benefit under s. 104, Penal Code. QUEEN v. MITTO SING, **3 W.R. Cr. 41.** [*Diss.*, 16 C. 206; *F.*, 22 W.R. Cr. 51.]

(57)—*Trespass—Penal Code*, ss. 97, 104, 105.—A person trespassed on the lands of another. The servants of the latter seized and confined the trespasser till the following day, when the land-owner gave information to the police. *Held* that the conduct of the land-owner and his servants in confining the trespasser could not be justified on the ground that they were exercising the right of private defence of property under ss. 97, 104 and 105 of the Penal Code. SHURUFOODDIN v. KASSINATH, **13 W.R. Cr. 64.**

(58)—*Trespass—Demand for payment of rent.*—Mere persistence in a demand for rent does not amount to a trespass justifying the exercise of the right of private defence. MAHOMED JAN v. KHADI SHEIK; HURNATH DE KHASHKHIR v. JOYGOPAL DE SARKAR; HURIS CHANDRA DAS v. BOLAI AUDHICAREE; SHEIKH AHMUDDY v. ANUND MOHUN MOZOOMDAR, **16 W R Cr. 75.**

(59)—*Penal Code*, ss. 96, 104—*Criminal trespass—Private defence.*—Where a person trespassed into the house of another for having criminal intercourse with the latter's wife and the latter with the assistance of his friend retaliated him violently, he should be held under ss. 96 and 104, I.P.C., to have committed no offence as he was justified in causing any harm short of death to a person committing house-trespass. QUEEN v. DHAUMUN TELI, **20 W.R. Cr. 36.**

(60)—*Attacking man found in house at night.* QUEEN v. PELKOO NUSHYO, **2 W.R. Cr. 43.**

(61)—*Right of private defence defined.* QUEEN-EMPRESS v. NGA CHET KYI, **L.B.R. 1872—1892, 333.**

(62)—*Exercise of right of private defence on thief.* QUEEN v. GOOKOL BOWREE, KRISHTO BOWREE, **5 W.R. Cr. 33.**

See ARREST, 29 P.R. 1902, Cr. = 2 P.L.R. 1903, 7 P.R. 1869, Cr.

See CHARGE—FORM OF CHARGE, 51 P.L.R. 1901.

See CHARGE TO JURY—MISDIRECTION, 17 W.R. Cr. 45.

Search without warrant — Right of—*See* CRIM. PRO. CODE, 1898, ss. 94, 98, 165, 9 Ind. Cas. 64 = 15 C.W.N. 343 = 12 Cr. L.J. 8 = 13 C.L.J. 639 = 38 C. 304.

See CRIM. PRO. CODE, 1898, s. 258, 11 C.L.J. 113.

Right of—Rioting—Right of, if exceeded—Punishment—*See* CRIM. PRO. CODE, 1898, ss. 309, 403, 423, 13 Cr. L.J. 497 = 15 Ind. Cas. 641 = 40 C. 163.

House-search by Police—General search—Search for specific article—Criminal trespass—Right of—*See* CRIM. PRO. CODE, 1898, ss. 435, 437, 165 and 94, 16 C.W.N. 1078 = 17 Ind. Cas. 76 = 13 Cr. L J. 764.

See CULPABLE HOMICIDE, 12 W.R. Cr. 15.

See CULPABLE HOMICIDE NOT AMOUNTING TO MURDER, A.W.N. 1882, 172, 13 P.R. 1868, Cr.

See EVIDENCE ACT, 1872, s. 105, 1 C.L.R. 62.

See MURDER, 5 A. 253.

Of—Fatal assault — *Onus* of proof — *See* PENAL CODE, ss. 34, 99, 100, 148, 304, 16 C.L.J. 440.

See PENAL CODE, ss. 141, 143, 148, 326, 17 C.W.N. 1132 = 14 Cr. L.J. 463 = 20 Ind. Cas. 623.

See PENAL CODE, ss. 148, 323, 326, 17 C.W.N. 1081 = 14 Cr. L.J. 590 = 21 Ind. Cas. 382.

Right of, when exercisable—Question as to right of—Whether a question of law—Revision—*See* PENAL CODE, ss. 148, 326, 149, 17 C.L.J. 391 = 14 Cr. L.J. 295 = 19 Ind. Cas. 951.

See PENAL CODE, s. 325, 8 C.W.N. 714.

Private defence—Right of—Illegal search by police—Police beaten—Whether right of private defence can be claimed—*See* PENAL CODE, ss. 332, 147, 99, 8 S.L.R. 1.

See PENAL CODE, s. 353, 105 P.L.R. 1904

Private Defence, Right of—*concluded.*

See RIOTING, 2 C.L.J. 516 = 3 Cr. L.J. 153 = 33 C. 295, 1 C.L.R. 521, 13 M. 148 = 1 Weir 67, 16 C. 206.

See WRONGFUL RESTRAINT, 12 B. 377.

Private Fisheries Protection Act.

See BEN. ACT II OF 1889.

Private Houses.

Prohibition by police of music in—*See* BOM. ACT VII OF 1867, s. 27, 9 B.H.C. 153, A.C.

Private Prosecutor.

(1)—*Right to papers—Crim. Pro. Code (Act* XXV *of* 1861), *s.* 434.—Private prosecutor not allowed to appear on a reference to the High Court under s. 434 of the Crim. Pro. Code. QUEEN v. RAMJI MAZUMDAR, 6 **B.L.R. Ap. 46 = 14 W.R. Cr. 51.**

Private Road.

With right of way over it—*See* NUISANCE UNDER CRIM. PRO. CODE, 8 W.R. 268.

Private Slaughter-house.

See NUISANCE UNDER CRIM. PRO. CODE, 25 W.R. Cr. 72.

Private Street.

See BEN. ACT III OF 1899, s. 3, cls. 35 and 37, sch XVII, r. 2, 8 Ind. Cas. 891 = 11 Cr. L.J. 728 = 13 C.L.J. 219.

See BOM. ACT III OF 1888, ss. 3, 305, 14 Bom. L.R. 1169 = 1 Bom. Cr. C. 240 = 18 Ind. Cas. 267 = 14 Cr. L.J. 43.

See BOM. ACT III OF 1888, ss. 305, 302 to 307, 12 Bom. L.R. 669 = 34 B. 593 = 7 Ind. Cas. 935 = 11 Cr. L.J. 544.

Private Vakil.

See LEGAL PRACTITIONERS.

(1)—*Power of Magistrate to pass a general order prohibiting a private vakil from appearing and practising in all cases before him.*—The discretion conferred up on the Magistrate as to prohibiting private vakils to appear before him is to be exercised in each particular case in which the party desires to appear by a private vakil. The Magistrate may decide in his own mind that any particular private vakil ought not to be allowed to practise and may remove his name from any list he may keep of private vakils against whom there is no objection. But he cannot pass a general order prohibiting a private vakil from appearing and practising in *all* cases before him. *In re* RANGA ROW, **4 M.L.T. 91.**

(2)—*Private vakil—Prohibition from acting in any proceeding, validity of.*—A High Court circular stated that, as a general rule, no person, who is not a qualified legal practitioner should be permitted to act in any proceeding except to prevent a possible miscarriage of justice. A District Magistrate issued a circular that Magistrates should not allow uncertified men to appear except in cases in which they are personally interested. *Held*, that the order of the District Magistrate went beyond the terms of the High Court Circular, although no exception can be taken to that portion of the order, which stated that the District Magistrate would not make any general exception in favour of any particular individual. The High Court circular does not preclude a Magistrate, in an exceptional case, from exercising his discretion by allowing a private vakil of good character to appear in a case. *In re* KRISHNAMACHARIAR, **12 M.L.J. 354 = 2 Weir 401.**

Privilege.

See DEFAMATION.

See PENAL CODE, ss. 499, 500.

English Common Law doctrine of absolute privilege is not the law in India—*See* PENAL CODE, ss. 2, 499, 500, 17 C.W.N. 297 = 14 Cr. L.J. 100 = 18 Ind. Cas. 660 = 40 C. 433.

Privileged Communication.

See EVIDENCE ACT, 1872, ss. 122—126.

(1)—*Act* II *of* 1855—*Evidence Act, s.* 24—*Vakil and client.*—S. 24, Act II of 1855, did not authorize the exclusion of a vakil from the witness-box, though it might allow his refusal to answer certain questions relating to communications between him and his client. DOOLAR JHA v. RUNJEET ROY, **15 W.R. 340.**

(2)—*Act* II *of* 1855, *s.* 24—*Mukhtear and client.*—The question whether a communication between the accused and witness is privileged, is a question of law for the Judge to decide. Communications between mukhtears and their clients are not privileged within s. 24 of Act II of 1855. QUEEN v. CHANDRAKANT CHUCKERBUTTY, **1 B.L.R. A. Cr. 8 = 10 W.R. Cr. 14.** [*F.*, 15 W.R. Cr. 68 ; *D.*, 25 C. 736.]

(3)—*Prosecutor in criminal case and his attorney and clerk.—Semble.*—Communications between a prosecutor in a criminal case and his attorney and his clerk with respect to the case, are not privileged. *In the matter of the petition of* BELILIOS, **12 B.L.R. 249 = 20 W.R. Cr. 61.** [*Appr.*, 2 C. 110 ; *R.*, 13 Cr. L.J. 897 = 17 Ind. Cas. 993 = 16 C.L.J. 453 = 17 C.W.N. 379.]

(4)—*Statement in petition to Magistrate—Defamation.*—*Held* that, under the circumstances of the case, the allegations contained in a petition presented by the respondent to the Magistrate acting in his administrative capacity cannot be regarded as a privileged communication made in the course of judicial proceedings ; and it being proved that the allegations so made were made with a sinister motive and malicious intention, and that they were irrelevant to the occasion, the appellant was held entitled to some substantial damages. DUNNE v. LEGGE, **1 Agra 38, Cr.**

Defamation letter addressed to a Legal Practitioner in reply to the notice of a claim on behalf of his client, which contains imputation concerning the client—Publication—Imputation addressed to the person himself—Defaming husband in wife's presence—*See* DEFAMATION, 6 P.W.R. 1910, Cr. = 10 P.R. 1910, Cr.

Privy.

Removal of a wall and a—Owner or lessee—Requisition or notice to remove—Service on person who has built—Failure to comply with requisition—Liability—*See* BEN. ACT III OF 1884, ss. 202, 218, 2 C.L.J. 226=2 Cr. L.J. 613.

Privy Council.

See APPEAL—APPEAL TO PRIVY COUNCIL.

Jurisdiction of, in Criminal cases— *See* PENAL CODE, ss. 302, 109, 17 C.W.N. 1110==14 M.L.T. 263=1913 M.W.N. 806=15 Bom. L.R. 910=25 M.L.J. 518=2 Bom. Cr. C. 123=18 C.L.J. 365=14 Cr. L.J. 577=21 Ind. Cas. 369=11 A.L.J. 881=36 M. 501, P.C.

Privy Council, Practice of.

See APPEAL—APPEAL TO PRIVY COUNCIL.

(1)—*Irregularity in trial causing injustice—Prerogative of Crown.*—There is no right of appeal to the Privy Council in criminal cases. In a petition for leave to appeal against a conviction and sentence of the Sudder Nizamut Adawlut of Bengal on the ground of alleged irregularities in the proceedings causing great hardship and injustice, *held*, that, assuming that the prerogative of the Crown extended to the granting of leave to appeal in such a case, and was not curtailed by the operation of the Indian Act XXV of 1861, and that this was *prima facie* a cause of great grievance, yet the consequences of allowing appeals in criminal cases would be such as to justify their Lordships in advising Her Majesty, in the exercise of her discretion, to refuse to grant the prayer of the petition. JOYKISSEN MOOKERJEE v. QUEEN, **1 Ind. Jur. O.S. 61=1 W.R. P.C. 13=9 M.I.A. 168=1 Sar. 860=1 Moo. P.C. N.S. 272=1 Suth. 481.**

(2)—*Criminal cases—Felony—Semble.*— No appeal lies in cases of felony to the Queen in Council, from any of the dominions of the Crown of Great Britain which are governed by the law of England. QUEEN v. EDULJEE BYRAMJEE, **3 M.I.A. 468=5 Moo. P.C. 276=1 Sar. 305.** [*R.*, 10 B.H.C. 75, 25 M. 457.]

Interference by Privy Council with the punishment passed on a pleader by the High Court—*See* ACT XVIII OF 1879, s. 13, 13 A. 93=17 I.A. 199, P.C.

Probabilities.

Criminal cases—Adjudication on mere—*See* CRIMINAL CASE, Rat. Un. Cr. C. 772=Cr. Rg. 36 of 1895.

Conviction on mere—*See* PENAL CODE, s. 304, Rat. Un. Cr. C. 686=Cr. Rg. 4 of 1894.

Probate and Administration Act.

See ACT V OF 1881.

Probation of Good Conduct.

See RELEASE ON PROBATION OF GOOD CONDUCT.

Procedure.

See JUDICIAL PROCEDURE.

See PRACTICEAND PROCEURE.

Proceedings, legal.

See BASTARDY PROCEEDINGS.

See CRIMINAL PROCEEDINGS.

See EXECUTIVE PROCEEDINGS.

See JUDICIAL PROCEEDINGS.

See REVIVAL OF CRIMINAL PROCEEDINGS.

See STAY OF CRIMINAL PROCEEDINGS.

Proceedings of Council.

See STATUTES, CONSTRUCTION OF, 14 C. 721.

Proceedings of Legislature.

Reference to—*See* STATUTES, CONSTRUCTION OF, 22 C. 1017, F.B., 22 B. 112.

Proceedings of the Legislative Council.

See STATUTES, CONSTRUCTION OF.

See BOM. ACT II OF 1891, s. 29, 4 N.L.R. 95=8 Cr. L.J. 31.

Proceedings on Sunday.

See HOLIDAY.

(1)—*Proceedings taken on Sunday.*—A Magistrate is not debarred in this country from taking criminal proceedings on Sundays. *In the matter of petition of* E.D. SINCLAIR, **6 N W.P. 177.**

Process.

See CRIM. PRO. CODE, 1898, s. 145, 7 Ind. Cas. 798=38 C. 24=11 Cr. L.J. 530.

Resistance to—of civil Court—*See* JURISDICTION OF CRIMINAL COURTS—GENERAL, 2 B.L.R. F.B. 21=10 W.R. Cr. 43.

Omission to pay process fees in cases of maintenance, effect of—*See* MAINTENANCE, 16 M. 234=2 Weir 252.

Process-fees.

Order for refund of stamp-duty and—*See* ACT XIII OF 1859, s. 2, 1 Weir 697.

Order for re-payment of Court and—*See* ACT VII OF 1870, s. 31, 1 Weir 722.

Court-fee and the, to be paid in addition to fine imposed—*See* ACT VII OF 1870, s. 31, 1 L.B.R. 209.

See ACT I OF 1871, s. 22, 1 Weir 715.

Costs and process-fees awardable under s. 545—*See* CRIM. PRO. CODE, 1898, s. 545, L.B.R. 1872—1892, 409.

Procession.

See NUISANCE UNDER CRIM. PRO. CODE.

See NUISANCE UNDER PENAL CODE.

See RELIGIOUS PROCESSION.

(1)—*Procession, Right to go in—Public street—Magisterial order prohibiting procession, whether gives a cause of action.*—Where the orders of the Magistrate prohibited procession in a public street. *Held*, that the Magisterial orders furnished a good cause of action for a suit by a member of the public for a declaration and injunction regarding his right to go in procession. MUTHEYYA REDDI v. SUDALAIMUTHU NADAR, **20 M.L.J. 119=8 M.L.T. 114=5 Ind. Cas. 902.** (19 M.L.J. 617, *R.*)

Procession—*concluded.*

Procession likely to cause breach of the peace—Power of police—Removal of banners from persons in the procession—*See* MAD. ACT XXIV OF 1859, ss. 21, 49, 17 M. 37.

See HIGH COURT, JURISDICTION OF—GENERAL, A.W.N. 1891, 178.

See HIGHWAY, 1 M.H.C. 50.

See MAGISTRATE, JURISDICTION OF—GENERAL, JURISDICTION, 6 M. 203=2 Weir 77, F.B.

Right of members of a community to pass in procession along the public streets—Assaulting members of—Rioting—*See* PENAL CODE, ss. 147, 296, 13 Cr. L.J. 534=15 Ind. Cas. 806.

See PRIVATE DEFENCE, RIGHT OF, 26 M. 249=1 Weir 63.

Process of Court.

Enforcement of—*See* JUDICIAL PROCEEDINGS, 12 C. L.J. 618.

Process-server.

Report of process-server—Prosecution instituted by District Judge on such report—Acquittal of accused—Process-server—Liability to pay compensation—*See* CRIM. PRO. CODE, 1898, s. 250, 25 P.R. 1910, Cr.=8 Ind. Cas 382=11 Cr. L.J. 634=195 P.L.R. 1910.

Arrest of judgment-debtor—Judgment-debtor allowed to go by decree-holder and—*See* PENAL CODE, s. 224, 7 Ind. Cas. 392=11 Cr. L.J. 477 =8 M.L.T. 286.

Oral order as to custody of civil prisoner to bailiff—Bailiff giving prisoner in charge of process-server—Process-server detaining him in his house—Wrongful confinement—*See* WRONGFUL CONFINEMENT, 4 L.B.R. 253=8 Cr. L.J. 68.

Proclaimed Offender.

See CRIM. PRO. CODE, 1898, s. 45, A.W.N. 1901, 10.

See CRIM. PRO. CODE, 1898, ss. 45, 87, 88, 7 M. 436=1 Weir 102.

Proclamation.

See ABSCONDING OFFENDER.

See CRIM. PRO. CODE, 1898, ss. 87, 88.

(1)—*Crim. Pro. Code*, 1882, *s.* 87—*Rules as to issue of proclamation for appearance of absconding person—Their nature.*—S. 87 prescribes certain rules regarding the time and the places of proclamation. In respect of these matters, the section is imperative and the neglect of the rule with regard to time is no more excusable than would be the neglect of the rule requiring publication in two places. QUEEN-EMPRESS v. SUBBARAYAR, 19 M. 3=2 Weir 40=1 Weir 86.

See CRIM. PRO. CODE, 1898, ss. 426, 439, 2 A. 276.

See SECURITY PROCEEDINGS, 17 M.L.J. 438.

Procuress.

Enticing by—*See* ABDUCTION, 1 W.R. Cr. 45.

Procuring evidence for conviction.

Police man procuring illegal sale of liquor to obtain conviction—*See* ACCOMPLICE—ACCOMPLICE EVIDENCE—NECESSITY FOR CORROBORATION, L.B.R. 1872—1892, 146.

Production of Document.

See DOCUMENT.

See PENAL CODE, s. 175.

(1)—*Penal Code, s.* 175—*Omission to produce document by an accused on trial—Crim. Pro. Code* (*Act* V *of* 1898), *s.* 94.—The provisions of s. 94, Crim. Pro. Code, cannot be taken to apply to the case of an accused person on his trial to whom a notice has been issued to produce an incriminating document. Where an accused, while on his trial for offences under ss. 471 and 193, I.P.C., being directed to produce a certain incriminating document, did not produce the document and in consequence the prosecution against him failed: *held*, the accused could not be convicted under s. 175, I.P.C., for his omission to produce the document. ISHWAR CHANDRA GHOSHAL v. EMPEROR, 12 C.W.N. 1016=8 C.L.J. 320=8 Cr. L.J. 224. [*Not F.*, 5 Ind. Cas. 493=13 Cr. L.J. 493; *R.*, 38 C. 301=15 C.W.N. 345=13 C.L.J. 639=12 Cr. L.J. 8=9 Ind. Cas. 64; *D.*, 41 C. 261=17 C.W.N. 1209=14 Cr. L.J. 405=20 Ind. Cas. 229.]

Disobeying order for production or inspection of documents—*See* PENAL CODE, ss. 175, 188, 15 P.W.R. 1910, Cr.=15 P.R. 1910, Cr.=6 Ind. Cas. 623=11 Cr. L.J. 386=90 P.L.R. 1910.

Professional Misconduct.

Offence, under the Penal Code not to be treated as—Proper Court to direct prosecution for giving false evidence—*See* FALSE EVIDENCE, W.R. 1864, Cr. 15.

Professional Tax.

See MAD. ACT III OF 1871, ss. 27, 61, 62, 7 M. 65.

See MAD. ACT III OF 1871, ss. 58, 62, 3 M. 129.

See MAD. ACT III OF 1871, ss. 62, 109, 9 M. 38.

Nature of—*See* MAD. ACT V OF 1878, s. 103, 8 M. 429.

Failure to pay—Conviction—Legality—*See* MAD. ACT III OF 1904, ss. 103, 118, 120, 124, 125, 126, 177, 8 M.L.T. 305=20 M.L.J. 773=7 Ind. Cas. 743=11 Cr. L.J. 521=(1910) M.W.N. 583.

Liability to be taxed under s. 120 of the Mad. Act III of 1904—Trader buying goods through servant at Madras—Shop at Tinnevelly—Whether the trader can be said to carry on business at Madras—*See* MAD. ACT III OF 1904, s. 120, 7 M.L.T. 80=33 M. 82=5 Ind. Cas. 44.

Professions, and Trades Licensing Act.

See ACT XXI OF 1867.

Professions and Trades Taxing Act.

See ACT IX OF 1868.

Profits *a prendre*.

See EASEMENT, 23 C. 55.

Prohibiting Traffic.

Notice by Magistrate — on Railway level-crossing—*See* NUISANCE UNDER CRIM. PRO. CODE, 8 B.H.C.Cr. 23.

Promissory Note.

(1)—*Act* II *of* 1889 (*Stamp*), *s.* (1) (*a*) - *Entry in creditor's book—Promissory note.*—An entry of receipt of money made by a debtor in his creditor's book with the addition that the amount borrowed would be paid on a certain date, but to whom it did not appear, is not executing a promissory note without the necessary stamp, for the entry does not amount to a promissory note. EMPEROR v. GULZARI MAL, EMPEROR v. KALUMAL, **A.W.N. 1903, 174.**

(2)—*Promissory note alleged to be stifling prosecution—Existence of debt.*—Where a *bona fide* debt exists and a promissory note is executed for the same, the note is not void as one made to stifle a criminal prosecution, though the transaction out of which the debt arose involved a criminal offence on the part of debtor. JAI KUMAR v. GAURI NATH, **A.W.N. 1906, 212=28 A. 718=3 A.L.J. 506.** (L.R. 9 Q.B. 371, 392=72 R.R. 298, L.R. 10 Q.B.D. 572, 11 B. 566, *R.*)

Insufficiently stamped, accepting of—*See* STAMP, 11 P.R. 1891, Cr.

Proof.

See BURDEN OF PROOF.

See EVIDENCE.

See EVIDENCE ACT, 1872, ss. 100—114.

See PRESUMPTION.

(1)—*What is legal proof—Per Carnduff, J.*—"Legal proof" is neither more nor less than what is indicated by the definition of the word "proved," which is to be found in s. 3, Evidence Act. Having regard to that definition, it is doubtful whether a distinction can possibly be drawn between 'legal proof' and 'moral conviction.' BARINDRA KUMAR GHOSE v. EMPEROR, **37 C. 467=14 C.W.N. 1114=7 Ind. Cas. 359=11 Cr.L.J. 453.**

(2)—*Proof of admission.*—To be an admission, it is necessary that a document should have been written by the person against whom it is sought to be used: it is sufficient if it be proved that the document has been is his possession, and that his conduct in reference to it has been such as to create an inference that he was aware of its contents and admitted their accuracy. Unless this be done, the document cannot be used as proof of its contents. What conduct would properly give rise to such inference depends upon the circumstances of each case. The mere fact of possession of

Proof—*concluded*.

letters is not of much value, unless it is shown that, their contents were recognised and adopted by the replies elicited or the conduct inspired by them. A statement, whether oral or written, can be used against a person to prove the truth of the matter stated, if, as against him, it can be regarded as an admission. But the facts must be proved by virtue of which it can be regarded as an admission. If an admission was actually written by him, the fact that it was so written must be proved by those methods which the law allows. BARINDRA KUMAR GHOSE v. EMPEROR, **37 C. 467=14 C.W.N. 1114=7 Ind. Cas. 359=11 Cr. L.J. 453.**

(3)—*Proof of handwriting—Ss.* 67, 73, *Evidence Act.*—S. 73 of the Evidence Act does not sanction the comparison of any two documents, but requires that the writing with which the comparison is to be made, or the standard writing as it may be called, shall be admitted or proved to have been written by the person to whom it is attributed, and next, the disputed writing must itself purport to have been written by the same person, that is to say, the writing must state or indicate that it was written by that person. A comparison of handwriting is, at all times as a mode of proof, hazardous and inconclusive, and especially when it is made by one not conversant with the subject, and without such guidance as might be derived from the arguments of counsel and the evidence of experts. The value of expert evidence of handwriting discussed. Handwriting may, in addition to the usual methods, be proved by circumstantial evidence under s. 67, Evidence Act, which prescribes no particular kind of proof. Methods of proving handwriting discussed. BARINDRA KUMAR GHOSE v. EMPEROR, **37 C. 467=14 C.W.N. 11.**

(4)—*Proof of signature.*—A document does not prove itself, nor is an unproved signature proof of its having been written by the person whose signature it purports to bear. BARINDRA KUMAR GHOSE v. EMPEROR, **37 C. 467=14 C.W.N. 114=7 Ind. Cas. 359=11 Cr. L.J. 453.**

Mode of proving contradictory statements—*See* CONTRADICTORY STATEMENTS, 4 S.L.R. 38=7 Ind. Cas. 601=11 Cr. L. J. 498.

Degree of proof required for conviction in criminal case—*See* CONVICTION, 136 P.L.R. 1909.

Property.

See DISPOSAL OF PROPERTY.

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY.

See FORFEITURE OF PROPERTY.

See IMMOVEABLE PROPERTY.

See MOVEABLE PROPERTY.

See PARTNERSHIP PROPERTY.

See RESTORATION OF PROPERTY.

See STOLEN PROPERTY.

Property—*concluded.*

(1)—*Penal Code, s. 420—"Property," meaning of.*—Property in this section includes money. BIRENDRA DAL BHADURI v. EMPEROR, **32 C. 22=8 C.W.N. 784=1 Cr. L.J. 794.**

Children not property — *See* CRIM. PRO. CODE, 1898, s. 517, 1 Weir 348.

See CRIM. PRO. CODE, 1898, ss. 523, 524, 22 C. 761.

Property Mark.

See PENAL CODE, s. 479, 6 Bom. L.R. 513.

Property, Transfer of Act.

See ACT IV OF 1882.

Prosecuting Inspector.

(1)—*Prosecuting Inspector occupying a seat near Magistrate—Bad practice—Where he should sit.*—The practice of the Prosecuting Inspector occupying a seat on the dais beside the Magistrate in improper. Every Magistrate should be jealous of the reputation of his Court, and rightly or wrongly the fact that the prosecutor is seated on the dais with the Magistrate is almost certain to raise in the mind of the accused a doubt as to the impartiality of the Court that is trying him. There is a proper place in every Court for those persons who prosecute and defend cases. The proper place for the Prosecuting Inspector is below the dais of the Court where the pleader for the defence stands on an equality with him. DEBI DIN v. KING-EMPEROR, **8 A.L.J. 1235=12 Ind. Cas. 843=12 Cr. L J. 579.**

Prosecution.

See ABATEMENT OF PROSECUTION.

See CRIMINAL PROSECUTION.

See MALICIOUS PROSECUTION.

See STIFLING PROSECUTION.

See WITHDRAWAL OF PROSECUTION.

(1)—*False information by lessor and lessee—Lessee's case pending before High Court—Prosecution of the lessor—Validity.*—Where, in a proceeding against the lessor of a land taken, under the Land Acquisition Act, for giving false information in written statements in which the lessee too was implicated, *held*, that the lessor should not be prosecuted, until the proceedings in the civil case, which was before the High Court, in respect of the lessee had come to an end. DURGA DAS RAKHIT v. UMESH CHANDRA SEN, **27 C. 985=5 C.W.N. 131.**

(2)— *Duty of prosecution—Witnesses present at offence—Duty of Judge.*—It is the duty of the prosecution to call for examination all the witnesses present at the commission of an offence, even if some of them are to give accounts different from the one relied on. It is also the duty of the Judge not merely to receive and adjudicate on the evidence submitted by the parties, but also to inquire to the utmost into the truth of a case. QUEEN-EMPRESS v. DHAMBA, **Rat. Un. Cr. C. 581=Cr. Rg. 41 of 1891.**

Prosecution—*continued.*

(3)—*Prosecution, duty of, to call all witnesses.*—The only legitimate object of a prosecution is to secure, 'not a conviction, but that justice be done. The prosecutor is not, therefore, free to choose how much evidence he will bring before the Court. He is bound to produce all the evidence in his power directly bearing upon the charge. It is *prima facie* his duty, accordingly, to call those witnesses who, from their connection with the transaction in question, must be able to give important information. If such witnesses are not called without sufficient reasons being shown,—and the mere fact of their being summoned for the defence is not necessarily a sufficient reason,—the Court may properly draw an inference adverse to the prosecution. As no corresponding obligation is on the accused, no inference unfavourable to him can properly be drawn, because he takes one course rather than the other. DHUNNO KAZI v. EMPRESS, **10 C.L R. 151.**

(4)—*Duty of prosecution.*—In a criminal case, the prosecution must prove the offence charged and the fact that there is suspicion against the accused, which he is not able to clear away, is not sufficient to justify a conviction. The prosecution must succeed by proof of the commission of the offence and not by the weakness of the defence. EMPRESS v. MUSSAMMAT BHURA, **5 C P.L.R. Cr. 11.**

(5)—*Search of premises—Duty of prosecution to examine persons present at the search.*—The fact that the prosecution believed that some persons who were present at a search had formed an opinion unfavourable to the prosecution story regarding it, is no reason why those persons should not be called by the prosecution, inasmuch as what those persons would be required to state in their depositions was, what they observed, and not what they thought. The prosecution is in duty bound to call such persons, unless it is of opinion that they would misrepresent facts and would mis-state what happened. MUNUI SONAR v. EMPEROR, **9 C.W.N. 438=2 Cr. L.J. 176.**

(6)—*Criminal trial — Relevant evidence—Duty of Crown to produce—Duty of Court.*—The doctrine that the Crown is not bound to call witnesses on whom it does not rely must not be pressed too far. It is its clear duty to produce all persons who lay claim to a first-hand knowledge of the incidents under trial; and if the prosecution do not choose to place them in the witness box, it must at least tender them to the defence for cross-examination. The crown is not so much concerned to prove a particular theory as to acquaint the Court with all the relevant evidence; and it is for the Court to determine how much of that evidence is to be credited, and what inferences it warrants. IMPERATOR v. JUMO, **3 S.L.R. 200=11 Cr. L J. 410=6 Ind. Cas. 847.**

(7)—*Civ. Pro. Code (Act V of 1908), s. 115—Order to prosecute for offence not committed—Material irregularity—Interference in revision.*—Where a Court directs the prosecution of a

Prosecution—*concluded.*

person for an offence, which clearly, on the facts before it, has not been committed, *held* that the Court has acted with material irregularity, and the order may be set aside in revision. BALBHADAR DAS v. KING-EMPEROR, **8 A.L.J. 537 = 12 Cr L.J. 432 = 11 Ind.Cas. 616.**

Under the Registration Act — Frame of charge by Magistrate on his own motion—*See* ACT III of 1877, s. 82, 10 C. 604.

Competency of Registrar to institute prosecution for offence under Act—*See* ACT III OF 1877, s. 83, 10 W.R. Cr. 5.

By Advocate or Attorney before Presidency Magistrate—*See* ACT IV OF 1877, s. 129, 6 C. 59 = 6 C.L.R. 374.

Second prosecution — *See* U.P. ACT I OF 1900, s. 147, 8 O.C. 249 = 2 C.L.J. 511.

For adultery, if put an end to by death of husband—*See* ADULTERY, 2 Weir 235 = 4 M. H.C. App. 55.

See CRIM. PRO. CODE, 1898, ss. 4, 495 (4), 537, 4 Bom. L.R. 271 = 26 B. 533.

Order for—Power of successor in office to make order—Revision of such order— High Court's powers—*See* CRIM. PRO. CODE, 1898, ss. 250, 476, 12 Cr. L.J. 521 = 12 Ind. Cas. 289 = 4 Bur. L.T. 246.

Small Cause Court directing prosecution of a person under s. 476, Crim. Pro. Code—Revision — Order of prosecution — Procedure to be adopted—*See* CRIM. PRO. CODE, 1898, ss. 476, 435, 17 O.C. 25 = 15 Cr. L.J. 217 = 22 Ind. Cas. 1001.

See CRIMINAL PROCEEDINGS, 16 B. 729.

Duty of Government Pleader conducting—Discrepancies of witnesses—*See* GOVERNMENT PLEADER, 20 W.R. Cr. 38.

See MURDER, 3 Ind. Cas. 622 = 8 P.W.R. 1909, Cr.

Duty of prosecution to call all available eye-witnesses—Duty of Public Prosecutor—*See* PENAL CODE, ss. 114, 302, 19 C.W.N. 28.

Explanation consistent with innocence of accused—Duty of prosecution— *See* PENAL CODE, ss. 192, 196, 1 P.R. 1914, Cr. = 139 P.L. R. 1914 = 15 Cr. L.J. 344 = 23 Ind. Cas. 696.

Duty of—Accused adopting false line of defence—Doubt as to offence— Conviction — Legality—*See* RAPE, 12 Cr. L.J. 584 = 12 Ind. Cas. 848 = 4 Bur. L.T. 136.

See SENTENCE—POWERS OF APPELLATE COURT—ENHANCEMENT, P L.R. 1900, 74, Cr.

Distinction between private prosecutions and those ordered or sanctioned by Government or Court officers—*See* STAY OF PROCEEDINGS, 7 Bur.L.T. 73 = 15 Cr.L.J. 488 = 24 Ind. Cas. 576.

See WITNESS — EXAMINATION OF WITNESSES, 8 C. 121.

Duty of, production of witnesses—*See* WITNESS—SUMMONS TO WITNESSES, 10 C. 1070.

Prosecutor.

See PRIVATE PROSECUTOR.

See PUBLIC PROSECUTOR.

See CHEATING—GENERAL, 7 C.L.J. 375 = 12 C.W.N. 750 = 7 Cr. L.J. 342.

Prospective fine.

See SENTENCE—FINE.

See ACT XXVI OF 1850, s. 7, 5 B.H.C. Cr. 103.

See BEN. ACT III OF 1864. ss 65, 66, 20 W.R. Cr. 64 = 12 B.L.R. App. 2.

See MAD. ACT IV OF 1884, s. 264, 16 M. 230 = 1 Weir 733.

Prospective Punishment.

For continuing offence — Legality — *See* BOM. ACT III OF 1888. ss. 471, 472, 22 B. 766.

Prostitute.

See ACT III OF 1880, s. 20, cl. VII, A.W.N. 1887, 219.

See BEN. ACT III OF 1906, s. 2, 6 C.L.J. 711 = 6 Cr. L.J. 423.

See BOM. ACT III OF 1867, ss. 11, 13, 14, 7 B.H.C. Cr. 87.

See BOM. ACT IV OF 1902, ss. 28, 129, 7 Bom. L.R. 161.

Prostitute communicating syphilis by sexual intercourse—*See* CHEATING—GENERAL, 11 B. 59.

Daughter of a, whether can claim to be a *Pardanashin* woman—*See* CRIM. PRO. CODE, 1898, ss. 439, 503, 11 P.W.R. 1913, Cr. = 18 Ind. Cas. 147 = 14 Cr. L.J. 3.

See MAXIMS, Rat. Un. Cr. C. 301 = Cr. Rg. 49 of 1886.

Soliciting for purposes of prostitution in a public road—*See* NUISANCE UNDER PENAL CODE, 22 A. 113 = A.W.N. 1899, 215.

Visiting a bungalow—See NUISANCE UNDER PENAL CODE, 2 N.W.P. 349.

Order prohibiting—Carrying on their trade on public roads—Service of the order—*See* PENAL CODE, s. 188, P.L.R. 1900, p. 24, Cr. = 2 P.R. 1900, Cr.

Prostitution.

See PENAL CODE, ss 372, 373.

(1)—*Prostitution not a profession by which one can earn livelihood—Crim.Pro. Code, s.* 488. —Prostitution cannot be treated as a profession by which a girl can earn her livelihood for the purpose of s 488, Crim. Pro. Code, 1898. A. KRISHNASAMY IYER v. CHANDRA VADHANA, **(1913) M.W.N. 695 = 14 M.L.T. 224 = 25 M.L.J. 349 = 14 Cr. L.J. 525 = 20 Ind. Cas. 1005 = 37 M. 565.**

(2)—*Penal Code, s.* 373—*Intention.*—A prostitute received into her house two girls, one of them being of mature age, and promised to give the elder girl good clothes and ornaments if she lived with her. *Held*, that from these facts it might be reasonably inferred that the accused obtained possession of the girls with

Prostitution—*continued.*

intent that one or both of them should be employed for the purpose of prostitution, or knowing it to be likely that they would be so employed, and that, therefore, an offence under s. 373, had been committed. KING-EMPEROR v. MUSSAMMAT SUNDER, **1 A.L.J. 559 = 1 Cr. L.J. 972.**

(3)—*Penal Code,* s. 372—*Disposing of minor for purposes of prostitution.*—The offence made punishable by s. 372 is complete when the person intending that a minor should be employed or used for the purpose of prostitution or for any unlawful or immoral purpose, or knowing it to be likely that such minor will be employed or used for any such purpose, intentionally places the minor in a position calculated to bring about the result intended or known to be likely. If such a change in the position or the circumstances of the minor has been effected with such knowledge or intention, it is quite immaterial whether third persons have or have not observed any ceremonies recognized by custom as necessary to give prostitutes a particular status. The offence consists in the intentional or conscious exposure of the minor to the danger of degradation. EMPEROR v. BHIMDE PANDU DEOLI, **7 Bom. L.R. 562 = 2 Cr. L.J 500.** [*R.*, 14 Cr. L J. 33 = 18 Ind. Cas. 257 = 24 M.L.J. 211 = 13 M.L.T. 131 = 1913 M.W.N. 207.]

(4)—*Penal Code,* s. 372—*Letting to hire a minor girl for prostitution for a single occasion.*—Where the accused brought a young prostitute to a brothel at the request of the complainant for his supposed use for a single occasion, and where it was not contemplated that the girl should be sold or let out for a period of employment, or for the purpose of being employed by the complainant as a prostitute, or for the purpose of being disposed of by that person for that course of life. *Held,* that the commission of an immoral act of sexual intercourse at an interview so brought about was not in the contemplation of s. 372, Penal Code. The Court dismissed the charge under s. 273 of the Crim. Pro. Code. QUEEN-EMPRESS v. SUKEE RAUR, **21 C. 97.** (5 M.H.C. 473, *F.*) [*F.*, Rat. Un. Cr. C. 962; *R.*, 116 P.L.R. 6.]

(5)—*Registration of prostitutes—Act* XIV *of* 1868, *ss.* 11 *and* 21—*Jurisdiction of Magistrates to entertain pleas of irregularity in the registry—Possession of registry ticket.*—Under Act XIV of 1868, the police are not empowered to put a woman on the register of "common prostitutes" against her will. The penalty prescribed by s. 11, Act XIV of 1868, for disobedience of any of its rules is for a "woman who voluntarily registers herself as a common prostitute." A Magistrate has authority to hear any objection urged by a woman charged with disobedience of the rules under Act XIV of 1868 against the legality of her registry, or that she is not a common prostitute. The possession of a registry ticket is not sufficient evidence of her being a common prostitute. *In the case of* LAKHIMANI RAR, **3 B.L.R. Cr. 70 = 12 W.R. Cr. 55.**

Prostitution—*concluded.*

See ACT XIV OF 1868, ss. 11, 21, 12 W.R. Cr. 55 = 3 B.L.R.A. Cr. 70.

Kidnapping — Selling for purpose of—*See* SENTENCE — CUMULATIVE AND SEPARATE SENTENCES, 7 W.R. Cr. 68.

Protection of Judicial Officers' Act.

See ACT XVIII OF 1850.

Proviso to section.

Function of—*See* STATUTES, CONSTRUCTION OF, 2 B.H.C. 106.

Provocation.

See CULPABLE HOMICIDE.

See GRAVE AND SUDDEN PROVOCATION.

See MURDER.

See PENAL CODE, s. 300.

See SUDDEN PROVOCATION.

Public.

Public claiming easement if may be party to proceeding under s. 145, Crim. Pro. Code—Effect of declaring the public to be in possession—*See* CRIM. PRO. CODE, 1898, ss. 145, 144, 17 C.W.N. 205 = 13 Cr. L.J. 789 = 17 Ind. Cas. 533 = 17 C.L.J. 397.

Publication.

See DEFAMATION.

See OBSCENE PUBLICATION.

See PENAL CODE, ss. 499, 500.

See CRIM. PRO. CODE, 1898, ss. 225, 233, 234, 235, 236 and 237, 10 Bom. L.R. 801 = 8 Cr. L. J. 272 = 33 B. 77 = 1 Ind. Cas. 641.

Proof of, of seditious matter—What amounts to attempt to commit sedition—*See* PENAL CODE, s. 124-A, 39 C. 522 = 16 Ind. Cas. 327 = 13 Cr. L.J. 679.

Obscene literature—Test of obscenity—*See* PENAL CODE, s. 292, 15 Bom. L.R. 307 = 2 Bom. Cr. C. 58 = 19 Ind. Cas. 504 = 14 Cr. L.J. 248.

Public Authority.

Evidence of sanction of prosecution of a—. *See* BEN. ACT III OF 1884, ss. 353, 217, 16 C.W.N. 934 = 15 Ind. Cas. 796 = 13 Cr.L.J. 524.

Public Capacity.

Magistrate— Personal interest—*See* NUISANCE UNDER CRIM. PRO. CODE, 10 C.L.J. 484 = 4 Ind. Cas. 437 = 11 Cr. L.J. 2.

Public Conveyances Act.

See BOM. ACT VI OF 1863.

Public Demands Recovery Act.

See BEN. ACT I OF 1895.

Public Document.

(1)—Public documents could only be proved by the production of the papers themselves or by secondary evidence of the nature described by s. 65 (*c*) and they could not be proved by the oral evidence of the witness. GANGA RAM v. EMPEROR, **5 P.R. 1903, Cr. = 66 P.L.R. 1903.** (Cr. A. 235 of 1893, *R.*)

Public Document—*concluded.*

Census Register is not a—*See* EVIDENCE ACT, 1872, s. 74, 6 Bom. L.R. 535.

See EVIDENCE ACT, 1872, s. 76, 20 M. 189 =2 Weir 763, F.B. =7 M.L.J. 167.

Falsification of—*See* PENAL CODE, s. 218, Rat. Un. Cr. C. 201.

Public Ferry.

See FERRY.

See BUR. ACT II OF 1898, ss. 25, 26 (*b*), 14 Bur. L.R. 22=7 Cr. L J. 311.

Public Gambling Act.

See ACT III OF 1867.

Public Health.

Offences relating to — *See* INFECTIOUS DISEASE, 24 C. 494=1 C.W.N. 274.

See PENAL CODE, s. 269, 7 M. 276=1 Weir 226.

Public Nuisance.

See CRIM. PRO. CODE, 1898, ss. 133 to 143.

See JURY UNDER NUISANCE SECTIONS OF CRIM. PRO. CODE.

See NUISANCE UNDER CRIM. PRO. CODE.

See NUISANCE UNDER PENAL CODE.

See PENAL CODE, ss. 268, 290.

(1)—*Penal Code, s.* 268—"*People in general,*" *interpretation of.*—S. 268 of the Penal Code, contemplates acts which cause common injury, &c., to the public, or to people in general, who dwell or occupy property in the vicinity, or which must necessarily cause injury, &c., to persons using public rights. The wording of the above section, which is not aimed at mere private nuisances, implies that an offence of causing a public nuisance can only be committed in a neighbourhood which is dwelt in or occupied by people in general, that is, by a body or a considerable number of persons. CROWN v. TUN U. **1 L.B.R. 213.**

(2)—*Penal Code, s.* 268—*Public nuisance—Proof.*—Every act which causes an offensive odour does not constitute an offence of public nuisance. The injury, danger or annoyance, referred to in s. 268, should also be proved. REG. v. SHEWOO, **Rat. Un. Cr. C. 11.**

(3)—*Killing of cows by Muhammadans—Custom.*—Acts calculated to offend the sentiments of a class do not necessarily amount to a public nuisance. Under certain limitations, the slaughtering of kine by Muhammadans is not illegal. It is the legal right of every person to make such use of his own property, as he may think fit, provided that, in so doing, he does not cause real injury to others, or offend against the law, even though he may thereby hurt the susceptibilities of others. The right of Muhammadans to slaughter kine is one to which they are legally entitled irrespective of custom, and it is only when they abuse the right that its exercise can be interfered with. SHAHBAZ KHAN v. UMRAO PURI, **A.W N. 1908, 64=5 A.L.J. 147=30 A. 181=7 Cr. L.J. 381.**

Public Nuisance—*continued.*

(4)—*Penal Code, s.* 290—*Drying cow-dung in public street.*—The accused was charged with placing cow-dung cakes to dry close to a public road, in such a manner as to cause annoyance to the public, and convicted under s. 290, I.P.C. *Held*, that the mere placing of the cow-dung cakes, to dry, close to a public road, without any evidence to show that any material annoyance was actually caused to the public, did not constitute the offence of public nuisance. QUEEN-EMPRESS v. BAPU JAGA, **Rat. Un. Cr. C. 297=Cr. Rg. 42 of 1886.**

(5)—*Penal Code, ss.* 190, 268—*Solicitation of sexual intercourse.*—Bare solicitation of sexual intercourse is not a public nuisance, as it proves or suggests no fact relating to any common injury, danger, or annoyance, which is a part of the definition of public nuisance in s. 268, I.P.C. QUEEN-EMPRESS v. RAJI, **Rat. Un. Cr. C. 765=Cr. Rg. 28 of 1895.**

(6)—*Penal Code, s.* 190—*Exposing meat for sale.*—The mere fact of keeping a shop open for the sale of meat does not constitute public nuisance. QUEEN-EMPRESS v HASAN SAMAD, **Rat. Un Cr. C. 903=Cr. Rg. 13 of 1897.** (12 B. 437, *F.*)

(7)—*Selling fish on or near a public road.*—Selling fish on or near a public road is not a public nuisance. There must be evidence that the accused caused some annoyance to the public or to the people in general, who dwelt or occupied property in the vicinity, or who had occasion to pass along the public road on which he exposed fish for sale. QUEEN-EMPRESS v. PAUNG THA RI, **L.B.R. 1872—1892, 94.**

(8)—*Gambling—Nuisance.* — Gambling privately in a house does not constitute the offence of a "public nuisance." CROWN v. DUSTOOR KHAN, **16 P.R. 1867, Cr.**

(9)—*Public nuisance—Right to sue—Special damage—District Police Act* (*Bombay Act* IV *of* 1890), *s.* 44—*Orders by District Magistrate—Religious assemblies, orders at—Music, rights to play.*—No individual or class of individuals can sue in respect of a public right unless the obstruction caused has resulted in special damage. The Bombay District Police Act (IV of 1890), is not intended to confer any right upon any individual or class of His Majesty's subjects which had not been given by the common law. The Act was passed in the interests of public peace. All that s. 44 of the Act contemplates is that where a District Magistrate has passed an order in the interests of peace, it is open to any party to go to a Civil Court and get an adjudication in favour of his right, if any. The legislature merely assumes that there is a right which the District Magistrate's order has opposed and which can be vindicated in a Court of law. VIRUPAXAPPA FAKIRAPPA v. SHERIF SAB MULLA MASUD SAB, **11 Bom. L R. 372=2 Ind. Cas. 494.**

(10)—*Public nuisance—Special law—Cattle Trespass Act* III *of* 1857—*S.* 290, *I.P.C.*—

Public Nuisance—*concluded.*

Under s. 290 of the Penal Code, injury, danger, or annoyance must be shown to have been caused to the enjoyment of property or to the exercise of a public right on the part of a portion of the community or of any particular class of people. The existence of a special law to meet a particular offence, *viz.*, cattle trespass, is no bar to the punishment of the offenders under the Penal Code, if an offence, which could have been rightly punished under the Penal Code, is proved. BEGG v. LAMESSOR ; WEBSTER v. KEENA, **9 W.R. Cr. 70.** [*R.*, 13 W.R. Cr. 1.]

See BOM. ACT III OF 1867, s. 11, Rat. Un. Cr. C. 480 = Cr. Rg. 45 of 1889.

See C.P. ACT XVIII OF 1889, s. 120, 12 C. P.L.R. Cr. 16.

See PENAL CODE, ss. 188, 268, U.B.R. 1892—1896, Vol. I, 183.

Exhibition of clock-work toys in a shop window—Collection of crowd outside—User in trade—Obstruction. *See* PENAL CODE, ss 283, 114, 13 Bom. L.R. 209 = 10 Ind. Cas 804 = 12 Cr. L.J. 258 = 35 B. 368.

Public Officer.

See PUBLIC SERVANT.

Power of Local Government to try a case of bribery against a—*See* CRIM. PRO. CODE, 1898, ss. 9, 193, 197, 1 M.L.J. 397, F.B.

"A Police officer"—*See* CRIM. PRO. CODE, 1898, s. 154, U.B.R. 1892—1896, Vol. I, 24.

Public Place.

See GAMBLING.

(1)—*Public place—Goods-yard in Railway Station.*—The goods-yard of a Railway Station is a place accessible to the public, although the Company's orders be that men on business alone should be admitted there. CAWASJI MERWANJI SHROFF v. GREAT INDIAN PENINSULA RAILWAY COMPANY, **26 B. 609 = 4 Bom. L.R. 290.**

(2)—*Cantonment Rules, Ch.* III, *No.* 63—*Public place—Compound of private house.*—The compound of a private house is not a "public place" within the meaning of rule 63. EMPRESS v. KALLAN KHAN, **A.W.N. 1887, 19.**

(3)—A "private garden" is not a public place. QUEEN-EMPRESS v. NGA CHET KYI, **L.B.R. 1872—1892, 333.**

(4)—A cultivated field is not a public place within the meaning of s. 10 of the Gambling Act (I of 1899). CRIMINAL REVISION NO. 603 OF 1892. **U.B.R. 1892—1896, Vol. I, 117.**

See ACT III OF 1867, s. 13, L.B.R. 1872—1892, 317.

What is a—*See* BOM. ACT IV OF 1887, s. 12, 15 Bom. L.R. 101 = 2 Bom. Cr. C. 24 = 19 Ind. Cas. 167 = 14 Cr. L.J. 167.

"Gambling in licensed toddy-shop—Toddy-shop not a"—*See* BUR. ACT I OF 1899, ss. 5 and 10, 2 L.B.R. 195.

See BUR. ACT I OF 1899, s. 10 U.B.R. 1892—1896, Vol. I, 117.

Public Place—*concluded.*

See U.P. ACT I OF 1900, ss. 88 and 147, A.W.N. 1901, 56.

See CANTONMENT RULES, 1 P.R. 1873, Cr.

Public Policy.

See COMPOUNDING OFFENCE, 4 M.L.J. 106.

Public Prosecutor.

(1)—*Convicting Magistrate appointed Public Prosecutor—Property.*—The appointment of the convicting Magistrate as Crown Prosecutor in the inquiry by the Sessions Judge directed as above, was a most improper proceeding. There should be no unseemly eagerness on the part of the prosecutor at securing a conviction. His object must be the furtherance of justice and not to act as counsel for any particular person or party. REG v. KASHINATH DINKAR, **8 B. H.C. Cr. 126.** [Rat. Un. Cr. C. 229, 581, 19 B. 749.]

(2)—*Pleader appointed by brother of a murdered man to support conviction of accused on appeal.*—Where in a criminal appeal pending before the Chief Court of Punjab, the brother of the murdered man, after obtaining permission from the District Magistrate to support the conviction, appointed a pleader, *held*, that the pleader so appointed was not a Public Prosecutor under s. 492, Crim. Pro. Code, AKBAR v. EMPRESS, **29 P.R. 1886, Cr.**

(3)—*Defect in the appointment or absence of a Public Prosecutor.*—The absence of a Public Prosecutor in a particular case, either owing to omission on the part of the Government or of the District Magistrate, as well as a defect in the appointment of a Public Prosecutor is an irregularity curable under s. 537, Crim. Pro. Code, 1882. ISHMAIL v. EMPRESS, **35 P.R. 1887, Cr.**

See ACCUSED PERSON, 29 P.R, 1886, Cr.

See CRIM. PRO. CODE, 1898, s. 494, 8 A. 291. F.B. = A.W.N. 1886, 94.

Duty of a—*See* PENAL CODE, ss. 114, 302, 19 C.W.N. 28.

Withdrawal of prosecution by—*See* WITHDRAWAL OF PROSECUTION, Rat. Un. Cr. C. 307 = Cr. Rg. 58 of 1886.

See WITNESS—EXAMINATION OF WITNESSES, 16 A. 84, 11 Bom. L.R. 1162 = 10 Cr. L.J. 538 = 4 Ind. Cas. 273.

Public purposes, Acquisition of Land for Act.

See ACT VI OF 1857.

Public Register.

Tampering with—*See* FORGERY, 13 P.R. 1895, Cr.

Public Resort.

Arrack shop whether a place of—*See* MAD. ACT IV OF 1884, ss. 75, 23, 6 M.L.T. 16 = 9 Cr. L.J. 496 = 2 Ind. Cas. 84 = 33 M. 83.

Public Right.

Enquiry into public right *per se*—*See* JURISDICTION OF CIVIL COURTS, 12 W.R. 199 =3 B.L.R.A.C. 305.

Public Road.

See HIGHWAY.

See NUISANCE UNDER CRIM. PRO. CODE.

See NUISANCE UNDER PENAL CODE.

See PUBLIC NUISANCE.

(1)—*Power of District Officers to meddle with rights of the public to pass through a public highway—Substitution of one public road for another—Practice.*—The powers and duties of public officers with respect to public roads in general do not seem to be laid down by law in India, and though, as the administrative head of a District, a Deputy Commissioner would naturally have some sort of executive control over public roads, and would be charged with their protection and maintenance, any authority he might have in this way would have to be exercised in accordance with ordinary legal principles. In England, the rights of the public in a highway were jealously guarded, and a high-way could not be stopped up, diverted or turned, except in compliance with elaborate provisions for their protection (*vide* Highway Act, 1835, ss. 84—92). Although so many precautions as those taken in England may not be requisite in this country, where there is not the same local organization, it would appear proper that the important principle involved, namely, that a public right-of-way should not be meddled with, save for the public benefit, should be carefully preserved. In England, when powers were given by statute to interfere with an existing road, provision was made for substituting another (*vide* Railway Clauses Consolidation Act, 1845, s. 54). A similar rule may well be followed in this country. QUEEN-EMPRESS v. MAUNG PO THIN, **U.B.R. 1897—1901, Vol. I, 268.**

See MAD. ACT V OF 1884, ss. 98, 162 (*b*) (2), 9 M.L.T. 219=9 Ind. Cas. 329=12 Cr. L.J. 63 =1911, 1 M.W.N. 78.

See CANTONMENT CODE, 1899, s. 141, P.L. R. 1900, Cr., p. 52.

Magistrate's order declaring a road public—*See* JURISDICTION OF CIVIL COURTS, 7 W.R. 95.

Injury to—*See* MISCHIEF, 1 Weir 511.

Mischief by injury to—*See* MISCHIEF, U.B. R. 1892—1896, Vol. I, 260.

Disobedience of order by kurnam to desist from constructing a pyal—Encroachment on—*See* PENAL CODE, ss. 186, 188, 1 Weir 132.

Obstruction to—Removal of obstruction whether an offence—*See* PENAL CODE, ss. 426, 447, 15 Cr. L.J. 723=26 Ind. Cas. 171.

See TOLLS, 6 W.R. Cr. 48.

Public Servant.

See BRIBERY.

See ILLEGAL GRATIFICATION.

Public Servant—*continued.*

See OBSTRUCTING PUBLIC SERVANT.

See PENAL CODE, ss. 21, 99.

See PRIVATE DEFENCE, RIGHT OF.

(1)—*Penal Code, s. 21—"Public servant," who is a.*—Any person whether receiving pay or not, who chooses to take upon himself duties and responsibilities belonging to the position of a public servant, and performs those duties, and accepts those responsibilities, and is recognised as filling the position of a public servant, must be regarded as one; it does not lie in his mouth to say subsequently that, notwithstanding his performance of public duties and the recognition by others of such performance, he is not a public servant. QUEEN-EMPRESS v. PARMESHAR DAT, 8 **A. 201= A.W.N. 1886, 63.**

(2)—*Penal Code, ss. 21, 99*—Gorait *in the district of Gorakhpur.*—A *gorait* (like a chaukidar) is a public servant within the meaning of s. 21, I.P.C., and he is, therefore, entitled to the protection given by s. 99, I.P.C., to public servants. EMPEROR v. SIDHU, **26 A. 542=A.W.N. 1904, 104=2 A.L.J. 243=1 Cr.L.J. 342.**

(3)—*Penal Code, s. 409—Naib Nazir, whether a public servant.*—The Naib Nazir is a public servant within the meaning of s. 409, and not merely the private servant of the Nazir. QUEEN v. MAHOMOOD HOSSEIN, **2 N.W.P. 298.**

(4)—*Penal Code, s. 21 (9)—Public servant—Karkun employed under Broach Thakurs' Relief Act.*—A Karkun employed by a manager appointed under the Broach Thakurs' Relief Act to execute revenue process and receive rents is a public servant within the meaning of s. 21 (9), I.P.C., as such Karkun receives rents not only on behalf of the Thakur but also on behalf of the Government. REG. v. ISUB MUSA, **Rat. Un. Cr. C. 117=Cr. Rg. 20-11-1876.**

(5)—*Penal Code, ss. 21. (2) 223*—Rakha—*Village servant— Escape from custody.*—A watchman in the Kaira Collectorate who does the work of *rakha*, though not borne on the village records as village servant, and receives a portion of the emoluments assigned as remuneration for the services of a *rakha*, is a person in actual possession of the situation of a public servant within the meaning of expl. 2 of s. 21 of the I.P.C., and is, therefore, punishable under s. 223 of the Code if he negligently allows any person lawfully given into his custody to escape. QUEEN-EMPRESS v. FULA BHANA, **Rat. Un. Cr.C. 388=Cr.Rg. 40 of 1888.**

(6)—*Penal Code, s. 21—Convict-warder.*—A convict-warder is not a public servant within the meaning of s. 21 of the I.P.C. QUEEN-EMPRESS v. OODAJI, **Rat. Un. Cr. C. 389.**

(7)—*Convict warders—Penal Code, s. 223—Suffering an escape from custody.*—Convict warders are "public servants" within the meaning of s. 223 of the Penal Code. QUEEN v. KALLA CHAND MOITREE, **7 W.R Cr. 99.**

(8)—*Penal Code, s. 21 — Municipal servant whether public servant—City of Bombay Municipal Act III of* 1888, s. 521.—A Municipal

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servant under the Bombay Municipal Act is a public servant within the meaning of s. 21 I.P.C. and is liable to be treated accordingly. EMPEROR v. ELIAS EZEKIEL, 6 Bom. **L.R. 54=1 Cr.L.J.** 23, [*R.*, 8 Cr.L.J. 269.]

(9)—*Penal Code*, s. 21, *cl.* 10—*Engineer receiving municipal money and paying the same to contractors.*—An engineer who receives municipal money and pays the same to contractors is a public servant though he has not the power to sanction expenditure of the same without the approval of another officer. REG. v. NANTAM RAM UTTAMRAM, **6 B.H.C. Cr. 64.** [*Appr.*, 33 B. 213=10 Bom. L.R. 761=8 Cr. L.J. 269=1 Ind. Cas. 869.]

(10)—*Penal Code*, ss. 116, 161—*Civil Surgeon if public servant—Abetment of illegal gratification.*—The prisoner was charged with having abetted the commission of an offence, punishable under s. 161, Penal Code. The person who abetted was a Civil Surgeon of a Sudder station. *Held* that the enhanced imprisonment under the latter part of s. 116, could not be inflicted as the Civil Surgeon was not a public servant. QUEEN v. RAMNATH SURMA BISWAS, **21 W. R. Cr. 9.**

(11)—*Penal Code*, s. 21—*Government Prosecutor.*—A person appointed by the Government solicitor, with the approval of the Government, to act as Government Prosecutor, is a public servant within the meaning of s. 21 of the Penal Code. EMPRESS v. BUTTO KRISTO, DOSS, **3 C. 497.**

(12)—Poddar *of the Bank of Bengal, not a public servant.*—A *poddar* of the Bank of Bengal is not a public servant, under cl. 9, s. 21 of the Penal Code. *In the matter of the petition of* MODUN MOHUN, **4 C. 376=2 Shome L.R. Cr. 13.**

(13)—*Penal Code*, ss. 21 (9), 29—*Meaning of the term " in the service and pay of Government "—Peon attached to Office of Salt Superintendent —Manager of an Estate under Court of Wards.* —An Officer " in the service or pay of Government " within the terms of s. 21 (*e*) is one who is appointed to some office for the performance of some public duty. A peon attached to the Office of the Superintendent of the Salt Department is a public servant within the meaning of s. 21 (9). The manager of an estate under the Court of Wards is not a public servant. NAZAMUDDIN v. QUEEN-EMPRESS, **28 C. 344 =4 C.W.N. 798.** (12 B.H C. 1, 7 M. 17, *R.*; 21 A. 127, *Diss.*) [*R.*, 1 S.L.R. 30, Cr.=9 Cr. L. J. 270.]

(14)—*Peon of Collector's Court—Penal Code*, s. 21, *cl.* 9, *and* s. 161—*Illegal gratification—Peon remunerated by fees.* - The peon of a Collector's Court, who received no fixed pay from the Government, but was remunerated by fees whenever employed to serve any process, and was placed on the register of supernumerary peons, had been ordered by the Magistrate to do duty on a particular day at the office of the Special Sub-Registrar, where he was detected

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receiving a eight-anna piece from a person and was prosecuted for receiving an illegal gratification as a public servant. *Held* that the peon was a public servant under the definition in the 9th clause of s. 21 of the Penal Code, and the trial of the charge against him must be proceeded with. QUEEN v. RAMAKRISHNA DAS, **7 B. L.R. 446=16 W.R. Cr. 27.**

(15)—*Manager of estate under Court of Wards.* —The manager of an estate under the Court of Wards is a " public servant " within the meaning of s. 21, I.P.C. QUEEN-EMPRESS v. MATHURA PRASAD, **21 A. 127=A.W.N. 1898, 205.** (7 M. 17, *R.*) [*Diss.*, 28 C. 344=4 C.W. N 798; *R.*, 9 Cr. L.J. 270=1 S.L.R. 30, Cr.]

(16)—*Penal Code*, s. 21—*Manager under Court of Wards.*—The Manager of a Village under the Court of Wards is a public servant within the meaning of s. 21 of the Penal Code. ISHRI v. SITAL PRASAD, **A.W.N. 1885, 297.**

(17)—*Penal Code*, ss. 21 *and* 352—*Employee of manager of an estate under the Court of Wards.*—A person employed by the manager of an estate under the charge of the Court of Wards is not a public servant within the meaning of that term in the Penal Code. QUEEN v. ARAYI, **7 M. 17=1 Weir 27.** [*R.*, 21 A. 127, 28 C. 344=4 C.W.N. 798, 9 Cr. L.J. 270=1 S.L.R 30, Cr.]

(18)—*Receiver appointed under Bengal Act* VII *of* 1876—*Penal Code*, ss. 174, 175, 186 *and* 188.—A receiver appointed under s. 56 of Bengal Act VII of 1876 (Land Registration) is not a public servant within the terms of ss. 174, 175, 186 and 188 of the Penal Code. EBRAHIM SIRCAR v. EMPEROR, **29 C. 236=6 C.W.N. 141.**

(19)—*Penal Code*, s. 21 (10)—*Local Board Road* Sircar, *whether a public servant.*—A Local Board Road *sircar* is not a public servant within the meaning of s. 21. ADDAITA BHIVA v. KALI DAS DE, **12 C.W.N. 96=6 Cr. L.J. 393.**

(20)—*Labourers employed by Government.*— Labourers or menial servants employed to do work or labour on account of the Government are not officers, and do not fall within the definition of public servant in s. 21, Penal Code. QUEEN v. NACHIMUTTU, **7 M. 18=1 Weir 27.**

(21)—*Penal Code*, s.166—*Zemindari Karnam, whether a public servant—Madras Reg.* XXIX *of* 1802, *s.* 12.—A Zemindari Karnam is a public servant and is bound by law to produce accounts to the proprietor or farmer. SUBRAMANYA v. SOMASUNDARA, **15 M. 127=1 Weir 72.**

(22)—*Penal Code*, ss. 21, 183 *and* 186—*Union Karnam, whether a " public servant "—Resistance to distraint of property.*—A union karnam is a public servant within the meaning of s. 21 of the Penal Code. Resistance offered to him in distraining property, when he has a general written authority to distrain, is punishable under ss. 183 and 186, Penal Code. *In re* GOPALASAMINATHA AIYEN, **1 Weir 28=1 Weir 128.**

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(23)—*Penal Code*, ss. 21 *and* 186—*Vaccinator, whether a "public servant."*—A vaccinator is a "public servant" within the meaning of ss. 21 (8) and 186, Penal Code, whose duty it is to preserve the public health. HIGH COURT PROCEEDINGS, 10TH MAY 1881, No. 944, 1 **Weir 27 = 1 Weir 129.** [*Doubted*, 1 Weir 621.]

(24)—*Vaccinators.*—Vaccinators are public servants. HIGH COURT PROCEEDINGS, 21ST DECEMBER, 1871, **6 M.H.C. App. 48.**

(25)—*Quære.*—Whether a vaccinator, not appointed by the Government, is a public servant within the meaning of s. 21 (8), Penal Code? *In re* SOORAPARAZU SINGAYYA, **1 Weir 134 = 1 Weir 621.**

(26)—*Penal Code*, ss. 17, 21 *and* 186—*Collector managing* Khas mehal—*Surveyor employed by such Collector—"Public servant," obstruction to.*—A Collector acting in the management of *khas mehal*, the property of Government, is as much the Government within the meaning of s. 17, as when he is exercising any other of the duties of his official position. A surveyor employed by the Collector in the *khas mehal* department for making a survey of a certain portion of a water course is a "public servant" within the meaning of s. 21, and obstruction to him in the discharge of his public functions is punishable under s. 186. BAJOO SINGH v. QUEEN-EMPRESS, **26 C. 158 = 3 C.W.N. 115.** (12 B.H.C. 1, 18 C. 518, *R.*) [*R.*, 11 Cr. L.J. 667 = 8 Ind. Cas. 531.]

(27)—*Penal Code*, ss. 99, 332—*Crim. Pro. Code* (*Act* X *of* 1882), s. 165—*Moharrir—Public servant in the discharge of his duty.*—A *Moharrir* of a police station ordered by the officer in charge to demand the weapons of offence from some accused persons, but without an order in writing as required by s. 165 of the Crim. Pro. Code, is a public servant in discharge of his duty for purposes of s. 332 of the Penal Code when he is assaulted in attempting to carry out the order. QUEEN-EMPRESS v. NAND KISHORE, **A.W.N. 1892, 1.** [*R.*, 18 A. 246 = A.W.N. 1896, 48.]

(28)—*Penal Code*, s. 21—*Public servant—Conservancy* Mohurrir.—A Conservancy *Mohurrir* who receives a salary from the Municipal funds and whose duty is to write and despatch orders as directed by the Superintendent of Conservancy, is not a public servant under s. 21 of the Penal Code. EMPRESS v. KHURSHED ALI, **A.W.N. 1885, 175.**

(29)—*Money received by* mohurrir *under Bengal Act* IX *of* 1862 *for registering deeds.*—Money, in the shape of fees paid by parties bringing deeds for registry and received by a *mohurrir* appointed under Bengal Act IX of 1862 would be money entrusted to the *mohurrir* as a public servant. QUEEN v. DWARKANATH GHOSE, **20 W.R. Cr. 49.**

(30)—*Penal Code*, s. 21 (9)—*Term "officer" defined*—Izaphatdar.—The word "officer" in s. 21 (9) is used in a definite sense. The section requires two things. In the first place, there must be an officer, and in the second he must be under an obligation to perform one of the duties enumerated. An officer is one to whom is delegated, by the supreme authority, some portions of its regulating and coercive powers or who is appointed to represent the State in its relation to individual subjects. He must be either himself armed with some authority or representative character, or his duties are immediately auxiliary to those of some one who is so armed. Although *Deshmukhs* and *Deshpandes* would thus be sufficiently within the meaning of the clause, an *Izaphatdar*, *i.e.*, a lessee whose rights and liabilities arise out of a contract with Government, is not such an officer. REG v. RAMAJI RAV JIVBAJI RAV, **12 B.H.C. 1.** [*R.*, 28 C. 344 = 4 C.W.N. 798, 12 C.W.N. 96; *D.*, 26 C. 158.]

(31)—*Penal Code*, ss. 21 *and* 406—De facto *public servant—In charge of records—Giving copies of records.*—A person irregularly employed by a clerk in charge of criminal records to help him in his work during his absence on sick-leave, and who is *de facto* in charge of such records, is a public servant under s. 21 of the Penal Code. Where such person gave copies of certain depositions in the record to another and it was not proved that he received any money therefor, *held* that he could not be convicted under s. 406 of the Penal Code since there was no such trust as is required by the section. QUEEN-EMPRESS v. KALIAN SINGH, **A.W.N. 1891, 206.**

(32)—*Making incorrect copy of document—Penal Code*, ss. 167, 197.—A copyist framing an incorrect copy of a document, filed in a Court, by adding a name not found in the original, thereby enabling the applicant of the copy to use the copy in a suit subsequently brought against the person whose name was fraudulently added, was held to be liable to be convicted under s. 197, I.P.C., and not under s. 167, I.P.C. Per *Barkley, J.*—Making what purports to be a copy of a document is not included in the words "preparation or translation of any document," nor in the words "frames or translates that document," as used in s. 167, Penal Code. CROWN v. DEWA SINGH, **15 P.R. 1879, Cr.**

(33) *Penal Code*, s. 167—*Framing incorrect record.*—A *patwari* framing an incorrect copy of an entry in his *raznamah* for a plaintiff in a civil suit is liable to be convicted under s. 167, I.P.C. HIRA SING v. CROWN, **33 P.R. 1872, Cr.**

(34)—*Disobedience to direction of law—Charge.*—A charge of an offence under s. 166 should specify the particular direction of the law, as to the way in which an accused person is to conduct himself as a public servant, which he is alleged to have disobeyed. KARM DIN v. EMPRESS, **34 P.R. 1890, Cr.**

(35)—*Penal Code*, ss. 353, 324, 332—*Sentence where public servant is treated with personal violence.*—Public servants are entitled to such protection as the Criminal Courts can afford by passing deterrent sentences in cases where gross

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personal violence is offered to them in the lawful execution of their duty. NGA TUN AUNG GYA v. QUEEN-EMPRESS, **L.B.R. 1893-1900, 192.**

See ABETMENT, L.B.R. 1893—1900, 338.

See ACCOMPLICE—GENERAL, 26 M. 1=2 Weir 521, 14 B. 331.

See ACT XXVI OF 1850, 4 B.H.C. A.C.J. 93.

Society for the Prevention of Cruelty to Animals, Officers of— Public servants—*See* ACT V OF 1861, 3 C.L.J. 475=10 C.W.N. 727 =3 Cr. L.J. 420.

Summary procedure should not be employed when public servants are concerned as accused persons—Effect of departmental punishment on punishment by Courts.—*See* ACT V OF 1861, s. 29, 9 Ind. Cas. 831=12 Cr.L.J. 143=15 P.W.R. 1911, Cr.=184 P.L.R. 1911.

Municipal Corporation, not a public servant —*See* ACT IV OF 1877, s. 39, 3 C. 758=2 C.L. R. 520.

Forest officer, whether a public servant—*See* ACT VII OF 1878, s. 172, 10 B. 124.

See BEN. ACT V OF 1875, s. 45, 6 C.W.N. 120.

See BEN. ACT VIII OF 1885, s. 69, 18 C. 518.

Municipal Inspector, whether a—*See* MAD. ACT IV OF 1884, s. 41. 13 M. 131=1 Weir 345 =1 Weir 726.

Sanitary Inspector appointed by Local Board, whether a—*See* MAD. ACT V OF 1884, s. 43, 21 M. 428=1 Weir 792.

See ASSAULT, 3 C.W.N. 627.

Complaint by public servant— *See* COMPENSATION—GENERAL, 2 Weir 318.

Non-attendance in obedience to order of—*See* CONTEMPT OF COURT, 10 W.R. Cr. 33.

See CONTEMPT OF COURT, 5 B.H.C. Cr. 33.

Trust arising from duty of—Penal Code, s. 409—*See* CRIMINAL MISAPPROPRIATION, 13 W.R. Cr. 77.

See CRIM. PRO. CODE, 1898, s. 43, 1 M. 266 =1 Weir 196.

See CRIM. PRO. CODE, 1898, s. 161, U.B.R. 1897—1901, Vol. I, 29.

See CRIM. PRO. CODE, 1898, ss. 197, 527 and 177, 4 L.B.R. 265=8 Cr. L.J. 70.

See CRIM. PRO. CODE, 1898, s. 202, 14 C. 141.

Personating a, and committing extortion thereby—*See* EXTORTION, 10 A. 58=A.W.N. 1887, 274.

In charge of records framing incorrect ones —*See* FALSE EVIDENCE, 5 A. 553.

See FALSE EVIDENCE, 19 A. 305=A.W.N. 1897, 64.

Forgery for purpose of concealing previous fraud — Furnishing false reports—*See* FORGERY, 8 A. 653.

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Wrongful dismissal of—, suit against Government for—Contract of service—Payment of monthly wages—*See* GOVERNMENT, 7 B.L.R. 688.

See NUISANCE UNDER PENAL CODE, 8 A. 99=A.W.N. 1886, 27.

See PENAL CODE, ss. 114, 147, 353, 3 C.W. N. 605.

See PENAL CODE, ss. 148, 152, 19 C. 105.

See PENAL CODE, s. 161, 2 J.G. 13.

Charge of bribery against, or of his having committed an offence in discharge of his public duties — Nature of evidence required—*See* PENAL CODE, ss. 161, 304, 330-A, 26 P.W.R. 1911, Cr.=12 Cr. L.J. 485=12 Ind. Cas. 93.

Petition writer not a—*See* PENAL CODE, s. 170, U.B.R. 1897—1901, Vol. I, 265.

See PENAL CODE, ss. 174, 175, 29 C. 236=6 C.W.N. 141.

Unlawful obstruction to—*See* PENAL CODE, s. 186, 4 Bom. L.R. 437.

See PENAL CODE, s. 186, 8 W.R. Cr. 66.

See PENAL CODE, s. 188, 31 C. 990=8 C.W. N. 781.

See PENAL CODE, ss. 188, 290, 19 M. 464=1 Weir 247=6 M.L.J. 181.

Overseer of the P.W.D. not a, lawfully empowered to promulgate an order—*See* PENAL CODE, ss. 188, 430, 8 Ind. Cas. 302=1910 M. W.N. 616=9 M.L.T. 42.

Threat of injury to—*See* PENAL CODE, s. 189, 8 A. 380=A.W.N. 1886, 128.

Disobeying direction of law—Protection of a person from punishment—*See* PENAL CODE, s. 217, 15 Bom. L.R. 578=2 Bom. Cr. Cas. 90 =20 Ind. Cas. 601=14 Cr. L.J. 441.

See PENAL CODE, ss. 217, 218, 3 C. 412=1 C.L.R. 483.

See PENAL CODE, s. 218, 13 P.R. 1881, Cr.

See PENAL CODE, s. 221, 3 A. 60.

See PENAL CODE, s. 223, 1 Weir 197.

Doing an act under an illegal order of Government officer not deemed to be in acting in execution of his duty as—*See* PENAL CODE, ss. 352, 353, 9 B. 558.

Mysore Police, whether—*See* PENAL CODE, s. 353, 1 Weir 342=1 Weir 837.

Forging a certificate and using it as genuine—*See* PENAL CODE, ss. 466, 471, 2 L. B.R. 316.

Magistrate's and Judge's public acts if above criticism—Press if specially privileged in criticising such acts—Limits of legitimate comment—*See* PENAL CODE, s. 499, excep. 9 and s. 52, 26 M.L J. 621=15 Cr. L J. 309=23 Ind. Cas. 661=16 M.L.T. 79=1914 M.W.N. 506= 12 A.L.J. 1042=20 C.L.J. 161=16 Bom. L.R. 544=2 Bom. Cr. C. 207=7 Bur. L.T. 167=41 C. 1023=18 C.W.N. 785, P.C.

See MAD. REG. XI OF 1816, 23 M. 540=2 Weir 222.

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Personating a public servant—Dishonest intention—*See* REVISION—QUESTION OF FACT, 9 Bom. L.R. 706=6 Cr. L.J. 70.

See SANCTION TO PROSECUTE—AUTHORITIES COMPETENT TO GRANT SANCTION, ETC., 2 B. 481.

Municipal servant if—*See* SANCTION TO PROSECUTE—CONDITIONS REQUISITE FOR GRANT OF SANCTION, ETC., 17 P.R. 1902, Cr.

See SANCTION TO PROSECUTE—CONDITIONS REQUISITE FOR GRANT OF SANCTION, ETC., 1 Weir 243=2 Weir 221, 25 C. 852=3 C. W.N. 539.

See SANCTION TO PROSECUTE—NATURE AND FORM OF SANCTION, 16 M. 469=3 M.L. J. 227=2 Weir 220.

Acting in good faith, under colour of office—*See* WRONGFUL RESTRAINT, 12 B. 377.

Public Spring.

See PENAL CODE, s. 277, 2 C. 383, 4 M. 229=1 Weir 230. Rat. Un. Cr. C. 215=Cr. Rg. 1-10-1885, Rat. Un. Cr. C. 14=Cr. Rg. 2-7-1869.

Public Street.

See HIGHWAY.

See PUBLIC ROAD.

(1)—*Public street, what is.*—Under the definition in s. 3 (27) of Mad. Act IV of 1884, a public street extends only up to the boundaries of the adjacent property. NARASIMMACHARI v. CHAIRMAN, MUNICIPAL COUNCIL, CONJEEVARAM, **31 M. 181=8 Cr. L.J. 72.**

Making water in a—*See* BOM. ACT VII OF 1867, s. 31 (4), Rat. Un.Cr. C. 305=Cr. Rg. 56 OF 1886.

See BOM. ACT III OF 1888, ss. 3 (10), 61 (*b*), Rat. Un. Cr. C. 802=Cr. Rg. 58 of 1895.

See BOM. ACT III OF 1888, ss. 3, 305, 14 Bom. L.R. 1169=1 Bom. Cr. C. 210=18 Ind. Cas. 267=14 Cr. L.J. 43.

Lawful use of—*See* CRIM. PRO. CODE, 1898, s. 144, 2 Weir 89.

Causing disturbance to a religious procession—Right of members of a community to pass in procession along the,—Assaulting members of procession—Rioting—Common object—*See* PENAL CODE, ss. 147, 296, 13 Cr. L.J. 534=15 Ind. Cas. 806.

Obstruction to—*See* PENAL CODE, s. 283, 11 C.L.R. 462.

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Public Thoroughfare.

See OBSTRUCTION TO PUBLIC THOROUGHFARE.

Public Way.

See NUISANCE UNDER CRIM. PRO. CODE, A.W.N. 1908, 151=5 A.L.J. 488=30 A. 361=8 Cr. L.J. 1.

Obstruction to a—*See* PENAL CODE, s. 283, 1 Weir 232.

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Sub-overseer of the, complaint against—Sanction not necessary—*See* CRIM. PRO. CODE, 1898, s. 197, 12 M.L.T. 351=17 Ind. Cas. 402=13 Cr. L.J. 770.

Overseer of the, not a public servant lawfully empowered to promulgate an order—*See* PENAL CODE, ss. 188, 430, 8 Ind. Cas. 302=1910 M.W.N. 616=9 M.L.T. 42.

Public Worship.

See MAD. ACT V OF 1878, s. 119, 6 M. 287.

See NUISANCE UNDER CRIM. PRO. CODE, 6 M. 203=2 Weir 77, F.B.

Publisher.

See ACT XXV OF 1867, ss. 3 and 12, 5 P.R. 1909, Cr.=15 P.W.R. 1909=10 Cr. L.J. 195=2 Ind. Cas. 978.

Liability of declared printer and—when absent during the period of publication of seditious articles—*See* ACT XXV OF 1867, s. 7, 38 C. 227=10 Ind. Cas. 954=12 Cr. L.J. 354.

See SEDITION, 2 Bom. L.R. 304.

Punchayat.

Fine imposed by sub-divisional officer on a member of village—Nature of the order—Revision by High Court—*See* BEN. ACT VI OF 1870, s. 8, 23 C. 421.

Defamation by caste—*See* DEFAMATION, 3 A. 664.

Punishment.

See SENTENCE.

See WHIPPING.

(1)—*S. 94, Registration Act, 1866—Abettor punishable more severely than principal.*—By s. 94 of Act XX of 1866, the Legislature intended that the Courts should have power in certain cases (as for instance when he is the chief offender, the person really pulling the things and for whose benefit the offence is, in fact, committed) to punish the abettor more severely than the person who actually commits the substantive offence. QUEEN v. GOPAL PROSAUD SEIN, **8 W.R. Cr. 16.**

(2)—*Punishment—Meaning—Penal Code, s. 2.*—The word punishment in s. 2 of the Penal Code means the total of punishments awardable as, for instance, in the case under s. 379, Penal Code, imprisonment and fine. QUEEN-EMPRESS v. DAGADU, 16 **B. 357.** (5 B.H.C. Cr. 83, B.L.R. Sup. Vol. 964, *F.*)

See ACCUSED PERSON, 3 C.L.R. 406.

Departmental punishment how far affects—by Courts—*See* ACT V OF 1861, s. 29, 9 Ind. Cas. 831=12 Cr.L.J. 143=15 P.W.R. 1911, Cr. =184 P.L.R. 1911.

See MAD. ACT III OF 1889, ss. 3 and 11, 18 M. 490=1 Weir 909.

Penal Code, s. 503—Criminal intimidation what constitutes—Conventional punishment by

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spiritual superior, whether amounts to injury —*See* CRIMINAL INTIMIDATION, 6 M. 381 = 1 Weir 595.

See CRIM. PRO CODE, 1898, ss. 565, 221, 537, 9 N.L.R. 88 = 14 Cr. L.J. 390 = 20 Ind. Cas. 214.

Punishment by heads of villages of petty thefts, Police.

See MAD. REG. IV OF 1821.

Punjab Chief Court Rules.

Correction slip No. 61, dated 29-8-1904—Scope—*See* PENAL CODE, s. 180, 8 P.R. 1912, Cr. = 37 P.W.R. 1912, Cr. = 245 P.L.R. 1912 = 16 Ind. Cas. 521 = 13 Cr. L.J. 713.

Punjab Courts Act.

See PUN. ACT XVIII OF 1884.

Punjab Frontier Crimes Regulation.

See PUN. REG. IV OF 1887.

See PUN. REG. III OF 1901.

Punjab Frontier Regulation.

See PUN. REG. I OF 1872.

Punjab Frontier Regulation, Amendment Regulation.

See PUN. REG. IV OF 1873.

Punjab Land Revenue Act.

See PUN. ACT XVII OF 1887.

Punjab Laws Act.

See PUN. ACT IV OF 1872.

Punjab Military Transport of Animals Act.

See PUN. ACT I OF 1903.

Punjab Municipai Act.

See PUN. ACT IV OF 1873.

See PUN. ACT XIII OF 1884.

See PUN. ACT XX OF 1891.

See PUN. ACT III OF 1911.

Purdanashin Woman.

See PARDANASHIN WOMAN.

Pwes.

(1)—*District Magistrate not empowered by Legislature to prohibit holding* Pwes—*Warrant for dispersal not to be issued so long as it is quietly and properly conducted.*—In Lower Burma, no power has been conferred by the Legislature on the District Magistrate to prohibit the holding of *Pwes.* A person cannot, therefore, be convicted for disobeying an order of the District Magistrate directing the prohibition of *Pwes.* No warrant to disperse the *Pwe* can be issued, and so long as it is properly and quietly conducted and no obstruction is caused in the public roads or streets, no one has any right to interfere with it. PO NAING v. QUEEN-EMPRESS, **L.B.R 1872—1892, 620.**

(2)—*Regulation of.*—While repealing the modifications of the Dramatic Performances Act previously in force, the Burma Laws Act, 1898, added a section (14-A) to the Upper

Pwes—*concluded.*

Burma Village Regulation and s. 7-A to the Upper Burma Towns Regulation to provide for the regulation of *pwes.* Persons holding *pwes* without a license are now liable to prosecutions under those sections, and not under s. 10 of the Dramatic Performances Act. QUEEN-EMPRESS v. NGA TAING, **U.B.R. 1897-1901, Vol. I, 368.**

(3)—Pwe—*Meaning.*—The word "*pwe*" is not to be understood as a mere synonym for dramatic performance, but it includes any public festival or entertainment which causes an assemblage. KING-EMPEROR v. NGA NYUN BU. **U.B.R. 1897--1901, Vol. I, 370.** (7 B. L R. 227, U.B.R. 1897-1901, 368, 22 C. 788, *R.*)

See BUR. ACT III OF 1889, s. 13-A, 3 L.B. R. 93 = 3 Cr. L.J. 18.

Pyaungchi.

See OPIUM, 4 L.B.R. 134 = 7 Cr. L.J. 410.

Quackenbush Rifle.

Possession of, without license—*See* ACT XI OF 1878, s. 19 (*f*), 1 P.W.R. 1913, N.W.F.P. Cr. = 159 P.L.R. 1913.

Quarantine.

Indian Penal Code (*Act* XLV *of* 1860), *ss.* 188, 511, 116—*Epidemic Diseases Act* (III *of* 1897), *ss.* 2, 3—*Notification—Attempt—Offence.*—*Held,* that the notification issued by the District Magistrate did not appear to be a rule imposing a quarantine in such a way as to make it an offence to try and evade quarantine, but was merely a notice informing persons of what they were liable to undergo, and made their detention legal, so that they could not escape detention if called upon to undergo it, but did not compel them to take the first step, and offer themselves for detention. *Held,* also, that even if it was an offence for persons liable to be quarantined to try and evade quarantine, the accused could not be said to have abetted even an attempt at evasion of quarantine on the part of these persons until the latter had attempted to evade quarantine and the former had assisted them in so doing. QUEEN v. MANEKSHAW MANCHERSHAW, **Rat. Un. Cr. C. 966.**

Queen.

See WAGING WAR AGAINST THE QUEEN.

Queen's Coin.

See COUNTERFEITING COIN, A.W.N. 1903, 115.

See PENAL CODE, ss. 28, 230, 235, 47 P.L. R. 1903.

Questioning Jury.

See CHARGE TO JURY—MISDIRECTION, 8 Ind. Cas. 52 = 15 C.W.N. 198 = 11 Cr. L.J. 557.

Question of Fact.

See REVISION—QUESTION OF FACT.

Raffle.

See BUR. ACT I OF 1899, s. 3, U.B.R. 1892-1896, Vol. I, 112.

Railways.

Jurisdiction to arrest persons along the line of—in the Hyderabad State for offence committed in British India—*See* ARREST, 6 P.R. 1897, Cr. P.C. *on appeal from*, 1 P.R. 1896, Cr.

Pay-sheets drawn up in Railway offices whether a 'record'—*See* CONFESSION—GENERAL, 15 Cr. L J. 502=24 Ind. Cas. 590.

Bhatinda Railway Station—Offence committed in, proper Court to try—Appellate Court—*See* JURISDICTION OF CRIMINAL COURTS—GENERAL, 7 P.R. 1914, Cr.=141 P.L.R. 1914 =15 Cr.L.J. 550=24 Ind. Cas. 958.

Notice by Magistrate prohibiting traffic on—Level-crossing—*See* NUISANCE UNDER CRIM. PRO. CODE, 8 B.H. C. Cr. 23.

Order issued by Police to Station Master to detain goods suspected to be stolen property—Legality—Disobedience of order whether punishable—*See* PENAL CODE, s. 188, 16 O.C. 371.

Passenger entering compartment reserved for females to assist his wife travelling in that compartment—Interference by Railway Police--*See* PENAL CODE, s. 332, 76 P.L.R. 1903.

Theft from railway train—Deterrent sentence—*See* PENAL CODE, s. 379, 14 Bom L R. 504=15 Ind. Cas. 803= 13 Cr.L.J. 531=1 Bom. Cr. C. 149.

Mischief—Intention—Motive — Cutting a channel through—to let water from fields—*See* PENAL CODE, s. 427, 16 C.W.N. 263=13 Ind. Cas. 826=13 Cr.L.J. 138.

Railways Act.

See ACT XVIII OF 1854.

See ACT IV OF 1879.

See ACT IX OF 1890.

Railway Act, Amendment Act.

See ACT XXV OF 1871.

Railway Carriage.

Theft in—*See* THEFT IN A BUILDING, 1 Weir 436.

Theft of luggage and cash from—Theft in a building—*See* THEFT—THINGS WHICH MAY BE THE SUBJECT OF THEFT, Rat. Un. Cr. C. 293=Cr. Rg. 36 of 1886.

Railway Company.

See CHEATING—GENERAL, 128 P.L.R. 1903.

Railway Guard.

General Rules—Great Indian Peninsula Railway working time-table—Rules not invalid—*Ultra vires*—Guard's duty to see the pair of points to ensure the safety of his train—*See* ACT IX OF 1890, s. 47, 12 Bom. L.R. 930 =8 Ind. Cas. 134.

Railway Receipt.

Receiving stolen property—of goods, production of, whether establishes possession of accused—*See* PENAL CODE, s. 411, 14 Cr. L.J. 318=19 Ind. Cas. 1006=40 C. 990.

Railway Servant.

Negligence of—*See* ACT IV OF 1879, ss. 101, 29, A.W.N. 1890, 171.

Impeding a, in the discharge of his duties—*See* PENAL CODE, s. 186, 1 C.W.N. 74.

Railway Station.

See PUBLIC PLACE, 26 B. 609=4 Bom. L. R. 290.

Railway Working Time-table.

General rules—Great Indian Peninsula—Rules not invalid—*Ultra vires*—Guard's duty to see the pair of points to ensure the safety of his train—*See* ACT IX OF 1890, s. 47, 12 Bom. L.R. 930=8 Ind. Cas. 134.

Rain-betting.

See BOM. ACT IV OF 1887, ss. 3 and 4, 13 B. 681.

Raiyats.

Possession by—*See* DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 21 W.R. Cr. 55.

Rangoon Police Act.

See BUR. ACT, IV OF 1899.

Rangoon Port Rules.

Meaning of "plying"—*See* ACT VIII OF 1878, s. 79, 12 Cr. L.J. 476=12 Ind. Cas. 84.

Rape.

See PENAL CODE, ss. 354, 375, 376.

(1)—*Penal Code, s. 376—False charge of rape—Jurisdiction.*—Rape is an offence punishable with transportation for life or with imprisonment for a term which may extend to ten years. The offence, therefore, of making a false charge of rape is triable exclusively by the Court of Sessions. QUEEN-EMPRESS v. BHIKHI, **Rat. Un. Cr. C. 953=Cr. Rg. 4 of 1898.**

(2)—*Penal Code, ss. 376 and 497—Charge of adultery—Complaint by husband—Person charged with rape whether can be convicted of adultery—Crim. Pro. Code,* 1898, *s.* 199.—If a criminal charge of adultery is to be preferred, a formal complaint of that offence must be instituted by the husband, in the manner provided by s. 199 of the Code. The circumstances of the husband's appearing as a witness in the prosecution for an offence of rape cannot be regarded as amounting to the institution of a complainant for adultery. When a person was accused of having committed rape, but was convicted of adultery, *held*, that the conviction was without jurisdiction, inasmuch as the husband, although a witness in the case, had not made any complaint of that offence. CHEMON GARO v. EMPEROR, 29 C. 415=6 C. **W.N. 677.** (5 A. 233, *F.*) [*R.*, 30 C. 910=8 C.W.N. 17, 17 C.P.L.R. 105.]

Rape—*continued.*

(3)—*Penal Code, s.* 375—*Rape — Consent—Excessive force—Injury.*— No offence of rape is committed by a person who has sexual intercourse with a girl of over *ten* years of age with her consent, merely because, during the intercourse, he used excessive force and thus caused great injury to her. EMPRESS v. DAMUA, **A. W.N 1884, 91.**

(4)—*Rape—Consent.*—Sexual intercourse by a man with a woman without her free consent, *i.e.*, a consent obtained without putting her in fear of injury, amounts to rape. QUEEN v. AKBAR KAZEE, **1 W.R. Cr. 21.**

(5)—*What constitutes rape— Evidence.*—To constitute rape, penetration is sufficient. Under such circumstances, the case turns more upon whether the woman made an outcry or complained immediately to those about her, than upon the time when the complaint is presented to the Magistrate. EMAMBUX v. CROWN, **19 P.R. 1866, Cr.**

(6)—*Prosecution—Proof — False line of defence — Rape.*—The case for the prosecution must always be established without reasonable doubt, and the fact that the accused may have adopted a false line of defence is no reason for convicting him, if there is serious doubt as to any element of the offence with which he is charged. Where an accused was charged with rape, but the facts proved were consistent with the accused's innocence of the crime charged and showed that the sexual intercourse was with the consent of the complainant, he was acquitted of the offence charged. KYAW HLA U v. EMPEROR, **12 Cr. L.J. 584=12 Ind. Cas. 848=4 Bur. L.T. 136.**

(7)—*Penal Code, ss.* 100, 201—*Attempt to commit rape— Murder — Right of private defence — Concealing dead body.*— Where the accused, husband and wife, in attempting to protect the latter from attempted rape by the deceased, killed him, *held* that the right of private defence extended to the causing of death in such a case and that no offence was committed. There can be no offence under s. 201 of the Penal Code in concealing the dead body in the above case, since no offence had been committed. QUEEN-EMPRESS v. RAMZAN SHAKEHAI, **Rat. Un. Cr. C. 867.**

See ATTEMPT, Rat. Un. Cr. C. 865=Cr. Rg. 31 of 1896.

Form of charge in case of—Amendment of charge—*See* CHARGE—GENERAL, 1 W.R. Cr. Letters 2.

See CHARGE—ALTERATION OF CHARGE, A.W.N. 1882, 165.

See CHARGE TO JURY—MISDIRECTION, 25 C. 230.

Burden of proof—on a child—Complaint of robbery—Report of Chemical Examiner—Confession—*See* CONFESSION—GENERAL, 93 P. L.R. 1910=8 Ind. Cas. 494=11 Cr. L J. 665.

See EVIDENCE—DYING DECLARATION, 6 W.R. Cr. 75.

Rape—*concluded.*

See JUDGMENT, A.W.N. 1885, 31.

—Measure of sentence — *See* SENTENCE—GENERAL, 6 W.R. Cr. 59.

Rash and Negligent Act, Causing death by.

See PENAL CODE, ss. 300—304-A.

(1)—*Death by explosion—Consignment of fireworks, falsely described as containing locks —Railway Act, s.* 107—*Contributory negligence.* —Two boxes, containing fireworks, but declared to contain locks, were sent by the accused to the East India Railway Company at Delhi. In loading, one of the boxes exploded, killing one coolie and seriously injuring another. *Held*, that the accused was rightly convicted of offences under ss. 304-A, 338, I.P.C. Even if nothing else happened, the accused could have been convicted under s. 107 of the Railway Act, for making a false declaration in respect of the two boxes consigned. *Held*, further, that in a case of this kind, it is a rule of criminal law that it is no defence that the deceased was guilty of contributory negligence. KAMAR-UD-DIN v. CROWN, **24 P.L.R. 1905=22 P.R. 1905, Cr.=2 Cr. L.J. 207.** (7 M.H.C. 119, *Appr.*; 6 A. 248, 16 A. 472, *R.*)

(2)—*Rash and negligent Act, causing death by.*—Where the accused struck his servant, who was suffering from an enlarged spleen, and thereby caused his death by its rupture, *held*, that he was not guilty of an offence under s. 304-A. CROWN v. GOPAL DAS, **7 P.R. 1877, Cr.**

(3)—*What amounts to.*—Intentional violence is not a rash or negligent act. EMPRESS v. GANDA SINGH, **11 P.R. 1880, Cr.**

(4)—*Penal Code, ss.* 52, 79 *and* 304-*A.*—Where the accused seeing a stooping child in the early morning, in a place considered by the villagers to be haunted, and considering the child to be a spirit or demon, caused his death by inflicting blows, before he discovered his mistake, *held* that he was properly convicted under s. 304-A, as he did not act in good faith, *i. e.*, with due care and attention. EMPRESS v. HAYAT, **11 P.R. 1888, Cr.**

(5)-*Death caused by an offence in itself.*—Where death is caused by an act, which is in itself an offence, s. 304-A is not applicable. EMPRESS v. SAIFULLA, **15 P.R. 1882, Cr.** [*R.*, 15 P.R. 1906, Cr.]

(6)—*Blow intended to fall upon an adult falling on a child and causing its death.*—When during a quarrel between the complainant and the accused's father, the accused struck a blow with a stick on the complainant, which missed the complainant, but fell upon a child of two years, which the complainant had on his hip during the quarrel, thereby causing the child's death, *held* that, although the blow, if it had hit the complainant, would not have been likely to cause more then simple hurt, the accused was guilty of an offence under s. 304-A under the circumstances of the case. JAMA v. EMPRESS, **28 P.R. 1888, Cr.**

Rash and Negligent Act, Causing death by —*concluded.*

(7)—*Penal Code, ss.* 229 *and* 304.—Where the accused struck the deceased on the head while he was standing on the edge of a well, by which the deceased lost his balance and was drowned, *held,* that he was guilty of an offence under s. 304-A, as he did not cause death by doing an act with the knowledge that he was likely by such act to cause death. CHUNNI LAL v. EMPRESS, **33 P.R. 1889, Cr.**

(8)—*Death caused by slight violence, without knowledge that the act is likely to cause death.* —S. 304-A does not apply to cases of death caused by direct violence intended to cause bodily injury, but without the knowledge that that is likely to cause death. The first sections to be considered in such cases are those sections defining the voluntary causing of hurt, grievous or simple. FATTEH v. EMPRESS, **34 P.R. 1887, Cr.**

(9)—*Administration of poison, but without knowledge of its noxious nature.*—Where death was caused by the wife administering poison received from her paramour to her husband, the wife all the while thinking the substance to be only a charm and having no knowledge of the poisonous nature of the substance administered till she did see the effects, *held* that she was guilty only of an offence under s. 304-A MUSSAMMAT BAKHAN v. EMPRESS, **60 P.R. 1897, Cr.** [*F.*, 31 A. 290=6 A.L.J. 203=2 Ind. Cas. 214.]

See PENAL CODE, s. 375, 18 C. 49.

Rash Driving.

See BOM. ACT II OF 1904, s. 2, 13 Bom. L.R. 126=9 Ind. Cas. 945=12 Cr. L.J. 167.

See MASTER AND SERVANT, 12 Cr. L.J. 89 =15 C.W.N. 390=9 Ind. Cas. 480=13 C.L.J. 335=38 C. 415.

See PENAL CODE, ss. 279, 426, 13 P.R. 1900, Cr.

See PENAL CODE, ss. 304-A, 279, 289, Rat. Un. Cr. C. 396.

Rash Navigation.

Of a launch—Running into a boat at anchor in itself *prima facie* evidence of negligence—*See* PENAL CODE, s. 280, 12 Cr. L.J. 582=12 Ind. Cas. 846=4 Bur. L.T. 140.

Rashness.

See PENAL CODE, s. 304-A.

(1)—Personal injury intentionally caused is neither a rash nor a negligent act. KING-EMPEROR v. NGA SHWE LU, **U.B.R. 1904, 1st Qr., Penal Code, 6=1 Cr. L.J. 557.** (U B. R. 1897-1901, 314, 1 L.B.R. 259, *R.*)

See PENAL CODE, ss. 79, 82, 292, explu. (i), 304 A, L.B R. 1893—1900, 221.

When culpable—*See* PENAL CODE, s. 285, L.B.R. 1872—1892, 337.

See PENAL CODE, s. 336, 1 Weir 337.

Rawana.

Endorsement of, by police or customs officers —*See* BEN. ACT VII OF 1864, s. 16, 23 W.R. Cr. 5.

Re-admission.

Of appeal rejected for default of appearance —*See* APPEAL—APPEAL — PRACTICE AND PROCEDURE, 2 Weir 471=7 M.H.C. App. 29.

Realization of Land Revenue, Ceded Provinces.

See BEN. REG. XXVII OF 1803.

Reasonable Doubt.

See COUNTERFEITING COIN, 3 M.L.T. 140 =7 Cr. L.J. 132.

Rebellion (Confiscation, etc., for Act).

See ACT X OF 1858.

Receipt.

See FALSE RECEIPT.

(1)—*Receipt—Exemption from Stamp duties.* —A receipt given by a pleader for his fees is exempt from stamp duty. LOCAL GOVERNMENT v. * * * , **10 C.P.L.R. Cr. 11.**

Essentials of a—*See* ACT I OF 1879, s. 3 (17), 23 B. 54.

See ACT I OF 1879, s. 3 (17), arts. 52, 54, Rat. Un. Cr. C. 732=Cr. Rg. 61 of 1894.

See ACT I OF 1879, s. 51, 1 Weir 901.

See ACT I OF 1879, ss. 58 and 64, 27 C. 324 =4 C.W.N. 440.

Entry by a creditor in debtor's book, if a —*See* ACT I OF 1879, art. 52, 11 C. 267.

Refusing or neglecting to give a—when required to do so—*See* ACT II OF 1899, ss. 30 and 65 U.B.R. 1897—1901, Vol. I, 378.

For rent—*See* ACT II OF 1899, sch. I, art. 53 (c), A.W.N. 1908, 272=5 A.L.J. 747=31 A. 36=9 Cr. L.J. 37=1 Ind. Cas. 568.

Evidentiary value of kabuliyats, chittas, accounts—, and survey maps—*See* EVIDENCE —GENERAL, 29 C. 187=29 I.A. 24=6 C.W.N. 386, P.C.

False charge of refusal to give stamped—for money paid—*See* FALSE CHARGE, 1 B.H.C. Cr 92.

Receiver.

(1)—*Receiver—Leave of Court necessary before making him party to proceedings or suit.*—A Receiver appointed by a Court cannot be made a party to any suit or proceedings without the leave of the Court appointing him. FINK v. CORPORATION OF CALCUTTA, **30 C. 721=7 C.W.N. 706.** [*Rel. on,* 13 Cr. L.J. 489=15 Ind. Cas. 489 ; *R.*, 13 Cr. L.J. 491=15 Ind. Cas. 491.]

(2)—*Sanction of Court—Prosecution of receiver for ordinary criminal offence.*—The sanction of the Court appointing a Receiver is not necessary in order to proceed against him for a breach of the ordinary Criminal law of the country, *e g.*, defamation. NAGENDRA NATH SRIMONEY v JOGENDRA NATH SRIMONEY, **13 Cr. L J. 491=15 Ind. Cas. 491.**

Receiver—*concluded.*

Appointed by Court, whether "owner" of premises he is holding—*See* BEN. ACT III OF 1899, ss. 320, 574, 30 C. 721=7 C.W.N. 706.

See BEN. ACT III OF 1899, s. 408, 15 C.W.N. 1002=12 Cr. L.J. 361=38 C. 714=11 Ind. Cas. 129.

Obstruction of receiver in discharge of duty —Duty of stranger in possession—Costs against person obstructing Receiver—*See* CONTEMPT OF COURT, 15 Cr.L.J. 65=22 Ind. Cas. 417.

Possession given by sub-magistrate to a person with consent of parties—not a—Nature of possession—*See* CRIM. PRO. CODE, 1898, ss. 144, 145, 26 M.L.J. 208=1914 M.W.N. 352 =15 Cr. L.J. 509=24 Ind. Cas. 597.

Appointed by Court, if a party to proceedings under s. 145, Crim. Pro. Code—*See* CRIM. PRO. CODE, 1898, s. 145, 30 C. 593=7 C.W.N. 390.

Receiver — Possession — Held on whose behalf—*See* CRIM. PRO. CODE, 1898, s. 145, 10 M.L.T. 573.

See CRIM. PRO. CODE, 1898, s. 145, 22 A. 214=A.W.N. 1900, 22.

Appointment of, before completing inquiry under s. 145, Crim. Pro. Code—Legality—*See* CRIM. PRO. CODE, 1898, ss. 145, 146, 13 Cr. L.J. 536=15 Ind. Cas. 808.

Dispute likely to lead to breach of peace—Attachment—Appointment of—Legality—*See* CRIM. PRO. CODE, 1898, ss. 145, 146, 8 M.L.T. 314=7 Ind. Cas. 895=11 Cr. L.J. 536=1910 M.W.N. 821.

Attachment of lands and crops harvested since the disturbance--Appointment and powers of—*See* CRIM. PRO. CODE, 1898, ss. 145 (4), 146, 13 Cr. L.J. 295=14 Ind. Cas. 759.

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 27 C. 259=4 C.W.N. 420.

See PENAL CODE, ss. 143, 447, 18 C.W.N. 1245=15 Cr. L.J. 725=26 Ind. Cas. 173.

See PENAL CODE, ss. 174, 175, 186 and 188, 29 C. 236=6 C.W.N. 141.

Charge of defamation against—Sanction of Court whether necessary—*See* PENAL CODE, s. 500, 13 Cr. L.J. 489=15 Ind. Cas. 489.

Receiving Stolen Property.

See STOLEN PROPERTY.

Reckless Driving.

See RASH DRIVING.

Recognised Agent.

A recognized agent is not a "party to the proceeding" within the meaning of s. 195 (*c*), Crim. Pro. Code. FATIMA BIBEE v. RAMAN CHETTY, 12 Cr. L.J. 87=8 Ind. Cas. 1202.

Recognizance to appear.

(1)—*Crim. Pro. Code*, s. 221 (=s. 514 *of the Code of* 1893)—*Bond for appearance, forfeiture of.*—Where a person enters into a personal recognizance to attend and give evidence, but fails to appear, an enquiry should be made into

Recognizance to appear—*continued.*

the excuse given by him for his non-appearance, before enforcing the penalty therefor, in order that the discretion conferred upon the Court by s. 221, may be said to have been fairly exercised. QUEEN v. AMEER KHAN, **2 N.W.P. 113.**

(2)—*By witnesses and complainant.*—A Subordinate Magistrate has no power to take recognizances from the witnesses and the complainant to appear on a certain day before a Magistrate with co-ordinate jurisdiction. HIGH COURT PROCEEDINGS, 31ST OCTOBER 1868, **4 M.H.C. App. 17.** *See also* VENKATAPPAH v PAPAMMAH, **5 M.H.C. 132** *and* HIGH COURT PROCEEDINGS, 18TH MARCH 1868, **4 M.H.C. App. 6.**

(3)—*Recognisance for appearance—Forfeiture.*—Where a complainant executed, before the police station officer, a recognisance binding himself to appear before a Magistrate on a certain date, *held*, that the Magistrate was not competent to order the forfeiture of the recognisance on failure of the complainant to appear on an adjourned day of hearing. HIGH COURT PROCEEDINGS, 31ST OCTOBER 1868, **4 M.H.C. App. 18.**

(4)—*Crim. Pro. Code* (1861), s. 219—*Forfeiture of recognizance for non-appearance.*—Where an accused person executed a recognisance binding himself to appear on a specified day, his failure to appear on another day when the case is called, will not justify the forfeiture of the bond, if he has appeared on the specified day. HIGH COURT PROCEEDINGS, 9TH APRIL 1869, **4 M.H.C. App. 44.**

(5)—*Recognizances for appearance of accused person.*—There is nothing illegal in requiring the accused to bind themselves to appear from the date of the execution of a bail-bond on every day until the case is disposed of. No notice is necessary before proceeding to enforce the penalty, if default is made. Whether the explanation of the accused should or should not be held a sufficient excuse for their default is not a question which it is open for the High Court to decide. HIGH COURT PROCEEDINGS, 17TH NOVEMBER, 1871, NO. 1808, **2 Weir 662 =6 M H.C. App. 38.**

(6)—*Recognizance of appearance of accused person—Penalty.*—Wilful default of appearance of accused when no personal recognizance has been taken from him does not render a person liable to penalty. SHARAFDIN v. CROWN, **2 P.R. 1875, Cr.**

(7)—*Crim. Pro. Code* (1861), ss. 214, 219, 220—*Duty of Magistrate when recognizance taken—Sureties to be proper persons substantially.*—A Magistrate ought to satisfy himself that a surety is, in point of substance, such that it may be reasonably presumed with reference to him that he can, if need be, fulfil the terms of the bail bond. CRIMINAL CIRCULAR NO. 15 DATED 11TH AUGUST 1864, **1 W. R. Cr. Cir. 2.**

(8)—*What a recognisance should contain.*—If a recognizance is taken from an accused

Recognizance to appear—*continued.*

person for his appearance in Court to answer a charge against him, the particular day on which he should so be present in Court must be specifically mentioned in such recognisance. QUEEN v. POORAN JALAHA, 11 W.R. Cr. 47.

(9)—*Crim. Pro. Code* (1861), ss. 182, 258, 261—*Personal attendance of accused dispensed with—Recognizance bond.*—Where the personal attendance of an accused is dispensed with, a recognizance bond, if deemed necessary, should be taken from him, and not from his agent, the accused being bound, under the terms of such recognizance, to appear either in person or by agent ; if the agent neglected to attend when the case was called on, the bond might be held to have been forfeited, and the accused made liable for the payment of the penalty. A Magistrate has no legal authority to secure the attendance of the agent by a bond taken from the agent himself. REG v. LALLUBHAI JASSUBHAI, 5 B.H.C. Cr. 64.

(10)—*Crim. Pro. Code*, s. 514—*Holiday being fixed for the hearing of a case by mistake—Forfeiture of bond for non-appearance of the accused on the succeeding day, validity of.*—Where a Magistrate fixed the hearing of a case on a Sunday, *held*, that he could not order the forfeiture of the bonds executed by the accused and their sureties, for the non-appearance of the accused on the succeeding day (Monday). EMPRESS v. ASANULLA KHAN, 2 C.W.N. 519.

(11)—*Power of police officers—Crim. Pro. Code* (1872), ss. 396, 397—*Bail taken by police officer.*—The powers conferred by ss. 396 and 397 of the Crim. Pro. Code apply to recognizances given to a Magistrate for the appearance of an accused person by a surety under s. 125 of such Code as well as to such recognizances when taken by a police officer. *In re* KRISTO PROSAD MUNDLE, 22 W.R. Cr. 74.

(12)—*Surety—Recognizance.*—A surety who agreed that he would be responsible for the continued presence of the accused at one Court (Nowadah), will be released from liability under his recognizance, if the said court gave permission to the accused without the surety's consent of leaving that place on business, and subsequently transferred it to another Court (the Court at Gya). QUEEN v. MEWA LALL, 13 W.R. Cr. 53.

(13)—Failure to appear—Forfeiture of recognizances — *See* QUEEN v. DASSOO MANJEE, 11 W.R. Cr. 39.

(14)—*Failure of surety to produce accused—Forfeiture of recognizance—Attachment of property of surety for accused person—Notice.*—A surety, who stood bail for an accused person, having failed to produce him on the day appointed, the Deputy Magistrate ordered that the bail bond be forfeited, and a warrant be issued for the attachment and sale of the moveable property, first, of the accused, and, secondly, of the surety. No recognizance had been signed by the accused, and no notice had been given to the surety to show cause. On a

Recognizance to appear—*concluded.*

reference by the Magistrate, the Deputy Magistrate's order was set aside as being illegal. QUEEN v. DURGA DAS BHUTTACHARJEE, 7 B.L.R. Ap. 37 = 15 W.R. Cr. 82.

(15)—*Enforcement of security bond—Notice to surety to pay amount of bond.*—Before a surety is ordered to pay the amount of a bond entered into by him, a notice must be served on him requiring him to pay the amount of the bond or to show cause why he should not be ordered to do so. QUEEN v. JEEBUN SHEIKH, 9 W. R. Cr. 4.

See APPEAL — CASES WHERE APPEAL DOES NOT LIE, 3 B H.C. Cr. 1.

Remission of penalty under recognizance bond—*See* CRIM. PRO. CODE, 1898, s. 106, 8 C.L.R. 72.

See CRIM. PRO. CODE, 1898, s. 106, 6 M.H. C. 25.

Bond from a witness when to be taken—Day fixed in the bond—*See* CRIM. PRO.CODE, 1898, s. 170 (2), (4), L.B.R. 1893—1900, 478.

See CRIM. PRO.CODE, 1898. s. 496, 6 N.W.P. 366.

See FALSE PERSONATION, 1 Weir 182 = 4 M.H.C. 18,

Mitigating penalty in—*See* MAGISTRATE, JURISDICTION OF—MISCELLANEOUS, Rat. Un. Cr. C. 20 = Cr. Rg, 6-9-1869,

Recognizance to keep the peace.

See SECURITY TO KEEP THE PEACE.

Reconciliation.

Perjury — Two contradictory statements, basis of the charge — Presumption in favour of—*See* PERJURY, 7 S.L.R. 96 = 15 Cr. L.J. 379 = 23 Ind. Cas. 747.

Re-construction.

See BOM. ACT III OF 1901, s. 96, 12 Bom. L.R. 1060.

Record.

(1)—*Arrangement of, by Sessions Judges and Magistrates.*—A proper arrangement of all their records should be maintained in all record rooms and the Sessions Judges and Magistrates should from time to time visit their record rooms to see whether the arrangement is properly kept up. Mention of the state of their record rooms should invariably be made in the Criminal Reports of Sessions Judges and Magistrates. The Court will not be satisfied with a mere cursory mention, but will require a clear description of the state of each record room and the dates up to which the records have been sorted or destroyed, so that it may appear without doubt that this duty has in no way been neglected. CRIMINAL CIRCULAR NO. 6, 17TH JULY 1865, 3 W.R Cr. Cir. 3.

(2)—*Of unappealable cases, not to be sent to the High Court.*—Sessions Judges need not send to the High Court the record of cases in which no appeal lies, unless called for by the High Court. CRIMINAL CIRCULAR NO. 7 OF 1869, 12 W.R. Cr. Cir. 5.

Record—*concluded.*

(3)—*Crim.Pro.Code* (*Act* V *of* 1898), *s.* 164(3)—*Confession* — *Record.*—The word "record" must necessarily mean "making a part of a judicial record" and not merely "writing out". The fact that questions relating to the voluntary character of a confession appeared at the end instead of at the beginning of the record does not make the record improper. EMPEROR v. KADAR GHULAM MAHMED, **8 Bom. L.R. 950 = 5 Cr.L J. 4.**

(4)—*Loss of records before appeal—Practice.*—Where the entire records of the proceedings in a Sessions case were lost before the appeal in the case was heard, the High Court ordered that the conviction should be set aside and that there should be a new trial. QUEEN-EMPRESS v. KHIMAT SINGH, **A.W.N. 1889, 55.**

See CALENDAR, 6 M H.C. App. 6.

See CONFESSION—CONFESSION TO MAGISTRATES—ADMISSIBILITY, 16 C P.L.R. 122.

See CONVICTION, 8 C. 195.

Duty of Magistrate to record evidence for holding that there is a likelihood of a breach of the peace in cases under s. 145, Crim. Pro. Code—*See* CRIM. PRO. CODE, 1898, s. 145, 28 C. 416.

See CRIM. PRO. CODE, 1898, s. 162, 28 C. 348 = 5 C.W.N. 65.

See CRIM. PRO. CODE, 1898, s. 367, S.C. 192, Oudh.

See CRIM. PRO. CODE, 1898, ss. 421, 435, Rat. Un. Cr. C. 128.

See SUMMARY TRIAL, 6 M. 396 = 2 Weir 328.

Recorder of Rangoon.

See SANCTION TO PROSECUTE—AUTHORITIES COMPETENT TO GRANT SANCTION, ETC., 22 C. 487.

Record of Evidence.

To be in English—Crim. Pro. Code (1861), *s.* 431.—Government Notification, dated the 6th August, 1865, introduces English as the language, for the record of evidence in cases tried in Courts of Session. All Sessions Judges should be fully acquainted with the vernacular language in ordinary use in their districts. Where the evidence is delivered in a dialect to which the Judge is unaccustomed, an interpreter should be employed in the manner prescribed by s. 431, Crim. Pro. Code. CRIMINAL CIRCULAR NO. 9, 28TH AUGUST 1865, **3 W.R. Cr. Cir. 5.**

Record of Rights.

Order under s. 145, Crim. Pro. Code—Omission of Magistrate to give effect to presumption arising from recently published record-of-rights—Effect—*See* CRIM. PRO. CODE, 1898, s. 145, 19 C.W.N. 123.

Recovery of Arrears of Revenue Act.

See MAD. ACT II OF 1864.

Recovery of Rent Act.

See BEN. ACT X OF 1859.

Recruiter.

Cooly sirdar, or recruiter, whether an artificer, workman or labourer—*See* ACT XIII OF 1859, s. 2, 6 C.L.J. 180 = 6 Cr.L.J. 191.

False pretence by, of emigrants—Jurisdiction—Place of trial—*See* ACT XIII OF 1864, s. 71, 4 M.H.C. App. 4.

Recruiting (Foreign) Act.

See ACT IV OF 1874.

Reference.

See REFERENCE TO HIGH COURT.

Reference to Full Bench.

See ST. 24 AND 25 VIC., C. 104, 28 C. 211 = 5 C.W.N. 169.

Reference to High Court.

See CRIM. PRO. CODE, 1898, ss. 307, 435—439.

See HIGH COURT, JURISDICTION OF.

See HIGH COURT, SUPERINTENDENCE AND POWERS OF.

See MAGISTRATE, JURISDICTION OF.

See REVIEW.

See REVISION.

(1)—*Crim. Pro. Code* (1882), *s.* 349—*Reference under the section.*—Power of Magistrate to whom reference is made, to return the case to submitting Magistrate for commitment to the Sessions Court. *In re* NAGULARAPU DASARIGADU, **2 Weir 428.** (9 M. 377, *F.*)

(2)—*Crim. Pro. Code* (1872), *s.* 296—*Reference to High Court by Sessions Court.*—A Judge should not suspend the conclusion of a trial which had already been commenced, and in which the assessors have given their opinion, for the purpose of making a reference to the High Court on a question of law that has arisen in the course of it. EMPRESS OF INDIA v. BHUP SINGH, **2 A. 771.**

(3)—*Crim. Pro. Code* (1882), *s.* 438—*Reference by Magistrate of orders passed by Sessions Judge on appeal.*—References under s. 438, by Magistrates, against orders passed by Sessions Judges on appeal, are generally inconvenient and undesirable, and are only justifiable in special cases. QUEEN-EMPRESS v ZOR SINGH, **10 A. 146 = A W.N. 1888, 5.** (9 A. 362, *R.*) [*R.*, 28 A. 91 = 2 A.L.J. 589 = A.W.N. 1905, 198, 12 A.L.J. 519 = 15 Cr. L.J. 407 = 23 Ind. Cas. 1007, Rat Un. Cr. C. 473, 601, 2 Weir 566.]

(4)—*Crim. Pro. Code* (1872), *s.* 296—*Order directing commitment—Powers of Sessions Judge to question its legality.*—The Court of Sessions has no power to set aside a commitment made under its direction. If the legality of such commitment is doubted by that Court, the proper course is to make a reference to the High Court. *In the matter of the petition of* HASSAN RAZA KHAN, **7 N.W.P. 211.**

(5)—*Crim. Pro. Code* (1872), *s.* 288—*Reference to High Court—Power to alter.*—The High Court, as a Court of reference, has no power

Reference to High Court—*continued.*

under s. 288, to alter a conviction for murder into one for culpable homicide not amounting to murder, unless there is a petition of appeal along with the reference. REG v. BALAPA *bin* DUNDAPA, **1 B. 639.**

(6)—*Crim. Pro. Code* (1872), s. 263 — *Reference to High Court on dissent by Sessions Judge from verdict of jury.*—The dissent spoken of in the 4th clause of s. 263 must be such a complete dissent as to lead the Judge to consider it necessary for the ends of justice to submit the case to the High Court. IMPERATRIX v. BHAWANI *bin* PANDUJI, **2 B. 525 = 3 Ind. Jur. 70.** [*F.*, 20 B. 215.]

(7)—*Crim. Pro. Code*, s 307—*Reference to High Court—Powers.*—Where a case is referred to the High Court under s. 307, Crim. Pro. Code, the High Court will not interfere with the verdict of the jury, except when it is shown to be clearly and manifestly wrong. QUEEN-EMPRESS v. MANIA DAYAL, **10 B. 497 = 11 Ind. Jur. 74.** [*F.*, 15 B. 452, 20 B. 215; *R.*, 14 B. 331, 15 C. 269.]

(8)—*Crim. Pro. Code*, ss. 307 *and* 429—*Reference to Division Bench — Difference between Judges — Reference to third Judge.*—Where Judges differ in cases referred under s. 307, the proper course is to lay the case, with their opinions, before a third Judge under s. 429, whose opinion then previls. The matter should not be disposed of in the manner provided by cl. 36 of the amended Letters Patent, *i.e.*, by the opinion of the senior Judge. The Court overrules the Letters Patent in this matter. In differences between the Judges on a reference under s. 307, the practice of the High Court, in differences under s. 429, should be followed. The opinion of the Judges should be given in public. As a general principle judicial acts ought to be performed in public, and reasons delivered in public to the suitors and the counsel. QUEEN-EMPRESS v. DADA ANA, **15 B. 452.** [*Not F.*, 13 Cr. L.J. 586 = 15 Ind. Cas. 1002; *R.*, 13 Cr. L.J. 209 = 14 Ind. Cas. 305 = 22 M.L.J. 219 = 11 M.L.T. 367 = 1912 M.W.N. 499.]

(9)—*Power of review—Crim. Pro. Code*, s. 369.—A Magistrate has no power to review his own previous orders passed on full enquiry, and after hearing both sides. The only course open to the Magistrate is to make a reference to the High Court, and have his own order cancelled. *In re* HARI LAL BUCH, **22 B. 949.**

(10)—*Crim. Pro. Code*, s. 432—*Reference on question of law, when can be made by Presidency Magistrate.*—A Presidency Magistrate is not entitled to make a reference to the High Court on a question of law, under s 432 where the accused has been merely placed before him and the hearing of the case has not begun. QUEEN-EMPRESS v. NANU AMIR, **1 Bom. L.R. 521.**

(11)—*Crim. Pro. Code*, s. 307—*Reference to High Court—Procedure.*—A Sessions Judge who refers a case under s. 307, Crim. Pro. Code, should state exactly what material portions of the evidence he believes to be true and his reasons for arriving at his conclusions. He should not content himself with repeating any remarks in his charge to the jury adding merely such a vague remark as, "for these and other reasons I submit the case for the orders of the High Court." EMPEROR v. DYAMANAIK ANNAPPANAIK, **6 Bom. L.R. 519 = 1 Cr. L. J. 586.**

(12)—*Crim. Pro. Code*, s. 307—*Reference to High Court, when permissible.*—S. 307, Crim. Pro. Code, requires as an essential condition of the reference that the Judge must disagree with the verdict of the jurors or a majority of them, on all or any of the charges on which the accused have been tried, and that the Judge should be clearly of opinion that it is necessary for the ends of justice to submit the case to the High Court. The Judge should state in his reference the evidence for the prosecution and for the defence, the facts which in his opinion are proved upon the evidence recorded in the case, and the conclusions to which these facts lead him. The fact that upon the same evidence the High Court convicted certain other persons who were tried in a certain other case can be no justification for submitting the case to the High Court, unless the Sessions Judge himself considered the evidence against the present accused reliable, independently of the result of the other trial. EMPEROR v. IRYA DODDAPPA KATAGI, **6 Bom. L.R. 599 = 1 Cr. L.J. 743.**

(13)—*Crim. Pro. Code* (*Act* XXV *of* 1861), ss. 23-*G*, 273, 276, *ch.* XIV—"*Subordinate Magistrate*"—*District Magistrate—Referring a case.*—The words "Subordinate Magistrate," as used in the title to ch. 16, Crim. Pro. Code, and throughout that Chapter apply only to the particular class of Magistrates denominated Subordinate Magistrates, and do not include Magistrates, Full Powers, notwithstanding that the latter are by s. 23-G made subordinate to the Magistrate of the District. The Magistrate of the District cannot, therefore, refer a case to a Magistrate, Full Powers, under s. 273, Crim. Pro. Code, because, although the words of the first paragraph of that section are sufficiently wide to allow of such a reference, such a liberal construction is limited by the subsequent use of the words "Subordinate Magistrate" in the same section. The Magistrate of a District may, under s. 36, refer a case to a Magistrate, Full Powers, as being "a Court subordinate to him," and also under s. 276, the Magistrate Full Power being "an officer subordinate to him." LETTER FROM THE SECRETARY OF GOVERNMENT, NO. 1043 AND 21ST MARCH 1871, **Rat. Un. Cr. C. 50.**

(14)—*Pending trial—Reference to High Court.*—There is no provision in the Crim. Pro. Code, which enables a Judge to stop a trial already commenced and to refer to the High Court any question or questions of law arising on the merits of the case. QUEEN-EMPRESS v. BAPUJI, **Rat. Un. Cr. C. 214.**

Reference to High Court—*continued.*

(15)—*Crim. Pro. Code (Act X of 1882), s. 438—Sessions Court—Procedure of District Magistrate dissatisfied.*—A District Magistrate who thinks that failure of justice is likely to arise from the refusal of a Sessions Judge to grant a sanction for prosecution, cannot refer the case to the High Court under s. 438 of the Crim. Pro. Code, but should communicate with the Local Government or the Public Prosecutor. QUEEN-EMPRESS v. BAJIO, **Rat. Un. Cr.C. 623 = Cr. Rg. 48 of 1892.**

(16)—*Case decided on appeal by Sessions Judge—Reference to High Court by District Magistrate—Crim. Pro. Code (Act X of 1872), ss. 295, 296, 297.*—A District Magistrate is not competent to make a reference of a case, decided on appeal by the Sessions Judge, for the orders of the High Court under s. 297 of the Crim. Pro. Code, s. 296 is controlled by s. 295. *In the matter of the petition of* RAM LALL ; EMPRESS v. RAM LALL, **8 C. 875.**

(17)—*Reference for revision by High Court.*—A necessity for altering a conviction from one section to another for cognate offences, when the accused has not been prejudiced by any such error, is no sufficient ground for a reference to the High Court for the exercise of revisional jurisdiction. EMPRESS v. ISHAN CHUNDRA DE, **9 C. 847 = 12 C L R. 451.**

(18)—*Crim. Pro. Code (1882), s. 438—Rejection of appeal by Sessions Judge—Reference by District Magistrate to the High Court—Proper procedure.*—Where a Sessions Judge, as the Court of appeal, has rejected an appeal from the conviction and sentence by a subordinate Magistrate, the District Magistrate raising the objection to the jurisdiction of the subordinate Magistrate, is not competent to refer the case to the High Court under s. 438 of the the Code, and should not admit the accused to bail. If he is inclined to move further in the matter, he should proceed through the Legal Remembrancer. HIRAMAN DE v. RAM KUMAR AIN, **18 C. 186.** (9 A. 362, *R.*)

(19)—*Crim. Pro. Code, s. 432—Reference by Presidency Magistrate to High Court—Right to begin.*—In a reference to the High Court by a Presidency Magistrate, as to whether, on the facts stated, any offence had been committed by the accused, the prosecution has to make out that there has been an offence under the law, and, consequently, the counsel for the prosecution should begin. QUEEN-EMPRESS v. HARADHAN *alias* RAKHAL DASS GHOSH, **19 C. 380.**

(20)—*Crim. Pro. Code (1882), ss. 118, 123 and 438—Refusal of Sessions Judge to confirm a District Magistrate's order under s. 118—Power of the Magistrate to refer the case to the High Court.*—S. 438 does not authorise the District Magistrate to refer to the High Court a case in which the Sessions Court has, under s. 123, refused to confirm his order under s. 18, and has discharged the person called upon to furnish security. S. 123 makes the order of the Magistrate, in a case like this, subject to confirmation or reversal by the Sessions Court, and it would be contrary to every principle to allow the District Magistrate to report against an order of the Sessions Court to which he is subordinate. If the Magistrate, as the officer responsible for the peace of his District, is dissatisfied with any such order, his proper course is to ask the Public Prosecutor to move the High Court for the revision of the same. QUEEN EMPRESS v. JAHANDI, **23 C. 249.** [*F.*, 28 A. 91 = A.W.N. 1905, 198 = 2 A.L.J. 589 ; *R.*, 8 Cr. L.J. 161 = 1 S.L.R. 40, Cr.]

(21)—*Crim. Pro. Code (1882), ss. 435, 438 and 439—Judgment or sentence by Sessions Judge—Power of District Magistrate to refer to the High Court.*—S. 438 read with s. 435 refers to a proceeding before any inferior criminal Court ; notwithstanding the words "or otherwise" in s. 438, it was not the intention of the Legislature to give to a Magistrate the power to question the propriety of a judgment or sentence by a superior criminal authority (the Sessions Judge), and to refer the proceedings to the High Court for revision. S. 439 read with s. 435 gives to the High Court the power to examine the record of any proceeding (whether it be of a Sessions or Magistrate's Court, and howsoever it might have been brought up) and to interfere with or alter the conviction or sentence or other order ; but notwithstanding the use of the words "or which has been reported for orders" in s. 439, it could never have been intended that such report might be made by an inferior criminal authority with respect to a proceeding by a superior authority. QUEEN-EMPRESS v. KARAMDI, **23 C. 250.** [*F.*, 23 M.L.J. 732 = 12 M.L.T. 170 = 1912 M.W.N. 812 = 16 Ind. Cas. 522 = 13 Cr. L.J. 714, 2 N.L.R. 149 ; *R.*, 8 Cr. L.J. 161 = 1 S.L.R. 40, Cr.]

(22)—*Crim. Pro. Code (1898), ss. 307 and 451—Judge disagreeing with the verdict of jury—Reference to High Court—Duty of High Court to consider the whole evidence in the case.*—In a reference under s. 307 of the Code, the High Court is not necessarily bound to act in accordance with the unanimous verdict of the jury, where it is not perverse or clearly and manifestly wrong. It is not necessary, therefore, for the prosecution to show that the opinions of the jury are perverse or clearly and manifestly wrong. The High Court is bound to consider the entire evidence in the case, and to give due weight to the opinions of the Sessions Judge and the jury, and not to rely only on the verdict of the jury. EMPEROR v. LYALL, **29 C. 128 = 6 C.W.N. 253.** [*F.*, 10 Cr. L.J. 57 = 2 Ind. Cas. 593 = 9 C.L.J. 432, 15 Cr. L.J. 513 = 24 Ind. Cas. 601; *R.*, 36 C. 629 = 2 Ind. Cas. 497 = 9 C.L.J. 638 = 13 C.W. 757 = 10 Cr. L.J. 32]

(23)—*Crim. Pro. Code, s. 307—Reference by whom to be made.*—The Judge, who may make a reference to the High Court under s. 307, must be the Judge who held the trial and heard the evidence, and not the officer who succeeds him as Judge. Where the trial was held before a Judge but the jury returned a verdict of "not

Reference to High Court—*continued.*

guilty " after the Judge had ceased to be the Judge of the place, *held*, that a reference to the High Court by him was properly made. EMPEROR v. DIL MOHAMED SHEIKH, **2 C.L. J. 48=2 Cr. L.J. 386.**

(24)—*Crim. Pro. Code* (1898), *s.* 307—*Reference to High Court, when to be made.*—A Sessions Judge is not justified in making a reference to the High Court under s. 307, in a case in which the evidence for the prosecution was, on his own showing in his charge to the jury, so open to hostile criticism as to justify the jury in regarding it with suspicion KING-EMPEROR v. CHIDGHAN GOSSAIN, **7 C.W.N. 135.** [*R.*, 36 C. 629=9 C.L J. 638=13 C.W.N. 757=10 Cr. L.J. 32=2 Ind. Cas. 497; *D.*, 9 C.L.J. 432 =10 Cr. L.J. 57=2 Ind. Cas. 593.]

(25)—*Crim. Pro. Code* (1898), *s.* 307—*Reference to the High Court—Its powers and duties.*—In a reference to the High Court under s. 307, although the High Court is bound to give due weight to the opinion of the Sessions Judge and the verdict of the jury, it can decide for itself the question of guilt or otherwise of the accused. EMPEROR v. SRI NARAIN PRASAD, **11 C.W.N. 715=5 Cr. L.J. 484.** [*R.*, 4 Ind. Cas. 28=13 C.W.N. 1089=10 Cr. L J. 476.]

(26)—*Crim. Pro. Code* (1882), *s.* 307—*Reference to High Court by Sessions Judge of cases tried with Jury—Discretion, how to be exercised.*—S. 307 leaves the referring of a case to the High Court entirely to the discretion of the Judge, for it is only when he disagrees with the verdict of the jury " so completely that he considers it necessary for the ends of justice to submit the case to the High Court " that he should do so. This discretion should, however, always be exercised when the Judge thinks that the verdict is not supported by the evidence. It is the only way in which the miscarriage of justice by a perverse verdict of a jury, can be remedied by the High Court. QUEEN-EMPRESS v GURUVADU, **13 M. 343=2 Weir 389.** [*R.*, 9 Cr.L.J. 93=4 M.L.T. 483.]

(27)—*When reference to High Court should not be made.*—The valuable time of the High Courts should not be taken up with references of an impractical character ; a reference should be made only in cases in which the practical interference of the Court is demanded in the interests of justice. EMPRESS v. FUKIRA GOUD, **7 C.P.L.R. Cr. 34.**

(28)—*Crim. Pro. Code* (1898), *s.* 438—*Reference—Enhancement of sentence—Reference cannot be made without upholding the conviction.*—The Sessions Judge is not competent to refer a case for enhancement of sentence, unless he has tried the appeal filed against the conviction. He can only refer the case under the provisions of s. 438, Crim. Pro Code, when he is satisfied as to the propriety of the conviction. KING-EMPEROR v. INTIZAR ALI KHAN, **6 A.L.J. 421 =2 Ind. Cas. 475=10 Cr.L.J. 27.**

(29)—*Crim. Pro. Code, s.* 307—*Reference to High Court—Sessions Judge—Points of reference.*—In referring a case to the High Court, under s. 307 of the Crim. Pro. Code, 1898, the Sessions Judge must say in his reference, in clear and unambiguous terms, what is the offence which has, in his opinion, been committed by the accused, and on what grounds, in that respect, he differs from the jury. When a reference, under the section, is made by the Sessions Judge, he should state with some fulness, his view of the evidence and the credibility of the more important witnesses, because not being in a position to pronounce any opinion upon the demeanour of the witnesses, the High Court has to attach more or less weight to the opinion of the Judge who saw and heard the witnesses. EMPEROR v. CHANDRA KRISHNA, **10 Bom. L.R. 173=7 Cr.L.J. 192.**

(30)—*Crim. Pro. Code, s.* 307—*Sessions Judge—Jury—Difference between Judge and jury—High Court not confined to points of difference, but can consider the whole case—Penal Code (Act* XLV *of* 1860), *s.* 395—*Dacoity—Essentials of the offence.*—In hearing a case, which is referred to the High Court under s. 307 of the Crim. Pro. Code, the Court is not to be confined to points of difference between the Judge and the jury; but the whole case is thrown open to the Court ; and it must be decided after giving due weight to the opinions of the Judge and the Jury. The essentials of the offence of dacoity are that the theft should be perpetrated by means either of actual violence or of threatened violence. The threatened violence may be implied in the conduct and character of the mob. It is not necessary that the force or menace should be displayed by any overt act. It cannot assist the accused or reduce the gravity of their offence that no actual hurt was caused for the reason that no one dared to resist the overwhelming show of force, which was sufficient to terrify and did in fact terrify those whose business it was to protect the property. EMPEROR v. CHANDRA KRISHNA, **10 Bom. L.R. 632=8 Cr. L J. 143.**

(31)—*Crim. Pro. Code* (1872), *ss.* 118, 296—*Powers of District Magistrate over Police.*—S. 296 of the Crim Pro. Code does not empower the Magistrate of a District to refer to the High Court the proceedings of a Superintendent of Police, the latter not being a " Court subordinate " to the Magistrate. The Magistrate of a District cannot interfere (except in the way of suggestion and advice) with the exercise of discretion given to a Police Officer by s. 118 of the Code to summon witnesses. *In re* SANKALCHAND, **Rat. Un. Cr. C. 133.**

(32)—*Sessions Judge—Sanction for prosecution — Reference to High Court by District Magistrate.* — Where a District Magistrate, being of opinion that the Sessions Judge gave a mistaken view of the facts, referred the case to the High Court, the High Court declined to interfere on the ground that questions of fact should be dealt with by the Court which might try the case. QUEEN-EMPRESS v. HUSEIN, **Rat. Un. Cr. C. 473=Cr. Rg 30 of 1889.**

(33)—*Crim. Pro. Code (Act* X *of* 1882), *s.* 432—*Question of fact.*—A reference to the High

Reference to High Court—*continued.*

Court under s. 432 of the Crim. Pro. Code must be on a question of law and not on one of fact. QUEEN-EMPRESS v. SHEIK IBRAHAM, **Rat. Un. Cr. C. 838 = Cr. Rg. 7 of 1896.**

(34)—*Sessions Judge — Reference to High Court.*—It is not competent to a Sessions Judge to refer to the High Court a matter which he can dispose of himself. *In re* SHIVRAM BAHIRDA, **Rat. Un. Cr. C. 937 = Cr. Rg. 46 of 1897.**

(35)—*Crim. Pro. Code* (1898), *s.* 307—*Reference to High Court — Jury's verdict, not perverse —Interference on facts—Penal Code* (*Act* XLV *of* 1860), *s* 307—*Attempt at murder —Liability for act done—Consequences intended not happening—Accident.*—It cannot be said that, as a general principle, the High Court will not, in a reference under s. 307, Crim. Pro. Code, disturb the verdict of a jury if such verdict is not perverse. In such a case, it is the duty of the High Court, to go through the whole evidence in the case, and, after giving due weight to the verdict as well as to the opinion of the Judge, to come to their own findings on that evidence. It is not improper for a Judge to refer a case to the High Court under s. 307, Crim. Pro. Code, merely because there is a weak link in the evidence for the prosecution, to which he drew the attention of the jury and asked them to pause and consider it before returning their verdict. Where the accused, a young man of 25 and accustomed to shooting, was found to have fired at a person at a distance only of some six paces, cartridge containing shot of about No. 6 size ; *held*, he must have known that his act was very likely to cause death. If the person shot at had died, the accused would undoubtedly have been guilty of murder. The fact that the back of the chair on which the victim was seated intercepted a number of pellets and thus avoided a fatal result, cannot reduce the offence from one under s. 307, Penal Code, to one under s. 324, Penal Code. If a person who has an evil intent does an act which is the last possible act that he could do towards the accomplishment of a particular crime that he has in his mind, he is not entitled to pray in his aid an obstacle intervening not known to himself. If he did all that he could do, and completed the only remaining proximate act in his power, he cannot escape criminal responsibility, because the consequences which he expected to ensue were prevented from ensuing. EMPEROR v. ABDUL RAHAMAN, **9 C.L.J. 432 = 2 Ind. Cas. 593 = 10 Cr. L.J. 87.** (29 C. 128, 7 C.W.N. 135, 14 A 38, *F.*) [*R* , 36 C. 629 = 9 C.L J. 638 = 13 C.W.N. 757 = 10 Cr. L.J. 32 = 2 Ind. Cas. 497.]

(36)—*Jurisdiction of a Court of Session or District Magistrate to direct a reconsideration of evidence or new inquiry—Crim. Pro Code* (1898), *s.* 437.—A Court of Session or District Magistrate has jurisdiction to direct a reconsideration of the evidence by the same Magistrate who discharged the accused, or a new inquiry

Reference to High Court—*continued.*

before another Magistrate on the grounds, *inter alia*, of mistake of law or incorrectness of the first finding. If the Sessions Judge or District Magistrate is satisfied that, on the evidence, there is a clear case for charging and trying the accused and there is no reason for desiring further magisterial investigation it is ordinarily the Judge's or the Magistrate's duty to refer the case to the High Court. PO WIN v. CROWN, **1 L.B.R. 311.** (15 C. 608, 1 L.B.R. 100, *F.*)

(37)—*Crim. Pro. Code*, *ss.* 435, 438, 439—*Revision—Practice—Sentence reduced by Sessions Court—Application by District Magistrate asking for enhancement.*—*Held*, that the powers given to District Magistrate to make a reference to the High Court, relate to proceedings before an inferior Court, and do not empower him to question the propriety of a judgment or sentence passed by a superior criminal authority as the Sessions Judge. In cases where he feels it necessary to question the adequacy of sentence by a superior Court, he should not instruct but inform the Public Prosecutor, who might, after receiving proper instructions from the local Government, lay the matter before the High Court on his own initiative. Though under s. 439, Crim. Pro. Code, the High Court can interfere on information derived from any source whatsoever, it will not as a rule entertain a reference from the District Magistrate under s. 438 or a revision application filed by the Public Prosecutor under instructions from the District Magistrate, which has for its object the enhancement of a sentence reduced by the Sessions Judge. EMPEROR v. SHAH NAWAZ *wd.* BACHAL, **8 Cr.L.J. 161 = 1 S.L.R. 40, Cr.**

(38)—*Crim. Pro. Code* (1882), *ss.* 378, 429—*Sentence of death—Reference to High Court—Defference between Judges—Reference to another Judge* —In this case, *Edge, C.J.*, criticises the views of *Justice Mahmood* expressed in 6 A.W.N. 275, about the propriety of referring to a third Judge, in cases where the Judges differ in their opinion about the guilt of the accused whose case has been submitted to the High Court for confirmation of sentence. EMPRESS v. BUNDU, **A.W.N. 1887, 125.**

(39)—*Sentence of death—Appeal—Difference between two Judges—Reference to third Judge.*—In this case *Mahmood, J.*, discusses the propriety of referring to a third Judge, when there is a difference of opinion between two Judges. EMPRESS v. DEBI SINGH, **A.W.N. 1886, 275.** [*R.*, A.W.N. 1887, 125.]

(40)—*Crim. Pro. Code* (*Act* X *of* 1882), *s.* 438 —*Reference to High Court—Report of jail darogha.*—A reference to the High Court under s. 438 can only be made for any of the reasons specified in that section, which appears from the records and not on the report of a jail darogha. QUEEN-EMPRESS v. KUNJAL, **A. W.N. 1891, 80.**

(41)—*Crim. Pro. Code* (1872), *ss.* 296, 297—*High Court's power of revision.*—Where a Sessions Judge, in disposing of an appeal by one of

Reference to High Court—*continued.*

two persons tried and convicted together, has discredited the evidence for the prosecution against him, this does not authorize the High Court to declare the evidence untrustworthy as against the other and to acquit him, under the provisions of s. 297, Crim. Pro. Code, 1872. S. 296 allows a reference when the Court of Session is of opinion that the judgment or order is contrary to law, or that the punishment is too severe or inadequate, but not on the ground of the insufficiency or incredibility of the evidence. EMPRESS v. KHUBI, **A.W.N. 1881, 12.**

(42)—*Discretion of Magistrate—Crim. Pro. Code* (1872), s. 296.—A Magistrate has full liberty, under s. 296, Crim. Pro. Code, to consider whether it is desirable or useful that a reference should be made and it is not incumbent on him to refer to the High Court every case which may disclose an error. NIBARAN CHUNDER DASS v. BHUGGOBUTTY CHURN CHATTERJEE, **20 W.R. Cr. 40.**

(43)—*Power to refer—Power of Joint Magistrate—Crim. Pro. Code* (1861), s. 433.—A Joint Magistrate cannot make a reference to the High Court under s. 434 of the Code of Criminal Procedure it can be done only by the Sessions Judge or by the Magistrate of the district. QUEEN v. CHOORAMANI SANT, **14 W.R. Cr. 25.**

(44)—*Mode of reference—Crim. Pro. Code,* (1861), s. 434—*Reasons for reference by Judge.*—A Sessions Judge, who refers a case under s. 434 of the Code of Criminal Procedure, should support it by reasons of his own, and not merely send up those which had been expressed by his predecessor who for some reason or other did not send up the case himself. BATOOL USHYO v. BHUGLOO CHOWKEEDAR, **10 W.R. Cr. 50.**

(45)—*Order contrary to law—Sessions Judge—Crim. Pro. Code* (1872), s. 296.—*Held* that a Sessions Judge who was of opinion that a judgment or order is contrary to law, or that the punishment was too severe, must report the proceedings to the High Court in the manner prescribed by the Circular Order of 15th July 1863, which applied to references under s. 296 of the Code of 1872 or s. 434 of the Code of 1861. RAJ KISTO PAUL v. NITTYANUND PAUL, **20 W.R. Cr. 50.**

(46)—*Question of sufficiency of evidence—Crim.Pro. Code,* (1861), s. 434.—Where a Magistrate convicted a person on the evidence of one witness whom he considered credible, *held* that the case was not a proper subject of reference to the High Court. QUEEN v. BINDU, **8 W.R. Cr. 60.**

(47)—*Illegality in proceedings—Crim. Pro. Code* (1861), s. 434.—The High Court's interference under s. 434, Code of Criminal Procedure only refers to cases in which there is some illegality in the proceedings of the Court below. QUEEN v. JOY KISHEN LALL, **12 W.R. Cr. 46.**

Reference to High Court—*continued.*

(48)—*Crim. Pro. Code* (1861), ss. 183, 184, 296—*High Court—Jurisdiction.*—Case where the High Court declined to interfere with the order of a magistrate rejecting an application for the restitution of property sold some years ago under ss. 183, 184 of the Crim. Pro. Code. The proper mode of raising the question as to the propriety of the order would be by a regular suit brought against the Government. *In re* GHUMUNDEE SINGH, **23 W.R. Cr. 30.**

(48-a)—*Question as to credibility of witnesses—Crim. Pro. Code* (1861), s. 434.—*Held* that s. 434 gave the High Court no power to interfere in cases where the difference of opinion between the Magistrate and the Sessions Judge was as to the credibility of certain witnesses. The Magistrate's order may be an improper one, but, if passed on legally sufficient evidence, it cannot be called illegal. SHAIK OODLA v. BARKAT, **18 W.R. Cr. 7.**

(49)—*Difference in appreciation of evidence—No ground of reference.*—If a Sessions judge takes a different view of the evidence, from that taken by the magistrate that cannot be a ground of reference under s. 434 of the Crim.Pro. Code. *In re* RAMDHUN MUNDLE, **18 W.R. Cr. 39.**

(50)—*Crim. Pro. Code* (1872), s. 296—*Acquittal by Magistrate.*—*Held*, that after a Magistrate who had required the prisoners to enter on their defence on the evidence of a witness, acquits them of the charge, the High Court could not interfere upon a reference made to it under s. 296, Act X of 1872. OKHOY TELI v. MODHOO SHEIKH, **19 W.R. Cr. 55.**

(51)—*Summary conviction—No revision after expiry of sentence.*—Where period of imprisonment awarded on a summary conviction had already expired, the High Court declined to interfere on a reference made by the Sessions Judge. KOPIL DOLAI v KANHAI JENNA, **24 W.R. Cr. 71.**

(52)—*Crim. Pro Code,* ss. 295, 296—*Reference by District Magistrate against acquittal by Sessions Judge*—Where prisoners convicted by a Bench of Magistrates are acquitted on appeal by the Sessions Judge, it is not competent for the District Magistrate to transmit the proceedings, under ss. 296, 297, Crim. Pro. Code, to the High Court, to have the order of acquittal by the Sessions Judge set aside. The High Court, as a Court of revision, will not interfere in any case of acquittal, the law having given to Government the right of appeal in such cases. *In the matter of* A. DAVID, **6 C.L.R. 245.**

To High Court from conviction in Scheduled Districts—*See* BOM. ACT XI OF 1846, s. 3, 25 B. 667.

See BOM. ACT VII OF 1867, s. 16, Rat. Un. Cr. C. 478 = Cr. Rg. 41 of 1889.

See BUR. ACT III OF 1889, ss. 9 and 20, cl. 2, L.B.R. 1893—1900, 147.

See CHARGE TO JURY—MISDIRECTION, 11 C. 10.

See COMPENSATION—GENERAL, 9 Cr. L.J. 502 = 2 Ind. Cas. 159.

Reference to High Court—*concluded.*

In cases of orders to keep the peace—*See* CRIM. PRO. CODE, 1898, ss. 107, 406 and 438, 32 C. 948=9 C.W.N. 860=2 Cr. L.J. 550.

Sessions Judge's power of revision or reference to High Court in proceedings under Ch. XII, s. 145, Crim. Pro. Code—*See* CRIM. PRO. CODE, 1898, ss. 145 and 435 (3), 28 C. 416.

See CRIM. PRO. CODE, 1898, ss. 340, 341, Rat. Un. Cr. C. 180.

Reference by second class Magistrate to Sub-Divisional Magistrate — Procedure —*See* CRIM. PRO. CODE, 1898, s. 346, Rat. Un. Cr. C. 554=Cr. Rg. 30 of 1891.

Power of Magistrate to whom case referred to send it back to referring Magistrate—*See* CRIM. PRO. CODE, 1898, s. 349, 26 A. 344= A.W.N. 1904, 42.

See CRIM. PRO. CODE, 1898, s. 367, 1 Bom. L.R. 160.

See CRIM. PRO. CODE, 1898, ss. 374, 375, 376, 2 C.W.N. 49.

Acquitting prisoner, referring case to High Court and resuming trial, validity of—*See* CRIM. PRO. CODE, 1898, s. 403, 2 C.P.L.R. 66.

See CRIM. PRO. CODE, 1898, s. 432, 9 Cr. L.J. 248=1 S.L.R. 4, Cr.

Imprisonment on non-payment of maintenance to wife, order of—Reference by Sessions Judge to High Court on point of law—*See* CRIM. PRO. CODE, 1898, ss. 435, 438, 488 (3), 5 O.C. 316.

See CRIM. PRO. CODE, 1898, s. 528, Rat. Un. Cr. C. 34.

See FALSE EVIDENCE, 1 L.B.R. 101.

See FURTHER ENQUIRY, 1 L.B.R. 100.

See JURY, 23 B. 696=1 Bom. L.R. 114, 25 C. 555.

See PREVIOUS CONVICTION, 30 M. 134=5 Cr. L.J. 422.

See PENAL CODE, s. 323, 17 C.P.L.R. 36.

See SENTENCE—POWERS OF APPELLATE COURT—ENHANCEMENT, 30 M. 48=1 M.L. T. 403=5 Cr. L.J. 88=3 M.L T. 312.

See VERDICT OF JURY, 9 Bom. L.R. 1057 =7 Cr. L.J. 236, 4 M L.T. 483, 3 C. 623=2 C. L.R. 304, 2 C.L.R. 1.

Reformatory.

Imprisonment for default to furnish security whether can be commuted to order of detention in reformatory—*See* SECURITY FOR GOOD BEHAVIOUR, 1 L.B R. 42.

See SECURITY PROCEEDINGS, 6 C.P.L.R. Cr. 13.

See SMUGGLING, L.B.R. 1893—1900, 567.

Reformatory Schools Act.

See ACT V OF 1876.

See ACT VIII OF 1897.

Refreshing Memory.

See EVIDENCE.

See EVIDENCE ACT, 1872, s. 159.

(1)—*Evidence Act, s.* 159—*Refreshing memory.* —A witness who is being asked, in reference to any particular transaction, if he had made any entry in a register or book at or about the time when an occurrence took place, such as the posting of a letter of which an entry was made, might refer to such entry or memorandum to refresh his memory, but beyond that he could not go. QUEEN-EMPRESS v. SAYAD SURFUDDIN, **Rat. Un. Cr. C. 344=Cr. Rg. 37 of 1887.**

See ACCUSED PERSON, 19 A. 390, F.B.

See CRIM. PRO. CODE, 1898, ss. 161, 162, 9 C. 455=11 C.L.R. 569.

Right to inspect writing used to refresh memory—*See* EVIDENCE ACT, 1872, s. 161, 12 C.L.R. 233.

Refund.

(1)—*Court Fees Act,* VII *of* 1870, *s.* 31—*Conviction—Cognisable offence—Refund of stamp duty.*—Where the complaint was for voluntarily causing hurt, but the conviction was for a cognisable offence, the complainant is entitled to a refund of the stamp duty. REG. v. CHIMAYA, **Rat. Un. Cr. C. 79 = Cr. Rg. 27-11-1873.**

High Court's power to order refund of fine on quashing a conviction—*See* ACT X OF 1875, s. 147, 1 C. 354.

See ACT XIII OF 1880, s. 18, 6 Cr. L.J. 124 =4 L.B.R. 12.

See COMPLAINT—PROCEDURE ON RECEIPT OF COMPLAINTS, Rat. Un. Cr. C. 79=Cr. Rg. 27-11-1873.

Refund of Fine.

See SENTENCE—FINE.

See COMPENSATION—TO COMPLAINANT AND HIS RELATIVES, 2 P.R. 1889, Cr.

Register.

(1)—*Annual—of fines in Judge's and Magistrate's returns.*—The Register should be kept up in the vernacular both in the Judge's and Magistrate's office, and the Sessions Judge's in submitting the annual returns, should state that they have examined the Registers in their own and in the offices of the Magistrate and his subordinates and certify to their being properly kept up. CRIMINAL CIRCULAR, NO. 14 OF 1867, **9 W.R. Cr. Cir. 1.**

Register Case.

See CRIM. PRO. CODE, 1898, s. 350, 5 M.L. T. 218=9 Cr. L.J. 146=32 M. 218=1 Ind, Cas. 54.

Registered Person.

See ACT XXVII OF 1871, s. 18, cl. 4, r. 7, 20 P.R. 1908, Cr.=9 Cr. L.J. 1.

See ACT XXVII OF 1871, s. 18 (7), r. 13, 23 P.R. 1908, Cr.=9 Cr. L.J. 94.

Registrar.

Whether a "Court" within the meaning of s. 195, Crim. Pro. Code, 1882—*See* ACT III OF 1877, ss. 72, 73, 74, 75, 15 M. 138=2 M.L.J. 64, F.B.

Acting under s. 73, Act III of 1877, whether a "Court"—*See* CRIM. PRO. CODE, 1898, s. 195, 15 A. 141=A.W.N. 1893, 59.

See CRIM. PRO. CODE, 1898, s. 195, 2 M.L.J. 286.

Sanction to prosecute—Complainant a District Registrar—Enquiry held departmentally—Judicial proceedings—*See* CRIM. PRO. CODE, 1898, ss. 195, 476, 11 C.L.J. 121=5 Ind. Cas. 721.

District Registrar not an 'inferior Criminal Court'—Sanction by him to prosecute—Revision—*See* CRIM. PRO. CODE, 1898, s. 435, 14 Bom. L.R. 970=1 Bom. Cr. C. 214=13 Cr. L.J. 845=17 Ind. Cas. 717.

Powers of High Court to interfere with orders of District Registrar—*See* CRIM. PRO. CODE, 1898, s. 476, 11 A.L.J. 55=18 Ind. Cas. 896=14 Cr. L.J. 144=35 A. 109.

District Registrar whether a 'Court'—*See* CRIM. PRO. CODE, 1898, s. 476, 16 Bom. L.R. 946=2 Bom. Cr. C. 264.

False statement made before—*See* FALSE EVIDENCE, 6 W.R. Cr. 81.

Accused identifying person personating another before Mahomedan Marriage Registrar—*See* PENAL CODE, ss. 114, 199, 466, 9 C.W.N. 69.

Registration officer whether a Court—*See* PENAL CODE, s. 499, 1912 M.W.N. 473=23 M.L.J. 50=15 Ind. Cas. 652=13 Cr. L.J. 508.

Of Small Cause Court—Sanction for prosecution granted by Chief Judge, validity of—*See* SANCTION TO PROSECUTE—AUTHORITIES COMPETENT TO GRANT SANCTION, ETC., 33 C. 193=3 Cr. L.J. 365.

See SANCTION TO PROSECUTE—CONDITIONS REQUISITE FOR GRANT OF SANCTION, ETC., 4 M.L.J. 189, 11 O.C. 358=9 Cr. L.J. 54.

Registration.

Registration, if necessary, of Company with its share capital divided into shares—*See* ACT V OF 1912, s. 2, sub-s. (8), ss. 6, 21, 18 C.W.N. 1182.

Of false divorce—*See* PENAL CODE, s. 419, 17 C. 606.

Registration Act.

See ACT XX OF 1866.

See ACT VIII OF 1871.

See ACT III OF 1877.

Registration (Land) Act.

See BEN. ACT VII OF 1876.

Registration of Books, and Press Act.

See ACT XXV OF 1867.

Registration of Deeds Act.

See BEN. ACT IX OF 1862.

Registration of Mahomedan Marriages and Divorces Act.

See BEN. ACT I OF 1876.

Registration of Ships Act.

See ACT X OF 1841.

Regulations.

1.—IMPERIAL.
2.—BENGAL.
3.—BOMBAY.
4.—BURMA.
5.—MADRAS.
6.—PUNJAB.

——1.—Imperial.

Reg. II of 1880 (Assam Frontier Tracts Regulation).

[APPLICATION EXT., REG. III OF 1884; S. 1, REP. IN PT. AND AM., REG. II OF 1898.]

S. 2—Withdrawal of operation of Crim. Pro. Code—*See* ACT XIV OF 1874, s. 6, 26 C. 874=3 C.W.N. 564.

Reg. III of 1884 (Assam Frontier Tracts).

[SHORT TITLE GIVEN, ACT V OF 1897.]

Powers of laskars — Jurisdiction of High Court over them—*See* GARO HILLS, 9 Ind. Cas. 114=12 Cr. L.J. 10=13 C.L.J. 444.

Reg. VII of 1891 (Assam Forest).

(1)—*Ss. 33, 34, 35 and 63 and s. 3 sub-cl. (a) of cl. 4—Rules made under s. 34—Rule 13—Forest produce—Presumption, that the forest produce is the property of Government, applicable, even though it is not in the direct possession of the Government.*—Offences are committed under the provisions of ss. 33 and 34 of the Regulation and penalties provided for such offences apply, whether the reserved trees are or are not in direct possession of the Government; and, hence, a criminal prosecution, instituted at the instance of a lessee from the Government for the infringement of the provisions of s. 33 or of any rules made under s. 34, is a proceeding taken under the Regulation within the meaning of s. 63 to which the presumption referred to in s. 63 is applicable. Where the facts, which would sustain a conviction under ss. 34, 35 and 40 of the Regulation, were fully set out and the accused had an opportunity of meeting the case, which was presented against them; *held*, that the omission to frame charges in respect of the offences under those sections did not prejudice the accused. Under r. 13, made under the Forest Regulation, a man may render himself liable to conviction even though he has no guilty knowledge, but the absence of any criminal knowledge or intention should be an element for consideration in awarding sentence. MANIK CHANDER AGARWALLA v. EMPEROR, **10 C.W.N. 311=3 Cr. L.J. 202.**

(2)—S. 34—*See* No. 1, *supra*.

(3)—S. 35—*See* No. 1, *supra*.

(4)—*S. 40—Rules 1 and 2—Burden of proof.*—In a prosecution for breach of Rules 1 and 2, framed under s. 40 of the Regulation, the only

Regulations—continued.

—— 1.—Imperial—*concluded.*

Reg. VII of 1891 (Assam Forest)—*concluded.*

facts accepted as proved were that the forest produce in question was discovered at a certain place under suspicious circumstances. There was no distinct finding that the produce was being removed along an unauthorized route. But the lower appellate Court wrongly threw the *onus* of proving that the produce was on its way for conveyance by an authorized route on the accused. *Held*, that the prosecution ought, in order to support the conviction, to prove that the produce was removed along some route other than the two routes prescribed by the rules. MOTI THAKOOR v. DEPUTY CONSERVATOR OF FORESTS, 33 C. 895=4 Cr. L.J. 206.

(5)—S. 63—*See* No. 1, *supra*.

Reg. V of 1896 (Chin Hills).

(1)—*S.* 4.—Under this section, the law, as regards persons other than Chins in the Chin Hills, is that in force in Upper Burma, exclusive of the town of Mandalay and the Court of the Judicial Commissioner is the High Court. Appeal from the Superintendent, Chin Hills, as District Magistrate lies to the Superintendent as Sessions Judge, and not to the High Court. JHABROO v. KING-EMPEROR, U.B.R. 1897—1901, Vol. I, 8.

Reg. VIII of 1896 (British Baluchistan Criminal Justice).

See JURISDICTION OF CRIMINAL COURTS—JURISDICTION OVER EUROPEANS, 5 P.R. 1907, Cr.=6 Cr. L.J. 108=41 P.L.R. 1907=26 P.W.R. 1907.

——2.—Bengal.

Reg. XI of 1796 (Resisting Process).

[REP. ACT XVII OF 1862].

See FORFEITURE OF PROPERTY, 7 P.L.R. P. C. 47=4 M.I.A. 246, 7 W.R. P.C. 18=11 M.I.A. 223.

Reg. IV of 1797 (Amending Ben. Reg. IX of 1793).

[REP., ACT XVII OF 1862.]

See ACT XVII OF 1862, 2 C. 225, F.B.

Reg. XXVII of 1803 (Realization of Land Revenue, Ceded Provinces).

[REP., EXCEPT IN CERTAIN AREAS, ACT XIX OF 1877].

See PENAL CODE, s. 174, Colm. Dig. Cr. 88 of 1877.

Reg. XI of 1806 (Bengal Troops Transport and Travellers'—Assistance).

[SHORT TITLE GIVEN, ACT V OF 1897. SUPPLEMENTED, BEN. REG. VI OF 1825, S. 20 REP., BEN. REG. II OF 1811, REP. AS TO COOLIES, BEN. REG. III OF 1820. SS. 9, 11, 12 REP., ACT XVI OF 1874, SS. 10, 13 TO 19 REP., ACT XII OF 1876. TITLE AND SS. 1 8 REP. IN PT., ACT XII OF 1891. SS. 2, 7 REP. IN PT., S. 4 (3) AM., ACT V OF 1897.

Regulations—continued.

——2.—Bengal—*continued.*

Reg. XI of 1806 (Bengal Troops Transport and Travellers'—Assistance)—*concluded.*

DECLARED IN FORCE—THROUGHOUT BENGAL (EXCEPT THE SAMBALPUR DISTRICT), EASTERN BENGAL AND AGRA, EXCEPT AS REGARDS THE SCHEDULED DISTRICTS, ACT XV OF 1874, SS. 6, 7, IN THE SONTHAL PARGANAS, REG. III OF 1872, S. 3, AS AMENDED BY REG III OF 1899, S. 3; IN THE ANGUL DISTRICT, REG. I OF 1894, S 3. IN THE CENTRAL PROVINCES AND THE SAMBALPUR DISTRICT (SS. 2 TO 6 AND 8, WITH MODIFICATIONS), ACT XX OF 1875, S. 3 AND SCH., AS AMENDED BY ACT XII OF 1891, THESE MODIFICATIONS REP. IN THE SAMBALPUR DISTRICT, ACT VII OF 1905; IN OUDH (SS. 2 TO 6 AND 8, WITH MODIFICATIONS). ACT XVIII OF 1876, S.3, AS AMENDED BY ACT XX OF 1890, S. 35, AND ACT XII OF 1891; IN AJMERE (SS. 2 TO 6 AND 8, WITH MODIFICATIONS) REG. III OF 1877, S. 3 AND SCH. 2, AS AMENDED BY REG. IX OF 1893]

R. 8—*See* PENAL CODE. ss. 99, 323, 493, 498, 11 Cr. L.J. 409=20 Ind. Cas. 233.

Reg. XIX of 1814 (Partition of Revenue-paying Estates).

[REP. (IN AGRA) ACT XIX OF 1863; (IN BENGAL AND EASTERN BENGAL BEN. ACT VIII OF 1876; (IN ASSAM, EXCEPT THE LUSHAI HILLS), REG. I OF 1886.]

See FALSE EVIDENCE, 14 W.R. Cr. 24.

Reg. XIV of 1816 (Jails).

[REP. ACT XXVI OF 1870.]

See ACT XXVI OF 1870, 4 N.W.P. 4.

Reg. XX of 1817 (Bengal Police).

[SHORT TITLE GIVEN, ACT I OF 1903. FORMS 2, 3, 8, 14 REP., REG. VII OF 1829. S. 30 (4) REP., ACT XVIII OF 1835. S. 27 REP., ACT X OF 1859. SS. 9, 12 TO 20, 22 TO 26 REP., ACT XVII OF 1862. SS. 1 TO 8, 10, 11, 29 (10), (11), 30 (3), (6), 31, 33, 34 REP., SS. 29 (1) TO (4), (9), 30 (2) REP. IN PT., ACT XVI OF 1874. S. 29 (5) TO (8) REP., ACT VIII OF 1875. SS. 28, 32 REP., SS. 21 (10), 29 (1) TO (4) REP. IN PT., ACT XII OF 1876. S. 21 REP. LOCALLY IN BENGAL, BEN. ACT VI OF 1870, S. 2, AS MOD. BY BEN. ACT, I OF 1871, S. 1. S. 21 REP. LOCALLY IN BENGAL, BEN. ACT V OF 1887, S. 38. TITLE AND S. 30 (HEADING) REP. IN PT., S. 29 (HEADING) AND CL. (12) AM., FORMS 1, 4, 5, 7, 9 TO 12, 15 TO 21 REP., ACT XII OF 1891. REP. IN PT. (IN AGRA), ACT XVI OF 1873. REP. (IN ASSAM), ACT V OF 1897. S. 29 AND S. 30, CLS. 1, 2 AND 5 DECLARED IN FORCE THROUGHOUT BENGAL (EXCEPT THE SAMBALPUR DISTRICT) AND EASTERN BENGAL, EXCEPT AS REGARDS THE SCHEDULED DISTRICTS, ACT XV OF 1874, S 6, AND SCH. 4, AS AMENDED BY ACT XII OF 1891. *Obsolete in Eastern Bengal.*]

S. 21—*See* PENAL CODE, ss. 187, 188, 7 C.L.R. 575.

Regulations—continued.

——2.—**Bengal**—*continued.*

Reg. III of 1818 (Bengal State Prisoners).

[SHORT TITLE GIVEN, ACT V OF 1897. SUPPLEMENTED, ACTS XXXIV OF 1850 AND III OF 1858. SS. 4, 9 REP. IN PT., S. 8 REP., ACT XVI OF 1874. S. 9 AM., ACT XII OF 1891. S. 4 REP. IN PT., ACT I OF 1903. DECLARED IN FORCE—THROUGHOUT BENGAL (EXCEPT THE SAMBALPUR DISTRICT), EASTERN BENGAL AND AGRA, EXCEPT AS REGARDS THE SCHEDULED DISTRICTS, ACT XV OF 1874, SS. 6, 7; IN THE SONTHAL PARGANAS, REG. III OF 1872, S. III. AS AMENDED BY REG. III OF 1899. S III; IN THE ANGUL DISTRICT, REG. I OF 1894, S. 3; IN THE CHITTAGONG HILL-TRACTS, REG. I OF 1900, S. 4; IN THE ARAKAN HILL DISTRICT, REG. IX OF 1874, S. 3; IN LOWER BURMA, ACT XIII OF 1898, S. 3; IN UPPER BURMA (EXCEPT THE SHAN STATES), ACT XIII OF 1898, S. 4; IN KACHIN HILL-TRACTS, AS REGARDS HILL-TRIBES, REG. I OF 1895, S. 3; IN CERTAIN TRACTS IN THE CHIN HILLS, REG. V OF 1896, S. 3; IN THE PUNJAB, ACT IV OF 1872, S. 3; IN THE N.W. FRONTIER PROVINCE, REG. VII OF 1901, S. 4; IN THE CENTRAL PROVINCES AND THE DISTRICT OF SAMBALPUR, ACT XX OF 1875, S 3; IN OUDH (WITH MODIFICATIONS, AND WITH THE EXCEPTION OF S. 10), ACT XVIII OF 1876, S. 3; IN AJMERE, REG. III OF 1877, S. 3; IN BRITISH BALUCHISTAN, REG. I OF 1890, S. 3.]

(1)—*Jurisdiction of High Court—Power to issue writ into the mofussil.*—A Mahomedan subject of the Crown was arrested in Calcutta, taken into the mofussil, and there detained in jail, under a warrant of the Governor-General in Council in the form prescribed by Reg. III of 1818. *Held* that such arrest and detainer were not acts of State, but matters cognizable by a Municipal Court. *In the matter of* AMEER KKAN, 6 B.L.R. 392. [*R.*, 36 M. 72=23 M.L.J. 393=1912 M W.N. 1012=16 Ind. Cas. 755=13 Cr. L.J. 723=13 M.L.T. 367.]

(1-*a*)—*Arrest of native subject — Power of Indian Legislature.*—Reg III of 1818 was applicable only to natives and those subject to the jurisdiction of the provincial Courts. It was passed under 37 Geo. III, c. 142, s. 28, not 13 Geo. III, c. 63, s. 36. It was passed by a legislative authority having full power in that behalf. Considering the circumstances under which it was enacted, Act III of 1858, which extended the effect of that Regulation to Calcutta, was not *ultra vires*. *In the matter of* AMEER KHAN, 6 B L.R. 392. [*R.*, 11 Cr. L. J. 453=7 Ind. Cas. 359=37 C. 467.]

(2) — *Detention—Warrant—Arrest.*—Assuming the power of the Judge of the High Court to issue a writ of *habeas corpus*, and assuming the right of appeal against an order refusing such writ, *held* that, as it appeared, that the prisoner was in custody under a warrant in the form prescribed by Reg. III of 1818, the detention was legal. The detention, to be legal, need only be covered by an actually existing warrant of the Governor-General in Council in the form prescribed, without regard to the lawfulness of the arrest. The Regulation is not confined to prisoners of war or foreigners held in confinement for political reasons. *In the matter of* AMEER KHAN, 6 B L R. 459. [*R.*, 39 C. 164=15 C.W.N. 1053=14 C.L.J. 375=12 Cr. L J. 505=12 Ind. Cas. 273.]

(3)—*Warrant of arrest under Reg. III of 1818.*—The Governor-General, in issuing a warrant of commitment under Reg. III of 1818, does not in any way act judicially or as a Court of Justice, nor is he to be considered as having adjudicated that the person placed under personal restraint, had been guilty of some specific offence. The proceeding is not in the nature of the conviction of the person placed under restraint; therefore the person so placed under restraint cannot, in any future proceeding taken against him, plead that he has been already tried, convicted, and punished. QUEEN v. AMIR KHAN, 9 B L.R. 36. [*R.*, 11 Cr. L.J. 453=7 Ind. Cas. 359=37 C. 467, 39 C. 164=15 C.W.N. 1053=14 C.L.J. 375=12 Cr. L.J. 505 =12 Ind. Cas. 273.]

See LIBEL, 14 C.W.N. 713=37 C 360=6 Ind. Cas. 81.

Reg. VI of 1819 (Ferries Police).

[REP. (EXCEPT IN BENGAL AND EASTERN BENGAL), ACT XVII OF 1878; (IN BENGAL AND EASTERN BENGAL), BEN. ACT I OF 1885].

S. 13, cl. 2—*See* FERRY, 7 W.R. Cr. 32.

Reg. VIII of 1819 (Bengal Patni Taluqs).

[SHORT TITLE GIVEN, ACT V OF 1897, SUPPLEMENTED, AND APPLICATION OF SS. 9, 11, 13, 15 AND 17 EXT., BEN. REG. I OF 1820. S. 9 REP. IN PT. AND SUPPLEMENTED, ACT XXV OF 1850. SUPPLEMENTED, ACT VI OF 1853. SS. 18, 19 REP., ACT X OF 1859. AM., APPLICATION OF S. 13 EXT., S. 16, REP., BEN. ACT VIII OF 1865. APPLICATION OF S. 13, EXT. (IN ASSAM), BEN. ACT VIII OF 1869, s. 62. SS. 2, 3 (3), 8 (2), 9, 15 (2) REP. IN PT., ACT XVI OF 1874. TITLE AND PREAMBLE REP. IN PT. ACT I OF 1903, DECLARED IN FORCE IN THE SONTHAL PARGANAS, REG. III OF 1872, S. 3, AS AMENDED BY REG. III OF 1899, S. 3.]

Ss. 11 and 15—*See* CRIM. PRO. CODE, 1898, s. 107, 9 C.W.N. 792=2 Cr. L J. 415.

Reg. X of 1819 (Salt).

[REP., ACT VIII OF 1875.]

(1)—*S. 36—Possession of salt—Arrangement by Government.*—The absence of a protective document makes salt contraband. But where the Government has made such an arrangement with a particular party as places him in possession of a large quantity of salt, the element

Regulations—continued.

——2.—**Bengal**—*continued.*

Reg. X of 1819 (Salt)—*concluded.*

and conditions which give a salt officer the jurisdiction to seize salt in the absence of a protective document are wanting. KUMAR NARAIN RAJ v. SUPERINTENDENT OF SALT CHOWKEY, JULLESSUR, **1 Hay 247.**

Reg. VII of 1822 (Bengal Land Revenue Settlement).

[SHORT TITLE GIVEN, ACT I OF 1903. PORTIONS EXT., BEN. REG. IX OF 1825, SS. 2, 3, 5 (9). REP. IN PT., S. 5 EXPLD., S. 33 SUPPLEMENTED, BEN. REG. IX OF 1833, SS. 2,3, 5 TO 11. S. 23 (3) REP. IN PT. ACT VIII OF 1835. S. 31 (2) REP. IN PT., ACT XXV OF 1837. EXT., ACT XXXI OF 1858. S. 22, REP., SS. 20 ET SEQ REP. IN PT., ACT X OF 1859. EXT., ACT XI OF 1859, S. 60. S. 25, REP., ACT XX OF 1865. S. 29 SUPPLEMENTED, BEN. ACT III OF 1868. S. 2 (1) TO (5) REP., SS. 2 (6), 5 (2), 6 (1), 7 (1), 9 (2), 12 (2), 15, 16, 17, 20 (2), 23 (3), 29 (5), 30, 31 (2), 33 (1) REP. IN PT., ACT XVI OF 1874. S. 27, REP., S. 29 (1), (5) REP. IN PT., ACT XII OF 1876. TITLE REP. IN PT., ACT XII OF 1891. TITLE AND SS. 7 (1), (6), 29 (1), 31 (2), 33 (1). 35 REP. IN PT., SS. 2 (6), 3,5, 6 (2), 7 (1), 8,9, (3), 10 (1), (3), (9), 13, 16, 17, 20, 23 (1), 24 (2), 26, 32, 35 AM., SS. 5 (1), 6 (4) 7 (4) REP., ACT I OF 1903, REP. (IN AGRA, EXCEPT CERTAIN AREAS), ACT XIX OF 1873; (IN ASSAM, EXCEPT THE LUSHAI HILLS). REG. I OF 1886.]

S. 34 — *See* DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 13 C.W.N. 104 = 8 C.L.J. 564 = 9 Cr. L.J. 35.

Reg. VI of 1825 (Bengal Troops Transport).

[SHORT TITLE GIVEN, ACT V OF 1897. S. 5 REP. IN PT., ACT XII OF 1876. SS. 2,4,5 REP. IN PT., ACT I OF 1903. DECLARED IN FORCE —THROUGHOUT BENGAL (EXCEPT THE SAMBALPUR DISTRICT), EASTERN BENGAL AND AGRA, EXCEPT AS REGARDS THE SCHEDULED DISTRICTS, ACT XV OF 1874, SS. 6, 7; IN THE SONTHAL PARGANAS. REG. III OF 1872, S. 3 AS AMENDED BY REG. III OF 1899, S. 3; IN THE ANGUL DISTRICT, REG. I OF 1894, S. 3; IN THE CENTRAL PROVINCES AND THE SAMBALPUR DISTRICT (WITH A MODIFICATION), ACT XX OF 1875, S. 3; THIS MODIFICATION REP. IN THE SAMBALPUR DISTRICT, ACT VII OF 1905; IN OUDH (WITH MODIFICATIONS), ACT XVIII OF 1876, S. 3; IN AJMERE (WITH A MODIFICATION), REG. III OF 1877, S. 3.]

(1)—*S.2—Fine imposed by Joint Magistrate—Legality of—Crim. Pro. Code (Act V of 1898), s. 435—Power of Sessions Judge to make reference.*—It is only the Collector who can take action and impose a fine under the Bengal Reg. VI of 1825. Where the District Magistrate made over a proceeding under the Bengal Regulation to the Court of the Joint Magistrate, *held* that the Joint Magistrate had no jurisdiction to proceed under s. 2 of the Regulation. Where, under

Regulations—continued.

——2.—**Bengal**—*concluded.*

Reg. VI of 1825 (Bengal Troops Transport)—*concluded.*

such circumstances, the Joint Magistrate proceeded with the proceedings under s. 2 of the Regulation, which he had no jurisdiction to do, *held* that, as he dealt with the case as a Magistrate, the Sessions Judge could take action under s. 435, Crim. Pro. Code. MUHAMMAD ALAM v. KING-EMPEROR, **7 A.L.J. 983, 7 Ind. Cas. 389 = 11 Cr. L.J. 476.**

Reg XX of 1825 (Courts-Martial and Military Courts of Requests).

[REP., ACT X OF 1882.]

See JURISDICTION OF CRIMINAL COURTS—GENERAL, 13 B.L.R. 474 = 22 W.R. 20.

Reg. V of 1831 (Munsifs, and Sadr Amins and Principal Sadr Amins.)

[REP., ACT XVI OF 1868.]

S. 26—*See* APPEAL — APPEAL TO PRIVY COUNCIL, 13 M.I.A. 343.

Reg. IX of 1833 [Bengal Land-revenue (Settlement and Deputy Collectors)].

[SHORT TITLE GIVEN, ACT I OF 1903. SS. 14, 15 REP., ACT X OF 1859. S. 19 REP. ACT X OF 1873. S. 4, REP., ACT XVI OF 1874. TITLE AND S. 1 AM. AND REP. IN PT., S. 2 REP., SS. 3, 8, 24, 25 REP. IN PT., SS. 12, 13, 16 AM., ACT I OF 1903. REP. IN PT., (IN AGRA, EXCEPT CERTAIN AREAS), ACT XIX OF 1873. AM. (IN AGRA), ACT XIX OF 1886. REP. (IN ASSAM, EXCEPT THE LUSHAI HILLS), REG. I OF 1886. DECLARED IN FORCE THROUGHOUT AGRA, EXCEPT AS REGARDS THE SCHEDULED DISTRICTS, ACT XV OF 1874, S. 7.]

Ss. 20, 21—*See* CRIM. PRO. CODE, 1898, s. 476, 17 C.W.N. 571 = 14 Cr. L.J. 139, 18 Ind. Cas. 891 = 40 C. 465.

Reg. XIII of 1833 (Zilas of Ramgar, Jungle Mahals and Midnapore).

[REP., ACT XII OF 1876.]

See JURISDICTION OF CRIMINAL COURTS—GENERAL, 13 B. L.R. 474 = 22 W.R. Cr. 20.

——3.—**Bombay.**

Reg. II of 1827 (Caste-questions; Pleaders).

[REP. IN PT., ACT I OF 1846; ACT X OF 1861; ACT X OF 1873; ACT XII OF 1873; ACT XII OF 1876; BOM. ACT VI OF 1866; (LOCALLY), ACT XIV OF 1869, REP. IN PT. AND AM., ACT XVI OF 1895. CH. VI REP., ACT XVIII OF 1879, S. 42 (AS AM. BY ACT I OF 1903), WHEN NOTIFIED. SS. 21, 47 TO 54 AND 56 DECLARED IN FORCE THROUGHOUT THE PRESIDENCY OF BOMBAY, EXCEPT AS REGARDS THE SCHEDULED DISTRICTS, ACT XV OF 1874, S. 5.]

(1)—S. 16 (2)—*See* APPEAL—ACTS, 2 B.H.C. 106.

(2)—S. 56—*See* LEGAL PRACTITIONERS—PLEADER, 1 B.H.C. Cr. 136.

Regulations—continued.

——3.—Bombay—*continued.*

Reg. XII of 1827 (Police Duties and Powers of Magistrates).

[REP. IN PT., ACT III OF 1857; ACT XVII OF 1862; ACT X OF 1872; ACT X OF 1873; ACT XII OF 1873; ACT XII OF 1876; ACT IV OF 1894; BOM. ACT VI OF 1866; BOM ACT VII OF 1867; BOM. ACT VIII OF 1867; BOM. ACT II OF 1870. REP. IN PT. (LOCALLY), BOM. ACT IV OF 1890. REP. IN PT. AND AM., BOM. ACT III OF 1886. SUPPLEMENTED, ACT II OF 1889. SS. 19, 20, AND 27, CLAUSE 2 AND S. 37, CLAUSES FIRST AND SECOND, DECLARED IN FORCE THROUGHOUT THE PRESIDENCY OF BOMBAY, EXCEPT AS REGARDS THE SCHEDULED DISTRICTS, ACT XV OF 1874, S. 5 AND SCH. 3, AS AMENDED BY ACT XII OF 1891.]

(a) *See* BOM. ACT XXXV OF 1850, s. 9, 3 B. H. C. Cr. 11.

(1)—Ss. 5 and 41—*See* ACT XVIII OF 1854, s. 35, 3 B.H.C. Cr. 54.

(2)—*S.* 19—*Prohibition of Billiard saloons—License.*—S. 19 of Reg. XII of 1827 does not empower a District Magistrate to prohibit the keeping of billiard saloons or to require the keeper to receive a license, his power being confined to the regulation of such places. INWARD, No. 990 OF 1899, **Rat. Un. Cr. C. 483 = Cr. Rg. 48 of 1889.**

(3)—*S.* 19—*District Magistrate — Billiard saloons—License.*—A District Magistrate has no power, under s. 19 of Reg. XII of 1827 to forbid the keeping of a billiard saloon without a license. Disobedience of such an order is not an offence. QUEEN-EMPRESS v. EDWARD GOLDSTEIN, **Rat. Un. Cr. C. 490 = Cr. Rg. 59 of 1889.**

(4)—*S.* 19 (1)—Bona fide *dispute as to ownership—Scope of section.*—S. 19 (1) of the Police Reg. XII of 1827, relates only to places, the right of the public to which is not disputed. A Magistrate has, therefore, no authority to institute rules with regard to a *dharamshala* when there is a *bona fide* dispute as to its ownership. LETTER FROM THE PUNCH-MAHALS COLLECTOR, 25TH JUNE 1888, **Rat. Un. Cr. C. 389 = Cr. Rg. 42 of 1888.**

(5)—*S.* 19 (1)—*Order prohibiting bathing or washing of clothes near ferry approaches.*—The District Magistrate of Ahmednagar having issued a notice caused it to be put up in a conspicuous place at Newasa, prohibiting the washing of clothes on, and bathing from, the masonry pavements of the ferry approaches at that place, or the landings of the said ferry. *Held* that the rule made by the Magistrate was not one which could be legally made under s. 19, cl. (1) of Reg. XII of 1827. AHMEDNAGAR DISTRICT MAGISTRATE'S LETTER NO. 6914, DATED 15TH DECEMBER 1887, **Rat. Un. Cr. C. 356 = Cr. Rg. 45 of 1887.**

Regulations—continued.

——3.—Bombay—*continued.*

Reg. XII of 1827 (Police Duties and Powers of Magistrates)—*continued.*

(6)—*S.* 19 (6)—*Power of Magistrate to issue a notice directing the inhabitants of* pols *to employ a watchman.*—It is not competent to a Magistrate to issue a notice under s. 19 (6) of Reg. XII of 1827 calling on the inhabitants of *pols* to employ a watchman, if they lock the *pol* gates at night, in order to open the gates to the Police when required. LETTER FROM THE KAIRA MAGISTRATE, 10TH MARCH 1881, **Rat. Un. Cr. C. 159.**

(7)—*S.* 19 (6)—*Notice under section—Valid notice.*—The District Magistrate of Ahmedabad issued the following notice under s. 19 (6) of Reg. XII of 1827: "Whereas the Munsar tank is held sacred by the Hindu community and Gusaria tank is much used by the people whose houses surround it and whereas fishing in these tanks is likely to hurt the religious feelings of the Hindus who resort to them for worship and for bathing, notice is hereby given that no one shall fish in the aforesaid tanks:" *Held* that such a notice could not be issued under the section. LETTERS FROM THE DISTRICT MAGISTRATE OF AHMEDABAD, **Rat. Un. Cr. C. 362.**

(8)—*S.* 19—*See* NUISANCE UNDER CRIM. PRO. CODE, 8 B.H.C. Cr. 23.

(9)—S. 27—*Order directing suspected characters to attend daily muster—Penal Code, s.* 164.—The accused, suspected characters, were repeatedly warned to attend the daily muster, but failed to do so. They were all convicted, under s. 174, I.P.C., of non-attendance in obedience to an order from a public servant, *i.e.*, the police patel. *Held*, reversing the conviction, that s. 27, Reg. XII of 1827, contemplates the taking of security for good behaviour, or with the assent of the person concerned, the more lenient measure described therein; and that the Magistrate alone could take these steps; and that the proper remedy, for failure to comply with the terms imposed and accepted, was an exaction of security for good behaviour. QUEEN-EMPRESS v. BALU HATHI, **Rat. Un. Cr. C. 289 = Cr. Rg. 28 of 1886.**

(10)—*S.* 27 — *Notice — District Magistrate—Action with respect to suspected characters—Procedure to prove the suspected character—Assent of the person dealt with.*—Before any action under s. 27 of the Bombay Reg. XII of 1827, can be taken against a person, (1) he must be shown, in accordance with legal procedure, to have been a suspected person and (2) his assent to the measure adopted should be taken. EMPEROR v. KAVTICK CHITARAM, **8 Bom. L. R. 241 = 3 Cr. L.J. 338.**

(11)—*S.* 27—*Notice, conditions of issue of—Crim. Pro. Code,* 1898, *Ch* VIII.—A notice under s. 27 of the Regulation can only be used after the proceedings have been taken against each person individually under Ch. VIII, Crim. Pro. Code, 1898, and it is only on his failure to

Regulations—continued.

——3.—**Bombay**—*continued.*

Reg. XII of 1827 (Police Duties and Powers of Magistrates)—*continued.*

furnish security under that chapter that the restrictions mentioned in the latter half of s. 27 of the Regulation can be enforced and that too with the assent of the accused person. EMPEROR v. GAHINA *kom* BABAJI, **7 Bom. L.R. 459=2 Cr. L.J. 433.**

(12)—*S. 27—Bond under—Conditions to be reasonable—Not to restrict liberty or deprive means of livelihood— Scope of section.*—The restrictions contained in a bond taken under s. 27, Reg. XII of 1827, should be imposed by the District Magistrate himself and are subject to two important conditions, *viz*., (1) that they will not unreasonably affect the personal liberty of the suspect and (2) that they will not have the effect of depriving him of the means of procuring a livelihood. A condition requiring the suspect to attend roll-call at such time and place as may be notified to him by the District Superintendent of Police is not in compliance with the terms of s. 27. The District Magistrate cannot delegate his duties to the Superintendent of Police. S. 27 contemplates an order being made with the assent of the suspected person, in order to obviate the severer procedure of the suspect being committed to prison in default of furnishing security. CROWN v. UMAR, **6 S.L.R. 177=19 Ind. Cas. 511=14 Cr. L J. 255.**

(13)—*S. 37—' Neglect '—Meaning of the term —Imposition of separate fine on Mahomedan and Hindu residents—Legality.*—Cowardice in not resisting the dacoits is not tantamount to ' neglect ' within the meaning of s. 37, Reg. XII of 1827. The neglect must at least consist of acts or omissions which lead to the inference that the villagers were in sympathy with the robbers and endeavouring to obstruct or defeat the police investigation. S. 37 of the Regulation imposes responsibility on the whole community residing within the boundary of the village. A Magistrate issuing notice under that section can only deal with that community as a body. He has no jurisdiction to exempt particular hamlets, or to exempt particular villagers from his order. Nor has he jurisdiction to impose separate fines on the Mahomedan and on the Hindu residents. CROWN v. CHAKARKOTE, **6 S.L R. 124=19 Ind. Cas. 505=14 Cr. L.J. 249.**

(14)—*S. 37—Trial for offence under Regulation—Trial as that of a criminal offence—Presence of accused only optional—Conviction of individual villagers — Illegality — ' Village,' Meaning of the term.*—A and B, two inhabitants of a village, were fined under s. 37, Bombay Reg. XII of 1827. The evidence was recorded in the absence of the accused, but they were permitted to attend the proceedings whenever they so desired. *Held*, that the trial was not irregular. The words used in s. 37 of the Regulation "investigate the matter as a criminal offence" merely mean that the Magistrate should proceed on evidence and after hearing both sides or giving both parties an opportunity of being heard. The attendance of the villagers is merely optional. *Held*, also, that the order fining two individual villagers was bad and ought to be set aside. S. 37 only empowers the Magistrate to take proceedings against the inhabitants of a village, and he cannot make an order affecting only individual villagers or a part of a village. The word ' village ' might be construed to mean also a hamlet or any such independent cluster of houses as might be described as a village or hamlet. IMPERATOR v. SYED ABDULA SHAH, **4 S.L.R. 269=12 Cr. L.J. 391=11 Ind. Cas. 255.**

(15)—S. 41—*See* No. 1, *supra.*

(16)—*S. 52—Inquest report — Evidence— Bom. Act* VIII *of* 1867.—Reg. XII of 1827, s. 52, having been repealed by Bom Act VIII of 1867, an inquest report is not admissible as evidence. REG.v. BHAISHANKAR NARBHERAM, **6 B.H.C. Cr. 75.**

Reg. XIV of 1827 (Crimes and Offences).

[REP. ACT XII OF 1873.]

(1)—S. 1, cl. 1, art. 7—*See* OFFENCE BEFORE PENAL CODE CAME INTO OPERATION, 1 B. H.C. Cr. 93.

(2)—*Ss.* 7, 19—"*Imprisonment*"—*Meaning of.*—"Imprisonment" under Reg. XIV of 1827, meant imprisonment with or without hard labour. A Magistrate could order imprisonment with hard labour in cases not falling within s. 19, cl. (2). REG. v. RAMA BAHIRU, **Rat. Un. Cr. C. 41=29-9-1870.**

(3)—S. 19—*See* No. 2, *supra*.

Reg. XVI of 1827 (Collectors of Land-Revenue).

[REP. IN PT., ACT XI OF 1843 ; ACT X OF 1873 ; ACT XII OF 1873 ; ACT X OF 1876 ; ACT XII OF 1876 ; BOM. ACT V OF 1866 ; BOM. ACT III OF 1874 ; RESIDUE REP. (LOCALLY), BOM. ACT V OF 1879.]

S. 26—*See* SANCTION TO PROSECUTE—AUTHORITIES COMPETENT TO GRANT SANCTION—REFUSAL TO GRANT SANCTION—APPEAL, REVISION AND JURISDICTION OF COURTS, 7 B.H.C. Cr. 64.

Reg. XVII of 1827 (Land-Revenue).

[REP. IN PT. ACT XXVI OF 1871; ACT XII OF 1873 ; ACT X OF 1876; ACT XII OF 1876; BOM. ACT VII OF 1863; BOM. ACT II OF 1866; RESIDUE REP. (LOCALLY), BOM. ACT V OF 1879.]

(1)—*S. 16—Undue exaction of money—Jurisdiction.*—The offence of undue exaction of money under s. 16 of Reg. XVII of 1827 being one punishable with imprisonment for seven years is not cognizable by a Magistrate, but exclusively triable by a Court of Session. REG. v. AJAM DULLA, **8 B.H.C. Cr. 115.**

Regulations—continued.

——3.—**Bombay**—*continued.*

Reg. XVII of 1827 (Land-Revenue)—*concld.*

(2)—Ss. 26, 29—*See* CONTEMPT OF COURT, 5 B.H.C. Cr. 39.

(3)—S. 29—*See* No. 2, *supra.*

Reg. XIX of 1827 (Land Revenue Bombay Town), Taxes on Shops).

[REP. BOM. ACT II OF 1876.]

S. 14—*See* BOM. ACT XXXV OF 1850, s. 16, 6 B.H.C. Cr. 45.

Reg. XXI of 1827 (Duty on Opium and Spirits).

[REP. ACT IV OF 1894.]

(1)—*Crim. Pro. Code* (*Act* XXV *of* 1861)—*Jurisdiction.*—The jurisdiction vested in a District Magistrate by Reg. XXI of 1827 is not ousted by the Crim. Pro. Code, and he can therefore try an offence against the Opium Laws though the penalty leviable exceeds his jurisdiction under the Crim. Pro. Code. REG. v. ABA APAJI, **Rat. Un. Cr. C. 62 = Cr. Rg. 18-1-1872.**

(2)—*S.* 4—*Keeping smuggled opium.*—Where several persons are convicted of keeping smuggled opium, under s. 4, Reg. XXI of 1827, each of them is liable to pay a forfeit of double the value of the smuggled opium and double the amount of duty leviable thereon. REG. v. VAKHATCHAND, **1 B.H.C. Cr. 50.** [*Overruled*, 7 B.H.C. 39.]

(3)—*S.* 7—*Smuggled opium—Penalty—More than one accused.*—Where two persons were convicted of a joint act of keeping a parcel of smuggled opium, *held* that only double the duty and double the value of the opium could be imposed on both together and not on each as a penalty. REG. v. SHOWDAR GHENAR, **7 B.H.C. Cr. 39, F.B.** (1 B.H.C. 50, *Overruled.*) [*Appl.*, 22 W.R. Cr. 9.]

(4)—Ss. 4, 7, 10, cl. 4—*See* MAGISTRATE—JURISDICTION OF—MISCELLANEOUS, 7 B.H.C. Cr. 59.

(5)—S. 7—*See* MAGISTRATE, JURISDICTION OF—MISCELLANEOUS, 8 B.H.C. Cr. 118, 9 B.H.C. 166.

(6)—S. 7—*See* No. 4, *supra.*

(7)—S. 10, cl. 4—*See* MAGISTRATE, JURISDICTION OF—MISCELLANEOUS, 3 B.H.C. Cr. 50.

Reg. III of 1829 (Cotton Frauds).

[REP. BOM. ACT IX OF 1863.]

(1)—*S.* 1 (1)— *Fraudulent sale of cotton.*—Where cotton had been sold subject to examination by an Inspector, the mere fact that, in one of the bales, cotton of two descriptions, one of bad and the other of good quality were mixed together, would not constitute an offence punishable under s. 1, cl. 1 of Reg. III of 1829. REG. v. RATANJI BHUKAN, **1 B.H.C. 17, Cr.**

Regulations—continued.

——3.—**Bombay**—*concluded.*

Reg. II of 1891 (Aden Laws).

See BOM. ACT II OF 1864, Rat. Un. Cr. C. 825 = Cr. Rg. 67 of 1895.

* **Reg. III of 1892 (Sindh Frontier).**

[REP. IN PT., ACT XVI OF 1895.]

(1)—*Ss.* 20, 21, 23—*Bond for good behaviour—cumstances entailing forfeiture—Order of forfeiture—Open to revision—Crim. Pro. Code*, *ss.* 435, 121.—S. 23 of the Sind Frontier Regulation states in clear terms what amounts to a breach of a bond given under s. 20 and under what circumstances the District Magistrate may declare a bond taken under s. 21 forfeited, and s. 23 must be accepted as containing a comprehensive statement of what amounts to breach of the one bond and what involves forfeiture of the other. An application under s. 435, Crim. Pro. Code, lies to revise an order of the District Magistrate declaring forfeited a bond entered into by the applicant under ss. 20, 21 of the Sind Frontier Regulation. CROWN v. IMAMBUX ROWAL KHAN, **7 S.L R. 194 = 15 Cr. L J. 544 = 24 Ind. Cas. 952.** (5 S.L.R. 105, *R.*)

——4.—**Burma.**

* **Reg. VII of 1886 (Upper Burma Criminal Justice.)**

[REP. ACT I OF 1903.]

Sch. XV—*See* JOINT TRIAL, U.B.R. 1904, 2nd Qr., Penal Code, 9.

* **Reg. V of 1887 (Upper Burma Municipal).**

[REP. IN PT., ACT XIII OF 1898, s. 18, AM. ACT XIII OF 1898, s. 16. AS TO REPEAL OF REG. V OF 1887 IN PARTICULAR MUNICIPALITIES, SEE BUR. ACT III OF 1898, ss. 1, 5, 14, 15.]

(1)—*Complaint by Municipal officers—Procedure—Penalty for breach of Municipal rule.*—The procedure laid down in s. 200, Crim. Pro. Code, applies to complaints to Municipal officers. Processes issued on the complaint of a Municipal officer are not exempt from the payment of Court fees. The only penalties which can be inflicted for a breach of a rule made under s. 12 of Upper Burma Municipal Regulation are those specified in s. 21 of the Regulation. A sentence of imprisonment in default of compliance with an order is therefore illegal. QUEEN-EMPRESS v. BALO TO, **U.B. R. 1892—1896, Vol. 1, 131.**

(2)—*S.* 12 (*d*).—The words "re-build" or "re-erect" do not include "repair." MAUNG SEIN v. MUNICIPAL COMMITTEEE OF PAKOKKU, **U.B R. 1904, 3rd Qr., Upper Burma Municipal Regulation 1 = 1 Cr. L J. 1049.**

(3)—S. 12 (1) (*c*)—*See* BUR. ACT III OF 1898, ss. 142 (*f*), 180, 1 U.B.R. 1902—1903, Municipal, 1.

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* These local Regulations were passed by the Imperial Legislature.

Regulations—continued.

——4.—Burma—*continued.*

Reg. V of 1887 (Upper Burma Municipal) —*concluded.*

(4)—*S.* 21—An order under s. 21 of the above Act, directing the removal of a building and sentencing the owner to imprisonment in default is illegal. QUEEN-EMPRESS v. BALO TO, **U.B.R. 1892—1896, Vol. I, 131.**

(5)—*S.* 21—*Continued infringement—Extent of penalty.*—If a person, even after the issue of a notice by the Committee, continues to infringe any of the Municipal rules, he can be punished with a fine of Rs. 50 for the original offence and with a further fine of Rs. 5 a day for every day it has been repeated up to the time of trial after he has been given notice. But an order directing him to pay the additional fine for an unascertained number of days should not be passed. QUEEN-EMPRESS v. NGA BWIN, **U.B.R. 1892—1896, Vol. I, 132.**

* **Reg. XII of 1887 (Upper Burma Ruby).**

[REP. IN PT., ACT XIII OF 1898, s. 18 AM. ACT XIII OF 1898, s. 16, REG. V OF 1891; REG. I OF 1897. DECLARED IN FORCE—IN KACHIN HILL-TRACTS, AS REGARDS HILL TRIBES, REG. I OF 1895, s. 3; IN CERTAIN TRACTS IN THE CHIN HILLS, REG. V OF 1896, S. 3.]

(1)—*S.* 6 (1).—Under s. 6 (1), Upper Burma Ruby Regulations, it is an offence to raise precious stones from rejected earth in a stone tract, whether on the surface or in the interior, if committed by a man, but such action by a woman, in the circumstances specified in Revenue Department Notification No. 361 of 27-10-1897, is no offence, and a Magistrate can confiscate only stones with respect to which an offence under s. 6 has been committed. S. 31 (1), Upper Burma Land and Revenue Regulation, does not apply to the case. KING-EMPEROR v. NGA NYUN, **1 U.B.R. 1902—1903, Upper Burma Ruby Regulations, 1.**

* **Reg. XIV of 1887 (Upper Burma Village).**

[REP., BUR. ACT VI OF 1907.]

(1)—*Refusing or neglecting to comply with requisition for cost—Personal interest of Magistrate.*—A township officer was travelling from one village to another for the performance of his official business and required a cart for the conveyance of office records. The headman discharged the obligation so far as he was concerned, but one of his villagers had been convicted for refusing or neglecting to comply with the requisition of the headman in the absence of reasonable excuse. *Held* that the conviction was sustainable. If the Magistrate before whom the case is brought for trial, happens to be the officer for whom the help of the villager is solicited, he ought not to try the case himself. Even if he was not actually a party, he had a personal interest in the matter and was

* These local Regulations were passed by the Imperial Legislature.

Regulations—continued.

——4.—Burma—*continued.*

Reg. XIV of 1887 (Upper Burma Village) —*continued.*

precluded by s. 555, Crim. Pro. Code, 1882, from trying the case. It is important in such matters that not only the reality, but the mere appearance of prejudice or bias should be avoided. QUEEN-EMPRESS v. NGA KAUK, **U.B.R. 1892—1896, Vol. I, 321.**

(2)—S. 4—*See* CRIM. PRO. CODE, 1898, s. 45, U.B.R. 1892—1896, Vol. I, 19.

(3)—*S.* 5 — *Requisition to keep guard—Watchmen at village gate going to sleep.*—The fact of the villagers, who were supposed to be on duty as *kinthamas* or watchmen at the village gate, going to sleep at the village gate is not a compliance with a requisition to keep guard, and in the absence of rules on the subject, the watchmen are bound to make some arrangement among themselves for the division of sentry duty and maintenance of an efficient watch. *Held further*, the obligation imposed on the accused, if any, could come only under cl. (*f*) of s. 5 of the Village Regulation, which requires a headman "to take such measures and execute such works for the protection of the village" . . . . "as the Deputy Commissioner may direct," and there was no evidence on record of any direction by the Deputy Commissioner on the subject. Case sent back for enquiry. QUEEN-EMPRESS v. NGA THA DIN, **U.B.R. 1892—1896, Vol. I, 325.**

(4)—*S.* 5 (1) —*Disobedience of order of village headman as to burying carcass of animal dying from an infectious disease.*— One of the public duties of the headman, in all places where Rules had been made under s. 5 (1) of Village Regulation, is to order the owner to bury the carcass of an animal dying from an infectious disease. Therefore, a conviction for disobeying the orders of the headman of a village can stand only in a place where these rules are in force. Again, the Magistrate who tries the case must be empowered under s. 190 (*c*) of the Crim. Pro. Code. The report of a police officer *who made an enquiry on his own motion*, must not be the basis of the Magistrate's proceedings in the case, for, such a report of the police officer is not a report within the meaning of s. 190, Crim. Pro. Code. QUEEN-EMPRESS v. NGA THAUNG, **U.B.R. 1892—1896, Vol. I, 328.**

(5 & 6)—*S.* 6—*Conviction under—Act* VI *of* 1864 (*Whipping*), *ss.* 3 *and* 4—*Penal Code, s.* 75.—A conviction under s. 6 of the above Regulation does not involve enhanced punishment, either under s. 75, I.P.C. or under s. 3 or 4 of the Whipping Act. QUEEN-EMPRESS v. NGA PO KIN, **U.B.R. 1897—1901, Vol. I, 388.**

(7)—*S.* 8—*Conviction under the section—When can be sustained.*—It must be proved to support a conviction under s. 8, Village Regulation, that the headman made a certain requisition to the accused and that the accused refused or

***Regulations*—continued.**

——4.—Burma—*continued.*

Reg. XIV of 1887 (Upper Burma Village) —*concluded.*

neglected to comply with it. KING-EMPEROR v. NGA MAUNG, 1 U.B.R. 1902—1903, Upper Burma Village Reg. 1.

(8)—*S.* 8 (2)—*Slaughtering cattle.*—Under s. 8 (2) of the Upper Burma Village Regulation, no offence is necessarily constituted by slaughtering cattle within an area which the headman is directed by a rule under s. 5 (1) of the Upper Burma Village Regulation, not to allow such slaughter. KING-EMPEROR v. NGA PU, **U. B.R. 1902—1903, Village Reg. 3.** (U.B.R. 1903, Village Reg. 1, *R.*)

(9)—S 14-A—*See* PWES, U.B.R. 1897—1901, Vol. I, 368.

***Reg. III of 1889. (Upper Burma Land and Revenue).**

[REP. IN PT., ACT XIII OF 1898, S. 18; REG. IV OF 1896, S. 3. AM., ACT XIII OF 1898, S. 16; REG. III OF 1894; REG. II OF 1895; REG. III OF 1898; REG. IV OF 1900; REP. IN PT. AND AM., REG. V OF 1901, S. 12(1) AM., REG. III OF 1903. SS. 34, 35, 36 REP. BUR. ACT II OF 1905, SS. 32, 33 REP. LOCALLY BUR. ACT III OF 1905 (WHEN NOTIFIED). APPLICATION OF CERTAIN PROVISIONS, EXT. BURMA ACT III OF 1905, S. 30 (WHEN NOTIFIED), S. 31, AM., REG. VI OF 1907.]

See BUR. REG. XII OF 1887, s. 6 (1), 1 U.B. R. 1902—1903, Ruby Reg. 1.

***Reg. VI of 1890 (Criminal Justice Upper Burma Amending Reg. VII of 1886).**

[REP. ACT I OF 1903.]

(1)—*S.* 12—*Excise Act*, s. 41, *offence under—Trial by Magistrate and acquittal—Retrial ordered by District Magistrate—Such order and conviction thereon bad.*—Where an accused was tried by a Magistrate for an offence under s. 41 of the Excise Act and acquitted, and the District Magistrate on a report by the Sub-Divisional Magistrate, ordered a retrial by the Sub-Divisional Magistrate, who convicted the accused and sentenced him to pay a certain fine, *held* that the District Magistrate had no power under the Criminal Justice Regulation to set aside an order of acquittal and direct a retrial, and that the conviction and sentence should be quashed. QUEEN-EMPRESS v. NGA CHIN, **U.B.R. 1892—1896, Vol. I, 11.**

(2)—*S.* 12—*Revision by District Magistrate of order of second class Magistrate awarding portion of fine as reward.*—S. 12 of the Schedule of the above Regulation, which confers powers of revision on District Magistrates, includes also the power of revising an order of a second class Magistrate awarding a portion of fine as a reward. QUEEN-EMPRESS v. NGA YAN LIN, **U.B R. 1892—1896, Vol. I, 14.**

* These local Regulations were passed by the Imperial Legislature.

***Regulations*—continued.**

——4.—Burma—*continued.*

*** Reg. VI of 1891 (Upper Burma Towns).**

[REP. BUR. ACT III OF 1907.]

(1)—*Ss.* 4 *and* 6—*Neglect of duty by headman of ward or elder of block.*—The duties of the headman of a ward and of the elder of a block in respect of the communication of information concerning offences are all contained within the four corners of s. 4 of the towns Regulation, and those duties cannot be added to in any way except in accordance with the provisions of cl. (vi), sub-s. (i). QUEEN-EMPRESS v. NGA TUN U., **U.B.R. 1897—1901, Vol. I, 381.**

(2)—S. 6—*See* No. 1, *supra.*

(3)—*S.* 7 (2)—*Lawful requisition by headman of ward.*—The inhabitants of a town are punishable under the Towns Regulations only for neglect to comply with lawful requisitions. There is nothing in the Towns Regulation authorising ward headman to require the arrival of strangers to be reported to them, and such a requisition is not a lawful one. QUEEN-EMPRESS v. NGA MIN, **U.B.R. 1897—1901, Vol. I, 384.**

(4)—*S.* 7 (2)—*Lawful requisition by headman of ward—Necessity.*—In order that a conviction may be had under s. 7 (2) of the Towns Regulation, it must be shown that there has been a lawful requisition by a head-man and that there has been a refusal or neglect to comply with it. QUEEN-EMPRESS v. RAMAZAN, **U.B R. 1897—1901, Vol. I, 386.**

*** Reg. V of 1892 (Upper Burma Criminal Justice).**

[REP. IN PT., ACT XIII OF 1898, S. 18. AM. ACT XIII OF 1898, S. 16. DECLARED EXCEPT. SS. I, II, VI, VII, IX, X, XVI AND XVII, OF THE SCHEDULE) TO BE IN FORCE—IN KACHIN HILL-TRACTS, AS REGARDS HILL TRIBES, REG. I OF 1895, S. 3; IN CERTAIN TRACTS IN THE CHIN HILLS, REG. V OF 1896, S. 3.]

S. 15—*See* CRIM. PRO. CODE, 1898, s. 537, U.B.R. 1897—1901, Vol. I, 91.

*** Reg. V of 1895 (Criminal Justice, Upper Burma, amending Reg. V of 1892).**

[REP. ACT XIII OF 1898, s. 18.]

(1)—*See* CRIM. PRO. CODE, 1898, s. 106, U. B.R. 1897—1901, Vol. I, 9.

(2)—*See* CRIM. PRO. CODE, 1898, s. 566, U. B.R. 1897—1901, Vol. I, 8.

(3)—Sch. XV—*See* PRACTICE AND PROCEDURE, U.B.R. 1897—1901, Vol. I, 47.

*** Reg. V of 1898 (Upper Burma Forest).**

[REP. BUR. ACT IV OF 1902.]

(1)—*S.* 67 (=s. 63 *of Burma Forest Regulation*, 1902) —*Burning firewood without paying first royalty.*—S. 67 of the Burma Forest Regulation V of 1898 cannot apply, and was never

* These local Regulations were passed by the Imperial Legislature.

Regulations—continued.

——4.—**Burma** —*concluded.*

Reg. V of 1898 (Upper Burma Forest) —*concluded.*

intended to apply to a case of burning firewood without first paying the royalty. KING-EMPEROR v. SADU SINGH, **1 U.B.R. 1902—1903, Forest 1.**

(2)—*Rules* 75 (1), 76—*Forest—Meaning.*—The word "forest," as used in the Forest Regulation, is to be understood as including everything that is not non-forest, that is to say, the whole of the country except what is specifically excluded under the provisions of the Forest Regulation or the Land and Revenue Regulation. KO SET TAUNG v. QUEEN-EMPRESS, **U.B.R. 1897—1901, Vol. I, 196.**

(3)—Rule 76—*See* No. 2, *supra.*

***Reg. II of 1899 (Upper Burma Towns).**

[REP. BUR. ACT III OF 1907.]

See PWES, U.B.R. 1897—1901, Vol. I, 368.

——5.—**Madras.**

Reg. XXIX of 1802 (Madras Karnams).

[SHORT TITLE GIVEN, ACT XI OF 1901. REP. IN PT., MAD. REG. II OF 1906, S. 7; ACT XII OF 1876. REP. IN PT. (EXCEPT IN SCHEDULED DISTRICTS). MAD. ACT III OF 1895. REP. IN NOTIFIED ESTATES, MAD. ACT II OF 1894. DECLARED IN FORCE THROUGHOUT THE PRESIDENCY OF MADRAS, EXCEPT AS REGARDS THE SCHEDULED DISTRICTS ACT, XV OF 1874, S. 4.]

(1)—*See* PENAL CODE, s. 177, 1 Weir 111.

(2)—S. 2—*See* PUBLIC SERVANT, 15 M. 127 = 1 Weir 72.

Reg. I of 1805 (Salt).

[REP. MAD. ACT IV OF 1889.]

(1)—*Spontaneous salt, what amounts to.*—The term "spontaneous salt" is a salt which is produced naturally, and which is comparatively free from any impurity so as to require no process of manufacture to render it suitable for human consumption. ANONYMOUS, **3 M. 17, F.B.**

(2)—*See* MAD. ACT XVII OF 1840, 1 Weir 894, F.B.

(3)—*S.* 18—*Possession of spontaneous salt, whether an offence—Madras Salt and Excise Act* (VI *of* 1871)—*Held,* by the Full Bench (*Innes, J., dissenting.*)—Persons who collect spontaneous salt for their domestic consumption or who are found in possession of this salt for that purpose, or who are found in the act of conveying it from the place in which it is collected to their houses are not, on the mere proof of such collection, possession, or conveyance, liable to be convicted for an offence under the provisions of Reg. I of 1805, s. 18. But in the Districts to which Act VI of 1871 is extended, the collection of spontaneous salt without a license is prohibited, and persons found in the act of obtaining it, or in possession of it under circumstances which show that they intended to evade the payment of the excise, would probably be held liable to conviction. *Per Innes, J.*—The conveyance, *i.e.*, the removal from one place to another of all inland salt of any description not manufactured and sold under the control of Government Officers, is in itself illicit within the meaning of Reg. I of 1805, and the party conveying is punishable, if it be shown that he has obtained the salt illicitly before proceeding to convey it. As to possession, it may be said that spontaneous salt cannot, from its nature, be in a man's possession without having been conveyed, nor earth salt, without its having been conveyed or manufactured, and that therefore the very possession shows that it was obtained in an illicit manner and would be punishable under s. 18. But it rests with the prosecution to show some thing more than a mere possession. It must show not merely that the accused person has obtained the salt, but he has obtained it in an illicit manner. ANONYMOUS, **3 M. 17, F B.**

(4)—*S.* 18—*Collecting salt from salt swamps, or being in possession of salt earth—Act* VI *of* 1871 (*The Madras Salt and Excise Act*).—The collecting of salt earth from salt swamps, or the being in possession of salt earth for the purpose of making salt, does not come within any of the terms of s. 18 of Reg. I of 1805. Such acts may be dealt with under Act VI of 1871, if the Local Government has issued the notification required by law to bring the act in force in particular district. REG. v. PYLA ATCHI, **1 M. 278.**

Reg. IV of 1816 (Village Munsiffs).

[REP., ACT XI OF 1901, SCH. III.]

(1)—*S.* 15—*Power of Village Munsiff to examine witnesses on oath* —S. 15, Reg. IV of 1816, empowers a Village Munsiff to require the attendance of any person in his village, who may be named as a witness by a party and cl. 4 of the same section gives him authority at his discretion to cause an oath to be administered to a witness. There is nothing in the Regulation to prevent a Village Munsiff examining as a witness any person who is present and who may not have been summoned nor is there anything to prevent one party naming the other party as a witness if he so pleases. Where a defendant in a suit before a village munsiff being present at the inquiry did not object to being called as a witness or to be examined, *held,* that it was competent to the village munsiff, under the circumstances, to examine the defendant as a witness, and that once sworn the defendant was legally bound to speak the truth. QUEEN-EMPRESS v. VENKAYYA, **11 M. 375 = 2 Weir 163 = 1 Weir 155.**

* These local Regulations were passed by the Imperial Legislature.

Regulations—continued.

——**5.—Madras**—*continued.*

Reg. IV of 1816 (Village Munsiffs)—*concluded.*

(2)—Ss. 15, 16—*See* CONTEMPT OF COURT, 6 M. 249 = 1 Weir 89.

(3)—S. 16—*See* No. 2, *supra.*

Reg. VI of 1816 (Native Commissioners).

[REP., ACT III OF 1873.]

See SANCTION TO PROSECUTE—AUTHORITIES COMPETENT TO GRANT SANCTION—REFUSAL TO GRANT SANCTION—APPEAL, REVISION AND JURISDICTION OF COURTS, 7 M.H.C. 182.

Reg. XI of 1816 (Madras Village Police).

[SHORT TITLE GIVEN, ACT XI OF 1901. REP. IN PT., MAD. REG IX OF 1828; ACT XVII OF 1862 (AS AMENDED BY ACT XXXVI OF 1867); ACT XII OF 1876, AM., MAD. REG. IV OF 1821, S. 6; SS. 8, 9 AND 10, S. 11, CL. (1), AND SS. 13, 14 AND 47 DECLARED IN FORCE THROUGHOUT THE PRESIDENCY OF MADRAS, EXCEPT AS REGARDS THE SCHEDULED DISTRICTS, ACT XV OF 1874, S. 4.]

(1)—*Village Magistrate trying an offender, whether a Judge—Penal Code, s. 19—Crim. Pro. Code,* 1898, *s.* 197.—A Village Magistrate, exercising jurisdiction and trying an offender under Reg. XI of 1816, is a Judge within the meaning of s. 197, Crim. Pro. Code, and s. 19, Penal Code. But a Village Munsiff preventing an offence, and not trying it is not acting in the capacity of a Judge, nor is he a public servant not removable from office without the sanction of the Government. KANDASAMI CHETTI v. SOLI GOUNDAN, **23 M. 340 = 2 Weir 222.**

(2)—*Enquiry by a Village Magsistrate on Sunday.*—It is not illegal for a Village Magistrate to hold an enquiry on a Sunday. *In re* MOOPPEN, **1 Weir 921.**

(3)—*See* ESCAPE FROM LAWFUL CUSTODY, 1 Weir 205.

(4)—*See* SANCTION TO PROSECUTE—AUTHORITIES COMPETENT TO GRANT SANCTION—REFUSAL TO GRANT SANCTION—APPEAL, REVISION AND JURISDICTION OF COURTS, 4 M.L.T. 214.

(5)—S. 5—*See* ESCAPE FROM LAWFUL CUSTODY, 17 M. 103 = 1 Weir 201.

(6)—*Ss.* 8 *and* 9—*Duties of a Village Munsiff.*—A Village Munsiff is bound to give information of every offence committed in his village, not merely to the heads of other villages, but to such person and in such manner as may be most likely to be effectual for the apprehension of the offender. Under s. 9, a Village Munsiff is expressly bound to report to the police the arrival of strangers, and the law would be strangely inconsistent, if it did not also bind him to report offences committed. HIGH COURT PROCEEDINGS, 12TH MARCH, 1867, **1 Weir 920 = 3 M.H.C. App. 30.**

(7)—S. 9—*See* No. 6, *supra.*

Regulations—continued.

——**5.—Madras**—*continued.*

Reg. XI of 1816 (Madras Village Police)—*continued.*

(8)—*S.* 10—*Punishment of stocks, whether can be imposed upon Mahomedan.*—S. 10 of Reg. XI of 1816 authorises Village Munsiffs to inflict the punishment of stocks, if the offending parties be any of the lower castes of the people on whom it may not be improper to inflict so degrading a punishment. This definition involves two conditions, the one having relation to the position of the castes to which an offender belongs, and the other to the social status of the person himself. A dealer in petty wares may or may not be a person on whom the infliction of the punishment may be degrading, but a Mahomedan cannot be said to belong to the lower castes of the people. It is probable that the framers of the regulation had in view those castes who, prior to the introduction of British rule, were regarded as servile. QUEEN v. NABI SAHEB, **6 M 247 = 1 Weir 927 = 7 Ind. Jur. 304.** [*F.*, 7 M.L.T. 305 (306) = 5 Ind. Cas. 797 = (1910) M.W.N. 52 = 11 Cr. L.J. 249; *R.*, 24 M. 271.]

(9)—*S.* 10—*Jurisdiction of Village Magistrate—Madras Regulation* XI *of* 1816, *s.* 10.—A Village Magistrate has no jurisdiction to try an offender for an offence committed in any village save his own. *In re* PARA VAGUTAN, **1 Weir 921.**

(10)—*S.* 10—*Kallans—Whether lower castes of people, within the meaning of—Power of Village Magistrate to sentence Kallan to confinement in stocks.*—The Kallans do not come under the purview of the term "the lower castes of the people" in the Regulation. A Village Magistrate has no power to sentence a Kallan to confinement in stocks. *In re* KOILA THEVAN, **7 M L.T. 305 = 5 Ind. Cas. 797 = 11 Cr. L.J. 249.** (6 M. 247, 24 M. 271, *F.*)

(11)—*S* 10—*Confinement in stocks.*—To render a person liable to confinement in the stocks under the Regulation, there must be a concurrence of two circumstances, namely, (1) he must be a person belonging to one of the lower castes of the people, and (2) he must be a person on whom, from his social standing or otherwise, it may not be improper to inflict so degrading a punishment. The Regulation is a penal one and must be construed strictly and, in case of doubt, in favour of the liberty of the subject. The test is not what is the offender's creed, whether Mahomedan, Christian or Hindu, but what is his caste. If he belongs to one of the lower castes, a change of creed would not of itself make any difference, provided he continues to belong to his caste; but if he abandons his caste and adopts the moral standard of the creed to which he has changed, he cannot be said to belong to one of the lower castes of the people, and his punishment be confinement in the stocks is no lower legal. RATTIGADU v. KONDA REDDI, **24 M. 271 = 1 Weir 928 = 11 M.L J. 23.** [*F.*, 11 Cr. L.J. 249 = 5 Ind. Cas. 797 = 7 M.L.T. 305 = 1910 M.W.N. 52.]

Regulations—continued.

——5.—**Madras**—*continued.*

Reg. XI of 1816 (Madras Village Police) —*continued.*

(12)—*S.* 10—*Powers of acting Village Munsiff.*—Where a person is appointed as acting Village Munsiff by a Divisional Magistrate, he has jurisdictions to try offences under s. 10 of the Regulation. *In re* SUBBA, **1 Weir 922.**

(13)—*S.* 10—*Term "assault" explained.*—It is not necessary to construe the term "assault" in s. 10, Reg XI of 1816, with strict reference to the definition of the same term in the Penal Code. Where the person assaulted was of the Chuckler caste and he did not regard the assault as one of aggravated character and was quite content with the redress which the Village Munsiff could give him, *held*, that the escape of the accused from the custody of the officer on the charge of assault was an offence under s. 224, Penal Code. *In re* NAGALAPATY PENCHALU REDDY, **1 Weir 923.**

(14)—*S.* 10—*Confinement in village choultry.*—In the absence of any village choultry, a Village Munsiff is not competent to pass a sentence of confinement in the village choultry. *In re* KUMARASAMI CHETTY, **1 Weir 924.**

(15)—*S.* 10—*Madras Regulation IV of* 1821, *s.* 6—*Jurisdiction of Village Magistrate—Petty thefts.*—Where the accused was charged with stealing clothes valued at Rs. 1-2-0, *held*, that the Village Magistrate had no jurisdiction to try that offence. HIGH COURT PROCEEDINGS, 14TH DECEMBER 1880, No. 2566, **1 Weir 925.**

(16)—*S.* 10—*Madras Regulation IV of* 1821, *s.* 6—*Thefts attended with aggravated circumstances—Jurisdiction of Village Magistrates.*—The jurisdiction of heads of villages is excluded under s. 6, Reg. V of 1821, when the theft is attended with aggravation. The fact that a theft is committed in a building or by a servant is an aggravating circumstance. HIGH COURT PROCEEDINGS, 17TH AUGUST, 1864, **1 Weir 924.**

(17)—*S.* 10—*Confinement in the stocks.*—To render a person liable to imprisonment in the stocks, there must be a concurrence of two circumstances, *viz.*, (1) he must be a person belonging to some one of the lower castes and (2) he must be a person on whom from his social standing or otherwise, it may not be improper to inflict so degrading a punishment. The word "whom" in the last sentence of s. 10 refers back to the words "the offending parties," and not to the words "the lower castes of the people." HIGH COURT PROCEEDINGS, 9TH OCTOBER, 1879, NO. 1732, **1 Weir 926.** [*F.*, 24 M. 271 = 1 Weir 928 = 1 Weir 927.]

(18)—*S.* 10—*Confinement in the stocks — "Bant" caste.*—A person of the "Bant" caste is not one on whom the punishment of imprisonment in the stocks could legally be inflicted, under s. 10, Reg. XI of 1816. *Quære.*—Whether excommunication from caste would render a member of the "Bant" caste liable to such punishment. *In re* PARAMESHRA SETTI, **1 Weir 928.**

Regulations—continued.

——5.—**Madras**—*continued.*

Reg. XI of 1816 (Madras Village Police) —*concluded.*

(19)—*S.* 10—*Jurisdiction of Village Magistrates.*—Although a Village Magistrate's Court is a Criminal Court, a Village Magistrate has no power to take summary cognizance of the offence of using abusive language to him in the course of a trial. He has not, further, the power to pass a sentence of fine. HIGH COURT PROCEEDINGS, 26TH JULY 1870, **5 M.H.C. App. 33.**

(20)—*S.* 10—*Confinement in the stocks—Member of blacksmith caste.*—Although a blacksmith is not a member of a higher caste, yet in Southern India, he and the hereditary artisan class are held in high esteem. Therefore it is improper, under the terms of the second condition prescribed in s. 10, to sentence persons of this class to the degradation of the punishment in the stocks. HIGH COURT PROCEEDINGS, 19TH APRIL 1882, NO. 732, **1 Weir 927.**

(21)—*S.* 10—*Govandla ryot—Confinement in stocks—Escape from custody—Liability under s.* 224, *I.P.C.*—A Govandla ryot, who was ordered to be imprisoned in stocks by the village magistrate under s. 10 of Reg. XI of 1816, escaped from the custody of the village servants for which he was prosecuted under s. 224, I P.C. and sentenced to 2 months rigorous imprisonment in addition to the imprisonment in stocks. On appeal the sub-divisional magistrate reduced the sentence to one of fine, on the ground that the accused was not a Pariah but a Govandla ryot owning some lands, to whom imprisonment in stocks was a great disgrace. *Held*, by the High Court, on revision, that the lower appellate Court has not, under s. 224, I P.C., considered whether, in view of those circumstances, accused was liable to the punishment of confinement in the stocks and that, if, on this ground, the sentence of confinement in the stocks was illegal, the accused cannot be convicted under s. 224, I.P.C., in escaping from it. *In re* UPPALA KOTAYYA, **18 M.L.T. 310.** (6 M. 247, *R.*)

(22)—S. 10 (1)—*See* MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION, 5 M. 268 = 1 Weir 925.

(23)—Ss. 15, 16, 17—*See* PENAL CODE, s. 223, 1 Weir 197.

(24)—S. 16—*See* No. 23, *supra.*

(25)—S. 17—*See* No. 23, *supra.*

Reg. XII of 1816 (Madras Village-lands Disputes).

[SHORT TITLE GIVEN, ACT XI OF 1901. REP. IN PT., ACT XII OF 1876; MAD. ACT II OF 1869; MAD. ACT IV OF 1897. DECLARED IN FORCE THROUGHOUT THE PRESIDENCY OF MADRAS, EXCEPT AS REGARDS THE SCHEDULED DISTRICTS, ACT XV OF 1847, s. 4.]

Regulations—continued.

——5.—**Madras**—*concluded.*

Reg. XII of 1816 (Madras Village-lands Disputes)—*concluded.*

1)—*Cl. 7—Reference by Deputy Collector to District Munsiff.*—A Deputy Collector, formally invested by the Collector with all the powers of a covenanted Assistant Collector, or with the special power to determine claims, under Reg. XII of 1816, is competent to refer disputes, under cl. 7, Reg. XII of 1816, to a District Munsiff. HIGH COURT PROCEEDINGS, 10TH JAN, 1868, **4 M.H C. App. 1.**

Reg. VII of 1817 (The Madras Endowments and Escheats).

[SHORT TITLE GIVEN, ACT II OF 1901. REP. IN PT., ACT XX OF 1863. DECLARED IN FORCE THROUGHOUT THE PRESIDENCY OF MADRAS EXCEPT AS REGARDS THE SCHEDULED DISTRICTS, ACT XV OF 1874, S. 4.]

S. 16—*See* ACT XX OF 1863, s. 20, 1 M. 55=1 Weir 755.

Reg. IV of 1821 (Madras Village Police).

[SHORT TITLE GIVEN, ACT XI OF 1901, REP. IN PT., ACT XVII OF 1862; ACT XII OF 1876.]

(1)—*See* SANCTION TO PROSECUTE, AUTHORITIES COMPETENT TO GRANT SANCTION—REFUSAL TO GRANT SANCTION—APPEAL, REVISION AND JURISDICTION OF COURTS, 4 M.L.T. 214.

(2)—*See* TRANSFER OF CRIMINAL CASES—TRANSFER BY OTHER COURTS, 26 M. 394=2 Weir 693.

(3)—S. 6—*See* MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION, 5 M. 268=1 Weir 925.

(4)—S. 6—*See* MAD. REG. XI OF 1816, s. 10, 1 Weir 925.

——6.—**Punjab.**

* **Reg. I of 1872 (Punjab Frontier).**

[REP. IN PT. REG. IV of 1873; REG. IV OF 1887; ACT XVII OF 1887; (IN AGROR VALLEY), REG. IV OF 1891, RESIDUE REP. REG. VI OF 1901.]

(1)—*S. 6—Election either to try an accused under Frontier Rules or under the Penal Code and Crim. Pro. Code.*—A Deputy Commissioner should elect, before he proceeds with the trial, whether to try the accused under the Frontier Rules or under the Penal and Criminal Procedure Codes. When once he has begun the trial under the latter procedure, it is not competent for him on finding the evidence insufficient, to proceed with the trial under the Frontier Rules. Further, a Deputy Commissioner cannot treat some of the accused under one and some under the other. CROWN v. MUHAMMAD ALI, **18 P.R. 1872, Cr.** [*R.*, 30 P.R. 1884, 33 P.R. 1885.]

* This Local Regulation was passed by the Imperial Legislature.

Regulations—continued.

——6.—**Punjab**—*continued.*

Reg. I of 1872 (Punjab Frontier)—*concluded.*

(2)—*S. 8—Rule framed under the section.*—The rules framed under the Act would not have any retrospective effect. Where adultery was made an offence in the woman for the first time by No. 1 of Frontier Rules on the 5th January, 1872, *held*, that a woman who had committed adultery on the 10th August, 1871, could not be convicted of adultery. KHANA v. CROWN, **10 P.R. 1872, Cr.**

(3)—*S. 8—Jurisdiction.*—S. 8 of the Punjab Frontier Regulation is applicable to the offence of adultery committed by the wife of a soldier temporarily quartered there. KHARAK SINGH v. EMPRESS, **36 P.R. 1881, Cr.**

(4)—*S. 8—Offences mentioned in the section—Jurisdiction.*—In determining the question of jurisdiction over offences mentioned in s. 8, the provisions of s. 8, Crim. Pro. Code, 1872, must be looked to. A Magistrate of the first class is, therefore, competent to try a woman for the offence of adultery within the meaning of s. 8. EMPRESS v. HALIM, **34 P.R. 1881, Cr.**

(5)—*S. 8—Adultery—Jurisdiction.*—Under Frontier Regulations, as under the Penal Code, only a Court of Sessions has jurisdiction to try the offence of adultery. CROWN v. RASSUL, **18 P.R. 1876, Cr.**

(6)—*Rule 8 of Frontier Rules — Woman punished for adultery—Solitary confinement.*—Solitary confinement can be inflicted only in cases of conviction under the Penal Code, so a woman punished for adultery under Rule 8 of Frontier Rules should not be punished with solitary confinement. CROWN v. MUNAWAR, **4 P.R. 1875, Cr.** [*R.*, 17 P.R. 1875, 26 P.R. 1889, Cr.]

* **Reg. IV of 1873 (Frontier Regulation Amendment).**

[REP., REG. IV OF 1887.]

(1)—*Illegal reference to* jirga—*Powers of Chief Court*—Where a Magistrate, after convicting an accused person under s. 457, I.P.C., directed that the claim regarding certain property alleged to have been stolen in the same transaction should be disposed of by a *jirga*, *held*, that the direction of the Magistrate was not proper. The Chief Court could set aside such a direction, but was not competent to set aside the actual reference to a *jirga*, if separate from the judgment, or any order passed by the *jirga*. EMPRESS v. SARWAR, **23 P.R. 1883, Cr.** (38 P.R. 1884, Cr., 11 P.R. 1879, Cr., *R.*.) *See also* HAIDAR SHAH v. KANDAL SINGH, **23 P.R. 1885, Cr. Note.**

(2)—*Security for good behaviour—Jurisdiction—Jirga.*—A *jirga* cannot order the furnishing of security for good behaviour. It can only award a fine. CROWN v. DURBARI MAL, **19 P.R. 1874, Cr.** [*R.*, 17 P.R. 1875, Cr.]

* This Local Regulation was passed by the Imperial Legislature.

Regulations—continued.

——6.—**Punjab**—*continued.*

Reg. IV of 1873 (Frontier Regulation Amendment)—*continued.*

(3)—*Confiscation of property.*—Under the Frontier Rules, property can only be seized in satisfaction of fine, but cannot be confiscated. GULAM KADIR v. CROWN, **14 P.R. 1874, Cr.** [*R.*, 9 P.R. 1875, Cr., 17 P.R. 1875, Cr.]

(4)—Jirga—*Jurisdiction and powers.*—Under the Frontier Regulation, a *jirga* is only competent to impose a fine. It has no jurisdiction to pass an order directing the accused, who has been convicted of adultery, to marry the complainant's wife after she is divorced by the complainant, or that the accused should give his sister in marriage to the complainant. But it has power to order the accused to pay compensation to the complainant. CROWN v. SHAHABDIN, **9 P.R. 1875, Cr.** (14 P.R. 1874, Cr., 19 P.R. 1874, Cr. *R.*) [*R.*, 17 P.R. 1875, Cr.]

(5)—*Conviction of accused under the Regulation—Power of Sessions Judge to subsequently try him for the same offence.*—Where a council of elders convened under Reg. IV of 1873, has fined an accused person charged with murder, it is not open to the Sessions Judge, under s. 402, Crim. Pro. Code, 1882, to direct the commitment of the accused to the Sessions Court, and thereafter to try him again for the same offence. SARWAR v. EMPRESS, 30 **P.R. 1884, Cr.** (18 P.R. 1872, Cr., *R.*) *See also* DOST MAHAMMAD v. CROWN, **11 P R. 1879, Cr.**; GULZAR v. EMPRESS, **38 P.R. 1884, Cr.**

(6)—*Power to pass sentence of imprisonment in lieu of fine.*—The Frontier Regulations give neither the *jirga*, nor the Deputy Commissioner power to pass sentences of imprisonment in lieu of fine. RAM v. EMPRESS, **3 P.R. 1885, Cr.**

(7)—*S. 2—Reference to* jirga.—When the proceedings, though short of acquittal or conviction, are not under the control of the Deputy Commissioner nor can the exercise of his powers supersede the authority of such Court (*e.g.*, Sessions Court), the Deputy Commissioner cannot refer the case to a council of elders. EMPRESS v. GURDITTA, **18 P.R. 1886, Cr.**

(8)—*S. 2—Reference to* jirga.—Since the decision in 18 P.R. 1872, Cr. s. 2 of Reg. IV of 1873 provides that a reference to the *jirga* may be made at any stage short of actual conviction or acquittal, and, as against some of the persons accused jointly, though the ordinary procedure is allowed in respect of the others. GANESHA RAM v. EMPRESS, **33 P.R. 1885, Cr.**

(9)—*S. 2—Trial by* jirga.—*Jurisdiction of ordinary Criminal Courts.*—Trial and sentence by a *jirga*, in the absence of the accused and when no proceeding directed to deciding the question of his guilt or innocence was possible, could not be pleaded in bar of the jurisdiction of the Criminal Courts over the same offence, when the accused had been found in British territory. GULZAR v. EMPRESS, **38 P.R. 1884, Cr.** [*R.*, 23 P R. 1885, Cr.] *See also* DOST MUHAMMAD v. CROWN, **11 P.R. 1879, Cr.** GULZAR v. EMPRESS, **38 P.R. 1884, Cr.**

(10)—S. 2—*See* RETRIAL, 11 P.R. 1879, Cr.

*** Reg. II of 1879 (Hazara Forest).**

[REP., REG. VI OF 1893.]

Reg. II of 1879 (Punjab).

(1)—*Ss.* 7, 28—*Illicit fire.*—Any fire arising from other than accidental causes is an illicit fire. EMPRESS v. JAMAL DIN, **18 P.R. 1885, Cr.**

(2)—*S.* 25—*Contractor with permit to cut dry woods—Liability for his servants cutting green wood.*—Where contractors, with a permit to cut dry wood in a certain *rakh*, a reserved forest, were charged and convicted under s. 25 of the Frontier Regulation, for damage caused to green trees in that portion of the forest, and where it appeared that the accused were ever present on the spot, they having appointed an agent who remained on the spot, and that they were not aware of what was going on in the *rakh*, *held*, that the conviction of the accused could not be sustained. MALIK KHAZAN SINGH v. EMPRESS, **11 P.R. 1884, Cr.**

(3)—S. 28—*See* No. 1, *supra.*

*** Reg. IV of 1887 (Frontier Crimes).**

[REP. REG. III OF 1901.]

(1)—*S.* 1 (2), (4)—*Notification extending the Regulation to certain Districts—Effect.*—Where the Regulation is extended in certain districts under sub-s. (2) of s. 1 by a notification of the Punjab Government, *held*, that the notification had the effect of making only the sections of the Regulation which are of general application operative in the districts of Peshawar, Hazara and Kohat. EMPRESS v. MUHAMMAD KHAN UMAR, **27 P.R. 1888, Cr.** (27 P.R. 1888, Cr. *Note (a)*, *Appr.*) *See also* LATIFF v. EMPRESS, **27 P R. 1888, Cr., Note.**

(2)—*S.* 8—*Whipping—Act* VI *of* 1864, *s.* 7.—The provisions of s. 8 of the Punjab Frontier Crimes Regulation, 1887, are not to be construed as overriding the general provisions in s. 7 of the Whipping Act. MANA v. EMPRESS, **45 P.R. 1888, Cr.**

(3)—*S.* 13—*Case sent to* jirga—*Power to recall.*—The Regulation bars a trial by the ordinary tribunals of a case referred to a council of elders by the Deputy Commissioner. Nor does the Regulation bestow on a Deputy Commissioner any power of recalling a case once sent to a council of elders. LAL v. EMPRESS, **33 P.R. 1888, Cr.**

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* These Local Regulations were passed by the Imperial Legislature.

***Regulations*—continued.**

——6.—Punjab—*continued.*

***Reg. III of 1901 (Frontier Crimes).**

[AM., IN N.W. FRONTIER PROVINCE, REG. VII OF 1901, s. 3].

(1)—*Applicability of, to new Districts—Trial by Council of Elders.—Held* that, in the absence of express repeal or exemption, Reg. III of 1901 is still in force over the area which was, on the 18th September, 1901, on which date the Regulation came into force, covered by the Districts made in the Regulation, as those districts then existed. *Held*, also, that the Deputy Commissioner, within the meaning of the Regulation, must be understood to include the office which might attach to any district subsequently formed out of the parts of the area to which the Regulation applied when it came into operation. *Held*, further, that the aforesaid Regulation is still in force in the Mainwali District, which comprises the Mainwali and Isahkel Tahsils of the old Bannu District, and the Bhakkar and Leiah Tahsils of the old Dera Ismail Khan District. GAMESHAH v. EMPEROR, **102 P.L.R. 1903 = 8 P.R. 1903, Cr.**

(2)—*S. 11—Applicability to Hindus of Leiah Tahsil, Muzaffargarh District—Reference of case to a* Jirga *under s. 11—Jurisdiction of Deputy Commissioner of Muzaffargarh.*—Reg III of 1901 applies to Hindus of the Leiah Tahsil which now forms part of the Muzaffargarh District, and the Deputy Commissioner of Muzaffargarh District has jurisdiction to refer a case to the *Jirga*. BHOLA RAM v. THE CROWN, **25 P.R. 1915, Cr.** (8 P.R. 1903, Cr., *F*)

(3)—*S. 15 (i)—In writing—Telegraphic instructions.*—After the trial of a Sessions case had been completed, all except the hearing of the arguments, the Public Prosecutor withdrew from the prosecution of Sadar and Khuda Bakshu, accused, in order that the case might be referred to the Council of Elders. The Public Prosecutor was authorized by telegram by the Deputy Commissioner "to withdraw the case against Khuda Bak h and Haider." The Sessions Judge refused to stay proceedings on the ground that the Public Prosecutor had not been instructed in writing by the Deputy Commissioner and that the instruction as regards one of the accused named him as Haider, while his real name was Sadar and acquitted the accused. On appeal against the order of acquittal, *Held*, that the wording of s. 15 (i) of Reg. III of 1901 was wide enough to include instructions by telegram and the section being imperative, the Sessions Judge was bound to stay proceedings against both the accused; the mistake of the name of one of the accused was obviously a clerical mistake and the Sessions Judge should have given the Public Prosecutor time to have it corrected. EMPEROR v. JANAN, **166 P.L.R. 1903 = 15 P.R. 1903, Cr.**

* This Local Regulation was passed by the Imperial Legislature.

***Regulations*—concluded.**

——6.—Punjab—*concluded.*

Reg. III of 1901 (Frontier Crimes)—*concluded.*

(4)—S. 59—*See* APPEAL—GENERAL, 19 P. R. 1910, Cr. = 6 Ind. Cas. 959 = 11 Cr. L.J. 426 = 103 P L.R. 1910 = 34 P.W.R. 1910.

Rehearing.

See REMAND.

See REVIEW.

See REVISION.

Offer by the husband to maintain his wife—Dismissal of application for default—*See* MAINTENANCE, 1 C.L.J. 214 = 2 Cr. L.J. 213.

Relatives.

See COMPENSATION — TO COMPLAINANT AND HIS RELATIVES.

Release.

Of an accused person.—No warrant for the release of an accused person is necessary. The Criminal Courts have simply to direct that the prisoner be set at liberty. CRIMINAL CIRCULAR ORDER NO. 2, DATED THE 18TH JANUARY, 1873, **9 W.R. Cr. Cir. 5.**

Release on probation of good conduct.

(1)—*Criminal breach of trust by a servant—Penal Code, s. 408—Order of release under s. 562, Crim. Pro. Code—Procedure.*—Before passing an order under s. 562, Crim. Pro. Code, a Magistrate must record an order of conviction of one of the offences in respect of which an order under that section is lawful. If an accused is convicted of criminal breach of trust as a servant under s. 408, Penal Code, no order under s. 562, Crim. Pro. Code, can be made. CROWN v. MI HLA YIN, **1 L B.R 142.**

(2)—*Conviction in the alternative—Retaining stolen property—Crim. Pro. Code, s. 562, application of, to alternative convictions.*—The provisions of s. 562, Crim. Pro. Code, cannot be applied to a case where an accused was charged and convicted in the alternative, under ss. 379 and 411, Penal Code. The offence of retaining stolen property, which is punishable with two years' imprisonment, is not one of the offences specified in s. 562, Crim Pro. Code. CROWN v. THA DUN U, **1 L.B.R. 158.**

See CRIM. PRO. CODE, 1898, s. 562, 4 N. L.R. 18 = 7 Cr. L.J. 319.

See SECURITY TO KEEP THE PEACE—ON CONVICTION, 4 L.B.R. 277.

Relevancy.

See EVIDENCE.

See EVIDENCE ACT, 1872.

Relevancy of document for proving knowledge of contents no ground for admitting it to prove truth of contents.—From the fact that the document may be relevant for the purpose of affecting some one with the knowledge of its contents, it by no means follows that it is relevant also for the purpose of proving the

Relevancy—*concluded.*

truth of that which it contains. BARINDRA KUMAR GHOSE v. EMPEROR, **37 C. 467 = 14 C.W.N. 1114 = 7 Ind. Cas. 359 = 11 Cr.L J. 453.** [*Rel. on.*, 13 Cr. L.J. 609 = 16 Ind. Cas. 257 = 15 C.L.J. 517 = 16 C.W.N. 1105.]

Religion, Offences relating to.

See PENAL CODE, ss. 295—298.

(1)—*Penal Code, s. 295—Scope—"Object" whether includes inanimate beings.*—The term "object" in s. 295 should be taken *ejusdem generis* with "a place of worship" and cannot therefore apply to inanimate objects such as cows. QUEEN-EMPRESS v. IMAM ALI, **10 A. 150, F.B. = A.W.N. 1888, 17.** [*F.*, 17 C. 852; *R.*, 30 A. 181 = 5 A.L J. 147 = A.W.N. 1908, 64 = 7 Cr.L.J. 381.]

(2)—*Public mosque — Right to pronounce "amin" in a loud tone.*—In a public mosque open to the use of all Muhammadans, a person pronouncing the word "*amin*" loudly in the *bona fide* exercise of his religious duties, cannot be made liable either civilly or criminally. But a Muhammadan or any one else who goes into a mosque not *bona fide* for religious purposes, but *mala fide* to create a disturbance there, and interferes with the devotion of the ordinary frequenters of the mosque, would bring himself within the reach of the Criminal Law. JANGU v. AHMAD ULLAH, **13 A. 419, F.B.** [*R.*, 35 M. 631 = 18 Ind. Cas. 195, 15 P.R. 1902, Cr. = 104 P.L.R. 1902, F B.]

(3)—*Penal Code, ss. 296, 39—Elements of the offence—"Voluntary," meaning of.*—Per *Banerjee, J.*—To constitute an offence under s. 296, (1) there must be a voluntary disturbance caused; (2) the disturbance must be caused to an assembly engaged in religious worship or religious ceremonies; and (3) the assembly must be lawfully engaged in such ceremonies or worship. It lies upon the prosecution to show that the persons who were disturbed in their religious worship or ceremonies were lawfully engaged in the performance of the same, that is, they had the right to do what they were doing. Per *Macpherson, J.*—The worship referred to in s. 296 must be a real worship, and not a cloak for doing something else, and the assembly must be lawfully engaged in the worship. Per *Banerjee, J.*—Intention to cause a certain result is not an element necessary to constitute a voluntary causing of that result, but knowledge of, or belief in, the likelihood of the result following, though not intended, may supply the place of intention. JAIPAL GIR v. DHARMAPALA, **23 C. 60.**

(4)—*Penal Code, s. 295—Removal of materials of dilapidated mosque—Insult to religion.*—The defendants in this case were charged under s. 295, I.P.C., in that they (Hindus) removed some old building materials belonging to a mosque, and thereby insulted the religious feelings of Muhammadans. They were acquitted on the finding that the mosque was, or at any rate its roof was, in a rotten condition, and that no one had any particular claim to it. The complainant applied to the High Court for revision. *Held* that there was no reason to believe that one of the defendants in acting as he did had any intention of insulting the religion of the Muhammadan residents of the village, or that he did so even with the knowledge that any class of persons was likely to consider the removal of the materials as an insult to their religion. JAN MUHAMMAD v. NARAIN DAS, **A W.N. 1883, 39.**

(5)—*Penal Code, s. 298—Exhibition of cow's flesh by Muhammadan.*—Where the accused, a Muhammadan, exhibited cow's flesh with the deliberate intention of wounding the religious feelings of the complainant and other Hindus, *held* that the accused was guilty of an offence under s. 298, I.P.C. QUEEN-EMPRESS v. RAHAMAN, **A.W.N. 1893, 144.**

(6)—*Penal Code, s. 296—Knowledge that one's act is likely to disturb religious worship—Whether sufficient to constitute offence under s. 296, I.P.C.—Notification by District Magistrate of hours of worship—Right of procession during such hours.*—It is not necessary for the purpose of s. 296, I.P.C., that the accused should have had an active intention to disturb religious worship. It is sufficient, if, knowing they were likely to disturb it by their music, they took the risk and did actually cause the disturbance. The accused had no right to pass the mosque with music, so as to disturb religious worship going on in the mosque, during the hours which had been notified as the hours in which religious worship would be carried on. PUBLIC PROSECUTOR v. SUNKU SEETHAIAH, **7 M.L.T. 430 = 6 Ind. Cas. 774 = 11 Cr. L.J. 400.**

See BEN. ACT VI OF 1871, s. 24, 7 A. 461.

A Hindu having sexual intercourse with a woman within enclosure surrounding a tomb of a Mahomedan fakir—*See* PENAL CODE, ss. 295, 297, 10 M. 126 = 1 Weir 256.

Religious Assembly.

See PUBLIC NUISANCE, 11 Bom. L.R. 372 = 2 Ind. Cas. 494.

Religious Ceremonies.

Performance of—When may amount to a wrongful act likely to cause breach of peace—*See* CRIM. PRO. CODE, 1898, s. 107, 33 A. 775.

Religious Endowments Act.

See ACT XX OF 1863.

Religious Preachers.

Right and duties of—*See* CRIM. PRO. CODE, 1898, ss. 108 (*b*), 451, 12 Cr L.J. 248 = 10 Ind. Cas. 789.

Religious Procession.

See PROCESSION.

(1)—*Public highway—Religious processions—Right of public to use highway for processions—Customary right of a particular sect to use a highway in derogation of the rights of another sect—Special damage—Maintainability of suit—Performance of ceremonies entitling one sect to use highway to the exclusion of another sect.*

Religious Procession—*concluded.*

—The right to go in procession through streets, attended with music, &c., is a natural right inherent in every subject of the state, and no user is necessary to the creation of such right. The adherents of any particular religious sect cannot prevent the adherents of another religious sect from carrying on a religious procession, or from assembling for public worship in public streets, on the ground that such worship had not hitherto been carried on, or that it was opposed to religious feelings. The performance of any religious rites or ceremonies by any sect or class of persons does not entitle them to appropriate a public street or any portion thereof for their religious processions or worship. Though no action lies for the obstruction of a religious procession along a highway in the absence of special damage, yet where an order has been passed by a Magistrate, restraining such procession from passing through a public street, at the instance of one party, the other party is entitled to bring a suit for declaration of their rights. KANDASAWMY MUDALI v. SUBRAYA MUDALI, **1 Ind. Cas. 716.** (26 M. 554, 2 B. 457, 18 B. 693, *D.*; 2 M. 140, 5 M. 304, 6 M. 203, 26 M. 376, 30 M. 185, 30 M. 15, *R.*)

See BOM. ACT IV OF 1890, s. 44, 12 Bom.L. R. 1029 = 8 Ind. Cas. 747.

Throwing stones at a—*See* MAD. ACT III OF 1889, s. 3 (12), 1 Weir 915.

Prohibiting religious procession—*See* CRIM. PRO. CODE, 1898, s. 147, Rat. Un. Cr. C. 548.

Causing disturbance to—Right of members of a community to pass in procession along the public streets—Assaulting members of procession—Rioting—Common object—*See* PENAL CODE, ss. 147, 296, 13 Cr. L.J. 534 = 15 Ind. Cas. 806.

On a highway—Disturbance—Offence—*See* PENAL CODE, s. 296, 8 A.L J. 1150 = 12 Cr. L. J. 573 = 12 Ind. Cas. 837.

See PENAL CODE, s. 296, 119 P.L.R. 1909.

Religious Usage.

Bull set at large in accordance with Hindu—Appropriation, whether amounts to an offence—*See* PENAL CODE, ss. 403, 410, 411, 8 A. 51.

Religious Works.

Publication of recognised religious works if and when an offence — Extracts from, when protected.—Love affairs of Radha and Krishna—Obscenity, test of—*See* PENAL CODE, s. 292, 15 C.L.J. 151 = 13 Ind. Cas. 993 = 13 Cr. L.J. 177 = 39 C. 377.

Remand.

See BAIL.

See CRIM. PRO. CODE, 1898, ss. 167, 344.

(1)—*Crim. Pro. Code* (1882), *ss.* 61, 167, 170 *and* 344—*Remand of prisoners.*—The power of remand, under s. 167, is given to detain the prisoners in custody, while the Police make the investigation and, in a proper case, to commence the inquiry. But the custody mentioned in s. 344 is quite different and is intended for under-trial prisoners. S. 167 gives the Magistrate discretion (recording his reasons) to remand, from time to time, but limits the period for the exercise of the discretion to fifteen days in all. S. 170 authorizes the Police officer, if there is evidence or reasonable ground of suspicion, to forward the accused to a Magistrate empowered to take cognizance of an offence on Police report. Then, under s. 344, an application might be made for cause shown as specified there to the proper Magistrate to postpone the commencement of the inquiry and remand the prisoner. The intention of the Legislature, having regard to ss. 61 and 167 and to the requirements of justice generally, is that an accused person should be brought before a Magistrate competent to try or commit, with as little delay as possible. QUEEN-EMPRESS v. ENGADU, **11 M. 98 = 2 Weir 142.** [*F.*, 23 B. 32.]

(2)—*Remand—Presence of the prisoner.*—To remand is to re-commit to custody. It is a magisterial commitment requiring the presence of the prisoner. The re-commitment of the prisoner also requires the presence of the prisoner. HIGH COURT PROCEEDINGS, 10TH JUNE 1867, **2 Weir 409.**

(3)—*Criminal cases — Object of remand—Crim. Pro. Code, Act* VIII *of* 1869, *s.* 422—*Act* X *of* 1872, *s.* 283—*Power of appellate Court.*—The remand of a case under s. 442, Act VIII of 1869, could only be for the purpose of taking further evidence, and certifying the result thereof to the appellate Court, and not for the purpose of re-trying the case upon such fresh evidence. After a remand under this section, the appellate Court could only try the case as an ordinary appeal, and has no power to enhance the punishment. ANONYMOUS, **3 B.L.R.A. Cr. 62.**

(4)—*Criminal cases - Remand for further evidence—Crim. Pro. Code* (1861), *s.* 422 *and ss.* 169 *and* 171—*Jurisdiction of Magistrate.*—When an appellate Court directed further evidence to be taken by a subordinate Court under s. 422 of the Code of Criminal Procedure, it was competent to the subordinate Court, before which such evidence was given, if any offence against public justice, as described in s. 169, was committed before such Court by a witness whose evidence was being recorded therein, to send the case for investigation to a Magistrate under the provisions of s. 171. QUEEN v. BAKTEAR MAIFARAZ, **6 B.L.R F.B. 698 = 15 W.R. Cr. 64.**

(5)—*Remand for further inquiry—Power to remand—Crim. Pro. Code* (1861), *s.* 422—*Omitting to give an information of an offence.*—Where a person had been found guilty by a Magistrate of the offence of intentionally omitting to give information of an offence which he was bound to give, and on appeal the Judge found that there had been no evidence given of the omission. *Held, per Kemp. J.* (*Glover, J., contra*), the Judge could not remand the case for additional inquiry under s. 422 of the

Remand—*continued.*

Crim. Pro. Code. *In the matter of the petition of* UDAI CHAND MUKHOPADHYA, 9 **B.L.R. Ap. 31=18 W.R. Cr. 31.**

(6)—*Procedure on bringing person before magistrate on warrant of arrest.*—The detention in custody of an accused person brought before a magistrate on a warrant of arrest is illegal, unless a proper remand is ordered on evidence given on oath or solemn affirmation. *In re* ZUHURUDDEEN HOSSAIN, **25 W.R. Cr. 8 (a).** *See also* MUTHOORA NATH CHUCKERBUTTY v. HEERA LALL DOSS, **17 W.R. Cr. 55=9 B.L.R. 354.**

(7)—*Accused absent.*—Where the accused is not brought before the Court, it is illegal for the Magistrate to remand the prisoner on the application of the police. CROWN v. SHERA, **39 P.R. 1867, Cr.**

(8)—*Period—Crim. Pro. Code* (1898), *s.* 167. —Where an accused person was kept in custody for ten months before the case was brought into Court, *held*, that the detention was illegal under s. 167, Crim. Pro. Code. HARGALAL v. EMPEROR, **24 P.R. 1902, Cr.=136 P L.R. 1902.** [*R.*, 4 P.R. 1903, Cr.; *Disc.*, 41 P.R. 1905, Cr. : *Doubted*, 31 P.R. 1904, Cr.]

(9)—*When can be ordered.*—An accused person may be remanded, if it is likely that further evidence might be obtained. Mere expectations that time would show his guilt or that further fact would come to light would not be sufficient grounds in remanding the accused person. KHUDA BAKHSH v. CROWN, **17 P.R. 1872, Cr.**

(10)—*Crim. Pro. Code* (1861), *s.* 224—*Remand, period of.*—Fifteen days is the longest period for which an accused person can be remanded by order of a Magistrate. REG. v. SURKYA *valad* DHAKU, **5 B.H.C. Cr. 31.**

(11)—*Crim. Pro. Code* (1861), *ss.* 205, 366, 380, 426, 439—*Examination of accused not properly done—Procedure* —Where the examination of the accused before the Magistrate has not been recorded in full so as to include the questions and answers, as required by s. 205, Crim. Pro Code, 1861, it is not admissible in evidence without further proof. But, although the evidence has been improperly admitted by the Judge, the acquittal of the prisoner does not necessarily follow. In a case where, even supposing that the examinations of the accused had been properly recorded or had, upon the case being remanded, been legally proved, the evidence was not such that the conviction ought to be supported, it would be useless to remand the case in order to have the examination proved. But when the examination would either alone, or with the other evidence, be sufficient for the conviction of the accused, the proper course is to remand. But where the evidence, exclusive of the examination, is sufficient to support a conviction, it is not necessary to remand. REG. v. KALLA LAKHMAJI, 2 **B. H.C. 395.** (2 B.H.C. 125, *Observed.*) [*F.*, 7 B.H.C. 50, Cr.; *R.*, 10 B H.C. 166, F.B.] REG. v. GANU BAPU, **2 B.H.C. 398.**

Remand—*concluded.*

See CONFESSION—GENERAL, 2 Weir 414.

Of accused—Accused to be produced before Court—Application for remand by whom to be made—*See* CRIM. PRO. CODE, 1898, ss. 154, 167, 172, 13 Cr. L.J. 65=16 C.W.N. 145=13 Ind. Cas. 721.

See CRIM. PRO. CODE, 1898, ss. 163, 61, 3 N.W.P. 275.

Sanction to prosecute—Revision before Judge —Powers of Judge to make a remand—*See* CRIM. PRO. CODE, 1898, s. 195 (6), 8 A.L.J. 429=12 Cr. L.J. 174=9 Ind. Cas. 982.

Remand by appellate Court for additional evidence and fresh finding — Legality — *See* CRIM. PRO. CODE, 1898, s. 428, 1914 M.W.N. 778.

See CRIM. PRO. CODE, 1898, ss. 435 (1 to 3), 426, 439 and 440, 4 C. 647.

Re-arrest of persons appearing before Magistrate and released on bail, whether proper—*See* CRIM. PRO. CODE, 1898, s. 496, 32 C. 80=8 C. W.N. 779.

See FALSE EVIDENCE, 30 P.R. 1888, Cr.

See JURISDICTION OF CRIMINAL COURTS—GENERAL, 32 C. 1069=3 Cr. L.J. 119.

See SUPERINTENDENCE OF HIGH COURT, 9 B.L.R. 354=17 W.R. Cr 55.

Re-marriage.

Of Hindu when Christian wife alive—Whether bigamy—*See* PENAL CODE, s. 494, 33 M. 371=8 Ind. Cas. 572.

Re-marriage (Hindu Widow's) Act.

See ACT XV OF 1856.

Remembrancer, Legal.

See LEGAL REMEMBRANCER.

Removal of Property.

Under false assumption—Claim of title—*See* FALSE EVIDENCE, 10 C.L.R. 187.

Renewal of Complaint.

See REVIVAL OF COMPLAINT.

Rent.

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY.

See LANDLORD AND TENANT.

Receipt for—*See* ACT II OF 1899, sch. I, art. 53 (*c*), A.W.N. 1908, 272=5 A.L.J. 747=31 A. 36=9 Cr. L.J. 37=1 Ind. Cas. 568.

Suit against agent for—received and misappropriated—*See* BEN. ACT VIII OF 1869, 2 W.R. Act X, 105.

See PUN. ACT XX OF 1891, s. 201, 3 Ind. Cas. 638=9 P.W.R. 1909, Cr.

See CRIM. PRO. CODE, 1898, s. 144, 9 C.W. N. 392.

Order prohibiting collection of—Disobedience to such order — Conviction — Legality—*See* NUISANCE UNDER PENAL CODE, 8 C.L.R. 231.

Rent—*concluded.*

Rate of, if can be decided entirely, upon accused's conduct—*See* PENAL CODE, ss. 467, 471, 14 C.L.J. 652.

See SECURITY TO KEEP THE PEACE—LIKELIHOOD OF BREACH OF THE PEACE, 3 C.L.R. 280.

Rent Recovery Act.

See BEN. ACT X OF 1859.

Repeal.

Effect of, of statute repealing another statute—*See* ACT X OF 1897, s. 7, 25 C. 233 =2 C.W.N. 11.

Repealed Law.

Conviction under — Illegality—Retrial—*See* RETRIAL, 1911, 2 M.W.N. 588=12 Cr. L.J. 992=12 Ind. Cas. 616.

Repealing Act.

See ACT XVI OF 1874.

Repealing Enactments relating to Criminal Law Act.

See ACT XVII OF 1862.

Repeal of Statutes.

See STATUTES, CONSTRUCTION OF, 6 M. 32.

Reply, Right of.

See CRIM. PRO. CODE, 1898, s. 292.

(1)—*Crim. Pro. Code* (1882), *ss.* 286, 292, 293—*Documents tendered for cross-examination of prosecution witnesses—Prosecutor's right of reply—Question as to right of reply when to be raised.*—Where the counsel for the accused, during the cross-examination of a witness called for the prosecution at a Sessions trial, and before the close of the evidence for the prosecution, reads or causes to be read to the Court and jury a letter or other document written by the witness which has not been put in evidence by the prosecution or by the presiding Judge, he either expressly or impliedly undertakes to put it in as evidence at the proper time, and the Crown has, therefore, a right of reply. [*R.*, 4 L.B.R. 5=6 Cr. L.J. 115.] The question whether, if certain documents were tendered by the accused to witnesses for the Crown with the intention of using those documents as evidence hereafter, the Crown would be entitled to a right of reply, should generally be raised, when the first document intended to be used in this way is put to a witness or when the accused is asked if he means to adduce evidence. If there are special circumstances justifying such a course, such question may be raised at any stage beyond those named. QUEEN-EMPRESS v. HAYFIELD, **14 A. 212= A.W.N. 1892, 63.** [*R.*, 9 Cr. L.J. 56=4 N.L. R. 163.]

(2)—*Crim. Pro. Code, s.* 292—*Documentary evidence put in by accused during cross-examination of prosecution witness—Right of reply.*—Where, during the cross-examination of the prosecution witnesses, the counsel for the accused puts in documentary evidence on behalf of the accused, and the counsel for the

Reply, Right of—*continued.*

defence does not call any witness for the defence, the prosecution has no right of reply. QUEEN-EMPRESS v. KRISHNAJI BABURAV BULELL, **14 B. 436.** [*Diss*, 14 A. 212.]

(3)—*Crim. Pro. Code, ss.* 289, 290, 292—*Prosecutor's right of reply, when only one of several accused adduces evidence.*—The prosecutor has the right to sum up, only when all the accused persons say that they do not mean to adduce any evidence. Where one of the accused jointly tried adduces evidence, but the other accused do not, they must all follow one another in their defence under s. 290, and the prosecutor will be entitled under s. 292 to reply generally on the whole case. QUEEN-EMPRESS v. SADANAND NARAYAN, **18 B. 364.**

(4)—*Crim. Pro. Code* (1898), *ss.* 289, 292—*Right to reply—Putting in documents in the cross-examination of prosecution witnesses does not give the right of reply to the prosecutor.*—Merely putting in papers through a witness for the prosecution in the course of cross-examination is not 'adducing any evidence,' within the meaning of s. 292, Crim. Pro. Code. Nothing which the accused can fairly get in to his own advantage by the legitimate employment of cross-examination, while the case is in the hands of the prosecution, deprives him of his right to the last word. But documentary matter, which ought properly to come in as evidence in rebuttal, ought not to be put in during the cross-examination of the witness for the prosecution. EMPEROR v. ABDULALI SHARFALI, **11 Bom. L.R. 177=9 Cr. L J. 284 =1 Ind. Cas. 280.** [*F.*, 7 L.B.R. 84.]

(5)—*Crim. Pro. Code* (1882), *Ch.* 21—*Warrant cases—Right of reply.*—So far as the trial of warrant cases is concerned, there is no provision in the Code under which the accused is asked whether he means to call witnesses or not. After the charge is framed, the accused is called on to enter on his defence, and to produce his evidence, but he is not asked, whether he means to call evidence or not. The right of reply would seem, therefore, to depend, not on what may be said, but on what is done, and if no evidence is produced, there should be no right of reply by the prosecutor. QUEEN-EMPRESS v. LAPPREY, **Rat. Un. Cr. C. 938= Cr. Rg. 48 of 1897.**

(6)—*Crim. Pro. Code, s.* 289—*Tendering of documentary evidence by accused during cross-examination of prosecution witness—Prosecutor's right of reply.*—Having regard to the provisions of s. 289 of the Code, the putting in of documentary evidence by an accused, during the hearing of the evidence for the prosecution, before he is asked whether he intends to call any evidence, does not give a right of reply to the Crown. EMPRESS OF INDIA v. KALI PROSONNO DOSS, **14 C. 245.** (10 C. 1024, *F.*) [*Diss.*, 14 A. 212=A.W.N. 1892, 63, 11 M. 339 =2 Weir 381; *F.*, 17 C. 930; *R.*, 14 A. 212= A W N. 1892, 63.]

(7)—*Crim. Pro. Code, ss.* 289, 292—*Documentary evidence put in by the accused during*

Reply, Right of—*continued.*

the cross-examination of a prosecution witness—Prosecutor's right of reply.—The prosecution is entitled to reply, only when the accused has stated, in reply to the question put to him under s. 289 of the Code, that he means to adduce evidence. If, during the cross-examination of witnesses for the prosecution, an accused person puts in documentary evidence to support his defence before he is asked under s. 289, whether he means to adduce evidence, the prosecution has no right of reply QUEEN-EMPRESS v. SOLOMON, **17 C. 930.** (14 C. 245, *F.*; 11 M. 339, *Diss.*) [*Diss.*, 14 A. 212.]

(8)—*Crim. Pro. Code* (1898), *ss.* 288 *and* 292 —*Deposition of witnesses before committing Magistrate being put in by accused—Prosecutor's right of reply.*—In a trial at the High Court Sessions, the accused immediately after the case for the prosecution was closed and before he was asked by the Court whether he meant to adduce evidence, put in depositions of certain witnesses for the prosecution taken by the committing Magistrate, which formed part of the record sent up by the Magistrate, for the purpose of contradicting their evidence given in the Sessions trial. *Held*, that the prosecution was not entitled to reply, as no evidence had been adduced by the accused, and as the tender of the depositions of these witnesses being merely an application that the discretion of the Judge be exercised in the manner provided by s. 288. EMPEROR v. ROBERT STEWART, **31 C. 1050 = 8 C.W.N. 528 = 1 Cr. L J. 451.** [*R.*, 15 Cr.L.J. 241 = 23 Ind. Cas. 193 = 7 L.B.R. 84; *R.*, 4 L.B.R. 5; *D.*, 10 Cr. L.J. 24.]

(9)—*Crim. Pro. Code* (1882), s. 289—*Documentary evidence put in by accused during examination of prosecution witnesses—Prosecutor's right of reply.*—The Crown has the right of reply, if documentary evidence is put in by the accused during the examination of the witnesses for the Crown QUEEN EMPRESS v. VENKATAPATHI, **11 M. 339 = 2 Weir 380.** (10 C. 1024, *Diss.*)

(10)—*Crim. Pro. Code* (1898), *ss.* 289 *and* 292—*Newspaper report of a previous Sessions trial put in evidence by the accused during cross-examination of a prosecution witness—Accused not adducing any evidence—Prosecutor's right of reply.*—Where, in the course of the cross-examination of a prosecution witness in a Sessions re-trial, a newspaper report of the previous trial including the witness's deposition in the same, was put in by the defence and admitted as evidence, and where the accused, in answer to a question put to him under s. 289 of the Code, at the conclusion of the case for prosecution, stated that he meant to adduce no evidence, *held* that the prosecutor had the right of reply on account of the newspaper put in. KING-EMPEROR v. H. MANUEL, **4 L. B R. 5 = 6 Cr. L.J. 115.** (11 M. 339. 14 A. 212, 16 A. 88, *F.*) [*R*, 15 Cr. L J. 241 = 7 L.B.R. 84 = 23 Ind. Cas. 193.]

(11)—*Crim. Pro. Code* (1898), *ss.* 289 *and* 292 —*Evidence adduced during cross-examination of prosecution witnesses—Effect of such procedure on right of reply.*—When evidence, oral or documentary, is adduced by the defence, through the mouths of the prosecution witnesses, it is for the Court to decide in each particular case whether that evidence is such as to take the prosecution by surprise, and to assign the right of reply accordingly, but the Court must exercise its discretion cautiously and sparingly in such circumstances. S. 292 is intended to give the right of reply to the prosecution, whenever at any stage, evidence is recorded for the defence of which the prosecution cannot be deemed to have had notice; and the prosecution must be presumed to have had notice of all relevant facts within the knowledge of its witnesses. The dictum has no application to those cases where the defence actually leads evidence, in formal exercise of its rights under s. 289; in such cases s. 292 has a direct application and the question of notice of the prosecution is immaterial. CROWN v. BHURO *wd.* GULBEG, **1 L.R. Cr. 91 = 8 Cr. L.J. 215.** [*R.*, 1 Ind. Cas. 280.]

(12)—*Crown's right of reply—Trial of prisoners charged with distinct offences in one indictment.*—Where two prisoners were charged with distinct offences in the same indictment, the calling of evidence on behalf of one does not give the Crown a right of reply upon the other. QUEEN v. ABBAS, **2 Hyde 247.**

Defence putting in a document during cross-examination—Prosecutor's right—Court giving guarantee to a witness to give any evidence without fear of consequences—*See* CRIM. PRO. CODE, 1898, ss. 222, 292, 417, 63 P.L.R 1911 = 9 Ind. Cas. 436 = 12 Cr. L.J. 73.

See CRIM. PRO. CODE, 1898, ss. 289 and 292, 10 C. 1024.

See PRACTICE AND PROCEDURE, 10 C. 140 = 13 C.L.R. 358.

Report.

See CHEMICAL EXAMINER'S REPORT.

See INQUEST REPORT.

See OCCURRENCE REPORTS.

See POLICE REPORT.

See POST-MORTEM REPORT.

Made by village officer in executive capacity —whether a complaint—*See* COMPLAINT—WHAT IS, AND WHO SHOULD INSTITUTE, Rat. Un. Cr. C. 554 = Cr. Rg. 29 of 1891.

Order under s. 145, Crim. Pro. Code, and maps referred to in such orders, admissibility and value of, as evidence—Evidence Act, s. 13 —*See* CRIM. PRO. CODE, 1898, s. 145, 29 C. 187 = 29 I.A. 24 = 6 C.W.N. 386, P.C.

Report from Record Office.

See EVIDENCE—GENERAL, 6 B.L.R. App. 151 = 15 W.R.Cr. 53.

Report of Chemical Examiner.

Burden of proof—Rape on a child—Complaint of robbery—Confession—*See* CONFESSION—GENERAL, 93 P.L.R. 1910=8 Ind. Cas. 494=11 Cr. L.J. 665.

Report of Indian Law Commissioners.

Reference to, in construction of statutes—*See* STATUTES, CONSTRUCTION OF, 17 C. 852.

Report of Jurors.

Jury, appointment of—Five persons named as jurors—Report of four, one being ill—Whether report legal—*See* CRIM. PRO. CODE, 1898, s. 138, 6 Ind. Cas. 777=11 Cr. L.J. 402.

Republication.

Of defamatory matter already published—*See* DEFAMATION, 12 B. 167.

Repugnancy.

Verdict of jury—in, effect of, in Indian law—Opinion of judge and jury, weight to be attached to—*See* PENAL CODE, ss. 34, 107, 18 C.W.N. 580=15 Cr. L.J. 402=41 C. 754=23 Ind. Cas. 1002.

Reputation.

See EVIDENCE—GENERAL REPUTE.

Attempt at cheating—False representation to pleader—Damage or harm in mind, reputation—Complainant, position of—*See* CHEATING—GENERAL, 7 C.L.J. 375=12 C.W.N. 750=7 Cr. L.J. 342.

Injury to — Malicious prosecution — *See* DAMAGES, 7 W.R. 117.

Rescue.

See ACT I OF 1871, s. 24, 24 M. 318=1 Weir 716.

See ARREST, 27 C. 366=4 C.W.N. 252.

See ESCAPE FROM LAWFUL CUSTODY, 11 M. 441=1 Weir 210.

See PENAL CODE, ss. 224, 225, 29 A. 575=A.W.N. 1907, 179=4 A.L.J. 483=6 Cr. L. J. 10.

Reserved Forest.

Cattle straying in—*See* ACT VII OF 1878, s. 69, 22 B. 933.

Reservists.

The term "Soldiers" includes—*See* ACT XI OF 1878, ss. 13, 16, 19.

Reservoir.

See PENAL CODE, s. 277, 2 C. 383.

Res Gestae.

See EVIDENCE ACT, 1872, s. 6, ill. (*a*), 11 C.W.N. 266=5 Cr. L.J. 71.

See EVIDENCE ACT, 1872, ss. 6, 122; 34 P.R. 1914, Cr.

Residence.

(1)—*Of persons convicted to be entered in warrants.*—Judicial officers shall enter in the warrants issued to officers in charge of jails the *residence* of the persons whom they convict and sentence. CRIMINAL CIRCULAR ORDER NO. 7, DATED THE 10TH SEPTEMBER, 1863, **10 W. R. Cr. Cir. 4**

Residence—*concluded.*

False statement as to place of, for facilitating recruitment to the police—*See* CHEATING—GENERAL, 6 A. 97.

Settled abode of kept mistress—Occasional visits with intention of continuance—Whether becomes residence of accused—*See* CRIM. PRO. CODE, 1898, s. 488, cl. (9), 5 S.L.R. 220=15 Ind. Cas. 794=13 Cr. L.J. 522.

See SECURITY TO KEEP THE PEACE—ON CREDIBLE INFORMATION, 6 A. 26, F.B.

See SECURITY TO KEEP THE PEACE—PERSONS WHO MAY BE REQUIRED TO GIVE SECURITY AND PERSONS OUTSIDE JURISDICTION, 24 C. 344=1 C.W.N. 129, 23 B. 32, 14 A. 49.

Resident.

See CRIM. PRO. CODE, 1898, s. 503, A.W.N. 1896, 106.

Resistance.

See ACT VIII OF 1873, s. 45, 27 A. 499=A. W.N. 1905, 74=2 A.L.J. 219=2 Cr. L.J. 183.

See U.P. ACT II OF 1901, s. 134, A.W.N. 1905, 65=27 A. 480.

To unlawful force not an offence—*See* ARREST, 1 L.B.R. 173.

See PENAL CODE, ss. 99, 353, 8 A. 293=A. W.N. 1886, 106.

See PENAL CODE, ss. 141, 147 and 325, 29 C. 244=6 C.W N. 164.

See PENAL CODE, s. 183, 15 B. 564.

See PENAL CODE, ss. 183, 79, 99 and 353, 21 M. 78=1 Weir 123.

See PENAL CODE, ss. 183, 192, 10 C. 18=13 C.L.R. 209.

See PENAL CODE, ss. 186, 187, 6 C.P.L.R. Cr. 5.

See PENAL CODE, s. 225-B, 6 C.W.N. 845.

See PRIVATE DEFENCE, RIGHT OF, 2 C.P. L.R. 73.

To an illegal search-warrant—*See* UNLAWFUL ASSEMBLY, 7 N.W.P. 209.

Resistance to Execution of Decree.

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 6 C.L.R. 206.

Resistance to Execution of Warrant.

See PENAL CODE, ss. 183 and 186, 5 C.W. N. 391.

Resistance to Process.

Of civil Court—*See* JURISDICTION OF CRIMINAL COURTS—GENERAL, 2 B L.R. F.B. 21=10 W.R. Cr. 43.

Resistance to Public Servant.

See PRIVATE DEFENCE, RIGHT OF.

See PUBLIC SERVANT.

See CRIM. PRO. CODE, 1898, ss. 160 and 161, Colm. Dig. Cr. 72 of 1877.

Res Judicata.

See AUTREFOIS ACQUIT, PLEA OF.

See AUTREFOIS CONVICT. PLEA OF.

(1)—*Crim. Pro. Code*, s. 403—Res judicata —*Whether it bars any proceedings by general principle or only by special enactment—Dismissal of first application for maintenance—Whether it is a bar to second application on same facts—Where substantial justice has been done by the lower Court—Whether High Court will interfere in revision—Civ. Pro. Code* (*Act* XIV *of* 1882), s. 13.—The parties were husband and wife, living apart. The respondent applied to the Sub Divisional Magistrate for an order for the applicant to pay an allowance for the support of their child. The Magistrate wrote "Respondent offers to maintain the complainant in a separate house, but she refuses to accept the offer. She alleges no ill-treatment. I have consequently no power to interfere. Case dismissed." This Magistrate was transferred, and the respondent subsequently applied to his successor for an order of maintenance for the child. The case was duly heard and an order made to pay Rs. 5 per month. *Held*, on appeal that *res judicata* does not bar any proceedings by general principle but only by special enactment, as contained in s. 13 of the Civ. Pro. Code, and s. 403 of the Crim. Pro. Code. *Held*, also that, where a Magistrate, to whom an application is made, knows or has reason to believe that a similar application on the same facts has been adjudicated on he ought not to act on the application without considering the previous decision, but that, when he does so, he is not wrong in law, nor are his proceedings bad and void, regardless of the merits. Where the second Magistrate has done substantial justice, it is a sufficient reason for refusing to interfere in revision. MAUNG PO SO v. MA KYIN MI, **14 Bur. L.R. 259=4 L.B.R. 337 =9 Cr. L.J. 21.**

(2)—*Crim. Pro. Code*, 1898, *s.* 403—*When previous acquittal a bar to subsequent trial on same facts.*—An acquittal of the accused for preparation to commit a dacoity is no bar to their subsequent trial on the same facts for collecting men and arms to wage war against the King under s. 403, Crim. Pro Code, when, at the time of the first trial, no sanction was obtained, under ch. VI, Penal Code, for the prosecution. SAN BAW v. CROWN, **1 L.B.R. 340, F.B.**

(3)—*Causes of action—Sanction for forgery in respect of document in another suit.—Held* that a previous decision in a civil suit, where on the issue of the genuineness or otherwise of a *kabuliat* the Court found that it was not genuine, but added (as an *obiter dictum*) that the *pottah* produced by the other side was authentic, did not bar the jurisdiction of a Civil Court to sanction a commitment for forgery regarding the *pottah.* JUGGUT MISSER v. BABOO LAL, **5 W.R. Cr. 50= Marsh 43= W.R.F.B. 10=1 Hay 75.**

See CRIM. PRO. CODE, 1898, s. 145, 8 C.W.N. 178.

Res Judicata—*concluded.*

See CRIM. PRO. CODE, 1898, s. 403, 6 A. L.J. 262=9 Cr. L.J. 526=31 A. 317=2 Ind. Cas. 219.

See MAINTENANCE, 32 C. 479=13 C.W.N. 150, 5 A. 224.

See MANDAMUS, 7 W.R. 316.

Res Nullius.

See CRIMINAL MISAPPROPRIATION, 11 M. 145=1 Weir 498.

See PENAL CODE, ss. 403, 410, 411, 8 A. 51 =A.W.N. 1885, 326.

See STOLEN PROPERTY, 9 A. 348=A.W.N. 1887, 73.

Restitution of Conjugal Rights.

Decree ordering wife to return to husband—Enforcing decree under a suit for restitution of conjugal rights against wife—*See* ACT XIV OF 1882, 8 W.R.P.C. 3=11 M.I.A. 551.

Order for maintenance of child obtained by wife against husband—Subsequent decree in favour of latter for restitution of conjugal rights—Wife's right to claim arrears of maintenance on behalf of child—*See* CRIM. PRO. CODE, 1898, s. 488, 6 L.B R. 127=18 Ind. Cas. 658=14 Cr. L.J. 98=6 Bur. L.T. 51.

Order for maintenance—Subsequent decree of Civil Court for restitution of conjugal rights —*See* MAINTENANCE, 23 B. 484.

Effect of Civil Court decree for restitution of conjugal rights—*See* MAINTENANCE, 27 A. 483=A.W.N. 1905, 54=2 A.L.J. 160.

Effect of decree of Civil Court on order for maintenance—Decree in suit for—*See* MAINTENANCE, 13 W.R. Cr. 52.

Restoration of Abducted Female.

(1)—*Crim. Pro. Code, s.* 552—*Absence of proof of unlawful detention.* — Where a Magistrate ordered the restoration of a woman to liberty, without any finding that she was unlawfully detained by any one, and without ordering any one to restore her to liberty, *held*, that such an order was not contemplated by s. 552, and that the proper course would be to issue an order to have her brought before him and to examine her. SYED UMAR SAHEB v. SYED DAVOOD SAHEB, **2 Weir 724.**

Restoration of Property.

See CRIM. PRO. CODE, 1898, s. 517.

(1)—*Crim. Pro. Code* (1872), *ss.* 418, 517 *of* 1898—*Essentials for order under the section.*—Where no offence has been proved against the accused, the pre-requisites of an order under s. 418 would be wanting. *In re* PRASANADA NYNAR, **2 Weir 666** (2 Weir 665, *F.*)

(2)—*Crim. Pro. Code* (1882), *s.* 517—*Property regarding which no offence has been committed —Disposal.*—S. 517 does not preclude the operation of the ordinary rule that, when no offence is shown to have been committed, the property before a Court ought to be restored to the party from whose possession it was last taken. NAGARATNAM v. RUKMANI, **2 Weir 668.**

Restoration of Property—*continued.*

(3)—*Crim. Pro. Code, s. 520—Disposal of property—Order passed by first-class Magistrate—Sentence confirmed by Sessions Court—District Magistrate varying the order in revision—Jurisdiction—Notice to the other side necessary—Practice and procedure.*—In deciding a case, a trying Magistrate of the First Class convicted and sentenced the accused and passed an order disposing of the property produced before him. On appeal to the Sessions Court, the conviction and sentence were confirmed and the orders as to the disposal of property left untouched. Subsequently, the District Magistrate, on an application having been made to him, varied the order without issuing any notice to the other side: *Held,* (1) that the District Magistrate had no jurisdiction to interfere under s. 520 of the Crim. Pro. Code, for he could interfere as a Court of revision only where there had been no appeal to the Sessions Court. (2) That the District Magistrate should not have disposed of the matter without giving notice to the other side. *In re* LAXMAN RANGU RANGARI, **13 Bom. L.R. 131 = 9 Ind. Cas. 947 = 12 Cr. L.J. 169.**

(4)—*Crim. Pro. Code, ss. 439, 522—Powers of revision of the High Court to order restoration of property.*—The High Court has, in its revisional jurisdiction, the power of making any amendment, or any consequential or incidental order that may be just and proper. An accused person may upon his acquittal be restored to the possession of property of which he has been deprived in favour of the complainant. MANKI v. BHAGWANTI, **27 A. 415 = A.W.N. 1905, 19 = 2 A.L.J. 64 = 2 Cr. L.J. 24.** (25 C. 630, *D.*) [*F.*, 36 C. 44 = 13 C.W.N. 77 = 9 Cr. L.J. 294 = 1 Ind. Cas. 202.]

(5)—*Crim. Pro. Code, ss. 517, 520—Order regarding half-currency notes.*—Where a question arises between two persons as to who shall bear the loss resulting from the fraud of a third, the one who has been guilty of negligence shall suffer. Where a buyer of certain goods made over to the seller the halves of certain currency notes as security for the payment of the price of goods delivered, having previously parted with the other halves to a third person, *held,* that the seller was entitled to recover possession of the halves originally made to him from the third person, to whom they had been delivered under an order of the Court, or to obtain compensation from him, if he had parted with them, inasmuch as it was his negligence which enabled the buyer to perpetrate the fraud upon the seller. ABDUR RAZZAQ v. RAHMATULLAH, **27 A. 630 = 2 A.L.J. 424 = A.W.N. 1905, 139 = 2 Cr. L.J. 331.**

(6)—*Crim. Pro. Code (1882), s. 517—Order for disposal of property, when valid—Appeal.*—An order under s. 517 could only be made if the Magistrate, at the conclusion of an enquiry, arrives at an opinion as to "whether any offence has been committed regarding the property." An order not so passed, is not one under the section, and the Sessions Judge has no jurisdiction to hear an appeal from an order of a first class Magistrate so passed. *In re* ANANT RAMACHANDRA LOTLIKAR, **10 B. 197 = 10 Ind. Jur. 339.**

(7)—*Crim. Pro. Code, ss. 517, 523—Disposal of property, when no offence is proved against the accused.*—Where property is produced before a Court in an enquiry, s. 517 is the only section that will apply and not s. 523. A Magistrate has, therefore, jurisdiction only in case he finds that it was property "regarding which an offence has been committed, or which has been used for the commission of an offence." Where a Magistrate discharged the accused under ss. 381, 411, I.P.C., because the evidence was not sufficient to warrant a conviction, and at the same time made an order for the detention of property produced before him during the enquiry, until the title of the rightful owner was proved before a Civil Court, and subsequently, in modification of that order, ordered the delivery of the property to the complainant, *held* that both orders were without jurisdiction and that the property should be disposed of in a legal manner after giving the parties notice. If he found that the case came within s. 517, then, he could make an order as he thought fit; if he found that it did not, then, the only legal order he could pass was to restore the previous possession. *In re* DEVIDIN DURGA PRASAD, **22 B. 844.** [*Appl.*, 30 C. 690; *R.*, 14 C.P.L.R. 60, 29 M. 375 = 4 Cr. L.J. 233.]

(8)—*Crim. Pro. Code, s 522—Order under this section, when to be made.*—An order under s. 522 for the disposal of moveable property in respect of which an offence has been committed, is an independent order, although it can only be made on conviction for the offence. It need not be made simultaneously with the conviction. NARAYAN v. VISAJI, **23 B. 494.** [*Doubted*, 5 C.W.N. 374.]

(9)—*Crim. Pro. Code, s. 517—Disposal of stolen property on conviction of the thief—Babashahi coin.*—A *babashahi* coin is not legal tender in British India; and, therefore, the title to it cannot pass by mere delivery unless it is shown to be a customary coin. Where such coin comes before the Court as part of the stolen property, and no custom is set up to show that it is legal tender in British India, the Court is at liberty to order the same to be restored to the complainant under s. 517, Crim. Pro. Code. *In re* MATHUR LALBHAI, **25 B. 702 = 3 Bom. L.R. 392.** [*Rel. on*, 12 Cr. L.J. 397 = 11 Ind. Cas. 581 = 4 S.L.R. 255.]

(10)—*Crim. Pro. Code (1898), s. 517—Magistrate—Order—Disposal of property—Discretion.*—S. 517 invests the Magistrate with a discretionary power and it is a rule of law that such power must be exercised judicially, *i.e.*, according to sound principles of law and not in an arbitrary manner. But what that means is, not that the order is in the opinion of the higher tribunal of revision an improper one which it would not have passed, but that, having regard to the materials before the Court

Restoration of Property—*continued.*

exercising the discretion, that discretion was exercised in a legal manner. Now, if there were no materials whatever before him, the Magistrate ought to have returned the property to the person from whom it was produced. But if there were some materials, then the Magistrate's discretion came into operation, and it was for him to say what order ought to be passed having regard to all the facts in the case. *In re* SADASHIV, **11 Bom. L.R. 16 = 9 Cr L.J. 162 = 1 Ind. Cas. 103.**

(11)—*Crim. Pro. Code* (1882), *ss.* 517, 523—*Stolen property—Delivery to complainant.*—Where property is alleged to be stolen and its seizure by the police is reported to the Magistrate, the property may be delivered to the complainant under s. 523, Crim. Pro. Code. But the Magistrate's order does not conclude the right of any person. *In re* AHMED SAHEB, **Rat. Un. Cr. C 365 = Cr. Rg. 12 of 1888.** [*R.*, 12 Bom. L.R. 232 = 11 Cr. L.J. 339 = 5 Ind. Cas 972.]

(12)—*Crim. Pro. Code* (1882), *s.* 517—*Disposal of property produced—Judicial enquiry—Forfeiture.*—A Magistrate ordered the forfeiture of the complainant's money on the suspicion that it had been used for the purpose of purchasing stolen property. *Held*, that the order was illegal. S. 517 of the Crim. Pro. Code does not contemplate detention of property by the Government but return thereof to the person entitled thereto. If it were so contemplated, no forfeiture can be ordered without a separate judicial enquiry after giving an opportunity to the complainant to explain all circumstances. *In re* ISHWAR, **Rat. Un. Cr. C. 492 = Cr. Rg. 62 of 1889.**

(13)—*Crim. Pro. Code* (1882), *s.* 518—*To what property applicable.*—An order of reference under s. 518 of the Crim. Pro. Code can be made only in respect of property regarding which any offence appears to have been committed or which has been used for the commission of any offence. QUEEN-EMPRESS v. GIRJI, **Rat. Un. Cr. C. 496 = Cr. Rg. 2 of 1890.**

(14)—*Crim. Pro. Code* (1882), *s.* 517—*Applicability to offences not under investigation.*—S. 517 of the Crim. Pro. Code does not apply to offences not actually under investigation. In the case of property used for the commission of any offence not under investigation, the Court cannot dispose of it under that section, but must return it to the person from whom it was taken. *In re* AMRA NATHU, **Rat. Un. Cr. C. 500 = Cr. Rg. 15 of 1890.**

(15)—*Crim. Pro. Code* (1882), *ss.* 517, 523—*Disposal of money produced in Court.*—Where no offence appears to have been committed regarding the money produced in a case, the Magistrate may refrain from making any order as to the money under s. 517. Proceedings can be taken, if necessary, under s. 523 of the Crim. Pro. Code. QUEEN-EMPRESS v. GOPALA, **Rat. Un. Cr. C. 536 = Cr. Rg. 7 of 1891.**

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(16)—*Crim. Pro. Code* (1882), *s.* 517—*Order for disposal of property, when to be made.*—It is not competent to a Magistrate to pass, before a trial is concluded, an order disposing of the property in respect of which an offence is committed. S. 517, Crim. Pro. Code, provides that such an order shall not be carried out at once in cases which are appealable. *In re* VALJI MAHOMED, **Rat. Un. Cr. C. 957 = Cr. Rg. 10 of 1898.**

(17)—*Crim. Pro. Code* (1898), *s.* 517—*Disposal of property.*—Under s. 517, a Sessions Judge has no jurisdiction to make an order for the disposal of property unless he finds that some offence appears to have been committed regarding it or that it has been used for the commission of some offence. QUEEN-EMPRESS v. USMAN GUL-MAHOMED, **Rat. Un. Cr. C. 981.**

(18)—*Crim. Pro. Code, s.* 517—*Discharge of accused charged with criminal misappropriation—Order regarding property as to which no offence had been committed — High Court's power to order restitution.*—After having dismissed a charge of criminal misappropriation of an elephant against the accused, the Magistrate, under s. 517 of the Code, ordered the elephant to be given to the Executive Engineer, holding that it was the property of the Government. *Held*, that the Magistrate was not competent to pass such order, because the elephant was not property produced before him regarding "which any offence had been committed or which had been used for the commission of any offence." In setting aside such order, the High Court held that they had no power to order the restitution of the elephant. BASUDEB SURMA GOSSAIN v. NAZIRUDDIN, **14 C. 834.** (1 B. 630, *F.*) [*F.*, 4 L.B.R. 14, 5 Bom. L.R. 25; *R.*, 30 C. 690, 18 A.W.N. 40, 14 C.P.L.R. 60; *R. and Expl.*, 25 C. 630.]

(19)—*Crim. Pro. Code* (1882), *s.* 517—*Property regarding which no offence had been committed—Order as to its disposal—Validity—Order directing delivery of property passed before expiry of appeal period, validity of.*—Where there is nothing, upon the record, to show that any offence has been committed in regard to certain property which the police found in the possession of accused, or that it has been used in the commission of any offence, a Magistrate has no authority, on conviction of the accused, to order to be paid to the complainant out of such property the sum he has lost by commission of the offence. [*D.*, 25 C. 630.] In view of para. 3 of s. 517, a Magistrate has no authority to pass an order for the delivery of the property to the complainant before the expiry of the time for preferring an appeal to the High Court. QUEEN-EMPRESS v. FATTAH CHAND, **24 C. 499 = 1 C.W.N. 435.**

(20)—*Crim. Pro. Code* (1898), *s.* 517—*Property produced before Magistrate, regarding which no offence had been committed—Disposal such of property.*—Under the provisions of

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s. 517 as amended, a Magistrate has power to pass an order regarding property produced before and in custody of the Court, even though no offence has been committed in respect of it. RUSSUL BIBEE v. AHMED MOOSAJEE, **34 C. 347=5 C.L.J. 44=5 Cr. L.J. 48.** (30 C. 690, *R.*)

(21)—*Crim. Pro. Code* (1898), *s.* 517—*Scope of the section.*—S. 517 of the Code has reference to cases of offences relating to property or relating to document, *e.g.*, where the Court directs, as in the case of theft or criminal misappropriation or offences of similar description, that the property which is stolen or misappropriated be restored to its owner. The words "which has been used for the commission of any offence" in s. 517, refer to cases of the same nature, *i.e.*, to instruments like guns or swords produced in Court. The Magistrate has, under s. 517, power to give direction as to deposit of property or instruments produced in Court and not direct forfeiture. ABINASH CHANDRA BHATTACHARJEE v. EMPEROR, **34 C. 986=11 C.W.N. 1046=6 C.L.J. 754=6 Cr. L J. 293.**

(22)—*Crim. Pro. Code* (1898), *s.* 517—*Order directing delivery of property, in the absence of any criminal proceedings or enquiry.*—Where an order directing delivery of property is made by a Magistrate without any criminal proceeding before him or any other Magistrate, but merely on the application of the person in whose favour such order is made, the order is entirely without jurisdiction. S. 517 does not apply to the case. SREEDAM CHUNDER SEAL v. W. J. O. GRADY, **6 C.L.J. 707=6 Cr. L.J. 402.**

(23)—*Penal Code, s.* 448—*Crim. Pro. Code, s.* 522—*Entry into a house on a* bona fide *claim, not criminal house-trespass—Restoration of articles, not identified where no conviction for theft, illegal—Where criminal house-trespass is not attended by criminal force, restoration of house to complianant's possession illegal.*—Where in the absence of the complainant, certain persons took possession of her house and established there a boy, alleged to be the adopted son of the complainant's father, and the complainant thereafter lodged a complaint of criminal house-trespass and theft, and the Deputy Magistrate convicted the accused of criminal house-trespass, but not of theft, holding that the articles taken away could not be satisfactorily identified, and although the accused claimed the articles, as their own, ordered to make over the articles as well as possession of the house to the complainant: *Held*—that the case is one, not of criminal but of civil trespass; that the Deputy Magistrate should not have ordered the articles to be delivered to the complainant: and further that the provisions of s. 522, Crim. Pro. Code, do not warrant the passing of an order delivering possession of the house to the complainant because the accused were not convicted of any offence attended by criminal force. SAITA BISWAL v. DOCHHI STRI, **7 C.L.J. 175=12 C.W.N. 269=7 Cr. L.J. 108.**

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(24)—*Crim. Pro. Code* (1898), *ss.* 517 *and* 522—*Restoration of property—Complainant dispossessed—Conviction under s.* 323, *Penal Code—High Court's power to interfere in revision with order under s.* 522, *Crim. Pro. Code.*—The High Court has power to interfere in revision with an order passed by a Magistrate under s. 522, Crim. Pro. Code. Where, on the complaint of the petitioner charging the opposite party with having forcibly dispossessed him (the petitioner) of a bungalow and its contents, the Magistrate found the case to be true and convicted the opposite party under s 323, I.P. C., for having forcibly dispossessed the petitioner of both the bungalow and its contents. *Held*, under the circumstances of the case, it was the duty of the Magistrate to pass orders under ss. 517 and 522, Crim. Pro. Code, directing restoration to the petitioner of the bungalow and its contents. AHMAD ALI v. KEENOO KHAN, **36 C. 44=13 C.W.N. 77=1 Ind.Cas. 202=9 Cr. L.J. 294.** (27 A. 415, *F.*; 25 C. 630, *R.*) [*R.*, 18 C.W.N. 1146=15 Cr. L.J. 175.]

(25)—*Crim. Pro. Code, s.* 517—*Order for disposal of stolen property, a cow with calf, the latter not being in existence at the time of theft.*—An innocent purchaser of a stolen cow cannot, under s. 517, be ordered to deliver up the calf, not even in embryonic existence when the theft took place, given birth to by the cow while it was in his possession. *In re* VERNEDE, **10 M. 25=2 Weir 670.**

(26)—*Crim. Pro. Code* (1898), *s.* 522—*Conditions necessary, before passing an order under the section for restoration of possession of immoveable property.*—The conditions precedent that must exist before an order can be made under s.522 are (1) some person must have been convicted of an offence attended by a criminal force and (2) some person must have been dispossessed of immoveable property by such force. To held that an offence 'attended by criminal force' means an offence of which criminal force is an ingredient is to place a narrow construction on the very general words "attended by criminal force." On the conviction of a person of criminal trespass under s. 447, Penal Code, the accused was ordered to restore possession of certain immoveable property to the complainant, *held*, that the use of criminal force was not a necessary ingredient of an offence under s. 477, Penal Code, and that, as there was no finding by the Court which convicted the accused that any criminal force was, in fact, used by the petitioners, or that the complainant was dispossessed of the land by such force, an order under s. 522 would be without jurisdiction. *In re* BATAKALA POTTIAVADU, **26 M. 49=2 Weir 675=12 M.L.J. 447.** [*R.*, 14 Cr. L.J. 172=19 Ind. Cas. 172, 4 Cr. L.J. 293=54 P.L.R. 1907=12 P.R. 1906, Cr.]

(27)—*Restitution of property to accused acquittal.*—Where the Court acquits the accused, the property taken out of their possession ought to be restored to them in the absence of

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a finding that the same belongs to somebody else. *In re* GOPALRAJU SITARAMIAH, **3 M.L.T. 334 = 7 Cr. L.J. 399.**

(28)—*Crim. Pro. Code, s. 517—Accused charged with theft of jewels—Discharged—Delivery of possession of jewels ordered on joint receipt of accused and complainant—Legality.*—K charged her daughter R and another with theft of jewels. R was discharged. The jewels were ordered to be delivered on the joint receipt of R and K. It was found that part of the jewels was the self-acquisition of R and the rest formed the joint family property of R and K. *Held*, that, under the provisions of s. 517, a Magistrate has jurisdiction to pass an order in favour of the daughter or of the mother or in favour of both, and that, on the finding of the Judge that part of the property was self-acquisition of the daughter and part was joint family property, the order was right. *In re* KANAGASABAI, **7 M.L.T. 179 = 5 Ind. Cas. 468 = 11 Cr. L.J. 138 = 20 M.L.J. 425.**

(29)—*To whom to be made on discharging accused—Crim. Pro. Code* (1898), *ss.* 517—520.—Where a Court discharges an accused person, it could make no order for the disposal of property other than an order giving it back into the possession from which it came. SAON GOUD v. SHEONANDAN LAL, **14 C.P.L.R. 60,** (17 B. 748, 22 B. 844 and 1 C.W.N. 561, *R.*)

(30)—*Crim. Pro. Code* (1898), *s.* 517—"*Disposal,*" *meaning of, whether it includes confiscation or destruction of property—Property of a person, other than the one convicted, if can be confiscated.*—P owned a press, of which B had the exclusive use for three days a week for printing a paper of his. B was prosecuted for sedition in respect of certain articles in his paper and convicted. P's press was seized and confiscated. *Held*, that the order of confiscation was not right. The Legislature never intended, by using the general word "disposal," to authorize the infliction of that punishment, not merely on the offender under trial, but also on others who may not even be before the Court. PRITHWIGIR v. EMPEROR, **5 N.L.R. 59 = 9 Cr. L.J. 539 = 2 Ind. Cas. 233.** (9 C.W.N. 597 = 34 C. 986, *R.*)

(31)—*Crim. Pro. Code* (*Act* V *of* 1898), *s.* 517—*Order for disposal of property regarding which no offence was committed.*—When the accused was convicted of the offence of rash driving on a public way under s. 279, Indian Penal Code, and the convicting Magistrate passed an order under s. 517 of the Crim. Pro. Code that the cart, pony and harness which the accused was driving should be sold and the sale-proceeds paid over to the complainant, *held* that the order was illegal. CROWN v. ILAHI BAKHSH, **4 P.L.R. 1904 = 1 Cr. L.J. 38.**

(32)—*Crim. Pro. Code, s.* 517—*Stolen buffalo—Sale in market overt—Purchaser buying such buffalo* bona fide—*Right of owner to reclaim it from such purchaser—S.* 108, *Contract Act*—Under s. 108 of the Contract Act, in India a seller cannot give to a buyer a better title than he has himself, and the buyer in overt market is not protected by any of the exceptions to that section. *Held*, therefore, that the real owner of a stolen buffalo was entitled to recover it from the possession of an honest purchaser, who acquired it *bona fide* after it had been bought and sold in overt market. FAIZ AHMED v. KING-EMPEROR, **2 P.R. 1908, Cr. = 6 P.W.R. 1908, Cr. = 140 P.L.R. 1908 = 7 Cr. L.J. 279.**

(33)—*Magistrate's order as to—Burmah Forest Act, s.* 55, *Crim. Pro. Code* (1882), *s.* 517.—S. 55, Burma Forest Act, has a more limited application than s. 517, Crim. Pro. Code. That Act contains no provision as to the disposal of property (timber, &c.), which have been seized and in respect of which no offence is proved to have been committed. When, therefore, there has been an enquiry or trial and the accused has been discharged or acquitted by a criminal Court, that Court is bound to restore the property in dispute into the possession of the person from whom it was taken in the absence of any express provision of law as to its disposal. QUEEN-EMPRESS v. NAGA AUNG BAJU, **L.B.R. 1893—1900, 20.** (1 B. 630, 5 W.R. Cr. 155, *F.*)

(34)—*Crim. Pro. Code* (1898), *s.* 517 (3)—*Order for disposal of property regarding which offence has been committed—Appeal from such order—Pledge of jewels, obtained from owner by means of an offence or fraud—S.* 178, *Prov.* 2, *Contract Act—Pawn-broker's right to sue in a Civil Court.*—A Magistrate should not make an order for delivery to owner or complainant of property regarding which an offence had been committed, without giving the person (pledgee), from whom the property was taken, an opportunity of being heard. An appeal lies from such order, and the Magistrate should not, under sub-s. 3 of s. 517 of the Code, allow his order to be carried out, until the period allowed for presenting such appeal had passed. Where, however, the evidence disclosed a *prima facie* case of a certain jewel having been obtained from the owner by means of an offence or fraud, within the meaning of the second proviso to s. 178 of the Contract Act, and being pledged subsequently to a third person, the Court declined to interfere with the order of the Magistrate directing the return of the jewel to the owner without hearing the person with whom the jewel was pledged. In such a case, the pawn-broker, from whom the jewel was taken, was held to have the right to bring a suit in the Civil Court to enforce his lien on the jewel. KONG LONE v. MA KAY, **4 L.B.R. 13 = 6 Cr. L.J. 125.** [*F.*, 3 Bur. L.T. 111 = 12 Cr. L.J. 88 = 8 Ind. Cas. 1204, 4 Bur. L.T. 170 = 12 Cr. L.J. 467 = 11 Ind. Cas. 1003.]

(35)—*Crim. Pro. Code* (1898), *s.* 523—*Disposal of property—Magistrate's discretion—High Court's power of revision and to order restitution.*—S. 523 empowers a Magistrate to make such order as he thinks fit, regarding the disposal of property seized by the police. But the discretion given by these words must be judicially exercised, and, in the absence of anything to

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show the title to the property, it should be ordered to be delivered to the person, in whose possession it was at the time of the attachment. The High Court may set aside the orders of a Magistrate in such a case, but has no power to order restitution of the property. KYIN TOU v. E CHO, **4 L.B.R. 14=6 Cr.L J. 126.** (5 Bom. L.R. 25, *F.*; 1 B. 630, 14 C. 834, *R.*)

(36)—*Crim. Pro. Code, ss.* 517 *and* 403—*Order for disposal of property—Immoveable property—Inquiry or trial barred by s.* 403.—The words in s. 517, "property regarding which any offence appears to have been committed" include immoveable property. A certain person charged with criminal trespass on land, was acquitted of the charge; subsequently, he was put up before a Magistrate on a charge of criminal trespass, and was acquitted of the offence under the provisions of s. 403. The Magistrate who acquitted the accused, however, made an order directing the disposal of the property in favour of the complainant. *Held* the order regarding the disposal of property in favour of the complainant was illegal, inasmuch as such an order can be made only "when an inquiry or trial in a Criminal Court is concluded." The trial having been barred by s. 403, there was no inquiry or trial at all within the contemplation of s. 517. TUN HLA v. SHWE NGO, **4 L.B.R. 229=7 Cr.L.J. 490.**

(37)—*Crim. Pro. Code* (1898), *s.* 517—*Disposal of property—Order to recipient to produce property when called upon.*—An order under s. 517, Crim. Pro. Code, cannot direct the party to whom property is delivered to produce it when called upon to do so. VEGGU MANIKYAM v. EMPEROR, **4 Ind. Cas. 875=19 M.L.J. 516=11 Cr L.J. 68.**

(38)—*Crim. Pro. Code* (1882), *ss.* 517, 520—*Acquittal by appellate Court—Order for restoration of property delivered to complainant, to appellant.*—The order of a Sessions Judge, acquitting a person convicted of theft and ordering restoration of property delivered by the lower Court to the complainant, is an order under s. 520 of the Code and not under s. 517. The remedy against orders of the appellate Court is by a petition for revision, and not by way of appeal DEBI PRASAD v. PURAN, **A. W.N. 1898, 40.** (1 B. 630, 14 C. 834, A.W.N. 1896, 56, A.W.N. 1897, 26, *R.*) [*R.*, 27 A. 630=A W.N. 1905, 139=2 A.L.J 424=2 Cr. L.J. 331.]

(39)—*Crim. Pro. Code* (1882), *s.* 517—*Disposal of property on conviction for theft—Appeal—Acquittal—Procedure.*—Where, on the conviction of the accused for theft of certain notes, the notes were handed over to the complainant, but subsequently the accused was acquitted by the appellate Court which, in the course of the appeal, sent for the notes and obtained possession of them from the Magistrate, to whom they were voluntarily handed over, and subsequently returned the notes as unclaimed property, *held* that the order of the appellate Court was wrong and that the notes should be returned to the complainant, leaving the other claimant to the note to prove his title in a Civil Court. ABADI BEGAM v. ALI HUSEN, **A.W.N. 1897, 26.** [*R.*, 32 A. 153=7 A.L.J. 103=5 Ind. Cas. 696=11 Cr. L.J. 203, A.W.N. 1898, 40.]

(40)—*Crim. Pro. Code* (*Act* X *of* 1882), *s.* 517—*Illegal order as to disposal of property, subject of theft—Acquittal—Procedure.*—Where neither the original Court convicting a person of theft, nor the appellate Court acquitting him, made an order as to the disposal of the property forming the subject of theft, and, subsequently, the successor in office of the original Magistrate ordered the restoration of the property to the complainant, *held* that, though the order was illegal, the High Court, as a Court of revision, could only quash the order but make no order as to the disposal of the property. The party aggrieved should be left to have his remedy by a civil suit. QUEEN-EMPRESS v. BACHHI LAL, **A.W.N. 1896, 56.** (1 B. 630, *F.*) [*R.*, A.W.N. 1898, 40.]

(41)—*Crim. Pro. Code* (1882), *ss.* 517, 520—*Scope of s.* 517.—By s. 517, a Criminal Court is empowered to pass such order as it thinks fit for the disposal of any property produced before it regarding which any offence appears to have been committed. There is nothing in the wording of the section to limit the power of the Court to property regarding which an offence has been committed by the person who has been tried before it. KHAIRATI v. BUDHU, **A.W.N. 1893, 61.**

(42)—*Crim. Pro. Code* (1898), *s.* 523—*Magistrate—Order as to delivery of property—Delivery—Disposal.*—S. 523 says that a Magistrate may order its delivery, if he thinks fit, to the person entitled thereto. The Magistrate does not decide the question of title, but merely decides the question of possession. The fact that the accused had been in possession of the property when the charge was made is not conclusive. The question is, who is entitled to its possession. HUSHENSHA RAHIMAN SHA v. MASHAKSHA MUJAFARSHA, **12 Bom. L.R. 232=5 Ind. Cas. 972=11 Cr. L.J. 339.**

(43)—*Crim. Pro. Code* (1882), *ss.* 522, 523, 524—*Order to restore possession of immoveable property.*—An order made under s. 522 of the Crim. Pro. Code (Act X of 1882), restoring possession of immoveable property to a person who has been dispossessed of it by criminal force, is an independent order and may be made subsequently to the date of the conviction of the offender. It need not be made at the same time as the conviction. The case contemplated by s. 522 is that of a person in possession being dispossessed by force by another person, and the latter being in possession at the date of conviction. In such a case, the section gives the Magistrate power to order possession to be restored to the person in possession. In the case of a proper order, third persons could not be affected; if they are, the order is not thereby necessarily invalid. Clause 2 of the section gives them a remedy by civil suit. NARAYAN v. VISAJI, **23 B. 494.**

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See ACT X OF 1875, ss. 115 and 147, 12 B.H.C. 217 A.C.J.

See APPEAL—CASES WHERE APPEAL DOES NOT LIE, 30 C. 690=7 C.W.N. 634.

Enquiry as to claims of property attached as belonging to the accused—Order as to disposal of property in respect of which an offence is committed—*See* ATTACHMENT, L. B.R. 1893—1900, 324.

See CRIM. PRO. CODE, 1898, ss. 404, 408 (*b*), 423 (*b*), 439, 518, 519 and 520, 17 C.P.L.R. 107.

See CRIM. PRO. CODE, 1898, ss. 423 (*d*) and 522, 7 O.C. 208.

See CRIM. PRO. CODE, 1898, ss. 517, 520, 1 C.L.R. 339=3 C. 379.

See SESSIONS JUDGE, JURISDICTION OF, L.B.R. 1893—1900, 282.

See STOLEN PROPERTY, 3 Bom. L.R. 449, 1 B. 630, 8 B. 575, 2 A. 276.

Restraint.

See WRONGFUL RESTRAINT.

Resumption of Attached Property from Lawful Custody.

Effect of endorsement by Nazir—Execution by peon beyond time fixed by Nazir but within date when warrant returnable—Peon's custody if lawful—Rescuing from such custody if offence —*See* PENAL CODE, s. 147, 17 C.W.N. 941=14 Cr. L.J. 274=19 Ind. Cas. 706.

Retracted Confession.

See CONFESSION.

See JUDGE AND JURY, Rat. Un. Cr. C. 730.

Retracted Statements.

By witnesses—*See* CONVICTION, Rat. Un. Cr. C. 762=Cr. Rg. 23 of 1895.

Retrial.

See AUTREFOIS ACQUIT, PLEA OF.

See CRIM. PRO. CODE, 1898, s. 423.

See DISCHARGE OF ACCUSED.

See REVISION—RE-TRIAL.

See REVIVAL OF COMPLAINTS.

See REVIVAL OF PROSECUTION.

(1)—*Object of re-trial.*—A re-trial should not be ordered with the object of enabling the prosecution to fill up deficiencies in the evidence of the prosecution. HAMDU MEAH v. EMPEROR, 8 Ind. Cas. 594=3 Bur. L.T. 9=11 Cr. L. J. 684.

(2)—*Appellate Court when may send case for re-trial—Ss. 6, 7, Act III of 1889 (Madras Towns Nuisances)—No evidence as to house being common gaming house—Duty of Magistrate to acquit.*—The accused were convicted by a 2nd Class Magistrate under ss. 6 and 7 of the Madras Towns Nuisances Act of keeping a common gaming house, and gaming there. On appeal, the appellate Magistrate found that there was no evidence that the house where the gaming was carried on was a common gaming house, and that there was no legal evidence to support the conviction, but he ordered a re-trial. *Held*, that, unless the appellate Magistrate found some material already on record tending to indicate that the house was a common gaming house, or unless the Magistrate was given by the prosecution assurance of sufficient weight indicating that there would be produced practically unimpeachable evidence that the gaming took place in a common gaming house, if a re-trial was ordered, he ought not to have sent back the case for re-trial and ought to have acquitted the accused in the absence of evidence to show that the house where they were found gaming was a common gaming house. *In re* MOGAMBARA PATTAN, **28 M.L.J. 379.**

(3)—*Practice — Re-trial ordered by High Court on a finding of fact — Re-trial Court, if competent to go behind that finding — Crim. Pro. Code, s. 439.*—When a case is directed to be re-tried the Judge re-trying it cannot go behind the findings of fact which were accepted by all the Courts and which were the basis on which a re-trial was ordered. SUBBARAYA PILLAI v. KRISHNASWAMI PILLAI, **15 Cr. L.J. 619=25 Ind. Cas. 627.**

(3-*a*)—*Crim. Pro. Code, ss. 423, 435, 437—Re-trial of accused after conviction—Inapplicability of sections—New trial when properly ordered—Want of jurisdiction —Misjoinder—Superficial enquiry.*—Ss. 435 and 437 do not empower a Court, in an appeal from a conviction, to order a re-trial of the appellant. The power of ordering a re-trial under s. 423 of the Crim. Pro. Code, should be exercised with discretion. A re-trial may properly be ordered, when the original trial is void for want of jurisdiction or for misjoinder or when the enquiry has been obviously superficial and material witnesses have not been examined. A re-trial should not be ordered with the object of enabling the prosecution to fill up deficiencies in the evidence of the prosecution. HAMDU MEAH v. EMPEROR, **8 Ind. Cas. 594=3 Bur. L.T. 9=11 Cr. L.J. 684.**

(4)—*Crim. Pro. Code, ss. 253, 437 and 439—Revision—Discharge of accused by first Court—Re-trial on the same evidence ordered by District Magistrate if prejudicial to the accused—Power of Chief Court to go into evidence.*—The accused, one H, was tried by a First-Class Magistrate for an offence under s. 406, I.P.C., and was discharged on the ground that the prosecution had not made out a case. On appeal to the District Magistrate, he ordered a re-trial, by another Magistrate, on the ground that a document for the defence had not been considered. On revision to the Chief Court that order was confirmed. Then the accused was tried by the other Magistrate and convicted; the Sessions Judge upheld the conviction. On revision to the Chief Court, *held*, that the order of the District Magistrate ordering a re-trial on the same evidence was seriously prejudicial to the accused and was opposed to principle though not illegal. A Criminal Court cannot review

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its own order passed with jurisdiction. Where an order for re-trial was prejudicial to the accused, and he was convicted at the re-trial, the correct course of the Chief Court to follow is to hear the case as if an appeal lay to that Court. HIRA v. KING-EMPEROR, **8 P.R. 1909, Cr.=38 P.L.R. 1910=3 Ind. Cas. 880=17 P. W.R. 1909, Cr.=10 Cr. L.J. 314.** (8 P.R. 1900, Cr., 2 P.R. 1901, Cr. *F.*) [*R.*, 11 Ind. Cas. 132 =10 P.R. 1911=12 Cr L.J. 364=24 P.W.R. 1911, Cr., 205 P.L.R. 1911.]

(5)—*Crim. Pro. Code* (1882), s. 537—*Sessions Judge—Appeal—Propriety of order of re-trial.*—Where the evidence recorded by the Magistrate is as full as the law requires, and there is no irregularity in procedure necessitating a re-trial, it is not competent to a Sessions Judge in appeal to order a re-trial. He must consider the case on the evidence before him and proceed to judgment. QUEEN-EMPRESS v. MAGUNLAL, **Rat. Un. Cr. C. 330=Cr. Rg. 63 of 1890.**

(6)—*Crim. Pro. Code* (1898), *ss.* 232 *and* 423 (*b*)—*Re-trial, power of appellate Court, to order.*—There is nothing in the language of s. 423 (*b*), to limit the power of an appellate Court to direct a re-trial to cases in which the trying Magistrate has not jurisdiction. Further a Sessions Judge has the power under s. 232, to direct a re-trial to be had upon a charge framed in whatever manner he thought fit, on the ground that the accused had been misled in their defence by the absence of a charge or by a defect in the charges. SARAT CHANDRA SHAH CHOWDHRY v. EMPEROR, **7 C.W.N. 301.**

(7)—*When to be ordered—Crim. Pro. Code* (1882), *ss.* 417, 423 *and* 439.—A re-trial should be ordered in cases of acquittals only of a conviction, in circumstances similar to those in which it would be ordered in the case, that is, when the trial has been radically and incurably defective so that even the taking of an additional evidence will not suffice to put the appellate or revisional Court in a position to dispose satisfactorily of the case. EMPRESS v. BAIJU TELI, **6 C.P.L.R. 15, Cr.** (9 A. 134, *R.*) [*F.*, 9 Cr. L. J. 211=5 N.L.R. 4, 1 Ind. Cas. 238.]

(8)—*Power of District Magistrate to order re-trial.*—Where an accused person is discharged by a subordinate Magistrate, the District Magistrate is competent to call for the record of the case under the provisions of s. 439, and to order a re-trial under s. 437. SHAMSUDDIN KHAN v. PIR ALA JOWAYA, **38 P.R 1885, Cr.** (8 M. 18, 9 B. 100, *R.*) [*R.*, 9 Cr. L.J. 104= 25 P.R. 1908, Cr.]

(9)—*Improper grounds for ordering re-trial—Trial of accused's witness as co-accused—Accused's statements when evidence against co-accused.*—Where the Magistrate trying a case is competent to inflict the maximum penalty allowed by law, the mere fact that the punishment appeared to the appellate Court inadequate is not a reason for ordering a re-trial. The proper course will be to move the High Court to exercise its revisional powers. A Court should never order the re-trial of an accused in order to strengthen the case against his witness and it is very unjust to deprive the accused of a piece of material evidence by making the witness a co-accused. The statements made by an accused in his defence are not evidence against a co-accused, unless the statements amount to a full confession, in which case alone they may be taken into consideration against a co-accused. KAZAW RHI v. QUEEN-EMPRESS, **L.B.R. 1893—1900, 111.** (16 B. 580, *F.*)

(10)—*Conviction set aside on appeal—Order of Sessions Judge for a—District Magistrate, whether can disregard such order for.*—On appeal a Sessions Judge set aside the order and conviction and sentence passed by a Sub-Divisional Magistrate, as being illegal, and ordered a new trial by a first class Magistrate. But, the District Magistrate, on reading such order, wrote that no fresh trial was necessary, as the accused had already undergone sufficient punishment. *Held*, the District Magistrate has no authority to disregard the order of the Sessions Judge for a new trial. KING-EMPEROR v. TUN LIN, **5 L.B.R. 49=2 Ind. Cas. 541=10 Cr. L.J. 77.**

(11)—*Crim. Pro. Code* (*Act* X *of* 1872), *s.* 280—*Appellate Court—Finding of more serious offence—Procedure.*—Where an appellate Court finds that the appellants had committed a more serious offence and that the conviction for the smaller is not supported by the evidence, it has to reverse the conviction and order a re-trial, but not to order a preliminary inquiry for a specific offence. EMPRESS v. RAMPRASAD, **A.W.N. 1882, 112.**

(12)—*Penal Code, ss.* 406, 409—*Jurisdiction of Magistrates.*—Where a Magistrate tried a case which properly came under s. 409, and which was, therefore, triable by the Court of Session, under s. 406, the High Court annulled the trial, and ordered a new trial for an offence under s. 409, Penal Code, before a Court of Sessions. *In the matter of* RAM SOONDER PODDAR, **2 C.L.R. 515.**

(13)—*Omission to take the defence of the accused—Proper order by appellate Court.*—The proper procedure on an appeal from a conviction by a Magistrate, who had refused to take the defence of the accused, is to set aside the conviction and sentence and order the Magistrate to begin the proceedings anew against the accused. GOHAR v. EMPRESS, **28 P.R. 1884, Cr.**

(14)—*Reason for—Frontier Regulation, s.* 2—*Reference to jirga after conviction.*—Where the Sessions Judge, in an appeal from a conviction by a first class Magistrate, ordered the retrial of the accused under the ordinary procedure or under the Frontier Rules, and the accused was subsequently made over by the Deputy Commissioner to a *jirga* or council of elders who sentenced the accused to pay a fine of Rs. 150. *Held* that, although the order of the Deputy Commissioner and the sentence of the council

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of Elders were not open to revision, the Sessions Judge's order, which was contrary to law was open to revision. A Deputy Commissioner of a Frontier District is not competent, under s. 2, Punjab Frontier Reg. IV of 1873, to refer the question of the guilt or innocence of the accused to a council of elders, after an actual conviction by a competent Magistrate, notwithstanding that the conviction had been set aside by a competent Court. DOST MAHOMED v. CROWN, **11 P.R. 1879, Cr.** [*R.*, 13 P.R. 1880, 23 P.R. 1885, Cr.]

(15)—*Crim. Pro. Code* (1872), *ss.* 455, 456—*Conviction for offence not charged, but allied to offence charged.*—Where a person charged with attempting to commit criminal breach of trust as a public servant and with framing an incorrect record as such, was acquitted on the ground that he was not a public servant, although the Judge found that he had framed the document with a fraudulent intent, *held* that the accused ought to have been convicted of the offence of attempting to cheat. A re-trial was accordingly ordered. REG. v. RAMAJIRAV JIVBAJI RAV, **12 B.H.C. 1.** [*R.*, 12 Cr. L.J. 224=10 Ind. Cas. 168=5 S.L.R. 16.]

(16)—*Power of appellate Court to order re-trial—Crim. Pro. Code* (1882), *ss.* 423 (*b*), 232 *and* 535, 537.—An appellate Court can order an accused to be re-tried under s. 423, Crim. Pro. Code, by another Court of competent jurisdiction, even where the first trial had been by a competent Court. QUEEN-EMPRESS v. SHAIK ALI, **L.B.R. 1893—1900, 238.** (8 A. 14, *Diss.*)

(17)—*Act* III *of* 1864—*Repealed by Act* I *of* 1886—*Conviction under former—Illegal—Re-trial.*—Where an accused person was convicted under a repealed law, and where the conviction is, therefore, irregular and illegal, a re-trial should not be ordered, under the new Act, as that would in no way benefit the accused. NARAHARI BISSOYI v. DISTRICT MAGISTRATE, GANJAM, **1911, 2 M.W.N. 588=12 Cr. L.J. 992=12 Ind. Cas. 616.**

(18)—*Cheating—False evidence — Offences against public justice.*—In this case the facts did not constitute the offence charged, but another offence which the Magistrate was not competent to try. Consequently the conviction and sentence were annulled, and the case was returned for trial by a competent Court. CROWN v. BANNEE, **83 P.R. 1866, Cr.**

(19)—*Murder.*—In this case there being doubts as to whether the case is really one of murder or of suicide, the case was remanded for re-trial. EESA v. CROWN, **59 P.R. 1866, Cr.**

Right of—by Jury where conviction set aside for misdirection—*See* ACCUSED PERSON, 4 C.W.N. 576.

See ACCUSED PERSON, 2 Weir 582.

See ACQUITTAL, 1 W.R. Cr. Letters 10, 9 A. 134, F.B.=A.W N. 1886, 322.

Power of Sessions Judge to order—*See* ACT XI OF 1874, s. 28, 2 C.L.R. 511.

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Power of High Court to order re-trial under Crim. Pro. Code (1872), s. 280—*See* ACT XI OF 1874, s. 28, 24 W.R. Cr. 24.

See ACT XI OF 1878, ss. 4, 19, 8 M.L.T. 296 =8 Ind. Cas. 397=11 Cr. L.J. 645.

See U.P. ACT I OF 1900, s. 147, 8 O.C. 249 =2 Cr. L.J. 511.

See APPEAL—APPEAL FROM ACQUITTAL, Rat. Un. Cr. C. 73, 6 N.W.P. 357.

See APPEAL—APPEAL—PRACTICE AND PROCEDURE, 27 C. 172=4 C.W.N. 166.

See APPELLATE COURT, Rat. Un. Cr. C. 938=Cr. Rg. 49 of 1897, Rat. Un. Cr. C. 245= Cr. Rg. 12 of 1886, Rat Un. Cr. C. 982=Cr. Rg. 42 of 1898, 16 P.R. 1895, Cr.

See BENCH OF MAGISTRATES, 20 C. 870.

See CHARGE—ALTERATION OF CHARGE, 26 C. 863=3 C.W.N. 653.

See CHARGE TO JURY—GENERAL, 4 C.W. N. 576, 5 W.R. Cr. 80=B.L.R. Sup. Vol. 459.

Trial by Jury—Defect in summing up statement of one accused against another—*See* CHARGE TO JURY—MISDIRECTION, 6 B.H. C. Cr. 10.

See COMPLAINT — WITHDRAWAL AND REVIVAL OF COMPLAINTS, 24 C. 528=1 C.W. N. 370.

See CONVICTION, A.W.N. 1882, 178.

See CRIM. PRO. CODE, 1898, s. 167, 13 Cr. L.J. 244=14 Ind. Cas. 596.

See CRIM. PRO. CODE, 1898, ss. 190, 191, 423 (1) (6) and 528, 30 M. 228=16 M.L.J. 546 =2 M.L.T. 46=5 Cr. L.J. 104=6 Cr. L.J. 133.

Sanction to prosecute—Power of appellate Court to order a, by the first Court—*See* CRIM. PRO. CODE, 1898, s. 195 (6), 8 Ind. Cas. 679= 9 M.L.T. 79.

See CRIM. PRO. CODE, 1898, ss. 227 and 537, 20 P.W.R. 1909, Cr.

See CRIM. PRO. CODE, 1898, s. 233, 17 C. W.N. 827=20 Ind. Cas. 609=14 Cr. L.J. 449= 40 C. 846.

Irregularity in charge—Misjoinder of offences and parties—Charge framed, confusing—Prejudice—By a new magistrate—*See* CRIM. PRO. CODE, 1898, ss. 233, 235, 239, 17 C.W.N. 419 =19 Ind. Cas. 308=14 Cr. L.J. 212.

Misjoinder of parties — Power of superior Courts to order re-trial—*See* CRIM. PRO. CODE, 1898, ss. 233, 239, 537, 28 C. 104.

Of offender discharged on complaint under s. 277, I.P.C.—*See* CRIM. PRO. CODE, 1898, ss. 247, 403, Colm. Dig. Cr. 50 of 1876.

See CRIM. PRO. CODE, 1898, ss. 247, 403, 2 Weir 457.

See CRIM. PRO CODE, 1898, ss. 253, 437 and 439, 8 P.R. 1909, Cr.

See CRIM. PRO. CODE, 1898, s. 259, 28 M. 310=2 Weir 325-A=2 Cr. L.J. 758.

See CRIM. PRO. CODE, 1898, ss. 264, 269 (1), 536, 1 A. 680.

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See CRIM. PRO. CODE, 1898, ss. 287, 289, 342, 1 O.C. 85.

Conviction set aside—Re-trial ordered—Whole case is re-opened—Procedure—*See* CRIM. PRO. CODE, 1898, ss. 309, 403, 423, 13 Cr. L.J. 497 =15 Ind. Cas. 641=40 C. 163.

See CRIM. PRO. CODE, 1898, ss. 342 and 362, 10 Bom. L.R. 201=7 Cr. L.J. 194.

See CRIM. PRO. CODE, 1898, s. 349, P.L.R. 1900, p. 37, Cr.

See CRIM. PRO. CODE, 1898, s. 367, 1 Bom. L.R. 160.

Conviction for hurt—for murder—*See* CRIM. PRO. CODE, 1898, s. 403 (3), 3 P.R. 1901, Cr.

See CRIM. PRO. CODE, 1898, ss. 403, 437, U.B.R. 1904, 2nd Qr., Crim. Pro. Code, 19.

Power of High Court to direct re-trial of appeal—*See* CRIM. PRO. CODE, 1898, ss. 417, 423 (*a*), 13 Cr. L.J. 737=17 Ind. Cas. 49=43 P.W.R. 1912, Cr.

See CRIM. PRO. CODE, 1898, ss. 426, 439, 440, 1 C.L.R. 83.

See CRIM. PRO. CODE, 1898, ss. 435 (1, 2, 3) 426, 439 (1 to 4) and 440, 4 C. 647.

See CRIM. PRO. CODE, 1898, s. 437, 1 Bom. L.R. 222, 33 P.R. 1894, Cr.

See CRIM. PRO. CODE, 1898, s. 487, 12 C. W.N. 246=7 C.L.J. 70=3 M.L.T. 154=7 Cr. L.J. 103.

See CRIM. PRO. CODE, 1898, s. 526 (8), 15 Cr. L.J. 507=24 Ind. Cas. 595.

See CRIM. PRO. CODE, 1898, s. 537, 3 M.L. T. 263=7 Cr. L.J. 358=18 M.L.J. 250.

See CRIM. PRO. CODE, 1898, s. 562, 155 P.L R. 1911=12 Cr. L.J. 213=16 P.R. 1911, Cr.

Sessions trial for murder—Application by defence counsel for postponement of cross-examination till next day—Refusal by Sessions Court—Effect—Accused prejudiced — Re-trial by another Sessions Court ordered—*See* CROSS-EXAMINATION, 41 C. 299=15 Cr. L.J. 596= 25 Ind. Cas. 348.

See EVIDENCE—GENERAL, 8 P.R. 1904, Cr.

See EVIDENCE—DYING DECLARATION, 2 Bom. L.R. 1129.

See EVIDENCE ACT, 1872, ss. 25, 167, 11 C. L.J. 301.

See EVIDENCE ACT, 1872, s. 167, 19 B. 749.

See FURTHER ENQUIRY, 11 P.L.R. 1905.

See HIGH COURT, JURISDICTION OF—REVISIONAL POWERS OF HIGH COURT, 2 Weir 569=7 M.H C App. 5, 8 M. 336=2 Weir 557.

Misjoinder of charges—Joint trial—Objection taken for the first time in the High Court whether can be allowed—Re-trial when to be ordered—*See* JOINDER OF CHARGES—MISJOINDER OF CHARGES, 19 C.L.J. 633=15 Cr.L.J. 472 =24 Ind. Cas. 352.

See JOINDER OF CHARGES—MISJOINDER OF CHARGES, 7 A L.J. 19.

See JUDGMENT, A.W.N. 1885, 28.

Retrial—*concluded.*

Seisin by jury—Retrial — Procedure — *See* JURY, 16 C.W.N. 909=16 Ind. Cas. 523=13 Cr. L.J. 715.

When may and when may not be ordered—*See* LIBEL, 10 M.L.T. 506=1911, 2 M W.N. 576=12 Ind. Cas. 961=12 Cr. L.J. 585=36 M. 457.

See MAGISTRATE, JURISDICTION OF — GENERAL JURISDICTION, 7 C.L.R. 193.

See MAGISTRATE, JURISDICTION OF — COMMITMENT TO SESSIONS COURT, 9 B.H.C. 169.

See MAGISTRATE, JURISDICTION OF — TRANSFER OF CASES, Rat. Un. Cr. C. 652= Cr. Rg. 18 of 1893.

See MAINTENANCE, 1 C.L.R. 89.

If may be ordered where charge fails for want of evidence—*See* PENAL CODE, s. 406, 17 C. W.N. 479=14 Cr. L.J. 219=19 Ind. Cas. 315.

Cheating—Judgment-debtor raising money on the mortgage of his house already sold in execution of decree—Discharge—*See* PENAL CODE, s. 420, 10 P.W.R. 1912, Cr.=114 P.L.R. 1912= 15 Ind. Cas. 88=13 Cr. L.J. 456.

See PENAL CODE, ss. 497, 498, 11 C. 81.

See PRACTICE AND PROCEDURE, U.B.R. 1897—1901, Vol. I, 91.

See RECORD, A.W.N. 1889, 55.

See REVISION—DISCHARGE OF ACCUSED, 24 W.R. Cr. 24.

See SESSIONS JUDGE, JURISDICTION OF, A.W.N. 1883, 99.

See SESSIONS TRIAL, 8 C.L.J. 59=4 M.L. T. 148=8 Cr. L.J. 121.

See TRIAL, 1912 M.W.N. 378=15 Ind. Cas. 313=13 Cr. L.J. 473.

See WITNESS—SUMMONS TO WITNESSES, 10 C. 1070.

Retrospective Effect.

Laws of procedure, whether can have—*See* STATUTES, CONSTRUCTION OF, 6 M. 336=7 Ind. Jur 301.

Retrospective Sentence.

See SENTENCE—GENERAL, 4 N.W.P. 8.

Returns

(1)—*Magistrate's annual and quarterly returns.*—With regard to the annual returns, it is sufficient to have the entire number of persons released in a single column, as that will include all cases brought on for hearing in which neither conviction nor commitment has resulted. CRIMINAL CIRCULAR, NO. 1, 10TH JANUARY 1865, 2 W.R. Cr. Cir. 1.

(2)—*Of the Court of Session.*—The returns of the Court of Session, not relating to its appellate business, should be submitted at the close of each actual Sessions and should be so altered in form as to exhibit more conveniently the result of the Sessions operations. The returns of appellate business must continue to

Returns—*concluded.*

be submitted periodically not oftener than quarterly. CRIMINAL CIRCULAR NO. 4 OF 1868, **9 W.R. Cr. Cir. 5.**

(3)—Appeals heard by Magistrates from the orders of District Superintendents of Police and the cases of Ministerial officers punished by fine for neglects of duty should not be entered in the Magistrate's returns. CRIMINAL CIRCULAR NO. 9, DATED THE 15TH DECEMBER, 1868, **10 W.R. Cr. Cir. 6.**

(4)—*Special return.*—A special return of criminals, annually sentenced to long terms of imprisonment and transportation, is no longer required. CRIMINAL CIRCULAR NO. 5, 15TH JUNE 1869. **12 W.R. Cr. Cir. 1.**

Return Ticket.

Transfer— Attempt— *See* ACT XVIII OF 1854, s. 3, Rat. Un. Cr. C. 123.

Revenue Agents, Pleaders and Mooktears, Act.

See ACT XX OF 1865.

Revenue (Bombay Salt) Act.

See BOM. ACT XXXI OF 1850.

Revenue Code (Land).

See BOM. ACT V OF 1879.

Revenue Court.

Whether a Court of civil jurisdiction—*See* ACT X OF 1877, s. 651, 4 A. 27.

See ACT II OF 1886, s. 25, 44 P.R. 1905, Cr. =187 P.L.R. 1905=3 Cr. L.J. 128.

Whether a Civil Court—*See* CRIM. PRO. CODE, 1898, ss. 198, 195, 2 A. 533, F.B.

Order passed by, under s. 476, Crim. Pro. Code—Revision—Powers of High Court—*See* CRIM. PRO. CODE, 1898, ss. 476, 439, 17 C.L. J. 245=17 C.W.N. 647=19 Ind. Cas. 197=14 Cr. L J. 197=40 C. 477, F.B.

Revenue Inquiry.

(1)—*Penal Code, s.* 180—*Refusal to sign deposition given in revenue inquiry.*—A witness is not legally bound to sign a deposition given by him in a Revenue enquiry. HIGH COURT PROCEEDINGS, 9TH JANUARY 1871, NO. 40, **1 Weir 112=6 M.H.C. App. 14**

(2)— Disobedience to summons issued by Tahsildar—held by Revenue Inspector under Tahsildar's orders — Offence— *See* PENAL CODE, s. 174, 8 M.L.T. 373.

Revenue Inspector.

Disobedience to summons issued by Tahsildar—Revenue enquiry held by—under Tahsildar's orders—Offence— *See* PENAL CODE, s. 174, 8 M.L.T. 373.

Revenue (N.W.P. Land) Act.

See U.P. ACT XIX OF 1873.

Revenue Officer.

See COMPLAINT—PROCEDURE ON RECEIPT OF COMPLAINTS, 4 C.W.N. 825.

Revenue Officer—*concluded.*

Yadast from a—to a third class Magistrate containing allegations against a person— *See* COMPLAINT—WHAT IS, AND WHO SHOULD INSTITUTE, 11 M. 433=2 Weir 238.

Revenue (Recovery of Arrears of) Act.

See MAD. ACT II OF 1864.

Revenue Summons.

Neglect to attend revenue—*See* PENAL CODE, s. 188, 32 P.R. 1867, Cr.

Revenue Summons Act.

See MAD. ACT III OF 1869.

Reversal of Sentence.

See SENTENCE—POWERS OF APPELLATE COURT—REVERSAL.

Review.

See HIGH COURT, JURISDICTION OF.

(1)—*Magistrate, Jurisdiction of—Review of order.*—A Magistrate has no power to alter or review the order once passed by him. T. NARASINGA RAO v. VITTOBA RAO, **16 Cr. L.J. 584=30 Ind. Cas. 136.** (35 C. 350=12 C.W.N. 605=7 Cr. L.J. 401, 22 B. 949, *F.*)

(2)—*Review of judgment.*—There is no provision in the whole Code for a review of judgment. Nor has the Magistrate power, verbally or otherwise, to direct a re-hearing in a case tried under Ch. XV of the Code of Criminal Procedure. QUEEN v. TILOKE CHUND, **3 N.W.P. 273.**

(3)—*Crim. Pro. Code* (1882), *s.* 369—*Review of judgment by the High Court.*—The High Court has no power to review the order of a Judge of the High Court, by which he dismissed the application for revision made by an accused person. His only remedy, therefore, is by an appeal to the prerogative of the Crown as exercised by the Local Government. *Per Brodhurst, J.*—The Legislature has not conferred, in express words, upon a High Court, the power of reviewing its judgment in all criminal cases, as it has done under the Civ. Pro. Code in civil cases. The provisions of s. 369, Crim. Pro. Code, so far as they affect a High Court, apply merely to questions of law arising in its original criminal jurisdiction, and which are reserved and are subsequently disposed of under the provisions of s. 434, and the corresponding sections of the Letters Patent, N.W.P. (ss. 18 and 19.) QUEEN-EMPRESS v. DURGA CHARAN, **7 A. 672=A.W.N. 1885, 177.** [*F.*, 10 B. 176, F.B.; *R.*, 14 C. 42, F.B., 23 B. 50, 27 A. 92=1 A.L.J. 495, 2 Cr. L.J. 465=U B. R. 1905, 1st Qr., Crim. Pro. Code, 35, 12 Cr. L.J. 473=4 Bur. L.T. 211=12 Ind. Cas. 81, 1912 M W.N. 982=12 M.L.T. 350=23 M.L.J. 371=16 Ind. Cas. 518=13 Cr. L J. 710.]

(4)—*Crim. Pro. Code, ss.* 421, 430—*Power of subordinate Courts to review their own judgments — Revision.*—A Sessions Judge, after receiving a criminal appeal, recorded a written order of rejection on the ground that it was barred by limitation. On a later representation by the prisoner, he admitted the appeal,

Review—*continued.*

and at the hearing acquitted him. *Held* that the Sessions Judge had no power to re-admit the appeal, as the Crim. Pro. Code, nowhere provides for a review of judgments in criminal matters. The jurisdiction of revision vested in the High Court under Ch. 32, was sufficient to rectify an inadvertent failure of justice. QUEEN-EMPRESS v. BHIMAPPA, **19 B. 732.** [*R.*, 16 M.L.J. 79=1 M.L.T. 31=29 M. 126=3 Cr. L.J. 274.]

(5)—*Crim. Pro. Code* (1882), *ss.* 369, 439—*Review of order in revision—High Court—Fresh evidence.*—The High Court cannot review an order made in the exercise of its revisional jurisdiction. This cannot be done *a fortiori* when the reason for the application is fresh evidence. QUEEN-EMPRESS v. CHIMABA, **Rat. Un. Cr. C. 458=Cr. Rg. 13 of 1899.**

(6)—*Crim. Pro. Code* (*Act* X *of* 1882), *s.* 433 —*Review of order.*—The High Court sitting in appeal cannot review an order made by itself under s. 433 of the Crim. Pro. Code. QUEEN-EMPRESS v. CANJI, **Rat. Un. Cr. C. 638=Cr. Rg. 14 of 1893.**

(7)—*Order by High Court in revision—Review.*—Although an order made by the High Court in revision cannot be reviewed yet, if before the judgment had been recorded, the attention of the Court be called to any matter showing that there is an error or mistake in the judgment pronounced, the Court would have the power of correcting such error or mistake. QUEEN-EMPRESS v. WAMAN, **Rat. Un. Cr. C. 659=Cr. Rg. 24 of 1893.**

(8)—*Crim. Pro. Code* (1882), *s.* 369—*High Court—Power to review its own judgment.*—The words "other than a High Court" in s. 369, Crim. Pro. Code, do not give to a Division Bench of the High Court power to review its judgment in a criminal appeal. The words are to be accounted for by the power of review given to the High Court by s. 434 of the Code. The remedy against any error in an order passed in an appeal by a Division Bench is afforded by petition to Government, "the authority with whom rests the discretion either of executing the law or of commuting the sentence." QUEEN-EMPRESS v. MOHUN ABHESING, **Rat. Un. Cr. C. 791=Cr. Rg. 49 of 1895.**

(9)—*Crim. Pro. Code* (1882), *s.* 369—*Review of judgment—High Court's power.*—The verdict and judgment of a Division Bench of the High Court in a criminal case, coupled with the sentence, are absolutely final. As soon as they have been pronounced and signed by the Judges, the High Court is *functus officio*, and neither the Court itself, nor any Bench of it, has any power to revise the decision or interfere with it in any way. *In the matter of the petition of* GIBBONS, **14 C. 42, F.B.** [*F.*, 1 P.R. 1909, Cr. =6 P.W.R. 1909, Cr.=9 Cr. L.J. 306=1 Ind. Cas. 506, 4 P.R. 1909, Cr.=10 P.W.R. 1909, Cr.=41 P.L.R. 1909=1 Ind. Cas. 747=9 Cr. L.J. 378; *Appl.*, 23 B. 50; *R.*, 13 Cr. L.J. 120=13 Ind. Cas. 776=38 C. 828, 13 Cr. L.J. 710=16 Ind. Cas. 518=23 M.L.J. 371=12 M.L.T.

Review—*continued.*

350=1912 M.W.N. 982, 12 Cr.L.J. 473=12 Ind. Cas. 81=4 Bur. L.T. 211, U.B.R. 1905, 1st Qr. Cr. P.C. 35; *D.*, 27 A. 92=1 A.L.J. 495, 10 Cr. L.J. 287=3 Ind. Cas. 393=10 C.L.J. 80]

(10)—*Crim. Pro. Code, ss.* 144 *and* 435—*Orders purporting to be made under s.* 144 *but not properly coming under it—High Court's power of interference.*—The mere statement that an order is made under s. 144, if it is not such an order as is contemplated by the section, and could not be made under it, does not make it an order under that section, and, consequently, any Court having jurisdiction to review orders under s. 435 would not be prevented, by the proviso to that section, from reviewing such order. ANANDA CHANDRA BHUTTACHARJEE v. CARR STEPHEN, **19 C. 127.** [*F.*, 25 C. 852, 26 C. 188, 2 C.W.N. 572; *R.*, 5 O.C. 1.]

(11)—*Sessions Judge's power to revise a sentence duly passed.*—In the absence of an appeal, a Sessions Judge has no power to revise or suspend a conviction duly passed and recorded. HIGH COURT PROCEEDINGS 13TH NOV. 1868, **4 M.H.C. App. 19.** HIGH COURT PROCEEDINGS, 18TH FEB. 1870, **5 M.H.C. App. 18.** HIGH COURT PROCEEDINGS 8TH DEC. 1870, **6 M.H.C. App. 7.** HIGH COURT PROCEEDINGS, 29TH MARCH 1870, **5 M.H.C. App. 19.**

(12)—*Power of Court of Judicial Commissioner to review its own order.*—A District Magistrate submitted the records in a case to the Judicial Commissioner with a recommendation that the sentence passed on the accused be reduced and an order of confiscation cancelled. The Judicial Commissioner accordingly reduced the sentence and cancelled the order of confiscation. Thereupon, an application was made to the Judicial Commissioner, on behalf of the accused, asking that the conviction and sentence be set aside. The question that arose for decision was whether the Court of the Judicial Commissioner could review the order passed by it in revision. *Held*, a Court cannot review its own decisions and a review cannot be permitted unless clear authority of law is shown for it. In the present case, no such authority was shown and the reported decisions were against review. The Court had no jurisdiction to grant the prayer of the application. AHLOK v. KING-EMPEROR, **U.B.R. 1905, Crim Pro Code, 35=2 Cr. L.J. 465.** (7 A. 672, 10 B. 176, 14 C. 42, *R.*) [*R.*, 13 Cr. L.J. 301=14 Ind. Cas. 765=5 Bur. L.T. 37.]

(13)—*Crim. Pro. Code* (*Act* XXV *of* 1861), *s.* 428—*Review in criminal case.*—S. 428 of the Crim. Pro. Code makes orders in a criminal case final. There is no provision in the Code for a review of an order passed in a criminal case. REG. v. MEHTARJI GOPALJI, **7 B.H.C. Cr. 67.** [*R.*, 4 B. 101, 23 B. 50, Rat. Un. Cr. Cas. 791]

(14)—*Crim. Pro. Code* (*Act* X *of* 1882), *s.* 437 —*Order by District Magistrate—Jurisdiction of Sessions Judge to interfere.*—The Sessions Judge has no jurisdiction to review an order made by a District Magistrate under s. 437 of the Crim. Pro. Code. Since, however, he has concurrent

Review—*continued.*

jurisdiction under the section, he can himself order further inquiry into a case dismissed by a subordinate Magistrate under s. 203, notwithstanding the fact that the District Magistrate has refused to do so. QADIR BAKSH v. SHEIKH ABDULLAH, **A.W.N. 1895, 38.**

(15)—*Power of review—Judgment in criminal appeal.*— The High Court cannot review its judgment passed in a criminal case before it on appeal. QUEEN v. GODAI RAOUT, **B.L.R Sup. Vol. 436 = 5 W.R. 61.** *See also*, CHOWDHRY ZUHOORUL HUQ v. MUSSAMUT BAGOO JAN, **11 W.R. 532**; *In re* KRISHNO CHURN AND MOHERAM OF ASSAM, **17 W.R. Cr. 2.** [*Appr.*, 14 C. 42, F.B., 7 A. 672: *F.*, 11 W.R. 532, 17 W.R. Cr. 2, Rat. Un. Cr. C. 791, 659, 10 B. 176; *Dist.*, 18 W.R. Cr. 33.]

(16)—*Order obtained on mis-statement of facts —Forfeited property — Crim. Pro. Code (Act XXV of 1861), ss. 184, 185.*—Where an order for the release of the property of an absconding offender, which had been attached under s. 184 of the Crim. Pro. Code (Act XXV of 1861), had been obtained from the High Court on an *ex parte* application, and on an incorrect statement of facts, the High Court, on the application of the Government, cancelled such order. *In the matter of the petition of* GOVERNMENT OF BENGAL, **9 B.L.R. 342 = 18 W.R. Cr. 34.**

To review order for delivery of property made under s. 115—*See* ACT X OF 1875, ss. 115 and 147, 12 B.H.C. 217.

See APPEAL — CASES WHERE APPEAL DOES NOT LIE, 24 P.R. 1887, Cr.

See CHARGE TO JURY—MISDIRECTION, 17 C. 642.

See CRIM. PRO. CODE, 1898, s. 103, U.B.R. 1905, Crim. Pro. Code 35 = 2 Cr. L.J. 465.

Court's power under s. 369, Crim. Pro. Code—*See* CRIM PRO. CODE, 1898, ss. 145, 146, 16 O. C. 192 = 14 Cr. L.J. 605 = 21 Ind. Cas. 477.

See CRIM. PRO. CODE, 1898, ss. 173 and 437, Rat. Un. Cr. C. 521 = Cr. Rg. 47 of 1899.

See CRIM. PRO. CODE, 1898, ss. 253, 437, 439, 8 P.R. 1909, Cr.

High Court—Review of judgment before it is signed—*See* CRIM. PRO. CODE, 1898, ss. 369, 253, 38 C. 828.

See CRIM. PRO CODE, 1898, ss. 369 and 439, 10 B. 176.

Sanction to prosecute — Different orders — Review—*See* CRIM. PRO. CODE, 1898, s. 476, 10 M.L.T. 389 = 1911, 2 M.W.N. 431 = 12 Cr. L.J. 556.

Criminal Court reviewing its own decisions—Practice—*See* CRIM. PRO. CODE, 1898, s. 517, 12 Cr. L.J. 473 = 12 Ind. Cas. 81.

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 35 C. 350 = 12 C.W.N. 605 = 7 Cr. L.J. 401.

Judgment of High Court, when could be altered—*See* JUDGMENT, 21 A. 177 = A.W.N. 1899, 15.

Review—*concluded.*

See LETTERS PATENT—LETTERS PATENT, 1865, (BOM.) ss. 25, 26, 9 Bom. L.R. 789, F.B. = 6 Cr. L.J. 164 = 32 B. 111 = 2 M.L.T. 414.

See PRESIDENCY MAGISTRATE, Rat. Un. Cr. C. 877.

See REFERENCE TO HIGH COURT, 22 B. 949.

See REVISION—GENERAL PRINCIPLES, 6 Bom. L.R. 360.

Refusal by Sessions Judge to revoke sanction—His power to review his order—*See* SESSIONS JUDGE, JURISDICTION OF, 23 B. 50.

Revision.

1.—GENERAL PRINCIPLES.
2.—DELAY.
3.—QUESTION OF FACT.
4.—MATTERS PERTAINING TO EVIDENCE.
5.—JUDGMENTS, DEFECTS IN.
6.—SENTENCES.
7.—MIS-DIRECTION AND VERDICT OF JURY.
8.—ACQUITTALS.
9.—DISCHARGE OF ACCUSED.
10.—RE-TRIAL.
11.—COMMITMENTS.
12.—MISCELLANEOUS CASES.

See ABATEMENT OF REVISION.

See CRIM. PRO. CODE, 1898, ss. 435 to 439.

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY.

See HIGH COURT, JURISDICTION OF—REVISIONAL POWERS OF HIGH COURT.

See REFERENCE TO HIGH COURT.

See SANCTION TO PROSECUTE—AUTHORITIES COMPETENT TO GRANT SANCTION, ETC.

——1.—General Principles.

(1)—*Crim. Pro. Code, s. 439—Revision—Practice—Discretion of Court as to entertainment of application in revision—Application to be made to lower Court at first.*—It is not the practice of the High Court to entertain an application for revision on the criminal side, where there exists a lower Court having concurrent revisional jurisdiction, unless a similar application has first been made to the lower Court and has been rejected. SHAFAQAT ULLAH v. WALI AHMAD KHAN, **A.W.N. 1908, 23 = 3 M.L.T. 124 = 7 Cr. L.J. 48 = 30 A. 116.** (A.W.N. 1904, 233, 28 A. 268, *R.*, A.W.N. 1905, 279, *F.*)

(2)—*Crim. Pro. Code, s. 439—Revision—Power to interfere with non-appealable orders—Order framing charge against accused—Revisability—Findings by Civil Court—Conviction upon different findings on same facts—Propriety—Duty of Criminal Courts.*—The Chief Court has power, under s. 439, Crim. Pro. Code, to interfere with orders, in respect of which no appeal would lie under the Code, and may, therefore, set aside, if it so thinks fit, the order of a Magistrate charging an accused

Revision—continued.

——1.—**General Principles**—*continued.*

person with an offence. It would be anomalous to hold that it is open to Criminal Courts to go behind the findings of the Civil Courts and to convict of cheating and fraud a person who, upon the very same facts, had succeeded in satisfying the Civil Court *upon the merits of the case* of the legality of his claim. CROWN v. BISHEN DAS, **33 P.R. 1910, Cr. = 12 Cr. L.J. 50 = 57 P.L.R. 1911 = 8 Ind Cas. 1161.** (42 P. R. 1885, Cr., 18 P.R. 1904, Cr., 25 C. 233, 26 C. 786, 22 C. 131, 2 A. 398, 19 A.W.N. 212, *R.*; 27 C. 126, *Diss.*; 45 P.R. 1885, Cr., *D.*)

(3)—*Crim. Pro. Code* (1898), *ss.* 435, 438, 439—*High Court—Practice—Criminal revisional jurisdiction — Concurrent jurisdiction of District Magistrate, Sessions Judge and High Court—Application to be made to former first for reference to High Court.*—The High Court refused to entertain an application for the revision of an order of a first class Magistrate, against which no application had been previously made to the Sessions Judge with a view to his referring the matter to the High Court. The practice of first applying to the Sessions Judge or the District Magistrate should be followed in all cases where they have concurrent jurisdiction with the High Court, even when such jurisdiction is not final. EMPEROR v. ABDUS SOBHAN, **36 C. 643 = 13 C.W.N. 753 = 10 Cr. L.J. 190 = 2 Ind. Cas. 846.** (14 C. 887, *F.*)

(4)—*High Court—Revision—No motion before Sessions Judge* —The High Court will not entertain an application for revision where the Sessions Judge has concurrent revisional jurisdiction, unless a similar application has first been made to the Sessions Judge and rejected. This point should, however, be taken at an early stage of the hearing. MATAI LAL v. ANANT RAM, **A.W.N. 1890, 164.**

(5)—*Crim. Pro. Code* (1887), *s.* 439.—*Appealable order not appealed—Revision.*—A person is not entitled to bring an application for revision of a Deputy Magistrate's order until he has preferred an appeal against that order and his appeal has been disposed of. EMPRESS v. MOHAR SINGH, **A.W.N. 1886, 295.**

(6)—*Application for revision— Revision by High Court, where lower Court has concurrent jurisdiction.*—In cases where the District Court or Magistrate has concurrent revisional jurisdiction with the High Court, the High Court will not entertain an application for revision, save on some special grounds shown, unless a previous application has been made to the lower Court. QUEEN-EMPRESS v. REOLAH, **14 C. 887.** [*F.*, 14 B. 331, 7 C.P.L.R. 47, Cr., Rat. Un. Cr. C. 499; *Rel. on*, 36 C. 643 = 13 C.W.N. 753 = 2 Ind. Cas. 846 = 10 Cr. L.J. 190.]

(7)—*Crim. Pro. Code* (1872), *s.* 297—*High Court's powers of revision.*—Before seeking the aid of the revisional powers of the High Court, recourse should be had, in respect to applications under s. 418, to the ordinary channel of relief, *e.g.*, by way of appeal to the Sessions Court, if such relief is allowed by the law. EMPRESS OF INDIA v. NILAMBAR BABU, **2 A. 276.** [*R.*, 9 M. 448 = 2 Weir 672, 14 C.P.L.R. 60.]

Revision—continued.

—— 1.—**General Principles**—*continued.*

(8)—*When revision should be applied for.*—The Court of the Judicial Commissioner will not entertain an application for revision in cases where the Court of Sessions or the District Magistrate has concurrent revisional jurisdiction with that Court, save on some special ground shown, unless a previous application shall have been made to one of the lower revisional Courts. SYED MAHOMED v. MAROTI, **7 C.P.L.R. Cr. 47.** (14 C. 887, *F.*)

(9)—*Crim. Pro. Code* (1882), *ss.* 423, 439—*Revisional powers.*—The High Court will not interfere in revision, save upon exceptional grounds, that is to say, save upon a question of law, *e.g.*, where there was no evidence whatever to sustain a conviction QUEEN-EMPRESS v. SHEKH SAHEB BADRUDIN, **8 B. 197.** [*F.*, 34 B. 378 = 12 Bom. L.R. 21 = 11 Cr. L.J. 180 = 11 Ind. Cas. 612, 9 Bom. L.R. 706, 11 Bom L.R. 858, 17 Ind. Cas. 79 = 6 S.L.R. 106, Rat. Un. Cr. C. 244; *Appl.*, 12 B. 377; *R.*, 14 B. 331, 28 B. 533 = 6 Bom. L.R. 379, 22 C. 998, 35 C. 1108 = 9 Cr. L.J 74. Rat. Un Cr. C. 908.] *See also In re* RAMJOY KURMOKAR, **25 W.R Cr. 10.** *In the matter of* KRISHNANUND BHUTTACHARJEE, **3 B L.R. 50, Cr.**; *In the matter of* KISHEN SOONDER BHUTTACHARJEE, **12 W R. Cr 47**; EMPRESS v. NAROTAM DAS, **6 A 98**; REG. v. GNAU *bin* KRISHNA GURAV, **4 B.H.C. 25, Cr.**

(10)—*Revisional powers—Quashing proceedings during trial.*—The High Court can, in exercise of its revisional jurisdiction, quash proceedings pending before a Magistrate or a Sessions Judge, but such power should be grudgingly used, and only when, on the very face of the proceedings, there has been some grave irregularity or error of law. CROWN v. SALAMATRAI, **9 Cr. L.J 270 = 1 S.L.R. 30, Cr.**

(11)—*Crim. Pro. Code* (1898), *s.* 437—*Revisional powers—Invocable by private persons —Interference at interlocutory stage —Powers not hemmed in by rules—Indian Evidence Act, s.* 132.—It is competent to the High Court to allow a private person to move it to exercise its powers of revision. As a general rule, the High Court refuses to interfere at an interlocutory stage, as it would seriously impede the administration of justice, if parties were encouraged to come to the High Court from time to time before the completion of the trial. In exceptional cases, where a bare statement of the facts without any elaborate argument is sufficient to convince the Court that the case is a fit one for interference at an intermediate stage, the High Court will exercise its discretion interfering. Where a Magistrate refuses to allow relevant questions to be put to a witness, on the ground that there was a prosecution pending against him on the same facts, *held*, that it was a fit case for interference

Revision—continued.

——1.—**General Principles**—*continued.*

under the above rule. The procedure of the Magistrate was opposed to the provisions of s. 132, Indian Evidence Act. In all matters of revision, it would be preferable for the Court not to be bound by any rule, and not to allow revision in one case to become a precedent for revision in another. IMPERATOR v. TEJU, **2 S.L.R. 25, Cr. = 10 Cr. L. J. 237.**

(12)—*Crim. Pro. Code* (1872), *s.* 297—*Conditions for exercise of powers of revision by High Court—Petition by a private person to the High Court.*—The High Court may exercise its powers of revision upon information in whatever way received, and, consequently, upon the petition of a private person occupying the position of a complainant in the case in which revision is sought. [*R.*, 18 M.L.J. 57 = 3 M.L.T. 230.] It was not intended by the Legislature that the powers given by cl. 1 of s. 297 should be exercised only in the particular instances of error and that the particular manner given in the succeeding clauses, which are merely intended to show the particular course which may be taken in those particular instances of error. [*R.*, 18 M.L.J. 57 = 3 M.L.T. 230.] In a sessions trial, it is unquestionably in the discretion of the prosecution to tender in evidence all that it considers material, and the Court cannot be said to have proceeded erroneously in not taking evidence upon what is not within the knowledge of the Court but which is referred by the committing Magistrate, and as to which the prosecution exercises its discretion by withholding it. [*R.*, 18 M.L.J. 57 = 3 M.L.T. 230.] The term "material error" cannot be taken to include error in the appreciation of evidence. The High Court has not, under first clause of s. 297, the power to set aside findings of fact by the lower Court and to substitute its own view of what those findings should have been except in case of appeal from a conviction. [*R.*, 18 M.L.J. 57 = 3 M.L.T. 230.] If a Magistrate or a Sessions Judge wrongly applies the law to the facts of a case, this, undoubtedly, will constitute such error in law as would call for the exercise of the powers of revision of the High Court. *In the matter of* AUROKIAM, **2 M. 38 = 2 Weir 566.** [*F.*, 15 Cr. L.J. 236 = 23 Ind. Cas. 188 = 26 M.L.J. 160; *R.*, 7 Cr.L.J. 267 = 31 M. 133 = 18 M.L.J. 57 = 3 M.L.T. 230, 32 M. 220 = 9 Cr. L.J. 192 = 19 M.L.J. 157 = 5 M.L.T. 233, 1 Ind. Cas. 228.]

(13)—*Initiative of private party.*—As a Court of revision, the Chief Court will not act under s. 439, Crim. Pro. Code, on the initiative of a private individual, where, by doing so, it would allow that individual to usurp the functions of the District Magistrate. GURUMUKH SINGH v. NAMAN, **30 P.R. 1903, Cr. = 29 P.L R. 1904 = 1 Cr. L.J. 112.** (8 P.R. 1902, Cr., 27 P.R. 1902, Cr., *R.*)

(14)—*Crim. Pro. Code* (1872), *ss.* 195, 297—*Powers of revision of High Court*—"*Material error.*"—When a Magistrate, enquiring into a case exclusively triable by a Court of Sessions, discharges the accused, the High Court will interfere in revision, only if, on considering the evidence produced on behalf of the prosecution, it comes to the conclusion that the Magistrate has made a "material error" in discharging the accused, or has illegally and improperly underrated the value of the evidence. LACHMAN v. JUALA, **5 A. 161.**

(15)—*Interference in cases of "material error"—Presumption of guilty knowledge—Crim. Pro. Code* (1872), *s.* 297.—In the absence of evidence showing dishonest possession on the part of the person convicted of being in possession of stolen property, the Chief Court should cancel the conviction on revision, as it is a "material error" to presume guilty knowledge from mere possession where the theft is not recent. SOHNA v. CROWN, **15 P.R. 1875, Cr.**

(16)—*High Court's powers of revision—Lower Court's wrong exercise of discretion.*—The High Court has the power to interfere in revision where, the exercise of discretion being required by law, the lower Court exercised no discretion at all or exercised its discretion in a wholly unreasonable or improper manner—*Per Markby, J.* [*F.*, 1 C.L.R. 268; *R.*, 14 B. 331]. *Per Mitter, J.* The High Court may interfere in revision if there is a material error in any judicial proceeding, (*i.e.,*) an error resulting in an unjust order. *In the matter of* JUGGUT CHUNDER CHUCKERBUTTY, **2 C. 110.**

(17)—*Crim. Pro. Code* (*Act* X *of* 1882), *s.* 435—*Revision—Powers of High Court—Calling for records whether their nature is preliminary or final.*—It is competent to the High Court to call for the record of any proceeding in an inferior Criminal Court and revise the same whether it is of a preliminary or final nature, except orders under ss. 143, 144 or 176 of the Crim. Pro. Code. QUEEN-EMPRESS v. JAGAN SINGH, **A.W.N. 1892, 102.** (2 A. 276, *D.*)

(18)—*Criminal Jurisdiction—Power of High Court—Revision case dismissed for default—No power to review or alter.*—The High Court has no power to review an order made in the exercise of its revisional jurisdiction. (14 C 42, 19 B. 732, *F.*) In cases of revision, when they are dismissed for default, no distinction can be made between an order passed without hearing the petitioner and one in which he is heard. The revisional power of the High Court is exercised at its own discretion, and no petitioner has a right to be heard. (10 B. 176, 7 A. 672, *F.*; 7 M.H.C. App. 29, *D.*) In criminal matters, the High Court cannot review or alter its judgment once completed and passed. B. RANGA RAO v. EMPEROR, **12 M.L.T. 350 = 23 M.L J. 371 = 1912 M.W.N. 982 = 16 Ind. Cas. 518 = 13 Cr. L.J. 710.**

(19)—*Petition of appeal, when no appeal lies.*—A petition of appeal may be dealt with in revision, where no appeal lies under the law. GAJJU v. KING-EMPEROR, **2 A.L.J. 173 = 2 Cr.L.J. 105.**

Revision—continued.

——1.—General Principles—*continued.*

(20)—*Crim. Pro. Code* (1882), s. 439—*Powers of revision—High Court can exercise powers of Court of appeal.*—In a revision case, it is competent to the High Court, having the record before it, to exercise the powers of a Court of appeal. EMPRESS v. SHEO PRASAD, **A.W.N. 1883, 61.**

(21)—*Revisional jurisdiction of High Court to be carefully exercised.*—The revisional jurisdiction of the High Court should be exercised circumspectly especially in matters of fact, in order to avoid lowering the responsibility of the Courts below and swamping the High Court with petty matters where the law advisedly prohibits relief by appeal. QUEEN EMPRESS v. VISHWANATH, **Rat. Un. Cr. C. 708 = Cr. Rg. 41 of 1894.**

(22)—*Crim. Pro. Code* (1861), *ss.* 308, 404—*Judicial proceeding—Revision.*—The provision in s. 308, which requires the Magistrate to issue a notice to the person concerned to show the cause why the order should not be enforced, shows that an order under s. 308 is an order made in a judicial proceeding. The High Court, therefore, is competent to call for the record and proceedings in the case, and the Magistrate will have an opportunity if he pleases, of instructing Counsel to appear in support of the legality of his proceedings. *In re* GANPRASAD *bin* SOBHARAM, **9 B H.C.A.C. 160.**

(23)—*Order directing expulsion of prostitute.*—An order by a Deputy Commissioner, directing the expulsion of a prostitute from the city, was held not open to revision as it was not a "judicial proceeding." MUSSAMMAT BANNI v. EMPRESS, **26 P.R. 1880, Cr.**

(24)—*High Court's powers of revision—Crim. Pro. Code* (1898), *s.* 439.—The controlling power of the Chief Court under s. 439, Crim. Pro. Code, being by its term entirely discretionary, the Court is not bound to set aside on revision, a case of joint trial of two opposing factions in a riot case (though it is opposed to ss. 233 and 239, Crim Pro. Code, and is altogether illegal and void) if no prejudice is shown to have resulted to the accused. ALA DYA v. KING-EMPEROR, **5 P.R. 1906, Cr. = 4 Cr.L.J. 75 = 116 P.L.R. 1907.** (36 P.R. 1902, F.B. *R.*)

(25)—*Reference to* jirga—*Crim. Pro. Code* (1878), *s.* 297.—An order of a Deputy Commissioner referring the question of the innocence or guilt of an accused person to a Court of elders and a conviction by the latter are not "judicial proceedings." EMPRESS v. SAID JAWAI, **13 P.R. 1880, Cr.** (11 P.R. 1879, *F.*)

(26)—*Trial not according to Frontier Regulations.*—Where, under the Frontier Regulations, the accused is not tried according to the ordinary procedure, there is no "judicial proceeding" with which the Chief Court can interfere. ABDUL KADIR v. CROWN, **17 P R. 1875, Cr. Note.** (15 P.R. 1872, Cr., 14 P.R. 1874, Cr., 19 P.R. 1874, Cr., 4 P.R. 1875, Cr., 9 P.R. 1875, Cr., *R.*)

Revision—continued.

——1.—General Principles—*continued.*

(27)—*Crim. Pro. Code* (1861), *ss.* 316, 404—*Order for maintenance—Appeal.*—An order for maintenance under s. 316, Crim. Pro. Code, is a judicial proceeding of a Criminal Court within s. 404; but no appeal lies against it under s. 409. REG. v. THAKU *bin* IRA, **5 B.H.C. Cr. 81.** [*R.*, 16 M. 234, L.B.R. 1893—1900, 662.]

(28)—*Crim. Pro. Code* (1882), *s.* 488—*Question of separate maintenance—Question of law—Revisional jurisdiction of High Court.*—Whether the facts found are sufficient, in Hindu law, when the parties to a proceeding under s. 488 are Hindus, to entitle the wife to separate maintenance, is a question of law and a ground in a civil suit for a second appeal. It may, therefore, under the practice of the High Court, be decided in the High Court's revisional jurisdiction. *In re* GULABDAS BHAIDAS, **16 B. 269.**

(29)—*Crim. Pro. Code* (*Act* X *of* 1872), *ss.* 471, 472—*Judicial proceeding—High Court—Revision.*—Where a Sessions Judge in his judgment in a perjury case acquitting the accused under s. 251 of the Crim. Pro. Code, committed the complainant for trial in his own Court for perjury under s. 471 of the Crim. Pro. Code, *held* that the order was really one falling under s. 472 of the Crim. Pro Code, that under that section there was no authority for a Court to commit the case to itself, and, that under s. 473 the Court could not try an offence (here, perjury) committed in contempt of its own authority. Even supposing the order to have been passed under s. 471, *Mahmood, J.*, was of opinion that the proceeding was "a judicial proceeding" like any other order of the committal by a Magistrate, and the High Court could revise it under s. 297 of the Crim. Pro. Code. *In re* RAMESHUR, **A.W.N. 1882, 229.** (2 A.W.N. 92, *Commented on.*)

(30)—*Crim. Pro. Code* (*Act* XXV *of* 1861), s. 426—*Penal Code*, *ss.* 177, 415.—Where, on a reference from a conviction under s. 415 of the Penal Code, it appeared to the High Court that the offence proved was really one under s. 177, *held* that, under s. 426 of the Crim. Pro. Code, it was unnecessary for the High Court to interfere with the conviction. REG v. RAGHOJI *bin* KANOJI, **3 B H C. Cr. 42.** REG v. BABAJI *bin* BHAU, **4 B H.C. Cr. 16.** [*R.*, Rat. Un. Cr. C. 210, 26 C. 863 = 3 C.W.N. 653.]

(31)—*Crim. Pro. Code* (1898), *ss.* 439 *and* 476—*Sanction to prosecute granted by Civil Court under s.* 476—*High Court's power of interference, under s.* 439 *of the Code, in revision.*—The Sub-Divisional Court sanctioned, under s. 476, Crim. Pro. Code, the prosecution of a witness for committing perjury. An application for the revision of that order was made to the Sessions Judge, who recommended to the High Court that the order be quashed. *Held*, that s. 439, Crim. Pro. Code, does not empower a High Court to revise an order

Revision—continued.

——1.—General Principles—*continued.*

of a Civil Court, made under s. 476 of the Code. SAN GAING v. KING-EMPEROR, **4 L.B.R. 339 = 9 Cr.L J. 24.** (3 L.B.R. 234, 4 L.B.R. 138, *R.*)

(32)—*Crim. Pro. Code* (1898), s. 476—*High Court's powers of revision.*—An order under s. 476 made by a Criminal Court is open to revision by the High Courts. MATA RATAN v. MAHABIR MISSIR, **4 A L J. 803 = A.W.N. 1908, 27 = 2 M L T. 512 = 7 Cr. L.J. 1.**

(33)—*Crim. Pro. Code* (1898), ss. 439, 476—*Income Tax Act* (II *of* 1886), *Chap.* IV—*An Income Tax Collector acting under, is a Revenue Court, within the meaning of* s. 476, *Crim Pro. Code—Jurisdiction of High Court over proceedings of Revenue Court—Construction of Penal Statutes.*—Where an Income-tax Collector, after holding proceedings under Chap. IV of Act II of 1886, was of opinion that the applicant had committed an offence under s. 193, I P.C., and sent him for trial under s. 476, *held* (*per Lucas, J. C.*, and *Pratt, A.J.C.*, *Crouch, A.J. C., dissenting*) an Income-tax Collector acting under Chap. IV of Act II of 1886 is a "Court," and is a Revenue Court, because he was engaged in hearing objections to the assessment under the Act, such assessment being a source of Government revenue; and he is consequently competent to take action under s. 476, Crim. Pro. Code. But as an Income-tax Collector is not an inferior Criminal or Civil Court, the High Court is not competent under s. 439, Crim. Pro Code, to revise his order under s. 476. (*Per Pratt, A.J.C.*).—Penal statutes must be strictly construed; words and expressions cannot be strained beyond their ordinary meaning, in order to confer penal jurisdiction. IMPERATOR v DEUMAL *wd.* DIPOMAL, **3 S.L.R 66, Cr. = 3 Ind. Cas. 886 = 10 Cr. L.J. 395.**

(34)—*Crim. Pro. Code*, ss. 195, 439, 476—*Revision of an order directing prosecution.*—Under the general revisional powers conferred by s. 439, a High Court has power to consider the propriety of an order which purports to be passed under s 476. *In the matter of the petition of* MATHURA DAS, **16 A. 80 = A.W.N. 1894, 9.** (13 B. 109, *Diss.*) [*Overruled.* 34 A. 602 = 10 A.L.J. 174 = 13 Cr. L.J. 717 = 16 Ind. Cas. 525; *Diss.*, 13 Cr. L J. 1 = 13 Ind Cas. 111; *F.*, 9 Cr. L.J. 181 = 1 Ind. Cas. 220; *R.*, 26 A. 249 = A.W N. 1904, 15, 35 A. 8 = 10 A.L.J 361 = 13 Cr L J. 829 = 17 Ind. Cas. 573, 6 A.L.J. 392, 26 B 785, 21 M. 124 = 2 Weir 593, 9 C.P. L.R. 27, 7 Cr L J. 281 = 103 P.L.R. 1908 = 7 P W.R. 1908, Cr. = 5 P.R. 1908 18 P.R. 1902, Cr. = 78 P L.R 1902. Rat. Un. Cr. C. 895; *D*, 97 P.L.R 1903]

(35)—*Crim. Pro. Code*, ss 439, 476—*Sanction by subordinate Court for perjury—Revision by High Court.*—The High Court has jurisdiction to deal in revision under s. 439 of the Crim. Pro. Code, with an order passed by a subordinate Court under s. 476, sanctioning prosecution for an offence punishable under s. 193 of the Penal Code, read with s. 249 of the Indian Succession Act. QUEEN-EMPRESS v. NUSSERWANJI SHERIARJI, **Rat. Un. Cr. C. 895 = Cr. Rg. 9 of 1897.** [*F.*, 26 B. 785.]

Revision—continued.

——1.—General Principles—*continued.*

(36)—*Crim. Pro. Code* (1882), ss. 439, 476—*Revisional powers of High Court.*—The High Court has jurisdiction to interfere in revision with an order passed under s. 476, Crim. Pro. Code. *In the matter of the petition of* SARJU UPADHIA, **A W.N. 1897, 64.**

(37)—*Crim. Pro. Code* (1898), *ss.* 439 *and* 476—*Proceedings of Court taking action under* s. 476—*Revision by High Court—Jurisdiction.*—The High Court, as a Court of revision, has power under s. 439, to interfere, on grounds other than want of jurisdiction, when a Criminal Court has taken action under s. 476 *In re* OTTUPURA NARAYAN SOMAYAJIPAD, **6 M L. T. 327 F B. = 10 Cr. L.J. 420 = 3 Ind. Cas. 934 = 19 M.L J. 766.**

(38)—*Crim. Pro. Code* (1898), s. 476—*High Court's powers of revision.*—The High Court has no power to interfere in revision with an order passed by a Collector under s. 476, but an application for revision should be filed before the Board of Revenue. ABDUL RAOOF v KING-EMPEROR, **4 A L J 701 = A W.N. 1907, 277 = 6 Cr.L J 350** [*R.*, 36 M. 72 = 13 Cr.L.J. 723 = 16 Ind. Cas. 755 = 23 M.L.J. 393 = 13 M.L. T. 367 = 1912 M.W.N. 1012, 22 Ind. Cas. 1001 = 17 O.C. 25.]

(39)—*Crim. Pro. Code* (1882), s. 476—*Revisional powers of High Court—Interference with order under section—Preliminary enquiry.*—The High Court can, as a Court of revision, interfere with an order under s. 476, Crim Pro. Code, sending a case for prosecution before a Magistrate *In the matter of* SALTANAT BEG, **S C 284, Oudh.** (16 C. 730, *F.*; 13 B. 109 and 13 M. 144, *Not F.*)

(40)—*Crim. Pro Code* (1882), ss. 439 *and* 476—*Power of High Court to revoke order of subordinate Court under* s. 476.—The High Court, as a Court of revision, has power under s. 439 read with s. 423, cl. (*c*), to revoke an order made by a subordinate Court under s. 476, Crim. Pro. Code. QUEEN-EMPRESS v. SRINIVASALU NAIDU, **21 M 124 = 2 Weir 593.** [*F.*, 34 C 42 = 11 C.W.N. 125; *R.*, 26 A. 249, F B. = A.W N. 1904, 15, 26 B.785, 40 C. 477 = 17 Cr. L.J. 245 = 17 C.W.N. 647 = 14 Cr. L J. 197 = 19 Ind. Cas. 197, 6 Cr. L.J. 25 = U.B.R. 1907, I Qr. Cr. P.C. 1, 33 M. 48 = 10 Cr. L.J. 420 = 3 Ind. Cas 934 = 19 M.L.J. 766 = 6 M L. T 327, 13 Cr. L J. 209 = 14 Ind. Cas. 305 = 22 M.L J. 419 = 11 M.L.T 367 = 1912 M.W.N. 499, 18 P.R. 1902 = 78 P L R 1902, 5 P.R. 1908 = 103 P L.R. 1908 = 7 P.W.R. 1908; *D.*, 26 M. 98 = 2 Weir 576.]

(41)—*Crim. Pro Code* (1898), s. 435—*Sanction to prosecute—Revision by High Court.*—The High Court cannot interfere with an order of sanction such as the one in question, *viz.*, one based on ss. 195, cl. (1) (*b*) and 476, any more than it could with an order under s. 476 alone,

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——1.—General Principles—*continued.*

unless the jurisdiction of the Court has been exceeded. *In re* JIVABHAI KHUSAL, **7 Bom. L.R. 84=2 Cr. L.J. 54.**

(42)—*Crim. Pro. Code* (*Act* V *of* 1898), *ss.* 476, 439—*Sanction by Civil Court—Revision by High Court—Civ Pro. Code* (*Act* XIV *of* 1882), s. 622.—The High Court can, under s. 622 of the Civ. Pro. Code, entertain an application presented in accordance with the provisions of s. 439 of the Crim. Pro. Code, to revise an order of a Civil Court granting sanction for prosecution under s 476 of the Crim. Pro. Code. EMPEROR v. DURGA PRASAD, **A.W.N. 1904, 170=1 A.L.J. 481=1 Cr.L.J. 706.**

(43)—*Crim Pro. Code* (1898), *ss.* 439 *and* 476—*Order for prosecution — Jurisdiction of Sessions Judge to revise such orders —High Court's power to revise the order.*—A Sessions Judge has no jurisdiction to revise an order of a Magistrate passed under s. 476 of the Code. It is only the High Court which has power to revise such orders of a Magistrate or of Civil Court, either under s. 439 of the Code or under its general powers of superintendence, if a case for interference is made out. And this power is not taken away by s. 476, cl. 2. EMPEROR v. GOPAUL BARIK, **34 C 42=11 C W.N. 125=4 Cr. L.J. 460.** (21 M. 124, *R.*; 26 M. 98 *Diss.*). [*F.*, 5, P.R. 1908, Cr.=103 P.L.R. 1908=7 P. W.R 1908, Cr.; *R.*, 37 C. 52=5 Ind. Cas. 62=14 C.W.N. 132=11 Cr. L J. 45, 40 C. 477=17 C.L.J. 245=17 C.W.N. 647=14 Cr. L.J. 197=19 Ind. Cas. 197, 32 M. 49=4 M L.T. 404=19 M.L.J. 42=9 Cr. L.J. 41, 1 Ind. Cas. 597.]

(44)—*Crim. Pro. Code* (1898), *ss.* 435 (3), 439, 476 *and* 537—*High Court's power to revise proceedings of inferior Criminal Courts under s.* 476 *of the Code.*—Under the repealed Code of 1882, orders under s. 476 were doubtless subject to revision under s. 439, and the words added to s. 476 (2) in the Code of 1898 do not operate to make the proceedings of the Magistrate under s. 476 (1) merely a complaint. S. 476 (1) contemplates an order being passed after such inquiry as may be necessary, and that order is something more than a complaint as defined in the Code, for, the Magistrate, who receives it, is bound to take action on it, and has not the option of postponing issue of process under s. 202, or of dismissing it under s. 203. The words in s. 476 (2) " as if on complaint made and recorded under s. 200 " do not mean that the proceeding taken under s. 476 (1) is to be regarded merely as a complaint, and not as an order. The words added to s. 537 certainly contemplate revisional action under s. 476, and, moreover, s. 476 does not find a place in s. 435 (3), which exempts certain orders and, proceedings from being called for for the purpose of examination. NUR MAHOMED v. AUNG GYI, **3 L B R. 234, F.B.** (26 B. 786, *F.*; 26 M 98, *Diss.*; 1 L B.R. 286, 8 C.W.N. 73, 26 A. 249, 29 M. 100, P J.L.B. 388.) [*R.*, 15 Ind. Cas. 492=6 L.B.R. 49, 4 L.B.R 339.]

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——1.—General Principles—*continued.*

(45)—*Crim.Pro.Code* (*Act* X *of* 1882), *ss.* 174, 435—*Inquest proceedings—Revision* —It is not open to the High Court to revise, under s. 435 of the Crim. Pro. Code, the inquest proceedings held by a Magistrate under s. 174. (3 C. 742, *F.*) The law does not require that the Police Report of investigation should contain a statement as to who killed the deceased. QUEEN-EMPRESS v. BAYAJI LAXMAN, **Rat. Un. Cr. C. 843.**

(46)—*Crim. Pro. Code* (1882), *ss.* 439, 144—*Jurisdiction to interfere with order under.*—The High Court has no revisional jurisdiction to interfere with an order under s. 144 of the Crim. Pro. Code. The aggrieved person has his remedy by an application to the District Magistrate under the last para but one of s. 144. QUEEN-EMPRESS v. VITHUL ANNAJI, **Rat. Un. Cr. C. 516=Cr. Rg. 38 of 1890.**

(47)—*Crim. Pro. Code* (1882), *ss.* 144, 435, 439—*Order prohibiting collection of rent—High Court's powers of interference under ss.* 435 *and* 439 *of the Crim. Pro. Code and under Charter Act.*—An order made by a Magistrate, under s. 144 of the Code, forbidding a person, who claims an interest in certain property, from collecting any rent from the raiyats on the property does not fall within s. 144 of the Code. Such an order may be set aside by the High Court under the provisions of ss. 435 and 439 of the Code and under the Charter Act. ANANDA CHANDRA BHUTTACHARJEE v. CARR STEPHEN, **19 C. 127** [*F.*, 4 L. B. R 75; *R.*, 24 B. 527, A.W.N. 1897, 50, 4 Bom. L.R 582, 12 Bom. L.R. 1029=8 Ind Cas. 747=11 Cr. L.J. 705, 8 Cr.L J. 170=1 S.L.R. 50, Cr.; *D.*, 24 M. 45=2 Weir 92.]

(48)—*Crim. Pro. Code, ss.* 145, 435—*Revision by High Court of orders under s.* 145.—Where the proceedings before a Magistrate are really within the purview of s. 145, the High Court cannot under s. 435 interfere in revision. But it can interfere where the proceedings merely purport to be under the section and disclose an exercise of powers not conferred by it. *In re* RASAL JAMAL, **7 Bom. L.R. 478=2 Cr. L.J. 481.**

(49)—*Crim. Pro. Code* (1898), *ss.* 145 *and* 439—*Omission to follow procedure laid down therein—Revision.*—*Held*, that an order purporting to be one under s. 145, Crim. Pro. Code, 1898, without following the procedure laid down therein, and tacked on to an order dismissing a complaint under s. 297, Indian Penal Code, is illegal and without jurisdiction, and is therefore liable to be set aside in revision. HAIDAR SHAH v. CROWN, **24 P.W R. Cr 1910=6 Ind Cas. 985=11 Cr L J 422.** (7 P.R. Cr. 1907=24 P.W R 1907, *F.*)

(50)—*Crim. Pro. Code* (1898), *ss* 145 *and* 435 (3) — *Jurisdiction — Revision— Powers of High Court.*—Notwithstanding the provisions of s. 435 (3) of the Code of Criminal Procedure, the High Court has jurisdiction to call for the

Revision—continued.

——1.—**General Principles**—*continued.*

records of proceedings. purporting to be proceedings under ch. XII of the Code if, in fact, no order in writing, such as is required by s. 145 (1) of the Code, has been passed by the Magistrate. BIHARI LAL v. CHAJJU. **A.W.N. 1907, 49 = 2 A.L J. 272 = 2 Cr. L J. 222.** [*R.*, 14 Cr. L.J. 495 = 20 Ind. Cas. 751 = 11 A.L.J. 696.]

(51)—*Crim. Pro. Code* (1898), *ss.* 145, 435 (3) —*Revisional powers of the High Court.*—Where there exists an order passed under s. 145 (1) and in substantial compliance with the requirements of the section, the High Court has no power in revision to interfere with the proceeding under ch. XII. BABAN SINGH v. BALDEO SINGH, **4 A.L.J. 91 = A.W.N. 1907, 50 = 5 Cr. L J. 117.** (2 A.L.J. 272, A.W.N. 1903, 102, A.W.N. 1904, 234, *D.*) [*R.*, 14 Cr.L.J. 605 = 21 Ind. Cas. 477 = 16 O.C. 192.]

(52)—*Crim. Pro. Code* (1861), *s.* 404 (= s. 439 *of the Code of* 1898)—*Revisional powers of the High Court.*—The Court is not empowered to interfere under the provisions of s. 404, Crim. Pro. Code, 1861, until there has been a judicial proceeding by the Magistrate. QUEEN v. BISHESHUR PERSHAD, **2 N.W.P. 441.**

(53)—*Crim. Pro. Code* (1898), *s.* 435 (3)—*Order made under Ch.* XII *of the Code without jurisdiction—Revisional jurisdiction of High Court.*—An order of a Magistrate, touching moveable property, is made under ch. XII of the Code, which deals only with disputes as to immoveable property, is made without jurisdiction. As regards such property, s. 435 (3) would not bar the revisional jurisdiction of the High Court. VYRAVAN CHETTY v. S.R M. MEYAPPA CHETTY, **4 L.B.R. 75 = 6 Cr. L.J. 291.**

(54)—*Crim. Pro. Code* (1898), *s.* 520—*Revisional powers of the High Court.*—Where a subordinate Court makes an order under s. 520 directing the disposal of any property regarding which an offence has been committed, the High Court can interfere in revision against such order and make any further orders that may be just. ABDUR RAZZAK v. RAH-MATULLAH, **27 A. 630 = A.W.N. 1905, 139 = 2 Cr. L.J. 331.**

(55)—*Crim. Pro. Code. ss.* 439, 423—*Revision, power of High Court in—Conviction, setting aside of, on compounding of the offence—Penal Code, ss.* 323 *and* 114.—The applicant was convicted by a Magistrate under s. 109 read with s. 325, Penal Code. On 11th April, 1910, the Sessions Judge on appeal altered the conviction to one under s. 323 read with s. 114 of the Code, but maintained the sentence passed by the Magistrate. The Sessions Judge at the end of his judgment recorded "that no application for permission to compound has been made nor has it been stated that the complainant is willing to compound." On 13th April, 1910, the present application for revision was made on the ground that the complainant is willing to compound the offence but no opportunity was given by the Judge for the purpose. Simultaneously with this, an application was put in by the complainant stating that the dispute had been compromised and asking the Court to allow the offence to be compounded. *Held*, that under s. 439 read with s. 423 of the Crim. Pro. Code the Court has power to pass any order that may be just and proper, and the offence having been compounded, the conviction should be set aside. RAM SARUP v. KING-EMPEROR, **13 O.C. 161 = 7 Ind. Cas. 539 = 12 Cr. L.J. 496.**

(56)—*Absence of manifest injustice on record.* —Where there is no manifest injustice on the face of the record, the Court would decline to interfere in revision to stop a pending case which had been legally commenced. LACHMANAN CHETTY v. KING-EMPEROR, **U.B.R. 1904, 1st Qr. Cr. P.C. 4 = 1 Cr. L.J. 539.**

(57)—*Crim. Pro. Code* (1882), *s.* 439—*Powers of the High Court as a Court of revision—High Court's Act.*—S. 439 does not in any way limit the powers of the High Court, as a Court of revision, vested in it by the High Court's Act. CHAKOWRI LALL v. MOTI KURMI, **13 C.L.R. 275.**

(58)—*Crim. Pro. Code* (*Act* X *of* 1882), *ss.* 195, 439—*Appeal against refusal of sanction to prosecute not filed—Revision.*—Since an appeal lies from an order refusing sanction to prosecute, the High Court will not interfere in revision under s. 439 of the Crim. Pro. Code, where no appeal has been preferred. GULAB SINGH v. SURAT RAM, **A.W.N. 1884, 293.** (2 A. 276, 3 C. 573, *R.*) [*Diss.*, 13 A.W.N. 147; *D.*, 15 A. 61 = A.W.N. 1892, 242.]

(59)—*Interlocutory orders—Crim. Pro. Code, s.* 439.—When, in pursuance of a sanction to prosecute, a complaint has been preferred, and the prosecution evidence has been recorded and charge framed, the Chief Court declined to interfere with a revision petition filed against the order granting sanction. GURAN DITTA v. EMPRESS, **31 P.R. 1890, Cr.**

(60)—*Appellate judgment dismissing appeal as time-barred—Review—Revision.*—Where a Sub-Divisional Magistrate erroneously dismisses an appeal as time barred, it is not open to him to review his own order and admit the appeal again; the only course open to him is to submit the case to the High Court for revision. EMPEROR v. RAGHUNATH RAMCHANDRA, **6 Bom. L.R. 360 = 1 Cr. L J. 329.**

(61)—*Interlocutory orders — Revision.*—The High Court has jurisdiction to revise interlocutory orders. QUEEN-EMPRESS v. NAGESHAPPA PAI, **20 B. 543** [*F.*, 130 P.L.R. 1901, 3 L.B. R. 109 = 3 Cr. L.J. 23.]

(62)—*Crim. Pro. Code* (*Act* V *of* 1898), *s.* 439 —*Revision—Power of High Court to interfere with interlocutory orders.*—Under s. 439 of the Code of Criminal Procedure, the High Court

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can interfere with an interlocutory order passed by a Magistrate. ROVEL SINGH v. EMPEROR, **130 P.L.R. 1901.** (20 C. 469, 22 C. 131, 25 C. 233, 20 B. 543, 45 P.R. 1885, Cr.,*R.*)

(63)—*Power of Chief Court to interfere with interlocutory order.*—The Chief Court has power to interfere with an interlocutory order passed by a Magistrate, but it will only exercise such power at an intermediate stage when it is satisfied that interference is necessary and the postponement of rectification of the error will cause waste of time or a miscarriage of justice. KING-EMPEROR v. SOBHA RAM, **8 P.R. 1904, Cr. = 70 P.L.R. 1904 = 1 Cr. L.J. 514.** (42 P.R. 1885. *Appr.*) [*F.*, 12 Cr. L.J. 50 = 8 Ind. Cas. 1161 = 33 P.R. 1910, Cr., 50 P.W.R 1910.]

(64)—*Interlocutory orders, revision of—Crim. Pro. Code* (1882), *s.* 439—The Chief Court is not competent to interfere with interlocutory orders by which no penalty is imposed on the accused. AZIM KHAN v. EMPRESS, **45 P.R. 1885, Cr.** [*R.*, 33 P.R. 1910 = 57 P.L.R. 1911 = 8 Ind. Cas. 1161 ; *D.*, 11 Cr. L.J. 387, 6 Ind. Cas. 624 = 17 P.W.R. 1910, Cr., 8 P.R. 1904.]

(65)—*Powers of High Court— Interference with pending case.*—Although the High Court has power to interfere in any case at any stage of it, it will not interfere in a pending case, unless there is an exceptional ground for its interference. A test for finding out whether a case is of such nature is that a bare statement of facts of the case without any elaborate argument should be sufficient to convince the High Court that it is a fit one for its interference at an intermediate stage. CHOA LAL DASS v. ANANT PERSHAD MISSER, **25 C. 233.** (22 C. 131, *Diss.*) [*F.*, 12 Cr. L.J. 50 = 8 Ind. Cas. 1161 = 33 P.R. 1910, Cr. = 57 P.L.R. 1911, 50 P.W.R. 1910, Cr.; *R.*, 38 C. 68 = 13 C L J. 43 = 11 Cr. L. J. 525 = 7 Ind. Cas. 747. 130 P. L.R. 1901 ; *D.*, 10 C.W.N. 322, 11 Cr. L.J. 387 = 6 Ind. Cas. 624 = 17 P.W.R. 1910, Cr.]

(66)—*Crim. Pro. Code* (1898), *s.* 439—Purdah *woman—Vexatious complaint—Power of High Court to interfere in pending case—Dismissal of complaint—Revision.*—The High Courts rarely interfere in respect of pending criminal cases, but where a case is *prima facie* vexatious, an interference is clearly required to prevent an abuse of such right as the complainant may have to action in the Criminal Courts. MUSSAMMAT KIRPA DEVI v. CROWN, **1 P.W.R. 1909, Cr. = 1 Ind. Cas. 93 = 36 P.L.R. 1909 = 9 Cr. L. J. 151.**

See ABSCONDING OFFENDER, 20 M. 88 = 2 Weir 42.

See ACCOMPLICE — ACCOMPLICE EVIDENCE—NECESSITY FOR CORROBORATION, 14 B. 115.

See ACCUSED PERSON, A.W.N. 1900, 47.

See ACQUITTAL, 8 C. 895, 9 Bom. L.R. 156 = 5 Cr. L J. 171, L.B R. 1893—1900, 126, 6 P. R. 1867, Cr., 10 P.R. 1900, Cr., 13 P.W.R. 1907, Cr. = 5 Cr. L.J. 438.

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See ACT V OF 1876, s. 8, Rat. Un. Cr. C. 494, 14 B. 381.

Powers of a Division Bench of a High Court over matters arising within its original territorial jurisdiction—*See* ACT IV OF 1877, s. 167, 2 M. 30 = 1 Weir 525.

By High Court of an order of a subordinate tribunal under s. 58, Forest Act, VII of 1878—*See* ACT VII OF 1878, s. 58, 4 A. 417.

See ACT XVIII OF 1879, s. 36, A.W.N. 1908, 279 = 6 A.L.J. 22 = 31 A. 59 = 9 Cr. L.J. 59 = 1 Ind. Cas. 143, 115 P.L R. 1909 = 11 P.R. 1909, Cr. = 28 P.W.R. 1909 = 3 Ind. Cas. 977, 120 P.L. R. 1909 = 29 P.W.R. 1909, Cr. = 3 Ind. Cas. 982.

See ACT III OF 1880, ss. 25, 27, 40 P.R. 1884, Cr.

See ACT VIII OF 1897, ss. 8, 11, 16, 31, 27 C. 133.

See ACT VIII OF 1897 s. 16, 18 P.R. 1907, Cr. = 42 P.W.R. 1907, Cr. = 55 P.L.R. 1908, L.B.R. 1893—1900, 441, 21 A. 391, F.B. = A. W.N. 1899, 138, 6 Bom. L.R. 550.

See ACT XV OF 1903, s. 7, 36 P.W.R. 1908, Cr. = 3 P.R. 1909, Cr. = 9 Cr. L.J. 3.

Order for security under Press Act if revisable by High Court—*See* ACT I OF 1910, s. 8, 17 C. W.N. 1245.

Finality of sentences in Santhal Pergunnahs —*See* BEN. ACT XXXVII OF 1855, s. 4 (1), 12 C. 536.

Fine imposed by Sub-Divisional officer on a member of village punchayat—Nature of the order by High Court—*See* BEN. ACT VI OF 1870, s. 8, 23 C. 421.

See BEN. ACT III OF 1899, ss. 406, 408, 574, 645, 34 C. 30 = 5 Cr. L.J. 137 = 11 C.W.N. 671.

See BEN. ACT II OF 1907, ss. 2, 3 and 6, 14 C.W.N. 404 = 37 C. 287.

See BOM. ACT VI OF 1863, ss. 22 and 25, 2 S.L.R. 20, Cr. = 10 Cr. L.J. 233.

See BOM. ACT II OF 1864, ss. 29, 30, 9 Bom. L.R. 331 = 5 Cr. L.J. 309 = 31 B. 335.

See BOM. ACT III OF 1901, s. 86, 9 Bom. L.R. 1347 = 6 Cr. L.J. 425.

Power to interfere with sentences of persons who have not appealed—*See* BUR. ACT I OF 1899, ss. 3, 7, 12, 12 Cr. L.J. 250 = 10 Ind. Cas. 792.

See PUN. ACT IV OF 1872, s. 45, 9 P.R. 1907, Cr. = 36 P.W.R. 1907 = 42 P.L.R. 1908 = 6 Cr. L.J. 379.

See PUN. ACT XX OF 1891, ss. 42 (1), (*f*), 201, 109 P.L.R. 1909 = 23 P.W.R. 1909 = 2 P. R. 1910. Cr.

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See APPEAL—GENERAL, 8 M.L.T. 380 = 8 Ind. Cas. 293 = 11 Cr. L.J. 622.

See APPEAL — APPEAL— PRACTICE AND PROCEDURE, 2 B. 564.

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—— 1.—**General Principles**—*continued.*

See APPEAL—APPEAL FROM ACQUITTAL, Rat. Un. Cr. C. 73.

See APPELLATE COURT, 16 P.W.R. 1907, Cr. = 6 Cr. L.J. 137.

See ATTACHMENT, 4 L.B.R. 109.

See BAIL, 5 A.L.J. 419, Cr. = A.W.N. 1908, 195 = 8 Cr. L.J. 49.

See BREACH OF THE PEACE, 3 M.L.T. 18 = 30 M. 548 = 7 Cr. L.J. 28.

See CANTONMENT CODE, 1899, ss. 94, 104, 240, 1 P.R. 1906, Cr. = 48 P.L.R. 1906 = 3 Cr. L.J. 346.

See CHARGE—FORM OF CHARGE, 21 C. 827.

See CHEATING—FALSE PERSONATION, 4 L.B.R. 315 = 9 Cr. L.J. 15.

See COMMITMENT TO SESSIONS COURT, 12 C.W.N. 117 = 6 C.L.J. 760 = 26 M. 139 = 2 Weir 197 = 2 Weir 577, 7 C.W.N. 327.

See COMPENSATION —GENERAL, 24 P.R. 1908, Cr. = 9 Cr. L.J. 103, 7 Bom. L.R. 998 = 3 Cr. L.J. 88, 12 P.R. 1885, Cr.

See COMPLAINT—PROCEDURE ON RECEIPT OF COMPLAINTS, 4 C.W.N. 825.

See COMPLAINT—WITHDRAWAL AND REVIVAL OF COMPLAINTS, 1 C.W.N. 49.

See COMPOUNDING OFFENCE, 5 B.H.C. Cr. 27.

See CRIMINAL MISAPPROPRIATION, 11 P.R. 1908, Cr. = 27 P.W.R. 1908 = 8 Cr. L.J. 250.

See CRIM. PRO. CODE, 1898, ss. 9 (1 to 5), 31, 193, 423 excep. 1 (*d*), 4 B. 239.

Interference with findings of facts in— *See* CRIM. PRO. CODE, 1898, ss. 35, 190, 196, 197, 200, 233, 239, 527 (*a*), 146 P.L.R. 1911 = 10 Ind. Cas. 156 = 12 Cr. L.J. 217 = 11 P.R. 1911, Cr. = 32 P.W.R. 1911, Cr.

See CRIM. PRO. CODE, 1898, ss. 35, 397, 438, 439, 20 P.L.R. 1912 = 13 P.W.R. 1912, Cr. = 13 Ind. Cas. 109 = 13 Cr. L.J. 3.

See CRIM. PRO. CODE, 1898, ss. 94, 96, 190 (c), 537, 12 C.W.N. 1075 = 8 Cr. L.J. 235.

See CRIM. PRO. CODE, 1898, ss. 107, 145, 115 P.L.R. 1903.

See CRIM. PRO. CODE, 1898, ss. 117 and 242 7 M.L.T. 304 = 6 Ind. Cas. 682 = 11 Cr. L.J. 393.

See CRIM. PRO. CODE, 1898, s. 133, 1 C.L.R. 486.

See CRIM. PRO. CODE, 1898, s. 143, 9 C.W.N. 887 = 1 C.L.J. 331 = 2 Cr. L.J. 408.

Proceedings under s. 145, Crim. Pro. Code—Omission to record preliminary order before summoning opposite party—Omission to affix copy on the property in dispute—Revision—Revision whether lies where other remedy open to applicant—Parties to revision—Omission to make joint owner a party—Effect. *See* CRIM. PRO. CODE, 1898, s. 145, 15 P.W.R. 1914, Cr. = 68 P.L.R. 1914 = 15 Cr. L.J. 27 = 23 Ind. Cas. 487.

Revision—continued.

—— 1.—**General Principles**—*continued.*

See CRIM. PRO. CODE, 1898, s. 145, 27 A. 296 = A.W.N. 1904, 234, 6 C.W.N. 737 = 30 C. 155, F.B., 25 B. 179 = 2 Bom. L.R. 755, 2 A.L.J. 274 = 2 Cr.L.J. 236, 2 A.L.J. 272, 25 A. 537 = A.W.N. 1903, 102.

Proceedings under ch. XII, Crim. Pro. Code—Power of High Court—Revision—*See* CRIM. PRO. CODE, 1898, ss. 145 to 148, ch. XII, 13 Cr. L.J. 495 = 15 Ind. Cas. 495.

See CRIM. PRO. CODE, 1898, ss. 145, 146, 435, 29 C. 382 = 6 C.W.N. 469.

See CRIM PRO. CODE, 1898, ss 145, 435, A.W.N. 1902, 111 = 24 A. 443, A.W.N. 1901, 154.

Magistrate attaching land under s. 146 (2), Crim. Pro. Code—Refusal to deliver property to successful party after Civil Court determined the rights of the contending parties—*Ultra vires* order of Magistrate—Revision—*See* CRIM. PRO. CODE, 1898, ss. 146 (2), 435 (3), 15 Cr. L.J. 500 = 24 Ind. Cas. 588.

In cases of disputes of a civil nature—*See* CRIM. PRO. CODE, 1898, s. 147, 29 M. 97 = 15 M.L.J. 394 = 3 Cr. L.J. 31.

Nature of remedy by revision—Refusal to interfere—Whether Letters Patent appeal lies —*See* CRIM. PRO. CODE, ss. 147, 144, 133, 435, 439, 15 M.L.T. 230 = 26 M.L.J. 223 = 1914 M.W.N. 394 = 15 Cr. L.J. 362 = 23 Ind. Cas. 730.

High Courts, power of, as to the amount of costs awarded—*See* CRIM. PRO. CODE, 1898, s. 148, 15 C.W.N. 811 = 11 Ind. Cas. 144 = 12 Cr. L.J. 376.

See CRIM. PRO. CODE, 1898, ss. 190, 253, 1 A.L.J. 609.

See CRIM. PRO. CODE, 1898, s. 195, 25 A. 126 = A.W.N. 1902, 197.

Matters not urged before first Court of revision if can be urged in moving High Court—*See* CRIM. PRO. CODE, 1898, ss. 195, 203, 13 Cr. L.J. 482 = 15 Ind. Cas. 482 = 40 C. 41.

See CRIM. PRO. CODE, 1898, ss. 195, 404, 439, 15 A. 61 = A.W.N. 1892, 242.

See CRIM. PRO. CODE, 1898, ss. 195, 423, 439, 476, 16 C. 730.

Revisional powers of the High Court—How to be exercised—Sanction to prosecute—Lower Court's order upheld by Sessions Judge—No revision against Sessions Judge's order —*See* CRIM. PRO. CODE, 1898, ss. 195 (*b*), 437, 12 A.L.J. 511 = 36 A. 403 = 15 Cr. L.J. 598 = 25 Ind. Cas. 350.

Of order passed under s. 203, Crim. Pro. Code —Notice to opposite party not necessary—*See* CRIM. PRO. CODE, 1898, s. 203, 13 O.C. 289 = 2 Ind. Cas. 371 = 11 Cr. L.J. 629.

Joint trial of persons charged with criminal breach of trust and receiving stolen property—Objection, when to be taken—*See* CRIM. PRO. CODE, 1898, ss. 233 and 537, 28 C. 7.

Technical mistake in adjective law—No presumption of injustice—High Court's powers of

Revision—continued.

—— 1.—General Principles—*continued.*

revision—*See* CRIM. PRO. CODE, 1898, ss. 250, 263 (*g*), 8 S.L.R. 25 = 15 Cr. L.J. 666 = 25 Ind. Cas. 994.

Order of acquittal set aside by High Court in revision on merits on the application of the complainant—*See* CRIM. PRO. CODE, 1898, ss. 258, 439, 18 C.W.N. 1244 = 15 Cr. L.J. 722 = 26 Ind. Cas. 170.

Summary trial—Case involving question of title and documentary evidence—Power of High Court to set aside order of acquittal—*See* CRIM. PRO. CODE, 1898, ss. 260, 439, 13 Cr. L.J. 771 = 17 Ind Cas. 403.

See CRIM. PRO. CODE, 1898, ss. 342, 539, 4 L.B.R. 143 = 7 Cr. L.J. 422.

Power of High Court in revision to allow case to be compromised — *See* CRIM. PRO. CODE, 1898, s. 345, 17 O.C. 92 = 15 Cr. L.J. 567 = 24 Ind. Cas. 975.

Fighting in the course of which one person was killed—Accused charged under s. 325, I.P.C.—Compounding of the offence by the relations of the deceased—Order of acquittal—Interference in revision on report of District Magistrate—Re-trial—*See* CRIM. PRO. CODE, 1898, ss. 345 (2), 439 (5), 7 S.L R. 200 = 15 Cr. L.J. 553 = 24 Ind. Cas. 961.

In case of irregularity in the mode of recording evidence—*See* CRIM. PRO. CODE, 1898, ss. 356 and 537, 6 O.C. 73.

See CRIM. PRO. CODE, 1898, ss. 367 and 537, 4 C.L.J. 232 = 4 Cr. L.J. 162.

See CRIM. PRO. CODE, 1898, s. 403, 14 Bur. L.R. 259 = 4 L.B.R. 337 = 9 Cr. L J. 21.

See CRIM. PRO. CODE, 1898, s. 407 (2), 2 Bom. L.R. 536.

See CRIM. PRO. CODE, 1898, s. 417, U.B.R. 1892—1896, Vol. I, 47.

Appeal—Judgment—Requisites of—No legal judgment— Court of Remand — Re-trial—Power to direct—*See* CRIM PRO. CODE, 1898, s. 423, 8 N.L.R. 84 = 15 Ind. Cas. 975 = 13 Cr. L.J 559.

See CRIM PRO. CODE, 1898, ss. 423 (*d*), 517, A.W.N. 1906, 256 = 3 A.L J. 770 = 4 Cr. L.J. 370.

See CRIM. PRO. CODE, 1898, s. 432, 9 Cr. L.J. 248 = 1 S L.R. 4, Cr.

See CRIM. PRO. CODE, 1898, s. 476, 26 B. 785 = 4 Bom. L.R. 618, 8 Bom. L.R. 477 = 4 Cr. L J. 34, 163 P.L.R. 1905 = 3 Cr. L.J. 73.

Small Cause Court directing prosecution of a person under s. 476, Crim. Pro. Code—Revision—Power of High Court acting as a Criminal Court in revision—*See* CRIM. PRO. CODE, 1898, ss. 476, 435, 17 O.C. 25 = 15 Cr. L J. 217 = 22 Ind. Cas. 1001.

Order passed by Civil or Revenue Court under s. 476, Crim. Pro. Code—Revision—Powers of High Court—*See* CRIM. PRO CODE, 1898, ss. 476, 439, 17 C.L.J. 245 = 17 C.W.N. 647 = 19 Ind. Cas. 197 = 14 Cr. L.J. 197 = 40 C. 477, F.B.

Revision—continued.

—— 1.—General Principles—*continued.*

See CRIM. PRO. CODE, 1898, s. 495, 2 Weir 655.

See CRIM. PRO. CODE, 1898, ss. 517 and 520, 5 M.H.C. App. 21, 2 Weir 673, 96 P.L.R. 1911 = 11 Ind. Cas. 584 = 12 Cr. L.J. 400.

See CRIM. PRO. CODE, 1898, s. 520, 2 Weir 673.

Powers of—*See* CRIM. PRO. CODE, 1898, ss. 556, 435, 439, 9 N.L.R. 81 = 14 Cr. L.J. 385 = 20 Ind. Cas. 209.

See DISCHARGE OF ACCUSED, 8 P.R. 1900, Cr.

See DISCRETION, 20 C. 349.

See DISTRICT MAGISTRATE, POWERS OF, L.B R. 1893- 1900, 311.

See EVIDENCE ACT, 1872, ss. 114, ill. (*b*) and 133, 11 Bom. L.R. 858 = 3 Ind. Cas. 963 = 10 Cr. L.J. 433.

See FURTHER ENQUIRY, 13 C.W.N. 1221 = 36 C. 994, 11 P.W.R. 1908, Cr. = 7 Cr L.J. 347, 6 M.L.T. 157, 26 M. 41 = 2 Weir 564.

See JOINT TRIAL, 5 P.R. 1906, Cr. = 4 Cr. L.J. 75 = 116 P.L.R. 1907.

See JUDGE AND JURY, Rat. Un. Cr. C. 452.

See JUDGMENT. 3 C.W.N. 281.

See JURISDICTION—GENERAL, 9 A.L.J. 51 = 13 Ind. Cas. 921 = 34 A. 118 = 13 Cr. L.J. 169.

See JURISDICTION OF CRIMINAL COURTS—JURISDICTION OVER EUROPEANS, 12 B. 561.

See LETTERS PATENT—LETTERS PATENT, 1865—ALLAHABAD, s. 27, 2 N.W.P. 117, F.B.

See NUISANCE UNDER CRIM. PRO. CODE, 25 C. 852 = 2 C.W.N. 593, 18 M. 402 = 2 Weir 91, 3 M. 354 = 2 Weir 90 = 6 Ind. Jur. 29, 6 N. W.P. 16, 1 C.L.R. 58, 6 B.L.R. F.B. 74 = 14 W.R. Cr. 46.

Receiving lottery prize by false pretence—Order in revision to refund—Mode of recovery—*See* PENAL CODE, ss. 24, 420, 15 Cr. L.J. 555 = 24 Ind. Cas. 963.

Erroneous interpretation of law—Acquittal—Interference of High Court—*See* PENAL CODE, ss. 97, 101, 354, 13 Cr. L.J. 53 = 13 Ind. Cas. 389 = 4 Bur. L. T. 268.

Application for revision by one accused—Conviction of another accused set aside in, though he did not apply in—*See* PENAL CODE, ss. 109, 280, 304-A, (1911) 2 M.W.N. 170 = 12 Cr. L.J. 495 = 12 Ind. Cas. 215.

High Court's power *suo motu* to quash conviction under s. 562, Crim. Pro. Code—*See* PENAL CODE, s. 143, 7 P.W.R. 1912, Cr., = 67 P.L.R. 1912 = 15 Ind. Cas. 316 = 13 Cr. L J. 476.

See PENAL CODE, ss. 147, 332, 38 P.W.R. 1907, Cr.

See PENAL CODE, ss. 147, 379, 16 P.L.R. 1904.

Revision—continued.

——1.—**General Principles**—*continued.*

See PENAL CODE, ss. 162 and 193, 4 A.L.J. 811 = A.W.N. 1908, 22 = 7 Cr. L.J. 3.

Finding of fact — High Court's power to interfere in—*See* PENAL CODE, s. 211, 16 C.L.J. 453 = 17 Ind. Cas. 993 = 13 Cr. L.J. 897 = 17 C.W.N. 379.

See PENAL CODE, ss. 268, 290, 69 P.L.R. 1904 = 9 P.R. 1904, Cr.

Failure to appeal—Whether revision lies—*See* PENAL CODE, s. 279, 2 P.W.R. 1912, Cr.

Consideration of evidence by the High Court in—*See* PENAL CODE, s. 280, 15 C.W.N. 835 = 12 Cr. L.J. 362 = 11 Ind. Cas. 130.

See PENAL CODE, ss. 406 and 403, 16 P.W.R. 1907, Cr. = 6 Cr. L.J. 137.

Stolen property—Its defective identification—Interference in—Irrelevancy of a statement of a person not examined in Court—*See* PENAL CODE, s. 411, 22 P.W.R. 1912, Cr. = 15 Ind. Cas. 971 = 13 Cr. L J. 555.

Value of first report to the Police—Admission of its certified copy in — Report falsifying prosecution story — Acquittal—*See* PENAL CODE, s. 498, 29 P.W.R. 1911, Cr. = 12 Cr. L.J. 500 = 224 P.L R. 1911 = 12 Ind. Cas. 220.

Of finding of fact — *See* PENAL CODE, s. 498, 36 P.W.R. 1913, Cr. = 319 P.L.R. 1913 = 21 Ind. Cas. 467 = 14 Cr. L.J. 595.

Liability of a party or witness for making defamatory statement in judicial proceeding—*See* PENAL CODE, ss. 499, 500, 7 P.W.R. 1911, Cr. = 10 Ind. Cas. 682 = 12 Cr. L.J. 193.

See PERJURY, 4 A.L.J. 811 = 7 Cr. L.J. 3 = A.W.N. 1908, 22.

See PREVIOUS CONVICTION, 15 C.P.L.R. 87.

Order to prosecute for offence not committed—Material irregularity—Interference in—*See* PROSECUTION, 8 A.L.J. 537 = 12 Cr. L.J. 432.

See RES JUDICATA, 14 Bur. L.R. 259 = 4 L.B.R. 337.

See RESTORATION OF PROPERTY, 27 A. 415 = A.W.N. 1905, 19 = 2 A.L.J. 64 = 2 Cr. L.J. 24, 13 C.W.N. 77 = 36 C. 44 = 1 Ind. Cas. 202.

See SANCTION TO PROSECUTE — CONDITIONS REQUISITE FOR GRANT OF SANCTION —NECESSITY, SUFFICIENCY AND VALIDITY OF SANCTION, 27 M 223 = 2 Weir 208 = 14 M. L.J 74.

See SANCTION TO PROSECUTE—NATURE AND FORM OF SANCTION, 5 A L J. 247 = A W. N. 1908, 102 = 30 A. 243 = 3 M.L T. 377 = 7 Cr. L J. 389.

See SECURITY FOR GOOD BEHAVIOUR, 16 B. 372.

See SECURITY TO KEEP THE PEACE—DEFAULT IN GIVING SECURITY, 4 L.B.R. 205, F.B. = 7 Cr. L.J. 472.

Revision—continued.

——1.—**General Principles**—*concluded.*

See SECURITY TO KEEP THE PEACE—LIKELIHOOD OF BREACH OF THE PEACE, 1 S.L.R. 50, Cr. = 8 Cr. L.J. 170.

See SENTENCE—POWERS OF APPELLATE COURT—REVERSAL, 1 L.B.R. 362.

Revision— Order refusing stay of criminal proceedings pending civil appeal—Not to be interfered with—*See* STAY OF CRIMINAL PROCEEDINGS, 8 S.L.R. 20 = 15 Cr. L.J. 661 = 25 Ind. Cas. 989.

See SUMMARY TRIAL, 7 P.R. 1887, Cr.

——2.—**Delay.**

(1)—*Crim. Pro. Code*, 1898, *s.* 439—*Delay in applying for revision.*—If there is a long delay in applying for revision unexplained by the applicant, the High Court will exercise its discretion against interference in revision. EMPEROR v. JAGAN NATH, **27 A. 468 = A.W. N. 1905, 65 = 2 Cr. L J. 154.**

(2)—*Crim. Pro. Code* (*Act* V *of* 1898), s. 439—*Delay in application—Practice.*—Long delay in applying for revision to the High Court, which is not satisfactorily explained, is a reason for the Court declining to interfere. CRIMINAL REVISION CASE NO. 820 OF 1904, **A W.N. 1905, 65, Note.**

(3)—*Revision—Belated application for—Discretion—No interference by Court—High Court rules, Ch.* XV, *r.* 3—*Sixty days.*—By the rules of the Court of the Judicial Commissioner, Sind, revision applications are not admitted unless presented within sixty days. Interference by revision in criminal cases is purely discretionary and the rule indicates that the Court will, in exercise of that discretion, refuse to interfere in the case of a belated application. TINDOOMAL v. SADHURAM, **5 S.L.R 265 = 15 Ind. Cas. 803 = 13 Cr. L.J. 531.**

(4)—*Crim, Pro. Code* (1882), *ss.* 417, 439—*Powers of revision on failure to exercise the right of appeal.*—It cannot be laid down as an inflexible rule, that where either the Government on the one side or an accused on the other, has a right of appeal and does not exercise it, the powers of the High Court under s. 439, cannot be exercised, but, in such cases, they should be sparingly used, and, save in very exceptional instances, not at all in reference to questions of fact. Where the Government applied for revision of an order of acquittal by the Session Judge nearly ten months after the Sessions trial, and upwards of twelve months since the commission of the alleged crime, *held* that, as there was no error of law in the judgment of the lower Court, and as it was not appealed against on a question of fact, the High Court could not, after so long an interval from the date of its delivery and of the alleged crime, enter into it at large upon the merits, under a petition for revision. QUEEN-EMPRESS v. ALA BAKHSH, 6 **A. 484 = A.W.N. 1884, 206.** [*R.*, 14 B. 331, 17 C.P.L.R. 75, L.B.R. 1893—1900, 41, 5 N.L.R. 4, 1 Ind. Cas. 238 = 9 Cr. L J. 211.]

Revision—continued.

——**2.—Delay**—*concluded.*

(5)—*Crim. Pro. Code* (1882), ss. 367, 421, 424, 439—*Summary rejection of criminal appeal—Powers of revision.*—The law requires that a lower appellate Court, in disposing of an appeal, and even in summarily rejecting an appeal, under the provisions of s. 421 of the Code, should give reasons for so doing. The powers conferred by s. 421 should be exercised sparingly and with great caution, and reasons, however concise, should be given for rejecting an appeal under that section. Where a Sessions Judge rejected an appeal summarily without giving any reason whatsoever, and the accused applied to the High Court for revision nearly nine months thereafter, *held*, that the appellate Court's order, would, if the application for revision had been made without such delay, have been set aside, but the High Court refused to interfere because of the delay. QUEEN-EMPRESS v. RAM NARAIN. **8 A 514 = A.W.N. 1886, 177.** [*R*, 6 C.P.L.R. 24, Cr., 15 Cr. L J. 512 = 24 Ind. Cas. 600 = 12 A.L.J. 850 ; *Diss.*, 21 C 92.]

(6)—*Crim. Pro. Code* (1898), s. 439—*Revision—Practice—Plea of guilty.*—*Held* that the High Court is not inclined to exercise its discretionary powers of revision, in cases where the applicant has made undue delay in coming to the Court for relief. In a summary trial for an offence under the Cantonment Code, the Magistrate recorded in his order: —"Finally he (the accused) admits his error in not having complied with the notice and throws himself on the mercy of this Court ; *Held* that this was equivalent to a plea of guilty, and that the accused could not be heard in revision, except as to the extent or legality of the sentence. EMPEROR v. PUTTAN LAL, **A.W.N. 1907, 204 = 6 Cr. L J. 153.**

(7)—*Crim. Pro. Code* (1872), s. 318—*Breach of peace.*—Applications by parties, who have been found not to have been in possession to set aside proceedings of a Magistrate under s. 318, Crim. Pro. Code, 1861, which are taken in order to prevent breach of the peace, ought to be made without any delay. GOGUN PRAMANICK v. RANEE SURNOMOYEE, **19 W. R. Cr. 39.**

(8)—*Crim. Pro. Code* (1898), s. 439—*Appeal not preferred—Revision barred.*—Where an accused has his remedy by appeal, but does not choose to exercise it, any subsequent proceedings by way of revision at his instance are barred by s. 439 (5), Crim. Pro. Code. QUEEN-EMPRESS v. SHAIKH ANSAR, **Rat. Un. Cr. C. 977 = Cr. Rg. 32 of 1898.**

——**3.—Question of Fact.**

(1) —*Crim. Pro. Code, ss.* 435 *and* 118—*High Court—Revision, findings of fact how far conclusive in—Security for good behaviour—Showing cause—Accused must be ready with his evidence—Questions to witnesses—Disallowed by the Court.*—The High Court acting in revision, under s. 435 of the Crim. Pro. Code, is bound to accept the finding of the lower Court, unless there is any error of law or procedure vitiating that finding, or unless there are any special circumstances apparent on the record to show that, in arriving at its conclusion of fact, that the lower Court has misapprehended the evidence. When a person is called upon to show cause why he should not be required to give security for good behaviour, under s. 118 of the Crim. Pro. Code, he must be ready with his evidence when he appears in obedience to the notice. That is the meaning of the expression "to show cause" in law. If he has been unable to bring the evidence with him on account of the shortness of the notice or other reasonable cause, it is his duty, when he appears, to apply at once for summonses to the witnesses he proposes to call. A party asking for redress at the hands of an appellate or revisional Court, on the ground that the Court below has wrongly excluded a question which the party wished to put to a witness, must state the form and substance of the question proposed to be put, to enable the appellate or revisional Court, as the case may be, to determine whether the particular question in each case was so framed as to make it admissible under the Evidence Act, 1872. EMPEROR v. NARAYAN SHIVRAM BARVE, **9 Bom. L R. 1385 = 7 Cr. L.J. 24 = 3 M.L.T. 53.**

(2) —*Revision by High Court—Finding of fact.*—It is unusual for the High Court in criminal cases to interfere in revision with a finding of fact, unless it is one so manifestly erroneous that a miscarriage of justice would result from its remaining uncorrected. EMPEROR v. BURAN SAHEB, **6 Bom. L.R. 1906 = 1 Cr. L.J. 1111.** [*R.*, 16 C.L.J. 453 = 17 C.W.N. 379 = 13 Cr. L.J. 897 = 17 Ind. Cas. 993.]

(3)—*Crim. Pro. Code (Act X of 1872), ss.* 295 *to* 297—*Powers in revision—Sessions Court and High Court.*—Neither the Sessions Court nor the High Court can, in revision, enter into the merits of a case except for the purpose of seeing whether, assuming the evidence to have been properly appreciated, there was enough to sustain the charge in point of law. EMPRESS v. SANWALIA, **A.W.N. 1882, 146.**

(4)—*Crim. Pro. Code* (1898), *ss.* 435 *and* 439—*High Court—Revision—Power to interfere on questions of fact—Practice—Penal Code, s.* 170—*Personating a public servant—Dishonest intention.*—*Per Chandavaker, J.*— It is the practice of the High Court not to interfere in revision with a finding of fact, unless there are special reasons. Accordingly, in cases in which the law allows no appeal, the High Court, as a Court of revision, does not, except on the ground of an error of law, or where the question is one of evidence, on exceptional grounds, exercise the power of an appellate Court. But where such exceptional grounds exist, the Court will exercise its discretion under s. 439 of the Crim. Pro. Code and reverse the conviction and sentence. *Per Beaman, J.*—There is nothing in the statutes law, which precludes the High Court

Revision—continued.

——3.—**Question of Fact**—*continued.*

from interfering in the exercise of its revisional powers, with conviction, and sentences, whether the ground of that interference be what is commonly called a question of fact or whether it be a question of law. The *cursus curioe* drawing a distinction between grounds of the former and grounds of the latter sort rests rather upon a principle of convenience than of law. The true rule is that the High Court will not interfere in the exercise of revisional powers, unless it is satisfied that it is necessary to do so to prevent an otherwise irreparable injustice. A dishonest intention is not expressly made an essential ingredient of the offence punishable under s. 170 of the Indian Penal Code EMPEROR v UMAKANT BALVANT, **9 Bom. L.R. 706 = 6 Cr. L.J. 70.** (8 B. 197, *R.*)

(5)—*High Court, jurisdiction of—Finding of fact of the lower Court.*—Although, as a rule, the findings of fact of the lower tribunal are accepted by the High Court in revision cases, there are exceptions. Where the facts are so doubtful as to give rise to a difference of opinion between two Judges of the High Court, and the conviction is dependent upon the finding of fact, there will be a difficulty in upholding the conviction. HARI BHUIMALI v. EMPEROR, **9 C. W.N. 974 = 2 Cr. L.J. 836.** [*F.*, 15 C.W.N. 414, 11 Cr. L.J. 248 = 14 C.W.N. 408 = 5 Ind. Cas. 794 ; *Rel. on.*, 9 Ind. Cas. 46 = 12 Cr. L.J. 7; *R.*, 14 C.W.N. 410.]

(6)—*Crim. Pro. Code* (1882), *s* 439—*Revision—Questions of fact.*—S. 439 Crim. Pro. Code, confers on the High Court, as a Court of revision, the powers of an appellate Court, but, in the exercise of its discretion, it will refuse to interfere in regard to findings of fact, except on very exceptional grounds. QUEEN-EMPRESS v. MAHOMAD HUSSAN, **Rat. Un. Cr. C. 244 = Cr.Rg 11 of 1886.** [*F.*, 34 B 378 = 12 Bom. L.R. 21 = 11 Cr. L J. 180 = 5 Ind. Cas. 612.]

(7)—*Crim. Pro. Code, s.* 439—*Revisional powers of High Court—Questions of fact.—Per Jenkins. C.J.*—The controlling power of revision of the High Court in criminal cases is an extraordinary power, and it must be exercised with regard to the circumstances of each particular case, anxious attention being given to the said circumstances which vary greatly. The discretion ought not to be crystallized, as it would become in course of time, by one Judge attempting to prescribe definite rules with a view to bind other Judges in the exercise of the discretion which the Legislature has committed to them. This discretion, like all other judicial discretions ought, as far as practicable, to be left untrammelled and free, so as to be fairly exercised according to the exigencies of each case. *Per Chandavarkar, J.*—The law as laid down in the Code gives the High Court the power to go into evidence in revision ; but the Bombay High Court has, as a matter of practice, held that it will not go into evidence as a rule, but will interfere only when there is an error of law. *Per Aston, J.*—It is a rule of practice according to which the High Court cannot ordinarily re-open questions of fact where no appeal lies, except on some ground of law and in order to remedy a clear miscarriage of justice. Where the question before the High Court exercising its power of revision is one of appreciation of evidence, the rule of practice is to refuse to disturb a conviction when there is legal evidence, oral or documentary, to sustain it. EMPEROR v. BANKATRAM LACHIRAM, **28 B. 533 = 6 Bom. L.R. 379 = 1 Cr.L J. 390** [*F.*, 8 Cr. L.J. 250 = 11 P.R. 1908, Cr. = 27 P.W.R. 1908, Cr., 9 Cr. L.J. 211 = 1 Ind Cas. 238 = 5 N.L.R. 4, 10 Cr. L.J. 237 = 2 S.L. R 25 ; *Appr.*, 13 Cr. L J. 897 = 16 C.L J. 453 = 17 C.W N. 379 = 17 Ind. Cas. 993 ; *R.*, 33 C. 295 = 2 C.L.J. 516 = 3 Cr.L.J. 153, 12 Cr.L.J. 149 = 9 Ind. Cas. 895 = 5 S.L.R. 40, 7 Cr.L J. 136.]

(8)—*High Court.*—The High Court, in revision, would not interfere with the findings of the lower appellate Court, on questions as to the truth of the allegations contained in a libel, or as to the *bona fides of* the accused. REG v. KIKABHAI PARBHUDAS, **9 B.H C. 451.** [*R.*, 4 C. 124.]

(9)—*Crim. Pro. Code, s.* 439—*Revision in what cases allowable.*—(1) The fact that the appellate Court took a different view of the facts to what the first Court did is, in ordinary cases, no ground for revision. (2) Where the accused had a remedy by way of appeal and they did not choose to have recourse to that remedy, the High Court declined to interfere by way of revision, no illegality having been shown in the proceedings of the convicting Court. QUEEN-EMPRESS v. NARAYAN, **2 Bom. L.R. 334.**

(10)—*Order under s.* 476, *Crim. Pro. Code*, 1898.—The High Court has power under s. 439 to consider the propriety of an order purporting to be passed under s. 476. But such power can only be exercised where there has been some error of law, irregularity, abuse of or a failure to exercise jurisdiction and not merely because the High Court might form a different opinion on the case from that formed by the Court below. GANDA SINGH v. BISAKHI, **18 P.R. 1902, Cr. = 78 P.L.R. 1902.** (13 B. 109, *N F.*; 20 C. 349, 21 M. 124, 16 A. 80, *R.*; 23 A. 249, *Appl.*) [*R.*, 23 P.R. 1903, Cr., 10 Ind. Cas. 121, 38 P.W.R 1911, Cr.]

(11)—*Question of fact.*—Under the former Code of 1872, the Court could on revision deal with questions of law, not questions of fact. SHAIKH MUNGLO v. DURGA NARAIN NAG, **25 W.R Cr. 74.** [*Appl.*, 4 C L.R. 483 ; *D.*, 7 C. 46 ; *R.*, 7 C. 385, 23 C. 557 ; *Ex.*, 33 C. 33 = 10 C.W.N. 257 = 2 C.L.J 271.] *See also* DEBI CHURN BISWAS, **20 W R. Cr. 40.** EMPRESS v. DONNELLY, **2 C. 405 = 2 Ind. Jur. 12.**

(12)—*Order in* bona fide *exercise of discretion —Conviction under Municipal Act* (III *of* 1864). —Where proceedings were held under a *bona fide* exercise of discretion and a fine was imposed under Bengal Act III of 1864, s. 68, for

Revision—continued.

——3.—**Question of Fact**—*continued.*

keeping a piggery in a filthy state, the High Court declined to cancel the proceedings. *In the matter of* AMAN CHINAMAN, **17 W.R. Cr. 58.**

(13)—*Acting without proper discretion—Order for prosecution.*—*Held* that the order of a Magistrate ordering a prosecution could not be reversed on the ground that such Magistrate had acted without a proper discretion. EMAM ALI v. SUDDERUDDIN, **9 W.R. Cr. 18.**

(14)—*Findings of fact not upset without special reason.*—It has been the uniform practice of the High Court not to upset a finding of fact by the lower Court, except for some very extraordinary reason. *In re* MAHOMAD HASSAN, **Cr. Rg. 11-2-1886.**

(15)—*Revision—When the High Court will not interfere.*—The plea of the accused under s. 242, Crim. Pro. Code, was *alibi*, but the Magistrate disbelieved the plea and convicted the accused. One of the accused had further pleaded that he was the owner of the land in question, and that the complainant had no title to it. *Held* in an application for revision, that it would encourage perjury if the High Court re-opened the case on the ground that one of the accused was owner of the land and entered and ploughed it on a *bona fide* claim of right. The High Court, therefore, declined to interfere in revision. IMPERATRIX v. KESHAV LAL, **21 B. 536.**

(16)—*Crim. Pro. Code* (1882), *s.* 439 —*Powers of High Court to deal in revision with questions of fact.*—According to the practice of the High Court, it is most unusual in applications for revision to interfere with findings of fact arrived at by the lower appellate Court. At the same time, the Court is not confined by law to questions of law alone and in dealing with questions of fact, requires that there should be distinct and definite findings of fact on which it can rely. QUEEN-EMPRESS v. KALLU MAL, **A.W N. 1894, 207.**

(17)—*Crim. Pro. Code* (*Act* X *of* 1882), s. 439 —*High Court—Questions of fact in revision.*—The High Court's power to interfere in revision with questions of fact in any case is undoubted, and the Court does so interfere when the interests of justice required it or when the enquiry in the lower Court has been faulty. QUEEN-EMPRESS v. SHOMACHATUR, **Rat. Un. Cr. C. 908 = Cr. Rg. 19 of 1897.** (10 C. 1047, 14 B. 231, 12 B. 377, *R.*)

(18)—*Power of High Court on revision—Entire evidence can be considered.*—The observation made in 14 C. 169 with reference to what is the ordinary procedure of the High Court in revision cases, as to findings of facts, does not militate against the view that the High Court has power, in revision, if it thinks right, to consider the whole evidence. REID v. RICHARDSON, **14 C. 361.** (14 C. 169, *R.*) [*R.*, 28 B. 533 = 6 Bom. L.R. 379, 22 C. 998.]

(19)—*Crim. Pro. Code* (1882), *s.* 435—*Power of High Court to consider questions of fact.*—Although the High Court has power, under s. 435 of the Code, to go into questions of fact, it will exercise the power only in such cases in which it finds that it should be exercised, in the interests of justice. NOBIN KRISHNA MOOKERJEE v. RASSICK LALL LAHA, **10 C. 1047.** [*R.*, 12 B. 377, 14 B 231, 22 C. 998 = 28 B. 533 = 6 Bom. L.R. 379. Rat. Un. Cr. C. 908.]

(20)—*Crim. Pro. Code* (1882), *s.* 439 —*Revision—Powers of High Court to consider facts.*—Under s. 439 of the Code, the High Court has power to consider the facts of a case in revision. RAM BRAHMA SIRCAR v. CHANDRA KANTA SHAH, **21 C. 931.** [*R.*, 35 C. 1108 = 9 Cr. L. J. 74.]

(21)—*Crim. Pro. Code* (1882), *s.* 439—*Burden of proof wrongly placed is ground for revision.*—The High Court is reluctant to interfere in revision on a matter of fact. But where the subordinate Court has taken a wrong view of the facts through an error in law, *e g.*, where it places the burden of proof on the accused contrary to s. 101, Evidence Act, the High Court will interfere in revision. QUEEN-EMPRESS v. NAGESH VAIJNATH, **Rat. Un. Cr. C. 794 = Cr. Rg. 52 of 1895.**

(22)—*Crim. Pro. Code* (1882), *ss.* 439 *and* 440 —*Revisional powers of High Court.*—The interference of the High Court in revision is not limited to matters of law, but it is fully competent to the High Court to enter into matters of fact. The mere application of a party to examine the evidence in any case would not be a sufficient ground for doing so. There must appear, upon the face of the judgment or order complained of or of the record, some ground (which need not always be a ground of law) to induce the Court to think that the evidence ought to be examined in order to see that there has been no failure of justice. No hard and fast rule can be laid down regarding this matter, and each case must be dealt with according to its own circumstances. KESHAB CHUNDER ROY v. AKHIL METEY, **22 C. 998.** [*F.*, 157 P.L.R. 1908 = 22 P.W.R. 1908, Cr., 15 Cr. L J. 236 = 23 Ind. Cas. 188 = 26 M.L. J. 160 = 1914 M W N. 273, 15 Cr L.J. 285 = 23 Ind. Cas. 493 ; *Rel. on.*, 9 Cr. L J 211 = 5 N.L. R. 4 = 1 Ind. Cas. 238; *R.*, 28 B. 533, 33 C. 295 = 2 C.L.J. 516, 2 C.L.J. 101.]

(23)—*Criminal cases—Concurrent findings of fact—Practice—Excise Act* (XII *of* 1896), *s.* 45. —Generally the Chief Court will not interfere on the revision side when the Original and the Appellate Courts are agreed in their finding on facts. But when it appears that the Courts have shown a great tendency to treat mere inferences and probabilities as proof, and evidence has not been properly weighed, the Chief Court will interfere in the interests of justice. Where some articles which might have been used for distilling country liquor were found in the yard of an unoccupied house adjoining that of the accused over which the accused had no control

Revision—continued.

——3.—**Question of Fact**—*continued.*

and the place could be reached from outside and the accused was convicted of an offence under s. 45 of Act XII of 1896. *Held*, that the conviction must be set aside. HIRA SINGH v. EMPEROR, **121 P.L.R. 1904 = 1 Cr.L.J. 953.**

(24)—*Crim. Pro. Code* (1898), *s.* 439—*Revision—Criminal cases—Findings of fact—Penal Code* (*Act* XLV *of* 1860), *s.* 420—*Cheating—Benefit of doubt.*—The Chief Court, in the exercise of revisional powers, set aside the orders of conviction of the accused under s. 420, Penal Code, on the ground that on the record the accused cannot with any certainty be said to have himself made away with Government money in any of the cases concerned. SHIB DAS v. CROWN, **106 P.L.R. 1909 = 13 P W R. 1909, Cr. = 4 Ind Cas. 978 = 11 Cr. L J. 97.**

(25)—*High Court's powers of revision—Crim. Pro. Code* (1882), *ss.* 435, 439.—It is only in very exceptional cases that the High Court, sitting as a Court of revision, deals with questions of evidence, and disturbs or supplements the finding of a lower Court on a question of fact. BHAWOO JIVAJI v. MULJI DAYAL, **12 B. 377.** [*R.*, 14 B. 331, 28 B. 533 = 6 Bom. L. R. 379, 22 C. 998, Rat. Un. Cr. C. 908.]

(26)—*Crim. Pro. Code* (1872), *s.* 297—*Revisional powers of High Court.*—The High Court in the exercise of its revisional powers under s. 297, Crim. Pro. Code, does possess the power of upsetting a finding of fact by the lower Court on the ground of misappreciation of evidence, but it has been the uniform practice of the Court not to exercise that power except for some very extraordinary reason. The circumstance that the Court itself might or would have come to a different conclusion is not such a reason. QUEEN-EMPRESS v. JAMSHEDJI, **Rat. Un. Cr. C. 177 = Cr. Rg. 31-8-1881.**

(27)—*Revision — Circumstantial evidence—High Court's power to go into evidence on revision side—Indian Evidence Act,* I *of* 1872, *s.* 8, *Crim. Pro. Code* (1898), *s.* 439.—*Held*, that it is not legal to convict only on circumstantial evidence connecting the accused with commission of the crime, specially when it can be explained otherwise. *Held*, also, that the fact that the complainant at first said that a certain person was the real culprit is relevant under s. 8, Evidence Act. In this case, the Chief Court discussed the evidence, reversed concurrent findings on facts of both the Courts below, and acquitted the accused. ABDUL GHAFUR v. CROWN, **25 P.W.R. Cr. 1910 = 6 Ind. Cas 957 = 11 Cr. L J. 425.**

(28)—*Crim. Pro. Code* (1882), *s.* 439—*Revisional powers of the High Court.*—*Per Scott, J.*—To justify the interference of the High Court in revision, it must be shown, first, that the Judge below has committed an error of law; and secondly, that the accused has been materially prejudiced by the error. The High Court may also exercise its revisional power, even as regards findings of facts, in cases where the lower Court has totally misconceived the evidence and come to an obviously wrong conclusion. But it is only very extreme cases which justify such an interference with the appreciation of fact by the Court which heard the evidence and by the appellate Court which reconsidered its value. The words "material error" cannot be held to include error in the appreciation of evidence. There must be material error in law. QUEEN-EMPRESS v. MAGANLAL, **14 B 115.** [*R.*, 16 B. 580 = Rat. Un. Cr. C. 577.]

(29)—*Crim. Pro. Code* (1898), *ss.* 423, 439—*Alteration of finding—Powers of Chief Court to alter finding on revision side.* BHOLA v. EMPEROR, **12 P.R. 1904, Cr. = 1 Cr. L J. 942 = 110 P.L.R. 1904.**

High Court's power in revision—Effect of wrong admission of case—Questions of fact when to be considered in revision—*See* CRIM. PRO. CODE, 1898, ss. 107, 125, 15 Cr. L.J. 721 = 26 Ind. Cas. 129.

Finding of fact not to be questioned in revision when there is some evidence to support it—*See* PENAL CODE, s. 498, 20 P.W.R. 1914, Cr. = 123 P.L.R. 1914 = 15 Cr. L.J. 524 = 24 Ind. Cas. 836.

——4.—**Matters pertaining to Evidence.**

(1)—*No revision on questions of evidence.*—On a pure question of the weight of evidence, the High Court would not enter in revision, except for very exceptional reasons. EMPRESS v. HARDEO DAS, **A.W N. 1884, 286.**

(2)—*Courts of Revision—Sufficiency of evidence.*—So long as there is any evidence to support a conviction, the Chief Court, when acting as a Court of Revision, cannot enter into the question as to whether that evidence was *sufficient* to convict the accused, although it may do so, when acting as a Court of Appeal. GHOLAM HOSEIN v. MAHOMED BUKSH, **14 P. R. 1868, Cr.**

(3)—*Evidence of previous convictions—Crim. Pro. Code* (1882), *s.* 439—*Enhancement of sentence.*—Evidence of previous convictions discovered after the trial does not justify the High Court in enhancing a sentence in the exercise of its revisional powers. QUEEN-EMPRESS v. NAHNA, **Rat. Un. Cr C 457 = Cr. Rg. 12 of 1889**; QUEEN EMPRESS v. KARIM, **Rat. Un. Cr. C. 461 = Cr. Rg. 19 of 1889.**

(4)—*Crim. Pro. Code* (1882), *s.* 307—*Sessions case—Power of High Court to consider evidence in the case.*—There is an essential difference between the functions of English Courts of appeal and the Indian High Courts. The English Courts have no power of finding on facts in any case. But the Indian Courts are expressly made Courts of appeal on facts. Under s. 307 of the Code, the High Court has power to act upon its own view of the evidence in a

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—— 4.—**Matters pertaining to Evidence**—*ctd.*

Sessions case in the Courts below ; but, in doing so, the opinion of the Sessions Judge as well as the jury who have had an opportunity of observing the witnesses, and have also had an opportunity of watching the whole course of the trial, must have due weight given to them. QUEEN-EMPRESS v. ITWARI SAHO, **15 C. 269.** (1 B. 10, 1 C.L.R. 275, 9 C. 53, 10 B. 497, 20 W.R. Cr. 33, 13 B.L.R. Ap. 19=20 W.R. Cr. 73, 14 B L.R. Ap. 2=21 W.R. Cr. 4, 25 W.R. Cr. 25, 13 B.L.R. Ap. 20=20 W.R. Cr. 20, *R.*)

(5)—*High Court's powers — Amendment of charge—Addition of statement regarding previous conviction.*—It is competent to the Chief Court, sitting as a Court of revision under s. 297, Crim. Pro. Code, 1872, to direct that a charge, which did not contain a statement of previous convictions, should be amended by adding a statement of the fact of the previous convictions and that evidence should be taken in support of the charge thus amended. KASIM v. EMPRESS, **19 P.R. 1879, Cr.**

(6)—*Crim. Pro. Code (Act X of 1872), ss. 283 297, 300—Appreciation of evidence — Error—Revision.*—The High Court will not, as a Court of revision, interfere with the judgment of the lower Court, on account of an error in the appreciation of evidence or of an error of law unless it has caused a failure of justice. REG v. SAKHARAM MANOHAR, **11 B.H.C. 125.**

(7)—*Error in appreciation of evidence no ground for interference in revision—Crim. Pro. Code, s. 439 — High Court — Revision.*—To justify the interference of the High Court in revision, it must be shown that there exists an error of law and that the accused had been prejudiced by that error. An error in the appreciation of evidence is not an error in law. EMPEROR v. SAKHARAM, **4 Bom. L.R. 686.** [*R.*, 15 Cr. L.J. 236=23 Ind. Cas. 188=26 M. L.J. 160.]

(8)—*Revision declined where appreciation of evidence necessary—Crim. Pro. Code (1882), s. 431— Abatement of appeal on death of appellant.*—One of the two accused convicted of criminal breach of trust died after the filing of the appeal from the conviction. The High Court, on appeal, quashed the conviction of the surviving appellant. A nephew of the deceased appellant applied to the High Court to reverse the conviction and sentence passed upon the deceased. *Held* that the appeal of the deceased abated, and that the case should not be taken up by the High Court under its revisional powers, as it depended on appreciation of evidence; the only remedy open to the representative was to apply to the Governor-in-Council. *In re* NABISHAH, **19 B. 714=Rat. Un. Cr. C. 707=Cr. Rg. 40 of 1894**

(9)—*Crim. Pro. Code (1882), s. 439—Untenable view of evidence taken by lower Courts, if a ground for revision.*—In the exercise of the powers of revision under s 439 of the Code, it is open to the High Court to alter any finding and confirm a conviction ; and if the evidence on the record will sufficiently warrant a conviction, it would not, in revision, be justified in setting aside the conviction, merely because the view taken of the evidence by the Courts below is one that is not sustainable, or because some fact which ought to have been found has either not been found or found incorrectly. BALMAKAND RAM v. GHANSAMRAM, **22 C. 391.**

(10)—*Acquittal of the accused—Error in appreciating prosecution evidence.*—An error in appreciating the evidence of the prosecution or in estimating its value, is not a ground for interference, by the Chief Court, in revision with an order of acquittal. CROWN v. RAHIM BAKHSH, **10 P.R. 1877, Cr.** (1 A. 139, *R.*)

(11)—*Receiving stolen property—Evidence of guilty knowledge.*—Where a person was convicted for receiving stolen property on the ground that he took a pledge of the temple jewels from the guardian of the temple in an open manner, the accused recording the transaction in the books, the Chief Court set aside the conviction on revision, on the ground that there was no legal evidence to support the conviction. CROWN v. ESHUR SINGH, **13 P. R. 1867, Cr.**

(12)—*Revision lies where there are misreading of documentary evidence and fundamental errors in principle—Crim. Pro. Code, s. 435—Revisional powers of High Court.*—The High Court can, under s. 435, interfere in revision on the grounds of misreading of documentary evidence and fundamental errors in principle which vitiate the conduct and disposal of the case. EMPEROR v. BAL GANGADHAR TILAK, **28 B 479=6 Bom. L.R. 324=1 Cr. L J. 305.**

(13)—*Omission to give opportunity to produce witnesses—Error or defect in trial—Crim. Pro. Code, 1861, ss. 252, 253, 426.*—A Magistrate is not bound to summon the accused's witnesses if the accused does not apply for the same, nor is the omission of the Magistrate to call upon the accused to produce his witnesses an error, if those witnesses are not in attendance. QUEEN v. TOTARAM, **11 W.R. Cr. 15.**

(14)—*Conviction not supported by evidence under s. 404, Crim. Pro. Code, 1861.*—The Chief Court quashed a conviction when it was not supported by any legal evidence, *e.g.*, where the only evidence was the admission of the co-accused. CROWN v. JUMEEYUTA, **124 P.R. 1866, Cr.**

(15)—*Omission to examine witnesses.*—*Held* that a Magistrate's omission to examine the witnesses of the complainant before acquitting the accused necessitated the exercise of the revisional powers of the High Court. SREENATH MUNDLE v. SREENATH RAJPUT, **24 W. R. Cr. 62.**

(16)—*Omission to examine witnesses—Penal Code, s. 342.*—In a case under s. 342, Penal Code, if a complainant and his witnesses do not attend on the day fixed for the trial the order

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of the Magistrate discharging the accused, even it be not warranted by the Procedure Code, is certainly not an order with which the High Court would interfere under the extraordinary powers of revision given to it. SANTOO MUNDLE v. ABDOOL BISWAS, **13 W.R. Cr. 35.**

(17)—Where the evidence of complainant is not recorded, *held* that it was not such an irregularity as required the interference of the High Court; except when a fresh investigation would appear to produce a different result. KABIL NUSYO PYADA v. BAHARULLAH, **17 W.R. Cr. 37.**

(18)—*Conviction on evidence not sifted is ground for revision—Crim. Pro. Code* (1872), *s.* 297—*High Court—Powers of revision.*—The High Court is not precluded from the exercise of the powers of revision in a case where there has been a conviction on evidence which has received no sifting, and which in many respects is so transparently false that, if it had been at all tested, its falsehood could not have escaped notice. EMPRESS OF INDIA v. MURLI, **2 A. 336.** (1 A. 139. *R.*) [*R.*, 14 B 331.] *See also* REG. v. SAKHARAM MANOHAR, **11 B H C. 125**; HIGH COURT PROCEEDINGS, 29TH NOVEMBER, 1869, **5 M H C. App. 10.** *In the matter of* AUROKIAM, **2 M. 38 = 2 Weir 566.**

(19)—*Conviction on no evidence—Revision.*—When the record discloses no evidence in support of a conviction, the conviction will be set aside on revision. BISHAN DAT v. KING-EMPEROR, **2 A.L J. 53 = 2 Cr. L.J. 22.**

(20)—*Irregularities concerning witnesses—Irregularity in taking evidence of witnesses.*—Where a witness for the prosecution was examined after the completion of the defence, the prisoner having notice of the testimony to be given by the witness, the High Court refused to interfere in revision on the ground that the accused was not prejudiced by it in his defence. QUEEN v. SHAM KISHORE HOLDER, **13 W R. Cr. 36**; QUEEN v. ASSANOOLLAH, **13 W R. Cr. 15.**

(21)—*High Court's powers of revision—Commission* — Purdanashin *lady.*—The High Court, in the exercise of its powers of revision, has powers to direct a Magistrate as to the mode in which the evidence of *purdanashin* ladies may and should be taken. Where a *purdanashin* lady applied to be examined on commission, but the Magistrate offered to examine her in the Court-house, the High Court, under the circumstances of the case, directed that, if the lady would take a house or a suite of rooms not far from the Court and if she would pay all the costs, which the Magistrate may deem reasonable and proper, the Magistrate should not enforce her attendance in Court, but should examine her in such place. HEM COOMAREE DASSE v. QUEEN EMPRESS, **24 C. 551 = 1 C.W N 333.** [*R.*, 12 Cr. L.J. 501 = 12 Ind. Cas. 221.]

(22)—*Crim. Pro. Code* (1872), *s.* 297—*Evidence in dispute regarding land.*—Case wherein a dispute regarding land, commenced under the Code of Criminal Procedure, 1861, but continued under the Code of 1872, the evidence not being recorded as required by s. 334 and the following sections of the Code, the High Court set the order aside on revision. KHETTROMONEY DASI v. SREENATH SIRCAR, **20 W.R Cr. 14.**

(23)—*Error in mode of recording evidence.*—*Held* that, if the evidence taken down by the Magistrate in English contained no memorandum attached to it (as required by s. 199, Code of Criminal Procedure, 1861) showing that the evidence was read over to the witness in a language known to him, the accused would be materially prejudiced so as to require the Court's interference on revision. QUEEN v. ISSUR RAUT, **8 W.R. Cr. 63.** [*Con.*, 13 W.R. Cr. 1.]

(24)—*Crim. Pro. Code* (1861), *ss.* 426 *and* 439—*Misconception of evidence.*—Ss. 426 and 439, Crim. Pro. Code, 1861, regarded misreception of evidence as a defect or irregularity within the meaning of those sections. QUEEN v. BEHARE DOSADH, **7 W R. Cr. 7.**

(25)—*Omission to take material evidence—Decision on discrepant evidence*—Under the Code of Criminal Procedure, 1872, s. 297, it was held that a case for the revisional interference of the High Court arose when the accused was prejudiced by very material evidence tendered by him was not taken down. *In re* HURI PERSHAD, **24 W.R. Cr. 60.**

(26)—*Conflict of opinion on evidence—Ground for exercise of power of revision—Difference of opinion between Magistrates.*—The High Court will not exercise its powers of revision, simply because there is a difference of opinion on the point of proof between a Magistrate who did and another who did not hear the witnesses. NUNDO KISHORE HALDAR v. ANUNDO CHUNDER CHATTERJEE, **23 W.R. Cr. 64.** *See also In re* HURI PERSHAD, **24 W.R. Cr 60**; *In the matter of* HURRIPROSAD DUTTA **25 W R. Cr, 61**; GOVERNMENT OF BENGAL v. KAZIMUDDIN, **18 W R. Cr. 3.**

(27)—*Crim. Pro. Code* (1898), *ss* 438, 439—*Grounds for revision—Conflicting views of evidence by lower Courts, no ground for revision.*—The High Court will not interfere in revision merely because the Sessions Judge takes a different view of the evidence from that taken by the Magistrate. QUEEN-EMPRESS v. SHAIKH ANSAR, **Rat Un. Cr. C. 977 = Cr. Rg. 32 of 1898**

(28)—*Questions depending on conflict of evidence*—No revision will lie on questions of fact depending upon conflicting evidence considered by the Judge who has pronounced his decision upon it. *In the matter of the petition of* DEBI CHURN BISWAS, **20 W.R Cr 40.** [*App.*, Rat. Un. Cr.C. 177, 2 C 110, 25 W R. Cr. 10, 25 W. R. Cr. 74; *D.*, 21 C 931; *Expl.*, 1 C L R. 83, 11 B H.C. 125.] *See also* BHARUT CHUNDER BOSE v. DWARKANATH CHOWDHRY, **15 W.R. Cr. 86.**

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——4.—Matters pertaining to Evidence—*cld.*

(29)—*Power of High Court—Penal Code, ss.* 283, 291—*Evidence not taken on oath.*—The High Court quashed the convictions of certain persons for offences under s. 283 (danger, obstruction, or injury to any person in a public way or line of navigation) and s. 291 (repeating or continuing public nuisance) of the Penal Code, where the complainants' statement was not made on oath or before a Magistrate, and there was no statement of charge or evidence of any kind. *In re* MOHESH CHUNDER, **20 W R. Cr. 55.**

(30)—*Crim. Pro. Code* (1861), *ss.* 426, 439.—The High Court declined to interfere, where the irregularity of procedure did not prejudice the prisoners, as for example, where the testimony of witnesses given in a previous proceeding was read over and used, at the express request of the accused, in a subsequent trial in lieu of a fresh examination of the witnesses. PURMESSUR SINGH v. SOROOP AUDHIKAREE, **13 W.R.Cr 40.** [*R.*, 9 A. 609.]

(31)—*Order of Magistrate refusing to recall witnesses for prosecution for cross-examination.*—If a Deputy Magistrate refuses to recall the prosecution witnesses for the purpose of being cross-examined, such order can be immediately corrected by the High Court under its general powers of revision. BELILIOS v. QUEEN, **19 W.R. Cr. 58.**

(32)—*Criminal trial—Hearing by two Magistrates—Objection not taken.*—Where a Magistrate who succeeded to the office of another continued a case heard by his predecessor without re-examining the witnesses examined by him, but no objection was taken then or in the appellate Court, *held* that the procedure was not proper, but that, since no objection was taken or material prejudice proved, the High Court would not interfere in revision. QUEEN-EMPRESS v. BANSI SINGH, **A W.N. 1889, 161.**

(33)—*Revision—Criminal cases—Concurrent findings of fact—Material error as to facts in the judgment of lower appellate Court.*—The Chief Court in the exercise of its revisional jurisdiction, quashed the conviction of the petitioner who was convicted of an offence under s. 417, Penal Code, on the ground that the appellate Court had fallen into an error as to the facts in its judgment which was of very material importance, and the testimony of the witness on which the conviction was based could not be implicitly believed. PRABHU DIAL v. CROWN **224 P L R. 1912 = 38 P.W R 1912, Cr. = 17 Ind. Cas. 406 = 13 Cr. L J 774.**

(34)—*Summary order rejecting an appeal.*—The Chief Court may, as a Court of revision, set aside an order rejecting an appeal summarily without inspection of the record, and direct the appellate Court to peruse the proceedings of the first Court before passing final orders. Erroneously relying on the judgment of the first Court upon the evidence of a witness who had not named the accused, and the admission of irrelevant evidence of bad character against the accused, were held to be valid grounds for setting aside in revision an order of appellate Court rejecting an appeal summarily. BUDR-UL-DIN v. EMPRESS, **31 P R. 1881, Cr.**

(35)—*Crim. Pro. Code* (1872), *ss.* 278, 280, 285—*Final order rejecting appeal—Review.*—An order of rejection of an appeal made under s. 278, is final and is, therefore, not open to review. It is clearly an order made by an appellate Court in appeal, and it seems immaterial whether such order is made before or after the papers are called for. EMPRESS v. MAHOMED YASHIN, **4 B. 101 = 4 Ind. Jur. 579.** [*Appl.* 23 B. 50; *R.*, 19 B. 732]

(36)—*Crim. Pro. Code* (1898), *s.* 439—*Power of revision exercised by the Chief Court—Weak and suspicious evidence.*—*Held*, that, when the evidence against an accused person is weak, suspicious and inconclusive, the Chief Court, on revision side, can examine and discuss the evidence on the record, upset the concurrent findings of fact by both the lower Courts, and set aside the conviction. BHAGWAN SINGH v. KING-EMPEROR, **20 P.W.R. 1907, Cr. = 6 Cr. L.J. 263.**

(37)—*Crim. Pro. Code* (1882), *ss.* 257, 423, 428—*Trial of warrant cases—Accused entitled to opportunity of producing his evidence after he has been charged—Proper order for appellate Court to pass when Magistrate refuses to take the defence for the accused.* GOHAR v. EMPRESS, **28 P R. 1884, Cr.**

——5.—Judgments, Defects in.

(1)—*Review of order passed by a Judge of the High Court.*—A petition to the High Court in the form of an appeal, from a person who was confined in jail owing to his failure to furnish security for good behaviour, was summarily dismissed on the ground that no appeal lay and that there was no sufficient ground for interference in revision. The order was signed by the Judge who passed it, but was not sealed with the seal of the Court. *Held* that, inasmuch as the order, even if it could be called a judgment, was not sealed, there was nothing to preclude the Judge who passed it from entertaining an application for revision in respect of the same matter. EMPEROR v. KALLU, **27 A. 92 = 1 A.L.J 495 = 1 Cr.L J. 710 = A.W.N. 1904, 195.** (21 A. 177 F B) [*R.*, 9 Cr. L.J. 306 = 1 P.R. 1909, Cr. = 6 P.W.R. 1909, Cr. = 1 Ind. Cas. 506.]

(2)—*Crim. Pro. Code* (1898), *s.* 435—*Revision—Power of High Court to expunge a finding from the judgment.*—In this case, the petitioners were prosecuted under ss. 181 and 199, Penal Code, for making a false statement on oath. The trying Magistrate discharged them on the ground that an oath was not legally administered, and at the same time recorded his opinion that the accused had deliberately perjured themselves. There was nothing on the record

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——5.—**Judgments, Defect in**—*concluded.*

to show that the statement made by the petitioners was false. The Chief Court on revision, under s. 435, Crim. Pro. Code, ordered the words, "I am of opinion that both the accused have deliberately perjured themselves" to be expunged from the judgment. BHAI GOPAL SINGH v. EMPEROR, **164 P.L.R. 1901.**

(3)—*Judgments, defects in—Judgments not giving the best reasons for conviction.—Held* that the weakness of the reasons assigned for a conviction was no ground for cancelling it when the record bore ample testimony to the accused's guilt. QUEEN v. PEARI RAUR, **8 W R. Cr. 40.**

(4)—*Conviction by Presidency Magistrate in non-appealable cases—Duty of Magistrate.*—In every non-appealable case, a Presidency Magistrate should state his reasons for convicting the accused, so as to enable the High Court, in revision, to judge of the sufficiency of materials before the Magistrate to support the conviction. YACOOB v. ADAMSON, **13 C. 272.** (6 C. 579, *R.*) [*R.*, 21 A. 189, 31 C. 983=8 C.W.N. 839.]

(5)—*Defect in proceeding rendering it illegal.*—A defect in a proceeding under s. 145 of the Crim. Pro. Code, which renders it illegal, is a ground for revision of the order by the High Court. HARPRASAD v. PANDURANG, **A.W.N. 1905, 260=3 Cr. L.J. 48.**

——6.—**Sentences.**

(1)—*Crim. Pro. Code (Act X of 1882), s. 439—Four accused—Non appealable sentence on some—Conviction wrong—Procedure.*—Where a Sessions Judge, in an appeal by one of four convicted persons, found that the conviction was wrong as against all of them but the sentences against the others were non-appealable, the High Court set aside the conviction even as against them in the exercise of their revisional powers under s. 439 of the Crim. Pro. Code. QUEEN-EMPRESS v. KARAM ALI, **A.W.N. 1891, 149.**

(2)—*Crim. Pro. Code (1882), s. 439—High Court's powers of revision—Enhancement of sentence.*—The High Court can, in the exercise of its powers of revision, enhance a sentence so as to alter its nature. QUEEN-EMPRESS v. RAM KURIA, **6 A. 622=A.W.N. 1884, 252.**

(3)—*Revision—Enhancement of fine on appeal.*—In this case the accused Hasana and Nabi Bakhsh were convicted under s. 70, Act XX of 1891, and each of them was sentenced with Rs. 75 as fine by the Cantonment Magistrate, Umballa. On appeal, the District Magistrate Umballa, maintaining the conviction, fined the two accused Rs. 150 jointly. *Held*, that the sentence passed by the District Magistrate was illegal, on the ground that it amounted in each case to an enhancement. The sentence passed on Hasana was remitted for want of sufficient proof of guilty knowledge. HASANA v. EMPRESS, P L.R. 1900, 32, **Cr.**

(4)—*Evidence as to previous convictions inadmissible in—Enhancement of punishment.*—

Revision—continued.

——6.—**Sentences**—*continued.*

The accused was tried and sentenced by a second Class Magistrate to two months' rigorous imprisonment, under s. 454, I.P.C. The prosecution had no knowledge of any previous convictions of the accused at the time of the conviction and sentence. The District Magistrate, having since discovered some previous convictions, moved the Chief Court under s. 438, Crim. Pro. Code, for enhancement of punishment. *Held*, on revision, that the accused, had a right to contend that the prosecution was not authorised to supplement the record, on proceedings in revision, by the production of fresh evidence of previous convictions so that there might be an enhancement of punishment in the same manner as he, the accused, would not be entitled to have the case re-opened by the production of fresh evidence. Enhancement of punishment declined. CROWN v. MAIDHAN, **46 P.L.R. 1905=2 Cr. L.J. 228=19 P.R. 1905, Cr.**

(5)—*Resorting to High Court's powers of revision for enhancing sentence already passed, whether in accordance with the requirements of justice.*—It would be going beyond the requirements of justice to resort to a High Court's powers of revision in order to enhance a sentence already passed, and not gravely inadequate, when, according to the evidence, the accused was acting under the orders of a superior present on the spot, and there is no indication that any steps have been taken to prosecute that superior for illegally instigating the offence. QUEEN-EMPRESS v. NAGA PO SAING, **L.B.R. 1893—1900, 270.**

(6)—*Enhancement of sentence.*—The Chief Court can, under s. 297, Crim. Pro. Code, 1872, pass any sentence it considers adequate for the offence proved. CROWN v. NATHU, **25 P.R. 1876, Cr.**

(7)—*Previous conviction for theft—Subsequent conviction for house breaking by night with intent to commit theft—Omission to frame formal charge of theft— Sentence of whipping in addition to imprisonment, validity of.*— The mere fact that the formal charge cited s. 457, I.P.C., as a section under which the offence came, although theft was distinctly charged in the formal charge, would not be a ground, in revision, for setting aside a sentence of whipping in addition to imprisonment, if the accused had been on a previous occasion convicted of theft. EMPRESS v. RADHA, **41 P.R. 1880, Cr.**

(8)—*Enhancement of sentence.—Per Brandreth, J*—The Chief Court cannot, under para 7 of s. 297, Crim. Pro. Code, pass a sentence higher than the Court which tried the case could award as a proper sentence, except possibly to the extent permitted in para 2 of s. 280. *Per Plowden, J.*—It is opposed to the spirit, if not to the letter, of the Code to pass a sentence upon conviction by a Magistrate in excess of the sentence he could inflict in full exercise of his special powers. JINDU v. EMPRESS, **15 P.R. 1881, Cr.** (60 P.R. 1880, *R.*)

Revision—continued.

——**6.—Sentences**—*continued.*

(9)—*Powers of Chief Court—Enhancement of sentence.*—The Chief Court may ordinarily interfere with an order to enhance a sentence, if the sentence is manifestly inadequate, but not when the sentence involves substantial punishment. The Chief Court will be slow to interfere for the above purpose, if the accused has been already discharged from jail, or on the mere ground that it would itself have passed a heavier sentence. EMPRESS v. CHUNI LAL, **7 P.R. 1889, Cr.** [*F.*, 14 Cr. L.J. 599=29 P.W.R. 1913=21 Ind. Cas. 471=313 P.L.R. 1913, 11 Cr. L.J. 99=4 Ind. Cas. 980=14 P.W. R. 1909, Cr.; *R.*, 15 Cr. L.J. 260=37 P.L.R. 1914=23 Ind. Cas 468=19 P.R. 1904=17 P. R. 1898, F.B., 19 P.R. 1905, Cr.]

(10)—*Powers of Chief Court—Enhancement of sentence.*—Per *Chatterji, J.*—An enhancement of sentence should take place only when the sentence awarded is manifestly inadequate, and the powers of the Chief Court for such purposes should be exercised only under exceptional circumstances QUEEN-EMPRESS v. SAIF ALI, **17 P.R. 1898, Cr., F.B.** [*R.*, 326 P L.R. 1913=18 P.R. 1913=14 Cr. L.J. 522=20 Ind. Cas. 1002=41 P.W.R. 1913, 15 Cr. L.J. 260=37 P. L.R. 1914=23 Ind. Cas. 468=19 P.R. 1914, Cr., 9 Cr. L.J. 342.]

(11)—*Magistrate trying a case exclusively triable by a Court of Sessions.*—Where an accused was convicted by a Magistrate, for an offence exclusively triable by a Court of Sessions, the Chief Court interfered in revision and altered the conviction to one for an offence triable by the Magistrate. CROWN v. DEVI BUKSH, **10 P.R. 1869, Cr.**

(12)—*Sentence under Special Act instead of Penal Code—Crim. Pro. Code* (1872), *s.* 297—*Crim. Pro. Code* (1861), *s.* 426—*Sentence under Post Office Act*, XIV *of* 1866.—Where an accused person, who was given a number of stamps to be affixed to a letter and asked to return the extra ones, did not so return, but misappropriated them to the extent of two annas and was punished under s. 49, Post Office Act, instead of for criminal breach of trust under the Penal Code, *held*, that, as the accused had not been sentenced to a larger amount of punishment than could have been awarded for breach of trust nor prejudiced by the conviction having been under the Post Office Act, the sentence could neither be reversed nor altered, as this was one of those cases where the gravity of the offence, rather than the smallness of the amount misappropriated, should be looked to. *In re* NOBIN CHUNDER DUTT, **17 W.R. Cr. 50**; *In re* TARINEE PROSAD BANERJEE, **18 W.R. Cr. 8.**

(13)—*Trial on wrong charge—Crim. Pro. Code*, 1861, *s.* 404.—A person scourged another with nettles for the purpose of extracting property from his victim; the Magistrate tried the case as one of hurt (under s. 323, Penal Code) and extortion (s. 384), although the accused ought to have been charged under s. 327, and tried by the Court of Session; *held* that no revision lay under s. 404, Code of Criminal Procedure, and a new trial could not be directed as substantial justice had been done in the case. *In re* TARINEE PROSAD BANERJEE, **18 W.R. Cr. 8.** [*Cons.*, 22 C. 669; *R.*, 22 C. 1017, F.B.]

(14)—*Trial on wrong charge—Crim. Pro. Code*, 1861, *s.* 404.—There is nothing in s. 404, Crim. Pro. Code, 1861, which obliges the High Court to interfere; and in cases in which it is clear that substantial justice has been done, the High Court is not bound to, and should not, interfere, even if, on some point of law, the Judge in the Court below has made a mistake. BUNKABEHAREE SEIN, **18 W.R Cr. 23.**

(15)—*Penal Code, ss.* 268, 290—*Crim. Pro. Code*, 1861, *s.* 426—*Nuisance—Filling up ditch.*—A person who filled up a portion of a ditch or drain which formed part of a public way and which belonged to the public was held to have committed a nuisance punishable under s. 290, Penal Code. *In re* ROOP NARAIN DUTT, **18 W.R. Cr. 38.**

(16)—*Conviction for separate offences—Penal Code* (*Act* XLV *of* 1860), *ss.* 380, 456, 457—*New trial.*—An accused was convicted by the Magistrate of two distinct offences under ss. 456 and 380 of the Penal Code, and sentenced for both. On appeal, the Sessions Judge, holding that the offence proved was under s. 457, ordered a new trial for offences under ss. 457 and 380. *Held* that there ought not to be a new trial, but that the conviction and sentence under s. 380 should be set aside. QUEEN v. RAMCHARAN KAIRI, **B.L.R. Sup. Vol. 488=6 W.R. Cr. 39.**

(17)—*Sentences—Conviction under Penal Code of offence committed before Penal Code came into operation—Crim. Pro. Code*, 1861, *s.* 426—*Act* XVII *of* 1862, *s.* 4.—Where an accused was charged under the Penal Code with an offence committed before the Penal Code came into operation, *held* that, under s. 4, Act XVII of 1862, and s. 426 of the Code of Criminal Procedure, the error of procedure did not vitiate the conviction so long as the punishment awarded as under the Penal Code was not in excess of what was a legal punishment for the offence before the Penal Code was passed. *In the matter of* MAHABEER SINGH, **15 W.R. Cr. 48.**

(18)—*Conviction under repealed law—Crim. Pro. Code*, 1861, *s.* 426.—Though a Magistrate convicted under certain repealed sections of the law, the High Court declined to interfere having regard to s. 426, Code of Criminal Procedure, as the conviction and sentence might have been under the sections of the Penal Code and no real harm had been done to the accused. RUGHOONATH DASS v. CHUCKERDHUN RAUT, **15 W.R. Cr. 49.**

(19)—*Setting aside improper sentences—Escape from illegal confinement.*—A person having been sentenced by a Magistrate to ten months' imprisonment for escaping from an imprisonment he was undergoing without warrant of law and without having committed

Revision—continued.

—— 6.—Sentences—*continued.*

an offence, the High Court, in revision, cancelled the order. QUEEN v. RUGHOOBUR SINGH, 25 W.R.Cr. 1.

(20)—*Ground for refusing to enhance sentence —Reference by Commissioner having jurisdiction —Inadequate sentence.*—Revision declined on a reference by a Deputy Commissioner to whom a case had been sent up for heavier punishment under s. 46, Code of Criminal Procedure, 1861, by a Magistrate of the second class, on the ground that the Deputy Commissioner, instead of referring the case, ought under that section, to have tried the accused himself, and convicted them of any offence proved. SOBIL DASS v. CHUNDRA DEB, 20 W. R. Cr. 15.

(21)—*Ground for enhancing sentence—Sentence clearly inadequate—Charge improperly framed.*—*Held* that the High Court would not interfere in revision merely on account of circumstances which, in the opinion of the Magistrate, would render necessary a more severe sentence or a different charge; and that matter must exist on the record showing that a charge had been improperly framed, or that an inadequate sentence had been passed. QUEEN v. HARNATH SINGH, 20 W R. Cr. 22.

(22)—*Crim. Pro. Code,* 1861, *s.* 404—*Severity of sentence is no ground to invoke High Court's powers of revision.*—The severity of a sentence is not of itself a ground on which the High Court can call for the record of a trial or other judicial proceeding under the general powers of revision given by s. 404. *In re* NARAPUREDDY, 4 M.H.C. 242. *See, also, In re* KRISHNANAND BHUTTACHARJEE, 3 B.L.R. Ap. Cr. 50 = 12 W.R. Cr. 47.

(23)—*Crim. Pro. Code,* 1882, *s.* 439—*Revisional powers of the High Court not barred by expiry of sentence.*—There is nothing in the terms of the law to prevent the High Court from interfering with a conviction, even though, in consequence of the expiry of the sentence, it may not be possible to interfere with the latter. QUEEN-EMPRESS v. SINHA, 7 A. 135 = A.W.N. 1884, 293.

(24)—*Form of report to the High Court—Circular Order, s.* 219—*Inadequate sentence, Miscarriage of justice involved by an—Interposition of High Court.*—When a case is reported to the Court of the Judicial Commissioner for the exercise of its powers as a High Court in revision, the report should be forwarded in original instead of a copy, and in the form prescribed by Circular Order, s. 219. When a miscarriage involved by the inadequacy of a sentence is clearly due to defects, which can be more effectively cured by better supervision by the District Magistrate over the Magistrates subordinate to him than by the High Court's interposition in occasional instances, and where there is not sufficient reason for putting the witnesses to the inconvenience of attending a fresh trial and for taking up the further time of the Courts, the High Court as a rule will not order a re-trial. QUEEN-EMPRESS v. NGA PO LIN, L.B.R. 1893—1900, 242.

Revision—continued.

—— 6.—Sentences—*concluded.*

(25)—*Power of Chief Court to revise order inflicting fine under s.* 283 *of Cantonment Code—Several persons tried together and fined on similar facts—Chief Court's power to deal with all the fines on the application of one person—Cantonment Code,* 1899, *s.* 283—*Fine cannot be imposed for breach of conditions of license—Practice—Right of convicted person to a copy of proceedings.*—An order inflicting a fine, under s. 283 of the Cantonment Code, for breach of the conditions of a license is a judicial order and, therefore, open to revision by the Chief Court. A fine cannot be inflicted under s. 283 for breach of the conditions of a license, where the license only provides for suspension or for cancellation in case of such breach. S. 283 cannot be applied to such a case. Where the several offenders are tried together and found guilty on exactly similar facts and fined, the Chief Court has the power, on the application of one of the persons fined, to deal with all the fines. A convicted person is entitled to a copy of the proceeding in the Magistrate's summary Register. MANGI RAM v. EMPEROR, 11 Cr. L.J. 17 = 4 Ind. Cas. 611 = 9 P R. 1909, Cr. = 30 P.W.R. 1909, Cr.

(26)—*Crim. Pro. Code* (*Act* X *of* 1882), *ss.* 423, 439—*Revision and appeal—Disposal.*—Where the High Court has heard an application for revision in a criminal case and disposed of it after entering into the merits in exercise of its powers as an appellate Court, under ss. 423, 439, Crim. Pro. Code, it cannot afterwards hear an appeal in the same case. For the order already passed has decided the question, not only of the merits of the case, but of the *quantum* of the punishment. EMPRESS v. KANHIA LAL, A.W.N. 1890, 225.

(27)—*Crim. Pro. Code* (1872), *ss.* 297, 491, 492—*High Court's powers of revision.*—Where a case of assault, in which the accused was fined, was brought to the knowledge of the High Court, by the complainant preferring a petition to it, and a single Judge of the High Court, holding that the case was one, in which the accused should have been required to furnish security to keep the peace, directed the Magistrate, to summon the accused, to ask him to show cause why he should not be required to furnish security, *held,* by *Stuart, C.J.*, that, as the Judge represented the full authority of the High Court, his order could not be questioned. *Held,* by *Pearson, Spankie and Oldfield, JJ.*, that the order was one which he was competent to make under s. 297 of the Code. EMPRESS OF INDIA v. MUHAMMAD JAFAR, 3 A. 545, F.B. [*D.*, 27 A. 92 = 1 A.L.J. 495.]

—— 7.—Misdirection and Verdict of Jury.

(1)—*Prejudice to prisoner from erroneous summing up.*—*Held* that the High Court can, in revision, interfere either by discharging the accused, if the evidence on the record cannot sustain his conviction, supposing the trial to have taken place with the aid of assessors, or by

Revision—continued.

——7.—**Misdirection and Verdict of Jury** *—continued.*

ordering a new trial. QUEEN v. MUTHOORA SINGH, **18 W.R. Cr. 66.**

(2)—*Omission to leave material facts to jury.* —A misdirection by the Judicial Commissioner who did not leave the cause of death and the prisoner's connection with certain attempts at bribery as questions for the consideration of the jury, was treated as a ground for reversing the verdict of the jury. QUEEN v. KALI CHURN GANGOOLY, **7 W.R. Cr. 2.**

(3)—*Error in law prejudicial to accused—New trial.*—An improper direction given by the Judge to the jury upon a question of fact, or the forbearance of the Judge from giving that advice which he, in the exercise of a sound judicial discretion, should give the jury upon questions of fact, amounts to such an error in law in summing up as to justify the High Court, on appeal or revision, in setting aside a verdict of guilty. The power of setting aside convictions and ordering new trials for any error or defect in the summing up will be exercised by the High Court only when it is satisfied that the prisoner has been prejudiced by the error or defect, or that a failure of justice has been occasioned thereby. QUEEN v. ELAHI BAX, **B.L.R. Sup. Vol. 459 = 5 W.R. Cr. 80.** [*Appr.*, 19 W.R. Cr. 57, 6 B.H.C. Cr. 10, 47, 14 B. 115; *F.*, 8 W.R. Cr. 19, 10 B.H.C. 75, 497, 6 W.R. Cr. 17, 7 W.R. Cr. 2, 12 W.R. Cr. 3, 15 W.R. Cr. 37, 21 W.R. Cr. 69, 25 W.R. Cr. 54, 24 W. R. Cr. 24; *Dist.*, 9 W.R. Cr. 51, 24 W.R. Cr 77; *Con.*, 18 W.R. Cr. 66; *R.*, 5 B.H.C. Cr. 85, 14 B. 331, 19 B. 749, Rat. Un. Cr. C. 644, 750, 840, 25 M. 143.]

(4)—*Misdirection—Trial by jury—Power to go into facts of case—Mode of dealing with directions of Judge to jury —Held* that the High Court could not go into the facts of a case, tried by a jury, in order to see whether or not the conviction standing entirely upon their verdict, was right. The Court will consider the facts only to see whether the Judge did his duty in laying the case before the jury for their consideration. The way in which the High Court will deal with the Judge's summing up to the jury pointed out, as regards the law and the facts. QUEEN v. NIM CHAND MOOKERJEE, **20 W.R. Cr. 41.** [*F.*, 8 C.L.R. 236; *R.*, 1 Bom. L.R. 351.]

(5)—*Finding of jury as to grave and sudden provocation—Crim. Pro. Code* (1872), *s.* 297—*Crim. Pro. Code* (1861), *s.* 426—*Question of fact—Power of High Court.*—*Held* that the High Court could not interfere with the finding of a jury on the question of fact, *viz.*, whether the offence of murder was committed under a grave and sudden provocation sufficient to prevent the offence from amounting to murder under excep. 1, s. 300, Penal Code. QUEEN v. SOHRAIE, **13 W.R. Cr. 33**

(6)—*Conviction on evidence not amounting to proof.*—*Held* that the High Court should not interfere with the verdict of a jury, because the proof is of a small quantity, as they may be satisfied with a minimum of proof; but the High Court will, on revision, set aside a conviction, when there is nothing which can, if believed, amount to proof, as, in such circumstances, the case should not be put to the jury at all, on the ground that there is nothing to sustain a conviction. QUEEN v. RUTTON DASS, **16 W.R. Cr. 19.** [*R.*, 10 A. 414.]

Revision—continued.

——7.—**Misdirection and Verdict of Jury** *—concluded.*

——8.—**Acquittals.**

(1)—*Crim. Pro. Code* (1898), *ss.* 435, 439—*High Court, revisional powers of, in cases of acquittal—Evidence, misappreciation of, sufficiency of, as a ground for revision.*—The Code of Criminal Procedure, does not limit the power of the High Court to revise the decision of acquittal passed by the Sessions Judge at all; and certainly does not prohibit the High Court from interfering on the ground of misappreciation of evidence. The High Court can, in revision, revise a judgment of acquittal, though such power should be exercised with great caution. NALLAMMAL v. RAMASAMI NADAN, **5 M.L.T. 258 = 4 Ind. Cas 1133 = 11 Cr. L.J. 195.**

(2)—*Crim. Pro. Code* (1882), *ss.* 423 (*a*) *and* 439—*Orders of acquittal—Revisional powers of the High Court.*—The High Court has power, under s. 439, to revise an order of acquittal, but it has not the power to convert a finding of acquittal into one of conviction. QUEEN-EMPRESS v. BALWANT, **9 A. 134 = A.W.N. 1886, 322.** [*F.*, 6 C.P.L.R. 15, 157 P.L.R. 1908 = 22 P.W.R. 1908, Cr.; *R.*, 14 B. 331, 23 C. 975, 37 M. 119 = 22 Ind. Cas. 757 = 15 Cr. L.J. 180, 31 A 317 = 6 A.L.J. 262 = 9 Cr. L.J. 526 = 2 Ind. Cas. 219, 9 Cr. L.J. 211 = 5 N.L.R. 4, U.B.R. 1892—1896, Vol. I, 11, U.B.R. 1897—1901, Vol. I, 91; *D.*, 110 P.L.R. 1904 = 12 P.R. 1904, Cr.]

(3)—*Crim. Pro. Code, s.* 245—*Revision against order of acquittal—Penal Code, ss.* 342 *and* 504—*Summary trial of the offences, legality of.*—The accused, a Railway Station Master and his brother, wrongfully restrained the complainant for several hours and unjustly (but unsuccessfully) prosecuted the complainant apparently under s. 241 of the Penal Code. The complainant, thereupon, presented a complaint against the accused, charging the latter with offences under ss. 342 and 504 of the Penal Code. A second class Magistrate dealt with the case as a summary case and acquitted the accused. *Held*, that, though, generally the High Court is reluctant to entertain revision petitions against acquittals, this was a fit case for its interference, seeing that the accused had behaved in a most arbitrary and high-handed manner to the complainant. *Held*, further, that the offences, falling under ss. 342 and 504 of the Penal Code were not triable as summary cases. The acquittal of the accused was illegal and was, consequently, set aside and a fresh trial ordered. SABAPATHI MUDALI v. KUPPUSAMI MUDALI, **15 M.L.J. 225.**

Revision—continued.

——8.—**Acquittals**—*continued.*

(4)—*Trial on evidence taken in another case.* —*Held* that the High Court could interfere in revision in a case where a Deputy Magistrate acquitted the accused on evidence, not taken before himself, but before another Magistrate. TUKHEYA RAI v. TUPSEE KOOER, **15 W.R. Cr. 23.**

(5)—*High Court's powers of revision.*—The Chief Court is competent, in revision, to set aside a judgment of acquittal, if that judgment is erroneous on a point of law. EMPRESS v. LALJI, **18 P.R. 1883, Cr.** [*Diss.*, 22 P.W.R. 1908, Cr. = 157 P.L.R. 1908, Cr.]

(6)—*Crim. Pro. Code* (1872), *s.* 297—*Judgment of acquittal — Revisional powers of the High Court.*—Per *Oldfield, J.*—The mere fact, that an accused person has been acquitted on trial, will not operate to take away the general powers of revision, when there has been a material error in any judicial proceeding in the case. Per *Pearson, J.*—An acquittal does not preclude revision under s. 297 of the Code. Per *Turner, J.*—Where there has been an acquittal on the merits, and where an accused person has been acquitted because the Court by which he has been tried holds the evidence insufficient to prove his guilt beyond reasonable doubt, the High Court cannot interfere as a Court of revision. But where the acquittal has been brought about by such material error in the proceeding as makes the proceeding bad in law, it is competent for the High Court to interfere. Per *Spankie, J.*—There is no appeal allowed by law to a private prosecutor from an order of acquittal, and there is no power given to the High Court to revise an order of acquittal on the facts found on the evidence. Unless there is something that could be considered to be a material error in law, all interference under the first paragraph of s. 297 is barred. Per *Stuart, C.J.*—A private prosecutor, who can show, on the face of his petition, a proper case for revision of a judgment of acquittal, is entitled to have it entertained under s. 297, and to an order on it for a new trial. *In the matter of* HARDEO, **1 A. 139.** [*Appl.*, 2 A. 336; *R.*, 14 B. 331, 2 M. 38 = 2 Weir 567, 10 Cr.L.J. 237 = 2 S.L.R. 25.]

(7)—*Crim. Pro. Code* (*Act* X *of* 1872), *ss.* 205, 297, 212—*Dismissal for default—Revision—High Court.*—Where in a summons case, the Magistrate did not give the complainant notice of the next hearing but sent a summons directing him to be present at either of the two places where he used to hold Court, *held*, that the Magistrate should not have dismissed the complaint for default but should have adjourned the case, under s. 205 of the Crim. Pro. Code. A dismissal for default in the above case operates as an acquittal under s. 212. But the High Court's powers of revision comprehend cases of acquittal. *In the petition of* BANSIDHAR, **A.W.N. 1882, 229.** (1 A. 139, *R.*)

(8)—*Penal Code, ss.* 191, 192—*False evidence —Acquittal.*—To constitute the offence of giving false evidence, it is not necessary that the false statements should be material to the trial in which they were made. Where the Senior Assistant Sessions Judge without taking evidence acquitted the accused after calling upon him to plead, the prosecutor being unable to say that the alleged false statements of the accused were material to the trial on which they were made, the High Court reversed the order of acquittal and directed the trial to be proceeded with. REG. v. DAMODHAR R. KULKARNI, **5 B.H.C. Cr. 68.**

(9)—*Crim. Pro. Code,* 1872, *ss.* 272, 297, (*ss.* 417 *and* 439 *of the Code of* 1898)—*Cases appealable by Government under s.* 272—*High Court's powers of interference.*—Where, in a case of acquittal, the Government may take action under s. 272 (s. 417), the High Court will not interfere as a Court of Revision. *In re* SUBBA TEVAN, **2 Weir 570.**

(10)—*Crim. Pro. Code* (1898), *s.* 439—*Revisionary power of High Court—Order of acquittal —Retrial of person, grounds of—Proper interpretation of s.* 439 (4).—The revisionary power granted by s. 439, Crim. Pro. Code, though extremely wide, constitutes an extraordinary jurisdiction, to be exercised only in exceptional cases and as a last resort, after all other available remedies have been exhausted. It is essentially a discretionary power of control, not to be crystallized by action under hard and defined rules, but to be left free and untrammelled, so as to be fairly exercised according to the exigencies of each case. But, as regards orders of acquittal, there is, further, a statutory restriction introduced by the present Crim. Pro. Code, 1898, sub-s. (5), s. 439, entirely forbids revision of an order of acquittal at the instance of the Local Government which could have appealed against that order. The question whether such revision can be had on the application of a private complainant or prosecutor, or on a reference made under s. 438 of the Code, is one which has been considered in several reported cases The consensus of opinion obtained from these decisions is that, although the High Court has power to revise an order of acquittal, otherwise than at the instance of the Local Government having a right of appeal against it, yet it will ordinarily refuse to exercise that power, because every such order is appealable. The High Court has no power to order the re-trial of a person who has been acquitted, except upon the ground that the trial has been illegal, or so radically and incurably irregular as, in fact, to have occasioned a failure of justice. Upon a proper interpretation of s. 439, sub-s. (4), Crim. Pro. Code, 1898, a High Court, acting as a Court of revision, is not competent to question an order of acquittal upon the merits thereof; nor can it direct a re-trial upon the ground that it takes a different view of the facts, or of the law applicable thereto, from that upon which the order of acquittal is based. BINDA PRASHAD v. RIPUSUDAN, **5 N.L.R. 4 = 9 Cr. L.J. 211 = 1 Ind. Cas. 238.**

Revision—continued.

——8.—**Acquittals**—*continued.*

(11)—*Suspicion of defence testimony, no ground.*—Orders of acquittal cannot be interfered with ordinarily by the Chief Court in revision on the ground that the evidence of the defence witness was unworthy of credit. SAUNDERSON v. WILSON, **10 P.R. 1900, Cr.** [*R.*, 157 P.L.R. 1908, Cr.]

(12)—*Crim. Pro. Code* (1872), *ss.* 4, 297—*Judicial proceedings—High Court's powers of revision.*—Where, on the acquittal of the petitioners on a charge of murder, and during the pendency of an appeal from the acquittal, they were arrested and brought before the Magistrate who ordered the detention of the petitioners in custody, until the decision of the case in appeal. *Held, by Turner, C.J.*, that the proceeding of Magistrate was not a judicial proceeding and the High Court had, therefore, no power under s. 297, to set aside the order. *Held, by Pearson, J.*, that the Magistrate's order, whether a judicial proceeding or not, was not such a proceeding within the terms of the definition contained in s. 4, and that the High Court, could not, therefore, interfere with the order. *Held, by Spankie and Oldfield, JJ.*, that the Magistrate's proceeding should be held to be a judicial proceeding and the High Court had, under s. 297, the power to interfere. QUEEN v. GHOLAM ISMAIL, **1 A. 1, F.B.**

(13)—*Revision against acquittal—Power of High Court—Interference—Want of notice to District Magistrate in criminal appeal—Only an irregularity.*—The High Court has power to interfere in revision with an acquittal, and though applications by private parties ought to be discouraged, the Court should interfere when it considers that interference is urgently demanded in the interests of public justice. The High Court should not interfere with an order of acquittal where the question is as to the appreciation of evidence or where there is no patent error or defect in the order of acquittal passed by the lower Court which has resulted in grave injustice. The mere fact that the High Court as a Court of Appeal would have come to a different conclusion on facts is no ground for exercising revisional jurisdiction in petitions against orders of acquittal. In an appeal before a Joint Magistrate, notice of appeal ought to be served on the District Magistrate under ss. 422 and 423 of the Code of Criminal Procedure. If a Magistrate hears the appeal when notice as a matter of fact was not served on the District Magistrate, the procedure is irregular. The mere omission to serve notice of appeal on the District Magistrate is only an irregularity, and if the interests of justice have not suffered, the High Court will not interfere in revision. VELLAYAN AMBALAM v. SOLAI SERVAI, **(1915) M.W.N. 540 = 16 Cr. L.J. 600 = 30 Ind. Cas. 152.**

(14)—*Accused not given benefit of doubt—Crim. Pro. Code*, 1872, *s.* 297.—Where there is a substantial doubt as to the guilt of the accused, it is a "material error" within the meaning of s. 297, Crim. Pro. Code, 1872, not to give the accused the benefit of it, and the Chief Court can interfere and acquit the accused. CROWN v. FAZLA, **6 P.R. 1875, Cr.**

(15)—Ex parte *application for revision—Jurisdiction of single Judge of High Court.*—An *ex parte* application for the revision of an order of an acquittal passed in appeal by the Sessions Judge is within the competency of a single Judge of the High Court, when the work allotted to him for that day includes applications in criminal matters. EMPRESS v. RAGHUBAR DIAL, **A.W.N. 1837, 300.**

(16)—*Powers of Chief Court on revision.*—The omission on the part of a Sessions Judge, who tried a murder case, to notice expressly an important portion of the evidence against the accused, *viz.*, certain statements by the accused containing admissions of a damaging character, was held not to be an adequate ground for interfering with an acquittal on revision. INDRAJ v. BHUPA, **16 P.R. 1884, Cr.**

(17)—*Crim. Pro. Code*, 1882, *s.* 439—*High Court's powers of revision—Acquittal.*—The High Court cannot interfere, in the exercise of its revisional jurisdiction, with a finding of acquittal made by a competent Court on the merits of the case tried by such Court. BATAK v. NARAIN RAO, **A.W.N. 1883, 222.**

(18)—*Crim. Pro. Code* (*Act* V *of* 1898), *s.* 439—*Revision—Acquittal—Excise Act* (XII *of* 1896), *s.* 46 (*c*).—The accused, licensed sub-contractors for the sale of liquor in a Native State, were found travelling in a train at a station in British territory proceeding to their place of business in the State with liquor which they had purchased in the State under a State pass. As they had failed to obtain a pass from the Collector of the District in which they were found travelling, they were arrested and charged with an offence under s. 46, cl. (c) of Act XII of 1896, but acquitted by the trying Magistrate on the strength of remarks on page 106 of the Punjab Excise pamphlet. The District Magistrate reported the case to the Chief Court for revision under s. 438 of the Crim. Pro. Code. *Held*, that interference on revision would be quite improper, it being open to the Government to appeal, if they so desired. CROWN v. GURDIT SINGH, **1 P.L.R. 1904 = 1 Cr. L.J. 30.**

(19)—*Crim. Pro. Code, ss.* 438, 439—*Acquittal—Revision—Penal Code, s.* 447.—Where no appeal has been preferred by the Government, it is very rarely correct to interfere on revision with an acquittal. MUNSHI v. CROWN, **13 P.W.R. 1907, Cr. = 72 P.L.R. 1908 = 5 Cr. L.J. 438.** (13 P.R. 1905, Cr., *Over.*; 12 P.R. 1906, Cr., *R.*)

(20)—*Criminal cases—Acquittal.*—The High Courts, though not going so far as to say that an order of acquittal cannot, under any circumstances, be interfered with on revision, have uniformly discouraged such action as being

Revision—continued.

——8.—**Acquittals**—*concluded.*

not contemplated by the Crim. Pro. Code. CROWN v. CHUHRA, **88 P.L.R. 1906 = 4 Cr. L. J. 37.**

(21)—*Criminal cases—Acquittal on facts—Discretion—Expunging findings from judgment—Sanction to prosecute—Approver—Pardon, withdrawal of.*—*Held*, that the revisional powers of the Chief Court against orders of acquittal are not confined to points of law but extend in exceptional cases to questions of fact also, though the Court in doing so cannot then and there convict but can only order a new trial. *Held*, also, that the Chief Court should revise orders of acquittal wherever justice requires that it should do so, and that the exercise of revisional jurisdiction is not affected by the fact that no appeal has been filed by the Government against the order of acquittal. The Chief Court under the peculiar circumstances of the case refused revision of the order of acquittal, though ample grounds existed to set aside the order. The order of prosecution of the approver for perjury was set aside as not warranted by the facts of the case. The Chief Court held that the remarks of the Sessions Judge about a certain witness, the approver and the police were uncalled for and not justified by the materials on record. VIRU MAL v. SADDU, **157 P.L.R. 1908 = 22 P.W.R. 1908 = 8 Cr. L.J. 462.**

(22)—*Crim. Pro. Code*, 1872, *ss.* 272, 297—*High Court's powers of revision—Private prosecutor, right of, to move it, on acquittal.*—It is competent for a private prosecutor to apply to the High Court, in the case of an acquittal, to exercise its powers of revision. SUKHO v. DURGA PRASAD, **2 A. 448.** (1 A. 139, *R.*) [*R.*, 9 Cr. L.J. 211 = 5 N.L.R. 4, 1 Ind. Cas. 238, 10 Cr. L.J. 237 = 2 S.L.R. 25, Cr.]

(23)—*Crim. Pro. Code*, 1882, *ss.* 435, 439, 440 — *Appeal against acquittal.*—An appeal against an acquittal by a private prosecutor, by way of revision, is not contemplated by the Code, and it should, on public grounds, be discouraged. In cases of acquittal by a Sessions Court, the law allows an appeal only on behalf of the Government. THANDAVAN v. PERIANNA, **14 M. 363 = 2 Weir 371.** [*F.*, 15 Cr. L. J. 236 = 26 M.L.J. 160 = 23 Ind. Cas. 188 ; *R.*, 23 C. 975, 4 Cr. L.J. 37 = 88 P.L.R. 1906, 13 Cr. L.J. 457 = 15 Ind. Cas. 89 = U.B.R. 1911, 4th Qr., 100, U.B.R. 1897—1901, 91, 9 Cr. L.J. 437, 9 Cr. L.J. 211 = 5 N.L.R. 4, 1 Ind. Cas. 238 ; *Expl.*, 2 Weir 571.]

Acquittal—Interference in revision—*See* ACT IX OF 1890, ss. 3, cl. (4), 122, 138, (1914) M.W.N. 124 = 15 Cr. L.J. 225 = 23 Ind. Cas. 177.

Setting aside of acquittal in revision on application of complainant—Powers of High Court—*See* CRIM. PRO. CODE, 1898, ss. 258, 417, 439, 19 C.W.N. 184.

Revision—continued.

——9.—**Discharge of Accused.**

(1)—*Crim. Pro. Code*, 1882, *s.* 439—*Improper discharge of accused—Revisional powers of High Court to order a commitment.*—The High Court is empowered, under s. 439, Crim. Pro. Code, to order that an accused person, who has been improperly discharged by a Magistrate, should be committed for trial. EMPRESS v. RAM LAL SINGH, **6 A. 40.** [*F.*, 27 B. 84.]

(2)—*Crim. Pro. Code*, 1898, *s.* 437—*Powers of revision of the Chief Court of the Punjab—No fresh evidence forthcoming — Order for further enquiry on same materials.*—The test for the interference of the Chief Court on revision and passing an order for 'further enquiry' under s. 437 of Code, in the case of an accused, discharged without any charge being framed, is whether the Chief Court would, under similar circumstances, have accepted an appeal from acquittal if one had been preferred. In this case, the evidence for the prosecution was contradictory and insufficient for a conviction, and there was no suggestion that additional or further evidence was forthcoming. The Chief Court refused to interfere. ALA JAWAYA v. THE EMPEROR, **8 P.L.R. 1905 = 2 Cr. L J. 116.**

(3)—*Dismissal of charge against accused—Dismissal of case of breach of contract on the ground that Act* XIII *of* 1859 *did not apply.*—Revision declined where a Joint Magistrate dismissed a complaint of breach of contract under Act XIII of 1859, on the ground that the Act did not apply to the case, *viz.*, which was a contract to work at a certain factory. JAMES LYALL & CO. v. RAM CHUNDER BAGDEE, **18 W.R. Cr. 53.** [*R.*, 16 B. 368.]

(4)—*Crim. Pro. Code*, 1882, *ss.* 436, 439—*Discharge of accused triable exclusively by Court of Sessions—Revision.*—Where a case exclusively triable by a Court of Sessions is tried by a Magistrate and the accused is discharged, without being committed to the Sessions, *held* that, under such circumstances, the complainant should not prefer a petition to the High Court for revision, but should move the Sessions Judge to exercise the powers conferred upon him by s. 436, Crim. Pro. Code. EMPRESS v. PHUL KOERI, **A.W.N. 1887, 105.**

(5)—*Crim. Pro. Code*, 1872, *s.* 297—*High Court's powers of revision—Notice to accused—Appearance of accused.*—Where a Sessions Judge reports the proceedings of a subordinate Court to the High Court on the ground that the accused has been improperly discharged, the High Court, on finding that notice could not be served on the accused to show cause why the proceedings of the lower Court should not be revised, is competent to dispose of the reference without hearing the accused person personally or even by an agent. EMPRESS v. COONEY, **A.W.N. 1881, 63.**

(6)—*Improper discharge—High Court's powers of revision—Crim. Pro. Code*, 1882, *s.* 439—*Power to order commitment—Revival of prosecution.*—The High Court has power under

Revision—continued.

——9.—**Discharge of Accused**—*concluded.*

s. 439 of the Crim. Pro. Code, 1882, if it considers that an accused person has been improperly discharged, to order him to be committed for trial. EMPRESS v. RAM LAL SINGH, **6 A. 40=A.W.N. 1883, 186.** [*Appr.*, 27 B 84.] *See also, In re* PROSUNNO COOMAR GHOSE, **19 W.R. Cr. 56**; IMPERATRIX v. GOWDAPA *bin* VENKU GOWDA, **2 B 534**; *In the matter of* MOHESH MISTREE, **1 C. 282=25 W.R Cr. 30, 67**; EMPRESS v. DONNELLY, **2 C. 405**; EMPRESS v. HARRY DOYAL KARMOKAR, **4 C. 16=2 Shome L.R. Cr. 12**; ISHEN CHUNDER KURMOKAR v. HURRY DOYAL KURMOKAR, **3 C.L.R. 263**; *In the matter of* TROYLOKHYANATH MITTER, **1 C.L.R. 83.**

(7)—*Improper discharge — High Court's powers of revision—Crim. Pro. Code,* 1872, *ss.* 296, 297—*Power to order—Commitment—Revival of prosecution.*—Under s. 297, the High Court has the power to order the acused to be committed for trial, that is, it may order him to be tried, which involves the taking of evidence before the accused can be put on his defence. But the absence of the words "order him to be tried," in s. 296, *seems* to indicate that a Magistrate, under that section is not empowered to direct a subordinate Court to take further evidence in a case of this description. *Re* PROSUNNO COOMAR GHOSE, **19 W.R. Cr. 56.**

(8)—*Order of Sessions Judge or District Magistrate setting aside order of discharge—Revision by High Court.*—An order of a Sessions Judge or a District Magistrate setting aside an order of discharge is liable to be reviewed by the High Court as a Court of revision. If, in any case, the High Court were to find that the lower Court had set aside an order of discharge on insufficient grounds, or that, while there were good grounds for setting it aside, the lower Court has made an order inappropriate to the facts of the case, the High Court would be acting properly in revising the order. HARI DASS SANYAL v. SRITULLA, **15 C. 608, F B.**

(9) — *Revision—Crim. Pro. Code,* 1898, *ss.* 253 (2) *and* 437—*Discharge without summoning witnesses for the prosecution.*—The Chief Court on revision set aside the order passed by the Sessions Judge under s. 437, Crim. Pro. Code, directing further enquiry in a case dismissed by a second-class Magistrate, without summoning the witnesses for the prosecution on the ground that the Magistrate was competent under s. 253 (2), Crim. Pro Code, to dismiss the charge, if he believed it, on the complainant's own statement, to be groundless. RAM CHAND v. EMPRESS, **P.L.R. 1900, 68, Cr.**

(10)—*Power to order re-trial—Power of High Court as power of revision and appeal—Act* XI *of* 1874, *s* 28.—The High Court in revision can direct a re-trial if need be. Under Act XI of 1874, s. 28, it can also order a re-trial in cases tried with assessors. *In re* LUCKHY NARAIN NAGORY, **24 W.R. Cr. 24.**

Revision—continued.

——10.—**Re-trial.**

(1)—*Crim. Pro. Code (Act* XXV *of* 1861), *s.* 434, *Penal Code, Act* XLV *of* 1860, *ss.* 323, 324.—On a reference to the High Court in a case where the Magistrate had convicted under s. 323 of the Penal Code while the offence really was one under s. 324 which the Magistrate had no jurisdiction to try, *held* that no re-trial could be ordered. REG. v. AMBA *kom* GIRSOJI, **4 B.H.C. Cr. 1.**

(2)—*Crim. Pro Code (Act* XXV *of* 1861), *s.* 427—*Magistrate—Penal Code, Act* XLV *of* 1860, *ss.* 323, 324.—S. 427 of the Crim. Pro. Code has no application to a reference by a Magistrate, but only to a Court of Session acting in appeal from a subordinate Court. *Held* also, under circumstances similar to the case in 4 B.H.C. 1, that no re-trial could be ordered. REG v. NABAJI *valad* VITHOJI, **4 B. H C. Cr. 2.**

(3)—*Re-trial—Conviction for a lesser offence—Summary trial.*—Where the accused, who were really guilty of an offence under s. 147, I.P.C., were summarily tried and convicted of an offence under s. 143, I.P.C., *held*, that the procedure adopted was not a proper one and that the accused were entitled to an order setting aside the conviction and directing the re-trial on the more serious charge. SARDAR KHAN v. EMPRESS, **5 P.R. 1887, Cr.**

(4)—*Previous conviction.*—Where a Magistrate sentenced an accused person convicted of theft to six months' imprisonment without knowing at the time, when he convicted, that there were six previous convictions against the accused, *held* that no revision would lie to the Chief Court. CROWN v. RAJI, **13 P.R. 1874, Cr.** (12 P.R. 1874. Cr., *R.*) [*R.*, 36 P.R. 1881.]

(5)—*Previous conviction not charged.*—Where evidence as to the previous conviction of the accused was not adduced owing to the neglect of the prosecution, and not on account of any negligence on the part of the Magistrate, the Chief Court is not competent to interfere in revision. EMPEROR v. GUL, **21 P.R. 1902, Cr. =144 P.L.R. 1902.** (36 P.R. 1884, Cr., *R.*) [*F.*, 43 P.R. 1905, Cr.]

(6)—*Evidence and witnesses—Power of High Court—Crim. Pro. Code (Act* XXV *of* 1861), *s.* 366—*Examination of accused—Postponement of trial for summoning a witness—Discretion of Judge.*—A Deputy Magistrate committed certain prisoners for trial on a charge of dacoity. Some of the prisoners had confessed before the Deputy Magistrate, but he failed to record the examination of the prisoners, or to attest it as required by s. 205 of the Code of Criminal Procedure. The Sessions Judge, therefore, refused to admit the examination of the prisoners by the Deputy Magistrate in evidence, and also refused to postpone the trial for the purpose of summoning the Deputy Magistrate and taking his evidence in the matter. *Held* that, it being wholly within the discretion of the Judge, under s. 366, to say whether or not he should postpone the trial, or summon any witness to give

Revision—continued.

——10.—**Re-trial**—*continued.*

his evidence, the High Court as a Court of revision, would not interfere or order a new trial. QUEEN v. RADHA JANA, **3 B.L.R.A. Cr. 59 = 12 W.R. Cr. 44.**

(7)—*Penal Code* (*Act* XLV *of* 1860), *ss.* 403, 406—*Re-trial.*—Where a Magistrate convicted an accused person of criminal misappropriation while the facts disclosed an offence of criminal breach of trust which the Magistrate was not competent to try, *held* that the conviction should be set aside and re-trial before a proper Court ordered REG. v. CANU *valad* RAMCHANDRA, **4 B.H C. Cr. 3.**

(8)—*Omission to record previous conviction—Re-trial.*—The Chief Court cannot, as a Court of revision, set aside the conviction and sentence passed by a Magistrate of competent jurisdiction, with a view to direct a new trial, because, subsequent to the conviction, it becomes known that the accused was previously convicted. But where the omission to record evidence of a previous conviction is due to the neglect of the Magistrate, the Court is competent to interfere in revision and order a new trial. EMPRESS v. SHAM SINGH, **36 P.R 1884, Cr.** (13 P R. 1874, Cr., 28 P.R. 1879, Cr. *R.*) [*F.*, 43 P.R. 1905. Cr.; *R.*, 21 P.R. 1902, Cr.]

(9)—*Re-trial—Omission to set out previous conviction in charge—Accused giving false name at the trial.*—Where the charge did not set out a previous conviction, on account of the accused giving a false name at the trial, *held* by the Chief Court, on revision, that the conviction should be set aside and a new trial should be ordered. EMPRESS v. YUSAF, **28 P R. 1879, Cr.** [*R* , 36 P.R, 1884, Cr.]

(10)—*Re-trial - Omission to set out in the charge a previous conviction.*—Where a Magistrate omitted to set out in the charge the previous convictions of the accused, the Chief Court, sitting in revision, directed that the charge should be amended by adding the previous conviction and also directed that evidence with regard to those convictions should be recorded. KASIM v. EMPRESS, **19 P.R. 1879, Cr.**

(11)—*Re-trial—Neglect to record evidence of previous conviction.*—Where there were previous convictions against the accused and the Magistrate, without questioning or calling for proof of those convictions convicted the accused and sentenced him, the Chief Court interfered in revision and set aside the conviction and sentence and ordered his trial. CROWN v. SANTU, **12 P.R 1874, Cr.** (13 P.R. 1874, Cr., *R.*)

(12)—*Where Magistrate's order manifestly wrong, High Court will interfere.*—A Deputy Magistrate adjourned a case to the 21st. The complainant not appearing on that day, he ordered the case to be dismissed; but he revived the case on the next day alleging that the previous dismissal was due to his ignorance of a petition by the complainant praying for an adjournment in consequence of his sickness. The Magistrate on appeal reversed the order of the Deputy Magistrate. The Deputy Magistrate's order having been mainfestly wrong the entire proceedings in the case were set aside by the High Court and the case restored to the position in which it was prior to the 21st. QUEEN v. RAMNARAIN GHOSE, **8 W.R. Cr. 5.**

Revision—continued.

——10.—**Re-trial**—*concluded.*

—— **11.—Commitments.**

(1)—*Crim. Pro. Code* (*Act* X *of* 1882), *s.* 439—*High Court—Revisional Jurisdiction.*— It is open to doubt if the High Court is competent to order the commitment and re-trial, under the same section of the Penal Code, of an accused person who is undergoing a sentence passed on him by a Magistrate in accordance with law, on the ground that the nature of the offence appeared to require a heavier sentence that the Magistrate was competent to inflict. EMPRESS v. IMAMI, **A.W.N. 1885, 297.**

(2)—*Crim. Pro. Code, ss.* 423, 439—*Revisional powers of High Court—Power to order commitment of discharged person.*—S. 439 read with s. 423, Crim. Pro. Code, confers upon the High Court, as a Court of revision, all the powers conferred upon it as a Court of appeal, subject only to the limitation set forth in para 4, that nothing in the section shall be deemed to authorize the High Court, acting in revision, to convert a finding of acquittal into one of conviction. The High Court has, therefore, as a Court of revision, jurisdiction to set aside an order of discharge passed by a Presidency Magistrate, and to direct that a person improperly discharged of an offence be arrested and forthwith committed for trial. EMPEROR v. VARJIVANDAS *alias* KALIDAS BHAIDAS, **27 B. 84 = 4 Bom. L.R 779.** [*R.*, 36 C. 994 = 11 C.L.J. 50 = 13 C.W N. 1221 = 10 Cr. L.J. 385 = 3 Ind. Cas. 385, 12 C.W.N. 117 = 6 C.L.J. 760 = 6 Cr L.J. 406, 12 C.W.N. 678 = 7 Cr. L.J. 499, 14 Cr. L J. 529 = 21 Ind. Cas. 129 = 14 M.L.T. 200 = 1913 M.W.N. 728.]

(3)—*Re-trial—Trial of murder case by District Magistrate.*—The trial and conviction of a murder case by a District Magistrate was set aside, by the Chief Court in revision, on the ground that the greatest punishment that he could inflict would not be an adequate punishment, and a commitment to the sessions was ordered. EMPRESS v. SHER SINGH, **30 P.R. 1880, Cr.** [*R.*, 15 P.R, 1881, Cr.]

——**12—Miscellaneous Cases.**

(1)—*Crim. Pro. Code* (*Act* V *of* 1898), *s.* 437—*Revisional powers of Sessions Judge and Dsitrict Magistrate.*—The powers of revision of the Sessions Judge and the District Magistrate are concurrent, and it is not optional with the Sessions Judge to refuse to exercise them and to refer the petitioner to the District Magistrate. RAM LABHAYA v. RAM DAS, **151 P.L. R. 1903.**

(2)—*Crim. Pro. Code* (1882), *s.* 437—*Revision—Concurrent jurisdiction of Sessions Court.*—Where no special ground is shown by a District

Revision—continued.

——**12.—Miscellaneous Cases**—*continued.*

Magistrate for applying to the High Court under s. 437 of the Crim. Pro. Code, he should apply in the first instance to the Sessions Court which has concurrent revisional jurisdiction under that section. QUEEN-EMPRESS v. GAMBHIR, **Rat. Un. Cr. C. 499**=**Cr. Rg. 11 of 1890.**

(3)—*Crim. Pro. Code, s.* 438— *Revision—Third class Magistrate—Second revision to Sessions Judge.*—A Sessions Judge has no power to revise an order of a District Magistrate setting aside an order of a third class Magistrate refusing to sanction a prosecution under s. 211 of the Penal Code. The only Court to which an appeal lies from an order of a third class Magistrate, is the District Magistrate, and he alone can revise his orders. RAM DENI v. NAND LAL RAI, **4 A.L.J. 805**=**6 Cr. L.J. 454**=**A.W N. 1908, 28**=**3 M.L.T. 115**=**30 A. 109.**

(4)—*Crim. Pro. Code* (1898), *ss.* 135, 439—*Illegal order under s.* 439.—The Chief Court is competent to revise an illegal order under s. 135, Crim. Pro. Code. RAM KALA v. GANGA, **42 P.R. 1885, Cr.** [*F. & D.*, 12 Cr.L. J. 50=8 Ind. Cas. 1161=33 P.R 1910, Cr., 8 P.R. 1904, Cr., 50 P.W.R. 1910, Cr.]

(5)—*Order confirming order for security for good behaviour—Crim. Pro. Code* (1861), ss. 404, 408.—*Held* that the High Court could revise the order of a Sessions Judge confirming a Magistrate's proceedings ordering security for good behaviour to be taken. *In re* JUSWUNT SINGH, **6 W.R. Cr. 18**=**1 Ind. Jur. N.S. 301.** REG. v. THAKU *bin* IRA, **5 B.H.C. Cr. 81.**

(6)—*Crim. Pro. Code* (1872), *ss.* 518, 521—*Revision.*—An order under s. 521, Crim. Pro. Code, 1872, is open to revision, but one under s. 518, Crim. Pro. Code, is not. ABDUL KADAR v. CROWN, **17 P.R. 1875, Cr.**

(7)—*Crim. Pro. Code* (1872), *ss.* 297, 518—*Revisional powers of Chief Court—Order under s.* 518.—*Held*, that a Magistrate had no jurisdiction under s. 518, Crim. Pro. Code, 1872, to pass an order directing that certain persons should continue to live in the *haveli* in which they were at the date of the order, and that a police officer should keep guard over the outer door, allowing only certain specified persons to enter the *haveli*. There is no revision against an order under s. 518, Crim. Pro. Code, 1872, though the order is in excess of the Magistrate's authority, nor could the Chief Court interfere under its general powers of superintendence (Act XVII of 1877). MUSSUMAT FAIZUL-NISSA v. FAIZ MAHOMED, **33 P R. 1878, Cr.**

(8)—*Order under s.* 518, *Crim. Pro. Code. Held* (*Lindsay, J, dissenting*).—An order under s. 518, Crim. Pro. Code, 1872, although illegal, was held not open to revision, as it would not be a "judicial proceeding." HARRIA MAL v. EMPRESS, **2 P.R. 1880, Cr.**

(9)—*Extra-judicial order by Magistrate—Revision.*—The High Court cannot, as a Court of revision, interfere with the extra-judicial order of a Magistrate. *In the petition of* SHERE ALI, **A.W.N. 1883, 25.**

(10)—*Crim. Pro. Code* (1898), s. 439—*Chief Court—Original criminal jurisdiction—Trial by a single Judge with jury—Sentence—Revision—Maintainability.*—Where a person has been convicted and sentenced at a trial held by a single Judge of the Chief Court with the aid of a jury in the exercise of that Court's original criminal jurisdiction. *Held*, no application for revision under s. 439 of the Crim. Pro. Code, lies against that sentence. Intention of the Legislature as expressed in s. 439, Crim. Pro. Code, with reference to its view taken in subsequent legislation, pointed out. PRESS v. KING-EMPEROR, **4 P R. 1909, Cr.**=**41 P.L.R. 1909**=**9 Cr. L.J. 378**=**10 P.W R. 1909, Cr.**=**1 Ind. Cas 747.** (2 P R. 1909, Cr., *Appr.*; 14 C. 42, *R.*)

(11)—*Judgment of single Judge exercising original criminal jurisdiction—Appeal—Revision by Division Bench or Full Bench—Revision of decision of single Judge by himself—Crim. Pro. Code* (1898), ss. 369, 434 *and* 439.—The powers of a single Judge in a matter with which he has jurisdiction to deal are the powers of the Court, and cannot be in any way controlled by a Bench or Full Bench of the Court. As no appeal lies, so no revision lies. Both procedures imply subordination or inferiority, which does not exist. Nor can the Judge himself revise his own decision. HALE v. KING-EMPEROR, **1 P.R. 1909, Cr.**=**6 P.W.R. 1909, Cr.**=**1 Ind. Cas. 506**=**9 Cr. L.J. 306.** (8 A. 63, 14 C. 42, 10 B. 176, 27 A. 92, *R.*) [*F.*, 1 Ind. Cas. 747; *R.*, 41 P.L.R. 1909, Cr.=4 P R. 1909, Cr.=9 Cr. L.J. 378]

(12)—*Order passed by Magistrate without jurisdiction.*—*Held* that an order by a Magistrate which he is incompetent, and has no jurisdiction, to make could be quashed by him. SHEIKH LALOO v. ADAM SIRCAR, **17 W.R. Cr. 37**; EMPRESS OF INDIA v. BERRILL, **4 A. 141.** [*D.*, 18 W.R. Cr. 22.]

(13)—*Proceedings under s.* 28 *of Act* III *of* 1880—*Disqualification of Magistrate.*—The proceedings of a Cantonment Magistrate, acting under s. 28, Act III of 1880, are liable to be reversed by the Chief Court on the Revision Side on the ground of the disqualification in the Magistrate in the particular case, owing to personal or pecuniary interest or bias. E. CHARDE v. EMPRESS, **40 P.R. 1884, Cr.**

(14)—*Error which cannot be corrected by appeal—Power of High Court—General rules for exercise of power.*—The High Court may Act as a Court of revision after it has acted as a Court of appeal in order to correct an error which cannot be set right by appeal. QUEEN v. GORACHAND GOPE, **B.L.R. Sup. Vol. 443**=**1 Ind. Jur. N.S. 177**=**5 W.R. Cr. 45.**

(15)—*Magistrate acting under section of Code under which he has no jurisdiction.*—A Magistrate purported to act under a section of

Revision—continued.

——12.—**Miscellaneous Cases**—*continued.*

the Crim. Pro. Code under which he had no jurisdiction; it, however, appeared that he had jurisdiction under some other section of the Code; *held* that the mistake was one which did not justify a interference with the Magistrate's order, if otherwise good, and if it did not prejudice the accused. *In re* PRANKRISTO PAL, **14 W.R. Cr. 41.**

(16)—*Crim. Pro. Code, s.* 439.—*Penal Code. s.* 326—*Detention in Asylum—Appeal or revision.*—Where the Magistrate finished the trial and finding the accused guilty of an offence under s. 326. I.P.C., ordered his detention in the lunatic asylum *held* that the order being a non-appealable one was open to revision under s. 439 of the Crim. Pro Code. EMPRESS v. CHADAMI LAL, **A.W.N, 1900, 47.**

(17)—*Revision of order of conviction by High Court—Appeal to High Court.*—Where a conviction and sentence by a Sessions Judge for an offence under s. 331, I.P.C., was set aside, by way of revision, by a single Judge of the High Court, but the accused was convicted of an offence under s. 330, I.P.C., *held* that no appeal lay to the High Court. EMPRESS v. RAM DAS, **A.W.N. 1883, 1.**

(18)—*Crim. Pro Code* (1898), *ss.* 195, 439—*Sanction granted by Civil Court and confirmed by District Court—Revision.*—Where sanction to prosecute has been granted under s. 195, Crim. Pro. Code, by the Judge of a Court of Small Causes, the High Court has no jurisdiction under s 439, Crim Pro. Code, to revise the orders of the District Judge and of the Judge of the Court of Small Causes. MUHAMMAD YAKUB v. MUHAMMAD TYAB, **A.W.N. 1903, 172.** (26 M. 139, *F.*) [*F.*, A.W.N. 1905, 85; *R.*, 28 A. 554 = 3 A.L J. 396 = 3 Cr. L.J. 400 = 1 M.L.T. 219.]

(19)—*Crim. Pro. Code, s.* 439—*Appeal pending—Revision by High Court—Practice.*—Though the powers of the High Court under s. 439 are very wide, it will not entertain an application for revision when an appeal in the same case is pending before a subordinate Court. QUEEN-EMPRESS v. BALDEO PRASAD, **A.W.N. 1895, 152.**

(20)—Under s. 439 of the Code of Criminal Procedure, the Chief Court has power to revise an order passed by a Magistrate granting or refusing an application of a Committee under s. 201 of the Punjab Municipal Act. DIN MUHAMMAD v. MUNICIPAL COMMITTEE. AMRITSAR, **23 P.R. 1903, Cr. = 130 P.L.R. 1903.** (1 P.R. 1891, Cr. 2 P.R. 1889, Cr., 18 P.R 1902, Cr., 22 A. 111, 22 B 709, *R.*; 26 C. 852, *D.*) [*F.*, 10 Cr. L.J. 353 = 3 Ind. Cas. 638 = 9 P.W.R. 1909, Cr; *R.*, 4 Ind. Cas. 951 = 105 P.L.R. 1909 = 23 P.W.R. 1909, Cr. = 2 P.R. 1910, Cr.]

(21)—*Crim. Pro. Code* (1882), *s.* 439—*Revision on receipt of letter from Local Government to Registrar.*—The High Court may exercise the revisional powers given to it, under s. 439, Crim. Pro. Code, on an application made by the Government in an official communication instead of through the Law Officer of the Crown. EMPRESS v. MATADIN, **A.W.N. 1887, 144.**

(22)—*Crim. Pro. Code* (1898), *s.* 439—*Revision—Executive order.*—In this case, the High Court declined to interfere with an order passed by a District Magistrate, whereby he revised the list of petition-writers who had been allowed to carry on their business within the precincts of the District Courts. *In the matter of the petition of* SUKHDEO PRASAD, **A.W.N. 1902, 175.**

(23)—*Revision—Punjab Courts Act, s.* 13—*General power of control of the Chief Court—Introduction of a client to a barrister—Declaration as a tout—Act* XI *of* 1896. *s.* 1.—*Held*, that the Chief Court could, in the exercise of its general power of control over subordinate Courts under s. 13, Punjab Courts Act, 1884, revise an order directing a person to be proclaimed as a tout for merely introducing a client to a barrister, when no remuneration was asked or expected; and the order of the lower Court was set aside CHANAN DAS v. EMPRESS OF INDIA, **P.L.R. 1900, 17, Cr.**

(24)—*Revisional powers of High Court whether could be taken away by an Act of a Local Legislature.*—*Quære*:—Whether an Act of a Local Legislature could take away from the High Court the powers of revision which may be exercised under the Act of Parliament, as well as under the Code of Criminal Procedure. QUEEN-EMPRESS v. LOUIS FRANCES, **Rat. Un. Cr. C. 672 = Cr. Rg. 37 of 1893.**

(25)—*Appeal to High Court—Repeal of Crim. Pro. Code of* 1872 *by that of* 1882—*High Court's revisional jurisdiction.*—Where, from a conviction by a Deputy Commissioner (corresponding to a District Magistrate) exercising special powers, an appeal lay to the High Court under the Crim. Pro. Code of 1872, but to the Court of Session under the Code of 1882, and, from such a case tried before the Code of 1882 came into force, an appeal was preferred to the High Court after the later Code came into force, the High Court, without definitely deciding whether the appeal lay, in the circumstances of the case, *held* that it was a fit case for the exercise of its revisional jurisdiction. RONGAI v. EMPRESS, **9 C. 513 = 12 C.L.R. 500.**

(26)—*Crim. Pro. Code* (1872), *s.* 296—*Revisional powers of the High Court.*—A person fined by the Collector for an offence under the Penal Code, without jurisdiction, cannot have redress from the exercise of the revisional jurisdiction of the High Court in criminal matters, a Collector of a District, not being, as such, subject to such revisional jurisdiction. *In the matter of* DIANUT HOSEN, **10 C.L.R. 14.**

(27)—*Crim Pro. Code* (*Act* V *of* 1898), *s.* 439—*Ground for revision—Criminal trespass—Offence intended not mentioned.*—It is not necessary that the written complaint should state the offence intended to be committed by the

Revision—concluded.

——12.—Miscellaneous Cases—*concluded.*

person accused of criminal trespass. It is enough if the complainant stated in his deposition the description of such offence. The High Court will not interfere with the conduct of a case on the ground that the written complaint did not fully describe the offence. EMPRESS v. CLIFTON, **A.W.N. 1899, 212.** [*F.*, 12 Cr.L.J. 50=8 Ind. Cas. 1161=33 P.R. 1910, Cr.=57 P.L.R. 1910=50 P.W.R. 1910, Cr.]

(28)—*Crim. Pro. Code* (1898), *s.* 439—*Revision—Power of Court to give leave to compound.*—The power conferred on a Court exercising its powers of revision are wide enough to allow of giving leave to the parties to compound an offence RAM PIYARI v. KING-EMPEROR, **7 A.L.J. 103=32 A. 153=5 Ind Cas. 696=11 Cr.L.J. 203.** [*R.*, 11 A.L.J. 13=14 Cr. L.J. 46=18 Ind. Cas. 270.]

(29)—Legal Practitioners Act, 1879, s. 36—Powers of Chief Court to revise order. LACHMAN DAS v. EMPEROR, **22 P.R. 1904, Cr.=1 Cr.L.J. 941=108 P.L.R. 1904.** (3 P.R. 1900, Cr., 21 A. 181, *R.*)

(30)—Crim. Pro. Code (Act X of 1882), ss 250 439—Right of accused person who has been awarded compensation to notice of proceeding on revision relating to the order for compensation. EMPRESS v. LAL, **14 P.R. 1888, Cr.** [*R.*, 3 Ind. Cas. 977=11 P.R. 1909=10 Cr.L.J. 443=115 P.L.R. 1909, Cr.]

(31)—Railways Act, 1890, s. 113—Duty of Magistrate acting under—Revision. A. GREY v. NORTH-WESTERN RAILWAY ADMINISTRATION, **13 P.R. 1891, Cr.**

(32)—Order of Magistrate of first class sanctioning prosecution—Power of District Magistrate to revise such order—" Court to which appeals ordinarily lie "—Crim. Pro. Code (1882), ss. 193, 435. WARYAM v. AMIR, **10 P.R. 1894, Cr.**

(33)—Crim. Pro. Code (1898), ss. 145, 439—Magistrate's powers under s. 145—Dispute as to joint ownership of shop goods—Joint possession over joint property—Revision—Power of Chief Court to interfere—Circular Memo. No. 12—4398-G of 1901. DHANI RAM v. BHOLA NATH, **23 P.R. 1902, Cr =135 P.L R. 1902.** (25 B. 179, 2 P.R. 1899, Cr., F.B., 27 C. 892, *R.*) [*F.*, 11 Cr. L.J. 61=4 Ind. Cas. 860=11 P.W. R. 1909, Cr.=105 P.L.R. 1909=12 P.R. 1909, Cr., 115 P.L.R. 1903. Cr.; *R.*, 11 Cr. L.J. 422=6 Ind. Cas. 955=24 P.W.R. 1910, Cr., 8 Ind. Cas. 453=3 Bur. L.T. 74.]

Revival of Complaint.

See COMPLAINT.

See RE-TRIAL.

See REVIVAL OF CRIMINAL PROCEEDINGS.

(1)—*Crim. Pro. Code, s.* 253—*Complaint, dismissal of—Complaint* de novo *on same facts, dismissed — Revival of first complaint — Court's discretion.*—M and others were prosecuted by A for robbing A of his mare under cover of levying a debt due to them, and were discharged under s. 253, Crim. Pro. Code. Subsequently, A prosecuted them for cheating him by refusing to hand over the mare and a receipt for the debt under an alleged agreement. This complaint also was dismissed. On such dismissal, A again filed a complaint of robbing him of his mare against M and others, and process was ordered to be issued against them. *Held*, on revision, that, though the Magistrate had jurisdiction to entertain this renewed complaint, he failed to exercise a sound judicial discretion in proceeding with it on the facts set forth above. MAHOMED HASHIM HAJI NAZARALI v. CROWN, **4 S.L.R. 52=8 Ind. Cas. 202=11 Cr. L.J. 582.**

(2)—*Crim. Pro. Code* (*Act* XXV *of* 1861), *s.* 269—*Incarceration of complainant in jail—Sufficient cause for non-appearance.*—The incarceration of a complainant in jail, after he had preferred his complaint, is a sufficient cause for his absence, in consequence of which the complaint was dismissed under s. 269 of the Crim. Pro. Code, and the complaint may be revived. REG v. VIRABHADRA, **Rat. Un. Cr. C. 59=Cr. Rg. 19-12-1871.**

(3)—*Crim. Pro. Code* (1898), *ss.* 247, 369, 432—*Revival of a case after an order of dismissal* —The Crim. Pro. Code contains no provision empowering a Magistrate to revive a case after an order of dismissal. RAM COOMAR v. RAMJEE, **4 C.W.N. 26.**

After dismissal, validity—*See* TRANSFER OF CRIMINAL CASES—TRANSFER BY OTHER COURTS, 7 C.W.N. 527.

Revival of Criminal Proceedings.

See COMPLAINT — WITHDRAWAL AND REVIVAL OF COMPLAINT.

See DISCHARGE OF ACCUSED.

See RE-TRIAL.

See REVIVAL OF COMPLAINT.

(1)—*Act* X *of* 1872 (*Crim. Pro. Code*)—*Revival of proceedings.*—A District Magistrate had no power to order the revival of proceedings against an accused improperly discharged. He had to report the matter to the High Court. *In the matter of the petition of* MOHESH MISTREE, **1 C. 282=25 W.R. Cr. 30.** [*F.*, 2 B. 534; *Appr.*, 2 C. 405; *R.*, 4 C. 647, 10 C. 268, 28 C. 652, 1 C.L.R. 83; *D.*, 2 A. 570.]

(2)—*Revival of proceedings against discharged accused—Crim. Pro. Code* (*Act* X *of* 1872), *ss.* 195 *and* 296—*Further evidence.*—The offence of theft, not being one exclusively triable by the Court of Session, a Magistrate had no power, under s. 296 of the old Code, to re-open such a case, in which the accused had been discharged and to commit him for trial to the Sessions Court. Where a Deputy Magistrate discharged an accused, in a case of theft, without taking the evidence of an important witness, *held*, it was competent for the District Magistrate to revive proceedings against such

Revival of Criminal Proceedings—*concluded.*

accused on the ground of further evidence being available. EMPRESS v. HARY DAYAL KARMOKAR, **4 C. 16.** (2 C. 405, *F.*)

(3)—*Revival of order after quashing it.*—After having quashed an order under s. 518, and struck the case off the file, a Magistrate cannot revive it, without a fresh proceeding. BRADLEY v. JAMESON, **8 C. 580 = 11 C.L.R. 414.**

"Revival of a prosecution" in expl. 2, s. 87, Presidency Magistrate's Act—*See* ACT IV OF 1877, s. 87, expl. 2, 5 C. 121 = 4 C.L.R. 305.

Dismissal of complaint for default after partial hearing by Presidency Magistrate—Institution of fresh proceedings—*See* ACT IV OF 1877, s. 124, 6 C. 523 = 8 C.L.R. 106.

See COMPOUNDING OFFENCE, 1 B. 64.

See CRIMINAL CASE, 10 C.L.J. 80 = 3 Ind. Cas. 393.

Under s. 133, Crim. Pro. Code, after previous cancellation—*See* CRIM. PRO. CODE, 1898, s. 133, 5 C.W.N. 173.

See CRIM. PRO. CODE, 1898, s. 145, 6 C.W.N. 923.

See CRIM. PRO. CODE, 1898. ss. 203, 435, 437, 13 C.W.N. 193 = 5 M.L.T. 95 = 36 C. 415 = 9 Cr. L.J. 563 = 2 Ind. Cas. 293.

See MAGISTRATE, JURISDICTION OF — GENERAL JURISDICTION, 2 C. 405.

Revival of Prosecution.

See REVIVAL OF CRIMINAL PROCEEDINGS.

Revocation of Sanction.

See SANCTION TO PROSECUTE—REVOCATION OF SANCTION.

Reward.

(1)—*Rewards in opium cases.*—Granting rewards for small seizures of opium should be discouraged as it is likely to lead to false charges being trumped up. QUEEN-EMPRESS v. NGA TUN YE, **L.B.R. 1893—1900, 198.**

Sentence—Payment of rewards out of fines and confiscations—*See* ACT VII OF 1878, ss. 25, 75, Rat. Un. Cr. C. 960 = Cr. Rg. 13 of 1898.

See BOM. ACT V OF 1878, s. 59, Rat. Un. Cr. C. 482 = Cr. Rg. 46 of 1889.

Right of Private Defence.

See PRIVATE DEFENCE, RIGHT OF.

Right of Reply.

See REPLY, RIGHT OF.

Right of Suit.

(1)—*Jurisdiction of Civil Court to try question of property in land, not ousted by its prior determination by Magistrate under s. 521 of the Crim. Pro Code—Estoppel.*—The jurisdiction of a Civil Court to try any question of property in land (*e.g.*, whether a plot of land is private property and not a thoroughfare or public place as between the parties and those claiming under them) is not ousted by an order by a Magistrate under s. 521 of the Crim. Pro. Code of 1872, determining the question. [*Diss.*, 14 C. 60; *F.*, 15 C. 460, F.B.; *see further* 4 B.L.R. 24, F.B., and 11 W.R. 434 = 3 B.L.R. Ap. 43, 8 B.H.C. A.C. 94, 6 B. 670 and 672; *R.*, 15 C. 564.] The circumstance that such an order by a Magistrate is confirmed by a jury appointed under s. 523 of the Code of 1872, does not estop the unsuccessful party from suing in a Civil Court to establish his rights. Per *Field, J.*, in MUTTY RAM SAHOO v. MOHI LALL ROY, **6 C. 291 = 7 C.L.R. 433.** [*R.*, 15 Cr.L.J. 259 = 7 Bur.L.T. 23 = 23 Ind. Cas. 467.]

Right of Suit—*continued.*

(2)—*Torts—Suit for fine realized after imprisonment in default of payment—Imprisonment—Fine.*—An accused person was punished by the Magistrate both with imprisonment and fine and was sentenced in default of payment of fine to a further imprisonment. After the accused had undergone both the principal punishment and additional imprisonment, he was released, and the fine realized from him. *Held* that a suit by him to recover the amount of the fine was not maintainable; the additional imprisonment not being in lieu of the fine, but as a punishment for non-payment of it. MANOOLAH *alias* MANOO v. GUNES KULWAR, **3 Agra 390.**

(3)—*Suit to recover damages for detention of goods—Dismissal of criminal charge for taking some goods.*—The circumstance that the plaintiff preferred a criminal charge against the defendant for the taking of his goods, which charge was dismissed, does not prevent the plaintiff from afterwards suing in the Civil Court to recover damages for the taking or detention of the goods, notwithstanding the Criminal Court may have jurisdiction upon a conviction to impose a fine and award it to the protector as compensation. ROOPA BEWA v. RAMCOOMAR SANDYAL, **2 Hay 13 = Marsh 248.** *See also* ADRAM v. HURBULLUB, **2 N.W.P. 58.**

(4)—*Suit for property (or its value) attached before judgment and made away with—Failure to institute criminal proceedings.*—Property attached under s. 81, Act VIII of 1859, and afterwards made away with by the defendants in collusion with the attaching officer or its value may be recovered by a suit without criminal prosecution being previously instituted against them. CHOITUNNO PARAMANICK v. ZUMMEROODDI SHAIKH, **18 W.R. 27.**

(5)—*Suit for damages for abuse not barred by failure to prosecute.*—A suit in the Civil Court to recover damages for abuse is not barred by the failure of an injured party to institute criminal proceedings therefor. SREENATH MOOKERJEE v. KOMUL KURMOKAR, **16 W.R. 83.**

(6)—*Suit for tort amounting to felony—Cause of action — Proof of previous conviction in Criminal Court.*—Where a person brings a suit alleging a state of facts which amounts to felony, he must show that he has done his best to procure a conviction on the criminal charge

Right of Suit—*concluded.*

before the Civil Court will entertain such a suit. COONAMULL v. SARNO RAUR, 2 **Ind. Jur. N.S. 187.**

(7)—*Orders, suits to set aside—Suit to set aside order of Criminal Court—Suit to set aside order of Magistrate under Act* XXI *of* 1841.—The proper course for a party dissatisfied with the order of a Magistrate, passed with jurisdiction under Act XXI of 1841, to pursue, was to appeal against that order, and not to bring a Civil suit for its reversal. OMOOLA KOOWUR v. GOHUN PATUCK, **1 Ind. Jur. O.S. 36 = 1 Hay 29 = Marsh 7.** *See also,* KEDAR NATH MOOKERJEE v. PARBUTTY PEISHKAR, **2 W.R. 267.** PRANKISHEN SURMA v. RAMROODER SURMA, **Marsh 214 = 2 Hay 86**; RAMKISHORE BHUTTACHARJEE v. BISSESHUR BHUTTACHARJEE, **Marsh 231 = Hay 559.**

(8)—*Obstruction to public highway—Suit for abatement of nuisance—Suit after refusal of Magistrate to interfere.*—A person injured by the erection of an obstruction on a public highway is not precluded from suing the person by whom it has been caused by the circumstance that he has previously applied to the Magistrate for an order for its removal, and that the Magistrate had refused to make any order. RAM TUNNOO v. SREENATH DOSS, **Marsh 537 = 2 Hay 659.**

(9)—*Judicial officer, suits against — Suit against Government for acts of Magistrate.*—*Held*, that a suit did not lie against the Government for the proceedings of a Magistrate under Ch. XX of the Crim. Pro. Code, 1861. BAGAI SHREE DYAL v. GOVERNMENT, **2 Agra 81.**

See ATTACHMENT, 4 L.B.R. 109.

See COMPENSATION—TO ACCUSED, 2 N.W.P. 58.

Right of Way.

See CRIM. PRO. CODE 1898, s. 133, A.W.N. 1906, 190 = 4 Cr. L.J. 65.

See CRIM. PRO. CODE, 1898, s. 147, 4 M.H.C. App. 11.

Right to Begin.

See BEGIN, RIGHT TO.

(1)—*Criminal case—Counsel—Practice—Reference to High Court under s.* 434, *Crim. Pro. Code* (*Act* XXV *of* 1861).—In a reference to the High Court under s. 434 of the Crim. Pro. Code, where counsel appeared, and the reference from the Judge impeached the order of the Magistrate, the Court called on counsel to support the argument. ANGELO v. CARGILL, **9 B.L.R. 417 = 18 W.R.Cr. 41.**

(2)—*Case under s.* 263, *Crim. Pro. Code*, 1872.—On a reference to the High Court under s. 263, Crim. Pro. Code, owing to the dissent of the Sessions Judge from the verdict of the jury, *held*, that the Government, which preferred the appeal, and prayed for a conviction, was entitled to begin and satisfy the Court that there was

Right to Begin—*concluded.*

a case demanding an answer from the accused. QUEEN v. RAM CHURN GHOSE, **20 W.R. Cr. 33.** [*Appr.*, 1 C.L.R. 275; *R.*, 15 C. 269.]

See REFERENCE TO HIGH COURT, 19 C. 380.

Right to Reply.

See REPLY, RIGHT OF.

Rigorous Imprisonment.

Under Mad. Act XXIV of 1859, if legal—*See* MAD. ACT XXIV OF 1859, s. 48, 5 M.H.C. App. 34.

Ring Game.

Playing—if ostensible means of livelihood—*See* CRIM. PRO. CODE, 1898, ss. 109, 118, 17 C.W.N. 883 = 40 C. 702 = 14 Cr. L.J. 452 = 20 Ind. Cas. 612.

Rioting.

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY.

See PENAL CODE, ss. 146 to 148.

See UNLAWFUL ASSEMBLY.

(1)—*Penal Code, s.* 154—*Liability of owner of land on which an unlawful assembly is held.*—In order to render the owner liable under s. 154, I.P.C., the knowledge of the owner that a riot was about to be committed is immaterial. He is liable for the acts of commission and the acts of omission, not only of himself, but of his agent or manager. That his manager took an active part in the riot is sufficient to convict the owner. QUEEN-EMPRESS v. PAYAG SINGH, **12 A. 550 = A.W.N. 1890, 176.** [*F.*, 28 C. 504 = 5 C.W.N. 771; *R.*, 12 Cr. L.J. 441 = 11 Ind. Cas. 785 = 7 N.L.R. 101, 8 O.C. 418.]

(2)—*Penal Code, ss.* 24, 147, 391—*Intention — Dacoity.*—Where the accused forcibly removed an ox and two cows, the property of the complainant (a Muhammadan), in order to prevent the butchery of the cattle, which the Hindu religion held to be a grossly outrageous act, *held*, that the accused was not guilty of the offence of dacoity, as there was no element of dishonesty in his conduct. QUEEN-EMPRESS v. RAGHUNATH RAI, **15 A. 22 = A.W.N. 1892, 220.** [*Diss.*, 9 Cr.L.J. 389 = 5 N.L.R. 17, 1 Ind. Cas. 800.]

(3)—*Penal Code, ss.* 147, 325—*Rioting.*—The accused armed with *lathies* went to cut down certain trees, knowing that the other party claimed the right and title in those trees, and knowing also that the other party would resist them. A fight ensued and several people were injured. *Held*, that they were properly convicted under ss. 147 and 325. EMPEROR v. KADHU SINGH, **24 A. 298 = A.W.N. 1902, 58.** [*R.*, 35 C. 368 = 7 C.L.J. 359 = 12 C.W.N. 384 = 7 Cr. L.J. 256 = 3 M.L.T. 385.]

(4)—*Affray—Trial.*—In cases of affray, the members of each faction should be tried separately, that is to say, one trial should be had in which the members of one faction are

Rioting—*continued.*

charged with offences imputed to them, and a second trial in which the members of the other faction are so tried. Then the statements of the members of each faction could, if they desired it, be taken on solemn affirmation, and be made evidence against their opponents. Of course, if they declined to give evidence on the ground that they might state matters implicating themselves, they cannot be compelled to do so. QUEEN v. MAHOMED HOSSAIN, **1 N.W.P. 293.**

(5)—*Rioting armed with deadly weapons—Common object—Grievous hurt—Culpable homicide.*—Where the facts established proved that the accused engaged in a riot armed with deadly weapons and that in the prosecution of the common object of the assembly, one man was killed and several severely wounded, *held*, that the accused were liable to be convicted of all the offences of rioting armed with deadly weapons and culpable homicide and grievous hurt. QUEEN v. HURGOBIND, **3 N.W.P. 174.** [*F.*, 2 A. 139 ; *R.*, 6 N.W.P. 293, 7 A. 29.]

(6)—*Rioting — Common object.*—Where the accused, not less than five in number, were all found to have been assembled together in the fight which took place, and it was also found that they and their opponents came armed with sticks prepared to fight, and did fight, *held*, that the accused were properly convicted of rioting, as their common object was to assault their opponents. The other party consisted of four members and they were not found to have any object in common with the other party. *Held*, that they were not guilty of rioting, but, had the fight taken place in a public place, they would have been guilty of an affray. QUEEN v. MUZHUR HOSSEIN, **5 N.W. P. 208.**

(7)—*Penal Code, s.* 147—*Rioting.*—When a number of persons who were assembled at a certain place ran away on being attacked by the opposite party, *held*, that the former were not guilty of rioting. MAHOMED ISHAQ KHAN v. KING-EMPEROR, **1 A.L.J. 602.** [*D.*, 12 A.L.J. 154=15 Cr. L.J. 231=23 Ind. Cas. 183.]

(8)—*Penal Code, s.* 141—*Rioting —Participation in violence.*—Actual participation in violence is not necessary to convict a person of rioting. Those who encourage, by signs, symbols or shouts, the unlawful object of the assembly, are also rioters. REG v. GANU, **Rat. Un Cr. C. 99.**

(9)—*S.* 147, *Penal Code.*—Where B's servants, in the above case, were again putting up the erection and A's servants, protesting against it, again pulled it down, throwing to the ground one of B's servants, A's servants did not form an unlawful assembly and could not be convicted of rioting under the Penal Code. A's servants were merely exercising the remedy of abating a private nuisance and were exercising a legal right of self-defence—Per *Cunningham, J.* The acts of B's servants in erecting the edifice amounted to mischief and came within the purview of s. 425 of the Penal Code—Also per *Cunningham, J.* EMPRESS v. RAJCOOMAR SINGH, **3 C. 573=1 C.L.R. 352.**

(10)—*Manager of Indigo Factory— Penal Code, s.* 156, *conviction under.*—To convict the manager of an indigo factory under s. 156 of the Penal Code, it must be proved that (1) a riot was committed, (2) it was committed on behalf of, and for the benefit of, the accused, and (3) the accused had reason to believe that a riot was likely to be committed. The law enacted by the section is not intended to be applied upon surmise but upon proof. BRAE v. QUEEN-EMPRESS, **10 C. 338.** [*F.*, 8 O. C. 418=3 Cr. L.J. 27 ; *R.*, 4 C.W.N. 691.]

(11)—*Common object of unlawful assembly.*—In a charge of rioting, it is necessary that the common object of the unlawful assembly should be set out. BEHARI MAHTON v. QUEEN-EMPRESS, **11 C. 106.** [*F.*, 38 P.W.R. 1907, Cr.; *R.*, 33 C. 295=2 C.L.J. 516=3 Cr. L.J. 153; *D.*, 4 C.W.N. 196.]

(12)—*Crim. Pro. Code*, 1882, *s.* 235—*What constitutes rioting.*—Where the accused, members of an unlawful assembly, in resisting the arrest of a judgment-debtor, use force both to the Civil Court peon and to another, who accompanies him, the offence of rioting is complete by the assault on either of them and the assault on the other is a further offence under s. 235 of the Crim. Pro. Code. CHANDRA KANT BHATTACHARJEE v. QUEEN-EMPRESS, **12 C. 495.**

(13)—*Penal Code, ss.* 97, 103, 104, 105, 141 *and* 147—*Unlawful assembly—Private defence of property.*—A party consisting of more than five persons went to a spot on a river bank, the river flowing through the land of the defendants, for the purpose of either repairing or erecting a *bund* across it, in order to cause the water to flow down a channel on to the land of the complainant. They arrived at about 10 A.M. and proceeded to work on the *bund* until the afternoon. At about 4 P.M. a large number of men armed with *lathis* and headed by the accused, servants of the principal defendants, went to the spot and attacked the complainant's men who were wounded with *lathis*. It was found that the defendants had the right to prevent the erection of the *bund*. *Held*, that they were guilty of an offence under s. 147 of the Code. *Held*, also, that no right of private defence was conferred by the Penal Code save as against the perpetrators of offences, and the acts of the complainants amounted merely to a civil trespass, and that, as, in the circumstances of the case, there was opportunity to have recourse to the proper authorities, no question of right of private defence arose. It cannot be laid down, as a general rule, that the Penal Code does not make assemblies, assembled in support of *status quo*, unlawful, and that an assembly to defend a right is lawful. What s. 141 prohibits is the enforcement of right or supposed right by criminal force or show of criminal force by an assembly of five

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or more persons. Rights, the defence of which can only be effected by enforcing them, may come within its provisions. This section refers to rights or supposed rights. This would seem to make a division into, (first) right in actual enjoyment when interfered with, (second) rights claimed, though not in actual enjoyment, when interfered with. And this would again indicate that the section, in some cases, at any rate makes unlawful an assembly which by force, etc., defends the right by restoring the *status quo ante* and with it the actual enjoyment. GANOURI LAL DAS v. QUEEN-EMPRESS, **16 C. 206**. (3 W.R. Cr. 41, 23 W.R. Cr. 25, 19 W.R. Cr 66, *R. and Commented on.*) [*F.*, 26 C. 574, Rat. Un.Cr.C. 465. 1 C.L.J. 104; *R.*, 14 B. 441, 33 C. 295 = 2 C.L J. 516, 35 C. 103 = 7 Cr. L.J. 123, U.B.R. 1897—1901, Vol. I, 259, U.B. R. 1905, 2nd Qr., Penal Code, p. 21, 7 Cr. L.J. 256 = 12 C.W.N. 384, 8 Cr. L.J. 54 = 35 C 443; *D.*, 24 C. 686.]

(14)—*Deposition of accused as witness in a counter-case—Admissibility.*—The deposition of witnesses in a case of rioting may be used as evidence against them in their trial on a counter-charge of rioting. MOHER SHEIKH v. QUEEN-EMPRESS, **21 C. 392.** (3 M. 271, 12 B. 440, *F.*) [*F.*, 31 C. 715 = 8 C.W.N. 910.]

(15)—*Penal Code, ss. 147, 323—Fishery—Causing hurt in assertion of the right.*—Where the accused, with the owner of a two-annas share, went armed with *lathies* to fish in a tank for asserting that right, in which they were opposed by other co-sharers, and a fight ensued resulting in the complainant's party receiving slight injuries, *held*, that the accused were rightly convicted of rioting and voluntarily causing hurt. *Held*, also, that it was extremely difficult in cases of this description to adopt and apply a general proposition of law as applicable to the facts of different cases. ANANT PANDIT v. MADHUSUDAN MANDAL, **26 C. 574.** (16 C. 206, *F.*; 24 C. 686, *R.*) [*R.*, 12 C W.N. 384.]

(16)—*Penal Code, s. 147—Rioting—Common object—Charge, defective—Precautions, if any, may be taken by party in possession—Aggression—Prejudice—Crim. Pro. Code, s. 537—Failure of justice—Right of private defence.*—Per *Rampini, J.*—When a person does something improper and illegal and encroaches stealthily on the land of others some time before the day of occurrence, those other persons have no right to come with a large body of armed men and to attack the person encroaching and his companions and to beat one or more of them and they have no right of private defence. When persons endeavour to take possession of some property by means of criminal force or to enforce a right or supposed right on it, and are prosecuted and know that they are tried for the riot they committed for the purpose of taking forcible possession of the property, they cannot be said to have been prejudiced in any way, and s. 537 of the Code of Criminal Procedure is applicable. Per *Woodroffe* and *Mookerjee, JJ.*—It is essential to sustain a conviction, under s. 147 of the Penal Code, that the persons forming the unlawful assembly should be animated by a common object; and, in the absence of such a finding, the conviction is not sustainable and ought, on that ground alone, to be set aside. Where the findings of a Court negative the common object, which is not very precisely set out in the charge, and the charge is itself defective, and does not specify the property, the taking possession of which is supposed to be the common object of the unlawful assembly, the accused are thereby prejudiced and s. 537 of the Crim. Pro. Code should not be had recourse to, particularly when the specification of the property would alter the whole complexion of the case. If, at the time of the occurrence, the accused were in possession, their common object could not have been to take possession by criminal force, and when the common object, fails and the substantive charge is disbelieved, the accused should be acquitted. It is not proper for an appellate Court, which disbelieves the alleged common object of an unlawful assembly, to find out a different common object regarding which the accused were never called upon to plead nor tried, and affirm the conviction. Per *Mookerjee, J.*—Although the High Court will not, as a rule, in the exercise of its revisional jurisdiction, go into the evidence and examine the validity of the conclusions of the Court below, it may, in exceptional cases, enter into matters of fact if it thinks fit. If persons are rightly in possession of land and find it necessary to protect themselves from aggression, they are justified in taking precautions and using such force as is necessary to prevent the aggression. PARES NATH SIRCAR v. EMPEROR, **2 C.L.J. 516 = 33 C. 295 = 3 Cr. L.J. 153.** (16 C. 206, 11 C. 106, 22 C. 276, 3 C.W. N. 605, 27 C. 990, 28 B. 533, 24 C. 686, *R.*; 22 C. 998, *F.*) [*R.*, 35 C. 103, 12 C.W.N. 384.]

(17)—*Penal Code, s. 147—Rioting—Common object—No express finding—No question as to common object—Prejudice.*—Where the common object of an unlawful assembly is clearly set out in the charge and there is no question in the lower Courts as to the common object so set out, a conviction for rioting with the object set out is good, even though there might be no express finding as to the common object, if the accused has not been in any way prejudiced by the absence of such finding. DASARATHI MAHAPATRA v. RAGHU SAHU, **36 C 158 = 8 C.L.J. 69 = 12 C W.N. 944 = 8 Cr. L.J. 129 = 1 Ind Cas. 794.** (22 C. 276, 33 C. 295, *D.*)

(18)—*Rioting—Private defence.*—Where both parties are armed and prepared for battle, it does not matter which is the first to attack, unless it is shown that either of the parties was acting, within the legal limits of the right of private defence. *In re* KALEE BEPAREE, **1 C.L.R. 521.** [*F.*, 35 C. 368 = 7 C.L.J. 359 = 7 Cr. L J. 256 = 12 C.W.N. 384, 3 M.L.T. 385.]

(19)—*Rioting, offence of, what constitutes.*—In order to convict a person of rioting, it must be found that there was an unlawful assembly,

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that the members constituting it had a common object, and that force was exercised in prosecution of that common object. *In the matter of* RAJCOOMAR SINGH, **2 C.L.R. 62.**

(20)—*Penal Code, s.* 157—*Gist of the offence.*—To support a conviction under s. 157, it must be shown that, for the purpose of an unlawful assembly, the accused had hired or engaged, or employed other persons. The mere fact that the accused's servants come from a district, where men having a well-known character as *lattials* reside, and that they had been in his service for some time before a riot took place, is not sufficient to support a conviction. *In the matter of* RADHA NATH CHOWDHRY, **7 C.L.R. 289.**

(21)—*Penal Code, s.* 147—*Common object.*—A conviction for rioting, in the absence of a finding as to the common object of the assembly charged with rioting, is improper. CHUNDER COOMAR SEIN v. QUEEN-EMPRESS, **3 C. W. N. 605.** *See, also,* TAFAZZUL AHMED CHOWDHRY v. QUEEN-EMPRESS, **26 C. 630.**

(22)—*Penal Code, s.* 154—*Offence under the section, what constitutes.*—In order to establish an offence under s. 154, it is necessary to prove (1) that a riot took place, (2) that the accused is the owner of the land on which the riot took place, (3) that his agent or manager knew that the riot was about to be committed, and (4) that, knowing this, the agent or manager did not use all lawful means to suppress the riot, or disperse the unlawful assembly. In such cases, the Court must always act upon proof and not on mere surmises. TARAKANT DAS v. EMPRESS, **4 C.W.N. 691.** [*R.*, 28 C. 504=5 C. W.N. 771, 8 O.C. 418.]

(23)—*Penal Code. ss.* 141, 146—*Rioting—Unlawful assembly.*—Where a procession was lawfully and orderly proceeding and, owing to the zeal of a police officer, who, in order to avoid the mingling of the procession with another coming behind, was urging the procession to move on, the processionists became enraged and attacked the police officer, *held*, that all those who were promoting and committing the act of violence would be guilty of rioting. RAGHO SINGH v. KING-EMPEROR, **6 C.W.N. 507.** [*R.*, 35 C. 443=8 Cr. L.J. 54.]

(24)—*Rioting—Opposing parties—Joint trial.*—Persons composing both parties to a riot with deadly weapons cannot be jointly tried for rioting. Each party should be tried separately. EMPRESS v. PULANDHAR, **A.W.N. 1882, 160.**

(25)—*Cross-cases of rioting—Simultaneous trial, validity of—Crim. Pro. Code*, 1898, *ss.* 233, 334 *and* 537.—Where a Magistrate tried two counter-rioting cases separately, but almost simultaneously, that is to say, on certain days the witnesses in both the cases were examined, while, on other days, witnesses in one or the other case were examined, and, in some instances, some of the accused in the one case were examined as witnesses for the prosecution, but the charges were framed on different days, and after hearing the arguments on both the sides on the same day, separate judgments in both the cases were delivered on the same day, *held*, that this mode of trial and the procedure adopted by the Magistrate did not vitiate the trial, and the accused was not prejudiced thereby. SAHADEV AHIR v. EMPEROR, **8 C.W.N. 344=1 Cr. L.J. 199.** (25 M. 61, 13 C.L.R. 275, *D.*; 20 C. 537, *R.*)

(26)—*Counter-charges of rioting—Competency of Judge to try the counter-case.*—A Judge is not incompetent to try a charge of rioting, merely because of the strong opinion expressed in a counter-rioting case. In dealing with the case pending before him, he should not, as far as possible, allow his mind to be influenced by the impression formed by him upon the matters, which were raised in issue between the parties in the other case. He should deal with the merits of the case upon the evidence, which may be adduced in it, quite independently of the evidence produced before him in the counter-case. ASIMADDI v. GOVINDA BAIDYA, **1 C.W.N. 426.** [*F.*, 36 C. 904=10 Cr.L.J. 244=3 Ind. Cas. 88, 8 Cr. L.J. 159=9 Cr. L.J. 275=1 S.L.R. 37, Cr.; *R.*, 33 A. 583=12 Cr. L.J. 564=12 Ind. Cas. 652.]

(27)—*Joint trial of opposite faction.*—In a case where two opposite parties are charged with rioting, each party should be tried separately. EMPRESS v. SAIFULLA, **15 P.R. 1882, Cr.** (22 P.R. 1881, Cr., 26 P.R. 1881, Cr., *R.*) [*R.*, 15 P.R. 1906, Cr.]

(28)—*Counter charges of rioting—Separate trial.*—In cases of counter-charges of rioting, separate trials of each faction is the proper procedure. NAWAB v. EMPRESS, **26 P.R. 1881, Cr.** *See, also,* EMPRESS v. HAIBAT, **22 P.R. 1881, Cr.** [*F.*, 15 P.R. 1882.]

(29)—*Common object necessary—Fighting between two opposite factions—Two common objects—Separate trials—Crim. Pro. Code* (1898), *s.* 233.—To constitute the offence of rioting, a common object is required. Two opposing bands cannot be said to have the same common object, but must have different ones and hence separate trials are necessary under the provisions of s. 233, Crim. Pro. Code, 1898, as distinct offences are committed. QUEEN-EMPRESS v. NGA AUNG NYUN, **1 L.B.R. 56.**

(30)—*Penal Code, s.* 147—*Rioting—Hurt—Right of proprietor of Hat to prohibit sale of particular articles by persons not permanent stall-keepers.*—The proprietors of a market have the right to direct that any particular kinds of things should not be sold there by a person who is not a permanent shop-keeper. RAJ KUMAR CHUCKERBUTTY v. EMPEROR, **11 C.W.N. 28=4 Cr. L.J. 406.** [*F.*, 11 C.W.N. 1128=6 Cr. L.J. 321.]

(31)—*Rioting by persons entitled to possession.*—Where the lessees of a widow, to whom certain property belonged, made a forcible entry on such land and committed assault on the persons in possession of the land, although

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they were mere trespassers, *held*, that they were properly convicted of rioting. APPAVU NAYAK v. QUEEN, **6 M. 245=1 Weir 68=7 Ind. Jur. 135.** [*R.*, 15 Cr. L.J. 225=23 Ind. Cas. 177=1914 M.W N. 124.]

(32)—*Penal Code, s.* 146—*Unlawful distraint of cattle — Rioting in self-defence.*—The complainant, a landlord, tendered to his tenant a patta which contained provisions which were illegal and was not such a patta as the tenant would have been bound to accept. The complainant distrained the tenant's cattle for arrears of rent, whereupon he, with the assistance of 11 others, forcibly removed the distrained property. It was found that the cattle had been actually seized and driven some 20 yards, before the tenant and his men forcibly obstructed its removal. The distraint itself was carried out under s. 19 of the Rent Recovery Act, the assistance of the police having been procured for that purpose. *Held*, that, under the circumstances of the case, the use of force to rescue the cattle was unlawful, and that there was no right of private defence of property, as the cattle were already attached. QUEEN-EMPRESS v. RAMAYYA, **13 M. 148=1 Weir 67.** [*F.*, 21 M. 296=1 Weir 135; *R.*, 21 M. 78=1 Weir 123; *D.*, 1 Weir 126.]

(33)—*Penal Code, ss.* 141, 143 *and* 341—Bona fide *belief of accused that land about to be ploughed by complainant belonged to some among them—Right of accused—Effect when show of force is exhibited by the accused.*—On the *bona fide* belief that land, which complainant was about to plough, was the property of some among them, the accused prevented the ploughing without the use of violence, but threatened to use force if the complainant's attempts were persisted in. The accused would have a right to prevent the wrongful entry of the complainant on their land; but if it were shown that they had collected a number of persons together to support their right by show of force, they might bring themselves within s. 141, I.P.C. PUNNI BASAVA v. AMARA GOUNDEN, **5 M.L.T. 85=2 Ind. Cas. 613=10 Cr L.J. 116.**

(34)—*Penal Code, s.* 141—*Rioting—Unlawful assembly—Common object — Necessity for five persons being concerned.*—Where, out of 15 persons complained against, only five persons were found guilty and convicted of the offence of rioting under s. 141, I.P.C., and it appeared that only three out of the five convicted persons might have had a common object. *Held*, that the conviction could not be upheld, because it was necessary to find that all of the five persons who were convicted had one of the common objects mentioned in s. 141, I.P.C., before they could be found guilty of the offence of rioting. Before there can be an unlawful assembly and rioting, there must be five persons who have a common object. *In re* VYAPURI CHETTI, **5 M.L.T. 283=4 Ind. Cas. 1142=11 Cr. L.J. 197.**

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(35)—*Penal Code, ss.* 99, 141 *and* 147—*Obstruction to a distraint by a landholder, when rent not being in arrears.*—The law confers (certain conditions being first complied with), on landholders and their authorized agents, power to distrain the moveable property of their tenants for the recovery of arrears of rent due by them. In all such cases, the landholder acts upon his own responsibility, and if, in the alleged exercise of this power, he attempts to seize the goods of his tenants, when no rent is in arrear, obstruction to the seizure is not an offence. HIGH COURT PROCEEDINGS, 19TH NOVEMBER, 1875, **1 Weir 44=1 Weir 56=8 M.H C. App. 11.** [*D.*, 1 Weir 67=13 M. 148.]

(36)—*Penal Code, ss.* 141 *and* 147—*Charge of rioting—Illegality of the act of the opponent, whether a defence.*—Where certain persons were charged with rioting for the purpose of enforcing a supposed right by show of criminal force, *held*, that they could not plead the illegality of the act of their opponents, unless such acts bring them within the category of those in which self-defence would be permitted by the Penal Code. HIGH COURT PROCEEDINGS, 8TH JANUARY 1873, NO. 59. **1 Weir 58=7 M.H.C. App. 35.** [*Appr.*, 6 Cr. L J. 123=35 C. 103; *R.*, 1 Weir 59=14 M. 126.]

(37)—*Penal Code, ss.* 146, 147 *and* 160—*Rioting, what constitutes—Absence of common object—Affray.*—To constitute the offence of rioting, it is necessary to show first, that the accused persons, being five or more in number, formed an unlawful assembly; second, that they were animated by a common unlawful object; and third, that force or violence was used by the unlawful assembly or any member of it in prosecution of the common object. Where three of the accused persons wished to enter a temple without previous payment of a fee, demanded by the other four accused, who were stationed at the entrance of the temple and were acting under the orders of the *Pujari* and a quarrel arose, *held*, that the accused were guilty of affray and not of rioting as there was no object common to the two sets of the accused persons. HIGH COURT PROCEEDINGS, 5TH AUGUST 1879, NO. 1140, **1 Weir 68=1 Weir 71.**

(38)—*Penal Code, s.* 148—*Rioting being armed with deadly weapons.*—Rioting armed with stout male bamboos is rioting armed with deadly weapons. *In re* KRISHNA CHETTY, **1 Weir 70.**

(39)—*Penal Code, s.* 154—*Riot — Unlawful assembly—Crim. Pro. Code, ss* 190 *and* 556.—*Held*, that, in order to convict an accused person of an offence under s. 154, Penal Code, the following facts must be established:—(1) That an unlawful assembly or riot has taken place on the land owned or occupied by the accused or in which he claims an interest; (2) that, he, knowing that such an offence is being or has been committed, or having reason to believe that it is likely to be committed, does not give the earliest notice thereof to the principal officer

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in the nearest Police Station; (3) in the case of his having reason to believe that it was about to be committed, he does not use all lawful means in his power to prevent it; and (4) in the event of its taking place, he does not use all lawful means in his power to disperse or suppress the riot or unlawful assembly. In this case, it was urged that the Magistrate ought to have made a note on the record to the effect that the accused might claim a trial before another Magistrate, the trying Magistrate being interested in it within the meaning of s. 556, Crim. Pro. Code. There was nothing on record to shew that the accused was not so informed. *Held*, the omission to make the note did not vitiate the trial, though it is very desirable, in such cases, the Magistrates do make a note to the effect that the accused may claim trial before another Magistrate. RAJAH BAGWAN BAKHSH v. KING-EMPEROR, **8 O.C. 418, B. = 3 Cr. L.J. 27.**

(40)—*Penal Code, ss.* 148, 149, 304—*Rioting attended with culpable homicide.*—The accused were committed for trial before the Court of Session charged under ss. 148 and 304, I.P.C. The Sessions Judge found on the evidence that a fight took place between the two parties; that the prisoners were the aggressors; that they used *lathis*; that the deceased received blows at the hands of one or more of the accused; that his spleen which was not diseased, was thus ruptured, and his death was caused; and that each of the five accused, having at the time been a member of an unlawful assembly, was responsible for the death of the deceased. On these findings, the Sessions Judge convicted them under s. 304, I.P.C., and sentenced them to three months' rigorous imprisonment. *Held*, that the prisoners should have been convicted both under ss. 148 and $\frac{149}{304}$ and that the sentences passed were inadequate. EMPRESS v. GATTU. **A.W.N. 1883, 32.**

(41)—*Penal Code, ss.* 147, 323—*Rioting—Joint trial of two opposite factions.*—Where two opposite factions were charged with rioting, *held*, that it was most irregular to try all the accused persons at one and the same time, as they could not be said to have a common object, but, on the contrary, the object each party had in view was diametrically opposite to that of the other. It was equally wrong in the Magistrate to dispose of the counter-charges under s. 323, in one proceeding—a mode of procedure which had the effect of preventing the party injured from giving evidence of the infliction of the injuries upon himself. But the High Court refrained from ordering a new trial, the Court not being in a position to say that the accused persons were prejudiced by the course adopted. EMPRESS v. BANDHO SINGH, **A.W.N. 1881, 28.**

(42)—*Penal Code, s.* 147—*Rioting—Joint trial.*—When two factions or parties are charged with riot, the proper course to pursue is to give each party or faction a separate trial, so as to enable its several members to be examined as witnesses in which they are, so to speak, the complainants and prosecutors, and the necessity for this is necessarily greater where a right of private defence of person or property is asserted. EMPRESS v. BAHADUR KHAN, **A.W.N. 1881, 28.**

(43)—*Forcibly taking possession of wife by husband.*—The offence of kidnapping is not committed by a husband or those who helped him for carrying away his own wife. If, however, they take possession of her by force and violence and in the darkness of night, they are guilty of rioting. QUEEN v. ASKUR, **W.R. 1864, Cr. 12.**

(44)—*Rights of true owners against person in wrongful possession—Affray, evidence as to nature of.*—When a party is in possession of land for four or five days, though it may be in wrongful possession, another party, although claiming to be the rightful owner, is not entitled to go in force to turn him out, much less is he entitled to take armed men with him for that purpose. In an affray, specific evidence as to the acts of each fighter cannot be expected, but only general evidence as to the accused taking part in it, and persons who, as in this case, punted the boats on which the fight took place, and in whose interest the fight on the boats took place, were held to be just as blameworthy as the men who struck the blows. MOHER SHEIKH v. QUEEN-EMPRESS, **21 C. 392.** [*F.*, 32 C. 756 = 9 C.W.N. 911 = 2 C.L.J 105; *R.*, 31 C. 715 = 8 C.W.N. 910.]

(45)—*Forcibly getting possession of cattle seized for trespass—Penal Code, s.* 147—*Act V of* 1857, *s.* 11.—Where the prisoners, who were part of an assembly of more than five persons with the common object of recovering possession by means of criminal force of their cattle seized for trespass, whether legally or not, made use of such force and took away their cattle, they were held guilty of rioting and liable to conviction under s. 147, Penal Code, and not under s. 11. Act V of 1857. QUEEN v. BOKOO SHEIKH, **W.R. 1864, Cr. 21.**

(46)—*Penal Code, s.* 155—*Zamindar's liability.*—Where it appeared improbable that a Zamindar could have anticipated a riot or thought it likely to happen, *held*, that he ought not to be rendered liable under s. 155, Penal Code. QUEEN v. HURNATH ROY, **3 W.R. Cr. 54.** [*Expl.*, 5 C.W.N. 771; *R.*, 28 C. 504.]

(47)—*Sudden quarrel—Assembly for lawful purpose.*—No riot, in the legal sense of the word, is committed by persons who are assembled for any lawful purpose and suddenly quarrel with an intruder without any previous intention or design. KHAJAH NOORUL HOSSEIN *alias* KHAJAH WAHEED JAN v. C. FABREE TONNERREE, **24 W.R. Cr. 26.**

(48)—*Requisites for offence— Penal Code, ss.* 447, 453—*Common object.*—For a conviction of rioting, etc., under ss. 447 and 453 of the Penal Code, it must be proved clearly that the accused have taken such a share in the transaction as will bring them within the criminal

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charge; there must be evidence that they had a common object, which they were intending to carry out by unlawful means. QUEEN v. GHOLAM MAHOMED, **22 W.R. Cr. 17.**

(49)—*Use of force by an unlawful assembly.*—The use of force by an unlawful assembly, however slight the force may be, constitutes rioting. KOURA KHAN v. CROWN, **34 P.R. 1868, Cr.**

(50)—*Show of criminal force, liable to provoke the opposite party—Penal Code, ss.* 141 *and* 146.—Where the accused, who had occasion to enter a village on lawful business and who had reason to believe that resistance would be offered to him, went to the village with armed men and assaulted and wounded several of the opposite party which was numerous and came out to watch his movements, on the belief that an immediate attack was intended by the latter party, *held* that the accused and his party constituted an unlawful assembly, as their act amounted to a show of criminal force, and they were guilty of rioting. ALLADAD v. CROWN, **1 P.R. 1870, Cr.**

(51)—*Resisting by force of taking away of property—Murder by one of the members.*—Where, in resisting by force, the unlawful taking of their property, one of the accused's party killed the member of the opposite party, but who committed the act was not proved, *held*, by *Boulnois* and *Campbell, JJ.* (*Lindsay, J., dissenting*) that the common object was not unlawful, and that each member of it could not be held responsible for the act of one, excusing the right of private defence of property, and, therefore, a conviction under s. 147, I.P.C., was unsustainable. HABIB v. CROWN, **5 P.R. 1877, Cr.**

(52)—*Rioting and unlawful assembly.*—The law regarding the offence of rioting and unlawful assemblies is discussed. RASUL v. EMPRESS, **4 P.R. 1889, Cr.**

See ACT V OF 1861, s. 34, U.B.R. 1892—1896, Vol I, 296.

See BEN. ACT V OF 1909, s 67, 15 Cr. L J. 251=23 Ind. Cas. 203=41 C. 836=18 C.W.N. 918.

See AUTREFOIS ACQUIT, PLEA OF, 6 W.R. Cr. 51.

See CHARGE—FORM OF CHARGE, 21 C. 827, 27 C. 990=5 C.W.N. 31, 9 W R. Cr. 33.

See COMPOUNDING OFFENCE, 11 P.R. 1907, Cr.=34 P.W.R. 1907, Cr.=47 P.L.R. 1908.

See CRIM. PRO. CODE, 1898, s. 144, 18 B. 758.

See CRIM. PRO. CODE, 1898, ss. 145, 522, 2 Weir 674=2 Weir 100.

See CRIM. PRO. CODE, 1898, ss. 239, 537, 20 C. 537.

Unanimous verdict, due to misdirection, of acquittal on charge of—agreed to by Judge—Verdict of guilty of grievous hurt not charged—

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High Court, power of, on reference, to reconsider charge of rioting—*See* CRIM. PRO. CODE, 1898, s. 307, 18 C.W.N. 668=15 Cr.L.J. 155=22 Ind. Cas. 731=41 C. 662.

Riot case—Duty of police to ascertain guilty party—Duty of Court—*See* CRIM. PRO. CODE, 1898, ss. 417, 423 (*a*), 13 Cr. L.J. 737 =43 P.W.R. 1912, Cr.=17 Ind. Cas. 49.

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Cross cases of—before same Court opinion expressed by Court in one case rather unfavourable to the accused in the cross case—Whether ground of transfer—*See* CRIM. PRO. CODE, 1898, s. 526, 33 A. 583.

Power of High Court—Joint charge—Parties in—on opposite sides—*See* CRIMINAL PROCEEDINGS, B.L.R. Sup. Vol. 750=8 W R. Cr. 47.

See CRIMINAL PROCEEDINGS, 14 C. 358.

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Separate sentences for, and wrongful confinement, validity of—*See* PENAL CODE, ss. 71, 147, 342, 8 C.W.N. 483.

See PENAL CODE, ss. 104, 105, 147, 325, 14 Cr. L.J. 380=20 Ind. Cas. 140=41 C. 43.

See PENAL CODE, ss 121, 147, 14 Cr. L.J. 514=20 Ind. Cas. 994=6 Bur. L.T. 146.

Offence of—Description by specific name, whether legal—*See* PENAL CODE, ss. 143, 147, 149, 13 Cr. L.J. 218=14 Ind. Cas. 314=39 C. 781.

See PENAL CODE, ss. 149, 302, 8 M.L.T. 326=8 Ind. Cas 399=1910 M.W.N. 522.

See PENAL CODE, ss. 153, 296, 26 M. 554=1 Weir 260=13 M.L.J. 171.

See PENAL CODE, ss. 154, 155, 7 C.W.N. 245.

See POLICE OFFICER, 8 W.R. Cr. 36.

See PRIVATE DEFENCE, RIGHT OF, 10 P. W.R. 1907, Cr.=5 Cr. L.J. 218, 20 A. 459=A. W.N. 1898, 117, 24 A. 143=A.W.N. 1901, 193, 35 C. 443=8 Cr. L.J. 54, 35 C. 103=7 Cr. L.J. 123, 3 W.R. Cr. 41.

See RELIGION, OFFENCES RELATING TO, 13 A. 419, F.B.

Rioting—*concluded.*

Witness in a riot case required to furnish security on his own evidence—*See* SECURITY TO KEEP THE PEACE—EVIDENCE AND PROCEDURE, 5 M. 380=2 Weir 49.

Omission to prevent—*See* SECURITY TO KEEP THE PEACE—EVIDENCE AND PROCEDURE, 19 W.R. Cr. 32.

See SENTENCE—GENERAL, 8 W.R. Cr. 3, 12 W.R. Cr 72.

See SENTENCE—CUMULATIVE AND SEPARATE SENTENCES, 9 A. 645=A.W.N. 1887, 149, 7 A. 757, F.B., 7 A. 29, 17 B. 260, F.B., 11 C. 349, 7 W.R. Cr. 60, 9 W.R. Cr. 5, 16 C. 442, F.B., 3 C.W.N. 761, 16 C. 725, 7 A. 414=A.W.N. 1885, 105, 19 C. 105, 6 A. 121, 1 W R. Cr. 7, 31 P.R. 1894, Cr., 8 P.R. 1895, Cr.

See SUMMARY TRIAL, 23 W.R. Cr. 19.

Conviction of one of the accused charged with —Refusal of the Magistrate to summon the other accused—Powers of the District Magistrate—*See* TRANSFER OF CRIMINAL CASES—GROUNDS FOR TRANSFER, 5 C.W.N. 488.

River.

See ACT XVII OF 1878, ss. 4, 26, 8 Ind. Cas. 221=11 Cr. L.J. 595.

If a watering place—*See* BOM. ACT VII OF 1867, s. 31 (2), Rat. Un. Cr. C. 55=Cr. Rg. 31-8-1871.

See BOM. ACT VIII OF 1867, s. 16 (2), Rat. Un. Cr. C. 609=Cr. Rg. 27 of 1892.

Land left by drying up of—*See* DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 17 W.R. Cr. 53.

See NUISANCE UNDER PENAL CODE, 20 C. 665.

See PENAL CODE, s. 277, 2 C. 383, Rat. Un. Cr. C. 14, 1 Weir 230.

River Embankment.

Endangering safety of—Intention—*See* MISCHIEF, 25 W.R. Cr. 69.

Rivulet.

See PENAL CODE, s. 277, Rat. Un. Cr. C. 215=Cr. Rg. 1-10-1885, Rat. Un. Cr. C. 14=Cr. Rg. 2-7-1869.

Road.

See PUBLIC ROAD.

District Board Roads—Right to the soil in whom vests—*See* BEN. ACT III OF 1885, s. 139, 15 Cr. L.J. 187=22 Ind. Cas. 763=18 C.W.N. 1120.

Rule of the—not invariable or inflexible—*See* BOM. ACT II OF 1904, s 2, 13 Bom. L.R. 126=9 Ind. Cas. 945=12 Cr. L.J. 167.

Mischief by injury to public—*See* MISCHIEF, U.B.R. 1892—1896, Vol. I, 260.

Encroachment on unmetalled portion of Government—*See* NUISANCE UNDER CRIM. PRO. CODE, A.W.N. 1901, 25.

Road Police and Village Act.

See U.P. ACT XVI OF 1873.

Roadside.

Encroachment—Erection of a fence on the—land—Passage along the road not impeded—Offence—*See* BEN. ACT III OF 1885, s. 140, 37 C. 671=7 Ind. Cas. 931=11 Cr. L.J. 540.

Robbery.

See DACOITY.

See PENAL CODE, ss. 390 to 398.

See THEFT.

(1) *Dishonest intention.*—Dishonest intention is the main ingredient in the offence of robbery. HIGH COURT PROCEEDINGS, 28TH OCTOBER 1870, **5 M H.C. App 39.**

(2)—*Penal Code, s. 390—Robbery, what constitutes.*—The mere use of violence will not convert the offence of theft into robbery, unless the violence be committed for one of the ends specified in s. 390 of the Penal Code, *viz.*, "in order to the committing of theft or in committing the theft or in carrying away or attempting to carry away property obtained by theft." HIGH COURT PROCEEDINGS, 2ND MARCH 1865, **1 Weir 442.** [*R.*, 5 Cr. L.J. 201=17 M.L.J. 118.]

(3)—*Penal Code, ss. 71, 342 and 392—Robbery by causing wrongful confinement—Separate convictions for wrongful confinement and robberry, validity of.*—The accused got into the garden of the complainant, and being surprised by the farm servant, who was on watch, not only threatened to kill him, but also proceeded to tie him hand and foot. They then made off with the complainant's property leaving the farm servant tied up. *Held*, that the accused could not be convicted both for robbery and wrongful confinement, as it was the wrongful confinement which converted the theft into robbery. *In re* MATTAPARTI PANDA SUBBADU, **1 Weir 445.**

(4)—*Threat of wrongful restraint.*—The accused, a police sergeant, obtained Rs. 7 on promise of releasing two persons arrested on a charge of receiving stolen property. Later on, he demanded Rs. 200 from the same persons threatening that he would keep them in the lock-up while a charge of bribery against them was being investigated, whereupon the accused was allowed to take a jewel from a box belonging to one of the accused. *Held* that he was guilty of robbery. BASANT RAI v. EMPRESS, **12 P.R. 1896, Cr.**

(5)—*Penal Code, s. 390—Arms Act XI of 1878, s. 19—Robbery with sword—No license.*—A person who commits robbery being armed with a sword for which he had no license, can be convicted of robbery and of carrying arms without a license and sentenced separately. QUEEN-EMPRESS v. NAND LAL, **A.W.N. 1896, 181.**

(6)—*Theft with grievous hurt.*—Grievous hurt, when inflicted during theft, makes it robbery, and all concerned in the offence are rendered liable to punishment. QUEEN v. HUSHRUT SHEIKH, **6 W.R. Cr. 85.**

Robbery—*concluded.*

(7)—*Theft and causing hurt with intention.*—Theft becomes robbery, when, in the course of committing it, there is an intention and an attempt to cause hurt. QUEEN v. TEEKAI BHEER, **5 W.R. Cr. 95.**

(8)—*Robbery and theft.*—In a case of the theft from a child, the conviction was altered by the Chief Court from one for robbery to one for theft. NAZU v. EMPRESS, **18 P.R. 1890, Cr.**

Burden of proof—Rape on a child—Complaint of—Report of chemical examiner—Confession—*See* CONFESSION — GENERAL, 93 P.L.R. 1910=8 Ind. Cas. 494=11 Cr. L J. 665.

Evidence on charge of robbery, admissibility of, in the charge of murder—*See* EVIDENCE—GENERAL, 13 M. 426=1 Weir 290.

Attended with death — *See* GRIEVOUS HURT 6 W.R. Cr. 16.

Commission of grievous hurt in course of—*See* GRIEVOUS HURT, 16 P.R. 1901, Cr.

See GRIEVOUS HURT, Rat. Un. Cr. C. 65=Cr. Rg. 27-6-1872.

Theft—Causing hurt to effect escape—*See* HURT, 4 L.B.R 147=7 Cr. L J. 446.

On same night in several different places—*See* JOINDER OF CHARGES—GENERAL, 6 W R. Cr. 83.

See PENAL CODE, ss. 85, 86, 6 L.B.R 100=5 Bur. L.T. 100=17 Ind. Cas 800=13 Cr L.J. 864, F B.

Murder combined with robbery—Recent and unexplained possession of stolen property is presumptive evidence against the prisoner on the charge of murder as well as that of robbery—*See* PENAL CODE, s. 302, 1911, 2 M.W N. 478=21 M.L J. 1071=12 Cr. L.J. 564.

See PENAL CODE, s. 356, Rat. Un. Cr. C. 3.

See PENAL CODE, ss. 379 and 390, 6 C.P. L.R. 36, Cr.

See VERDICT OF JURY, 1 W.R. Cr. Letters, 13.

See WHIPPING, 1 L.B.R. 55.

Rocket.

Manufacture or possession of firework—*See* ACT XI OF 1878, ss. 4, 5, 9, 5 M. 159=1 Weir 655.

Roof.

Bye-law of municipality—Roofs with inflammable material—*See* BEN. ACT III OF 1861, s. 63, 24 W.R. Cr. 70.

Rough Copy.

Secreting a document—Panchnama—Destroyed owing to obliterations—New copy made and duly signed—Destruction of rough copy is no offence—*See* PENAL CODE, s. 204, 14 Bom. L.R 1163=1 Bom. Cr. C. 234=13 Cr. L.J. 912=17 Ind. Cas. 1008.

Royal Proclamation.

S. 5 (7)—Proclamation prohibiting trading with enemy—Elements necessary to constitute

Royal Proclamation—*concluded.*

offence under the construction of penal proclamations—*See* ORDINANCE VI OF 1914, s. 3, 19 C.W.N. 1239.

Royalty.

Burning firewood without paying first—*See* BURMA FOREST ACT, 1902, s. 63, 1 U.B.R. 1902—1903, Forest, 1.

Burning firewood without paying first—*See* BUR. REG. V OF 1898, s. 67, 1 U.B.R. 1902—1903, Forest, 1.

Ruby Regulation, Upper Burma.

See BUR. REG. XII OF 1887.

Rules.

See CANTONMENT RULES.

See HIGH COURT RULES.

(1)—*Power to make rules.*—The power to make rules does not authorize the making of a rule which goes beyond the power given by the Act. QUEEN-EMPRESS v. JANUDIN *valad* MAHOMED. **14 B. 170.**

(2)—*Penal Code, s 166—Direction of law—Rules made under sections of statutes conferring the power.*—No express enactment in those sections of the statute, which confer the power to make rules, that rules, when made, should have the force of law, is necessary in order to give the rules, when properly made and within the power expressed by the Legislature, the force of law. Such rules amount to a direction of law within the meaning of s. 166, Penal Code. RAMACHANDRA REDDI v. MUNISAMI PILLAI, **1 Weir 73.**

Rules and Orders of Chief Court, Punjab.

See PENAL CODE, s. 180, 8 P.R. 1912, Cr. =37 P.W.R. 1912, Cr.=245 P L.R. 1912=16 Ind. Cas. 521=13 Cr. L.J. 713.

Rules, Construction of.

See ACT I OF 1879, s. 46, 7 M. 176, F.B.

See ACT IX OF 1890, s. 101, sub-ss (*a*), (*b*), (*c*), 14 Cr. L.J. 676=21 Ind. Cas. 996.

See BOM. ACT III OF 1867, s. 10, Rat. Un. Cr. C. 476=Cr. Rg. 35 of 1889.

Rules framed under Act XI of 1846.

See APPEAL—ACTS, 15 B 505

Rules made under Bom. Act V of 1879.

See BOM ACT V OF 1879, ss. 125, 214, 215, 13 B 291.

Rules of High Court, Bombay.

R. 794—*See* HABEAS CORPUS, WRIT OF, 12 Bom. L.R. 891=8 Ind. Cas. 619.

Rules of High Court, Calcutta.

(1)—*Rule of 4th April, 1866*—"*Proceeding in a civil cause.*"—The proceeding by way of mandamus is "a proceeding in a civil case," within the meaning of the Rule of 4th April, 1866. JUSTICES OF THE PEACE FOR CALCUTTA v. ORIENTAL GAS COMPANY. **8 B.L.R. 433=17 W.R. 364.** [*Appr.*, 21 C. 473, 26 C. 361, 18 C. 182.]

Rule to show Cause.

See SECURITY TO KEEP THE PEACE—SUMMONS TO SHOW CAUSE, ETC.

See APPEAL — APPEAL — PRACTICE AND PROCEDURE, 23 C. 347.

See CHARGE—FORM OF CHARGE, 21 C. 827.

Consideration of new ground at hearing of rule—*See* CRIM. PRO. CODE, 1898, ss. 202, 522, 18 C.W.N. 399=15 Cr. L.J. 302=23 Ind. Cas. 510.

See PRACTICE AND PROCEDURE, 25 C. 625 =2 C.W.N. 289.

See SECURITY TO KEEP THE PEACE—GENERAL—POSITION OF PARTIES, ETC., 25 C. 798.

Rumours.

See EVIDENCE—HEARSAY EVIDENCE, 1 L.B.R. 71.

Running Amuck.

See MURDER, 8 W.R. Cr. 53.

Rupees.

See MURSHIDABAD RUPEES.

Rural Police and District Cesses Act.

See BUR. ACT II OF 1880.

Rural Policeman.

See VILLAGE HEADMAN, L.B.R. 1893—1900, 397.

Sacrifice.

Sacrifice of son by father—*See* QUEEN v. BISHENDHAREE KAHAR, **7 W.R. Cr. 64**

Sadar Amin's Court.

Offence committed on the Small Cause side of —*See* SANCTION TO PROSECUTE—AUTHORITIES COMPETENT TO GRANT SANCTION, ETC., 6 M.H.C. 191.

Sadr Amins, and Principal Sadr Amins, Munsifs.

See BEN. REG. V OF 1831.

Sagai Marriage.

See ADULTERY, 3 C.L.R. 410.

See BIGAMY, 19 C. 627.

Sagai Wife.

Sagai wives, whether legal wives — *See* ADULTERY, 3 C.L.R. 410.

Salary.

(1)—*Of an appointment not to be drawn by a person not conducting the duties thereof.*—A Judge should not allow the salary of a particular appointment on his establishment to be drawn by an officer, who does not hold or conduct the duties of that appointment. Such a practice is altogether irregular and directly opposed to the orders of the Government. CRIMINAL CIRCULAR NO. 7, 28TH JULY 1865, **3 W.R. Cr. Cir. 4.**

Sale.

Stamp given on promise that another of equal value would be returned—Transaction, whether amounts to sale—*See* ACT VII OF 1870, s. 34, 30 C. 921=7 C.W.N. 704.

By agent of license-holder, legality of—*See* ACT XI OF 1878, s. 19 (*a*), 12 M. 473=1 Weir 655.

Sale-Deed.

With false statement of consideration—*See* PENAL CODE, s. 423, 10 P.R. 1902, Cr.=75 P.L.R. 1902.

Sale of Poisons Act.

See BOM. ACT VIII OF 1866.

Salt.

See ACT XII OF 1882.

See BEN. ACT VII OF 1864.

See BOM. ACT XXVII OF 1837.

See BOM. ACT VII OF 1873.

See BOM. ACT II OF 1890.

See MAD. ACT IV OF 1889.

See BEN. REG. X OF 1819.

See MAD. REG. I OF 1805.

(1)—*Possession of more than one seer of unlawfully manufactured salt.*—Being in possession of more than one seer of unlawfully manufactured salt is punishable under No. 32 of the Rules issued by the Board of Administration, Punjab, 29th May 1851. CROWN v. VELAYT, **9 P.R. 1872, Cr.**

Removal of salt from a swamp—*See* THEFT — THINGS IN RESPECT OF WHICH THE OFFENCE OF THEFT CANNOT BE COMMITTED, 1 Weir 412.

Removal of legally appropriated— formed naturally in a creak—*See* THEFT—THINGS WHICH MAY BE THE SUBJECT OF THEFT, 10 B.H.C. 74.

Spontaneous salt formed in swamp placed under guard—*See* THEFT—THINGS WHICH MAY BE THE SUBJECT OF THEFT, 4 M. 228= 1 Weir 412.

Salt Amending Bom. Act II of 1890.

See BOM. ACT I OF 1901.

Salt (Contraband) Act.

See ACT XXXVI OF 1855.

Salt Excise Act.

See MAD. ACT VI OF 1871.

Salt Earth.

Possession of—*See* MAD. ACT I OF 1882, ss. 2 and 26, 7 M. 163.

Salt Laws.

See MAGISTRATE, JURISDICTION OF—MISCELLANEOUS CASES, 14 W.R. Cr. 36.

Salt Laws Act

See MAD. ACT XVII OF 1840.

Salt Laws Amendment Act.

See MAD. ACT I OF 1882.

Salt Officer.

Officer of Salt Department whether police officer—*See* BOM. ACT VII OF 1873, Rat. Un. Cr. C. 183 = Cr. Rg. 20-7-1882.

Saltpetre.

See ACT XXXI OF 1860, s. 32 (2), 25 P.R. 1869, Cr.

Salt Revenue Act.

See BOM. ACT XXXI OF 1850.

Salt Water.

Possession of—*See* MAD. ACT I OF 1882, S. 74 (*d*), 1 Weir 896.

Sambandham.

Marmukkatayam Law—Liability of father to pay maintenance to children born of such marriage—*See* MAINTENANCE, 22 M. 247 (foot-note) = 2 Weir 624.

Same Transaction.

See CRIM. PRO. CODE, 1898, s. 239.

See JOINDER OF CHARGES.

(1)—*Fight between two parties.*—A fight between two parties cannot properly be described as being the same transaction. QUEEN-EMPRESS v. NGA AUNG NYUN, **1 L.B.R. 56.**

See ACCUSED PERSON, 2 L.B.R. 106.

See ACT I OF 1859, s. 83 (5) (7), 3 Bom. L. R. 539.

See JOINT TRIAL, 6 Bom. L.R. 361, 9 Cr. L.J. 367, 7 M.L.T. 367 = 6 Ind. Cas. 242 = 11 Cr. L J. 293, 1 S.L.R. 73 = 8 Cr. L.J. 191.

See PENAL CODE, ss. 34, 141, 142, 147, 149, 11 Cr. L.J. 30 = 4 Ind. Cas. 700 = 6 M.L.T. 17.

See PENAL CODE, ss. 380, 461, A.W.N 1896, 194

See SANCTION TO PROSECUTE—NATURE AND FORM OF SANCTION, 13 C.W.N. 1062.

See SENTENCE—CUMULATIVE AND SEPARATE SENTENCES, Rat. Un. Cr. C. 493 = Cr. Rg. 63 of 1889.

See THEFT—MISCELLANEOUS, 5 C.L.R. 574.

See UNLAWFUL ASSEMBLY, 6 M.L.T. 17 = 11 Cr. L.J. 30 = 4 Ind. Cas. 700.

Sanad.

Pleader—*Sanad*—Refusal to extend to Civil Courts of a District—Permission to practise in Criminal Courts not to be inferred—*See* LEGAL PRACTITIONERS—PLEADER AND CLIENT, 7 S.L.R. 98 = 15 Cr. L.J. 232 = 23 Ind. Cas. 750.

Sanction.

Income-tax Collector—Sanction by the income-tax Collector—Revision by the High Court—*See* CRIM. PRO. CODE, 1898, s. 476, 8 Bom. L.R. 477 = 4 Cr. L.J. 34.

Sanction to prosecute.

1.—GENERAL.
2.—WHO MAY APPLY FOR SANCTION.
3.—AUTHORITIES COMPETENT TO GRANT SANCTION—REFUSAL TO GRANT SANCTION—APPEAL, REVISION AND JURISDICTION OF COURT.
4.—CONDITIONS REQUISITE FOR GRANT OF SANCTION—NECESSITY, SUFFICIENCY AND VALIDITY OF SANCTION.
5.—NATURE AND FORM OF SANCTION.
6.—NOTICE OF SANCTION.
7.—EXPIRY OF SANCTION AND LIMITATION.
8.—REVOCATON OF SANCTION.
9.—GRANT OF FRESH SANCTION.
10.—MISCELLANEOUS CASES.

See CRIM. PRO. CODE, 1898, ss. 188, 195 to 197, 476.

——1.—General.

(1)—*Crim. Pro. Code, s.* 195—*Sanction to prosecute.*—Sanction granted under s. 195, Crim. Pro. Code, should be drawn up with precision and particularity, so as to convey clearly to the mind of the Magistrate entertaining the prosecution the exact offence or offences he is authorized to investigate. *In the matter of the petition of* CHIMMAN, **A.W.N. 1883, 228.**

(2)—*Crim. Pro. Code* (1898), *s.* 195—*Penal Code, s.* 471—*Forgery—Knowledge of applicant that the document was a forgery—Proof.*—Before a conviction can be had under s. 471, I.P.C., it is necessary to prove that the accused knew or had reason to believe that the document was a forgery. Where, therefore, there is no ground for supposing that the accused had any knowledge or belief as to the forgery of a pro-note, on which a suit was based, sanction for his prosecution cannot be given. RAMASWAMY CHETTY v. MAUNG SHWE BON, **8 Ind. Cas. 995 = 3 Bur. L.T. 151 = 11 Cr.L.J. 749.**

(3)—*Crim. Pro. Code, s.* 195—*Sanction to prosecute—Perjury—Omission to specify false statements—Revocation of sanction—Probability of conviction—Withdrawal of suit, effect of.*—Omission to specify statements in respect of which a prosecution is sanctioned is not in itself a sufficient ground for revoking the sanction. The Court before granting sanction must be satisfied that there is reasonable probability of conviction. The withdrawal of a suit by a plaintiff cannot be construed as an admission that the note sued on was not executed by the defendants. It is at most an admission that plaintiff cannot prove execution, which is a very different thing. MUTAYA PILLAY v. MAUNG SHWE BON, **8 Ind. Cas. 996 = 3 Bur. L.T. 152 = 11 Cr.L.J. 749.**

(4)—*Crim. Pro. Code, s.* 195—*Sanction for prosecution—Perjury—Excise Act* (*VII B. C. of* 1878), *r.* 16—*License, nature of.*—Under the Excise Rules, a person to whom a license in

Sanction to prosecute—continued.

——1.—**General**—*continued.*

granted if forbidden to sublet his shop or transfer his license, which is a purely personal one, to any other person or to allow any person to sell liquor under his license. A licensee under the Excise Rules stated in a criminal case that a particular wine shop was exclusively owned by him, but it was found in a civil suit that he had a partner: *Held*, that, in making the statement, he might have unconsciously deviated into the truth, and it might be that the claim of the alleged partner was without legal justification, and that sanction to prosecute him for perjury should not be granted. RAKHAL CHANDRA SHAH v. DAMODAR SHAH, **9 Ind. Cas. 115 = 15 C.W.N. 169 = 12 Cr.L J. 11.**

(5)—*Crim. Pro. Code*, ss. 190 (c), 192, 195 (b), 200, 476—*Proceedings under the Village Act are not judicial proceedings.*—The Commissioner, Pegu Division, in a proceeding under the Village Act, wrote to the District Magistrate requesting him to proceed against the petitioner under s. 476 of the Crim. Pro. Code, for an offence under s. 199, Penal Code: *Held*, that no sanction was necessary under s. 195 (b) of the Crim. Pro. Code, and the District Magistrate could take cognizance under s. 190 (c) and transfer the case to a Subordinate Magistrate under s. 192 of the Code. MAUNG KYE v. EMPEROR, **8 Ind. Cas. 949 = 3 Bur. L. T. 120 = 11 Cr.L.J. 736.**

(6)—*Crim. Pro. Code* (1898), s. 195 (6)—*Power of appellate Court to order a re-trial by the first Court.*—An appellate Court, dealing with an application under s. 195 of the Crim. Pro. Code, has no power to order a re-trial by the first Court. *In re* KAMMA NARAYANAPPA, **8 Ind. Cas. 679 = 9 M.L.T. 97 = 1911, 1 M.W.N. 100 = 11 Cr. L.J. 699.**

See ACT XXXI OF 1860, ss. 19 (*f*), 29, 32 (2), L.B.R. 1872—1892, 536.

See ACT XI OF 1878, ss. 19 (*f*), 29, 24 P.R. 1913, Cr.

See ACT I OF 1879, ss. 39, 69, L.B.R. 1872—1892, 623.

For perjury—*See* ACT VI OF 1884, ss. 31, 32, 33, 34, 35, 12 Cr. L J. 577 = 12 Ind. Cas. 841 = 4 Bur. L.T. 130.

See COMPLAINT—INSTITUTION OF COMPLAINT—PRELIMINARIES, 8 W.R. Cr. 9.

See CRIM. PRO. CODE, 1898, ss. 144, 435, 476, 5 M.L.J. 249 = 19 M. 18.

Magistrate exceeding jurisdiction in recording statements on oath—Deponent occupying the position of an accused—Contradictory statement—Sanction to prosecute for perjury—Legality—*See* CRIM. PRO. CODE, 1898, ss. 164, 191 (*c*), 202, 7 S.L.R. 25 = 21 Ind. Cas. 472 = 14 Cr. L.J. 600.

Pardon—Approver—Sanction of High Court for prosecution of approver how to be obtained—Practice—Motion in open Court—*See* CRIM. PRO. CODE, 1898, ss. 337, 339 (3), 30 P.W.R. 1912, Cr. = 175 P.L R. 1912 = 15 Ind. Cas. 83 = 13 Cr. L.J. 451 = 230 P.L.R. 1912.

Sanction to prosecute—continued.

——1.—**General**—*concluded.*

Trial for murder—Conditional pardon to accomplice—King's witness — Contradictory statement before Magistrate—Sanction to prosecute—*See* CRIM. PRO. CODE, 1898, s. 339 (3), 11 A.L.J. 964.

See CRIM. PRO. CODE, 1898, ss. 403, 236, 235, cl. (1) and 195, 24 M.L.J. 463 = 13 M.L.T. 360 = 19 Ind.Cas. 310 = 14 Cr. L.J. 214 = 36 M. 308.

See CRIM. PRO. CODE, 1898, s. 435, 14 Bom. L.R. 970 = 1 Bom. Cr. C. 214 = 13 Cr. L.J. 845 = 17 Ind. Cas. 717.

See DEFAMATION, 2 C.P.L.R. 198.

See FALSE CHARGE, 8 C.L.R. 289, 9 P.W R. 1908, Cr. = 7 Cr. L.J. 291.

See FALSE EVIDENCE, P.L.R. 1900, p. 63, Cr., 30 P.R. 1888, Cr.

Deputy Collector acting as Income Tax Officer—Order sanctioning prosecution for offence under s. 193, Penal Code, by such officer.—*See* LETTERS PATENT—LETTERS PATENT, 1865—MADRAS, cls. 39, 11, 12, 13, 14 M.L T. 421 = 25 M.L J. 565.

Perjury—False charge—*See* PENAL CODE, ss. 182, 193, 13 Cr. L.J. 56 = 13 Ind. Cas. 392 = 4 Bur. L.T. 262.

Sanction granted by Dt. Judge—Conviction of accused for false evidence—Appeal heard by the same Judge as Sessions Judge—Competency to hear appeal—*See* PENAL CODE, s. 193, 15 Bom. L.R. 104 = 2 Bom. Cr C. 27 = 19 Ind. Cas. 190 = 14 Cr. L.J. 190.

Fraudulent execution of decree—Application for—*See* PENAL CODE, s. 210, 59 P.L.R. 1911 = 12 Cr. L. J. 189 = 10 Ind. Cas. 646.

See PENAL CODE, s. 211, 12 Bom L.R. 229.

Charge of defamation against Receiver—Sanction of Court, whether necessary—Defamation arising out of matter of repairs of estate under charge of Receiver—*See* PENAL CODE, s. 500, 13 Cr. L.J. 489 = 15 Ind. Cas. 489.

Perjury—Two contradictory statements—Reconciliation of—Presumption in favour of—Penal Code, s. 193—*See* PERJURY, 7 S.L.R. 108 = 15 Cr. L.J. 488 = 24 Ind. Cas. 576.

Sanction of Court—Prosecution of Receiver for ordinary criminal offence—*See* RECEIVER, 13 Cr. L.J. 491 = 15 Ind. Cas. 491.

——2.—**Who may apply for sanction.**

(1)—*Crim. Pro. Code* (1898), s. 195—*Sanction to prosecute, presupposes application.*—Where a Magistrate having directed a police investigation into a case pending before him, passed, as the result of such investigation, an order purporting to be an order under s. 195 (2), Crim. Pro. Code, 1898, it was *held* that his order was wholly irregular, inasmuch as s. 195

Sanction to prosecute—continued.

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presupposes an application by some person for sanction to prosecute. EMPRESS v. AUTLA DUBA, **A.W.N. 1902, 195.** (A.W.N. 1882, 32, *F.*)

(2)—*Sanction to prosecute, pending appeal to higher Court—Stay of proceedings—Doubtful criminal prosecution—Crim. Pro. Code* (1898), *ss.* 195, 476—*Inquiry into, previous to sanction.*—The respondents in a civil appeal should not be allowed to act as private prosecutors when their so doing will certainly delay and possibly defeat the appeal and when the lower appellate Court has declared that the evidence on which they proposed to proceed appears to it to be unsatisfactory to a great extent. It is neither necessary nor desirable to grant sanction to one of the parties in such a litigation to pursue a very doubtful criminal prosecution pending the decision of the appeal which has been ordered to be expedited. The proper procedure in such a case is to await the conclusion of the litigation and then to move the higher Courts to take action, if necessary, in the ends of public justice. A Court should make an enquiry under s. 476 of the Crim. Pro. Code, before granting sanction, although there were strong probabilities for the prosecution ending in a conviction on the evidence as it stood at that time. JADU LAL SAHU v LOWISE, **34 C. 848=11 C.W.N. 712=5 Cr. L.J. 480=6 C.L.J. 531.** (16 B. 729, 18 B. 581, 8 C. & P. 50, 26 M. 190, *R.*; B.L.R Sup. Vol. 426, *D.*) [*R.*, 31 M. 510=18 M.L.J. 466=4 M.L.T. 186=8 Cr. L. J. 390, 14 Cr L.J. 32=16 C.L.J. 569=18 Ind. Cas. 176.]

(3)—*Crim. Pro. Code* (1882), *s.* 195—*Order, sanctioning a prosecution, on application by a person not a party to the suit—Order under the section, when can be made.*—No Court should tolerate any application to prosecute made by persons who are not parties in the case. Such an order ought only to be given by Judges after careful consideration and having in view the ends of justice, and not in order to assist the private ends of individuals. It is desirable, in most cases, that the Judge should conclude the case and have all the facts before him, before he gives sanction to prosecute. *In the matter of* CHANDRA KANT GHOSE, **3 C.W. N 3.** [*R.*, 10 Cr. L.J. 454=4 Ind. Cas 6=13 C.W.N. 1038, 13 Cr. L.J. 4=13 Ind. Cas. 97; *D.*, A.W.N. 1908, 209=8 Cr L. J. 157.]

(4)—*Crim. Pro. Code, s.* 476—*Offences against public justice — Sanction to private person.*—Where offences against public justice are committed, it would be well if Courts avail themselves more fully of the provisions of s. 476, instead of leaving the prosecution to private parties who often use the sanction granted to them for the gratification of private malice. *In re* BAL GANGADHAR TILAK, **26 B. 785=4 Bom. L.R. 618.**

(5)—*Crim. Pro. Code* (1898), *ss.* 195, 476—*Sanction for prosecution whether should be given during pendency of Civil litigation involving a decision of the same matter—Delay—Indian Penal Code* (*Act* XLV *of* 1860), *ss.* 182 *and* 211, *offences under.*—Where, on an information lodged to the police by the petitioner alleging that there had been a burglary in his house and a sum of money and a mortgage-bond had been stolen and that he suspected one K and his brother-in-law one B who, he said, would be benefited by the loss of the mortgage-bond, the Deputy Commissioner directed an inquiry by a Deputy Magistrate, who, on inquiry, found the information to be false and submitted his report to the Deputy Commissioner, and the Deputy Commissioner directed the prosecution of the petitioner under s. 211 I.P.C., but, this order having been set aside by the High Court, the Deputy Commissioner returned the record of the cases to the Deputy Magistrate, who had held the inquiry and the Deputy Magistrate, on the examination of two more witnesses tendered by the petitioner, ordered his prosecution under ss. 182 and 211, I.P.C. *Held*, that the order for prosecution was not bad in law under s. 476, Crim. Pro. Code. It would be a dangerous doctrine to lay down any hard and fast rule to the effect that a criminal trial or inquiry should, of necessity, be stayed, simply because a Civil suit has been instituted between the parties in which some or all the matters materially in issue in the criminal case would have to be determined, until the Civil litigation was finally decided. It is very desirable in the ends of justice that when a competent Court has taken upon itself the responsibility of ordering a prosecution under s. 476, Crim. Pro. Code, that that prosecution should be entertained as speedily as possible while the evidence on both sides is fresh. But a Court may well hesitate to give sanction under s. 195, Crim. Pro. Code, to a private individual to prosecute his adversary for an offence alleged to have been committed during the pendency of a Civil litigation, before it has terminated. Where, in his information to the police, the petitioner did not name any one as the actual offender, but what he did was to report that a burglary or theft had taken place in his house and that he suspected that the opposite party had instigated it, *held*, that the order for prosecution of the petitioner, under s. 211, I.P.C., was justified, as it was found by the Magistrate that, as a matter of fact, no burglary or theft had at all taken place as alleged by the petitioner. BROJOBASHI PANDA v. EMPEROR, **13 C.W.N 398=11 Cr. L.J. 4=4 Ind. Cas 485.** (34 C. 551=11 C.W.N. 568, 31 M. 140, 34 C. 818=11 C.W N. 712, *Expl.*; 35 C. 909, *F.*)

(6)—*Crim. Pro. Code, ss.* 195, 476—*Order under s.* 476 *infructuous—Order under s.* 195 *not illegal—Application under s.* 195 *presented by minor should be presented through next friend.*—After action has been taken under s. 476, Crim. Pro. Code, and an order has been made, which proves infructuous because it is not made in accordance with that section, or

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because it is defective in form, there is no reason why an application properly made under s. 195 should not be entertained. The position would be different if the order under s. 476 was set aside on the merits. An application presented under s. 195, Crim. Pro. Code, to a Civil Court for sanction to prosecute a person, by a person who is an infant, ought to be presented on his behalf by a properly appointed next friend. The Court will not entertain an application which is not so presented. The objection goes to the root of the matter, and may be taken successfully in the Appellate or the Revisional Court. RAJENDRA NATH DAS v. MUKTA RANI DASI, **6 Ind. Cas. 267 = 11 Cr L J. 327.**

(7)—*Crim. Pro. Code, s. 195—Application for sanction may be made by Government pleader.*—There is nothing in law to prevent the Government pleader, on instructions from the District Magistrate, applying for sanction to prosecute in respect of an offence alleged to have been committed in connection with a civil suit. EMPEROR v. RAM ADHAR RAI, **A.W.N. 1908, 209 = 8 Cr. L J. 157.** (18 M. 487, *R.*; 3 C.W.N. 3, *D.*)

(8)—*Crim. Pro. Code* (1882), *s.* 195—*Sanction to prosecute—Application to High Court—Procedure.*—Where the High Court is asked to sanction the prosecution of a witness in a criminal case for perjury, the request for such sanction should not be made by a letter. The proper course is to cause the formal application to that intent to be presented to the Court through the medium of the Legal Remembrancer. *In re the application of* THE MAGISTRATE OF BASTI, **A.W.N. 1893, 13.**

(9)—*Crim. Pro. Code* (1882), *ss.* 195, 407, 476—*Scope of the section—Sanction by Magistrate having jurisdiction to hear appeal—District Magistrate granting sanction and directing prosecution to take place before particular Magistrate—Whether particular form of application necessary.*—S. 195, Crim. Pro. Code, does not make any particular form of application for sanction necessary, nor does it enact that application shall be made by any particular person. The section merely provides that no Court shall take cognizance of certain offences without sanction. Under s. 407, Crim. Pro. Code, an appeal lies to the District Magistrate from a Second Class Magistrate; but, where the District Magistrate has directed that all appeals from Second and Third Class Magistrates of a place shall be heard by a Deputy Magistrate, it follows that all appeals from their decisions must be presented to the Deputy Magistrate and his Court is the Court to which the "appeals ordinary lie" within the meaning of s. 195. Therefore it is only the Deputy Magistrate, who can give the sanction required by s. 195 and not the District Magistrate, for an offence mentioned in the section committed before a Second Class Magistrate. [*Appr.*, 2 Bom. L.R. 536; *D.*, 2 Weir 202 = 26 M. 656.] Where a District Magistrate grants sanction under s. 195, he cannot direct the prosecution of the accused before a particular Magistrate, unless he acts under s. 476, *i.e.*, unless the offence is brought to his notice in the course of a judicial proceeding. QUEEN-EMPRESS v. SUBBARAYA PILLAI, **18 M. 487 = 2 Weir 165 = 2 Weir 597 = 5 M.L.J. 125.** [*R.*, A.W.N. 1908, 209, 1 Ind. Cas. 597, 19 M.L.J. 42.]

(10)—*Crim. Pro. Code* (1898), *s.* 195—*Sanction to prosecute—Sanction granted to one person, whether could be availed of by another.*—A sanction expressly given to a particular applicant cannot be availed of by some other person against that person's wish and without his authority; and a Magistrate, in acting upon the complaint of such person, will be acting illegally. JOGENDRA NATH MOOKERJEE v. SARAT CHANDRA BANERJEE, **32 C. 351 = 9 C.W.N. 277 = 2 Cr. L. J. 78.** (8 C. 435, 20 C. 474, 18 A. 213, 8 C.W N. 883, 27 C. 820, *R.*) [*Diss.*, 8 Bom. L.R. 32 = 1 M.L.T. 47; *Not F.*, 14 Ind. Cas. 206 = 13 Cr. L.J. 206; *F.*, 2 C.L.J. 619 = 10 C.W N. 222 = 3 Cr. L J. 112; *R.*, 13 Cr. L.J. 551 = 15 Ind. Cas. 967 = 15 O C. 177.]

(11)—*Omission to prosecute upon sanction—Jurisdiction of District Magistrate to proceed—Crim. Pro. Code* (1872), *ss.* 470, 450—*Amendment of charge.*—Where the sanction accorded by a Deputy Magistrate, to prosecute another for bringing a false charge, is not availed of by the party, it is open to the District Magistrate to take up the case under s. 142 of the Code of 1872 without a complaint. [*R.*, Rat. Un. Cr. C. 422 = 13 B. 384, 13 B. 600, 5 P.L.R. 1903 = 27 P.R. 1902; *D.*, 32 C. 351 = 9 C.W.N. 277.] Where a person can be charged with offences under one or other of two sections of the Penal Code, the sanction given in respect of one offence covers also one under the other on the same facts. EMPRESS v. NIPCHA, **4 C. 712.**

(12)—*Crim. Pro. Code, s.* 195—*Sanction given to judgment-debtor against creditor.*—It is not proper and expedient that sanction for prosecution should be given to judgment-debtors to be used against persons who are their creditors. NAZIR HASAN v. DOST MUHAMMAD, **26 A. 1 = A. W.N. 1903, 171.** (26 M. 139, *Diss.*) [*Overruled*, 28 A. 554 = 3 A.L J. 394 = A W.N. 1906, 183 = 3 Cr. L.J. 400 = 1 M.L.T. 219; *Diss.*, 7 Cr. L.J. 416 = 4 L.B.R. 138; *R.*, 7 Cr. L.J. 281 = 103 P.L.R. 1908 = 5 P.R. 1908, Cr. = 7 P. W.R. 1908, Cr.]

(13)—*Crim. Pro. Code* (1882), *s.* 195—*Sanction to prosecute—Right of Government to oppose.*—Although the system of Criminal Procedure adopted in this country recognises the right of a private person to institute criminal proceedings, it also recognises the right of the Crown which is a party to all criminal trials, as representing the public to intervene and procure a stay of proceedings. Although when sanction is applied for the prosecution of persons whose evidence, if accepted, might have

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subjected the petitioner to a severe sentence that the Court ought not to refuse it, if there are grounds for holding that such evidence was false to the knowledge of those who gave it, yet, in any case which admits of doubt, the Court is entitled to consider the grounds on which the Crown suggests the allowance of a prosecution is inexpedient *In re* VIJAYA-RAGHAVA CHARI, **2 Weir 193.**

(14)—*Crim. Pro. Code* (1882), *ss.* 476, 195 *and* 439 – *Distinction between sanction to private individual and Court's complaint — Setting aside complaint by subordinate Court.*—There is a distinction under s. 195, Crim. Pro. Code, between the sanction granted by a Court to a prosecution by a private individual and a complaint made by the Court itself, and where a subordinate Court duly makes a complaint, no superior Court, except the High Court, can quash the complaint. EMPRESS v. BIRBAL, **9 C.P.L.R. Cr. 27.** (7 A. 871, 13 B. 109, *F.*; 16 C. 730 and 16 A. 80, *Dist.*)

(15)—*Crim Pro. Code* (1882), *ss.* 195 (*b*), 478—*Sanction to private person—Whether Court debarred from itself instituting proceedings.*—The mere fact that a Court has, under s. 195 of the Crim. Pro. Code, given a private person sanction to prosecute, does not debar the Court itself from instituting proceedings under s. 478. QUEEN-EMPRESS v. SHANKAR, **Rat. Un. Cr. C. 422 = 13 B. 384.** (1 C. 450, 4 C. 712, 6 C. 42, 6 C. 523, 8 C. 435, *R.*)

(16)—*Crim. Pro. Code, ss.* 195, 478—*Sanction to prosecute—Court's order to prosecute not barred by the sanction.*—Where sanction to prosecute is granted to a private individual under s. 195, Crim. Pro. Code, and no action is taken under the same, it is competent to the Magistrate to adopt proceeding against the offenders, through his Karkun, under s. 478 of the Code. EMPEROR v. NAGJI GHELABHAI, **11 Bom. L R. 855 = 10 Cr. L J. 431 = 3 Ind. Cas. 962 = 34 B 88.**

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(1)—*Crim. Pro. Code* (1861), *s.* 169 (= s. 195 *of the Code of* 1898)—*Application for sanction to whom to be made.*—As a general rule, an application for sanction to prosecute should first be made to the Court before which the offence is alleged to have been committed. *In re* RAJAH OF VENCATAGIRI, **2 Weir 159 = 6 M.H.C. 92.** [*D.*, 2 Weir 160.] *See also In re* SHEEB PERSHAD CHUCKERBUTTY, **17 W.R. Cr. 46.**

(2)—*Crim. Pro. Code* (1861), *s.* 169 (= *s.* 195 *of the Code of* 1898)—*Application for sanction—Power of successor in office to give sanction.*—The Court before which an offence is alleged to have been committed is to give the sanction to prosecute the offender. A change of incumbent leaves it still the same Court. HIGH COURT PROCEEDINGS, 12TH NOVEMBER 1872, NO 1902, **2 Weir 159 = 7 M H.C. App. 12.** [*F.*, 33 C. 193.]

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(3)—*Crim. Pro. Code* (1898), *s.* 195—*Sanction to prosecute, to be granted by Court trying case on merits.*—The Court which tries a case on its merits, and not the Court before which proceedings are instituted and by which process is issued, is the proper authority to grant sanction under s. 195, to prosecute the complainant. JEEBUN KRISTA SHAW v BENOY KRISTA SHAW, **6 C.W.N. 35.** (3 C.W.N. 33, *F.*)

(4)—*Prosecution for perjury—Sanction after order for committal to Sessions.*—The Court before which a perjury was committed may sanction prosecution therefor at any time even after the order for commitment to the Sessions has been made. QUEEN v. GOLAB SINGH, **3 B L R. A. Cr. 10.** *See also* QUEEN v. LEKHRAJ, **2 N.W.P. 132 = Agra F.B. Ed. 1874, 206.**

(5)—*Sanction given by Judge who afterwards tried the case—Crim. Pro. Code* (1872), *s.* 469. —*Held* that a conviction was not illegal under s. 469, Crim. Pro. Code, 1872, though the Judge who tried the case and he who gave sanction to the criminal proceedings were one and the same person. QUEEN v. SUBAL CHUNDER GANGOOLY, **22 W.R. Cr. 16.**

(6)—*Power to sanction where no particular party is accused—Sending case for investigation.* —*Held* that a case might be sent by a Court to a Magistrate for investigation under s. 171, Crim. Pro. Code, 1861, though no accusation against any particular individual had been made. ESSAN CHUNDER DUTT v BABOO PRANNAUTH CHOWDHRY, **W.R. F.B. 71.**

(7)—*Crim. Pro. Code* (1898), *ss.* 195, *sub-s.* (1), *cl.* (*b*), 503—*Commissioner to examine witnesses—His power to grant sanction.*—Although a Commissioner for the examination of a witness under s. 503, Crim. Pro. Code, may be a Court within the meaning of that section for the purpose of issuing process against the witness and for recording his evidence, he is not a Court within the meaning of s. 195, sub-s 1, cl. (*b*). The word 'Court' there means the Court whose duty it is to consider evidence and to decide whether it is true or false. SAADAT ALI KHAN v. EMPEROR, **11 C.W.N. 909 = 6 Cr. L.J. 160.**

(8)—*Dismissal of complaint—Examination of complainant's evidence.*—A Magistrate is, on the application of the person falsely charged, competent to grant leave for a prosecution for bringing the false charge, after the dismissal of the original complaint on examination of the complainant alone, without hearing the

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complainant's evidence. GYAN CHUNDER ROY v. PROTAB CHUNDER DASS, **7 C. 208=8 C.L R. 267=4 Shome L.R. 128.** [*Cons.*, 14 C. 707.]

(9)—*Crim. Pro. Code* (1898), *s.* 195, *cl.* (1)(*b*) —" *Court*," *meaning of.*—The term " Court " as used in s. 195, cl. (1) (*b*) of the Code is not confined to the Judge who tried the case or the appeal, as the case may be, but also means and includes the successor in office of such Judge; a sanction for prosecution granted under this section by such successor is valid in law and is not defective for want of jurisdiction. *In the matter of* LALIT MOHAN PAL, **5 C.L.J. 176=5 Cr. L J. 186.** (33 C. 193, *F.*)

(10)—*Crim. Pro Code* (*Act* X *of* 1882), *s.* 195 —*Court to give sanction—False evidence given inadvertently.*—Where the alleged false evidence was given before a Magistrate to whom the case had been specially transferred for trial from the Magistrate who had jurisdiction over the case, the Court of the latter is not the Court in which the offence was committed. The fact that the false evidence was given inadvertently is no reason for not sanctioning prosecution. PARGAN SINGH v. THAKURDIN, **A.W N. 1884, 276.**

(11)—*Crim. Pro. Code, s.* 195 (1), *cl.* (*b*)—*Fraudulent decree obtained before the Registrar of Small Cause Court—Sanction for prosecution granted by Chief Judge, validity of.*—Petitioner fraudulently obtained an *ex parte* decree in the Calcutta Small Cause Court, in a suit, which was tried by the Registrar of that Court. As the Registrar left the country on leave, an application was made to the Chief Judge of the said Court for sanction to prosecute the petitioner under ss. 209 and 210 of the I.P.C., and the Chief Judge granted the sanction. On a reference by the Magistrate, before whom the prosecution was instituted, of certain points of law raised with reference to the validity of the sanction given by the Chief Judge; *held*, the sanction granted by the Chief Judge was a good sanction, though he was not the Judge who tried the case. Though, ordinarily, as a matter of convenience and expediency, an application for sanction should be made to the Judge, who tried the case, if he be present in the Court, yet, if he is not so present, it is open to the Court, that is, any other Judge of the Court, to grant sanction, since it would hardly have been the intention of the legislature that the conviction and punishment of a person who had committed an offence should be made to depend upon the question whether the Judge, before whom it was committed, was or was not alive, or absent, or had or had not, been transferred from the Court; and it is the Court and not the Judge, before whom the offence is alleged to have been committed, that is to give the sanction; the change of the incumbent does not alter the constitution of the Court. EMPEROR v. MOLLA FUZLA KARIM, **33 C. 193=3 Cr. L.J. 365.** (9 C.W.N. 859, *D. and Diss.*; 2 C L.J. 65, note, *R* ; 7 M.H.C. App. 12, *F.*) [*F.*, 5 C.L.J. 176; *R.*; 35 C. 133=7 Cr. L J. 159; *D.*, 34 C. 551 =5 C L.J. 508, F.B.=11 C W N. 568=5 Cr. L.J. 398=2 M.L T. 298.]

(12)—*By whom grantable, when personal of Court changed.*—The sanction required by s. 469, Crim. Pro. Code, 1872, may be granted by the Magistrate who succeeds the Magistrate before whom the offence was committed. KARIM BAKHSH v. MUL CHAND, **29 P.R. 1879, Cr.**

(13)—*Crim. Pro. Code* (1882), *s.* 195—*Opinion of predecessor a valuable guide.*—In granting a sanction for prosecution for forging a document produced in his Court, it is competent to the subordinate Judge to rely upon the opinion expressed by his predecessor in office. *In re* BAI JADAV, **Rat. Un. Cr. C 705 =Cr. Rg. 38 of 1894.**

(14)—*Crim. Pro. Code* (1898), *s.* 195—*Transfer of Magistrate—Appellate Court's power to grant sanction.*—On the transfer of a Magistrate, an application for sanction to prosecute the accused for giving false evidence in the case tried by him, was made to the Joint Magistrate to whom all the former's work was made over and the sanction prayed for was granted and was upheld by the Sessions Judge. *Held* that the Joint Magistrate had no jurisdiction to make the order for sanction to prosecute, nor could the order of the Sessions Judge cure the defect, (though, in the first instance, on a proper application made to him, he had power to grant sanction), inasmuch as the Sessions Judge was not dealing with the matter as an original Court but as a Court of appeal. *In the matter of the petition of* DEBI PRASAD, **A.W.N. 1902, 9.**

(15)—*Superior Court can grant sanction otherwise than on appeal.*—The power to grant sanction to prosecute is not restricted to cases in which appeals are heard and determined, but vests in the superior Court as a Court exercising supervision and control over the subordinate Court. It may be granted by the superior Court on a perusal of the record, though no appeal is preferred, and though the subordinate Court has refused to sanction the prosecution. It is not material how the superior Court is set in motion. HIGH COURT PROCEEDINGS, 13th APRIL 1881, NO. 789, **2 Weir 160.**

(16)—*Power of appellate Court to sanction for prosecution of abetment—Offence committed before lower Court.*—*Held* that, though an offence might have been committed against a Court of first instance, a sanction to prosecute under Ch. XI, Crim. Pro. Code, 1861, might be given by the appellate Court to which such first Court

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was subordinate, even when the offence was abetment. *In the matter of* ISHAN CHANDRA GHOSE, **15 W.R. 352.**

(17)—*Crim. Pro. Code* (1872), *ss.* 295, 468 (=*ss.* 435 *and* 195 *of the Code of* 1898)—*Committing Magistrate whether subordinate to the Sessions Judge.*—The committing Magistrate is, within the meaning of s. 295 (s. 435), the subordinate of the Court to which he commits. The Sessions Judge has therefore the power to sanction the prosecution for perjury of a person examined as a witness only in the Court of the committing Magistrate, not in the trial before him. HIGH COURT PROCEEDINGS, 17TH JANUARY 1877, No. **120, 2 Weir 160.**

(18)—*Crim. Pro Code* (1882), *s.* 195—*Sanction to prosecute given by a subordinate Court—Recorder of Rangoon—High Court's jurisdiction.*—For the purpose of s. 195, a Court is regarded as subordinate to the Court to which appeals from the former Court ordinarily (that is, in the majority of cases) lie. Even in cases where an appeal from the decree of the Recorder of Rangoon lies only to "Her Majesty in Council," the former is subordinate to the Calcutta High Court within the meaning of s.195, inasmuch as appeals from the Recorder of Rangoon lie to the High Court in the majority of cases. MADURAY PILLAY v. ELDERTON, **22 C. 487.** (11 B. 438, *F.*) [*R.*, 13 Cr.L.J. 498=15 Ind. Cas. 642=8 N.L.R. 57.]

(19)—*Crim. Pro. Code* (*Act* XXV *of* 1861), *s.* 167—*Sanction for prosecution of Kulkarni-Mamlatdar.*—The Mamlatdar of the Taluq is an officer competent, under s. 167 of the Crim. Pro. Code and s 26 of Reg. XVI of 1827, to give sanction for the prosecution of a kulkarni who is subordinate to him. It is not necessary that the Collector should give the sanction. REG v. MULHAR RAMCHANDRA, **7 B.H.C. Cr. 64.**

(20)— *Crim. Pro. Code, s.* 195 (7) (*c*) —*Offences committed before Mamlatdar—Sanction by District Judge.*— A District Judge is authorised, under s. 195 (7) (*c*), Crim. Pro. Code, to grant sanction for prosecution in respect of offences committed in the course of a possessory suit before a Mamlatdar in the District. *In re* GURUNATH, *In re* RAMCHANDRA, **5 Bom. L R. 206** [*F.*, 9 Bom. L.R 896=6 Cr. L.J. 225.]

(21)—*Crim. Pro. Code* (1898), *ss.* 195, 476—*Sanction to prosecute and order for prosecution—Offence against public justice—Penal Code* (*Act* XLV *of* 1860), *s.* 209—*Offence committed before Small Cause Court—Sanction granted by such Court revoked by District Judge—High Court or District Judge, if may order prosecution under s.* 476—*High Court, if may grant sanction under s.* 195, *or set aside order revoking sanction—Powers of revision—Civ. Pro. Code* (*Act* V *of* 1908), *s.* 115—*Acting illegally in exercise of jurisdiction.*—Where a Small Cause Court Judge granted sanction to the District Magistrate to prosecute the petitioner for an offence under s. 209, I.P.C., and the sanction was revoked by the District Judge on the ground that a sanction could not be granted to a third party, but the District Judge nevertheless ordered the prosecution of the petitioner under s. 476, Crim. Pro. Code, there being, in his opinion, a *prima facie* case against the petitioner, *held*, that neither the District Judge nor the High Court had power to order the prosecution of the petitioner under s. 476, Crim. Pro. Code. That the High Court was not, for the purposes of s. 195 of the Code, the Court to which the Small Cause Court was subordinate, and so could not grant sanction under cl. (*b*) of sub-s. (1) of s. 195. That the High Court had jurisdiction to set aside the order of revocation and to restore the original sanction under s. 115 of the Civ. Pro. Code, the District Judge having acted illegally in the exercise of his jurisdiction in revoking the sanction which had been properly granted to the District Magistrate. *Quære* :—Whether the High Court had power, under cl. (*b*) of sub-s. (1) of s. 195, to interfere with the order of the District Judge revoking the sanction. 10 C.W.N. 1026 is on this point in conflict with 5 C.L J. 222 and has been dissented from, by a Full Bench of the Madras High Court in 30 M. 382 There is nothing in the statute law to limit the grant of sanction to a party to the proceeding in connection with which the offence aimed at was committed. Sanction to prosecute for an offence against public justice may best be granted to a public officer, for there can be no better recipient of such sanction. The principles relating to the grant of sanctions to prosecute and the reasons for the safe-guards provided by ss. 195 and 476 indicated. "Offences against public justice ought to be pressed primarily in the interests of public justice and never as a means of satisfying a private grudge." *In re* RAM PRASAD MALLA, **37 C. 13=13 C.W.N. 1038=4 Ind. Cas. 6=10 Cr. L.J. 454.** [*R.*, 40 C. 477=17 C.L.J. 245=17 C.W.N. 647=14 Cr. L.J. 197=19 Ind. Cas. 197, 13 Cr. L J. 291=14 Ind. Cas. 755=15 C. L.J. 337.]

(22)—*Crim. Pro. Code* (1861) *s* 170—*Offence committed on the Small Cause side of Sadar Amin's Court—Sanction by Civil Court, validity of.*—The Civil Court has no power to sanction the prosecution of a person for forgery for giving in evidence a forged document in a suit on the Small Cause side of the Principal Sadar Amin Court, as the latter officer acting in his function of Small Cause Court Judge is not subordinate to the Civil Court. *Ex parte* MAHALINGAIYAN, **6 M H.C. 191.**

(23)—*Contradictory statements before a first class Magistrate and an Honorary Magistrate—Sanction by whom grantable.*—Where an

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accused made contradictory statements in the Court of a first class Magistrate and of an Honorary Magistrate, the former Court was not competent to grant a sanction for prosecution as the latter Court was not subordinate to the former. In such cases the Court competent to grant sanction would be the Court to which both these Courts are subordinate. SOBHA SINGH v. LAL CHAND, **30 P.R. 1901, Cr.** (10 P.R. 1894, Cr., *D.*; 25 P.R. 1889, Cr., *R.*) [*Diss.*, 7 P.R. 1902, Cr.]

(24)—*Contradictory statements before two different Magistrates.*—Where the accused makes contradictory statements before two different Magistrates, one of them is not competent to sanction a prosecution on a charge framed in the alternative. He can only sanction a prosecution on a charge of an offence committed before himself only. PHINA SINGH v. EMPRESS, **25 P.R. 1889, Cr.** [*F.*, 30 P.R. 1901, Cr.; *Rel.*; 10 Cr. L.J. 158 = 6 P R. 1909 = 12 P.W.R. 1909, Cr. = 2 Ind. Cas. 812 = 104 P. L.R. 1909; *R.*, 207 P.L.R. 1913 = 7 P.R. 913 = 1 14 Cr. L.J. 178, 19 Ind. Cas. 178 = 7 P.R. 1913 6 P.R. 1913, Cr.]

(25)—*Crim. Pro. Code* (1872), *ss.* 468, 469 —"*Subordinate,*" *meaning of.*—A Deputy Commissioner cannot sanction prosecution for an offence committed in the Court of an Assistant Commissioner, from whom an appeal lies to the Commissioner. KIRPA RAM v. CROWN, **5 P.R. 1875, Cr.** [*R.*, 42 P.R. 1882.]

(26)—*Offence committed before Extra-Assistant Commissioner—Sanction by whom grantable.*—Where a false document is given in evidence before an Extra-Assistant Commissioner, either he or the Judicial Extra-Assistant Commissioner is competent to give sanction for prosecution. But the Divisional Court has no such power, as an appeal from the decision of an Extra-Assistant Commissioner does not ordinarily lie to the Divisional Court. LAL SINGH v LADHA SINGH, **7 P.R. 1886, Cr.** [*R.*, 5 P.R. 1889, Cr., 25 P.R. 1900, Cr.]

(27)—*Crim. Pro. Code* (1882), *s.* 195 (1) (*a*) —*False information of police officer—Sanction to prosecute.*—A Magistrate, not being the official superior of a police officer, cannot sanction the prosecution of a person giving false information to such police officer under s. 177, Penal Code. *In re* GAPARAZU NARASIMHAM, **2 Weir 156.**

(28)—*Offence relating to document committed before Munsiff—Sanction by Deputy Commissioner.*—A Deputy Commissioner is competent to sanction a prosecution for an offence relating to documents committed in the Court of a Munsiff, who is his subordinate. CHAND MAL v. EMPRESS, **9 P.R. 1879, Cr.**

(29)—*Crim. Pro. Code* (*Act* X *of* 1882), *ss.* 195, 476—*Penal Code, s.* 182—*Honorary Magistrate*

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—*Information to the police.*—A Bench of Honorary Magistrates has no jurisdiction, under s. 195 of the Crim. Pro. Code, to sanction the prosecution of a person for an offence under s. 182 of the Penal Code for making a false report to a police officer inasmuch as the latter is not subordinate to the Bench. Nor could the sanction be reckoned as one under s. 476 of the Crim. Pro. Code, since the matter could not be said to have been brought to the notice of the Magistrates. EMPRESS v. BALDEO PRASAD, **A.W.N. 1895, 152.**

(30)—*Sanction by whom to be given—Crim. Pro. Code* (1861), *s.* 167.—A Deputy Commissioner would be competent to sanction the prosecution of a Deputy Inspector of Police. CROWN v. BOODH SINGH, **47 P.R. 1867, Cr.**; COWN v. BOODH SINGH, **9 P.R. 1868, Cr.** [*F.*, 11 Cr. L.J. 252 = 5 Ind. Cas. 829 = 6 P.R. 1910 = 10 P.W.R. 1910, Cr., 170 P.L.R. 1910.]

(31)—*Crim Pro. Code* (1898), *s.* 195 (1) (*a*)—*False complaint to police—Sanction for prosecution by District Magistrate—Legality—Police Act* V *of* 1861, *s.* 4.—The Magistrate of the District, in whom are vested under s. 4, Act V of 1861, powers of general control and direction over the police in his district, may sanction prosecution under s. 195 (1) (*a*), Crim. Pro. Code, 1898, for the offence of preferring a false complaint to the police. SHIBBU v. CROWN, **6 P.R. 1910, Cr. = 11 Cr. L.J. 252 = 5 Ind Cas. 829 = 10 P.W.R. 1910, Cr. = 170 P.L.R. 1910.** (47 P.R. 1867, Cr., 9 P.R. 1868, Cr., *F.*; 27 C. 452, 32 C. 180, *R.*)

(32)—*Crim. Pro. Code* (1898). *s.* 195 (*a*)—*Sanction to prosecute—Village Munsiff not subordinate to Sub-Magistrate.*—A Village Munsiff is not subordinate to a Sub-Magistrate under s. 195 (*a*). The subordination of one public servant to another may arise either from express enactment or from the fact that both the public servants belong to the same department, one being superior in rank to another. There is no enactment which makes Village Munsiffs subordinate to Sub-Magistrates. The Code does not do so, nor do Regs. XI of 1816 and IV of 1821. Village Munsiffs and Sub-Magistrates do not belong to the same department. VENKATASAMI v. NARASIMAYYA, **4 M.L.T. 214 = 18 M.L.J. 584 = 8 Cr. L.J. 400** (4 M. 241, *Not F.*)

(33)—*Crim. Pro. Code* (1882), *s.* 195—*Sanction for prosecution given by Village Munsiff, validity of.*—Though nothing in the Code of Criminal Procedure applies to heads of villages, the limitation in s. 195, cl. (*b*) is on the powers of the Courts governed by the Procedure Code in the entertainment of complaints. The section merely prohibits the entertainment of a complaint governed by the Procedure Code, without a sanction. A Village Munsiff trying a cause is a "Court" and he is therefore competent to

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accord the sanction required by s. 195 to prosecute a witness for giving false evidence before him. QUEEN EMPRESS v. VENKAYYA, **11 M. 375 = 2 Weir 163.**

(34)—*Crim. Pro. Code, ss.* 195, 195 (6), 439 —*Sanction to prosecute—Procedure—Court if bound to take evidence—Revision of order of Civil Court refusing sanction — Civ. Pro. Code (Act* V *of* 1908), *s.* 115—*High Court, Original Side—Revisional jurisdiction over Presidency Small Cause Court—Practice—High Court Rules, Appellate Side, Rule* IV (*a*).—There has been a well established practice of the High Court that applications for revision of orders by the Calcutta Small Cause Court are heard by a single Judge on the Original Side of the High Court. Rule IV (*a*) of the Appellate Side Rules confirms the practice, and under it jurisdiction for revision of orders by the Small Cause Court is vested in a single Judge on the Original Side. A Civil Court, in making an order under s. 195 of the Crim. Pro. Code, does not exercise criminal jurisdiction. The Criminal Revisional Bench of the High Court has therefore no jurisdiction to interfere with such an order. But the High Court can interfere with such order under s. 115 of the Civ. Pro. Code. The jurisdiction of the High Court to interfere under s. 115, Civ. Pro. Code, is not ousted by s. 195, sub-s. (6) of the Crim. Pro. Code, inasmuch as an application under the latter is not an appeal but a substantive application. In disposing of the application for sanction to prosecute for bringing a false suit, under s. 195 of the Crim. Pro. Code, the Court has to decide whether the original suit was false, and whether, if it was false, sanction should be granted, and must make a full enquiry into the matter even if it involves trying the case *de novo*. So where there was no evidence in the records of the original case to prove that it was false, and the Small Cause Court refused sanction on the ground that it was not bound to go beyond the record, the Court ordered the case to be sent back and tried according to law. RAMADHIN BANIA v. SEWBALAK SINGH, **37 C. 714 = 11 Cr. L.J. 357 = 14 C.W.N. 806 = 6 Ind. Cas. 473.** (29 C. 498, 30 C. 986, *F.* ; 30 C. 588, 28 A. 554, 26 A. 249, 1 C.W.N. 400, 7 C.W.N. 112, 8 C.W.N. 73, 26 M. 98, *R.* ; 26 A. 244, *D.*) [*F.*, 36 M. 138 = 10 M.L.T. 278 = 1911 M.W N. 259 = 12 Ind. Cas. 521 ; *R.*, 40 C. 477 = 17 C.L.J. 245 = 17 C.W.N. 647 = 14 Cr. L.J. 197 = 19 Ind. Cas. 197.]

(35)—*Crim. Pro. Code* (1898), *ss.* 195, 439—*Sanction granted by Civil Court confirmed by appellate Court—Revision.*—Where sanction has been given for prosecution under s. 195, Crim. Pro. Code, by a Court of Civil jurisdiction, and the order of that Court has been dealt with by a District Court under the provisions of sub-s. (6) of the section, the High Court has power to deal with the case in criminal

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revision. MOTIRAM v. NIADAR MAL, **A.W.N. 1903, 170.** [*Overruled*, 28 A. 554 = 1 M.L.J. 219 = 3 A.L.J. 396 = 3 Cr. L.J. 400 ; *R.*, 11 A.L.J. 313 = 14 Cr. L.J. 389 = 20 Ind. Cas. 213.]

(36)—*Crim. Pro. Code* (1898), *ss.* 195, 435 *and* 439—*Jurisdiction of High Court to revive order for sanction to prosecute granted either by Revenue or Civil Court—Civ. Pro. Code, s.* 622. —The High Court cannot, under the provisions of ss. 435 and 439, Crim. Pro. Code, revise an order passed by any Court other than a Criminal Court under cl. (*b*) or (*c*) of sub-s. (1) of s. 195, Crim. Pro. Code, according sanction for the prosecution of any person who is alleged to have committed any of the offences therein referred to, in relation to any proceeding in such Court, nor revise an order passed under sub-s. (6) of s. 195 revoking or refusing to revoke a sanction given or granting a sanction refused by such Court. It may be that, under s. 622 of the Code of Civil Procedure where the powers of revision are much narrower than those conferred by ss. 435 and 439, Crim. Pro. Code, the High Court may, in a fit and proper case, revise the proceedings of a Civil Court under s. 195, Crim. Pro. Code, whether it be the Court of first instance or an appellate Court. *In re* CHENNANAGOUD, **26 M. 139 = 2 Weir 197 = 2 Weir 577.** [*F.*, 8 C.W.N. 73, 28 A. 554 = A.W.N. 1906, 103 = 1 M.L.T. 219 = 3 Cr. L.J. 400 = 3 A.L.J. 393, F.B., 4 L.B.R. 138 = 7 Cr.L J. 416 ; *R.*, 2 M.L.J. 84 = 5 Cr.L J. 289 = 30 M. 311 = 17 M L.J. 123, 10 Cr. L.J. 395 = 3 Ind. Cas. 886 = 3 S.L.R. 66, 15 Cr. L.J. 217 = 22 Ind. Cas. 1001 = 17 O.C. 225, 40 C. 477 = 17 C. L.J. 245 = 17 C.W.N. 647 = 19 Ind. Cas. 197 = 14 Cr. L.J. 197 ; *Diss.*, 26 A. 1, 6 O.C. 216, 7 P.W.R 1908 = 103 P.L.R. 1908 = 5 P.R. 1908, Cr., F.B.]

(37)—*Sanction by Government—Principles to be followed in scrutinising it.*—The true implication of s. 196, Crim. Pro. Code, is that the judgment of the Local Government should be specially directed to the particular sections of Ch. VI of the Penal Code, in respect of which proceedings are to be taken, and that the order or authority should be preceded by, and be the result of, a deliberate determination that proceedings should be taken in respect of a particular section or particular sections of the Chapter and no other. The provisions of s. 196, Crim. Pro. Code, do not authorise the Local Government by its order to give, or delegate to, its legal or other advisers, a roving power to determine under what sections of the Chapter proceedings should be taken and abandon to them the discretion and responsibility that properly belong to it. Where an order of the Local Government, under s. 196, Crim. Pro. Code, authorised a Police Officer to prefer a complaint against and to prosecute certain persons for offences under ss. 121-A, 122, 123, 124 of the Indian Penal Code, or under any

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other section of the said Code, which may be found applicable to the case, and where the complainant in his sworn statement distinctly stated that sanction had been given to him to prosecute certain persons under ss. 121 A, 122, 123, 124, I.P.C., *held* that the order did not authorise a complaint under s. 121, I.P.C., that the Magistrate had no power to commit thereunder, and that the defect was not cured by a subsequent order obtained while the case was before the Court of Session, authorizing a complaint under the section which was not, as a matter of fact, made thereafter. *Held*, also, that the defect cannot be cured by the provisions of s. 532, Crim. Pro. Code. The signature of the Chief Secretary on the document containing the authority of the Government under s. 196. Crim Pro.Code, is sufficient. BARINDRA KUMAR GHOSE v. EMPEROR, **37 C. 467** = **14 C. W.N. 1114** = **7 Ind. Cas. 359** = **11 Cr. L.J. 453.** [*D.*, 32 P.W.R. 1911, Cr. = 146 P.L.R. 1911 = 10 Ind. Cas 156 = 12 Cr. L.J. 217 = 11 P.R. 1911, Cr.]

(38)—*Crim. Pro. Code, s. 167—Sanction to prosecute public servants—A Munsiff on charge of extortion, committed as Small Causes Judge.*—In respect of charges made under the Penal Code against a District Munsiff, the Legislature does not intend that the sanction should be regulated both by the Code of Criminal Procedure and also by Reg. VI of 1816. The Crim. Pro. Code must be taken to supersede the old procedure in respect of offences against the Penal Code, and other offences to which the Code of Criminal Procedure applies. The proper authority to sanction the prosecution of a District Munsiff for acts of extortion committed as a Judge of Small Causes, is the Sessions Judge to whom the former is subordinate. *In re* NARAYANASAMI AYYAR, **7 M.H C. 182.**

(39)—*Crim. Pro. Code* (1861), s. 167 (= s. 197 *of the Code of* 1898)—*Interpretation of the section.*—S. 197, by implication, vests in the Court or authority to whom the Judge or other public servant not removeable, etc., is subordinate, the power of sanctioning or directing the prosecution. It does not say that the Government must give power, but that it shall exist unless limited or reserved. Every Court or authority, therefore, has it, unless there is a limitation. *In re* B. KRISTNA ROW, 2 Weir **213** = **7 M.H. C. 58.**

(40)—*Crim. Pro. Code, ss. 195 and 476—Complaint against a public servant—Reference to a subordinate Magistrate for enquiry and report—Prosecution of the complainant under s. 182, I.P.C., validity of.*—Where a Deputy Commissioner referred a complaint against a public servant to a subordinate officer for inquiry and report, the latter would not be competent to order the prosecution of the complainant under s. 182, I.P.C., inasmuch as the complaint was made to the Deputy Commissioner, and s. 476 would not apply to the proceedings, as the proceedings before the subordinate officer were not judicial proceedings. ASMATULLA v. EMPRESS, **4 C.W.N. 366** [*R.*, 12 Cr. L.J 323 = 10 Ind. Cas. 619 = 21 M.L.J. 795 = 10 M.L.T. 47 = 2 M.W.N. 1911, 9.]

(41)—*Crim. Pro. Code* (1872), *s. 466—Sanction to prosecute a public servant—Sub-Judge subordinate to District Judge.*—The scope of s. 466 extends to all acts ostensibly done by a public servant, *i.e.*, to acts which would have no special significance except as acts done by a public servant. Where a *muhalkari*, an officer invested with the powers of a Judge in a certain class of cases, is charged with fabricating the proceedings of a case from the plaint to the decision, he could not be tried on that charge, except with the sanction provided for in the section. Para 1 of s. 466 is intended to apply, at least, chiefly to the cases of persons specially responsible to Government, such as accountants, who have failed in their duty; para 2 is directed to persons professing to exercise certain authority and with that pretext doing an act which is impeached by a subject on the ground of its being wholly unwarranted, or of an excess or impropriety of the same kind. The case of a *muhalkari* falls within para 1 of the section, and the sanction given by the District Magistrate is sufficient. [*R.*, 26 C. 852 = 3 C.W.N. 539, 32 M. 255 = 9 Cr. L.J. 89 = 4 M.L.T 473 = 3 Ind. Cas. 387, 13 C.P.L.R. 126, 4 M.L.J. 473; *D.*, 9 M. 439.] For the purposes of s. 468, Crim. Pro. Code, a subordinate Judge is subordinate to the District Judge, even in cases involving more than Rs. 5,000, where ordinarily an appeal lies to the High Court. Whether an appeal lies or does not lie in certain classes of cases to the District Judge, is not a final criterion to determine the subordination. The subordination spoken of in this section is the general subordination irrespective of special considerations of convenience or otherwise which induced the Legislature to provide a direct appeal to the High Court in certain matters of exceptional importance. IMPERATRIX v. LAKSHMAN SAKHARAM, **2 B. 481.** [*F.*, 11 B. 438.]

(42)—*Crim. Pro. Code* (*Act X of* 1872), *ss* 168, 469—*Superior Court.*—The sanction given under ss. 468, 469 of the Crim. Pro. Code cannot be disturbed by superior Court. JOGRAJ DAI v. MEHNDI KHAN, **A.W.N. 1882, 84.**

(43)—*Crim. Pro. Code.* 1882, *s.* 195—*Delay in asking for sanction.*—Where there was great delay in asking for sanction and the sanction was applied for not on public grounds, but as a means of putting pressure on the accused, *held*, that the Magistrate would be exercising a sound discretion in refusing to grant a sanction. KOPPOLU VENKATRAYUDU v. SRIVENKATAKRISHNA YACHENDRA, **2 Weir 154.**

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(44)—*Crim. Pro Code*, 1882, *s.* 195—*Sanction to prosecute—Powers of superior Court.*—S. 195 imposes upon the Courts giving sanction the duty of inquiring and exercising a discretion as to how far any good may be promoted by a criminal prosecution. When once sanction to prosecute is refused by the Court before which the offence in respect of which sanction is sought is alleged to have been committed, a superior Court before granting the sanction should satisfy itself that there are grounds for holding that the subordinate Court has erred in not granting the sanction. KISHAN LAL v. SHEO DIAL, **A.W.N. 1893, 104.**

(45)—*Sanction to prosecute—Refusal of sanction by the Court of first instance—Power of appellate Court to grant sanction—Crim. Pro. Code, ss.* 195 *and* 439—*Right of opposite party to be heard where High Court issues rule on District Magistrate.*—The power of granting sanction possessed by the appellate Courts ought to be exercised carefully, especially when sanction is refused by the Court of first instance. Where sanction has been granted by the Sessions Judge, and the High Court issues a rule upon the Magistrate of the District to show cause why the sanction should not be set aside, the opposite party has no *locus standi* and cannot be heard. JHALAN JHA v. BUCHAR GOPE, **31 C. 811 = 1 Cr. L.J. 850.** [*R.*, 7 Bur. L.T. 205.]

(46)—*Crim. Pro. Code*, 1872, *ss.* 468, 469—*Sanction to prosecute—Jurisdiction of superior Courts*—A sanction, given by any one of the Courts empowered under the Code, cannot be disturbed by a superior Court. But where the sanction is refused by one of these Courts, the refusal does not deprive the other Courts of the discretion given to them. BAKATULLAH KHAN v. BENNIE, **1 A. 17, F.B.** [*F.*, 2 A.W.N. 84, Rat. Un. Cr. C. 683 ; *D.*, 6 C. 440 = 7 C.L.R. 330 ; *Diss.*, 26 B. 785.]

(47)—*Crim. Pro. Code*, 1898, *s.* 195—*Sanction to prosecute—Valid reason for according the sanction.*—Application was made to a second class Magistrate for sanction to prosecute the petitioner on a charge of abetment of giving false evidence in a judicial proceeding. After holding an inquiry and examining three witnesses, the Magistrate refused to grant the sanction. Against the order of refusal, an appeal was preferred to the Sub-Divisional Magistrate who accorded the sanction giving the following as his reason :—" I consider it essential that the truth of the matter should be thrashed out and, for that reason, I sanction the prosecution of the petitioner, as this appears to be the only course by which it can be decided, whether or not, this very serious offence was committed." *Held*, that this was clearly no ground whatever for exercising the powers vested in Courts to grant sanction for prosecution and the Sub-Divisional Magistrate was not warranted in law.

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in setting aside, on such ground, the order of the second class Magistrate. *In re* VENKATESA IYENGAR, **26 M. 193 = 2 Weir 191.**

(48)—*Crim. Pro Code, ss.* 195, 435 *and* 476—*Refusal of Sub-Magistrates to grant sanction—Power of District Magistrate to call for the record and grant sanction.*—A Sub-Magistrate had refused to grant the sanction sought from him to prosecute the petitioner, who was a witness in a trial before him, for having given false evidence. The District Magistrate, who called for the records of the case, under s. 435 of the Code, passed an order under s. 476 of the Code, sending the petitioner for trial by a Magistrate on a charge of perjury. *Held*, that the District Magistrate had no jurisdiction to proceed under s. 476 *In re* SUBBARAYA VATHYAR, **15 M.L.J. 489 = 3 Cr. L.J. 118.** [*R.*, 31 M. 140 = 17 M L.J. 584 = 3 M.L.T. 79 = 7 Cr. L.J. 54.]

(49)—*Refusal of sanction by Magistrate and Sessions Judge—Sanction granted by Chief Court.*—Where the Magistrate and the Sessions Judge refused to sanction the prosecution of a complainant under s. 211, I.P.C., the Chief Court granted the sanction holding that the circumstances of the case justified the granting of the sanction. MUHAMMAD KHAN v. MUHAMMAD RAMZAN, **11 P.R. 1892, Cr.**

(50)—*Crim. Pro. Code, s.* 195—*Presidency Court of Small Causes Act* (XV *of* 1882), *s.* 38—*Sanction to prosecute—Full Court's power to grant or revoke sanction—Full Court not an appellate Court—Powers of Full Court.*—The Full Court of the Presidency Small Cause Court in Bombay has no power to grant or revoke a sanction to prosecute, refused or granted by a single Judge of that Court. *Per Chandavarkar, J.*—The language used in ss. 37 and 38 of the Presidency Court of Small Causes Act, 1882, does not appear to be appropriated for the purposes of conferring appellate jurisdiction upon the Full Court. *Per Batchelor, J.*—The jurisdiction conferred by s. 38 of the Act upon the Full Court is not appellate, but revisional only. *In re* SIVLAL PADMA, **12 Bom. L R. 130 = 5 Ind. Cas. 862 = 34 B. 316 = 11 Cr. L.J. 271.**

(51)—*Crim. Pro. Code, ss.* 195, 435 *and* 476—*Sanction to prosecute—Revision.*—Application was made by an accused person who had been discharged by the trying Magistrate—a Magistrate of the first class—for sanction to prosecute the complainant under s. 193 of the Indian Penal Code. That application was refused. The applicant then applied for sanction to the Magistrate of the District. On this the Magistrate of the District directed the prosecution of the complainant under s. 211 of the Indian Penal Code. *Held* that the Magistrate of the District had no jurisdiction to pass such an order, either under s. 195 or s. 435 or s. 476 of

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the Code of Criminal Procedure. MIHI LAL v. LARETI PRASAD, **A.W.N. 1908, 74=5 A.L.J. 562=7 Cr. L J. 304.**

(52)—*Power of Civil Judge—Crim. Pro. Code*, 1861, ss. 170, 171—*Power of Judge to make order where application had been made to Sudder Ameen in whose Court offence occurred, and refused.*—The Civil Judge has jurisdiction to make an order under s. 170, and s. 171 of the Penal Code, directing the Magistrate to investigate if certain documents used before the Sudder Ameen were forged, and, if so, by whom, notwithstanding that the Sudder Ameen had been applied to and had refused to make a similar order. RADHANAUTH BANERJEE v. KANGALEE MOLLAH, **Marsh 407=2 Hay 538.** [*R.*, 7 C. 208.]

(53)—*Sanction to prosecute—Refusal by subordinate Judge—Sanction granted by District Judge.*—If a subordinate Judge refuses to grant a sanction for prosecution, the Sessions Judge, to whom the subordinate Judge is subordinate, has jurisdiction to grant it. *In re* SHIVRAM BAHIRDAS, **Rat. Un. Cr. C. 937=Cr. Rg. 46 of 1897.**

(54)—*Crim. Pro. Code*, 1882, s. 195—*Refusal by first class Magistrate to sanction prosecution—Sanction by District Magistrate—Jurisdiction.*—A District Magistrate has no jurisdiction to sanction a prosecution for an offence under s 193 of the Penal Code where a first class Magistrate has refused to grant such sanction, since the latter is not subordinate to the former under s. 195 of the Crim. Pro. Code. QUEEN-EMPRESS v. BHIKAJI RAO, **Rat. Un. Cr. C. 511=Cr. Rg. 35 of 1890.** (11 B. 428, *R.*)

(55)—*Crim. Pro. Code*, 1872, s. 468—*By whom grantable.*—For the purposes of s. 468, a Magistrate of the first class is subordinate to the Court of the Magistrate of the District. Where a sanction is refused by a Magistrate of the first class for the prosecution of a person for giving false evidence before him, the District Magistrate is competent to accord the sanction, and the Sessions Judge has no such power. IMPERATRIX v. PADMANABH PAI, **2 B. 384.** [*R.*, 2 B. 481, 9 B. 100.]

(56)—*Crim. Pro. Code* (1872), ss. 37, 468—*Subordinate Magistrates of the District, to whom subordinate for the purpose of s. 468.*—*Held by the Full Bench* (*Oldfield, J., dissenting*).—The Court of a subordinate Magistrate is subordinate to the Court of the Magistrate of the District in the matter to which s. 468 relates. Therefore a Sessions Judge is not competent to order the prosecution of a person for giving false evidence, when the Magistrate of the first class, before whom the offence has been committed has refused the sanction. Such powers vest in the Magistrate of the District. *In the matter of the petition of* GUR DAYAL, **2 A. 205.**

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(57)—*Crim. Pro. Code* (1882), s. 195—*Sanction to prosecute for offence committed in a civil suit of a value beyond the appellate jurisdiction of the District Judge—Appeal.*—A sanction to prosecute, for an offence committed in a civil suit before a Subordinate Judge, for a sum largely in excess of Rs. 5,000, granted by that officer, is within the appellate jurisdiction of the District Judge, although owing to the money value of the suit, the appeal from the suit is outside his jurisdiction, as such sanction is a sanction for a criminal prosecution, and as the District Judge's Court is the ordinary Court of appeal from decisions in criminal matters passed by the Subordinate Judge. GANGA DEI v. SHER SINGH, **17 A. 51=A.W.N. 1894, 201.**

(58)—*Sanction for false verification—Crim. Pro. Code* (*Act* X *of* 1882), s. 195—*Appeal.*—Where a person wishes to have an order by a Munsiff sanctioning his prosecution for false verification set aside, he should apply to the District Judge and not to the High Court. An order sanctioning a prosecution for false verification of a plaint is not vague. *In the petition of* CHAJMAL DAS, **A.W.N. 1884, 57.**

(59)—*Crim. Pro. Code* (*Act* X *of* 1882), s. 195—*Application to High Court—Sessions Judge.*—Except under very special circumstances, an application to set aside an order under s 195 of the Crim. Pro. Code granting sanction to prosecute, should, in the first instance, be made to the Sessions Court and not to the High Court. QUEEN-EMPRESS v. JANKI PRASAD. **A.W.N. 1888, 132.**

(60)—*Subordination of Courts.* — For the purposes of sanction to prosecute, an inferior Magistrate is subordinate to the Court of the Magistrate of the District, and not to the Court of Sessions or Additional Sessions Judge, to which an appeal may have lain from the conviction and sentence of the Magistrate concerned. SAWAN MAL v. SOHAN SINGH, **42 P.R. 1882.** (5 P.R. 1875, F.B., *R.*)

(61)—*Crim Pro. Code* (1898), s. 195—*Sanction to prosecute — Appeal.*—*Held*, that when sanction to prosecute has been granted by a Court under the provisions of s. 195 of the Code of Criminal Procedure, only one appeal from such order will lie under that section. KANHAI LAL v. CHHADAMMI LAL, **A.W N, 1908, 290=31 A. 48=6 A.L J. 1=5 M.L.T. 55=9 Cr. L.J. 63=1 Ind Cas. 5.** (28 A. 554, 30 M. 382, A W.N, 1908, 102, *R.*) [*F.*, 12 A.L.J. 821; *R.*, 13 Cr. L.J. 191=16 C.W.N. 645=13 Ind. Cas. 1007.]

(62)—*Crim Pro. Code* (1882), s. 195—*Sanction to prosecute — Refusal by subordinate Court—Appeal.*—S. 195, Crim. Pro. Code (Act X of 1882), has been worded, as it is, on purpose, to give legislative effect to the judgment in 2 B. 481. The intention and the effect are

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to make a Court, in relation to the sanction or the refusal of sanction of a prosecution, subordinate to the Court to which an appeal from it ordinarily lies, *i.e.*, lies in the majority of cases, even though, in a particular instance, the appeal may lie to another Court. The appellate Court, for the purposes of s. 195, Crim Pro. Code, from the orders of a Subordinate Judge, first class, is the District Judge, although the decree in a particular case is appealable to the High Court. *In re* ANANT RAMCHANDRA LOTLIKAR, **11 B. 438.** [*F.*, 22 C. 487; *R.*, 23 B. 50, 13 Cr.L.J. 498=15 Ind. Cas. 642=8 N.L.R. 57, Rat. Un. Cr. C. 511.]

(63)—*Crim. Pro. Code* (1898), *ss.* 195 *and* 407—*Sanction to prosecute accorded by Second Class Magistrate—Appeal to the District Magistrate for revocation of sanction—Delegation by District Magistrate to Sub-Divisional Magistrate-Jurisdiction of Sub-Divisional Magistrate.*—Appeals from the Court of a Magistrate of the second class *ordinarily* lie to the District Magistrate. They do not lie at all to the Court of any Sub-Divisional Magistrate. When they go to him, they reach him through the District Magistrate and by his direction; and the powers of the Sub-Divisional Magistrate are limited to appeals, whether taken as particular cases, or in classes, made by accused persons against convictions, *i.e.*, such appeals as are mentioned in s. 407 (1). It follows that, by the imperative provisions of s. 195 (7), the Court of a second class Magistrate is subordinate *only* to the District Magistrate, and jurisdiction under sub-s. 6 is vested in that authority. There is no provision of law under which, by any general or special order, the District Magistrate can delegate such jurisdiction in any case to a Sub-Divisional Magistrate. RAM DAYAL v. RAMPRASAD, **3 N.L.R. 50=5 Cr. L.J. 432.**

(64)—*Penal Code*, *ss.* 195, 439—*Sanction to prosecute—Appeal—Power of appellate Court.*—The application to be made under sub-s. (6) of s. 195 should be regarded as an application made to a Court of appeal and therefore in the nature of an appeal. But it is not material by what name the application is called in pursuance of which the appellate Court sets aside an order for sanction, and gives sanction under the provisions of s. 195 That section clearly enables the proper appellate Court to set aside an order which has been passed by a subordinate Court. HARDEO SINGH v. HANUMAN DAT NARAIN, **26 A. 244, F.B =A.W N. 1904, 10=1 Cr. L.J. 7.** (15 A. 61, *Disc.*) [*R.*, 37 C. 714=14 C.W.N. 806=11 Cr. L.J. 357=6 Ind. Cas. 493; *Disc.*, 40 C. 239=17 C.W.N. 91=13 Cr. L J. 599=16 Ind. Cas. 167.]

(65)—*Crim. Pro. Code* (*Act* V *of* 1898), s. 195 (7)—*Subordinate Court—Court of Magistrate of first class subordinate to Sessions Court.*—When a Magistrate of the first class has given or refused sanction for prosecution under s. 195 of the Crim. Pro. Code, he is subordinate to the Sessions Court for the purpose of granting or revoking that sanction. MELA RAM v. EMPEROR OF INDIA, **44 P.L.R. 1902=7 P.R. 1902, Cr.** (30 P.R. 1901, *Overruled.*)

(66)—*Sanction by Munsiff—Ordinary appellate authority—Divisional Court*—For the purposes of s. 195, Crim. Pro. Code, appeals from the decrees of District Munsiffs would ordinarily lie, in the Punjab, to the Divisional Court, and not to the District Court. NARAIN v. HUKAM CHAND, **34 P R. 1886, Cr.** [*R.*, 10 P.R. 1891, 25 P.R. 1900, Cr.]

(67)—*Sanction by Munsiff—Ordinary appellate authority—Divisional Court.*—The Divisional Courts in the Punjab continue to be the Court to which appeals ordinarily lie, for the purposes of s. 195, Crim. Pro. Code, from the decrees of the Munsiff, notwithstanding the amendment of the Punjab Courts Act by Act XIII of 1888. YUSAF ALI v. EMPRESS, **10 P.R. 1891, Cr.** (34 P.R. 1886, *R.*)

(68)—*First Class Magistrate subordinate to the Sessions Judge.*—For the purposes of s. 195, Crim. Pro. Code, a Magistrate of the first class is subordinate to the Sessions Judge, inasmuch as appeals from the decision of the first class Magistrate ordinarily lay to the Sessions Judge. WARYAM v. AMIR, **10 P.R. 1894, Cr.**

(69)—*Offence committed before District Munsiff—Sanction by whom grantable.*—For the purposes of s. 195, Crim. Pro. Code, 1898, a Munsiff is subordinate to the District Judge and not to the Divisional Judge. BURE KHAN v EMPRESS, **16 P.R. 1898, Cr.**

(70)—*Crim. Pro. Code, ss.* 195, 476—*Penal Code* (*Act* XLV *of* 1860), *s.* 175—*Disobedience of Court's order—Sanction to prosecute—Proceedings under s.* 476, *Crim. Pro. Code, when to be taken—Jurisdiction*—An application for sanction was refused by an Honorary Magistrate. Against the order of refusal an application was made to the District Magistrate, who set aside the order of refusal and sanctioned prosecution. The District Magistrate's order, however, was set aside by the High Court, on the technical ground that he had not issued notice to the accused before he sanctioned his prosecution; upon this the District Magistrate directed prosecution of the accused under s. 476, Crim. Pro. Code: *Held*, that it was open to the District Magistrate to send a notice and take up the revision again, but he had no power to institute an entirely fresh proceeding under s. 476 at that stage of the case. Except under very special circumstances, proceedings under s. 476 should be taken at an early date after the decision of the original case. Where an accused was

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called upon to produce a book in Court and he failed to do so, and the Court thought that the production of the book was not necessary for the decision of the case, it would be improper to prosecute the accused for intentionally disobeying the Court's order. MITHAN LAL v. EMPEROR, **5 Ind. Cas. 17 = 11 Cr. L.J. 20.**

(71)—*Crim. Pro. Code, s.* 195 (6) (7)—*Sanction by appellate Court for prosecution under s.* 211, *Penal Code, not to be ordinarily granted.*—On appeal against a conviction by a subordinate Magistrate, the District Magistrate set aside the conviction and granted sanction for prosecution of the complainant under s. 211, Penal Code. *Held*, that, under s. 195, Crim. Pro. Code. cl. 7, a Sessions Judge has no jurisdiction to interfere with the order of the District Magistrate according such sanction and that an appellate Court, in overruling a reasoned and strongly expressed decision of the lower Court, should not take to ordering or sanctioning the prosecution of the complainant except under very unusual circumstances. BUDH RAM v. CROWN, **56 P R. 1905. Cr. = 180 P.L R. 1905 = 3 Cr. L J. 121.** [*R.*, 326 P.L.R. 1913 = 18 P. R. 1913 = 14 Cr. L.J. 522 = 20 Ind Cas. 1002 = 41 P.W.R. 1913.]

(72)—*Competency of appellate Court acting under s.* 195, *Crim. Pro. Code to take action under s.* 476.—An appellate Court, lawfully exercising jurisdiction under s. 195, Crim. Pro. Code. is competent to take action under s. 476, in regard to an offence, as having been brought under his notice in the course of a judicial proceeding. NARAIN v. HUKM CHAND, **34 P.R. 1886, Cr.** [*R.*, 10 P.R. 1891, Cr., 25 P.R. 1900, Cr.]

(73)—*Crim. Pro. Code* (*Act* V *of* 1898), *s.* 195—*Sanction to prosecute given or revoked by Revenue Court—Powers of Chief Court.*—*Held*, that the Chief Court is not competent to interfere, on appeal or revision, with an order granting or revoking sanction to prosecute, passed by a Revenue Court under s. 195 of the Crim Pro. Code. CROWN v. CHHANGA, **97 P.L.R. 1903** [*F. & App.*, 7 P.W.R. 1908, Cr. = 103 P.L.R 1908, Cr. = 5 P.R. 1908, Cr.]

(74)—*Crim. Pro. Code, ss.* 195 *and* 428—*Appeals under s.* 195—*Power of appellate Court to take or call for further evidence—Jurisdiction.*—The power to take, or call for, further evidence, given by s 428, is expressly limited to appeals under that chapter (*i e.*) under chapter XXXI of the Code. S 195 is not part of that chapter, nor does the section itself give any power to call for further evidence. So a District Magistrate has no power to make an order calling for further evidence in cases of appeals under s. 195. *In re* KRISHNA REDDY, **7 M. L.T. 128 = 33 M. 90 = 20 M.L J. 102 = 5 Ind. Cas. 881 = 11 Cr. L J. 280.**

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(75)—*Appealability of order of single Judge of High Court interfering or declining to interfere in revision—Application for sanction to prosecute—Appeal—Appellate Court — Jurisdiction to direct lower Court to take fresh evidence—Crim. Pro. Code, s.* 195—*Revisability of proceedings under s.* 195, *Crim. Pro. Code, before Judges of Civil Courts—Civ. Pro. Code, ss.* 622, 647, 568 *and* 569.—An appeal lies against the decision of a single Judge of the High Court, whenever it amounts to a judgment; and an order of a single Judge interfering in revision is an appellate judgment. The rejection by such a Judge of a revision petition, on the ground that the objection therein taken to the jurisdiction of the lower appellate Court to pass a certain order was unfounded, is also a judgment and is appealable. When an application for sanction to prosecute comes before the District Judge on appeal from the District Munsiff under s. 195, Crim. Pro. Code, the District Judge has no jurisdiction to direct the Munsiff to take fresh evidence. The powers conferred by s. 195, Crim. Pro. Code, are of a very special nature and no inherent jurisdiction can be attributed to any Court, in the exercise of such powers, unless it is incident to their proper exercise and the jurisdiction to direct a District Munsiff to take fresh evidence is not necessarily incident to the exercise of the appellate jurisdiction conferred by s. 195, Crim. Pro. Code. The effect of s. 647, Civ. Pro. Code, is not to make the provisions of the Civ. Pro. Code, applicable to proceedings under s. 195, Crim. Pro Code, which are of a criminal, rather than a civil, nature. RAMA IYER v. VENKATACHELA PADAYACHI, **2 M. L.T 84 = 17 M.L J. 123 = 5 Cr. L.J 288 = 30 M. 311.** [*R.*, 11 Cr.L.J. 699 = 9 M.L.T. 97 = 8 Ind. Cas. 679 = 1911, 1 M.W.N. 100.]

(76)—*Crim. Pro. Code*, 1898, *s.* 195—*Sanction for prosecution—Appeal—Expiry of period of sanction before disposal of appeal—Extension.*—Where an appeal had been preferred against an order sanctioning the prosecution of the petitioner and the appeal was not disposed of before the expiry of six months during which the sanction would remain in force, *held*, that there was sufficient ground for extending the time. KARUPPANNA SERVAGARAN v. SINNA GOUNDEN, **26 M. 480 = 2 Weir 201.** [*D.*, 9 C. W.N. 321 = 2 Cr.L J. 106 = 32 C. 379 ; *F.*, 15 Cr. L.J. 359 = 23 Ind. Cas. 727 = 1914, M W N. 347, 13 Cr. L.J. 551 = 15 Ind. Cas. 967 = 15 O.C. 177 ; *R.*, 8 C.W.N. 797.]

(77)—*Crim. Pro Code, s.* 476—*Complaint by subordinate Court—Power of High Court, on appeal, to set aside the complaint.*—The High Court has no power, on appeal, to set aside a complaint duly made by a subordinate Court under s. 476, Crim Pro. Code. QUEEN-EMPRESS v. NARAKKA, **13 M. 144.** [*R.*, 21 M. 124, F.B. = 2 Weir 593, 17 A.W.N. 64, Rat. Un. Cr. C. 701, 895; *Expl.*, 16 A. 80.]

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(78)—*Ss.* 195, 476—*Sanction to prosecute—Refusal by subordinate Judge—District Judge's power on appeal.*—Where a Subordinate Judge refuses to grant a sanction under s. 195, Crim. Pro. Code, a District Judge has, on appeal, jurisdiction to pass an order under s. 476; but in doing so, he should himself proceed according to s. 195, cl. (*b*), read within s 476. *In re* LAKSHMIDAS LALJI, **32 B. 184=10 Bom. L.R. 28=7 Cr. L.J. 35=3 M.L.T. 116.** [*N.F.*, 32 M. 49=9 Cr. L.J. 49=19 M.L.J. 42=4 M.L.T. 404; *R.*, 35 A. 8=10 A.L.J 361=13 Cr. L.J. 829=17 Ind. Cas. 573, 37 C. 642, F.B.=14 C.W N. 799=12 C.L.J. 45=11 Cr. L.J. 407=6 Ind. Cas. 801, 36 M. 72=13 Cr. L.J 723=23 M.L.J. 393=13 M.L.T. 367=1912 M.W.N. 1012=16 Ind Cas. 755, 8 Cr L. J. 209=1 S.L.R. 84, 10 Cr. L.J. 395=3 Ind. Cas. 886=3 S.L.R. 66, 1 Ind. Cas. 597, 4 M. L.T. 269.]

(79)—*Crim. Pro. Code* (*Act* X *of* 1882), *s.* 195—*Sanction by Deputy Magistrate—Sessions Court.*—Where a Deputy Magistrate, in appeal from an order passed by a Subordinate Magistrate, granted sanction to prosecute for an offence, the Sessions Judge could not entertain an appeal from such order, but could report the proceedings to the High Court under s. 438 of the Crim. Pro. Code. EMPRESS v. GHOUS ALI, **A.W.N. 1884, 271.**

(80)—*Crim. Pro. Code* (*Act* X *of* 1882), *s.* 195—*Jurisdiction of Sessions Judge.*—The Court of a Collector on appeal from an Assistant Collector who gave a sanction to prosecute for an offence, is subordinate to the Sessions Court for the purpose of s. 195 of the Crim. Pro. Code. QUEEN-EMPRESS v. ZAHARIA MAL, **A W.N. 1889, 206.**

(81)—*Crim. Pro. Code* (*Act* X *of* 1882), *s.* 195—*Penal Code, s.* 182—*Police—Appeal to Sessions Judge.*—A District Magistrate who, under s.195 of the Crim. Pro. Code, sanctions the prosecution of a person for an offence under s. 182 of the Penal Code for giving false information to the Police, is acting judicially and is therefore subordinate to the Sessions Judge for the purpose of s. 195 of the Crim.Pro. Code. QUEEN-EMPRESS v. ZORAWAR, **A.W.N. 1890, 168.**

(82)—*Crim Pro. Code* (*Act* X *of* 1882), *s.* 195, *cl.* (*b*)—*Assistant Collector subordinate to Collector.*—For the purpose of cl. (*b*) of s. 195 of the Crim. Pro. Code, an Assistant Collector of the first class sitting as a Revenue Court is subordinate to the Collector of the District, though in the particular case in which the offence was committed the appeal would lie to the District Judge. QUEEN-EMPRESS v. AJUDHIA PRASAD, **A.W N 1895, 121.** [*F*, 19 A. 121=A.W.N. 1897, 165.]

(83)—*Power of Small Cause Court Judge—Proceeding before Registrar—Forgery —Crim. Pro. Code* (*Act* XXV *of* 1861), *s.* 170. — A specially registered bond was presented before the Small Cause Court Judge for execution, under s. 53, Act XX of 1866, and a decree passed upon it in the usual form. Subsequently, the Registrar sanctioned the prosecution of the decree-holder, on the ground that the bond was a forgery. The Small Cause Court Judge thereupon, on application made, without taking any evidence or making further inquiry, set aside the decree, and sanctioned the prosecution under s. 170 of the Crim. Pro. Code. *Held* that he could sanction the prosecution, but not set aside the decree. QUEEN v. NAWAB SING, **3 B.L.R.A. Cr. 9.**

(84)—*Crim. Pro. Code* (1882), *s.* 195—*Sanction to prosecute—Appeal — Revision.*—No appeal lies from orders passed under s. 195, Crim. Pro. Code, whether the order be for granting or for refusing sanction. The proper course in such cases is an application for revision. ZAHUR AHMAD v. MUHAMMAD HASAN, **A.W. N. 1893, 147.**

(85)—*Crim. Pro. Code* (*Act* X *of* 1882), *ss.* 195, 435 — *Subordinate Court — District Magistrate and Sessions Judge.*—The fact that a District Magistrate is not subordinate to a Sessions Judge within the meaning of s. 195 of the Crim. Pro. Code does not prevent the latter from revising under s. 435 an order refusing sanction to prosecute. *In the matter of the petition of* NAJIB KHAN, **A.W.N. 1889, 100.** [*R.*, A.W.N. 1889, 206.]

(86)—*Crim. Pro. Code* (1898), *s.* 195 (7) (*a*)—*Sanction to prosecute — Revision — Jurisdiction.*—Where sanction to prosecute is granted or refused by a Munsif, the District Judge, and not the Divisional Judge, has jurisdiction to revise the order passed by the Munsif and the order of the District Judge is not open to revision by the Divisional Judge. P.R. 34 of 1886, Cr., and P.R. 10 of 1891, Cr., have lost authority by the amendment of s. 195 of the Code of Criminal Procedure. MUNSHI v. GANDA MUL, **25 P.R. 1900. Cr.=19 P.L.R. 1901.** (34 P.R. 1886, Cr., 10 P.R. 1891, Cr., 7 P.R. 1886, Cr., *R.*) [*R.*, 5 P.R. 1908, Cr.]

(87)—*Crim. Pro. Code* (*Act* V *of* 1898), *ss.* 195 *and* 439—*Sanction to prosecute — Revision.*—The petitioner in this case applied to the District Magistrate for sanction under s. 195 of the Crim. Pro. Code for the prosecution of the respondent for giving false evidence. The District Magistrate rejected this application, but of his own motion directed the prosecution of the respondent for giving false evidence with the intention of evading payment of income-tax. The order of the District Magistrate was set aside by the Sessions Judge The petitioner applied for revision and contended that the District Magistrate accorded sanction as Collector of the District, and that his order could not be interfered with by the Court of Sessions. *Held*

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that, the petitioner's application for sanction having been rejected by the District Magistrate, his remedy was by revision of that order, and there was no reason for the exercise by the Chief Court, on his initiative, of the discretion vested in it under s. 439 of the Crim. Pro. Code; and that an order passed by a District Magistrate as such can be set aside on cause shown by a Court of Sessions, and the order was passed by an official purporting to act as a District Magistrate. GURMUK SINGH v. NAMAN, **30 P.R. 1903, Cr.=29 P.L R. 1904=1 Cr. L.J. 112.** (8 P.R. 1902, Cr.=33 P.L.R. 1902, 5 P.L.R. 1903, 27 P.R. 1902, Cr., *R.*)

(88)—*Revision of District Judge's appellate order granting sanction to prosecute.*—S. 622 of the Civ. Pro. Code does not apply to the case of an application for revision by the High Court of an order of the District Judge reversing an order of the Subordinate Judge and granting sanction to prosecute a person for offences under ss. 209 and 210, I.P.C. The words "any case" in s. 622, Civ. Pro. Code, are very wide, but they are confined to suits or proceedings governed by the Code of Civil Procedure. Applications for sanction to prosecute are not governed by the Civ. Pro. Code, but by s. 195 of the Crim. Pro Code. The District Judge's order was not revisable by the Judicial Commissioner, as the words "any sanction given or refused" in s. 195, cl. (6) mean any sanction given or refused upon an original application and the clause does not provide for interference by a third Court at all. S. 439, Crim. Pro Code, provides for the case of "any proceedings" and empowers the High Court to exercise the power conferred upon the Court of appeal by s. 195, and, therefore, the High Court has power or jurisdiction under s. 439 to revise the District Judge's order. MUSAJI v. MOHAMMED WALAYAT-UL LAH KHAN, **6 O.C. 216** [*R.*, 37 C. 714=14 C.W.N. 806=11 Cr. L.J. 357=6 Ind. Cas. 473, 15 Cr. L J. 217=17 O.C. 25=22 Ind. Cas. 1001.]

(89)—*Crim. Pro. Code* (1898), *ss.* 195, 435 *and* 438—*Sanction to prosecute given by a Magistrate of a Sessions Division—Prosecution on that sanction in a Court outside the jurisdiction of the Sessions Judge—Power of Sessions Judge to revise the proceedings and order stay of proceedings.*—Where sanction to prosecute was granted and confirmed on appeal by the Magistrate of one Sessions Division, and the complaint, in pursuance of the sanction, was filed before a Magistrate of another Sessions Division, and the accused presented a revision petition to the Sessions Court of the former place, *held*, that the Sessions Judge was not competent to pass an order staying proceedings pending the disposal of the revision petition. The order was set aside without prejudice to his disposing, according to law, of the petition presented to him by the accused under s. 435 to move the High Court under s. 438 to quash the sanction. SHANMUGAM CHETTY v. PENNAPPA MUDALY, **26 M. 137=2 Weir 196.**

(90)—*Crim. Pro. Code, ss.* 195, 435 *and* 478—*Forged documents filed in Court, but not given in evidence—Power of the Court to sanction prosecution for forgery—Powers of High Court in revision*—The words "any such offence" in s. 478, relate to offences referred in s. 195, and such of those offences as fall under ss. 463 and 471, Penal Code, must have been committed by a party to any proceeding in any Court in respect of "a document given in evidence" in such proceeding. Where certain documents were put into Court in a pending suit, but not given in evidence, *held*, that the Court was not competent to order the prosecution of the party, who had put in the documents for forgery, as it was not competent to the Court to go beyond the record and that the High Court had the power to revise, on revision, the proceedings of that Court. ABDUL KHADAR v. MEERA SAHEB, **15 M 224=2 M.L.J. 148=2 Weir 174.** [*Diss.*, 12 P.R. 1897, Cr, 2 Weir 177; *R.*, 32 A. 74=6 A.L J. 983=10 Cr. L.J. 497=4 Ind. Cas. 105, 10 C.L J. 564=14 C.W.N. 330=4 Ind. Cas. 710=37 C. 250=11 Cr L J. 37, 5 M.L.J. 226=2 Weir 602, Rat. Un. Cr. C. 895; *Expl.*, 20 M. 339=7 M.L.J. 311=2 Weir 175.]

(91)—*Crim. Pro. Code* (1898), s. 195, *sub-s.* 6—*High Court's power of interference with sanctions awarded by subordinate Courts—Duty of Court granting sanction*—Under s. 195, sub, s. (6), the High Court has power to interfere with the order of a District Judge affirming the sanction granted by a Munsif, and not revoking it. GIRIJA SANKAR ROY v BINODI SHEIKH, **5 C L.J. 222=5 Cr. L J. 188.** [*R.*, 17 M.L.J. 266=30 M. 382=2 M L.T. 239=6 Cr. L J. 102, 7 P W.R. 1908, Cr., F.B.=5 P.R. 1908, Cr =103 P.L.R 1908.]

(92)—*Crim. Pro. Code* (1898), *s.* 476—*Order under section.*—*Revision.*—The High Court should not interfere in revision with an order passed under s. 476, merely on the ground that it disagrees with it, when the lower Court has formed a real opinion on the evidence. But, where an order under the section is made apparently on very insufficient grounds, and no further action is taken in respect thereof by the Court making it for more than a year, *held* that, in such a case, the revisional powers of the High Court might properly be exercised and the order set aside. KING-EMPEROR v. ZALIM SINGH, **A.W N. 1901, 177.** (23 A 249, *R.*)

(93)—*Crim. Pro Code* (1882), s 195—"*Court to which appeals ordinarily lie*"—*Order of Assistant Magistrate of first class—Jurisdiction to revise the order.*—Where an Assistant Magistrate of the first class grants or refuses sanction to prosecute, his order is liable to be revised by

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the District Judge, for the former is subordinate to the latter for the purposes of s. 195. The District Magistrate has no such jurisdiction. SHANKAR DIAL v. A. M. VENABLES, **19 A. 121 = A.W.N. 1897, 2.** (10 A. 582, *F.*; A.W.N. 1895, 121, *Cons.*)

(94)—*Crim. Pro. Code* (1898), s. 438—*Sanction by District Magistrate on refusal by third class Magistrate—Powers of Sessions Judge.*—A Sessions Judge has no power to revise an order of the District Magistrate setting aside an order of a third class Magistrate refusing to sanction a prosecution under s. 211, I.P.C. The only Court to which an appeal lies from an order of a third class Magistrate is the District Magistrate, and he alone can revise such orders. RAM DEVI v. NAND LAL RAI, **30 A. 109 = 4 A.L.J. 805 = A.W.N. 1908, 28 = 3 M.L.T. 115 = 6 Cr. L. J. 454.**

(95)—*Crim. Pro. Code*, s. 195—*Sanction by District Magistrate as head of the Police—Powers of the High Court*—Where a District Magistrate acting as head of the Police in the District has granted sanction for a prosecution under s. 195, the High Court has no power to interfere in revision. EMPEROR v. SHIB SINGH, **27 A. 292 = 1 A.L.J. 597 = A.W.N. 1904, 231 = 1 Cr. L J 892.** (27 C. 452, *Diss.*)

(96)—*Crim. Pro. Code*, ss. 195, 439—*Sanction by Civil Court—Revisional powers of High Court.*—The High Court is empowered under s. 439 to interfere in revision in the case of any proceeding which has in any way come to its knowledge; and a sanction given or refused under s. 195 can be revised even when given or refused by a Civil Court. NAZIR HASAN v. DOST MUHAMMAD, **26 A. 1 = A.W.N. 1903, 171 = 1 Cr.L.J. 120.** (26 M. 139, *Diss.*) [*Overruled*, 28 A. 554 = 3 A L J 394 = A W N. 1906, 183 = 3 Cr. L.J. 400 = 1 M L.T. 219; *Diss.*, 7 Cr. L.J. 416 = 4 L.B.R. 138; *R.*, 11 A.L J. 313 = 14 Cr. L.J. 389 = 20 Ind. Cas. 213, 7 Cr. L.J. 281 = 103 P.L.R. 1908 = 5 P.R. 1908, Cr. = 7 P.W.R. 1908, Cr.]

(97)—*Crim. Pro. Code* (*Act* V *of* 1898), s. 195, *Civ. Pro. Code, Act* XIV *of* 1882, s. 622—*Sanction granted by Civil Court—Revision.*—Where a sanction granted by a District Munsiff for the prosecution of certain persons for offences under s. 193 of the I P.C., was upheld by the District Judge, *held* that no application for revision would lie to the High Court under s. 622 of the Civ. Pro. Code. RANJIT SINGH v. SHIBBA MAL, **A.W.N. 1905, 85 = 2 Cr. L.J. 225.** (A.W.N. 1903, 172, *R.*) [*R.*, 7 Cr. L.J. 281 = 103 P.L.R. 1908 = 5 P.R. 1908, Cr. = 7 P.W.R. 1908, Cr., F.B.]

(98)—*Crim. Pro. Code* (1898), ss. 195 *and* 439—*Sanction to prosecute—Revision—Powers of High Court.*—When an order granting or refusing sanction to prosecute under s. 195(1)(*b*) or (*c*) of the Code has been dealt with under

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s. 195 (6) of the Code by the Court to which appeals from the Court which passed the order ordinarily lie, the High Court has no power to interfere in revision with the order passed under s. 195 (7). KUSAL v. BADRI PRASAD, **A.W.N. 1907, 283 = 6 Cr. L.J. 372.** [*R.*, 30 A. 243 = A.W.N. 1908, 102 = 5 A.L.J. 247 = 7 Cr. L.J. 389 = 3 M.L.T. 377.]

(99)—*Crim. Pro. Code* (1872), ss. 468, 469—*Powers of Civil Court to sanction prosecution—Revision—Civ. Pro. Code*, 1877, s. 622.—The revisional powers of the High Court, contemplated by s. 622, Civ. Pro. Code, are not applicable to a matter, relating to the exercise of the discretionary power, of the Civil Court in the granting or withholding sanction to a criminal prosecution. *In the matter of the petition of* MADHO PERSAD, **3 A. 508 = A.W.N. 1881, 15.**

(100)—*Commitment without sanction as to one prisoner—Ground for quashing commitment*—*Held* that, where a sanction to prosecute given under s. 169, Crim. Pro. Code, 1861, applied only to one of the persons charged, the commitment of the rest was bad and they should be discharged. QUEEN v. WOODURMUL SINGH, **10 W.R. Cr. 24 = 15 W.R. Cr. 55.**

(101)—*Institution of case without sanction—Discretion of High Court to interfere—Trial finished without sanction.*—Where the accused was tried and committed and there was nothing to entitle the accused to the benefit of the exceptions in s. 426 of the Crim. Pro. Code, 1861, the High Court would not interfere, although the charge was established without the necessary sanction. KIRTI OJHA v. RAJKUMAR, **7 B.L.R. 29, Note.**

(102)—*Crim. Pro. Code* (1872), s. 168—*Discretion of High Court to grant sanction after refusal by Small Cause Court.*—*Held* that, where a Small Cause Court refused to give a defendant sanction to prosecute the plaintiff, the High Court would not interfere under s. 468, Crim. Pro. Code, 1872, except on very clear grounds. MONEY MOHUN DEY v. DINONATH MULLICK, **22 W.R. Cr. 11.**

(103)—*Crim. Pro. Code* (1898), ss. 195 *and* 439—*Civ. Pro. Code*, s. 622—*Revision*—*Act* XVIII *of* 1879 (*Legal Practitioners Act*), s. 4—*Jurisdiction.*—A complaint made by letter by a litigant to the subordinate Judge charging a pleader with professional misconduct was "filed" by the subordinate Judge; but on a similar complaint being sent to the District Judge, the District Judge, having inquired into its authenticity, sent it to the subordinate Judge for inquiry and report. The subordinate Judge thereupon instituted an inquiry under s. 14 of the Legal Practitioners Act, as a result of which he granted sanction to the pleader to prosecute for perjury one of the witnesses who had appeared before him in the course of the inquiry, and this order was

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confirmed by the District Judge. *Held*, that the High Court had no jurisdiction to interfere with the order of the subordinate Judge under s 195 or s. 439 of the Code of Criminal Procedure, nor could it interfere under s. 622 of the Code of Civil Procedure, inasmuch as the subordinate Judge (though he possibly mistook the meaning of the District Judge's order addressed to him) had jurisdiction to inquire into the truth of the charge made against the pleader. MAZHAR HASAN v. SAID HASAN, **A.W.N. 1908, 273 = 5 A.L.J. 749 = 9 Cr. L J. 39 = 1 Ind. Cas. 569 = 31 A. 38.** (28 A. 554, *R.*)

(104) —*Crim. Pro. Code*, ss. 195, 476—*Sanction to prosecute— Complaint to a District Registrar — Enquiry held departmentally — Judicial proceedings—Penal Code* (*Act* XLV *of* 1860), *ss.* 182, 211.—Where a person made a complaint to a District Registrar against the conduct of a subordinate officer, a sub-Registrar, alleging that the latter had misappropriated a sum of money paid to him on account of fees for a commission, and the District Registrar after holding a departmental enquiry was satisfied as to the falsity of the complaint and made a report to himself as District Magistrate, and in this latter capacity passed the following order :—"Read report of District Registrar, Prosecution of E.B, under ss. 211 and 182, Penal Code, sanctioned, Summon, E.B. ss. 182 and 211, Penal Code."—*Held*, it was not clear from the record whether the District Magistrate purported to act under s. 195 or s. 476 of the Crim. Pro. Code. If he purported to act under s. 195, then the sanction would be without jurisdiction as to s. 182, Penal Code, inasmuch as he was not the public officer concerned or the public officer to whom he was subordinate ; and so far as the sanction related to s. 211, Penal Code, it was equally without jurisdiction, as there was no offence committed in or in relation to any proceeding in Court. Nor could the District Magistrate take action under s. 476, Crim. Pro. Code, as the alleged offence or offences cannot be said to have been committed before him or brought under his notice as a Court in the course of a judicial proceeding. ELAHI BUX v. KING-EMPEROR, **11 C.L.J. 111 = 5 Ind. Cas. 721 = 11 Cr. L.J. 212.**

(105)—*Effect of want of—Crim. Pro. Code*, 1872, s. 468.—All proceedings taken without the sanction prescribed under s. 468, Crim. Pro. Code, would be without jurisdiction. POLICE v. SHEIKH CHAND, **Colm. Dig. 59 of 1876.**

(106)—*Crim. Pro. Code, ss.* 295, 435, 439, 476—*Revision—Civ. Pro. Code, s* 622—*Punjab Courts Act*, XVIII *of* 1884, *s* 70—*Chief Court's power to interfere, under s.* 439 *of Crim. Pro. Code. with a sanction granted by a Civil Court —Difference between ss.* 435, 439.—*Held*, by the Full Bench, that it is competent for the High Court to interfere, under s. 439, Crim. Pro. Code, with a sanction for prosecution granted by any Court Civil, Revenue or Criminal either under s. 195 or s. 476 of the Crim. Pro. Code. BISHEN SINGH v. AMRITSARIA, **7 P.W.R. 1908, Cr., F.B. = 103 P.L.R. 1908 = 5 P.R 1908, Cr. = 7 Cr. L.J. 281.** (26 A. 249, F.B., *Diss.*; 34 C. 45, 21 M. 124, 26 A. 1, 26 B. 785, 16 C. 730, 20 C. 349, 16 A 80, 11 C.W.N. 195, 19 P.L.R. 1901, 8 P.L R 1902, 97 P.L R. 1903, 5 C.L.J. 222, 12 Bur. L.R. 318 = 5 Cr. L. J. 123, *F. & Appr.*; 28 A. 554, F.B., 8 C.W.N. 73, 26 M. 139, 10 C.W.N. 1026, 26 M.98, F.B., 7 Bom. L.R. 84, A.W.N. 1905, 85, 26 A. 249, F.B., *Not F.*)

(107)—*Code of Civil Procedure* (1908), *s.* 115 —*Application for sanction to prosecute in a civil case—Appeal to District Judge—Practice.* An appeal filed against an order rejecting an application for sanction to prosecute a petitioner in a civil case is a civil appeal and should be registered as such, and an application for revision can be entertained by the High Court only under s. 115 of the Code of the Civil Procedure. The practice prevailing in the court of District Judges to register such appeals as criminal appeals is a wrong practice. MUHAMMAD YASIN v. CHEDA LAL, **13 A.L.J. 709 = 16 Cr. L.J. 524 = 29 Ind. Cas. 540.**

(108) —*Crim. Pro. Code, ss.* 195 (6) *and* 439 —*Power of Chief Court to interfere on its criminal revision side with an order of sanction by a District Court.*—A District Court sanctioned the prosecution of R, for offences under ss. 193, 196 and 471 of the Penal Code. R applied to the Chief Court of Lower Burma, on its criminal revision side to have the sanction revoked under the power conferred by s. 439 of the Crim. Pro. Code. *Held*, the Chief Court had not the power conferred on it, to interfere with the proceedings of a Court which is not *qua* the Crim. Pro. Code, subordinate to it. RAMZAN ALI v. OPORNO CHARAN CHOWDRY, **4 L.B.R. 138 = 7 Cr. L. J. 416** [*F.*, 4 L.B.R. 339 ; *R.*, 14 Cr.L.J. 496 = 20 Ind. Cas. 752.]

(109)—*Crim. Pro. Code, ss.* 195 (6), 435 *and* 439 —*Nature of jurisdiction exercised by every Court, holding proceedings under powers conferred on it by the Crim. Pro. Code, is criminal —Effect of order made under s.* 195, *sub-s.* 6 *of Code by a competent Court—Limit to exercise of power conferred by sub-s.* 6—*Revision of order under s.* 195, *Crim. Pro. Code, made by Civil or Revenue Court in the ordinary course of its business, to be made by High Court.*— Jurisdiction being conferred on the Courts in British India by a codified adjective law, any jurisdiction conferred upon any Court by the Code of Criminal Procedure must be a criminal jurisdiction, if there is any meaning in the name given to that Code. The Civ. Pro. Code jurisdiction is limited to matters of a civil nature ;

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it is wrong to speak of an order or sanction to prosecute for a criminal offence as a matter of a civil nature. Where a single officer or a single Court is invested with several powers of different natures, the question as to whether that Court is a civil, criminal, or revenue Court must be answered with reference to the nature of the proceedings before it in each case ; and, in every proceeding held under the authority of the Crim. Pro. Code, it would be a criminal Court, and it makes no difference whether such jurisdiction is ordinary or exceptional. Though the nature of the ordinary business carried on by a Court offers a convenient basis for its appellation, and for its general administrative control by higher authority, that cannot alter the law and change the nature of a jurisdiction which the Legislature has conferred upon such Court ; and, it is that nature upon which depends the judicial control over every proceeding held by any subordinate Court. Each of the Superior authorities mentioned, *e.g.*, in s. 195, Crim. Pro. Code, obtains such power of control, not by virtue of his ordinary jurisdiction, but by a special jurisdiction conferred upon him by s. 195, Crim. Pro. Code, without which he would have no authority whatever over any order made under that section. Hence, in exercising the control, each superior tribunal itself becomes, *pro tanto*, a criminal Court within the meaning of s. 195, Crim. Pro. Code. The Legislature never intended that a particular power of superior control, given under a particular section of the adjective law, shall be exercised more than once, and by different Courts, in the same case. Sub-s. 6 of s. 195, Crim. Pro. Code, contemplates one proceeding only, in a single superior Court, after which the power given by it is exhausted, a view supported by the language of sub-s. 7, cl. (*a*) of the same section. The powers under sub-s. 6, s. 195, Crim. Pro. Code, especially in the directon of granting a sanction refused on reasonable and valid grounds, should be most sparingly used. In a suit brought in 1903 against the appellant, he had made a statement, and, in a suit brought in 1906 against him, which was dismissed as false and malicious, he made a statement alleged to be contradictory to that made in 1903. An application for sanction to prosecute the appellant for perjury in respect of the alleged contradictions in the statements of 1903 and 1906 was dismissed by the Court of the first instance, but the District Judge accorded the sanction asked for with reference to the discrepancy between the statements. *Held*, that the application should be dealt with under s. 439 of the Crim. Pro. Code, and not under s. 622 of the Civ. Pro. Code, 1882. SHANKAR RAO v. SHAIK DAUD, **4 N.L.R. 140 = 8 Cr. L.J. 351.** [*Rel.*, 15 Cr. L.J. 33 = 9 N.L.R. 184 = 22 Ind. Cas. 177.]

(110)—*False evidence in civil proceedings—Application for reversal of order granting or refusing sanction —Crim. Pro. Code*, 1898, s. 195—*Jurisdiction of Criminal Courts.*—Where the evidence asserted to be false was given in a Civil Court, the Criminal Courts have no power to deal with an application for sanction to prosecute, or for reversal of orders granting or refusing such sanction. Such applications should be dealt with by the Civil Courts alone. They should be treated as Civil or Criminal Miscellaneous applications, as the case may be, and not as Civil or Criminal appeals. RUD MULL v. RAM CHANDRO KHEMKA, **1 L.B.R. 47.**

(111)—*Crim. Pro. Code*, 1898, *ss.* 195, 476 —*Offence committed before Munsiff—Prosecution ordered by District Judge—Jurisdiction.*—Where a Munsif refused to grant sanction to prosecute, and the District Judge also refused to grant sanction, on appeal under s. 195 (6), but, acting under s. 476, ordered prosecution himself :—*Held*, that the District Judge's order was without jurisdiction, inasmuch as neither the offence was committed before him, nor was it brought to his notice in the course of a judicial proceeding. SHIAM LAL v. CHUNNI LAL, **9 Cr.L.J. 181 = 1 Ind. Cas. 220.**

(112)—*Crim. Pro. Code*, 1882, *s.* 195—*Letters Patent, s.* 15—*Sanction to prosecute by a Judge of the High Court in exercise of revisional jurisdiction of High Court—Appeal.*—Where a Judge of the High Court, in exercise of the revisional jurisdiction of the High Court, reversed an order of a first-class Magistrate and granted sanction, under s. 195 of the Crim. Pro. Code, for the prosecution of the counter-petitioner for an offence under s. 192, Penal Code, and the counter-petitioner preferred an appeal under Letters Patent, s. 15, *held*, that the appeal was not justified by s. 15 of the Letters Patent, inasmuch as that section had nothing to do with criminal jurisdiction, and that s. 195 of the Crim. Pro. Code was also inapplicable to the case. SRINIVASA AIYANGAR v. QUEEN-EMPRESS, **17 M. 105 = 1 Weir 786.**

(113)—*Crim. Pro. Code*, 1898, *s.* 195—*Sanction to prosecute — Application dismissed for default by the first Court—Appellate Court cannot grant sanction on appeal—Absence of applicant—Dismissal of application for default not permissible—Practice.*—The Public Prosecutor applied to the subordinate Judge for sanction to prosecute in respect of offences committed in his Court. On the day and at the hour fixed for the hearing of that application, the Public Prosecutor, having failed to appear, the subordinate Judge dismissed the application as for default. Later on he moved the subordinate Judge to review the order ; but this was declined. On appeal, the District Judge granted the sanction under s. 195 of the Crim. Pro Code ;—*Held*, (1) That the subordinate Judge had no power to review his order, because

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the Crim. Pro. Code, 1898, contained no provision giving jurisdiction to a Court to review an order passed under it. (2) That there is no provision in the Crim. Pro Code, 1898, which warranted the subordinate Judge in rejecting or dismissing the application of the Public Prosecutor because of his failure to appear at the time the application was called on for disposal. In the absence of such a provision the subordinate Judge was bound to consider the application on its merits, even though the party who made it was not there to help the Court. (3) That as there was no sanction given or refused by the subordinate Judge, the District judge had no jurisdiction to accord the sanction under s. 195 of the Crim. Pro. Code, 1898. The only jurisdiction he had under the circumstances was to revise the order of the subordinate Judge dismissing the application as for default. *In re* GOPAL SIDDESHWAR DESHPANDE, **10 Bom. L.R. 95 = 32 B. 203 = 3 M L.T. 170 = 7 Cr. L J. 120.** [*F.*, 15 Cr. L.J. 71 = 22 Ind. Cas. 423.]

(114)—*Crim. Pro. Code, ss.* 195 *and* 439—*Sanction to prosecute—Revision—Jurisdiction—Civ. Pro. Code, s.* 622.—Where a Civil Court has given sanction to prosecute under s. 195 of the Crim. Pro Code, the High Court has no jurisdiction, under s. 439 of that Code, to revise that order, but it has power to call for the proceedings under s. 622 of the Civ. Pro. Code, and pass such orders on them as may be expedient. SALIGRAM v. RAMJI LAL, **3 A L. J. 394 = A.W.N. 1906, 103 = 3 Cr. L J. 400 = 1 M.L.T. 219 = 28 A. 554.** (26 A. 1, *overruled* ; 26 A. 249, 26 M. 139, 1877, L R. 6 Ch. D. 297, 1877, L R. 2 Q.B.D. 179, *R*) [*F.*, 31 A. 48 = 6 A.L.J. 1 = A.W.N. 1908, 290 = 9 Cr. L.J. 63 = 5 M L.T. 55; *R.*, 31 A. 38 = 5 A.L.J. 749, A. W.N. 1908, 273 = 9 Cr. L.J. 39, 37 C. 714 = 14 C. W.N. 806 = 11 Cr. L.J. 357 = 6 Ind. Cas. 473, 40 C. 477 = 17 C.L.J. 245 = 17 C.W.N. 647 = 14 Cr. L.J. 197 = 19 Ind. Cas. 197. 30 M. 311 = 5 Cr. L. J. 288 = 17 M.L J. 123 = 2 M L.T. 84, 5 A.L.J. 749 = A.W N. 1908, 273, 7 Cr. L.J. 281 = 103 P. L.R. 1908 = 5 P.R. 1908, Cr. = 7 P.W R. 1908, 10 Cr. L J. 395 = 3 Ind. Cas. 886 = 3 S.L.R. 66.]

(115)—*Prosecution—Application for sanction.*—An application to the Chief court for sanction to prosecute an approver for giving false evidence should be by motion on behalf of the crown in open Court, and not by a letter of reference. CROWN v. BULAKA SINGH. **10 P. R. 1904, Cr. = 1 Cr. L.J. 793.** (21 C. 492, *cited*) [*F.*, 230 P.L.R. 1912, Cr. = 30 P.W.R. 1912, Cr. = 75 P.L R. 1912 = 15 Ind. Cas. 83 = 13 Cr. L.J. 451.]

Under s. 196, Crim. Pro. Code—Legality of—Authority of Local Government, even illegally constituted, to grant sanction — *See* CONSPIRACY, 16 C.W.N. 1105 = 16 Ind. Cas. 257.

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——4.—**Conditions requisite for grant of sanction—Necessity, sufficiency and validity of sanction.**

(1)—*Crim. Pro. Code*, 1898, *s.* 195—*Sanction to prosecute grantable only on application.*—Unless an application for sanction to prosecute is made, no such order can properly be made. THAKUR TEWARY v. QUEEN-EMPRESS, **4 C. W.N. 347.**

(2)—*Crim. Pro. Code*, 1898, *s.* 439—*Offence under s.* 211, *Indian Penal Code—Notice to show cause against the institution of proceedings—Sanction to prosecution—High Court's power to remedy improper acquittals.*—The Sessions Judge, Lucknow, acquitted the respondent of an offence under s. 211, Indian Penal Code, on the ground, (1) that he was not served with notice to show cause against the institution of proceedings against him ; and (2) that the sanction was defective in form. *Held* that prior notice to respondent to show cause was not necessary and that the sanction given by the Deputy Commissioner was amply sufficient. *Held*, also, that the last clause of s. 439, Crim. Pro. Code, contains nothing to prevent the High Courts from remedying improper acquittals in the exercise of their jurisdiction under this section. For instance, they may reverse an acquittal and order a retrial. SAIYAD HASAN RAZA KHAN v. MIR MASHHADI HUSAIN, **S.C. 191, Oudh.**

(3)—*Crim. Pro. Code*, 1882, *s.* 195—*General sanction issued by Magistrate on his own motion—Validity.*—S. 195 does not contemplate a general sanction issued forth, of his own motion, by the Magistrate, irrespective of any application for sanction to prosecute. CHAUDHARI MAHOMED IZHARUL HUQ v. QUEEN-EMPRESS, **20 C. 349.** [*F.*, 23 C. 532 ; *R.*, 12 Cr. L. J. 85 = 8 Ind. Cas. 1197 = 3 Bur. L T. 101.]

(4)—*Crim. Pro. Code*, 1872, *ss.* 468, 471—*Sanction to prosecute.*—The instruction given to a Magistrate, in the concluding portion of the judgment of the Sessions Court, to prosecute a person for giving false evidence, will not amount to a sanction under s. 468, which supposes a complaint or at least an application for sanction. EMPRESS OF INDIA v. GOBARDHAN DAS, **3 A. 62.** [*R.*, 18 A. 213.]

(5)—*Crim. Pro. Code* 1898, *s.* 195—*Sanction—Court of Village Munsif subordinate to District Judge—District Judge competent to grant sanction—Sanction to be granted on formal application—Village Courts Act* (III *of* 1892), *s.* 73.—No appeal lies from the decree of a Village Munsif under the Village Courts Act, although under s. 73 of the Act, the District Judge may under certain circumstances review the decree of a Village Munsif. As no appeal lies from the decrees of a Village Munsif, that Court is, under s. 195 (7) (c), Code of Criminal Procedure, deemed to be subordinate to the principal Court of original jurisdiction within the local limits of whose jurisdiction it is situate. The District Judge is, therefore,

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——4.—Conditions requisite for grant of sanction—Necessity, sufficiency and validity of sanction—*continued*.

under s. 195 (1) (*b*), competent to grant sanction. Before sanction is granted, there must be a formal application by some person for sanction. Hence, where a District Judge, moved by the joint Magistrate to that effect, granted sanction for the prosecution of certain persons in respect of the offence of false personation in the Court of a Village Munsif, but he did not name the person to whom he granted it, *held*, that the sanction ought to be revoked, as there was no formal application for sanction, although the District Judge was competent to grant it. SUNDAR LAL v. KING EMPEROR, **6 A.L.J. 796=6 M.L.T. 98=3 Ind. Cas. 966=10 Cr. L.J. 437.**

(6)—*Crim. Pro. Code*, 1882, ss. 195, 476—*Sanction to prosecute.*—Where there is no application for sanction, no sanction under s. 195, should be granted. If the Court considers that there is ground for enquiring into an offence referred to in s. 195, and if there is no application for sanction, the proper procedure is to take action under the provisions of s. 476 of the Code. *In the matter of the petition of* BANARSI DAS, **18 A. 213=A.W.N. 1896, 32.** (3 A. 62, *R.*) [*F.*, 2 C.L.J. 619=10 C.W.N. 222=3 Cr. L J. 112 ; *R.*, 32 C. 351=9 C.W.N. 277, 41 C. 14=17 C.W.N. 976=14 Cr. L.J. 292=19 Ind. Cas. 948, U.B.R. 1907, I Qr. Cr. P.C. 1=6 Cr. L.J. 25, 13 Cr. L.J. 4=13 Ind. Cas. 97.]

(7)—*Sanctioning officer to comply with the law strictly.*—In granting sanction for the criminal prosecution of any person, the Judge who issues such sanction should comply strictly with the terms of the law. A sanction, which does not specify the place where, and the occasion on which, the offence is committed, is defective, and should be revoked, although the necessary facts may be gathered by implication. GIRIJA SANKAR ROY v. BINODE SHEIKH, **5 C.L.J. 222=5 Cr. L.J. 188.** (10 C W.N. 1026, *D.*) [*F.*, 5 P.R. 1908, Cr.=7 P.W.R. 1908, Cr.=103 P L.R. 1908, 13 Cr.L J.191=13 Ind. Cas. 1007=16 C.W.N. 645, 4 Ind Cas 6=13 C.W.N. 1038=10 Cr. L J. 454.]

(8)—*Crim. Pro. Code* (1898), s. 195—*Penal Code*, s. 182—*False report of police—Sanction to prosecute—Procedure.*—Before granting a sanction to prosecute, the provisions of the Crim. Pro. Code, *inter alia*, s. 190 *et seq* including s. 195, must be strictly followed. A vernacular order passed by an executive officer, merely bearing some more or less illegible initials directing a subordinate Magistrate to take up a case under s. 182, I. P C., is not sufficient compliance with the requirements of law. The butchers of a town made an application to the Deputy Commissioner of the District that the Hindu shopkeepers of the place would not supply them, and asked him to take measures for their relief. The Deputy Commissioner, on the report of the *Thasildar* to the effect that it was not shown that any ring or boycott had been established,

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——4.—Conditions requisite for grant of sanction—Necessity, sufficiency and validity of sanction—*continued*.

without any complaint by any one and without calling the petitioners before him, issued a vernacular order for their prosecution under s. 182, Penal Code. The Chief Court on revision set aside the order as illegal. KALA KHAN v. CROWN, **211 P.L.R. 1908=9 Cr. L.J. 190=46 P W.R. 1908, Cr.**

(9)—*Offence under s. 182, Penal Code—Charge and conviction under different section of Penal Code from that for which sanction was given.*—*Held* that a Magistrate, who sanctioned the prosecution of a complainant under s. 211, I.P.C., and tried the complaint under that section, but subsequently framed a charge under s. 182, I.P.C., and sentenced him thereunder, erred in law, because, the offences under ss. 182 and 211 being offences under Ch. XIV, Crim. Pro. Code, 1861, he should not have framed the charges without obtaining the sanction of the Court that heard the complainant's previous case. RAJCOOMAR v. KIRTHU OJHA, **13 W.R. Cr. 67=7 B.L.R. 29, Note.**

(10)—*Crim. Pro. Code* (1898), s. 195—*Sanction to prosecute—Affidavit in support of the application for sanction—Cross-examination on the affidavit, not permissible.*—Before granting a sanction under s. 195, the Judge should be satisfied that there is a reasonable *prima facie* case fit to be tried. The giving of a sanction to prosecute does not involve any trial of the issue, nor necessarily the forming of any definite opinion one way or the other upon the prisoner's guilt, but is restricted to removing a bar to this question being formally tried in another place. As a general rule, no cross-examination should be allowed on affidavits in support of an application for sanction to prosecute. SAFURABAI v ABDULLABHAI READYMONEY, **11 Bom. L.R. 1164= 4 Ind. Cas. 273=10 Cr. L.J. 539.**

(11)—*Crim. Pro. Code, s. 195—Sanction to prosecute*—*Prima facie case.*—Per *Russel, J.*—Before granting sanction to prosecute, under s. 195 of the Code, the Judge ought to satisfy himself whether there is a *prima facie* case against the person as to whom sanction to prosecute is asked. Per *Aston, J.*—The question whether the applicant is guilty cannot be decided in sanction proceedings, where the question is not whether guilt is proved (before trial), but whether there are *prima facie* grounds for removing a bar to the institution of criminal proceedings, in which the question of guilt can be determined. *In re* RAOJI SAKHARAM, **7 Bom L R. 732=2 Cr. L.J. 611**

(12)—*For making a false charge.*—A prosecution under s. 211, Penal Code, should not be granted as a matter of course, but only when the complainant can satisfy the Court that the interests of justice require a prosecution and that there is a strong *prima facie* case against the accused. MA SAW KIN v. MAUNG TUN LIN, **L.B.R. 1883—1900, 542.** (6 A. 114, *F.*)

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——4.—**Conditions requisite for grant of sanction—Necessity, sufficiency and validity of sanction**—*continued.*

(13)—*Crim. Pro. Code* (1872), ss. 468, 471—*Sanction for offence under s. 193, I.P.C.—Preliminary enquiry.*—If, in the course of a criminal trial, the evidence recorded by the trying Magistrate discloses a *prima facie* case of an offence under s. 193 of the Indian Penal Code, the sanction for the trial of the accused person may be given by such Magistrate without independent preliminary investigation. QUEEN-EMPRESS v. NABI NATHA, **Rat. Un. Cr. C. 132.**

(14)—*Crim. Pro. Code* (1898), s. 195—*Principles governing grant of sanction.*—The authority giving the sanction or upholding the sanction given under s. 195 must go into the merits of the application for sanction, with reference to the evidence before such authority, which is relied upon as justifying the according of sanction. Unless there is sufficient *prima facie* evidence and a reasonable probability of conviction, the Court giving the sanction or upholding it will not be properly exercising the discretion vested in it by law; and the safeguard provided by law against vexatious or frivolous prosecutions of parties resorting to Court and of witnesses attending and giving evidence in Courts of Justice in discharge of a public duty imposed upon them by law will be rendered nugatory. [*R.*, 26 M. 193=2 Weir 199.] The authority giving sanction under s. 195 should never be influenced in giving it by evidence which it ought to know will be altogether inadmissible against an accused person in a criminal trial. It would be an abuse of the power vested in Courts under s. 196, Crim. Pro. Code, if sanction should be given or upheld on the principle that, though the conviction of the party complained against is a *mere possibility* and is by no means *probable*, yet, the giving of sanction would in itself operate as a punishment which in the opinion of the authority giving or upholding the sanction, will be fully deserved by the person whose prosecution is sanctioned. Where on appeal from an order sanctioning the prosecution of the petitioner, the Appellate Magistrate passed the following order, that as the Magistrate had judicial evidence before him and also held the necessary inquiry before granting sanction, it was not for him to usurp the functions of a Court trying petitioner for the offence, *held*, that the order of the Appellate Magistrate was not a proper order and the Magistrate should restore the appeal to his file and dispose of it according to law. *In re* PAREE KUNHAMMED, **26 M. 116=2 Weir 189.** [*R.*, 13 Cr. L.J. 209 =14 Ind. Cas. 305=22 M.L.J. 419=11 M.L.T. 367=1912 M.W.N. 499.]

(15)—*Crim. Pro. Code* (1882), s. 195—*Sanction to prosecute* prima facie *case.*—Before granting sanction for prosecution for an offence under s. 210 of the I.P.C., a Court ought to satisfy itself that there was *prima facie* case against the accused that he had committed the offence. QUEEN-EMPRESS v. GIRDHARLAL, **Rat. Un. Cr. C. 374=Cr. Rg. 22 of 1888.**

(16)—*Forgery—Evidence of charge—Necessity for.*—No sanction to prosecute a witness or a party to a suit, for the forgery of a document tendered in the course of the trial of that suit, should be given, before all the testimony available at the trial and bearing on the question of forgery has been first received, and a *prima facie* case is satisfactorily made out. It is doubtful whether sanction is necessary where a document finds a place merely in the Judge's file without being either put in or dealt with as evidence. SEETARAM SAHOO v. SHEO GHOLAM SAHOO, **19 W.R. 183.**

(17)—*Penal Code*, s. 211—*Sanction to prosecute for false charge, when grantable—Crim. Pro. Code* (1882), s. 195.—A prosecution on a charge under s. 211, I.P.C., should not be sanctioned under s. 195, Crim. Pro. Code, as a matter of course, but only when the complainant can satisfy the Court that the interests of justice require a prosecution, and that there is a strong *prima facie* case against the accused. *In the matter of the petition of* GAURI SAHAI, **6 A. 114=A.W.N. 1883, 240.** [*F.*, L.B.R. 1893—1900, 542; *R.*, 35 P.R. 1889, Cr., 5 C.P.L.R. 78.]

(18)—*Omission to specify Court and occasion wherein the offence was committed—Sanction, when grantable.*—An omission in a sanction to prosecute to specify the place in which and the occasion on which the offence was committed is a defect by which the accused might be prejudiced. Sanction should not be granted unless the interests of justice require it and unless there is a strong *prima facie* case against the accused. IMAM BAKHSH v. CROWN, **35 P.R. 1889, Cr.** (6 A. 101 and 114, *R.*)

(19)—*Crim. Pro. Code*, ss. 195 *and* 476—*Confession of judgment—Inquiry by Court prior to granting sanction—Validity.*—Where, in a civil suit settled, without any evidence being gone into, by confession of judgment, the Court had grounds for supposing that an offence referred to in s. 195 of the Crim. Pro. Code, namely, an offence of false personation under s. 205 of the Penal Code, had been committed before it, *held*, that the Court, before granting a sanction to prosecute, would be competent to make a preliminary inquiry and travel outside the record, and thus satisfy itself whether a *prima facie* case had been made out for granting a sanction. SHASHI KUMAR DEY *of Paikparah* v. SHASHI KUMAR DEY *of Khilparah*, **19 C. 345.** (6 C. 440, 6 M. 29, *Diss.*) [*F.*, 20 M. 339=2 Weir 177=7 M.L.J. 311, 7 Cr. L.J. 495 =4 L.B.R. 231; *R.*, Rat. Un. Cr. C. 895.]

(20)—*Crim. Pro. Code* (1872), s. 468 (=s. 195 (*b*) *of the Code of* 1898)—*Sanction to prosecute, when can be granted.*—Under s. 468, sanction

Sanction to prosecute—continued.

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could not be properly given, unless the officer giving it is satisfied that there is a good *prima facie* ground to justify the prosecution. The section is intended to prevent the prosecution at the suit of disappointed or hostile parties, and was intended to protect against reckless or groundless criminal proceedings. VASTEVA PUTTURAYA v. LAKSHMINARAYANA KACHINTHAIYA, **2 Weir 177**.

(21)—*Crim. Pro. Code* (1882), *ss.* 195 *and* 476 —*Civ. Pro. Code, s.* 643—*Sanction to prosecute—Preliminary enquiry—Offence by definite individual or individuals.*—The provisions of s. 476, Crim. Pro. Code and s. 643, Civ. Pro. Code, clearly indicate that the Court taking action under the sections must not only have grounds for an enquiry into an offence of the description referred to in s. 195 of the Crim. Pro. Code, but must also be *prima facie* satisfied that the offence has been committed by some definite individual or individuals against whom proceedings in the Criminal Court are to be taken. MAHOMED BHAKKU v. QUEEN-EMPRESS, **23 C. 532**. (16 C. 730, 20 C. 349, *F.*) [*R.*, 40 C. 477 = 17 C.L.J. 245 = 17 C.W.N. 647 = 14 Cr. L.J. 197 = 19 Ind. Cas. 197, 41 C. 446 = 15 Cr. L.J. 49.]

(22)—*Crim. Pro. Code* (1898), *s.* 195 (3)—*Sanction to prosecute*—Prima facie *case.*—A sanction given under s. 195 (3) is not a mere formal sanction. It is incumbent on the Magistrate, before granting sanction, to consider the evidence and to decide as to whether there is a *prima facie* case and any reasonable chance of conviction being obtained. ABBOO CHETTY v. KUPPUSWAMY CHETTY, **2 Weir 188 = 12 M.L.J. 392.**

(23)—*Duty of judicial officer granting sanction—Duty of Magistrate entertaining complaint—Crim. Pro. Code* (1898), *ss.* 195 *and* 254.—A judicial officer, to whom an application is made for sanction to prosecute for the making of a false charge, should consider. "If I were prosecuting this case myself, am I in a position to produce such evidence as, if unrebutted, would support a conviction?" A Magistrate, to whom a complaint is presented after sanction to prosecute has been granted under s. 195 of Crim. Pro. Code, is bound to examine the complainant under s. 200 of that Code and should not issue process until the complainant satisfies him that there is sufficient ground for proceeding. It is the duty of the Magistrate, under s. 254, Crim. Pro. Code, to frame the charge in accordance with the evidence, although a different section of the Penal Code may have been specified in the complaint. MOKUN MAISTRY v. VALOO MAISTRY, **1 L.B.R. 286.** (27 C. 131, *R.*) [*R.*, 7 Cr. L.J. 495 = 4 L.B.R. 234.]

(24)—*Crim. Pro. Code* (1882), *s.* 195—*Sanction to prosecute.*—Before a Court sanctions a criminal proceeding, it is bound to satisfy itself by some inquiry that there is reason to believe the case to be true. But the Court need not go into the defence or scrutinize carefully the evidence against each individual. VYTHIYANATHA AIYAN v. VYTHIYANATHA AIYAN, **2 Weir 179.**

(25)—*Crim. Pro. Code* (1882), *s.* 476—*Sanction to prosecute for an offence mentioned in s.* 195, *Crim. Pro. Code.*—It is provided by s. 476, which applies to cases in which a Civil Court initiates a criminal prosecution of its own motion, that the Court should see that there is ground for inquiry. It is not necessary for the purpose that the Court should go minutely into the evidence recorded in the suit. It is sufficient, if that evidence discloses a reasonable foundation for a criminal charge. SECRETARY OF STATE FOR INDIA v SANGILI VIRA PANDIA CHINNTHAMBIYAR, ZEMINDAR OF SIVAGIRI, **2 Weir 587.**

(26)—*Crim. Pro. Code* (1898), *s.* 195—*Grounds for sanction.*—When granting permission to prosecute under s. 195 of the Code, there should always be good grounds for thinking that a false and malicious charge was made and that a prosecution is desirable in the interests of justice. NANDRAM v. RAMCHAND, **5 C.P.L.R. 78**

(27)—*Perjury—False charge, making of—Sanction to prosecute refused by trying Magistrate—Duty of superior Court.*—Sanction to prosecute should only be given in a case in which, in the interests of justice, further criminal proceedings are necessary. The view of the Court, which originally passed the order, on which the proceedings for sanction are taken, is most valuable and should not be lightly set aside. HIRA v. GOPI, **17 P.L.R. 1907.**

(28)—*Crim. Pro. Code* (1898), *s.* 195—*Sanction to prosecute, when to be granted.*—Sanction to prosecute is not usually granted unless there is a very reasonable chance of a conviction following. A sanction to prosecute under s. 195 of the Code of Criminal Procedure ought to be granted with great circumspection and care. If granted it places in the hands of the person obtaining it a very powerful weapon which the unscrupulous might use for purposes of oppression or blackmail. KALI CHARAN LAL v BASUDEO NARAIN SINGH, **12 C.W.N. 3 = 6 Cr. L.J. 356.** [*F.*, 37 C. 250 = 10 C.L.J. 564 = 14 C.W.N. 330 = 11 Cr. L.J. 37 = 4 Ind. Cas. 710.]

(29)—*Crim Pro Code, s.* 195—*Sanction to prosecute — Probability of conviction.*—Where there is no probability of securing a conviction even if sanction is granted, a Magistrate should refuse to accord the sanction. CHAKRAPANI AIYANGAR v. KING EMPEROR, **12 M.L.J. 408.**

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(30)—*Penal Code, s.* 193—*Sanction to prosecute for perjury—Primary consideration—Discretion of Magistrate in according sanction—Improper exercise—Crim. Pro. Code (Act V of* 1898), *s.* 195 —The primary consideration in a case of perjury under s. 193, I.P.C., is that the false statement should be intentionally made. Where, in a case in which sanction was asked for the prosecution of the petitioner under s. 193, I.P.C., for having made false statement in his cross-examination in a Court of Justice, there was no finding by the Magistrate who granted the sanction that the false statement was intentionally made, and there did not appear any evidence in the case of any such intention. *Held*, that the sanction was bad in law. Where the petitioner, who had been convicted and sentenced to imprisonment in a criminal case brought against him by certain Sonthals, seventeen years ago, having been asked in cross examination whether he was ever convicted and sentenced to imprisonment in any criminal case brought against him by some Sonthals, denied having been so convicted and sentenced, and the trying Magistrate on being moved refused to grant sanction to prosecute him for perjury. *Held*, that the District Magistrate did not exercise his discretion properly in sanctioning the prosecution of the petitioner, without considering whether the false statement in any way affected his credibility, and whether it was not possible for him to forget the circumstances of his previous conviction, and whether the question was at all relevant. AZIBULLA SARCAR v. UDOY SONTHAL, **13 C.W.N. 422 = 1 Ind. Cas. 287 = 9 Cr. L J. 282.**

(31)—*Sanction—Technical ground – Court's duty.*—When a Court is invited to sanction a prosecution because an offence against public justice has been committed, the ends of justice should not be allowed to be defeated on technical grounds. At the same time, a sanction should not be lightly granted, merely because there is room for suspicion that an offence may have been committed; the Court is bound to satisfy itself that there is at least a *prima facie* case, and that, if a sanction is granted, there is a reasonable prospect of a successful termination of the prosecution about to be instituted. MATHURA SAHU v. DAMRI RAM, **15 C.L.J. 337 = 14 Ind. Cas 755 = 13 Cr. L.J. 291.** [R., 40 C. 477 = 17 C.L.J. 245 = 17 C W.N. 647 = 19 Ind. Cas. 197 = 14 Cr. L.J. 197.]

(32)—*Crim. Pro. Code (Act X of* 1882), *s.* 195 —*Supplementary evidence—Recording evidence.* —A Magistrate can take supplementary evidence in an application for sanction to prosecute for preferring a false complaint. But in such a case, the evidence must be duly recorded. *In re* KADARBHI, **Rat. Un. Cr. C. 629 = Cr. Rg. 54 of 1892.**

(33)—*Crim. Pro. Code, s.* 195—*Sanction for prosecution for false evidence—Recording of evidence other than that in the case—Legality—Reasons for sanction.*—Sanction for a prosecution for preferring a false complaint and for giving false evidence, should not be granted, unless there are good and reasonable grounds for considering that the prosecution will be successful. In deciding whether a Magistrate ought to give his sanction for prosecution for giving false evidence, a Magistrate has power to hold an inquiry and record other evidence, besides that in the case before him, in the course of which the offence is supposed to have been committed, and arrive at a conclusion whether the interests of justice require such a prosecution. TUCK SEW v. HAIN KEE, **4 L.B.R. 234 = 14 Bur. L R. 207 = 7 Cr. L.J. 495.**

(34)—*Crim. Pro. Code* (1882), *s.* 195—*Sanction to prosecute—Complaint by accused found to be false after police investigation* —Before a sanction for prosecution for preferring a false complaint can be given, there should be a judicial investigation of the complaint. A mere investigation by the Police and a finding by them that the accused's complaint was false does not amount to a judicial investigation. MUKUNDA BEHARI v. BHIKKARI CHARAN MAHANTI, **1 C.W.N. 452** [*Not Appl.*, 11 Cr. L J. 3 = 4 Ind. Cas. 477 = 3 S L.R. 132.]

(35)—*Penal Code, s.* 211—*Sanction, when grantable.*—Sanction to prosecute for an offence under s. 211, I.P.C., should not be granted, merely because the complainant has not proved his charge; nor should such sanction be granted without any inquiry when the original complaint has been dismissed upon a report from the Police. PARTAPA v. EMPRESS, **33 P.R. 1890, Cr.**

(36)—*Proceedings in Court—Legality of sanction without hearing the complainant and his witnesses.*—Where proceedings are commenced in a Court, it is illegal to accord sanction for prosecution for a false charge without giving the complainant an opportunity for substantiating his charge. ASHROF ALI v. EMPRESS, **5 C. 281.** [*R.*, 14 C 707, F.B ; *D.*, 7 C. 208.]

(37)—*Sanction to prosecute for preferring a false complaint—Omission to give opportunity to produce evidence in proof of the complaint—Crim. Pro. Code, s.* 195 (1) (*b*).—Where a complaint was declared to be false before giving the complainant an opportunity of producing his evidence in proof of it, *held*, that an order for sanction to prosecute the complainant would not be legal. VELU NAIR v. GNANA PRAKASAM PILLAI, **2 Weir 167 = 2 Weir 243.**

(38)—*Crim. Pro. Code* (1898), *ss.* 195, 203—*Sanction to prosecute for bringing a false complaint—Application for inquiry into the complaint—Penal Code, s.* 211.—An application for inquiry into their complaint, made by persons in showing cause why they should not be prosecuted for bringing a complaint declared by

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the Police to be false, is in effect in the nature of a complaint, and a sanction for prosecution for bringing a false complaint cannot be given until and unless that complaint is judicially determined. *In re* SAHIRAM AGRAWALLA *and* JIBUN KUMAR, **5 C.W.N. 254.** [*R*, 33 C. 1 = 10 C.W.N. 158 = 2 C.L J. 228.]

(39)—*False charge—Sanction to prosecute, when illegal—Penal Code*, s. 211.—A sanction for prosecution under s. 211 of the Penal Code, given without hearing all the witnesses whom a complainant wishes to produce in Court, is illegal. EMPRESS v. SHIBO BEHARA, **6 C. 584 = 8 C.L.R 265.** [*Cons.*, 14 C. 707, F.B.]

(40)—*Crim. Pro. Code* (1898), *ss.* 195, 476, 478—*Sanction to prosecute—Offence, elements of—Police investigation—Police, false information to—Judicial enquiry, false statement during—Sanction, principles upon which, to be granted.*—S. 476, Crim. Pro. Code, has to be read with s. 195, and is therefore restricted by the limitations contained in cl. (*b*) of that section. An order for prosecution under s. 476 cannot therefore be made for alleged perjury during a Police investigation. *Quære*, whether the same principle is applicable to a case under s. 478, read with s. 195, cl. (*c*). A prosecution may be directed under s. 476, in respect of perjury alleged to have been committed in the course of a judicial investigation following a Police report. An order for prosecution under s. 476, like a sanction to prosecute under s. 195, must be made with great care and caution. The Court must be satisfied that there is a reasonable foundation for the charge, in respect of which prosecution is sanctioned or directed. JADU NANDAN SINGH v. EMPEROR, **37 C. 250 = 14 C W.N. 330 = 10 C.L J. 564 = 4 Ind. Cas 710 = 11 Cr. L.J 37** (7 C.L.J. 373, *F.*; 5 C.W.N. 106, 14 C. 707, 10 M. 232, 33 C. 1, 7 A. 871, 12 C.W.N. 3, 1 C. 450, *R.*; 18 B. 581, 22 C. 1004, 7 C.L J. 371, 33 C. 30, *D*) [*R.*, 40 C. 477 = 17 C.L.J. 245 = 17 C.W.N. 647 = 14 Cr. L.J 197 = 19 Ind. Cas. 197, 9 N.L.R. 184.]

(41)—*Crim. Pro. Code* (1872), *s.* 468—*Power of Court to go beyond record to see whether sanction should be given.*—S. 468 contemplates there being sufficient material before the Court in the suit or criminal trial to found the charge on. It is not competent to the Court, on an application for sanction under s. 468, to go beyond the record to determine whether sanction ought to be given when the record itself discloses no foundation for the charges. SANGILI VIRA PANDIA CHINNA THAMBIAR, ZEMINDAR OF SIVAGIRI v. QUEEN, **6 M. 29 = 2 Weir 173.** [*Diss.*, 19 C. 345; *F.*, 15 M. 224 = 2 Weir 174; *R.*, 14 Ind. Cas. 305 = 1912 M.W.N. 499 = 11 M.L T. 367 = 13 Cr. L.J. 209; Rat. Un. Cr. C. 895; *Expl. & D*, 20 M. 339 = 7 M.L.J. 311 = 2 Weir 175.]

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——4.—Conditions requisite for grant of sanction—Necessity, sufficiency and validity of sanction—*continued.*

(42)—*Sanction for prosecution in case settled without evidence, propriety of.*—When a Court, before which a case is pending, sanctions criminal proceedings against a party, before any evidence in the case has been given and without any materials before it upon which it could properly exercise a discretion, such sanction is highly improper.—*Per* Garth, C.J. [*Diss.*, 19 C. 345, 6 M. 29; *F.*, 6 M. 29 = 2 Weir 174; *R.*, Rat. Un. Cr. C. 895: *Expl & D.*, 20 M. 339 = 7 M.L.J. 211 = 2 Weir 176.] *Quære*—Whether, under the Penal Code, a statement upon oath, when the oath is not necessary, would come within s. 191 and support an indictment for perjury? JUGGUT CHUNDER MOZUMDAR v. KASI CHUNDER MOZUMDAR, **6 C. 440 = 7 C.L.R. 330.**

(43)—*Exercise of discretion—Crim. Pro. Code* (1861), *s.* 169.—*Held* that a Civil Court was bound to exercise the discretion vested in it under this section of sanctioning a prosecution for perjury most carefully. QUEEN v. POOSA RAM, **6 W.R. Cr. 11.**

(44)—*Crim. Pro. Code* (1882), *s.* 195—*Sanction to prosecute.*—Sanction under s. 195 should not be given until the complainant has been afforded an opportunity of proving his case, which has been thrown out merely on the report of the Police. QUEEN-EMPRESS v. GANGA RAM, **8 A. 38 = A W N. 1885, 323.**

(45)—*False charge—Prosecution of complainant ordered—Magisterial enquiry to precede sanction—Penal Code*, *s.* 211—*Crim. Pro. Code* (1882), *ss.* 215, 438, 532, 537—*Limitation.*—A complaint made to a second class Magistrate was dismissed as false after a police investigation, and the District Magistrate granted sanction for the prosecution without any Magisterial enquiry. The accused was committed to the Sessions, but the Additional Sessions Judge, holding that there was no valid sanction for the prosecution, took the opinion of the assessors as to the invalidity of the sanction and then, without hearing evidence or considering the merits of the case, acquitted the accused of the offence with which he stood charged. *Held*, that the sanction was invalid, as there ought to be a Magisterial enquiry before sanction is granted in respect of a false complaint made to a Magistrate; that in the absence of a legal sanction, the Magistrate was not competent to commit and was, therefore, not a competent Magistrate within the meaning of s. 215, Crim. Pro. Code, that the Sessions Court should have itself quashed the commitment, but had no power to acquit the accused; and that the period of limitation only applied to a sanction given under s. 195, Crim. Pro. Code, that is to say, to a sanction legally given under that section. QUEEN-EMPRESS v. SIT LAW, **L B.R. 1893—1900, 377.**

(46)—*Civil Court deciding in favour of party alleged to have fabricated false evidence.*—

Sanction to prosecute—continued.

——4.—**Conditions requisite for grant of sanction—Necessity, sufficiency and validity of sanction**—*continued.*

Where the decision of a Civil Court, in which the successful party was alleged to have fabricated false evidence, has been affirmed on appeal; *held*, that Criminal Courts should resort to criminal proceedings against the party only when there are very exceptional circumstances justifying a resort to it. GUL MUHAMMAD v. EMPRESS, **36 P.R. 1882, Cr.**

(47)—*Crim. Pro. Code* (1898), *ss.* 195 *and* 439 —*Sanction to prosecute—Complaint to, Executive Officer as such—His incompetency to act judicially—Absence of proper inquiry—Notice —I.P.C.* (*Act* XLV *of* 1860), *s.* 211.—A complaint made to an Executive Officer as such, which contains certain imputations against a person, is not making a false charge of an offence for which sanction to prosecute under s. 211, I.P.C., is allowable. When no proper inquiry has been made into the truth or falsehood of a complaint, the Court has nothing to go upon and is not justified in granting sanction to prosecute the complainant under s. 211, I.P.C., particularly when no opportunity has been given him to defend himself. *Held*, further, that the hearsay report of the Municipal Secretary is no evidence in this case. ZAIN-UL-ABDIN v. NAWAB DIN, **2 P.W.R. Cr. 1909=9 Cr. L.J. 152=37 P.L.R. 1909=1 Ind. Cas. 93.**

(48)—*Crim. Pro. Code* (1898), *ss.* 195, 202 *and* 203—*Sanction to prosecute—Dismissal of complaint under s.* 203—*Magistrate's power to sanction prosecution for preferring false charge.* —S. 203 allows a criminal complaint to be disposed of, after examination of the complainant and an inquiry under s. 202. When a complaint so disposed of is found or believed to be false, the Magistrate is not, as a matter of law, incompetent to grant sanction for prosecution under s. 195; and the fact of the complainant not having had an opportunity to substantiate his case is no legal bar to the sanction. CHIRAGH DIN v. KING-EMPEROR, **2 P.R. 1907, Cr.=49 P.L.R. 1907=18 P.W.R. 1907, Cr.=5 Cr. L.J. 491.** (6 C.W.N. 295, *F.*; 8 A. 38, *Diss.*)

(49)—*Crim. Pro. Code, s* 195—*Sanction to prosecute for perjury, application for—Contradictory statements before committing Magistrate and Court—True story stated in Court—Statement before Magistrate not fairly induced—Sanction if should be granted.*—On an application for sanction to prosecute a witness under s. 193, Penal Code, in respect of contradictory statements made by him before the committing Magistrate and the Court, it was found that the witness had made false statements before the committing Magistrate, but had deposed truly in Court: *Held*—that, having regard to the circumstances leading up to the examination of the witness before the committing Magistrate and the conditions under which the examination was conducted, the sanction should not be given. It would be a dangerous doctrine to hold that the fact of a witness having made contradictory statements before the committing Magistrate and in Court would alone justify the granting of sanction to prosecute him for perjury. There may be exceptional conditions in which sanction should be granted in a case, in which the witness has told a false story before the committing Magistrate but a true story in Court, but to grant sanction in circumstances such as were found in the present case would only tend to defeat and not to further the ends of justice. EMPEROR v. TRIPURA SHANKAR SARKAR, **37 C. 618=14 C.W.N. 767=6 Ind Cas. 476=11 Cr.L J. 360.** [*R.*, 13 Cr.L.J. 56=13 Ind. Cas. 392=4 Bur. L.T. 262, 13 Cr. L.J. 609=16 Ind. Cas. 257=15 C.L.J. 517=16 C.W.N. 1105.]

(50)—*Evidence before Sessions Judge not false —Special and cogent reason necessary for sanction to prosecute—Penal Code, s.* 193.—There should be some special and cogent reason for a Sessions Judge sanctioning the prosecution of a witness who has given evidence at the trial, if the Sessions Judge is not satisfied that the evidence given before himself by such witness is false and such as to render the witness liable to be prosecuted under s. 193 of the Penal Code. A mere contradiction between the evidence given by him at the trial and the evidence given before the committing Magistrate does not constitute a special or cogent reason. QUEEN-EMPRESS v. NGA PO NYUN, **L B.R. 1893—1900, 79**

(51)—*Crim. Pro. Code* (1882), *s.* 195 (1) (*b*) —*Contradictory statements before committing Magistrate and Sessions Judge—Sanction to prosecute—Power of Sessions Judge.*—Where a Sessions Judge believes that the evidence given before him by a witness is true, but that given before the committing Magistrate was false, he will be acting properly in not giving sanction to prosecute the witness for giving false evidence before him or for having given statements, one or other of which must necessarily be false. But he may give sanction in respect of the evidence given before the committing Magistrate, provided that there is such proof forthcoming as to justify a reasonable expectation that the prosecution will be successful. PUBLIC PROSECUTOR v. NALLAN, **2 Weir 166.**

(52)—*Crim. Pro. Code* (1898), *ss.* 195 (1) (*b*) *and* 476—*Contradictory statements in one and the same deposition—Sanction to prosecute.*—Where a person makes contradictory statements in one and the same deposition, a prosecution for perjury should not be sanctioned without having taken into consideration the whole deposition. An intention to give false evidence should not be inferred from an isolated statement. *In re* SAHIB BACHA, **2 Weir 168.**

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(53)—*Crim. Pro. Code* (1898), *ss.* 195 (1) (*b*) *and* 236—*Contradictory statements— Alternative charge.*—A person cannot be charged in the alternative, under s. 236, Crim. Pro. Code, for having made two contradictory statements, one in a petition and the other in his deposition inasmuch as the petitioner is not bound by law to state the truth in the petition. *In re* CHENNAMMA, **2 Weir 169.**

(54)—*Crim. Pro. Code, s.* 195—*Sanction to prosecute—Penal Code (Act* XLV *of* 1860), *ss.* 196 *and* 211—*False case—False evidence.*—Sanction to prosecute under s. 211, Indian Penal Code, should only be given where the case is deliberately a false one; where the case brought is not false in substance, but is bolstered up by false evidence, the proper section to give sanction to prosecute under is s. 196 of the Indian Penal Code. BHOLANATH DUTT v. HARI MOHAN DUTT, **7 C.L J. 169 =7 Cr.L.J. 196.**

(55)—*Crim. Pro. Code, ss.* 202, 203 *and* 476 —*Dismissal of complaint by first class Magistrate—Sanction to prosecute the complainant under s.* 211, *Penal Code—Preliminary enquiry by a third class Magistrate, whether valid.*—Where a Magistrate dismissed a complaint under s. 203, without further enquiry and upon consideration of the result of a police investigation, as false, and made an order sanctioning the prosecution of the complainant for an offence punishable under s. 211, Penal Code, and directed a third class Magistrate to hold the preliminary enquiry, as the offence was cognizable exclusively by the Court of Sessions, *held,* that the order sanctioning the prosecution, being made on his own motion without any application for sanction, the order must be taken to be a complaint made by the first class Magistrate and, therefore, he should have sent the complaint for enquiry to a Magistrate of the first class and, therefore, the commitment to Sessions by the third class Magistrate was without jurisdiction and should be quashed. *Held,* also that the first class Magistrate should have held a preliminary enquiry under s. 476, in order that the party complaining might have an opportunity of showing in the preliminary enquiry the truth of the *bona fide* character of his complaint. QUEEN v. YENDAVA CHANDRAMMA, **7 M. 189=2 Weir 585=8 Ind. Jur. 79.**

(56)—*Crim. Pro. Code* (1882), *s.* 476—*Preliminary enquiry, necessity for.*—It is not necessary for the validity of an order under s. 476 that there should be a preliminary enquiry. QUEEN-EMPRESS v. MATABADAL, **15 A. 392=A.W.N. 1893, 146.** (20 C. 474, *F.*) [*F.*, 34 A. 267=9 A. L.J. 231=13 Cr. L.J. 141=13 Ind. Cas. 829.]

(57)—*Crim. Pro. Code* (1882), *s.* 195—*Power of Court to go outside the record and to grant sanction.*—It is open to a Magistrate, when a person is accused of having committed before him an offence punishable under s. 193 of the Indian Penal Code, to inquire into the truth of the accusation, and then, if it seems proper in the interests of public justice to give sanction for prosecution, even though the original record did not, on its face, disclose that the offence had been committed. The Magistrate is not precluded from holding an inquiry and recording other evidence besides that in the case before him to show that there is ground for the prosecution. QUEEN-EMPRESS v. MOTHA, **20 M. 339=2 Weir. 175=7 M.L.J. 311.** [*F.*, 7 Cr.L.J. 495=4 L B.R. 234, 2 Weir 177; *R.*, 10 Cr.L.J. 225=2 S.L.R. 11 Cr., 13 Cr.L.J. 209=14 Ind. Cas. 305=22 M.L.J. 419=11 M. L.T. 367=1912 M.W.N. 499.] *See, also,* POLEPALLI BALAMMA v. MITTA VENKATASUBBAYYA, **2 Weir 177.**

(58)—*Crim. Pro. Code* (*Act* X *of* 1872), *ss.* 468, 297, 471—*Sanction to prosecute—Preliminary inquiry if necessary.*—Where the Court granting sanction to prosecute is already sufficiently acquainted with the facts of the case, there is no necessity for a preliminary inquiry before granting sanction. The sanction given under ss. 468, 469 of the Crim. Pro. Code cannot be disturbed by a superior Court. *In re* HARSUKH, **A W.N. 1882, 20.** (1 A. 17, *R.*)

(59)—*Crim. Pro. Code, ss.* 195, 197, 215, 526 —*Commitment under s.* 526—*Quashing of commitment—Nature of sanction accorded by Government under s.* 197.—S. 215, Crim. Pro. Code, is inapplicable to a case in which the commitment is not one made under any one of the four sections therein specified, but is one made under the direction of the High Court under s. 526 (1) (iv). The sanction accorded by Government under s. 197 cannot be held to be null and void for the reason that no notice was given to the accused to show cause why such sanction should not be given. It is a matter left entirely to the discretion of Government whether such opportunity should be given to the person concerned before sanctioning his prosecution, and the Criminal Court before which he is prosecuted is not an appellate authority over Government in the matter of the sanction. There is a marked distinction between the classes of offences dealt within s. 195, cl. 1 (*a*), (*b*) and (*c*), and it does so in connection with offences committed in or in relation to any proceeding in such Court, and the Court therefore acts in its judicial capacity in granting the sanction upon legal evidence. But the Government in according or withholding sanction under s. 197—for the prosecution of a public servant in respect of an offence alleged to have been committed by him as public servant—acts purely in its executive capacity, and the sanction need not be based upon legal evidence. *In re* KALAGARA BAPIAH, **8 M.L.T. 205=11 Cr.L.J. 527=7 Ind. Cas. 752.**

Sanction to prosecute—continued.

——4.—**Conditions requisite for grant of sanction—Necessity, sufficiency and validity of sanction**—*continued.*

(60)—*Crim. Pro. Code* (1882), s. 195—*Sanction, when should be accorded.*—Sanction to prosecute should be granted before the commencement of the trial. QUEEN-EMPRESS v. DALA JIVA, **10 B. 190.**

(61)—*Sanction previous to prosecution—Jurisdiction of tribunal without sanction—Illegal conviction—Crim. Pro. Code* (1861), *s.* 167.—S. 167 of the Code of Criminal Procedure required that sanction to prosecutions therein mentioned should be given before any such prosecution was commenced, and until the sanction was obtained, the tribunal by which the offence was triable had no jurisdiction, and a conviction founded on evidence taken without such sanction would be bad. QUEEN v. MAHIMA CHANDRA CHUCKERBUTTY, **7 B. L.R. 26=15 W.R. Cr. 45.**

(62)—*Illegal possession of fire arms—Previous sanction — Institution of proceedings—Charge—Indian Arms Act, ss.* 19 (*e and f*), 29—*Crim.Pro.Code* (1898), *ss.* 190, 195, 535, 537(*b*).—The accused was sent up by the police for trial under s. 19 (*e*) of the Arms Act for illegally going armed. After hearing the prosecution, the Magistrate charged him in the alternative with this offence and with illegal possession of an arm under s. 19 (*f*). The sanction of the District Magistrate, required under s. 29, was not obtained till after the framing of the charges. The accused was finally convicted under s. 19 (*f*). *Held* that, as the police sent up the case under cl. (*e*) of s. 19, proceedings under cl. (*f*) were not instituted until the Magistrate framed the charge under that clause. Although the charge was actually framed without jurisdiction, the Magistrate might have instituted proceedings afresh, after receiving sanction, by framing a fresh charge; and as the accused had not been in any way prejudiced by the procedure adopted, the absence of a fresh charge after the receipt of sanction was cured by s. 535 of the Crim. Pro. Code, 1898. s 537 (*b*), Crim. Pro. Code, does not cure the want of sanction in any case except when the sanction is required under s. 195 of the Code. KAKA v. KING-EMPEROR, **4 L.B R. 247=8 Cr.L.J. 65.** (1 U.B.R. 2, 2 L.B.R. 302, *F.*)

(63)—*False statement by a person who has accepted a tender of pardon—Prosecution for false evidence—Sanction of High Court, a condition precedent—Crim. Pro. Code, s.* 339 (3).—S. 339 establishes the sanction of the High Court as a necessary condition precedent to the entertainment of a prosecution for giving false evidence in respect of a statement made by a person who has accepted a tender of pardon. The absence of such a sanction is an illegality which invalidates the trial. KING-EMPEROR v. HTUKTALWE, **2 L.B.R. 302=1 Cr. L.J. 1021.** (42 P.R. 1884, Cr., U.B.R. 1892—1896, Vol. I, 2, *R.*) [*R.* 8 Cr. L.J. 65=4 L.B.R. 247.]

Sanction to prosecute—continued.

——4.—**Conditions requisite for grant of sanction — Necessity, sufficiency and validity of sanction**—*continued.*

(64)—*Crim.Pro.Code*(1872), *s.*470(=*s.* 195 (4) *of the Code of* 1898) — *Entertainment of the complaint by officer competent to sanction insufficient.*—Where the law prescribes that a complaint shall not be entertained without sanction, it is not sufficient fulfilment of the requirement that an officer competent to give the sanction entertains the complaint. HIGH COURT PROCEEDINGS, 3RD MARCH 1881, **2 Weir 171.**

(65)—*Crim. Pro. Code* (1872), *s.* 468 (=*s.* 195 *of the Code of* 1898)—*Absence of sanction, effect of.*—As soon as it becomes apparent that the complaint is of an offence falling within s. 468 and that it is made without sanction, the Magistrate is not competent to entertain it. HIGH COURT PROCEEDINGS, 16TH FEBRUARY 1875, NO. 365. **2 Weir 153=8 M.H. C. App. 2.**

(66)—*Crim. Pro. Code* (1882), *ss.* 195, 476 *and* 537—*Want of sanction.*—The mere want of a sanction requisite under s. 195, Crim. Pro. Code, 1882, or a mere irregularity in granting it, is not fatal to any finding, sentence or order of a Court of competent jurisdiction; nor is any other error, omission or irregularity in procedure that has not occasioned a failure of justice. MANGA RAM v. EMPRESS, **28 P.R. 1886, Cr.**

(67)—*Penal Code, s.* 206—*Want of sanction to prosecute for an offence under the section—Failure of justice—Crim. Pro. Code* (1898), *s.* 537.—Sanction for a prosecution should be given before a Magistrate can take cognizance of an offence under s. 206, Penal Code; but, unless the want of such sanction, has, in fact, occasioned a failure of justice, a conviction cannot be regarded as bad only on that account. SUNDER DASADH v. SITAL MAHTO, **28 C. 217=5 C.W.N. 291.** [*R.*, 14 Cr. L J. 183=19 Ind. Cas. 183=52 P.L.R. 1913=4 P.R. 1913, Cr.]

(68)—*Crim. Pro. Code, ss.* 196 *and* 537—*Prosecution for offence under s.* 505 (*b*), *Penal Code—Letter of Commissioner conveying sanction of Local Government authorizing it—Letter, whether a complaint—Defect regarding complaint or its absence, whether cured by s.* 537(*a*). *Crim.Pro. Code.*—An accused person, charged under s. 505 (*b*), I.P.C., was prosecuted upon a letter of the Commissioner, purporting to convey the sanction of the Local Government required by s. 196, Crim. Pro. Code, authorizing the prosecution. The accused, having been convicted, objected, in revision, that, no complaint having been made, under s. 196, Crim. Pro. Code, the whole proceedings against him were illegal and that the letter of the Commissioner was not in itself a complaint. It appeared that the letter was in the hands of the Magistrate before the trial commenced, and that no such objection was taken in the first Court, nor in the appellate Court, nor in the first application for revision

Sanction to prosecute—continued.

——4.—Conditions requisite for grant of sanction—Necessity, sufficiency and validity of sanction—*continued.*

to the Chief Court, but that it was only taken as an after-thought in the extra grounds for revision. It was not also urged that the absence of a formal complaint prejudiced the accused in any way. *Held* that, granting that the Commissioner's letter conveying the sanction, the absence of which would be quite fatal to any case coming within the purview of s. 196, Crim. Pro. Code, did not amount in itself to a complaint but merely authorized one, where the most essential part of the section has been complied with and the formal sanction to entertain the complaint has been incorrectly treated as a complaint itself, and the intermediate formalities omitted and no detriment has resulted to any one, s. 196 has no special application, and the irregularity regarding the complaint or the absence of a formal complaint is cured by s. 537 (*a*) of the Crim Pro. Code. SWAMI DAYAL v. KING-EMPEROR, 8 P.R. 1908, Cr. = 15 P.W.R. 1908, Cr. = 149 P.L R. 1908 = 7 Cr.L J. 353. (16 P.R. 1890, Cr., *D.*)

(69)—*Crim. Pro. Code* (1898), ss. 195, 487 *and* 537—*Sanction by District Magistrate on Police report - Proper sanction—His competency to hear appeal from conviction—Police officer whether subordinate to District Magistrate —Report of police officer if a complaint.*—Where, upon a report by a police officer that a false information was given, the District Magistrate gave sanction to prosecute the person giving such information, *held*, that s. 487 would not apply to the case and prevent the District Magistrate from hearing an appeal from the conviction of such person, inasmuch as the offence was not committed before the District Magistrate or in contempt of his authority or brought to his notice as Magistrate in the course of a judicial proceeding. *Held* also, that, although proper sanction was not obtained, the conviction would stand, having regard to the terms of s. 537, since there was no failure of justice. [*R.*, 32 C. 180, 32 C. 184.] Police Officers in a District are generally subordinate to the District Magistrate, but the subordination, as contemplated by s. 195, is that of some superior officers of police. [*F.*, 1 L B.R. 101 ; *R.*, 5 O. C. 164, 6 O.C. 1 ; *D* , 32 C. 180 ; *Diss.*, A.W. N. 1904, 231 = 27 A 292 = 1 A.L.J. 597.] The report of a police officer to a District Magistrate that the information given by the accused was false and constituted an offence under s. 182 could not be regarded as "complaint," because the definition of complaint excludes the report of police officers. RAMASORY LALL v. QUEEN-EMPRESS, 27 C 452 = 4 C.W.N. 594. [*F.*, 11 Cr.L.J. 252 = 5 Ind. Cas. 829 = 6 P.R. 1910, Cr = 170 P.L.R. 1910 = 10 P.W.R. 1910, Cr., 6 O C. 1.]

(70)—*Crim. Pro. Code* (1898), s. 195—*Sanction to prosecute—Delay, ground for refusal—Sanction by successor in office.*—Applications for sanction to prosecute ought to be made promptly or the delay should be satisfactorily accounted for. Where there was a delay for nearly one year in applying for sanction, and the delay was not accounted for : *Held*, that the application ought to have been refused. A Munsif has jurisdiction to grant sanction under s. 195 of the Code in respect of an offence committed before his predecessor in office. DHARAM DAS KAMAR v. SAGORE SANTRA, 11 C.W.N. 119 = 4 Cr. L.J. 454. (9 C.W.N. 859, *D. & Doubted* ; 18 A. 203 *F*) [*R.*, 35 C. 133 = 7 Cr. L J. 159; *D.*, 34 C. 551 = 5 C.L.J. 508 = 11 C.W.N. 568 = 5 Cr. L.J. 398 = 2 M.L.T. 298.]

(71)—*Crim. Pro Code* (1898), s. 195—*Penal Code* (*Act* XLV *of* 1860), *s.* 193—*Sanction to prosecute for perjury—Delay in making the application—Sanction to be granted by the same Judge.*—A prosecution for perjury should be instituted as soon as possible after the decision of the case. An officer other than he who tried the case in which perjury was committed does not act without jurisdiction, if he grants sanction to prosecute, but it is very much more satisfactory that sanction should be given by the very Judge in whose Court an offence—whether under s. 193 or s 211, Penal Code—has actually taken place. Where there was a delay of four months in making an application for sanction to prosecute under s. 193, Penal Code, the delay not being accounted for, and the sanction was granted by a Judge other than the one in whose Court the alleged offence actually had taken place, *held* that the sanction was not properly given. YAD RAM v. RISAL, 7 A.L.J. 50 = 11 Cr. L J. 140 = 5 Ind. Cas. 469.

(72) *Crim. Pro. Code* (1882), s. 195—*Application for sanction to prosecute.*—It is not intended that a Court should grant an indefinite sanction to a prosecution for perjury or for using a false document. The assignments of perjury for which sanction to prosecute is asked should be distinctly stated in the application. Where sanction is asked in respect of the use of a forged document, the document should be clearly ear-marked on the face of the application. It should not be left to the Court which is asked to grant the sanction, or to the Court which is to act on that sanction, to find out, by reference to another record, what the document is in respect of which the sanction is sought or given. Application for sanction to a prosecution for perjury, or for the use of false documents, should be made promptly, or the delay should be satisfactorily accounted for. Where there is great delay in making the application, a Court cannot help suspecting that the applicant is acting, not in the interests of justice, but from an indirect motive, possibly to worry, annoy and prosecute his opponent. BALWANT SINGH v. UMED SINGH, 18 A. 203 = A.W.N. 1896, 81. [*F.*, 11 C.W.N. 119 = 4 Cr. L J. 454 ; *R.*, 27 A. 468 = A.W.N. 1905, 65, 36 C. 808 = 9 C.L J. 690 = 13 C.W.N. 942 = 10 Cr. L.J. 150 = 2 Ind. Cas. 697, U.B.R. 1913, I Qr. p. 166.]

Sanction to prosecute—continued.

——4.—**Conditions requisite for grant of sanction—Necessity, sufficiency and validity of sanction**—*continued.*

(73)—*Crim. Pro. Code* (1872), s. 468—*Mamlatdar's Court—Bombay Act*, III *of* 1876.—A Mamlatdar's Court, constituted under Act III of 1876, is a Civil Court within the meaning of s. 468, Crim. Pro. Code, 1872. Sanction for prosecution is, therefore, necessary and desirable in the case of an offence committed before or against the Mamlatdar's Court, as in one committed against the ordinary Civil Court. *In re* SAVANTA, **5 B. 137.** [*F.*, 2 Bom. Cr. C. 9 =15 Bom. L.R. 53=14 Cr. L J. 80=18 Ind. Cas. 416.]

(74)—*Crim. Pro. Code* (1872), s. 468—*Offence committed before Mamlatdar—Sanction.*—The Mamlatdar's Court constituted by the Bombay Mamlatdars Courts Act is a Civil Court within the meaning of s. 468 of the Crim. Pro. Code; hence, a complaint of an offence mentioned in that section, when such offence has been committed before or against a Mamlatdar's Court shall not be entertained in the Criminal Courts, except with the sanction of the Mamlatdar's Court before or against whom the offence was committed, or with the sanction of the High Court. SAVANTA v. BHIMAJI, **Rat. Un. Cr. C. 149=Cr. Rg. 13-9-1880.**

(75)—*Crim. Pro. Code* (1872), s. 468—*False evidence before Mamlatdar—Sanction of Collector.*—The Collector's Court having been abolished since the passing of Bom. Act II of 1866, and the Mamlatdars having thereby, for the purpose of Bom. Act V of 1864, ceased to be subordinate to the Collector, the sanction of the Collector is not sufficient to authorise the prosecution of a person for having intentionally given false evidence before a Mamlatdar in a suit under Bom. Act V of 1864. REG. v. DHONDI, **Rat. Un. Cr. C. 118=Cr. Rg. 21-11-1876.**

(76)—*Crim. Pro. Code* (1872), s. 210—*Sanction for an offence under* s. 183, *I.P.C.*—No proceedings can be instituted against a person accused of an offence under s. 183, I. P.C., without the sanction of the Court whose authority has been resisted, as the offence is one of contempt of the lawful authority of a public servant. *In re* MUSE ALI ADAM, **2 B. 653.**

(77)—*Crim. Pro. Code*, s. 476—*Acquittal on a charge under* s. 211, *I.P.C.—Subsequent sanction by the same Magistrate under* s. 193, *I.P.C.*—A Joint Magistrate, after dismissing a complaint, directed the prosecution of the complainant, under s. 211, I.P.C. The complainant was convicted in the lower Court but was acquitted on appeal by the Sessions Judge. Thereupon, the Joint Magistrate, who had in the meantime become the District Magistrate, ordered his prosecution for perjury. *Held*, that the order of the Joint Magistrate as a District Magistrate was bad and should be set aside, as it was calculated to bring the administration

Sanction to prosecute—continued.

——4.—**Conditions requisite for grant of sanction—Necessity, sufficiency and validity of sanction**—*continued.*

of justice into contempt. MALLU KHAN v. KING-EMPEROR, **1 A.L.J. 388=1 Cr. L.J. 692.**

(78)—*Crim. Pro. Code* (1898), s. 195—*Sanction to prosecute.*—Where the question is whether sanction for a prosecution for giving false evidence shall or shall not be granted, the safest rule is to give the witness, as far as possible, a *locus penetentiæ* and if the witness avails himself thereof, a prosecution for perjury is inexpedient. EMPEROR v. GANGA SAHAI, **A.W.N. 1903, 68.**

(79)—*Crim. Pro. Code*, ss. 191, 193, 195—*Sanction to prosecute for perjury*—In sanctioning proceedings for perjury against a witness, the Magistrate should remember that the statement must be intentionally false in order to justify a prosecution. When the question is neither material to the issue in the case nor goes to the credit of the witness, he is not liable to prosecution. SHEODAHIN SINGH v. BANDHAN SINGH, **2 A.L.J. 836=3 Cr. L.J. 45.**

(80)—*Crim. Pro. Code* (1898), s. 476—*Matter must come before sanctioning officer in judicial proceeding—Order for prosecution for laying a false charge to the Police — Competency of District Magistrate to order prosecution when enquiry was heard by another Magistrate.*—It is not legal for a District Magistrate to order a prosecution under s. 211, Penal Code, when the enquiry has been made by another officer and the matter has not come before him in the course of a judicial proceeding. A complaint lodged with the Police was reported false. The District Magistrate, on receiving a report from a Deputy Magistrate, to whom the case had been sent for enquiry, to the same effect, directed the prosecution of the complainant under s. 211 of the Penal Code. *Held* that the order for the prosecution was an order made under s. 476 and not under s. 195 and that the order was bad as it was passed with regard to a matter which did not come up to his cognizance in the course of a judicial proceeding. HAIBAT KHAN v. EMPEROR, **33 C. 30=10 C.W.N. 30=3 Cr. L J. 125** [*F.*, 37 C. 250=10 C.L.J. 564=14 C.W.N. 330=11 Cr. L.J. 37=4 Ind. Cas. 710, 7 C.L.J. 371=7 Cr. L.J. 338; *R.*, 11 Cr. L.J. 4=13 C.W.N. 398=4 Ind. Cas. 485; *D.*, 30 A. 52=4 A.L.J. 790=A.W.N. 1907, 288=6 Cr. L.J. 396, 40 C. 360=13 Cr. L.J. 826=17 Ind. Cas. 570.]

(81)—*Crim. Pro. Code* (1898), ss. 195, 200, 476—*Applicability of Penal Code*, s. 182—*Burden of proof.*—Where the Deputy Commissioner made an order, purporting to be under s. 476, Crim. Pro. Code, on the diary sheet of the miscellaneous proceedings under the Village Regulation. *Held*, that s. 476 did not apply to cases where there is no "judicial proceeding." To establish an offence under s. 182 of the Penal Code, the prosecution must show, not merely that the accused gave the information,

Sanction to prosecute—continued.

——4.—**Conditions requisite for grant of sanction—Necessity, sufficiency and validity of sanction**—*continued.*

but that it was false and that the accused knew or believed it to be false. When a public servant wishes to prosecute for one of the offences referred to in s. 195, Crim. Pro. Code, committed before him or brought to his notice otherwise than in the course of a judicial proceeding, his proper course apparently is to prefer an ordinary complaint under s. 200, unless some aggrieved person applies for sanction to prosecute, when the public servant may sanction the prosecution under s. 195. NGA LU PO v. KING-EMPEROR, **U.B.R. 1908, 4th Qr., Crim. Pro. Code, 13 = 10 Cr. L.J. 12.** (U.B.R. 1907, I, Cr. P.C. 1, *R.*)

(82)—*Crim. Pro. Code* (1898), s. 195 (1) (*b*) —*False statement in an investigation under* s. 202, *Crim. Pro. Code.*—An investigation by a Magistrate under s. 202, Crim. Pro. Code, to which the public are not allowed access is not a judicial proceeding. Therefore no prosecution against any person examined at such an investigation for giving false evidence can be sanctioned. VELU NAIR v. GNANA PRAKASAM PILLAI, **2 Weir 167 = 2 Weir 243.**

(83)—*Crim. Pro. Code*, ss. 195, 476—*Application for sanction to an appellate Court—Order for prosecution under s.* 476, *validity of.*—The defendant in a civil suit in a District Munsiff's Court applied to the District Judge under s. 195, to sanction the prosecution of a witness, who had deposed in favour of a deed, declared by the Munsiff to be a forgery. The District Judge refusing to give sanction to prosecute, himself directed the institution of a prosecution. *Held*, that, as the offence was not committed before him nor brought to his notice in the course of a judicial proceeding, the District Judge had no power to make such an order under s. 476. *In the matter of the petition of* MATHURA DAS, **16 A. 80 = A W.N. 1894, 9.** [*R.*, A.W.N. 1895, 225.]

(84)—*Crim. Pro. Code, Act* X *of* 1882, *ss.* 195, 476—*Transfer of Property Act* (IV *of* 1882), *s.* 83—*Document produced.*—A mortgage-deed deposited in Court in pursuance of the procedure provided by s. 83 of the Transfer of Property Act, is neither put in evidence nor brought to the notice of the Court so as to give the Court power to sanction, under either s. 195 or s. 476 of the Crim. Pro. Code, the prosecution of the person suspected of having forged such deed. ADHAR SINGH v. ABLAKH SINGH, **A.W.N. 1895, 145.**

(85)—*Crim. Pro. Code* (1872), s. 466—*Protection to public servants—Sanction when required to prosecute a public servant.*—The analogy of English status, as to actions against Justices and constables for abuse of their powers, points rather to the protection of Government Officers under s. 466, only in cases of mistakes of excesses of duty committed in good faith. If a Police officer subjects a prisoner or a witness to any form of torture or illegal pressure, it can hardly be said, save in very exceptional cases, that he is really acting in his capacity as a public servant; but the precise point at which the class of acts protected shades off into the class of acts unprotected by the enactment, is really dependent on facts not admitting of exact definition. QUEEN-EMPRESS v. GANPAT, **Rat. Un. Cr. C. 142.**

(86)—*Crim. Pro. Code* (1872), s. 466—*Sanction to prosecute public servant—Police patel—Village Police Act, Bom. Act* (III *of* 1874), *s.* 85, —S. 466 of the Crim. Pro. Code contemplates sanction in the case of those public servants only who are not removable from their office without the sanction of Government. A Police patel, hereditary or otherwise, is not such a public servant under s. 9 of the Bombay Village Police Act, as he is liable to dismissal, on proof of misconduct, by a Magistrate of the First Class subject to the sanction of the Police Commissioner. QUEEN-EMPRESS v. VIRBASAPA, **Rat. Un. Cr. C. 147 = Cr. Rg. 17-6-1880.**

(87)—*Crim. Pro. Code* (1872), s. 466—*Penal Code*, s. 418—*Sanction of Government to prosecute public servant.*—For the prosecution of a Hospital Assistant in charge of a dispensary (a public servant not removable from office without the sanction of the Government), who commits an offence under s. 418, Penal Code, in drawing larger sums on contingent bills than he had spent, it is not enough that the sanction of Civil Surgeon is obtained; as such an act purports to be done by him in the discharge of his duty according to the second clause of s. 466, Crim. Pro. Code, it is necessary to obtain the sanction of the Government. CROWN v. MAHOMED YARKHAN, **Colm. Dig. Cr. 85 of 1877.**

(88)—*Crim. Pro. Code* (1871), *s.* 167—*Prosecution of Judge—Sanction.*—The sanction of Government is required for the prosecution of any Judge, if a complaint is made against him as a Judge. HIGH COURT PROCEEDINGS, 29TH MARCH 1871, **6 M.H.C. App. 21.**

(89)—*Crim. Pro. Code* (1882), s. 197—*Sanction to prosecute a Village Magistrate.*—Where the authority and position of the accused as a Village Magistrate was made use of in order to constrain the complainant to give a bribe, *held* that sanction, under s. 197, was required for the prosecution of the accused. *In re* MANGAPATHI NAIDU, **2 Weir 221.**

(90)—*Crim. Pro. Code*, s. 197—*Chairman of a Municipality, whether a public servant.*—The Chairman of a Municipality is a public servant and is not liable to prosecution without the sanction of the Government. *In re* CHAIRMAN OF THE MUNICIPAL COUNCIL, ELLORE, **1 Weir 243 = 2 Weir 221.**

Sanction to prosecute—continued.

——4.—**Conditions requisite for grant of sanction—Necessity, sufficiency and validity of sanction**—*continued.*

(91) —*Defamation by Municipal Commissioners.*—A member of a Municipal Committee is a public servant and the sanction of the Local Government is necessary for his prosecution for any statement made by him as such public servant. NUR BAKHSH v. EMPEROR, **17 P.R. 1902, Cr.** (14 P.R. 1890, Cr., *R.*) [*R.*, 29 P.R 1904, Cr., P.W.R. 1906, p. 3.]

(92)—*Public servant.*—Conviction quashed on the ground that the accused being a public servant not removable from his office without the sanction of the Local Government, and the act charged against him having been done in his official capacity, sanction to the prosecution ought to have been obtained. MOZUFFER ALI v. AMEER KHAN, **10 P.R. 1867, Cr.**

(93)—*False evidence by witnesses before Commissioners appointed under Act* XXXVII *of* 1850—*Oaths Act*, 1873, *ss.* 4 *and* 14.—Witnesses examined before a Commissioner appointed under Act XXXVII of 1850, to hold an enquiry into the behaviour of a certain judicial officer, are bound to state the truth and render themselves liable to be punished under s. 193, I.P.C., if they testify falsely. Therefore, sanction may be granted for their prosecution. GOBIND RAM v. EMPRESS, **18 P.R. 1898, Cr.**

(94)—*Crim. Pro. Code* (1898), *s.* 197—*Charges against a Munsiff under ss.* 342, 500 *and* 506 *of the Penal Code—Necessity for sanction—Jurisdiction of Magistrate.*—A party to a civil suit, pending in the Court of a Munsiff, preferred a complaint against the Munsiff, charging him with offences under ss. 342, 500 and 506 of the Penal Code. The case was that the Munsiff abused the complainant and his female relatives and wrongfully confined the complainant within the precincts of the Court-house. The accused (the Munsiff) contended that the complaint was not entertainable without sanction for prosecution obtained under s. 197 of the Crim. Pro. Code and that the Magistrate must first decide the question of jurisdiction. The Magistrate was of opinion that sanction for prosecution was unnecessary and declined to go into the question of jurisdiction. *Held*, the charges regarding the offences under ss. 342 and 506 of the Penal Code were not cognizable without the previous sanction obtained under s. 197 of the Code and that the Magistrate was wrong in refusing to go into the question of jurisdiction. The proceedings before the Magistrate were accordingly quashed. CHAUDHRI AMIR SINGH v. KING-EMPEROR, **9 P.L R. 1905 = 29 P.R. 1904, Cr. = 2 Cr. L.J. 119.**

(95)—*Crim. Pro. Code, s.* 197— *Sanction to prosecute a Judge for uttering defamatory language, when necessary.*— If defamatory language is used by a Judge in the course of the trial of the suit, the language is uttered as Judge, and not as a private individual, and, if any criminal offence has been committed in uttering it, the offence has been committed by

Sanction to prosecute—continued.

——4.—**Conditions requisite for grant of sanction—Necessity, sufficiency and validity of sanction**—*continued.*

him as a Judge. Therefore, a complaint against a Judge for using such language cannot be entertained by a Magistrate without sanction. *In re* GULAM MUHAMMED SHARIF-UD-DAULAH, **9 M. 439 = 2 Weir 213.** [*Diss.*, 26 C. 852 = 3 C.W.N. 539; *R.*, 30 C 927 = 7 C W.N. 750, 13 C.P.L.R. 126, 29 P.R. 1904, Cr. = 9 P.L.R. 1905.]

(96)—*Crim. Pro. Code* (1898), *s.* 197—*Sanction to prosecute a Judge or public servant.*—Sanction to prosecute, under s. 197, Crim. Pro. Code, is necessary only if the Judge or public servant commits an offence in his capacity as such. NANDO LAL BASAK v. N.N. MITTER, **26 C. 852 = 3 C.W.N. 539.** [*F.*, 2 Bom. L.R. 1078, 2 Weir 223 = 25 M. 15, 30 C. 927 = 7 C.W.N. 750; *R.*, 13 C.P.L.R. 126; *Com.*, 29 P.R. 1904 Cr. = 9 P.L.R. 1905.]

(97)—*Sanction for prosecution—Overseer—Executive Engineer—Letter.*—Where an Executive Engineer of the P.W.D., by a letter written to the Magistrate, gave sanction for the prosecution of an Overseer subordinate to him but not removable from office without the sanction of the Government, for framing an incorrect statement, and the Magistrate tried and convicted the Overseer without a formal complaint, *held* that the sanction was sufficient. REG. v. NARAYAN RAM CHUNDRA, **Rat. Un. Cr. C. 32 = Cr. Rg. 27-4—1870.**

(98)—*Charge to Police under s.* 211—*Necessity for sanction.*—The charge of an offence, under s. 211, before the Police, would be good, even though the case never went before a Magistrate and even though there is no sanction, because the offence is one that is committed not in, or in relation to, any proceeding in any Court. BHOKTERAM v HEERA KOLITA, **5 C. 184.** [*F.*, 7 M. 292 = 1 Weir 186.]

(99)—*Crim. Pro. Code* (*Act* X *of* 1882), *ss.* 191, 195, 476—*Sanction.*—After the dismissal of a complaint as false by a Deputy Magistrate, on the motion of the police for the crime being struck off the registers, the papers were sent to the District Magistrate. The latter in striking off the case, ordered the prosecution of the complainant for an offence under s. 211 of the Penal Code. *Held* that this was obviously no order under s. 195 of the Crim. Pro. Code, or under s. 476, since the case did not come before the officer as a judicial proceeding, and if the order was one under s. 191, it was bad for want of sanction under s. 195. THAKUR KANDU v. BILAR, **A.W.N. 1884, 290.**

(100)—*Crim. Pro. Code* (*Act* X *of* 1882), *s.* 195—*Sanction.*—No sanction under s. 195 of the Crim. Pro. Code is necessary in cases where the complaint did not pass into any Court but was only investigated and thrown out by the police. JAI NARAIN v. RAM KRISHNA, **A.W.N. 1885, 95.**

Sanction to prosecute—continued.

——4.—Conditions requisite for grant of sanction—Necessity, sufficiency and validity of sanction—*continued.*

(101)—*Crim. Pro. Code, ss.* 195, 476—*Penal Code, s.* 211—*False charge to police—Permission by District Magistrate—Legality.*—Where a District Magistrate granted permission to prosecute a person under s. 211 of the Penal Code for having given a false report of theft to the police, on which report the person complained of was prosecuted and acquitted by a subordinate Magistrate, *held* that the order was not one under s. 476 of the Crim. Pro. Code, but one passed by the District Magistrate as *ex officio* head of the police to whom a false complaint was made. QUEEN-EMPRESS v. RAM KHILAWAN, **A.W.N. 1890, 167.**

(102)—*Penal Code, ss.* 182, 500—*Servant of Abkari contractor giving false information to his master about Abkari Inspector—Crim. Pro. Code* (1882), *s.* 195—*Sanction.*—The servant of an Abkari licensee gave false information to his master that the Abkari Inspector asked him for money and adulterated the liquor to get him into trouble. *Held* that the accused was not guilty of an offence under s. 182, I.P.C., as his master was not a public servant, though he might be guilty of defamation, and that no sanction under s. 195, Crim. Pro. Code, was required for his prosecution. QUEEN-EMPRESS v. SANTARAM, **Rat. Un. Cr. C. 315 = Cr. Rg. 1 of 1887.**

(103)—*Crim. Pro. Code, s.* 195 (1) *(c)*—*Sanction to prosecute—Offence under s.* 471 *committed before document was filed in the suit.*—Where an offence punishable under s. 471, I.P.C., is made out in a complaint, the use complained of being prior in date to the use of the document in question in evidence in a Civil Court, the sanction of such Court is not necessary under s. 195 (1) (c), before a Criminal Court can take cognizance of such offence. NOOR MAHOMED CASSUM v. KAIKHOSRU MANECKJEE, **4 Bom. L.R. 268.** [*R.*, 37 M. 107 = 13 Cr. L.J. 241 = 14 Ind. Cas. 598 = 11 M. L.T. 391 = (1912) M.W.N. 536, 12 Cr. L.J. 101 = 15 C.W.N. 565 = 9 Ind. Cas. 577.]

(104)—*Crim. Pro Code, s.* 197—*Two Magistrates engaged jointly in Magisterial duty—Use of abusive language by one against the other—Sanction.*—The use of abusive language by one Magistrate to another while jointly engaged in the discharge of their Magisterial or other functions, is not an act done in the discharge of Magisterial duty. It is not necessary to obtain a sanction under s. 197, before proceeding against him for the use of such language. *In re* HARLEKAR, **2 Bom.L.R. 1079.**

(105)—*Crim. Pro. Code, s.* 195 — *False evidence in departmental enquiry—Court—Sanction.*—Where the Collector of the district, on receiving information that a subordinate Revenue Officer had been trying to obtain a bribe, ordered, after examining him and certain other persons, an enquiry to be made by the Assistant Collector under the Land Revenue Code, in the enquiry held by the latter officer, the accused was alleged to have given false evidence. *Held* that, as the enquiry was merely a departmental enquiry, and not a judicial proceeding, the officer holding the enquiry was not a Court. No sanction, therefore, for prosecution of the person who had given false evidence, was required under s. 195, Crim. Pro. Code. *In re* CHOTALAL MATHURADAS, **22 B. 936.**

(106)—*Crim. Pro. Code* (1882), *ss.* 161, 195—*False statement before police officer—Sanction.*—A statement taken by a police constable under s. 161 is not evidence in a stage of a judicial proceeding. The police officer taking such statement is not a Judge, nor is the place where he officiates a Court. S. 195 of the Code does not apply to a prosecution for a false statement made to a police officer, whether the charge imputing falsehood be framed singly or alternatively. Therefore his sanction is not necessary for the prosecution. QUEEN-EMPRESS v. ISMAL *valad* FATARU, **11 B. 659 = 12 Ind. Jur. 152.** [*R.*, 12 B. 36, U.B.R. 1897—1901, 31.]

(107)—*Crim. Pro. Code* (1872), *s.* 466—*Bombay Village Police Act* (VIII *of* 1867), *s.* 9, *as amended by Act* 1 *of* 1876—*Police patel—Sanction to prosecute.*—A police patel may, under the provisions of s. 9 of Bombay Act VIII of 1867, as amended by Act I of 1876, be dismissed, on proof of misconduct, by a first class Magistrate, subject to the sanction of the Police Commissioner. No sanction of Government is, therefore, required for his prosecution, for an offence committed by him in his official capacity. IMPERATRIX v. BHAGWAN DEVRAJ, **4 B. 357.**

(108)—*Crim. Pro. Code* (1872), *ss.* 4, 468—*False statement before patel—Sanction—Criminal Court.*—S. 468, Crim. Pro. Code, 1872, renders a sanction necessary only when one of the offences mentioned therein is committed before or against a Civil or Criminal Court. Having regard to the definition of a Criminal Court in s. 4, it is clear that a police patel is not a Criminal Court and, therefore, no sanction is necessary for prosecuting a person under s. 193, I.P.C., for making a false statement upon oath before him. IMPERATRIX v. IRBASAPV, **4 B. 479.**

(109)—*Crim. Pro. Code* (1882), *s.* 195—*Sanction to prosecute—Sub Registrar acting under ss.* 34 *and* 35 *of the Registration Act* (III *of* 1877).—A Sub-Registrar acting under ss. 34 and 35 of the Registration Act is not a "Court" within the meaning of s. 195, Crim. Pro. Code. His sanction is, therefore, not necessary for the prosecution of a person for false personation of the supposed executant o

Sanction to prosecute—continued.

——4.—Conditions requisite for grant of sanction—Necessity, sufficiency and validity of sanction—*continued.*

a document presented for registration. QUEEN-EMPRESS v. RAMAYA NADAN, **4 M.L.J. 189.** [*R.*, 13 Cr. L.J. 508=15 Ind. Cas. 652=23 M. L.J. 50=(1912) M.W.N. 473.]

(110)—*Crim. Pro. Code* (1898), *s.* 195—*Registrar, not a Court—Registration Act, s.* 82. —A Registrar is not a Court within the meaning of s. 195 of the Code, though he is entitled to institute a prosecution for any offence falling under s. 82 of the Indian Registration Act. TALEWAND v. KING-EMPEROR, **11 O. C. 358 =9 Cr. L.J. 54.**

(111)—*Crim. Pro. Code*, s. 195 (1) (c), (3) —*Sanction to prosecute—Abetment of an offence specified in s.* 195, *cl.* (*c*)—*Abettor not party—No sanction necessary—Penal Code* (*Act* XLV *of* 1860), *ss*. 463, 471, 475, 476.—The offence or offences in which s. 195, cl. (1), sub-cl. (*c*) read with cl. (3) requires that sanction should be given by a Court with respect to documents produced in Court, must be offences committed by parties to the proceeding, whether the offence be one of the substantial offences described in s. 463 or punishable under ss. 471, 475, or 476 of the Penal Code, or only amounts to abetment of any such offences. CHAUDHRI GHANSHAM SINGH v. EMPEROR THROUGH MARE LAL, **4 Ind. Cas. 105=6 A.L.J. 983= 32 A. 74=10 Cr. L.J. 497.**

(112)—*Forged document used in civil case—Power of Magistrate—Crim. Pro. Code* (1861), *o.* 170.—*Held*, that only cases where a forged document had been put in evidence in a Civil or Criminal Court were referred to in the above section; but that in other cases a Magistrate could *proprio motu* inquire into the allegations of forgery without any sanction. QUEEN v. RAMDHARRY SINGH, **10 W.R. Cr. 5.**

(113)—*Prosecution for false charge in complaint made at police station—Crim. Pro. Code* (1872), *s.* 468.—*Held*, that a complaint preferred at a police station being made not before any Civil or Criminal Court, no sanction of any Court under s. 468, Code of Criminal Procedure, is required for prosecution, should it prove false. GOVERNMENT OF BENGAL v. GOKOOL CHUNDER CHOWDHRY, **24 W.R. Cr. 41.** (25 W. R. Cr. 33.) [*F.*, 13 B. 506; *R.*, 5 C. 184.]

(114)—*Crim. Pro. Code* (1872), *s.* 468—*False complaint to police—Sanction to prosecute under s.* 211, *I.P.C.*—Where a complaint of a false charge is made to the police, no sanction is necessary for the prosecution of the complainant. TODUR MAL v. BHOLI, **14 P.R. 1882, Cr.** (16 P.R. 1870, F.B., *F.*)

(115)—*Agent of a party to a proceeding.*—Sanction is not necessary to prosecute the agent of a party to a proceeding in which a false document is given in evidence. CHAND MAL v. EMPRESS, **9 P.R. 1879, Cr.**

Sanction to prosecute—continued.

——4.—Conditions requisite for grant of sanction—Necessity, sufficiency and validity of sanction—*continued.*

(116)—*Prosecution of public servant—Sanction, when necessary— Crim. Pro. Code* (1872), *s.* 466.—Sanction to prosecute a public servant is not necessary, when the act charged against the accused is not one to which his character as a public servant is in any way essential. TABU SINGH v. EMPRESS, **8 P.R. 1879, Cr.** [*R.*, 14 P.R. 1890, Cr.]

(117)—*Crim. Pro. Code, s.* 195 (*c*)— *Penal Code, ss.* 465 *and* 467.—One S B sued M for cancellation of a mortgage-deed, purporting to have been executed by the former in favour of the latter, on the ground that the document was a forgery, and had never been executed by him. S B filed, along with his plaint, a certified copy of his mortgage-deed obtained from the Registration Department and asked the defendant, M, to produce the original. The defendant did not appear to defend the suit, nor did he produce the original. The suit was decreed *ex parte*. S B, subsequently, instituted criminal proceedings against M and others under ss. 465 and 467 of the Penal Code. It was objected on behalf of M that the prosecution could not proceed as no previous sanction had been obtained under s. 195 (c) of the Crim. Pro. Code. *Held*, that no previous sanction was necessary as the original mortgage-bond had not been "produced or given in evidence," the complainant having given only secondary evidence of the same by producing a certified copy. The word "document" in s. 195 (c) of the Crim. Pro. Code refers only to the original. KING-EMPEROR v. RAJA MUSTAFA ALI KHAN, **8 O.C. 313=2 Cr. L.J. 653.**

(118)—*Crim. Pro. Code* (1882), *s.* 197—*Scope of the section.*—S. 197 protects, under certain circumstances, a public servant who is not removeable from his office without the sanction of Government from prosecution for acts done in his capacity as such public servant. But it is not stated that such protection is extended to persons to whom the public servant may delegate a portion of his powers. No sanction is, therefore, necessary for prosecuting a Municipal Chairman Delegate for acts done *qua* Chairman Delegate. VENKATESALU NAIDU v. HEERAMAN CHETTY, **2 Weir 226.**

(119)—*Crim. Pro. Code* (1882), *s.* 195 (1) (*b*) —*Offences under ss.* 193 *and* 211, *Penal Code, committed before the commencement of enquiry by Magistrate—Sanction to prosecute.*—Where offences under ss 193 and 211 were alleged to have been committed, in regard to proceedings taken by the police and there was no proceeding in any Court until after the police enquiry regarding them was completed, *held* that no sanction for the prosecution was necessary. *In re* MANIKKAVASAGAM PILLAI, **2 Weir 162.**

(120)—*Crim. Pro. Code* (1898), *ss.* 195, 235 —*Assaulting complainant acting under Amin's*

Sanction to prosecute—continued.

——4.—Conditions requisite for grant of sanction—Necessity, sufficiency and validity of sanction—*continued.*

order—Offences under ss. 183, 185, 323, 355, *Penal Code—Necessity for sanction.*—Where an offence punishable under ss. 183 and 186 of the Penal Code was committed, and, in committing them, offences under ss. 355 and 323 of the Penal Code were also committed, the latter offences may, under s. 235 of the Crim. Pro. Code, be separately charged, and no sanction is necessary in respect of them. The complainant, alleging that he was assaulted when trying, under the orders of the Amin, to open the door of a judgment-debtor's house, charged the accused with offences under ss. 183, 186, 355 and 323. *Held*, that the sanction of the Court was not necessary, in respect of offences under ss. 355 and 323, and the sanction of the Amin would be sufficient in respect of the other offences. KRISHNA PILLAI v. KRISHNA KONAN, **17 M L.J. 559=31 M. 43=7 Cr. L.J. 6 =3 M.L.T. 113.**

(121)—*Crim. Pro. Code* (1898), ss. 195, 435, 439—*Delay—Village Magistrate committing extortion, when not a Judge—Sanction.*—Where the complaint against a Village Magistrate for extortion was dismissed for want of sanction, *held*, that the Village Magistrate was not acting as a Judge when the alleged extortion was committed. No sanction was therefore necessary. Long delay should not matter when it is due to the orders of the lower Courts requiring sanction. Case ordered to be restored. ATHANGARAYAN v. GOPALAN CHETTY, **6 M. L.T. 128=4 Ind. Cas. 1056=11 Cr. L.J. 162.**

(122)—*Crim. Pro. Code* (1898), *s.* 197—*Sanction to prosecute under— Village Magistrate fabricating record of criminal case.*—When a Village Magistrate fabricates a false record of a criminal case, sanction is not, under s. 197 of the Code, necessarily required for his prosecution. A Magistrate who fabricates a record in which he figures as a Judge cannot properly be said to be acting as a Judge when he does so. PALANIANDI PILLAI v. ARUNACHELLAM PILLAI, **4 M.L.T. 473=32 M. 255=9 Cr.L.J. 89=3 Ind Cas. 387.**

(123)—*Crim. Pro. Code, s.* 195—*Penal Code, s.* 188—*Disobedience to order promulgated by Government — Sanction to prosecute, whether necessary—Epidemic Diseases Act,* III *of* 1897. —S. 195, Crim. Pro. Code, read with s. 188, Penal Code, requires that no Court shall take cognizance of an offence committed, by disobeying an order promulgated by a public servant, except with the previous sanction of the public servant concerned or of some public servant to whom he is subordinate. Where an order made and issued by the Government under the Epidemic Diseases Act is republished in a Municipality by the Chairman, the order is not an order promulgated by a public servant, and no sanction is required as a condition precedent to prosecution for disobeying the order. QUEEN-EMPRESS v. SOUTH, **24 M. 70 =2 Weir 158.**

Sanction to prosecute—continued.

——4.—Conditions requisite for grant of sanction—Necessity, sufficiency and validity of sanction—*continued.*

(124)—*Crim. Pro. Code* (1898), *s.* 197—*Charge against Village Magistrate for an offence committed by him, while suppressing a riot—Sanction to prosecute, whether necessary.* —Where a complaint was preferred against a Village Magistrate on a charge of hurt, while suppressing a disturbance in the village, the Sub-Magistrate took the complaint on his file overruling the objection that sanction under s. 197 was necessary. The Village Magistrate then presented a petition to the District Magistrate, who quashed the whole proceedings of the subordinate Magistrate, being of opinion that the prosecution could not be sustained without a sanction. *Held*, that the order of the District Magistrate quashing the proceedings of the Sub-Magistrate was passed without jurisdiction, and that the proper course would have been to have reported the case for the orders of the High Court, if interference was considered necessary. *Held*, further, that the Village Magistrate acting in the suppression of a disturbance was neither a Judge nor a public servant not removeable from office without sanction of Government and therefore no sanction under s. 197 was necessary. KANDASAMI CHETTI v. SOLAI GOUNDAN, **23 M. 540=2 Weir 222.** [*R.*, 11 Cr. L.J. 162=4 Ind. Cas. 1056=6 M.L.T. 128; *D.*, 32 M. 255=9 Cr. L.J. 89=3 Ind. Cas. 387 =4 M.L.T. 473.]

(125)—*Crim. Pro. Code* (1882), *s.* 195—*Sanction to prosecute for abetment of an offence, whether necessary—Penal Code, s.* 109.—The abetment of an offence is an offence of itself and is punishable under separate sections of its own. None of these sections is mentioned in cl. (*b*) of s. 195, Crim.Pro. Code, and therefore sanction need not be obtained in respect of them. QUEEN-EMPRESS v. ABDUL KADIR SHERIFF SAHEB, 20 M. 8 [*R.*, 32 A. 74=6 A.L.J. 983=10 Cr. L.J. 497=4 Ind. Cas. 105, 32 M. 3=9 Cr. L.J. 130=1 Ind. Cas. 36=5 M.L.T. 16.]

(126)—*Crim. Pro. Code, s.* 469—*Witnesses in a civil suit—"Parties to the proceeding."*—Witnesses in a civil suit do not come within the meaning of "parties to the proceeding" in s. 469 of the Code. Therefore no sanction is required to prosecute them for forgery of a document given in evidence in such civil suit. EADARA VIRANA v. QUEEN, 3 M. 400=2 **Weir 170.** [*F.*, 9 Ind Cas. 577=12 Cr. L.J. 101=15 C.W.N. 565; *R.*, 30 M. 226.]

(127)—*Crim. Pro. Code* (1882), *s.* 195—*Complaint made to police—Necessity for sanction for laying false charge—Penal Code, s.* 211.—Where an offence, under s. 211, Penal Code, has been committed in the laying of a criminal charge before the police and the charge has been judicially declared to be false, no sanction is necessary for the prosecution of the complainant, as the offence is not committed in or in

Sanction to prosecute—continued.

——4.—Conditions requisite for grant of sanction—Necessity, sufficiency and validity of sanction—*continued.*

relation to any proceeding in any Court. The proper authority to grant a sanction to prosecute is the Magistrate who inquired into the case. PUTIRAM RUIDAS v. MAHOMED KASIM, **3 C W.N. 33.** [*F.*, 37 C. 250=10 C.L.J. 564=14 C.W.N. 330=11 Cr. L.J. 37=4 Ind. Cas. 710. 6 C.W.N. 35; *R.*, 34 A. 522=10 A.L.J. 61=13 Cr.L J. 702=16 Ind. Cas. 510, 13 Cr. L.J. 576 =15 Ind. Cas. 992=U.B.R. 1912, 1st Qr. 134; *D.*, 5 Bur. L.T. 111=13 Cr.L J. 565=15 Ind. Cas. 981=6 L.B.R. 50.]

(128)—*Crim. Pro. Code, ss.* 195 *and* 476—*Sanction to prosecute for offence of obstructing a public servant—Officer instituting proceedings under s.* 476 (2)—*Necessity for sanction—Penal Code, ss.* 183, 352 *and* 353.—Where, on the proceedings, it was clear that a Munsiff, who initiated the prosecution of certain persons for offences under ss. 183, 352 and 353 of the Penal Code in connection with certain execution proceedings in his Court, was expressly acting under s. 476, *held*, that it was incumbent on the Magistrate under s. 476 (2) to proceed with the case as regards the charge under s. 183, Penal Code, and that he was not competent to acquit the accused on the ground that there was no sanction as required by law. *Held*, also, that charges under ss. 352 and 353, Penal Code, were not such as require any sanction. EMPEROR v. ARJAN PRAMANIK, **31 C. 664 =1 Cr.L J. 525.** (7 A. 871, *R.*) [*R.* 40 C. 477=17 C.L.J. 245=17 C.W.N. 647=14 Cr.L.J. 197=19 Ind.Cas. 197.]

(129)—*Crim. Pro. Code* (1898), *s.* 195—*False evidence in investigation by police—Sanction, whether necessary.*—No sanction under s. 195 is necessary in a case where false evidence is alleged to be given not in relation to any proceeding pending in any Court, but simply in an investigation held by a police officer. JAGAT CHANDRA MOZUMDAR v. QUEEN-EMPRESS, **26 C. 786=3 C W.N. 491.**

(130)—*Registration Act* (III *of* 1877), *s.* 82.—No sanction is necessary before instituting a charge under s. 82 of the Registration Act. GOPINATH v. KULDIP SINGH, **11 C. 566, F.B.** [*R.*, 11 M. 500.]

(131)—*Crim. Pro. Code* (1882), *s.* 195 (1) (*a*) —*Contradictory statements in two departmental enquiries—Sanction by both the officers concerned necessary.*—When a charge is made of making two contradictory statements in two departmental enquiries before two different officers, the sanction of both the officers is necessary for instituting the prosecution. *In re* SUBBUSAMI ROW, **2 Weir 157.**

(132)—*Crim. Pro. Code, s.* 195—*Tahsildar holding inquiry as to transfer of names in land register—Sanction to prosecute.*—A Tahsildar, when holding an inquiry as to whether a transfer of names in a land register should be made or not, is a Revenue Court. He is authorized, under Madras Act III of 1869, to receive evidence and to decide whether a transfer should be made or not. He is, therefore, a tribunal empowered to deal with a particular matter and authorized to receive evidence bearing on that matter in order to enable him to arrive at a determination. His sanction is necessary for the prosecution of any person for an offence mentioned in s. 195, Crim. Pro. Code, committed before him. QUEEN-EMPRESS v. MUNDA SHETTI, **24 M 121=2 Weir 170.** [*R.*, 9 Cr. L.J. 41=32 M. 49=4 M.L.T. 404=19 M L.J. 42, 10 Cr. L.J. 395=3 Ind. Cas. 886=3 S.L.R. 66; *R.*, 36 M. 72=23 M.L J. 393=(1912) M.W.N. 1012=16 Ind. Cas. 755=13 Cr. L J 723=13 M L.T. 367, 187 P L R. 1905=44 P.R. 1905, Cr.=3 Cr.L.J. 128.]

(133)—*Crim. Pro. Code* (1898), *s.* 195, *cls.* (*b*) *and* (*c*)—*Suit in Court of Small Causes referred to an arbitrator—Fabrication of evidence, forgery and using forged document before such arbitrator—Sanction of the Court of Small Causes.*—In a suit in a Court of Small Causes, the Court made a reference, under the rules of the Court, to an arbitrator. The accused, a party to the suit, was alleged to have fabricated evidence and to have committed forgery and to have forged a document, which was produced before the arbitrator The accused was prosecuted in respect of those offences, without the sanction of the Court of Small Causes. *Held*, that a Magistrate could not take cognizance of the prosecution, without the sanction of the Court of Small Causes, where the document alleged to be forged was filed with the award and formed part of the record of the suit. PUTTIAH CHETTY v. VEERASAMY MUDALY, **17 M.L.J. 420=6 Cr. L.J. 331=2 M. L. T. 496.** [*F.*, 15 Cr. L. J. 358=23 Ind Cas. 726=136 P.L R. 1914=3 P.R. 1914, Cr.]

(134)—*Crim Pro. Code* (1898), *s.* 195 (*c*)—*Sanction—Indian Penal Code* (*Act* XLV *of* 1860), *ss.* 463, 467—*Forgery Sanction for prosecution, want of, effect of.*—On the prosecution of the accused for an offence under s. 467, I.P.C., alleged to have been committed in respect of a document, which was subsequently produced at the hearing of a suit tried on the Original Side of the High Court in which the accused was a party; *Held*—that the prosecution was incompetent without the previous sanction of the Court which tried the suit or of the Court to which it was subordinate. That s 463, I.P.C., referred to in s. 195 (c) of the Crim. Pro. Code covers forgery of the description for which penalty is provided under s. 467, I.P.C. TENI SHAH v. BOLAHI SHAH, **14 C.W.N. 479=5 Ind. Cas. 879=11 Cr. L.J. 280.** [*F.*, 36 M. 387=13 Cr.L.J. 35=13 Ind. Cas 275=22 M.L.J. 141=10 M.L.T. 563=(1912) M.W.N. 3.]

(135)—*Crim. Pro. Code* (1898), *s.* 195—*Sanction to prosecute should not be granted when*

***Sanction to prosecute*—continued.**

——4.—Conditions requisite for grant of sanction—Necessity, sufficiency and validity of sanction—*continued.*

complainant had some foundation for charge against accused.—When the complainant failed to prove his charge and the accused was acquitted, and the Magistrate ordered prosecution of the complainant under s. 211 of the Penal Code, the Chief Court set aside the sanction, on the ground that the complainant had some foundation for the charge. PUNJAB SINGH v. KING-EMPEROR, **137 P.L.R. 1909 = 4 Ind. Cas. 945 = 11 Cr. L.J. 87.**

(136)—*Crim. Pro. Code* (1898), *s.* 195—*Document alleged to be forged tendered in evidence, but not judicially considered—Sanction to prosecute for forgery of document filed in Court, when could be refused.*—Under s. 195, sanction may be granted to prosecute a person for forgery in respect of a document which has been tendered as evidence, although such document is not judicially considered by the Court. Sanction to prosecute a person for forgery was refused on the ground that the genuineness of the document alleged to be forged might be questioned and determined in a Civil Court in another suit, and also on the ground that sanction, if granted, would calculate to prejudice the judicial enquiry and decision in that suit. GURU CHARAN SHAHA v. GIRIJA SUNDARI DASI, **29 C. 887 = 7 C.W.N. 112.**

(137)—*When not grantable.*—Where a person convicted of an offence under s. 182, I.P.C., which conviction stood unreversed, applied for sanction to prosecute the persons who brought the charge on which he stood convicted, *held*, that the sanction was rightly refused. GURMUKH SINGH v. EMPRESS, **10 P.R. 1882, Cr.**

(138)—*Commitment by Assistant Commissioner of a* patwari *on a charge of forgery—Sanction of Deputy Commissioner.*—Where a *patwari*, before whom the accused produced a forged document in a revenue proceeding was committed to the Sessions, after referring the matter on the revenue side to the Deputy Commissioner who replied that "the Assistant Commissioner will be good enough to report to me the result of the criminal proceedings which as a Magistrate he may think fit to take," *held*, that the proceedings were sanctioned by the Deputy Commissioner. CROWN v. BISHNA, **10 P.R. 1873, Cr.**

(139)—*What amounts to sanction.*—Where a person resisting a peon executing a Tahsildar's decree was prosecuted before the Tahsildar, *held*, that that was a sufficient sanction for the prosecution. CROWN v. SUZAWAR, **8 P.R. 1870, Cr.**

(140)—*Crim. Pro. Code, s.* 195—*Sanction to prosecute.*—S. 195 clearly shows that it would be quite sufficient if either the sanction of the public servant mentioned therein were given, or a complaint is directly made by him. POONIT SINGH v. MADHO BHOT, **13 C. 270.** (5 A. 36, *Diss.*)

***Sanction to prosecute*—continued.**

——4.—Conditions requisite for grant of sanction—Necessity, sufficiency and validity of sanction—*continued.*

(141)—*Crim. Pro. Code* (1898), *ss.* 195, 197, *and* 230—*Fresh sanction, whether necessary, before convicting for abetment, where sanction for substantive offence given.*—The Inspector-General of Registration wrote a letter to the District Registrar directing that the accused, a Sub-Registrar, should be prosecuted on charges under ss. 417 and 468, Penal Code. The accused was tried and convicted of abetting an offence under s. 468. The accused contended that no sanction had been given to prosecute for the abetment of an offence under s. 468, and, therefore, the conviction was illegal. *Held*, that the letter of the Inspector-General was sufficient for the conviction of the accused under s. 468 read with s. 109. Although the letter amounted to a sanction to prosecute for a substantive offence under s. 468, no fresh sanction was necessary to prosecute the accused on a charge of abetting the offence, as the latter charge was founded on the same facts as those, on which the original sanction was given. PROFULLA CHANDRA SEN v. EMPEROR, **30 C. 905 = 7 C.W.N. 494.**

(142)—*Right of trying Magistrate to question the sanction—Preliminary enquiry.*—It is not open to a Magistrate enquiring into a case, in which sanction has been granted by a competent authority, to question the sanction on the ground of its informality. He can at best stay the proceedings and allow the accused to apply to a competent Court to have the sanction revoked. Where the evidence on record is sufficient for sanctioning prosecution, further enquiry is unnecessary. EMPRESS v. BHOLA, **2 P.R. 1888, Cr.**

(143)—*Crim. Pro. Code* (1882), *s.* 195—*Sanction to prosecute—Legality.*—Where sanction to prosecute has been granted under s. 195, Crim. Pro. Code, by a Sessions Judge, it is not competent to the Magistrate before whom proceedings based upon such sanction are taken to refuse to act upon such sanction on the ground of its insufficiency. MUZAFFAR ALI KHAN v. TOTA RAM, **A.W.N. 1893, 177.**

(144)—*Crim. Pro. Code* (*Act* V *of* 1898), *ss.* 190 *to* 195—*Penal Code* (*Act* XLV *of* 1860), *s.* 193—*Sanction to prosecute for perjury—Cognizance of case on the complaint of a stranger.*—When sanction to prosecute under s. 195, Crim. Pro Code, has been granted to a particular person, a Magistrate, otherwise competent to try the offence, may take cognizance of the case under s. 190. Crim. Pro. Code, on the complaint of any other person, whatever may be the motive of the complainant. LAKHI v. EMPEROR, **5 P.L.R. 1903 = 27 P.R. 1902, Cr.**

(145)—*Sanction of official superior—Crim. Pro. Code* (1861), *s.* 169—*Judicial Commissioner sitting as Sessions Judge.*—A certificate by the Judicial Commissioner of Assam, sitting as Sessions Judge, but given in his capacity of

Sanction to prosecute—continued.

——4.—Conditions requisite for grant of sanction—Necessity, sufficiency and validity of sanction—*continued.*

Judge of Chief Civil Court in Assam, that a charge of false evidence was entertained with the sanction of the District Court of Assam, to which the Court of the Munsif of Debrooghur, before or against which the offence was committed, was subordinate, was held to be a sufficient sanction. BAPOORAM AHAM v. GUNGARAM KACHAREE, **17 W.R. Cr. 54.**

(146)—*Sufficiency of sanction—Sanction of official superior—Penal Code, s.* 182—*Crim. Pro. Code* (1861), *s.* 168.—There is a sufficient compliance with the provisions of s. 168 of Crim. Pro. Code, 1861, where the prosecution of an offence under ch. X of the Penal Code, was commenced by an inferior ministerial servant under the authority of his departmental superior. QUEEN v. RAMGOLAM SINGH, **11 W. R. Cr. 22.** *In re* MOULVY ABDOOL LUTEEF, **9 W.R. Cr. 31.** [*R.*, 19 W.R. Cr. 33.]

(147)—*Insufficient sanction.*—Where a Munsiff, in giving a sanction to prosecute, made the following order: "if the petitioner thinks there is sufficient evidence against A, I have no objection to give such sanction," *held*, that the order was not a sufficient sanction to support a prosecution. JADUNATH HAZRA v. ANNODA PROSAD SIRCAR, **11 C.L.R. 53.**

(148)—*Subordinate Magistrate sending a case to the District Magistrate to be dealt with under s.* 211 *of the Penal Code.*—Where a subordinate Magistrate sends the records of a case to the District Magistrate to be dealt with under s. 211 of the Penal Code, if the latter thinks proper to do so, such action of the subordinate Magistrate will not constitute a sanction to prosecute. KHEPU NATH SIKDAR v. GRISH CHUNDER MUKERJI, **16 C. 730.** (1 C. 450, 23 W.R. C. 39, *F.*)

(149)—*Crim. Pro. Code* (1882), *s.* 195 (4)—*Sanction to prosecute.*—Where an order granting sanction was expressed thus:—"Prosecution sanctioned," *held*, that the sanction did not comply with the requirement of s. 195. *In re* VASUDEVA PILLAI, **2 Weir 172.**

(150)—*Crim Pro. Code* (1898), *s.* 476—*Inquiry by a Collector as a Revenue Court for determining the person entitled to pay stamp duty.*—Where a Sub-Registrar impounded a document presented for registration as insufficiently stamped and sent it to the Collector, and the Deputy Collector, acting on the orders of the Collector, reported that the document was not genuine and that the petitioner had failed to prove the execution of the document, *held* that the order of the Collector sanctioning the prosecution of the petitioner under s. 476 was made without jurisdiction and the inquiry by the Deputy Collector was not a judicial inquiry, having been held solely for the purpose of determining who should be called on to pay the stamp duty. KEDAR NATH GHOSH v. EMPEROR, **7 C.W.N. 795.**

Sanction to prosecute—continued.

——4.—Conditions requisite for grant of sanction—Necessity, sufficiency and validity of sanction—*continued.*

(151)—*Crim. Pro. Code, ss.* 195, 476—*Sanction to prosecute—Complaint to a District Registrar—Enquiry held departmentally—Judicial proceeding—Penal Code, s.* 182—*Complaint.*—Where a person made a complaint to a District Registrar, against the conduct of a subordinate officer, a Sub-Registrar, alleging that the latter had delayed to register a document presented by him, and the District Registrar, after holding a departmental enquiry, was satisfied as to the falsity of the complaint and made an order sanctioning his prosecution for an offence under s. 182 of the Penal Code. *Held*, the order for prosecution was not one under s. 476 of the Crim. Pro. Code, nor was it a sanction under s. 195; it was wholly without jurisdiction and should be set aside. The enquiry held by the District Registrar, being a departmental one and not a judicial proceeding, s. 476 of the Crim. Pro. Code can have no application. The prosecution of a person under a sanction not properly given and, in a case where there was no application for sanction, is illegal and cannot be maintained. MULFAT ALI SHEIKH v. KING-EMPEROR, **2 C.L.J. 619 = 3 Cr. L.J. 112 = 10 C.W.N. 222.** (18 A. 213, 20 C. 474, 9 C. W.N. 277, *F.*)

(152)—*Crim. Pro. Code, ss.* 195 *and* 476—*Sanction to prosecute—False information—Indian Penal Code, s.*211—*Requisites of sanction.*—A false information was given at the Thana regarding the death of a girl. The informant, the chowkidar, was directed to be prosecuted under ss. 182 and 211 of the Indian Penal Code. On an application by the opposite party, the Sessions Judge sanctioned the prosecution of two other persons by the following order:—"There can be no doubt that D and A instigated the chowkidar to lodge this information. I direct that they be prosecuted under s. 211 with the chowkidar;" *Held*, the sanction was without jurisdiction and bad. DHARMADAS KAWAR v. KING-EMPEROR, **7 C.L.J. 373 = 12 C.W. N. 575 = 7 Cr. L.J. 340.** [*F.*, 37 C. 250 = 10 C.L.J. 564 = 14 C.W.N. 330 = 11 Cr. L.J. 37 = 4 Ind. Cas. 710.; *R.*, 34 A. 522 = 10 A.L.J. 61 = 13 Cr. L.J. 702 = 16 Ind. Cas. 510.]

(153)—*Crim. Pro. Code* (1872), *s.* 467—*False information to police—Sanction to prosecute given by Taluk Magistrate, whether proper sanction.*—The sanction of a Taluk Magistrate to a prosecution under s. 182, Penal Code, for a statement made to the Police and included in their referred charge-sheet forwarded by them to such Magistrate, under s. 117, Crim. Pro. Code, is not a proper sanction, as such Magistrate is not the official superior of the Station House Officer within the meaning of s. 467. QUEEN v. VELAYUDAM, **6 M. 146 = 2 Weir 156 = 6 Ind. Jur. 576.** [*F.*, 2 Weir 156.]

(154)—*Crim. Pro. Code* (1898), *ss.* 476, 195—*District Magistrate calling for records of a case*

Sanction to prosecute—continued.

——4.—**Conditions requisite for grant of sanction—Necessity, sufficiency and validity of sanction**—*continued.*

in his executive capacity—Judicial proceeding—Sanction to prosecute.—Where a District Magistrate called for the records of a case before a Sub-Magistrate in his executive capacity for the purpose of enabling him to ascertain whether an application for an inquiry into the conduct of a police officer should be granted or not, and sanctioned the prosecution of the police officer under s. 193, Penal Code, *held*, that the order should not be upheld as an order for sanction to prosecute such as was required by s.195, cl. 1 (*b*) inasmuch as a District Magistrate was not the Court to which the Sub-Magistrate was subordinate within the meaning of s. 195 (7). *Held*, further that the order calling for the record did not come within the terms of s. 435 and therefore there was no judicial proceeding for the purposes of s. 476 and that the order should be set aside. SANGILIA PILLAI v. DISTRICT MAGISTRATE OF TRICHINOPOLY, **25 M. 659 = 2 Weir 599.**

(155)—*Crim. Pro. Code* (1898), *s.* 195—*Sanction to prosecute under s.* 195, *I.P.C.*—Where sanction was granted by the lower Court for prosecution of the petitioner under s. 195, I.P.C., for having deposed that he recognised a dacoit by the flash of his revolver, *held*, that sanction ought not to have been given, as identification by the flash of a revolver is not impossible. In order to sustain a conviction, it is necessary for the prosecution to prove that the petitioner, when he said that he recognised the dacoit by the flash of his revolver, not only spoke falsely, but knew that he was speaking falsely. GOPALASAMI NAIDU v. EMPEROR, **6 M L T 91 = 2 Ind. Cas. 431 = 10 Cr. L.J. 7.**

(156)—*Crim. Pro. Code* (1898), *s.* 195—*Police report--Complaint.*--After finding a charge to be groundless, the police *thanadar* submitted the records of the case to the District Superintendent of Police. He sent it to the Court Inspector, who put up a note stating the grounds for a prosecution under s. 182, I.P.C., and sent the file to the Sub-Divisional Magistrate, with a recommendation that the case may be expunged and that a sanction may be given to prosecute the accused under s. 182, I.P.C. The Magistrate returned the papers to the District Superintendent of Police with the remark that they should have been sent through that officer, who thereupon passed an order that the records be laid down before the Sub-Divisional Magistrate for the crime being expunged and for sanction being given for the prosecution of the accused. The Sub-Divisional Magistrate ordered the accused to be charged under s. 182, I.P.C., and directed summonses to issue in order to the commencement of proceedings. *Held*, on revision, that there had been neither a lawful sanction nor a complaint for the institution of the proceedings against the accused and that the proceedings were illegal; a report submitted in the usual way, ss. 157, 173 of the Code is not intended to be and could not be a "complaint"; the *thanadar's* report, not sent to a Magistrate and not intended to be a complaint, the Court Inspector's note and the District Superintendent of Police's order were not complaints. MOKHAM SINGH v. KING-EMPEROR, **6 O.C. 1.**

(157)—*Crim. Pro. Code* (1898), *s.* 195—*Penal Code* (*Act* XLV *of* 1860), *s.* 191—*False evidence—Written statement filed in a suit—Denial of plaint allegations— Sanction to prosecute — Pleadings, construction of.*— Where the defendant in a suit stated, in his written statement, that he denied the plaint allegations, except such as were contained in a certain para therein, and sanction was asked for and granted for his prosecution under s. 191, Penal Code. *Held*, that, having regard to the whole of defendant's written statement, he only meant to say that he did not admit the plaint allegations and wanted plaintiff to prove them, and that sanction should not have been granted on the basis of such loose expression of language. Pleading in the *mofussil*, where no great exactitude of expression is found, should not be taken too literally. NARAIN SASTRULU v. KANAKAMUNA, **3 Ind. Cas. 723 = 6 M.L.T. 346 = 10 Cr. L.J. 364.**

(158)—*Crim. Pro. Code* (1898), *s.* 195—*Penal Code* (*Act* XLV *of* 1860), *ss.* 183, 186—*Resisting public servant— Withdrawal of attachment—Court directing Court officer to redeliver properties to defendant—Properties taken possession of by defendant—Civ. Pro. Code* (*Act* V *of* 1908), *O.* XXI, *r.* 55.—Certain properties of the defendant were attached in execution of a decree against him. The amount of the decree having been deposited in Court, the Court directed the properties to be released and directed the Amin to re-deliver the properties to the defendant. The Amin reported that he could not effect delivery, as the defendant had already taken the properties from the bailees with whom they were deposited. The District Judge sanctioned the prosecution of the defendant under ss. 183 and 186, Penal Code. *Held*, that the order directing the properties to be entrusted to the petitioner was not authorised by any of the provisions of the Civ. Pro. Code, and that the attachment having been withdrawn, there was no resistance by the defendant to a public servant, within the meaning of s. 183 or s. 186, Penal Code. *In re* ARAKKAL AHMAD ALI RAJAH AVERGAL OF CANNANORE, **4 Ind. Cas. 97 = 6 M.L.T. 376 = 10 Cr. L.J. 496.**

(159)—*S.* 476—*Judicial proceedings — Proceedings by a Revenue Officer as distinguished from a Revenue Court—Land Revenue Act* (III *of* 1901), *ss.* 4 (9) *and* 46.—Where under orders of the Deputy Commissioner, a Deputy

Sanction to prosecute—continued.

——4.—Conditions requisite for grant of sanction—Necessity, sufficiency and validity of sanction.

Collector made inquiries, which resulted in the finding that the applicant was in the habit of giving no receipts for rents received and did not record the correct realizations in the Patwari's papers, and the Deputy Collector thereupon passed an order under s. 476, Crim. Pro. Code, directing that proceedings under s. 177, Indian Penal Code, should be instituted against the applicant, *held*, that the inquiry was one under s. 46 of the Land Revenue Act, and the Deputy Collector in making the inquiry was acting merely as a Revenue Officer as defined in s. 4 (9) of U.P. Act III of 1901, and not as a Revenue Court, nor were his proceedings judicial proceedings within the meaning of s. 476, Crim. Pro. Code. The order passed by the Deputy Collector was therefore without jurisdiction and must be set aside. PRAG TEWARI v. KING-EMPEROR, **13 O.C. 198=7 Ind. Cas. 612=11 Cr. L.J. 514.** [*R.*, 17 O.C. 25.]

(160)—*Sanction by a Court upon its own motion--Validity of.*—Where, during the enquiry into a civil case, the accused filed a certificate signed by the Civil Surgeon to prove his age, and the Court believing that the certificate had been tampered with, recorded a sanction, on its own motion, for the prosecution of the accused, *held* that the sanction was not valid, as it had not been granted to a private prosecutor, nor had the procedure prescribed by s. 476, Crim. Pro. Code, been complied with. ATMA RAM v. EMPEROR, **23 P.R. 1901, Cr.** (30 P.R. 1905 Cr., 44 P. R. 1905 Cr., 13 B. 109, *R.*) [*D* , 3 P.L.R. 1904.]

(161)—*Crim. Pro. Code* (1898), *s.* 195—*Affidavit in support of application for attachment before judgment — Statement that the defendant intended to alienate the property—Plaintiff in examination stating that the statement was based upon hearsay—Penal Code*, ss. 193, 196, 199, 200 —The plaintiff in a suit applied for an attachment before judgment and declared in the affidavit that the defendants, with bad intention, were attempting to alienate the immoveable properties belonging to them. While he was examined *viva voce* in support of his petition, he stated that he only knew from hearsay that the defendants were intending to alienate the properties. The application being dismissed, the Subordinate Judge granted sanction only for an offence under s. 199, Penal Code, but refused sanction for the offences under ss. 193, 196, 200, Penal Code. The sanction was not based upon any statement made by the petitioner in his oral evidence, but upon the above-mentioned declaration made by him in his affidavit. On appeal by the defendant, the District Judge granted sanction under ss. 193, 196, 200, Penal Code. *Held*, that the District Judge did not exercise a sound discretion in according sanction for the prosecution of the petitioner. Although, in

Sanction to prosecute—continued.

——4.—Conditions requisite for grant of sanction—Necessity, sufficiency and validity of sanction—*continued.*

his affidavit, he did not state that he based his statement made therein upon hearsay, yet the declaration in the affidavit was not inconsistent with his having based it upon hearsay PALANIAPPA CHETTI v ANNAMALAI CHETTI, **27 M. 223=2 Weir 208=14 M.L.J. 74=2 Weir 577.**

(162)—*Contradictory statements made before the Police and Magistrate—False evidence.*—A witness in an earlier case, who became an accused person in a subsequent case, made one statement before the police and another before the Magistrate who tried that case, in consequence of which the Magistrate ordered him to be prosecuted for giving false evidence, annexing to his order the memorandum of the statement made to the police officer and the record of the statement made before himself. During the accused's trial, the police officer who had taken down the statement of the accused was not examined as a witness. The memorandum of the police officer was held to be inadmissible in evidence of what the accused had stated before the police, and the sanction to prosecute the accused was held to be groundless, in the absence of anything to show that the accused had not, as a witness, told the truth to the Magistrate in the earlier case. QUEEN EMPRESS v. NGA YE GYAU, **L. B.R. 1893-1900, 187.** (L.B.R. 1893—1900, 79, *Appl*)

(163)—*Crim. Pro. Code* (1898), *ss.* 195, 174—*Contradictory statement to the police and in enquiry before the Magistrate— Sanction to prosecute* —Where the Magistrate gave sanction to prosecute the accused for an offence under s. 193, Penal Code, as his statement before a police officer under s. 174, Crim. Pro. Code, was contradictory to one made to the Magistrate in the course of an enquiry into a certain case, and as he was necessarily guilty of an offence under s. 193, I.P.C., in respect of one or other of the statement. *Held*, that the sanction to prosecute, in respect of the statement made before the Magistrate, is not invalid. *In re* FAKIR MOHIDEEN, **5 M.L.T. 355=9 Cr. L.J. 304=1 Ind. Cas. 547.**

(164)—*Penal Code, s.* 182—*Crim. Pro Code,* 1861, *s.* 168—*Constable subordinate to Superintendent of Police.*—Where a person was charged under s. 182, I.P C., with having given false information to a Police Head constable, a sanction given by the District Superintendent of Police to whom the constable was subordinate was held valid. QUEEN v. GRISH CHUNDER SIRKAR, **19 W.R Cr. 33.** (11 W.R. Cr. 22, *F.*)

(165)—*Crim. Pro. Code, s.* 168 (=s. 195 *of the Code of* 1898)—*Sanction to prosecute by District Superintendent for false information given to the Assistant Superintendent.*—When a person gave false information to an Assistant Superintendant of Police, a sanction to prosecute the informant, given by the District Superintendant of Police, is not valid. QUEEN v. OOTUM CHAND, **2 N.W.P. 287.**

Sanction to prosecute—continued.

——4.—**Conditions requisite for grant of sanction—Necessity, sufficiency and validity of sanction**—*concluded*.

(166)—*Crim. Pro. Code*, ss. 195, 476—*Order in the alternative, validity of.*—A District Magistrate, on an application for sanction to prosecute a certain person for perjury alleged to have been committed in his Court, passed an order sanctioning his prosecution for perjury, or in the alternative for an offence under s. 182, I.P.C. *Held*, that an option of that kind was not an order at all, and was, therefore, not valid. HASANSHAH v. HARDEO SAHAI, **25 A. 234 = A.W.N. 1903, 31.**

Evidence of sanction of prosecution of public authority—Consent of Municipal Commissioners for prosecution how to be evidenced. —*See* BEN. ACT III OF 1884, ss. 353, 217, 16 C. W.N. 934 = 15 Ind. Cas. 796 = 13 Cr. L.J. 524.

——5.—**Nature and form of sanction.**

(1)—*Crim. Pro. Code* (1882), s 197—*Nature of the sanction required under section—Delegation of authority to sanction.*—The sanction required under s. 197, Crim. Pro Code, must be granted with reference to some specific offence with which the accused is charged in his capacity as a public servant, as the intention of the legislature was that the authority empowered to grant the sanction should take the responsibility of deciding whether there were reasonable grounds for prosecuting such public servant for such offence. An irregularity in a sanction granted under the section is not cured by the provisions of s. 537. The authority empowered to grant sanction cannot delegate to another the duty of determining which offence the sanction should relate to. An order by the Board of Revenue directing the prosecution of a Deputy Tahsildar "for bribery or other charges as the District Magistrate thinks likely to stand investigation by Criminal Courts" was held not to be a proper order under s. 197. QUEEN-EMPRESS v. SAMAVIER, **16 M. 468 = 3 M.L.J. 227 = 2 Weir 220.** [*F.*, 2 Weir 221; *R.*, 27 M. 54 = 2 Weir 227, 13 C.W.N. 1062 = 10 Cr. L.J. 463 = 8 Cr. L.J. 70 = 4 L.B.R. 265 = 4 Ind. Cas. 13, 7 Ind. Cas 752 = 8 M.L.T. 205 = 11 Cr. L.J. 527; *D.*, 12 Cr. L.J. 217 = 10 Ind. Cas. 156 = 11 P.R. 1911, Cr. = 146 P.L.R 1911.]

(2)—*Crim. Pro. Code, s. 195—Sanction—Name of the person to whom sanction is granted.* —The sanction contemplated by s. 195 is not a sanction to any particular person to prosecute but a sanction to the Criminal Courts concerned to take cognisance of certain offences specified in that section, of which the Criminal Courts cannot take cognizance except with the previous sanction or on the complaint of the authority described in that section. The sanction, whilst it is in force, restores to the Criminal Courts a jurisdiction, of which the same section deprives them in respect of specified offences, and need not even name the accused person. *In re* MOWJEE LILADHAR, **8 Bom. L. R. 32 = 3 Cr. L.J. 227 = 1 M.L.T. 47.**

Sanction to prosecute—continued.

——5.—**Nature and form of sanction**—*ctd.*

(3)—*Crim. Pro. Code* (1882), ss. 195, 435—*Sanction to prosecute, object of—Sanction to prosecute for perjury on perusing calendar.*—Sanction should not be given by any Court without first examining the evidence. The object of giving the power to sanction, is to secure, as far as possible, that no man shall be prosecuted unless the Court hearing the case or a superior Court is satisfied that it is a proper case to put the party on his trial. Where a Joint Magistrate in perusing the calendar of a case tried by a Magistrate subordinate to him ordered the prosecution of a witness in that case for perjury without reading the evidence in the case, *held*, in the Magistrate's acting under s. 435, he was not acting in a judicial proceeding and the sanction was not, therefore, legal, nor did the Magistrate act under s. 476, as the matter was not brought before him in a judicial proceeding. QUEEN EMPRESS v. KUPPU, **7 M. 560 = 2 Weir 180.** [*R.*, 7 Cr. L J. 495 = 4 L. B.R. 234, 15 M.L J. 489 = 2 Weir 601-A.]

(4)—*Issue of warrant—Implied sanction—Crim. Pro. Code* (1861), *s.* 169.—*Held*, that the object of the sanction required by the section was only to ensure that the prosecution should be instituted after due consideration on the part of the Court before whom the false evidence was given, or on the part of a Court to which such Court was subordinate; hence where a Magistrate sent on the papers of a case, which had been forwarded to him by a subordinate Magistrate for consideration, to the District Superintendent of Police and at the same time expressed an opinion that the prisoner's conduct was discreditable and the District Superintendent of Police requested the Magistrate to issue a warrant against the prisoner, charging him with giving false evidence, *held*, that the prosecution was sufficiently sanctioned. QUEEN v. MAHOMED HOSSAIN, **16 W.R. Cr. 37.** [*R.*, 7 C. 208; *Appr.*, 26 A. 509.]

(5)—"*Sanction to prosecute*"—*Crim. Pro. Code* (*Act* X *of* 1872), s. 468.—The sanction to prosecute contemplated by s. 468 is something very different from a direction, inasmuch as it leaves a private prosecutor free to exercise his own unfettered direction as to whether he will proceed or not. GRIDHARI MONDUL v. UCHIT JHA, **8 C 435 = 10 C L.R 46.** [*R.*, 13 B. 384 = Rat. Un. Cr. C. 422, 32 C. 351 = 9 C.W.N. 277 = 2 Cr. L.J. 78, 32 C. 469 = 8 C.W.N. 883, 5 P. L.R. 1903 = 27 P.R. 1902, Cr]

(6)—*Crim. Pro. Code* (*Act* X *of* 1872), *s.* 468—*Penal Code, s.* 193—*Sanction—Court's intention to sanction prosecution.*—The expression in the judgment of a Sessions Judge, of an intention to sanction the prosecution of a particular witness for an offence under s. 193 of the Penal Code, is not a sanction in itself, the intention not having been carried out. REG. v. PIRTAPPA, **Rat. Un. Cr. C. 78 = Cr. Rg. 2-10 1873.**

(7)—*Crim. Pro. Code* (1898), *s.* 195—*Sanction to prosecute — Appeal — Letters Patent,*

Sanction to prosecute—continued

——5.—**Nature and form of sanction**—*ctd.*

s. 15.—An order, passed under s. 195 with a view to a subsequent prosecution and trial, is not a sentence or order passed "in a criminal trial." An appeal, therefore, lies under s. 15 of the Letters Patent. CHAKRAPANI AIYANGAR v. KING EMPEROR, **12 M.L.J. 408.**

(8)—*Crim. Pro. Code* (1882), *ss.* 195 *and* 560 —*Sanction for prosecution and award of compensation—Validity.*—Recourse should not be had to the provisions of s. 560, in a case in which the trying Magistrate is of opinion that the complaint was wilfully and maliciously false, and that the complainant should be prosecuted for an offence under s. 211 of the Penal Code. To sanction or direct a prosecution, and also to proceed to award compensation under s. 560 would be an improper exercise of discretion. SHIB NATH CHONG v. SARAT CHUNDER SARKAR, **22 C. 586**. [*Diss.*, 21 M. 237= 2 Weir 312, 18 P.R. 1901, Cr.=100 P.L.R. 1901 ; *R.*, 26 C. 181, 30 C. 123, F.B., 15 C.P. L.R. 194, 30 P.W.R. 1907, Cr.=7 Cr. L.J. 231.]

(9)—*Crim. Pro. Code* (1898), *ss.* 250 *and* 476 —*Sanction to prosecute and award of compensation—Validity.*—Although there is nothing in the Code which makes it illegal for a Magistrate both to award compensation to the accused and also to direct or sanction the prosecution of the complainant for bringing a false charge, yet a Magistrate who adopts such course would be exercising his discretion improperly. BACHU LAL v. JAGDAM SAHAI, **26 C. 181.** (22 C. 586, 6 B L.R. 296=15 W. R. Cr. 9, *R.*) [*Not F.*, 37 B. 376=2 Bom. Cr. C. 5=15 Bom. L.R. 49=14 Cr. L.J. 75=18 Ind. Cas. 411; *R.*, 30 C 123, 15 C.P.L.R. 194, 6 P.R. 1904, Cr., 18 P.R. 1901, Cr.=100 P.L. R. 1901, 18 P.R. 1903, Cr.=156 P.L.R. 1903.]

(10)—*Crim. Pro. Code* (1898), *s.* 197—*Form of the sanction.*—The Crim. Pro. Code does not prescribe any particular form for the sanction required by s. 197, though in the case of a sanction accorded under s. 195, sub-s. 4 thereof prescribes that the sanction shall, as far as practicable, specify the place in which, and the occasion on which, the offence is committed. *In the matter of* KALAGAVA BAPIAH, **27 M. 54 =2 Weir 227=2 Weir 263=2 Weir 578.**

(11)—*Crim Pro. Code* (1898), *s.* 195 (4)—*Sanction, form of.*—Courts, in granting sanction to prosecute, should be accurate and precise, especially where sanction is given against several persons and in regard to several offences. SHUNMUGA CHETTY v. PONNAPPA MUDALY, **2 Weir 173.**

(12)—*Penal Code, s.* 195—*Sanction to prosecute.*—Sanction granted under s. 195, Crim. Pro. Code, should be drawn up with precision, and particularity, so as to convey clearly to the mind of the Magistrate entertaining the prosecution the exact offence or offences he is authorized to investigate. *In the matter of the petition of* CHIMMAN, **A.W.N. 1883, 228.**

(13)—*Crim. Pro. Code* (*Act* X *of* 1882), *s.* 195 —*Sanction to prosecute—False evidence—Details.*—A sanction under s. 195 of the Crim. Pro. Code, to prosecute for giving false evidence, should specify the statement alleged to be false, and, where more than one person are concerned, there should be a separate sanction for each. *In the petition of* DWARKA DAS, **A.W.N. 1884, 56.**

(14)—*Crim. Pro. Code* (*Act* X *of* 1882), *s.* 195 —*Sanction to prosecute—Offence to be specified.* —A sanction given under s. 195 of the Crim. Pro. Code should specify the particular offences for which prosecution is directed. *Petition of* SHEORAJ SINGH, **A.W.N. 1884, 87.**

(15)—*Legality of sanction to prosecute on mere suspicion—No direct evidence as to abetment of offence.*—Upon an application for sanction to prosecute, the time when and the place where the offence was committed must be specified, and sanction should not be granted by a Court except upon evidence before it of such matters. Mere suspicion that a person has instigated the institution of a false complaint is not enough for the purpose of granting a sanction, without a *prima facie* case being made out against him. AZHARUL HASAN v. MAZHAR HASAN, **6 A.L. J. 337=2 Ind. Cas. 467=10 Cr. L.J. 28.**

(16)—*Crim. Pro. Code, ss.* 195, 476—*Sanction to prosecute – Particulars necessary, omission to state—Sanction for offence not complained of—Issue of warrants—Complaint, cognizance of —Examination of complainant, if necessary—Judicial proceeding, cognizance in the course of.* —A Magistrate cannot grant sanction or tak cognizance of a matter, which did not com within his cognizance in the course of a judicial proceeding under s. 476 of the Code—is not applicable to such a case. A sanction, under s. 195 of the Code, which omits to specify the particulars required by sub-s. 4 of s. 195 of the Code is bad in law. It is not competent to a Magistrate to sanction the prosecution of a person for having used, dishonestly, documents in regard to which the application for sanction is silent and does not complain. A Magistrate has no power, upon an application for sanction, at once, to grant sanction and issue warrants against the accused, even without examining the complainant on oath. SARODA CHARAN HALDAR v. KING EMPEROR, **2 C.L J. 612=3 Cr.L.J. 81.**

(17)—*Crim. Pro. Code* (1898), *s.* 195 (4)—*Sanction to prosecute.*—The sanction granted under s. 195, should be granted to a particular person, and should specify the Court or other place in which, and the occasion on which, the alleged offence was committed. NIYAMUT MIAH v. EMPEROR, **1 C.L.J. 630=2 Cr. L.J. 656.**

(18)—*Crim. Pro. Code* (1882), *ss.* 195, 215, 476—*Sanction to proscute, conditions precedent to.*—(1) Where an offence coming under s. 195 has been committed before the Court of an

Sanction to prosecute—continued.

——5.—Nature and Form of sanction—*ctd.*

Assistant Collector, an application for sanction to prosecute shoud be made either to him or to some other Court to which he is subordinate. He is not subordinate to the Magistrate of the District, within the meaning of s. 195. (2) Sanction to prosecute should specify the Court in which, and the occasion on which, the offence was committed. (3) Sanction to prosecute should not be granted without preliminary enquiry where such enquiry is necessary in the sense of s. 476 of the Code. EMPRESS v. NAROTAM DAS, 6 A. 98. [*R.*, Rat. Un. Cr. C. 423.]

(19)—*Crim. Pro. Code*, ss. 195 *and* 439—*Power of High Court—Order by Judge refusing to set aside an order sanctioning prosecution—Revision—Order not specifying the place and occasion of offence — Defective.*—When a Sessions Judge refuses to interfere in the order of a Magistrate sanctioning prosecution, the High Court has power to call for and examine the record and pass such orders as a Court of appeal could have passed, under s. 195 of the Code of Criminal Procedure. An order sanctioning prosecution did not specify the Court or other place, in which, and the occasion on which, the offence was committed, *held*, that the order was defective. EMPEROR v. SERH MAL, 5 A.L.J. 247=A.W.N. 1908. 102=30 A. 243=3 M.L.T. 377=7 Cr. L J. 389. (A.W.N. 1907, 283, 30 M. 382, *R.*) [*F.*, A W.N. 1908, 290; *R.*, 22 M L.J. 419=11 M.L.T. 367=1912 M W. N. 499=14 Ind. Cas. 305=13 Cr. L.J. 209.]

(20)—*Crim. Pro. Code* (1872), *s.* 195—*Sanction to prosecute, form of.*—A sanction is defective in form, if it does not specify the Court or other place in which, and the occasions on which, the offence was committed. It should, in respect of a prosecution for giving false evidence under s. 193, I P.C., specify the particular statements in respect of which the offence is imputed. GOBERDHONE CHOWKIDAR v. HABIBULLAH, 3 C.W.N. 35. [*R.*, 36 C. 808=9 C.L.J. 690=13 C.W.N. 942=10 Cr. L.J. 150=2 Ind. Cas. 697.]

(21)—*Crim. Pro. Code* (1861), *ss.* 169, 170—*Statement of particular offences.*—A Civil Court sanctioning a prosecution under ss. 169 and 170, Crim. Pro. Code, 1861, should specify the particular offence or offences for the prosecution of which it gives sanction. QUEEN v. OOMA MOYE DEBEA, 13 W.R Cr. 25. [*Not F.*, 8 B.H.C. Cr. 24=8 B.H.C. Cr. 28.]

(22)—*Crim. Pro. Code, s.* 195, *cl.* (1) (*b*)—*Sanction to prosecute for abetment of the offence of preferring a false charge.*—A sanction to prosecute for abetting the preferring of a false charge is not legal, if it does not show in what the abetment consisted. VELU NAIR v. GNANA PRAKASAM PILLAI, 2 Weir 167=2 Weir 243.

(23)—*Crim. Pro. Code, s.* 195—*Sanction to prosecute.*—S. 195 ought to be used in such a way as to give the person against whom the sanction for prosecution is given, some means of knowing definitely in what the criminal act alleged against him consists. The Judge in issuing a sanction for a prosecution ought to apply his mind closely to the facts, with a view to ascertain whether they really constitute an offence, and also to prevent a sanction issued with one purpose of design being abused to the furtherance of some other. *In re* JIVAN AMBAI DAS, 19 B 362=Rat. Un Cr. C. 693=Cr. Rg 20 of 1894. [*R.*, 9 C.L.J. 690=13 C. W.N. 942=10 Cr. L.J. 110=36 C. 808; *D.*, 9 C.P.L R. 27.]

(24)—*Penal Code, s.* 124-*A*—*Crim. Pro. Code, s.* 196—*Complaint, sanction—Examination of complainant—Local Government — Presumption—Evidence Act* (I *of* 1872), *s* 144—*Privilege — Proceedings of Court of Justice—Printing Presses and Newspapers Act* (XXV *of* 1867), *s.* 7—*Declaration by Printer — Liability of Printer.*—S. 196 of the Crim. Pro. Code, requires that no case under s. 124-A of the Penal Code shall be taken cognisance of except upon complaint made with the authority of the Local Government. Where the letter of authority did not specify the name of the accused, but he was indicated from the first, and his name was supplied at the commencement of the Police Court proceedings, *held* it was a sufficient compliance with the section. The person who signs the letter of authority is not the complainant, and it is not necessary to take his examination under the law. The person who armed with the authority makes the application to the Court for the apprehension of the accused is the complainant, and his examination is to be taken. A Presidency Magistrate need not at this stage administer an oath to the complainant nor reduce his complaint into writing. The authority under s. 196 need not, in the case of Local Government, be signed personally by the Lieutenant-Governor; it is enough if it is signed by one of his accredited and gazetted officers. It must be presumed that all official acts have been duly performed, and s. 144 of the Evidence Act amply supplies all omissions in the method of communication of the sanction to the prosecuting officer and the Magistrate, where the sanctions, as they originally stood, contained a misdescription of the articles on which the prosecution was based, and this was rectified by a subsequent sanction filed in course of the trial, *held*, the petitioner was not prejudiced and the defect was cured by s. 537 of the Crim. Pro. Code. A newspaper was prosecuted for sedition. One article only was put in at the trial. The prosecution intended to rely upon other articles also in support of their case and had them translated, and the translation supplied to the accused, in that case. They were, however, never brought upon the record in that case. Where these translations were reprinted by another newspaper, *held*, that the re-publication was not of any proceedings of a Court of Justice, and not, therefore, privileged. In a case like this, the Court shall look into the state of the

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country and judge whether the re-publication was *bona fide* or not. The person who subscribes to the declaration under the Printing Presses and Newspapers Act must be presumed, under s. 7, to be cognizant of all that he was printing and publishing, and in the absence of any evidence to the contrary, his liability in the matter cannot be gainsaid. APURBA KRISHNA BOSE v. EMPEROR, **7 C L J 49 = 7 Cr. L J. 10 = 35 C. 141 = 2 M.L.T. 500.** [*R.*, 5 M.L.T. 1 = 32 M. 3.]

(25)—*Crim. Pro. Code* (1882), *s.* 195—*Sanction to prosecute—False evidence.*—It is incumbent upon the Courts authorizing prosecutions under s. 195, to specify in distinct terms the place where, and the time when, the alleged false evidence was given, and in substance the assignments of perjury, as also the sections of the Penal Code under which proceedings are authorized. *In the matter of the petition of* HARDIAL, **6 A. 105.** [*R.*, 19 B 362.]

(26)—*Crim. Pro. Code* (1898), *s.* 195—*Sanction to prosecute—Offence relating to documents given in evidence—" Party to proceeding."*—Cl. (4) of s. 195, obviously applies only to cases where at the time of granting sanction, the offender is uncertain or unknown. If there is no doubt about who the offender is, a Magistrate should name the person against whom the prosecution is to be directed. In respect of offences mentioned in s. 195 (1) (*c*), sanction is required for the prosecution only of a party to the proceeding in a Court in respect of the offences mentioned in the sub-section, committed regarding a document produced or given in evidence. Therefore, no sanction is required, if the person to be prosecuted is not a party to the proceeding in the Court. JOHN MARTIN SEQUEIRA v. LUJABAI, **25 M. 671 = 2 Weir 173.** [*F.*, 15 Cr. L J. 242 = 23 Ind. Cas. 194 = 26 M. L.J. 220 ; *R.*, 12 Cr. L.J. 101 = 15 C.W.N. 565 = 9 Ind. Cas. 577.]

(27)—*Crim. Pro. Code* (1882), *s.* 195 (4)—*Sanction granted in general terms.*—Although a sanction may be granted in general terms, yet, some indication should be given of the offence, which in the opinion of the sanctioning authority, appears to have been committed. Where a sanction was given to prosecute thirteen persons who were witnesses in a sessions trial, without any attempt having been made to discriminate between the different persons or to define with what offence each person should be charged, *held*, that the order was bad. PARVATHI AMMAL v. HASSAN AHAMED SAHIB, **2 Weir 172.**

(28)—*Crim. Pro. Code* (1898), *s.* 195—*Sanction given in general terms, effect of.*—A sanction for the prosecution of the complainant under s. 211 given generally to the accused is of an indefinite character and is therefore not a proper one. ABU SARKAR v. CHENGU SARKAR, **6 C W.N. 37.** (20 C. 474, *R.*)

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(29)—*Sanction in general terms—Penal Code, s.* 193—*Sanction for perjury in alternative.*—Where a sanction is granted to prosecute under s. 193, Penal Code, in respect of contradictory statements made in two depositions, the sanction need not be more specific than that the deponent should be prosecuted for any false statement contained in the two depositions. QUEEN v. KADIR BUX, **11 W.R. Cr. 17.**

(30)—*Crim. Pro. Code* (1898), s. 195, *cls.* (4) *and* (5)—*Sanction in general terms—Sanction when grantable—Sanction confirmed on appeal—Powers of High Court.*—Sanction to institute criminal proceedings should be in express terms, and should strictly comply with the provisions of the law. A sanction couched in general terms, which does not specify the Court or other place in which, or the occasion on which the offence was committed, or the offence alleged to have been committed by the accused, is not a proper sanction. It is not sufficient compliance with the law, if the necessary elements have to be derived from the Court's judgment by implication. No sanction should be granted unless the Court has made up its mind that the accused has committed the offences for which he is to be prosecuted. Where sanction granted by a Munsiff has been confirmed on appeal by the District Judge, the High Court has authority to interfere under s. 195 (6). HABIBUR RAHMAN v. MUNSHI KODABUX, **11 C.W.N. 195 = 5 C.L J. 219 = 5 Cr. L.J. 29.** [*R.*, 30 M. 382 = 17 M.L.J. 266 = 2 M.L.T. 239 = 6 Cr. L.J. 102, 16 C.W.N. 645 = 13 Ind. Cas. 1007 = 13 Cr. L. J. 191. 5 P. R. 1908, Cr. = 103 P.L.R. 1908 = 7 P.W.R. 1908, Cr., F.B.]

(31)—*General sanction—Prosecution for false evidence—Penal Code, s.* 193.—A sanction by a Judge to a prosecution for giving false evidence under s. 193 of the Penal Code, and for false verification should not be sanctioned in general terms. The Judge should point out the exact words upon which the prosecution is based, and the exact offences which he thinks the Magistrate should take notice of and investigate. QUEEN v. KARTIK CHUNDAR HOLDAR, **9 W. R. Cr. 58.** [*Diss.*, 8 B. H. C. Cr. 24.] *See, also,* QUEEN v. KADIR BUX, **11 W.R. Cr. 17.**

(32)—*Crim. Pro. Code, ss.* 195, 476—*"Subordinate"—Whether the successor of a Judge can take proceedings under the sections—Sanction to prosecute—Vague sanction.*—S, a Sub-Divisional Officer, commenced proceedings under s. 476, Crim. Pro. Code. Before passing the final orders, he reverted to his substantive post of a Deputy Magistrate in the same sub-division. His successor, C, thinking that S was subordinate to him, gave sanction under s. 195 (1)(*b*) of the Code. *Held*, that C had no authority to proceed under s. 195 (1) (*b*), as S was not subordinate to him within the meaning of s. 195 (7). C could, however, take action under s. 195 or s. 476 of the Code, as the offences had been committed in his own Court, though not

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when he was the presiding officer. Where a sanction order said that the accused were to be prosecuted in respect of the complaint of a certain date and as a matter of fact there was no complaint of that date, *held*, that the order was bad for vagueness. BHOLU v. EMPEROR, **7 Ind. Cas. 51 = 7 A.L.J. 991 = 11 Cr. L.J. 438.**

(33)—*Omission to specify particulars of offence—False evidence—Crim. Pro. Code* (*Act* XXV *of* 1861), ss. 169 *and* 170.—Where persons were charged with offences under ss. 471 and 193 of the Penal Code, committed in proceedings before the Civil Court, and for which, therefore, the sanction of the Civil Court was necessary under ss. 169 and 170 of Act XXV of 1861, *held*, that the sanction, simply giving permission without specifying the particular act or acts and particular words which constituted the offences, was insufficient. QUEEN v. GOBIND CHANDRA GHOSE, **7 B. L. R. 28, Note = 10 W. R. Cr. 41.**

(34)—*Crim. Pro. Code* (1882), *s.* 197—*Nature of the sanction required under the section.*—When an order by Government sanctioning a prosecution under s. 197, does not specify for what offence the sanction to prosecute is granted, the sanction is not a legal one. *In re* SRINIVASA AIYANGAR, **2 Weir 221.**

(35)—*Offence under s.* 194, *I.P.C.*—The application for sanction to prosecute under s. 194, I.P.C., or the sanction itself should indicate what story or statement of the accused is alleged to be false. SOJAN SINGH v. FAUJDAR SINGH, **8 P.R. 1898, Cr.**

(36)—*Making false charge—Penal Code, s.* 211—*Crim. Pro. Code* (1898), *ss.* 195 *and* 476.—A Magistrate recorded a *rubkar* to the effect that a charge preferred by certain complainants before him, was false and that justice required them to be prosecuted under s. 211, I.P.C., and added that, in consequence of this, the statements of the complainants, as accused persons, had been recorded in proceedings to be instituted against them. He then ordered that the *rubkar*, together with the statements of the complainants and the records in the case of the false charge, might be submitted to the Deputy Commissioner, with the request that the case might be made over to another Magistrate and that proceedings may be taken under s. 211, I.P.C. It was not stated under what law the Deputy Magistrate passed the order. The District Magistrate passed an order making over the case to another Deputy Magistrate for disposal. No sanction appeared to have been asked for. The order of the Deputy Magistrate did not purport to be one sanctioning the prosecution of the complainants on charges under s. 211, I.P.C., nor was it in the form of a complaint. *Held*, therefore, that it was not an order such as the Magistrate could have passed under s. 195, Crim. Pro. Code, nor was it an order under s. 476, Crim. Pro. Code, and that the proceedings taken against the complainants under s. 211, I.P.C. were invalid, as the requirements of the law, before proceedings under that section can be taken, had not been complied with. JAGDEI v. SRI CHARAN, **5 O.C. 240.**

(37)—*Crim. Pro. Code* (*Act* X *of* 1872), *s.* 470—*Sanction for false evidence given in one Court or another—Form of sanction.*—Where it is intended to charge a person with having made a false statement in the Court of a Magistrate, or, in the alternative, in that of a subordinate Judge, it is necessary that both Courts or their superiors should grant the sanction. [*R.*, Rat. Un. Cr. C. 224.] The sanction given must refer to the Court in which the false statement is alleged to have been made and to the occasion on which it was made. The offence charged must be described at least in general terms though details need not be given. *In re* BALAJI SITARAM, **11 B.H.C. 34.** [*R.*, Rat. Un. Cr. C. 693, 19 B. 362.]

(38)—*Crim. Pro. Code* (1898), *s.* 195—*Sanction to prosecute restricted to particular person—Prosecution instituted by another, when valid.*—Where a sanction to prosecute is not of a general nature but is expressly restricted to a particular person, the prosecution may be initiated by a person expressly authorised by him to whom the sanction is given. In such a case, the authority must be a matter of record, so as to enable the accused to challenge its validity both before the Magistrate and also on appeal or revision. KALI KINKAR SETT v. NRITYA GOPAL ROY, **32 C. 469 = 8 C.W.N. 883 = 1 Cr. L.J. 845.**

(39)—*Sanction if must be given in particular form of words.*—The law does not require a sanction to a prosecution to be given in a particular form of words, and it permits such a sanction to be given at any time. When a Sessions Judge directs a commitment, he must be taken to sanction the prosecution out of which the commitment arises. QUEEN v. LEKHRAJ, **2 N.W.P. 132.**

(40)—*Crim. Pro. Code* (1882), *ss.* 195, 476—*Sanction to prosecute given in the abstract—Preliminary enquiry.*—A sanction for a prosecution, under s. 195, is not intended as a sanction given in the abstract, not to any intended prosecutor, nor on any application. Where a Deputy Commissioner issued a sanction for the prosecution of the accused, under s. 182 of the Penal Code, upon an express application on behalf of a Sub-Inspector against whom a charge of torture had been made by the accused, which charge was found by the Magistrate to be false and concocted, *held* that the sanction was one given to a contemplated prosecution by a definite person, and was, therefore, a proper sanction. [*F.*, 27 C. 820, 3 Cr. L.J. 112 = 10 C.W.N. 222 = 2 C.L.J. 619; *R.*, 23 C. 532, 6 C.W.N. 37, 32 C. 180, 32 C. 351 = 9 C.W.N 277, 7 C.L.J. 49.] *Semble.*—An order under s. 476 may be made

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without making any preliminary enquiry, although there is no sworn evidence on the record to contradict the statements which are treated in the order as false. Although it may sometimes will be that a preliminary enquiry ought to be held, the adoption of a rigid rule to that effect is not rendered imperative by law, nor is it desirable. BAPERAM SURMA v. GOURI NATH DUTT, **20 C. 474.** (6 C. 308, 1 C. 450, 16 C. 730, *R. & D.*) [*F.*, 15 A. 392 = A.W.N. 1893, 146 ; *R.*, 34 C. 551, F B. = 5 Cr. L.J. 398 = 5 C.L J. 508 = 11 C.W.N. 568, 40 C. 477 = 17 C.L.J. 245 = 17 C.W.N. 647 = 19 Ind. Cas. 197 = 14 Cr. L.J. 197, Rat. Un. Cr. C. 895, 6 C.W.N. 295, 11 M.L.T. 367 = 1912 M. W.N. 499 = 22 M.L.J. 419 = 14 Ind. Cas 305 = 13 Cr. L.J. 209, 7 Cr. L.J. 10 = 7 C.L.J. 49 = 35 C. 141 = 2 M.L.T. 500, 13 Cr. L.J. 4 = 13 Ind. Cas. 97, 13 Cr. L.J. 19 = 13 Ind. Cas. 211 = 2 M.W.N. 1911, 526.]

(41)—*Crim. Pro. Code* (1898), *ss.* 197, 235—*Sanction under s.* 97, *whether should specify the offence with precision—Substantial compliance with the terms of the sanction—Penal Code, s.* 161—*Illegal gratification—Misjoinder—Taking bribe Rs.* 2 *for the registration of each of seven documents presented together—Whether one offence — Transaction, one.*—Under s. 197, Crim. Pro. Code, the Government in granting sanction need not specify the offences with the same precision as is necessary in framing a charge. Where the order of the Local Government sanctioning the prosecution of the accused directed the Inspector-General of Registration to instruct the District Registrar to institute a prosecution according to law and the District Registrar, being himself the District Magistrate, took cognizance of the case against the accused, and summoned him and directed the actual trial to take place before a Special Magistrate to be appointed by the Local Government, *held*, that, although taking cognizance of the case as District Magistrate was not the same thing as initiating the prosecution as the District Registrar, still the prosecution was instituted in substantial accordance with the order of Government. Where the accused, a Sub-Registrar, was charged in one count, with having received a bribe of rupees 2 for each of seven *kobalas* presented together for registration, which were executed by one person in favor of seven different persons. *Held*, that the count did not amount to a charge of seven separate offences, and there was no misjoinder of charges, having regard to the provisions of s. 235, Crim. Pro. Code. The question, whether what was alleged in the count amounted to seven separate offences and seven different charges, is one of fact. If the accused attempted to obtain rupees 2 separately for each of the *kobolas* and was willing to register any of them on the receipt of the sum, then there would be seven separate offences. But if he was not willing to register any one of the *kobalas* unless rupees two for each of the *kobalas* were paid, then there would be one offence in one transaction. GIRWARDHARI LAL v. KING-EMPEROR, **13 C.W.N. 1062 = 10 Cr. L.J. 463 = 4 Ind. Cas. 13** (8 B.H.C. Cr. 32, *D.*; 10 C W N. 520, *R.*) [*F.*, 32 P.W.R. 1911, Cr. = 146 P.L.R. 1911 = 11 P.R. 1911, Cr. = 10 Ind. Cas. 156 = 12 Cr. L.J. 217.]

(42)—*Crim. Pro. Code* (1882), s. 195—*Sanction to prosecute—Conditions precedent.*—(1) A Judicial Officer granting sanction to prosecute should mention the section or sections of Penal Code, under which he authorises criminal proceedings to be taken, as also in a general way, the offence or offences to be charged, the date of commission, and the place where committed. (2) A Munsiff granting sanction to prosecute a person for forgery should, if *he* has not decided the question of the forgery in the suit, make some enquiry to satisfy himself that there are materials to justify a prosecution, and should place upon record his reasons for holding that criminal proceedings ought to be sanctioned. PARSOTAM LAL v. BIJAI, **6 A. 101 = A.W.N. 1883, 226.** [*R.*, 15 Cr. L J. 217 = 22 Ind. Cas. 1001 = 17 O.C. 25, 35 P.R. 1889, Cr.]

(43)—*Sanction for prosecution—Section if to be quoted.*—An order which is clearly an order sanctioning a prosecution as required by some section of the Crim. Pro. Code, is not bad for not specifying the section of the Code under which it is granted or the section of the Penal Code to which the offence relates. REG v. TAI, **8 B.H C. Cr. 24.** [*R.*, 8 B.H.C. Cr. 28.]

(44)—*Crim. Pro. Code, s.* 195—*Sanction in general terms, validity of.*—Before granting a sanction under s. 195, a Court is bound to satisfy itself that an offence has been committed. It is not bound to hold an enquiry as to all the person who may be implicated in such offence. On the contrary, the section expressly provides that the sanction may be in general terms and need not name the accused person or persons, at all. *In re* GOVINDAN NAYAR, **7 M. 224 = 2 Weir 179 = 8 Ind. Jur. 80.**

(45)—*Sanction to prosecute—Sanction specifying section of the Penal Code—Power of Magistrate to amend charge—Crim. Pro. Code* (*Act* XXV *of* 1861), *s.* 244.—The Magistrate, to whom a person has been sent by a Civil Court with sanction to prosecute for particular offences under the Penal Code, cannot amend the charge under s. 244 of the Crim Pro. Code by adding another offence not specified in the sanction. *In the case of* JAYASING HARIBHAI, **8 B.H.C. Cr. 31, Note.** [*R.*, 8 B.H.C. Cr. 28.]

(46)—*Implied sanction—Crim. Pro. Code* (1869), s. 168—*Penal Code, ss.* 177, 193—*Framing charge.*—*Held*, that the form of an accusation by a Superintendent of Police, under s. 193, I.P.C., did not preclude a Magistrate from applying the provision of s. 177 in framing a charge ; an implied sanction by the District Superintendent of Police, under s. 168, Crim. Pro. Code, 1869, to the framing of the

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charge in any way the Magistrate thought fit would be sufficient. *In re* ASHRUFF HOSSEIN, **16 W.R. Cr. 67.** (9 W R. Cr. 31, *D.*)

(47)—*Sanction by High Court to prosecution for perjury—Presumption that proper procedure will be adopted.—Held*, that the order of a High Court sanctioning a prosecution for perjury would presuppose the adoption of the proper legal procedure and the institution of the proceedings in a Court having jurisdiction to entertain the charge. KEERUT SINGH v. NARAIN PASEE, **25 W.R. Cr. 14.**

(48)—*Penal Code, ss.* 109, 211—*Whether a sanction to prosecute includes abettor not named in sanction.*—After a sanction to prosecute a complainant and his witnesses was given, the person, who obtained the sanction, charged a person, who was not a party or witness in the former case, with having abetted the former complainant in an offence under s. 211, Penal Code. *Held*, that the sanction was sufficient to empower the Magistrate to take cognisance of the complaint against the third party, who could be prosecuted for abetment without a sanction specially naming him. JAMALUDDIN v. ALI GOHAR, **55 P.R. 1887, Cr.**

(49)—*Crim. Pro. Code* (*Act* V *of* 1898), *s.* 195—*Reasons to be stated in order.*—A Court sanctioning prosecution for an offence, under s. 195 of the Crim. Pro. Code, should state its reasons for doing so, so as to help the Court of revision to see whether it can exercise its powers of revision in the case. It is possible that a Court may find an offence to be committed without at the same time considering a prosecution to be expedient MAULA BAKHSH v. NIAZO, **A W.N. 1904, 171=1 Cr. L.J. 640.** [*R*, 28 A. 142=A. W.N. 1905, 231=2 Cr. L.J. 598.]

(50)—*Crim Pro. Code* (1898), *s.* 195—*Sanction asked to prosecute under one section—Sanction granted for prosecution under another section—Validity.*—Where sanction is asked for the prosecution of a person under s. 193, I.P.C., the Court is not competent to grant sanction for a prosecution under s. 182, I P.C. *In the matter of the petition of* SUNDAR LAL, **A.W.N. 1898, 205.**

——6.—Notice of sanction.

(1)—*Notice to accused—Crim. Pro. Code* (1882), *s.* 195.—No notice is necessary to the person, against whom it is intended to proceed, before the Court, before which the alleged offence has been committed, can, under s. 195 of the Crim. Pro. Code, sanction a complaint being made to a Magistrate regarding one of the offences specified in that section. KRISHNANUND DAS v. HARI BERA, **12 C. 58.** [*F.*, 18 A 358=16 A.W.N. 113; *App.*, 10 M. 232=2 Weir 181.]

(2)—*Crim. Pro. Code* (1898), *s.* 195—*Sanction to prosecute—Notice to accused persons.*—There is no hard and fast rule that notice must be given in all cases to an accused person before

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sanction is granted. *In the matter of* GOVINDU, **26 M. 592=2 Weir 262=2 Weir 297.** [*F.*, 15 Cr.L.J. 271=23 Ind. Cas. 479=26 M L J. 486.]

(3)—*Crim. Pro. Code* (1898), *ss.* 197 *and* 195—*Sanction accorded by Government under s.* 197—*Notice to accused—Difference between the sanction under s.* 197 *and that under s.* 195.—The sanction accorded by Government under s. 197 cannot be held to be null and void for the reason that no notice was given to the accused to show cause why such sanction could not be given. It is a matter left entirely to the discretion of the Government whether such opportunity should be given to the person concerned before sanctioning his prosecution, and the Criminal Court before which he is prosecuted is not an appellate authority over Government in the matter of the sanction. A Court granting sanction under s. 195, cls. (*b*) and (*c*), does so in connection with offences committed in or in relation to any proceeding in such Court, and the Court therefore acts in its judicial capacity in granting the sanction upon legal evidence. But the Government, in according or withholding sanction under s. 197, acts purely in its executive capacity and the sanction need not be based upon legal evidence. There is nothing in the signification of the word 'sanction' to import a judicial element into the act of the executive. *In the matter of* KALAGARA BAPIAH, **27 M. 54=2 Weir 227=2 Weir 263=2 Weir 578.** [*R*, 13 Cr.L.J. 209=14 Ind Cas. 305=22 M. L.J. 419=11 M.L.T. 367=1912 M.W.N. 499.]

(4)—*Form of—Notice—Penal Code, s.* 211—*Crim. Pro. Code* (1882), *s.* 195.—Where a person was acquitted under s. 211, Penal Code, on the ground that notice was not given to him to show cause why proceedings should not be taken against him and that the sanction was defective in form, *held*, that a previous notice to show cause was not necessary, and that a sanction given by the Deputy Commissioner was amply sufficient. SAIYID HASSAN RAZA KHAN v. MIR MASHADI HUSAIN, **S C. 191, Oudh.**

(5)—*Crim. Pro. Code* (*Act* V *of* 1898), *s.* 476—*Grounds for order—Absence of notice.*—No Court should order a prosecution unless there is evidence of a substantial nature such as would lead to a conviction. Mere surmise or suspicion is not sufficient. Mere absence of notice of an application for sanction in respect of an offence does not nullify an order under s. 476 of the Crim. Pro Code, when the accused has appeared to show cause against the proposed order. DEBI PRASAD v. QUEEN-EMPRESS, **A.W.N. 1900, 149.** (1 C. 450, *Appr.*)

(6)—*Crim. Pro. Code* (1882), *s.* 195—*Order under the section, without notice—Lapse of sanction—Renewal.*—Although it is advisable that a person against whom it is intended to proceed should be called upon by a Court to show cause why sanction for his prosecution should not be given, the law does not require

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——6.—**Notice of sanction**—*continued.*

any such notice to be given. [*R.*, 28 A. 142, A.W.N. 1905, 231 = 2 Cr.L.J. 598.] If an order under s. 195 has expired without any prosecution having been commenced within the period of six months, a fresh sanction may be granted. But a very strong case must be made out for the grant of such fresh sanction. MANGAR RAM v. BEHARI, **18 A. 358 = A.W.N. 1896, 113.** (12 C. 58, *F.*; 22 C. 573, *N.F*; 6 A. 45, A.W.N. 1892, 245, *R.*) [*R.*, A.W N. 1901, 151; *D.*, 8 C. W.N. 797.]

(7)—*Crim. Pro. Code*, s. 195 (*b*)—*Penal Code*, ss. 182 *and* 211—*Report to Police not followed up by complaint to Court.*—S. 195 (*b*) of the Crim. Pro. Code does not apply to a case where a person makes a report to the *thana*, but does not follow it up by a complaint to any Court. By making a report no offence is committed in, or in relation to, any proceeding. Under s. 211 of the Indian Penal Code, it is not necessary that the person charged should be given notice of the charge made against him, and the District Magistrate does not act without jurisdiction, if no notice is given in passing an order to institute a case under that section. TABARAK ZAMAN KHAN v. KING-EMPEROR, **4 A.L.J. 790 = 30 A. 52 = 6 Cr.L J. 396 = A.W.N. 1907, 288.** (8 A. 38, 29 A. 587, 33 C. 31, *D.*) [*R.*, 5 A.L.J. 74 = A.W.N. 1908, 45.]

(8)—*Crim. Pro. Code* (*Act* X *of* 1882), s. 195 (*a*)—*Chairman of Municipal Board—Jurisdiction—Notice to accused* —Where any contempt of lawful authority is committed against the Secretary of a Municipal Board acting as such, the Chairman of the Board has power to sanction prosecution for an offence under s. 182 of the Penal Code. In granting such sanction, it is not necessary that notice should be given to the accused or inquiry held before the sanction. *In the matter of the petition of* SHEO PRASAD, **A.W.N. 1892, 31.**

(9)—*Crim. Pro. Code* (1898), s. 195—*Notice to person concerned—High Court's power of revocation.*—Although notice is not invariably necessary in cases under s. 195 of the Crim. Pro. Code, there may be circumstances, such as where there is a difference of opinion as to the advisability of granting the sanction, in which a proper discretion could not be said to be exercised, unless the parties, sought to be prosecuted, are given an opportunity to be heard. The granting of an order sanctioning a prosecution is a judicial act. [*R.*, 2 Weir 297 = 26 M. 592, A.W.N. 1905, 231 = 2 Cr.L J. 598 = 28 A. 142.] A subordinate Court granting sanction to prosecute under s. 195, Crim. Pro. Code, should so frame the proceedings before it so as to enable the High Court to satisfy itself from the record whether the application for sanction has been properly granted or not. If this is not done, the High Court will revoke the sanction. PAMPAPATI SASTRI v. SUBBA SASTRI, **23 M. 210 = 2 Weir 186.** [*F.*, 13 Cr. L.J. 1 = 13 Ind. Cas. 111.]

Sanction to prosecute—continued.

——6.—**Notice of sanction**—*continued.*

(10)—*Desirability of giving notice.*—It is very desirable that, before a Magistrate passes an order under s. 195 of the Crim. Pro. Code, notice should be given to the accused to show cause. QUEEN-EMPRESS v. ZORAWAR, **A. W.N. 1890, 168.**

(11)—*Crim. Pro. Code*, s. 195—*Sanction to prosecute—Notice.*—It must be borne in mind that, though notice may not be legally necessary in all cases where sanction is granted, it is certainly necessary that the authority competent to grant the sanction, should judicially consider and determine, as a Court responsible for the granting of sanction, whether any special reasons appear to warrant a departure from the ordinary practice. *In re* BAL GANGADHAR TILAK, **4 Bom. L.R. 750.** [*R.*, 28 A. 142 = A.W.N. 1905, 231 = 2 Cr. L.J. 598.]

(12)—*Crim. Pro. Code* (1882), s. 195—*Right of party to be heard in defence.*—Sanctioning a prosecution for an offence is a judicial act and the proceeding held in connection with it is a judicial proceeding. The fact that an appeal is allowed from the order of a Magistrate giving or refusing sanction pre-supposes the existence of judicial evidence on which an opinion can be judicially formed. No act can be said to be judicial, unless the party to whose prejudice it is done, is previously heard and judgment is formed upon legal evidence. The intention of the Legislature, in requiring that prosecution by a private person must be sanctioned, is to enable the Magistrate to see, whether there is good ground for the application made to him, or whether it is made solely for the purpose of harassing the accused or preventing any further legal proceedings, which he may be entitled to take; and effect cannot satisfactorily be given to that intention, unless the party concerned is previously heard. In cases in which the Magistrate examines the complainant and hears the evidence and either acquits or discharges the accused, and, without notice to the complainant, sanctions his prosecution for bringing a false charge, such sanction cannot be said to be improperly given. But, where the Magistrate dismisses the original complaint upon a report from the police, there is no legal evidence before him upon which to frame his opinion. In such cases, notice should be issued to the party concerned to show cause why his prosecution should not be sanctioned. QUEEN-EMPRESS v. SHEIK BEARI, **10 M. 232 = 2 Weir 181, F.B = 2 Weir 162.** [*F.*, 13 Cr. L.J. 1 = 13 Ind. Cas. 111; *R.*, 37 C. 250 = 10 C L J. 564 = 11 Cr.L.J. 37 = 14 C.W.N. 330 = 4 Ind. Cas. 710, 23 M. 210 = 1 Weir 187, 12 Bom. L.R. 229 = 11 Cr. L.J. 338 = 5 Ind. Cas. 971, 11 Cr.L.J. 527 = 7 Ind. Cas. 752 = 8 M.L.T. 205, 1912, M.W.N. 499, F.B. = 14 Ind. Cas. 305 = 11 M.L.T. 367 = 22 M.L.J. 419 = 13 Cr. L J. 209, 2 S.L.R. 11, Cr. = 10 Cr. L.J. 225; *D.*, 15 Cr. L.J. 271 = 23 Ind. Cas. 479 = 26 M.L.J. 486, 11 M. 500, 27 M. 54.]

***Sanction to prosecute*—continued.**

——6.—Notice of sanction—*continued.*

(13)—*Crim. Pro. Code, s. 195—Sanction to prosecute—Notice of application for sanction—Practice.*—Where an application is made to Court, under s. 195, for sanction to prosecute, although it is not legally necessary that notice of such application should be given to the opposite party, before orders are passed thereon, nevertheless, it is highly desirable that such notice should be given. INAYAT ALI v. MOHAR SINGH, **A.W.N. 1905, 231 = 2 Cr. L.J. 598 = 28 A. 142.** (23 M. 210, 4 Bom. L.R. 750 = 26 B. 792, 18 A. 358, A.W.N. 1904, 171, *R.*)

(14)—*Refusal of—by Magistrate—Grant of sanction of by Sessions Judge without notice.*—Where a Magistrate, who tried the case and dismissed the complaint, refused to sanction the complainant's prosecution and that of his witnesses under ss. 193 and 211, I.P.C., *held*, that the Sessions Judge should not reverse the Magistrate's order without giving the respondent an opportunity to show cause against the grant of the sanction prayed for. EMPRESS v. MUNSHI RAM, **37 P.R. 1885, Cr.**

(15)—*Crim Pro. Code* (1898), *s. 195—Refusal of sanction by a trying Magistrate—Notice before granting sanction by Sessions Judge, whether necessary.*—Where a Deputy Magistrate, who has tried the case, refused sanction to prosecute a witness for perjury, the Sessions Judge could not grant the sanction without calling upon that person to show cause. RAGHUBIR SINGH v. JOGESHWAR TEWARY, **8 C.W N. 643 = 1 Cr. L.J. 632.** [*R.*, 7 Bur. L.T. 205.]

(16)—*Crim. Pro. Code* (1882), *s. 195—Refusal of sanction to prosecute by Magistrate—Order for sanction by Sessions Judge without notice—Penal Code, s. 211.*—Where the accused applied for sanction to prosecute the complainant, four months after their discharge, and the Magistrate refused to accord the sanction on the ground the complainant's case was at best a mere suspicious one, but the Sessions Judge accorded the sanction without notice to the complainant, *held*, that having regard to the view, which the Magistrate took of the matter in refusing the application, and having regard also to the great delay in making the application, and to the fact of the Sessions Judge's order being made without any notice, the order was not properly made and should, therefore, be set aside. RAM NATH CHAMAR v. RAM SARAN LAL, **1 C.W N. 529.** [*R.*, 7 Bur. L.T. 205, 8 Cr.L J. 351, 4 N.L R. 140.]

(17)—*Crim. Pro. Code, s. 437—Further inquiry—Notice to the accused—Forgery—Sanction of the Civil Court to prosecute—Proceedings under the Registration Act arising out of the same transaction if good without sanction.*—The accused was placed on his trial for offences under ss. 423, 467 and 471, I. P.C , and s. 82, Indian Registration Act, on the allegation that he had abetted the fabrication of a forged bond but was discharged. The District Magistrate, under s. 437, Crim. Pro. Code, directed a further inquiry into the case, but, before the proceeding under s. 437 commenced, a Civil Court had decided that the bond was a forged one. *Held*, that the case against the accused cannot proceed as regards the charge of forgery or abetment of forgery without the sanction of the Civil Court. That, with regard to the charges under s. 423, I.P.C., and s. 82 of the Indian Registration Act, which did not require any sanction, the accused should not be prosecuted till the Civil Court sanctioned his prosecution for forgery, as it was not desirable that the case should proceed against him piecemeal. That an order for further inquiry under s. 437, Crim. Pro. Code, without giving a previous notice to the accused to show cause against the application for further inquiry, must be set aside. GIRIDHARI MARWARI v. EMPEROR, **12 C.W N. 822 = 8 C L.J. 73 = 8 Cr L.J. 51.** (15 C. 608, 32 C. 1090, *F.*) [*F.*, 39 C. 238 = 13 Cr. L J. 304 = 14 Ind. Cas. 768; *R.*, 15 C.W.N. 565 = 12 Cr.L.J. 101 = 9 Ind. Cas. 577.]

(18)—*Crim. Pro. Code, s. 195—Sanction to prosecute—Notice to accused—High Court's power to revoke sanction.*—After a dismissal of a complaint of theft, application was made for sanction to prosecute the complainant, in the presence of his attorney, and the Magistrate declined to hear the application at once, and stated that it should be made at the hour fixed for the hearing of such application, although the attorney for the complainant expressed his willingness to have the application then heard in his presence, and intimated that he was prepared to oppose it The application was subsequently renewed in the absence of that attorney and granted. *Held*, that, under the circumstances of the case, the Magistrate did not exercise a proper discretion in neglecting to give the other side, through his attorney, an opportunity of being heard especially after he had intimated that he was prepared to oppose the application. *Held*, also that, as there was nothing really amounting to any record of proceedings on the charge of theft beyond the judgment of the Magistrate to the effect that "the charge of theft was not proved at all against the accused" the Magistrate had not exercised a proper discretion in granting the sanction. The High Court consequently revoked the sanction. [*F.*, 23 M. 210 = 2 Weir 187; *R.*, 5 C.P L.R. 78 ; *D.*, 20 C. 474.] Under s. 195, a discretion is granted to the High Court to revoke any sanction which may have been granted by any authority, such as a Presidency Magistrate of Calcutta, subordinate to it, and, therefore, the law imposes upon the High Court a responsibility in such matters to consider whether the application has been properly granted or not. It is, therefore, incumbent upon the subordinate Courts so to frame the proceedings before them as to satisfy the High Court as a Court of revision. KEDAR NATH DAS v. MOHESH CHUNDER CHUCKERBUTTY, **16 C. 661.** [*F.*, 23 M. 210 = 2 Weir 187.]

Sanction to prosecute—continued.

—— 6.—**Notice of sanction**—*continued.*

(19)—*Notice when necessary previous to sanction.*—When a sanction is applied for, after the termination of the proceedings in the course of which the offence is alleged to have been committed, the person, against whom the sanction is applied for, ought to have notice and have an opportunity of being heard, and the proceedings ought not to be re-opened to his prejudice, without giving him such an opportunity. ABBILAKH SINGH v. KHUB LALL, **10 C. 1100**, [*Commented upon*, 10 M. 232=2 Weir 181, F.B.]

(20)—*Crim. Pro. Code* (1898), ss. 195, 234, 360, 537—*Penal Code* (*Act* XLV *of* 1860) s. 193—*Perjury—Alleged false statements not given in sanction—Sanction, application for notice to accused, prejudice—Charge—Several statements, one charge—False evidence—Reading over deposition in the presence of the accused or his pleader—Several accused, only one present—Admissibility in evidence—Oaths Act* (X *of* 1873), ss. 5, 13—*Omission to administer oath to interpreter, effect of.*—*Held*, [on a review of the authorities and a consideration of s. 195 (4), Crim. Pro. Code]—that s. 195 should be used in such a way as to give the person, against whom sanction is asked for or granted, means of knowing precisely of what the alleged criminal act consists. It is right, therefore, when sanction is sought or granted in respect of statements contained in a long deposition, that the particular statements alleged to be false should be specified. A conviction for perjury cannot be set aside on the ground that the sanction was defective, unless there has been in fact a "failure of justice." Where, therefore, the statements alleged to be false were set out in full detail in the application for sanction, and they were also specified in the charge subsequently framed: *Held*, the accused had full notice of the case against him and there had been no failure of justice. The making of any number of false statements in the same deposition is one aggregate case of giving false evidence, and charges of false evidence cannot be multiplied, according to the number of false statements contained in the deposition. Separate statements in a deposition are not to be separately charged for, under s. 234, Crim Pro. Code Where the alleged false statements were given in a deposition, in a case in which there were twenty seven accused persons, and it was proved that it had been read over in the presence of the pleader for one of them. *Held*, the deposition was undoubtedly admissible in evidence as against that accused, and was also, therefore, admissible against the witness on his trial for perjury. S. 360, Crim. Pro. Code, had not been contravened. The effect of the omission to administer an oath to the interpreter under s. 5 (*b*) of the Oaths Act is to render it necessary for the prosecution to prove that the interpretation was made accurately. It does not make the deposition inadmissible. S. 13 of the Oaths Act refers to omissions to administer oaths to interpreters and jurors, as well as to witnesses. RAKHAL CHANDRA LAHA v. KING-EMPEROR, **9 C.L.J. 690=13 C.W.N. 942=10 Cr.L.J. 150=36 C 808=2 Ind. Cas. 697.** (18 A. 302, 9 W.R. Cr. 58, 10 W.R. Cr. 41, 17 W.R. Cr. 32, 19 B. 362, 3 C.W.N. 35, 9 W.R. Cr. 25, *R*; 6 M H.C. App 27, *F.*; 28 M. 308, 12 C.W.N. 845, *D.*; 20 W.R. Cr. 19 *Appr.*)

(21)—*Crim. Pro. Code*, s. 195—*Sanction to prosecute—Notice.*—Where a Judge issues a notice to the accused to show cause why his prosecution under s. 195, I.P.C., should not be sanctioned, he must allow sufficient time for the notice to be served upon the accused, and should not grant the sanction before the notice has been served. *In re* UMARBHAI, **Rat. Un. Cr. C. 404=Cr. Rg. 65 of 1888.**

—— 7.—**Expiry of Sanction and Limitation.**

(1)—*Crim. Pro. Code*, s. 195—*Sanction to prosecute—Computation of time—Limitation Act*, s. 12.—S. 195, Crim. Pro. Code, provides that no sanction shall remain in force for more than six months. S. 12 of the Limitation Act does not appply to it and the time has to be computed from the date of the grant of sanction without any deduction being allowed for the time occupied in procuring a copy of the sanction. PERIA KRISHNAMA RAJU v. KUPPA RAJU, **1 Weir 789=2 Weir 200.**

(2)—*Crim. Pro. Code* (1898), s. 195—*Sanction to prosecute — Computation of period of six months*—An order for sanction to prosecute will lapse at the expiration of six months from the date on which it was given. That period cannot be reckoned from the date of the final order of the appellate Court declining to revoke the sanction The fact that an appeal has been preferred against it is no impediment to the institution of criminal proceedings on the strength of the sanction, though, as a general rule, it may be a reasonable ground for stay of the proceedings by the Magistrate, before whom the complaint has been preferred, pending the disposal of the appeal. *In re* MUTHU-KUDAM PILLAI, **26 M. 190=2 Weir 200.** [*Diss.*, 2 Cr. L.J. 106=32 C. 379=9 C.W.N. 321; *F.*, 13 Cr. L.J. 551=15 Ind. Cas 967=15 O.C. 177; *D.*, 11 C.W.N. 712=34 C. 848=5 Cr.L.J. 480=6 C.L.J. 531.]

(3)—*Crim. Pro. Code* (1882), s. 195—*Sanction to prosecute—Date of beginning of period*—On application by one of the parties to a suit for sanction to prosecute the other, the Judge, on 12th December, 1894, recorded a judgment according sanction as applied for under s. 209, I.P.C., and the formal sanction was drawn up and issued on 25th January, 1895; *held* that, considering the protective intention of s. 195, the sanction was given on 12th December, 1894, in written words, and that six months' time mentioned in that section began on that date. *In re* LALA BAHRUMAL, **Rat. Un. Cr. C. 803=Cr. Rg. 59 of 1895.**

Sanction to prosecute—continued.

——7.—Expiry of sanction and limitation *—continued.*

(4)—*Crim. Pro. Code* (1882), *s.* 195—*Sanction to prosecute after six months.*—Sanction to prosecute is of no effect, when it is more than six months old. CRIMINAL REVISION CASE NO. 128 OF 15TH MARCH 1883, **A.W.N. 1883, 86.**

(5)—*Crim Pro. Code* (*Act* X *of* 1882), *s.* 195—*Limitation.*—All that s. 195 of the Crim. Pro. Code provides is that no sanction shall remain in force for more than six months after it is granted. There is nothing to prevent fresh sanction being given. BUDHU MAL v. AJUDHIA PRASAD, **A.W.N. 1884, 70.**

(6)—*Crim. Pro. Code* (*Act* X *of* 1882), *s.* 195—*Lapse of three months and a half.*—It is illegal to set aside an order of a lower Court sanctioning a prosecution, on the ground that no formal and legal sanction was recorded after an interval of three months and a half after the proceeding. BHIMANGAUDA v. MALLANGAUDA, **Rat. Un. Cr. C. 859 = Cr. Rg. 23 of 1896.**

(7)—*Complaint filed before the expiry of six months—Delay of over six months after the filing of the complaint.*—All that a person holding a sanction to prosecute is required to do is to lodge the complaint before the expiry of six months. Subsequent delays and irregularities of the Court resulting in a postponement of the trial for over six months cannot be pleaded as a bar for the prosecution. SARDAR JAWALA SINGH v. MOUJDIN, **28 P.R. 1887, Cr.** [*R.*, 14 Cr.L.J. 183 = 19 Ind. Cas. 183 = 52 P.L.R. 1913 = 4 P.R. 1913, Cr.]

(8)—*Crim. Pro. Code* (1882), *ss.* 195, 476—*Sanction—Order of Munsif to prosecute certain persons for offences under ss.* 193, 463, 471, *I.P.C., whether amounts to complaint—Limitation—Act* XIV *of* 1882, *s.* 643.—In the course of a suit which had been heard before a Munsif, he was of opinion that certain persons had committed offences under ss. 193, 463, 471, I.P.C., and, having all the materials before him, he came to the conclusion that a prosecution should be instituted. He accordingly directed that they should be sent to a particular Magistrate under bail, and that the Magistrate should enquire into the matter. More than six months after the date of the Munsif's order, one of the accused applied to the District Court to revoke the sanction for prosecution granted by the Munsif, and it was contended before the Judge that the sanction had ceased to have effect. *Held*, that the Munsif's order, whether it amounted to a sanction or not, was a sufficient complaint within the meaning of s. 195, and that the limitation period prescribed by that section would not apply to the case. Per *Straight, J.*, (*Petheram, C.J., concurring*): —The words in s. 195—"except with the previous sanction or on the complaint of the public servant concerned"—must be read in connection with s. 476. The latter section affords a clear indication of what was contemplated by the Legislature regarding the nature of the complaint of a Civil Court under s. 195. It is easy to imagine the inconvenience which might be caused, if a Munsif, or a subordinate Judge, or a Judge, were obliged to appear before a Magistrate and make a complaint on oath in order to lay the foundation for a prosecution, and for this reason, the Legislature thought it desirable that the procedure to be followed in cases of complaint by Court should be different from that which has to be observed by an ordinary complainant. The language of s. 476 indicates that, where a Court is acting under s. 195, a complaint, in the strict sense of the Code, is not required, and the procedure therein laid down constitutes the complaint mentioned in s. 195. ISHRI PRASAD v. SHAM LAL, **7 A. 871, F.B. = A.W.N. 1885, 287.** [*Appr.*, 19 M.L.J. 42 = 4 M.L.T. 404 = 32 M. 49; *R.*, 13 B. 109, 9 C.P.L.R. 26, Rat. Un. Cr. C. 895, 26 A. 249 = A.W.N. 1904, 15, 31 C. 664, 17 M.L.J. 584 = 31 M. 140 = 3 M.L.T. 79 = 7 Cr.L.J. 54, 40 C. 477 = 17 C.L.J. 245 = 17 C.W.N. 647 = 19 Ind. Cas. 197 = 14 Cr. L.J. 197, 33 M. 48 = 19 M.L.J. 766 = 6 M.L.T. 327 = 10 Cr.L.J. 420 = 3 Ind. Cas. 934, 37 C. 250 = 14 C.W.N. 330 = 10 C.L.J. 564 = 4 Ind. Cas. 710 = 11 Cr.L.J. 37.]

(9)—*Crim. Pro. Code* (1882), *s.* 195 (6)—*Time during which a sanction is in force.*—S. 195, Crim. Pro. Code, does not empower a Magistrate to fix a time during which a sanction may be in force. VATTA THEVAN v. VANDAL ALAGAPPUDAYAN, **2 Weir 201.**

(10)—*Crim. Pro. Code* (1882), *s.* 195—*Power of Magistrate to fix the period of sanction.*—S. 195, Crim. Pro. Code, does not empower a Magistrate to fix a time during which a sanction may be in force. The legislature has expressly provided that the sanction shall not remain in force for more than six months, but has conferred no power on the authority granting the sanction to limit it to a shorter period. VATTA THEVAN v. VANDAL ALAGAPPUDYAN, **3 M.L.J. 44.**

(11)—*Crim. Pro. Code* (1882), *s.* 195—*Prosecution commenced six months after granting sanction—Intervention of holidays—General Clauses Act* (I *of* 1897), *ss.* 2 *and* 7—*Prosecution after expiry of the period prescribed in s.* 195—*Operation of s* 537 *of the Code*—A sanction to prosecute can remain in force only for six months from the date on which it was given; and the period for such sanction cannot be extended by reason of the period expiring during the Court holidays. S. 7 of the General Clauses Act will have no application to such a case, as the Code of Criminal Procedure was passed before the passing of the former Act. S. 537 of the Code is expressly made subject to the provisions before contained in the Code, and it was not intended to over-ride the provision of s. 195. It cannot refer to a case in which the want of sanction was directly brought to the notice of the Magistrate at the

Sanction to prosecute—continued.

——7.—**Expiry of sanction and limitation** —*continued.*

commencement of the proceeding before him, nor can it be said that there has not been a failure of justice in the prosecution of a person after the expiry of the period, for which the sanction was in force. RAJ CHUNDER MOZUMDAR v. GOUR CHUNDER MOZUMDAR, **22 C. 176.** [*Overruled*, 27 C. 839; *Diss.*, 29 M. 149, 31 M. 80=17 M.L.J. 533=2 M.L.T. 493=6 Cr. L.J. 382; *R.*, 23 C. 983, 21 A.W.N. 151, 9 C.W.N. 909, Rat. Un. Cr. C. 803; *D.*, 2 Weir 200.]

(12)—*Crim. Pro. Code* (1898), *s.* 195 (6)—*Prosecution instituted after six months of the granting of the sanction—General Clauses Act*, 1897. *s.* 10.—The object of the sanction, for which s. 195 provides, is to enable a proceeding to be taken which could not be taken without the sanction, and sub-s. 6 allows a proceeding to be taken in a Court within a prescribed period within the meaning of s. 10 of the General Clauses Act. Where, therefore, the six months during which, under s. 195 (6), the sanction which has been granted remains in force, expires on a day when the Court is closed, the complaint may be presented on the next day afterwards on which the Court is open. *In re* RANGA ROW, **2 Weir 200.**

(13)—*Crim. Pro. Code* (1898), *ss.* 195, 537—*Proceedings instituted more than six months after grant of sanction—Defect whether curable by s.* 537.—S. 537, Crim. Pro. Code, applies as much to a case in which a sanction has been granted under cl. 6 of s. 195, as to a case in which no sanction has been granted at all; that is to say, where a conviction has been arrived at, and sentence passed at a trial held in virtue of a sanction more than six months old, such conviction and sentence will not be set aside unless it is shown that there has been a failure of justice. KING-EMPEROR v. PANCHAM, **A.W.N. 1901, 151.** (18 A. 368, 22 C. 170, *R.*) [*R.*, 14 Cr. L.J. 183=19 Ind. Cas. 183=52 P.L.R. 1913=4 P.R. 1913, Cr.]

(14)—*Sanction given under the Code of* 1872—*Expiry after the passing of the Code of* 1882.—Although a sanction to prosecute granted under the Code of 1872 on the 6th July, 1882, would be deemed to have been given under the corresponding section of the Code of 1882, the sanction was held to have lapsed after the 6th January, 1883. CHANDAN LAL v. GURPERSHAD, **23 P.R. 1884, Cr.**

(15)—*Crim. Pro. Code* (1898), *s.* 195 (6)—*Time expired sanction—Applicability of s.* 537 (*b*).—Where a prosecution has ended in an acquittal owing to the bar contained in s. 195 (6), the provision in cl. (*b*) of s. 537 is not applicable to such a prosecution. CHINNAKARUPPA GOUNDAN v. MUTHU GOUNDAN, **2 Weir 202.** [*R.*, 15 Cr. L.J. 409=24 Ind. Cas. 145=26 M. L.J. 511=15 M.L.T. 403.]

Sanction to prosecute—continued.

——7.—**Expiry of sanction and limitation** —*concluded.*

(16)—*Crim. Pro. Code* (1898), *s.* 195—*Extension of time—Powers of a Judge sitting on the original side of the High Court.*—A Judge sitting on the original side of the High Court is the High Court within the meaning of sub-s. (6). He has therefore power to extend the time for the institution of a prosecution on a sufficient cause being made out. DINOBANDHU NANDY v. SREEMUTTY HURRY MUTTY DASSEE, **8 C.W.N. 797.**

(17)—*Crim. Pro. Code* (1898), *s.* 195—*Sanction to prosecute—Extension of time—Power of a Judge sitting on the original side of the High Court to extend time—Appeal from order granting new sanction—Letters Patent, s.* 15.—"High Court" in s. 195, does not mean a Judge sitting on the original side of the High Court. Such a Judge has no jurisdiction to entertain an application for the extension of time of the sanction. The High Court in its appellate civil jurisdiction is the proper forum for entertaining an application for extension of time of sanction granted by a Judge on the original side. If the time during which a sanction given under s. 195 is in force has expired, it cannot be extended. An order purporting to extend the period of an old sanction, but which is in effect one granting a new sanction, is appealable under s. 15 of the Letters Patent. KALI KINKAR SETT v. DINOBANDHU NANDY, **32 C. 379=9 C.W.N. 521=2 Cr. L.J. 106.** (26 M. 190, 26 M. 480, *Diss.*) [*Diss.*, 13 Cr. L.J. 551=15 Ind. Cas. 967=15 O.C. 177; *F.*, 40 C. 423=14 Cr. L.J. 572=21 Ind. Cas. 172.]

(18)—*Crim. Pro. Code* (1872), *ss.* 468, 469, 470—*Sanction to prosecute, refusal to give under mistaken view of law.*—A refusal by a Court of Revenue to give sanction to a prosecution under a mistaken view of the law, and under an impression that sanction was unnecessary, would not constitute a sanction. The words "at any time" in s. 470 mean at any time during the trial, seeing that it is for the purpose of such trial, the sanction is required, and without it the trial could not proceed, and that after conviction and sentence, there is nothing to follow for which sanction may be asked. EMPRESS OF INDIA v. SABSUKH, **2 A. 533, F.B.**

—— 8.—**Revocation of sanction.**

(1)—*Sanction to prosecute given by an appellate Court—Power of revoking it—Crim. Pro. Code* (*Act* V *of* 1898), *s.* 195.—*Held*, that, whether a Court grants sanction to prosecute on the original or appellate side, it can be revoked, under s. 195 (7) (*a*) of Act V of 1898, by the Court to which appeals ordinarily lie from the order of the Court granting the sanction. So the Sessions Judge has jurisdiction to entertain an application to revoke sanction granted by the District Magistrate in his appellate capacity. RAM KISHEN v. MEHRAM, **24 P.W.R. 1908, Cr.=8 Cr. L.J. 457.**

Sanction to prosecute—continued.

——8.—**Revocation of sanction**—*continued.*

(2)—*Crim. Pro. Code* (1882), *s.* 195—*Sanction for prosecution for perjury committed in a suit under N.W.P. Rent Act,* XII *of* 1881—*Application for revocation — Jurisdiction.*—Where a sanction to prosecute a person for perjury committed in a suit for arrears of rent under N.W.P. Act XII of 1881, tried before a a Tahsildar having the powers of and acting as an Assistant Collector of the second class, is granted by the District Collector, the Sessions Judge is, although there is no appeal to him from the decision in the rent suit, competent to consider an application to revoke the sanction, as appeals from the decisions of the Collector are, generally and ordinarily, to be made to the District Judge, though his orders in certain cases are appealable to the Deputy Commissioner. HARI PRASAD v. DEBI DIAL, **10 A. 582 = A.W.N. 1888, 234.** (19 A. 121 = A.W.N. 1897, 2, 9 A.W.N. 206, *F.*) [*F.*, 19 A. 121 = A.W.N. 1897, 2, 9 A.W.N. 206.]

(3)—*High Court's powers of revocation and revision of sanction granted by Courts below—Ss.* 195 *and* 439, *Crim. Pro.Code.*—Under sub-s. 6, s. 195, Crim. Pro. Code, a petition, by way of appeal, lies to the High Court in every case, in which a Civil or Criminal Court subordinate to it, within the meaning of sub-s. 7 (*a*), gives or refuses a sanction, whether, in respect of an offence committed before it or of one committed before a Court subordinate to it, and, in the latter case, whether it gives a sanction refused by the subordinate Court or revokes a sanction accorded by such Court. Under cls. (*b*) and (*c*) of sub-s. 1, the sanction may be accorded in the first instance by the Court to which the Court, in which the offence was committed, is subordinate, even though no application for sanction has been made to the latter Court. For the purposes of cls. (*b*) and (*c*) of sub-s. 1, a sanction awarded by the High Court would operate as a sanction accorded by a Court subordinate to it, such as the District Court. An order passed by the Court of Appeal is, in law, the order which ought to have been passed by the subordinate Court, and will, therefore, have the same efficacy and operation as the order which ought to have been passed by the latter. S. 439 expressly provides, among other things, that the High Court, as a Court of revision, may exercise the powers conferred on a Court of appeal by s. 195. In a case in which both the original Criminal Court and the Appellate Criminal Court refuse a sanction, the High Court, as a Court of revision, may call for the record, and, if the refusal proceeds on an error of law, it may accord the sanction which ought to have been granted by the appellate Court, and such sanction will be operative, for the purposes of cls. (*b*) and (*c*) of sub-s 1, s. 195. PALANIAPPA CHETTI v. ANNAMALAI CHETTY, **27 M. 223 = 2 Weir 208 = 14 M L J. 74 = 2 Weir 577.** [*Appr.*, 17 M.L.J. 266 = 2 M. L.T. 239, 6 Cr. L.J. 102 = 30 M. 382.]

(4)—*Crim. Pro. Code* (1898), *ss.* 195 *and* 407 —*Sanction to prosecute—Police officer relying upon a sanction given to another and preferring a charge sheet in respect of an offence under s.* 211, *Penal Code—Validity—Power of superior Court to revoke sanction.*—One P was accorded sanction by a Sub-Magistrate, under s. 195, Crim. Pro. Code, to prosecute the accused for offences under ss. 211 and 193, Penal Code, alleged to have been committed before the Magistrate. P did not prefer any complaint in pursuance of the sanction, but the police, relying on it preferred a charge sheet to the Joint Magistrate, in respect of the alleged offence under s. 211, notwithstanding that an offence under that section was not cognizable by the police. It did not appear that any police officer preferred any complaint in the ordinary way to the Joint Magistrate. *Held*, that under these circumstances, the Joint Magistrate was acting properly in striking the case off his file, as it was clear that the course pursued by the police in sending a police report in respect of an offence under s. 211 was contrary to law. But the reason given by the Joint Magistrate for striking the case off his file, *viz.*, that *suo motu* he quashed the Sub-Magistrate's sanction under sub-s. 6 of s. 195, was unsound in law. *Held*, also, that it was not necessary, under the circumstances of the case, to decide whether, on the strength of the sanction accorded to P, a police officer or other stranger may prefer a complaint against the accused. A joint Magistrate authorised under s. 407 (2), to entertain appeals preferred by persons convicted on a trial by a Stationary Sub-Magistrate, is not the Court to which "appeals ordinarily lie" within the meaning of s. 195 (7). The Court of such Sub-Magistrate is, within the meaning of s. 195, cls. 6 and 7, subordinate to that of the District Magistrate. [*R.*, 3 N.L R. 50 = 5 Cr. L.J. 432.] *Quaere.*—Whether a superior Court which has power to revoke the sanction, under sub-s. (*6*) of s. 195 can exercise the same *suo motu*, as if it were a Court of revision, when no application has been made to it, either to give a sanction which has been refused or to revoke a sanction which has been given. The mere fact that a complaint has been made in pursuance of the sanction would be no bar to a Court, competent under sub-s. (6) to deal with an application to revoke such sanction, entertaining such application and disposing of it according to law even if the complaint in pursuance of the sanction has been preferred to itself. *In the matter of* SUBBAMMA, **27 M. 124 = 2 Weir 461 = 2 Weir 206.** [*R.*, 13 Cr. L.J. 206 = 14 Ind. Cas. 206.]

(5)—*Crim. Pro. Code, ss.* 195, 476—*Sanction granted to—Complaint by private individual and complaint by Court distinguished—Revocation.*—Per *Birdwood, J.*—S. 195 distinguishes between a sanction granted by a Court for a prosecution and a complaint made by a Court. If a Court make such enquiry as may be necessary under s. 476, and then sends the case to the nearest Magistrate of the first class for enquiry and trial, or if the Court to which it is

Sanction to prosecute—continued.

——8.—Revocation of sanction—*continued.*

subordinate adopts that procedure, then such action amounts to the making of a complaint such as is contemplated in s. 195, Crim. Pro. Code, as distinguished from a complaint made by a private person to whom a sanction has been granted under the section. Though a superior Court can revoke a sanction granted by a subordinate Court, no power is given to it to set aside a complaint duly made by a subordinate Court. On receiving a case duly sent to him by a Court under s. 476, a Magistrate is bound to proceed with the case according to law. The Court to which the Court making the complaint is subordinate has no power to stop the enquiry, though, of course, the Magistrate can discharge the accused if the evidence does not warrant a commitment. Per *Parsons, J.*—The provisions of s. 195, relating to the revocation or grant of sanction given or refused by a subordinate Court refer only to a sanction and cannot apply to a commitment. QUEEN EMPRESS v. RACHAPPA *and* QUEEN-EMPRESS v. IRAPPA, **13 B 109.** (7 A. 871, 1 C. 450, 7 C. 208, *R.*) [*Diss.*, 16 A. 80 = A.W. N. 1894, 9, 26 B. 785, 20 C. 349, 21 M. 124, F.B. = 2 Weir 124, 18 P R. 1902, Cr. = 78 P.L. R. 1902; *F.*, 13 M. 144; *R.*, 26 A. 249 = A W. N. 1904, 15, 32 B 184 = 10 Bom. L.R. 28 = 7 Cr. L.J. 35 = 3 M.L.T. 116, 40 C. 477 = 17 C.L J. 245 = 17 C.W.N. 647 = 14 Cr. L J. 197 = 19 Ind. Cas 197, 9 C.P.L.R. 27, Cr., 23 P.R. 1901, Cr., 30 P.R. 1905, Cr. = 105 P.L.R. 1905, Rat. Un Cr. C. 587, Rat. Un. Cr. C. 701, Rat. Un. Cr. C. 896.]

(6)—*Crim.Pro.Code* (1882), *s.* 195—*Sanction—Object of sanction—Revocation.*—A sanction, given by any of the Courts empowered under the Code, can be revoked by a superior Court. The provision requiring that "no Court of criminal jurisdiction shall take cognizance of an offence without the permission of the Court before whom the offence is committed" is intended to protect persons from criminal charges being brought against them by persons who, actuated by personal malice, ill-will or mere reckless frivolity of disposition, choose to place persons in a Criminal Court. EMPRESS v. MAHADEO SINGH, **A.W.N. 1887, 142.**

(7)—*Crim. Pro. Code* (1882), *ss.* 195 *and* 439—*Sanction to prosecute—Application to execute satisfied decree—Penal Code, s.* 210.—Where an application for execution of a decree for rent was dismissed on the ground that the decree had been satisfied and an order sanctioning the prosecution of the decree-holder for an offence under s. 210, Penal Code, was also made, the High Court revoked the sanction under s. 439, Crim. Pro. Code, on the ground that the decree had not been caused to be executed. SHAMA CHARAN DAS v. KASI NAIK, **23 C. 971.** [*F.*, 13 P.R. 1902, Cr. = 88 P.L R. 1902; *R.*, 12 Cr. L.J. 189 = 10 Ind. Cas. 646 = 59 P.L.R. 1911.]

(8)—*Crim. Pro. Code, ss.* 195, 476—*Revocation of sanction.*—Under cl. (6) of s. 195, the High Court has power to revoke or grant a sanction given or refused by a subordinate Civil Court. LACHMAN DAS v. SOHAN LAL, **1 A. L.J. 186 = 1 Cr. L.J. 333.**

(9)—*Subordination of Courts—District Magistrate, power of, to revoke sanction accorded by first class Magistrate.*—A District Magistrate has the power to revoke a sanction granted by a Magistrate of the first class, as the latter is subordinate to the former for the purposes of s. 195, Crim. Pro. Code. SOBHA SINGH v. LAL CHAND. **30 P.R. 1901, Cr.** (10 P.R. 1894, Cr., *D.*; 25 P.R. 1889, Cr., *R.*) [*Diss.*, 7 P. R. 1902, Cr.]

(10)—*Crim. Pro. Code* (1882), *s.* 195—*Revocation of sanction.*—It is not competent to a District Magistrate, on appeal, to revoke a sanction duly granted, on the ground of lapse of time. *In re* FRAMJI ARDESHIR, **Rat. Un. Cr. C. 805 = Cr. Rg 63 of 1895.**

(11)—*Crim. Pro. Code* (1882), *s.* 195—*Order regarding sanction by Sub-Judge—Powers of District Judge.*—A District Judge has jurisdiction, under s. 195, to revoke or grant a sanction granted or refused by a subordinate Judge, as an appeal from the subordinate Judge, ordinarily, lies to the District Court. VENKATA v. MUTHUSAMI, **7 M. 314 = 2 Weir 196.**

(12)—*Crim. Pro. Code* (*Act* X *of* 1882), *ss.* 195, 476—*Application for revocation—Power to alter order—Alternative offence.*—A Judge who is asked, under s. 195 of the Crim. Pro. Code, to revoke a sanction, has no jurisdiction to alter the order into one under s. 476. (16 A. 80, *R.*) A Judge who is asked to revoke an order for prosecution for an offence, under s. 195 of the Penal Code, cannot order the prosecution under s. 193 of the Penal Code or, in the alternative under s. 195 read with s. 109. *In the matter of the petition of* NIHAL CHAND, **A.W.N. 1895, 225.**

(13)—*Crim. Pro. Code* (1898), *s.* 195 (7) (c)—*Sanction to prosecute—Granted by Collector—Set aside by District Judge—Jurisdiction.*—Where a Collector granted sanction for prosecution for perjury in a case in which no appeal lay and the District Judge revoked the sanction *held*, that, under cl. (c) of sub-s. 7 of s. 195, Crim. Pro. Code, the District Judge, as being the principal Court of original jurisdiction, had jurisdiction to revoke the sanction. WAZIR MUHAMMAD v. HUB LAL, **6 A.L J 231 = 31 A. 313 = 9 Cr. L.J. 504 = 2 Ind. Cas. 182.** [*R.*, 9 A.L J. 124 = 13 Cr. L.J. 44 = 13 Ind. Cas. 284.]

(14)—*Crim. Pro. Code. s.* 195—*Sanction to prosecute—Revocation by District Judge—High Court's power of interference—Civ. Pro. Code* (*Act* XIV *of* 1882), *s.* 622.—The High Court cannot interefere under s. 195 of the Crim. Pro. Code, with an order of a District Judge revoking a sanction for prosecution granted by a Munsif. HAMIJUDDI MONDOL v. DAMODAR GHOSE, **10 C.W.N. 1026 = 4 Cr. L.J.**

Sanction to prosecute—continued.

——8.—**Revocation of sanction**—*continued.*

168. [*Diss.*, 30 M. 382=17 M.L.J. 266 =2 M.L.T. 239=6 Cr. L.J. 102, 5 P.R. 1908, Cr.=103 P.L.R. 1908=7 P.W.R. 1908, Cr. *R.*, 10 Cr. L.J. 454=4 Ind.Cas. 6=13 C.W.N. 1038, 13 Cr. L.J. 191=13 Ind. Cas. 1007=16 C.W. N. 645, 13 Cr. L.J. 209=14 Ind. Cas. 305=22 M.L.J. 419=11 M.L.T. 367=1912 M.W.N. 499 ; *D.*, 5 C.L.J. 222=5 Cr. L.J. 188.]

(15)—*Application for revocation—Court of Deputy Commissioner subordinate only to Court of Commissioner—Crim. Pro. Code* (1898), *s.* 195 (6) *and* (7)—*Lower Burma Courts' Act*, 1889.—The Court of a Deputy Commissioner under the Lower Burma Courts' Act is, for the purpose of sub-s. (6) of s. 195, Crim. Pro. Code, subordinate only to the Court of the Commissioner. An application to revoke a sanction, granted under this section by the Deputy Commissioner, whether as a Civil Appellate Court or as a Court of original jurisdiction, cannot be made to the Court of the Judicial Commissioner. MAUNG SAN DOK v. MA U ZON, **L.B.R. 1893—1900, 529.**

(16)—*Crim. Pro. Code* (1898), *s.* 195 (6) *and* (7)—*Appeal from orders of appellate Courts revoking sanction granted by Court of first instance.*—The right of appeal conferred by s. 195 (6), as read with sub-s. 7, is not restricted to right of appeal to the appellate Court, to which the Court of first instance is subordinate. An appeal lies to the High Court, not only in cases where the Court of first instance refuses sanction, and sanction is granted by the appellate Court, but also in cases where the Court of first instance grants sanction and the sanction is revoked by the Court to which the Court is immediately subordinate. A revocation of sanction is a refusal of sanction in the same way as an order confirming a grant of sanction is a giving of sanction for the purposes of sub-s. 6, s. 195. MUTHUSAMI MUDALI v. VEENI CHETTI, **30 M. 382=17 M.L.J. 266=2 M.L.T. 239=6 Cr. L.J. 102, F.B.** [*Diss.*, 5 A. L.J. 247=A.W.N. 1908, 102=7 Cr. L.J. 389= 3 M.L.T. 377 ; *Not Fol.*, 12 A.L.J. 821 ; *F.*, 13 Cr. L.J. 768=17 Ind. Cas. 80=6 S.L.R. 81, 15 Cr. L.J. 409=24 Ind. Cas. 145=26 M.L.J. 511 =15 M.L.T. 403 ; *R.*, 10 Cr. L.J. 454=4 Ind. Cas. 6=13 C.W.N. 1038, 6 A.L.J. 1=A.W.N. 1908, 290=31 A. 48=9 Cr. L.J. 63=1 Ind. Cas. 5=5 M.L.T. 55, 13 Cr. L.J. 191=13 Ind. Cas. 1007=16 C.W.N. 645, 22 M.L.J. 419=14 Ind. Cas. 305=1912 M.W.N. 499=11 M.L.T. 367=13 Cr.L.J. 209; *Disc. & D.*, 40 C. 239=13 Cr. L.J. 599=17 C.W.N. 91=16 Ind. Cas. 167.]

(17)—*Crim. Pro. Code, s.* 195, *cls.* 6, 7—*Order of District Court granting an appeal sanction refused by lower Court—Maintainability of appeal against the order—Power of appellate Court on such appeal.*—Where a District Judge, on appeal, revoked the sanction granted by a District Munsiff for prosecution under certain sections of the Penal Code and granted, at the same time, sanction for prosecution for some other offence, *held*, an appeal lay to the High Court against such order of the District Judge under cls. (6) and (7) of s. 195 of the Code. *Held*, also, that, under the provisions of the same section, the appellate Court has power to revoke any sanction granted by the Court, against whose order the appeal has been preferred, as also to grant sanction refused by it. KANNAMBATH IMBICHI NAIR v. MANATHANATH RAMAR NAIR, **29 M. 122=4 Cr. L J. 164.** [*R.*, 30 M. 382=17 M.L.J. 266 =2 M.L.T. 239=6 Cr. L.J. 102, F.B.]

(18)—*Crim. Pro. Code (Act* V *of* 1898), *ss.* 195 (7), 439—*Court competent to revoke sanction.*—Under s. 195 (7) of Act V of 1898, neither the Court of an Assistant Collector, nor that of a Collector is subordinate to the Chief Court and the Chief Court consequently has no jurisdiction to revoke a sanction granted by a Revenue Court. The jurisdiction conferred by s. 439, read with the preceding sections in ch. 22 of the Crim. Pro. Code, is over inferior Criminal Courts only and does not extend to the revoking of a sanction granted by the Revenue Courts. The Chief Court in this case returned to the petitioner his application to revoke the sanction and the documents filed with it for presentation to the Revenue Court having jurisdiction. SAIFULLAH KHAN v. EMPEROR OF INDIA, **33 P.L.R. 1902=8 P.R. 1902, Cr.**

(19)—*Crim. Pro. Code, s.* 195—*Sanction by Registrar of Presidency Small Cause Court—Power to revoke—Presidency Small Cause Courts Act, s.* 35.—The Registrar of the Presidency Small Cause Court has authority, under s. 195 (1) (*a*), Crim. Pro. Code, to grant a sanction for the prosecution of an offence under s. 182, I.P.C., as the public servant concerned. Such a sanction cannot be revoked by the Small Cause Court whether presided over by a single Judge or more Judges. But it is competent to the Chief Judge of the Presidency Small Cause Court to whom the Registrar is by law subordinate as a public servant to revoke the sanction. *In re* GOVERDHANDAS, **27 B. 130=4 Bom. L.R. 940.**

(20)—*Revocation of sanction, s.* 195, *Crim. Pro. Code—Revocation of sanction granted already.*—When a Court or authority, mentioned in s. 195 of the Crim. Pro. Code, with the knowledge already acquired in the course of judicial proceedings or inquiries before such Court or authority, is unwilling to sanction a prosecution and refuses to sanction one, such prosecution is barred and Magistrates are to that extent relieved of a responsibility which would otherwise rest upon them. But it does not appear that the Legislature, by requiring the antecedent sanction of the Court concerned for a prosecution for perjury, intended, by making such sanction necessary, to interpose any hindrance in the way of a prosecution, when such Court is satisfied, and has reasons to be

Sanction to prosecute—continued.

—— 8.—**Revocation of sanction**—*continued.*

satisfied, that a prosecution should be instituted. When such sanction is granted, a Magistrate is not relieved of the responsibility imposed upon him by the Legislature as to issuing process and proceeding with the enquiry. A sanction granted under s. 195, Crim. Pro. Code, ought not ordinarily to be revoked, if the grounds urged to support the application are such as can be more conveniently and more appropriately advanced in the Criminal Court where proceedings are or may be instituted on such sanction. DHURMALINGUM MUDALY v. KUPAMAH, **L.B.R. 1893—1900, 83.**

(21)—*Crim. Pro. Code* (1898), s. 195—*Revocation of sanction by appellate authority—Power of original Court to re-hear the application.*—Where the District Judge, on appeal from the District Munsif, revokes a sanction to prosecute on the ground that it was based on evidence of affidavits, it is perfectly competent for a District Munsiff to re-hear the application for sanction to prosecute. MALLIKARJUNA PRASADA NAIDU ZEMINDAR GARU v. PRASADA NAIDU BAHADUR GARU, **2 Weir 195.**

(22)—*Crim. Pro.Code* (1882), s. 195—*Reconsideration of sanction.*—There is nothing in s. 195, Crim. Pro. Code, to prevent an officer or Court from reconsidering an order passed under that section. MOOLCHAND v. RAMAKRISHNA AIYAR, **2 Weir 194.**

(23)—*Crim. Pro. Code* (1898), *ss.* 195 (6), 421 *and* 440—*Sanction to prosecute—Application for revocation—Summary rejection without hearing the applicant—Illegality.*—An application under s. 195 (6), Crim. Pro. Code, for the revocation of a sanction for prosecution, is made by way of appeal, and under s. 421, Crim. Pro Code, such an application ought not to be summarily rejected, without giving the applicant a reasonable opportunity of being heard in support of the same. The provisions of s. 440, Crim. Pro. Code, do not apply to such a case. RAJ KUMAR SINGH v. TINCOWRI MAZUMDAR, **12 C.W.N. 248 = 9 Cr. L. J. 189.**

(24)—*Crim.Pro.Code* (1898) *ss.* 195 *and* 476—*Revocation of sanction—Judicial proceedings—Order under s. 476, validity of—Penal Code,* s. 183.—Where, on the report of a Nazir, the Subordinate Judge made an order granting sanction for the prosecution of the petitioner, under s. 183, I.P.C., for resisting the Nazir in the execution of a decree of that Court, and the District Judge revoked the sanction and sent the case under s. 476, Crim. Pro. Code, to the District Magistrate for inquiry or trial, *held*, that neither the Subordinate Judge in granting the sanction, nor the District Judge in revoking it was holding a judicial proceeding, and the order under s. 476 was therefore bad. JADU NATH MAHTA v. JAGADISH CHANDRA DEB, **7 C.W.N. 423.** [*R.*, 13 Cr. L. J. 1 = 13 Ind.Cas. 111, 13 Cr.L.J. 209 = 14 Ind. Cas. 305 = 11 M.L.T. 367 = 22 M.L.J. 419 = 1912 M.W.N. 499.]

(25)—*Crim. Pro. Code,* s. 195—*Sanction to prosecute pleader for presenting suspicious document in Court on behalf of client.*—A Court will not be justified in ordering the prosecution of a pleader for presenting a document on behalf of his client, merely because the document was suspicious in appearance. Pleaders are not in duty bound to examine documents given them to produce in Court and to come to a conclusion upon their genuineness, for which conclusion if wrong, they should be liable to be criminally prosecuted. A pleader is under no higher obligation than any other agent would be, and to justify his prosecution it must be shown that he was a party (principal or accessory) to the concoction of the document, or that he had the knowledge that it was concocted. The mere fact that the suspicions of the pleader ought to have been aroused by the sight of the document is not *prima facie* evidence that he knew or had reason to believe the document to be forged. Sanction given for the prosecution of a pleader for presenting such a document was revoked. *In the matter of the petition of* RANCHHODDAS NAGARDAS, **22 B. 317.**

(26)—*Crim. Pro. Code* (1882), s. 195—*Sanction to prosecute—Application for revocation—Delay.*—Sanction for the prosecution of the accused having been given, the complainant was examined, and the accused was arrested and brought before the Court. The witnesses for the prosecution were examined, charges were framed and a date was fixed for the examination of the witnesses for the defence. After this stage of the trial, the accused applied to the High Court for revocation of the order sanctioning the prosecution. *Held* that it was too late. MATA BADAL v. MUHAMMAD RAJA KHAN, **A.W.N. 1886, 83.**

—— 9.—**Grant of fresh sanction.**

(1)—*Crim. Pro. Code* (1882), s. 195—*Sanction to prosecute—Fresh sanction after* **efflux** *of time.*—It is perfectly competent for a Court, before which any of the offences mentioned in s. 195 has been committed, to give a fresh sanction, if the one already granted has expired by ***efflux*** of time. The limitation of six months mentioned in the section means that a Magistrate shall not take cognizance of a case under a sanction that is more than six months old, not that the whole prosecution must be completed within that period. GULAB SINGH v. DEBI PRASAD, **6 A. 45 = A.W.N. 1883, 196.** [*R.*, 18 A. 358, 22 C. 573.]

(2) — *Sanction—Second sanction—Repetition of first sanction—Period of limitation not to be extended.*—There can be no second sanction for a prosecution, and any subsequent order purporting to be a second sanction must be taken

Sanction to prosecute—continued.

——9.—**Grant of fresh sanction**—*continued.*

to be nothing more than a repetition of the first, and the same period of limitation, therefore, will apply running from the date of the first sanction. DURGA PROSHAD PATTAK v. LACHMAN BANIA, **14 Cr. L.J 213 = 19 Ind. Cas. 309 = 40 C. 584.** (22 C. 573, *Rel.*)

(3)—*Crim. Pro. Code* (*Act* X *of* 1882), s. 195 —*Lapse of time after sanction—Renewal.*—A sanction on which no steps were taken and which has lapsed by time, cannot be renewed without special and good cause being shown. BALDEO SINGH v. PRASADI, **A W.N. 1892, 245.** (11 C. 577, *R.*) [*R.*, 18 A. 358 = A.W.N. 1896, 113.]

(4)—*Crim. Pro. Code* (*Act* X *of* 1882), *s.* 195 —*Sanction granted—Lapse of time—Fresh application.*—Where a person to whom sanction has been given to prosecute another for certain offences, allows the sanction to become void by lapse of time, he cannot obtain a fresh sanction without showing substantial reason for the delay. CHIDDU v. HARDEO PRASAD, **A.W.N. 1891, 40.**

(5)—*Crim. Pro. Code, ss.* 195, 476—*Revocation of sanction by Sessions Judge—Granting of fresh sanction by District Magistrate, validity of.*—Where a Sessions Judge revokes a sanction granted by a Magistrate for the prosecution of certain persons for intentionally giving false evidence in a judicial proceeding, the District Magistrate has no power to grant a fresh sanction for their prosecution under s. 193, but should move the High Court to have the order of the Sessions Judge set aside. BINDA v. KING-EMPEROR, **1 A L.J. 395.**

(6)—*Crim. Pro. Code* (1882), *s.* 195—*Sanction to prosecute—Fresh sanction after expiry of six months — Proper sanction.*—When a sanction granted under s. 195 has expired by effluxion of time before any prosecution under it has been commenced, it is not open to the prosecution to procure a fresh sanction and to institute proceedings under such fresh sanction. The words "six months" from the date on which the sanction was given must be taken to mean six months from the date on which it was first given, and not from any subsequent date on which the purport of the order may have been repeated. [*R.*, 18 A. 358 = A.W.N. 1896, 113, 40 C. 581 = 19 Ind. Cas. 309 = 14 Cr. L.J. 213, Rat. Un. Cr. C 803, 8 C.W N. 797; *D.*, L.B.R. 1893—1900, 377.] *Semble*:—In a case where the Munsiff who tried a suit out of which the application for sanction arose, refused to sanction any prosecution and the Munsiff who sanctioned the prosecution was a different officer, while the Munsiff who gave the fresh sanction was different from both, *held*, that it was extremely doubtful whether the sanction was such as was contemplated by s. 195 of the Code. DARBARI MANDAR v. JAGOO LAL, **22 C. 573.**

Sanction to prosecute—continued.

——9.—**Grant of fresh sanction**—*concluded.*

(7)—*Application for fresh sanction more than six months after prior sanction—Grounds of grant of such fresh sanction*—Where, upon a sanction to prosecute for forgery and perjury, criminal proceedings were not commenced for more than six months from its date and the charge was dismissed in consequence, *held* that, before a fresh sanction on a fresh application could be granted, the Munsiff should, assuming he had the power to grant it all, insist upon a satisfactory explanation for the omission to commence proceedings within the six months; and an order granting such fresh sanction, without such explanation, setting forth special grounds, was set aside. JOYDEO SINGH v. HARIHAR PERSHAD SINGH, **11 C 577.** [*R.*, 22 C. 176, 22 C. 573, 8 C.W.N. 797.]

(8)—*Crim. Pro. Code, s.* 195 (6)—*Granting of another sanction after lapse of previous sanction*—A sanction to prosecute was granted at the instance of one of the defendants to a suit. The sanction exhausted itself, because six months were allowed to elapse, and no prosecution was instituted. Then another defendant applied for sanction, but the Subordinate Judge rejected the application. On appeal, the District Judge remanded the application for re-consideration. *Held*, reversing the order passed by the District Judge, that very strong grounds would be necessary for a second sanction to be granted, for the first sanction opened the door of the Criminal Courts for the institution of criminal proceedings, and the proviso to s. 195 provides that the High Court may, for good causes shown, extend the time. *In re* SHEIK SAHEB, **6 Bom. L.R. 1097 = 1 Cr. L.J. 1112.**

(9)—*Practice of Calcutta High Court in sanction cases—Sanction at first granted on verbal application—Effect—Subsequent written application for sanction—Jurisdiction to order sanction thereon—Application to revoke sanction granted by Judge on the original side of the High Court must be made to an appellate Bench—S.* 195, *Crim. Pro. Code.*—The practice of the Calcutta High Court is to grant sanctions for prosecution only on a formal petition being put in, upon which an order can be passed. In this case Counsel made a verbal application for sanction to prosecute, which was granted, but as the application was not made upon a formal petition, no order could be drawn up according to the practice of the Court. A formal petition for sanction having been subsequently put in, *held* that the Court had jurisdiction to grant the sanction. (7 M. H C. 58, *R*) Where a sanction has been properly granted by a Judge sitting on the original side of the High Court, an application to revoke the sanction ought to be made to an appellate Bench of that Court. The Judge granting the sanction has no jurisdiction to revoke it. THADDEUS v. JANAKI NATH SAHA, **40 C. 423 = 21 Ind. Cas. 172 = 14 Cr. L J. 572.** (32 C. 379, *F.*)

Sanction to prosecute—continued.

——10.—**Miscellaneous Cases.**

(1)—*Competency of sanctioning Court to try the accused—Crim. Pro. Code* (1872), *ss.* 467, 468, 469, 471, 473.—*Held*, that the Magistrate of the District was not disqualified from trying an accused person on a charge of forgery and perjury connected with the proceedings in another Court, merely because as the Deputy Commissioner of the District, and in that capacity the Court to which the other Court was subordinate as regards appeal, he sanctioned the prosecution on these charges. GUL MUHAMMAD v. EMPRESS, **36 P.R. 1882, Cr.**

(2)—*Power of inferior Court to question sanction granted by a superior Court.*—A Magistrate is not competent to decline inquiry into a case on the ground that the sanction granted by a superior Court was not warranted by the circumstances of the case. The only thing he can do is to stay proceedings pending an application by the accused to a Court superior to the one which granted the sanction to revoke the same. NATHA v. ALI BAKHSH, **18 P.R. 1887, Cr.**

(3)—*Crim. Pro. Code* (1898), *ss.* 197, 215 *and* 532.—The language of s. 197 of the Code, *viz.*, "is accused as such Judge or public servant" indicates that the offence charged must involve, *as one of its elements*, that it was committed by a person filling that character. EMPRESS v. GHULAM KADIR KHAN, **13 C.P.L.R. Cr. 126.** (7 B.H.C. 61, 2 B. 481, 9 M. 439, 26 C. 852, *R.*)

(4)—*Crim. Pro. Code* (1882), *s.* 195—*Costs.*—A Court has no power to give costs under s. 195, although the proceeding under the section is taken in a Civil Court. MAHOMED DUSTAGIR SAHIB v. MAHOMED KARIMUDDEEN, **2 Weir 196.**

(5)—*Crim. Pro. Code* (1898), *ss.* 132, 195, 196, 197 *and* 537—*Want of sanction—Conviction after trial, validity of—Irregularity.*—The words "subject to the provisions hereinbefore contained," which occur at the beginning of s. 537 of the Crim. Pro Code, cannot be construed in such a way as to nullify the express provision of the latter part of the section, which in cl. (*b*), enacts that no sentence passed by a Court of competent jurisdiction shall be reversed on appeal "for want of any sanction required by s. 195." Therefore, want of sanction, under s. 195, Crim. Pro. Code, is not a good ground for setting aside a conviction after trial Similarly, ss. 132, 196 and 197 of the Crim. Pro. Code, which require sanction to be obtained in certain cases, are not affected by s. 537, cl. (*b*). *In re* PERUMAL NAYADU, **17 M L.J. 533=2 M.L.T. 493=31 M. 80=6 Cr. L.J. 382.**

(6)—*Crim. Pro. Code, s.* 195, *want of the sanction required by, a mere irregularity within s.* 537 (*b*).—S. 195 provides generally for cases in which sanction is necessary, while s. 537 (*b*) provides for cases of want of, or irregularity in, the matter of sanction in particular cases. The latter, as providing for a special case, must have effect given to it as qualifying the general provisions in the earlier section. The want of the required sanction would, therefore, amount only to mere irregularity, which could not justify the reversal of the decision in a case prosecuted without the sanction, unless the want of such sanction has caused any prejudice to the accused or has occasioned a failure of justice. ISMAIL ROWTHER v. SHUNMUGAVELU NADAN, **29 M. 149=3 Cr. L.J. 419.** (22 C. 176, *Diss.*) [*Appr.*, 31 M. 80=6 Cr. L.J. 382 =17 M.L.J. 533=2 M.L.T. 493.]

(7)—*Crim. Pro. Code* (*Act* V *of* 1898). *s.* 476—*False complaint sent by post.*—A false complaint sent to the Magistrate by post is duly presented to the Court for the purpose of sanction for prosecution being granted under s. 476 of the Crim. Pro. Code. EMPRESS v. JETO MAL, **A.W.N. 1900, 187.**

(8)—*Crim. Pro. Code, s.* 476—*Limit of time for passing an order under s.* 476 *directing the prosecution of a person for an offence under s.* 193, *I.P C.*—Where a Sessions Judge passed an order under s. 476, Crim. Pro. Code, directing the prosecution of a person for an offence under s. 193, I.P.C., *held*, the order must be set aside, if there is nothing to show that it was made in such circumstances that it can be said to have been a continuation of the proceedings in which the evidence was given. *In re* RAMA KRISHNAMMA, **8 M L T. 81=7 Ind. Cas. 398=11 Cr L.J. 479.**

(9)—*Crim. Pro. Code* (1898), *s.* 195—*Sanction to prosecute given by competent authority—Competency of trying Magistrate to question the propriety of sanction.*—The Magistrate before whom a prosecution is instituted, in pursuance of a sanction given, under s. 195 of the Crim. Pro. Code, by a competent Court, cannot question the propriety or legality of the sanction given by the Magistrate in respect of an offence of the kind mentioned in s. 195, which is alleged to have been committed in any proceeding before his Court. *In re* PACHAI AMMAL, **26 M. 189=2 Weir 195=13 M.L J. 67.** [*R.*, 4 Cr. L.J. 223=10 C.W.N. 1095.]

(10)—*Crim. Pro. Code* (1872), *s.* 467—*Sanction to prosecute granted by District Magistrate—Power of trying Magistrate to question its validity.*—Where a District Magitrate sanctions the prosecution of a person under s. 211, I.P.C., the subordinate Magistrate to whom the case is sent for trial is bound to accept the sanction as valid, and leave the accused to question it before a competent Court, if so advised. NUSIBUNNISSA BIBEE v. SHEIKH ERAD ALI, **4 C.L.R. 413.** [*Diss.*, 6 C. 584=8 C.L.R. 265.]

(11)—*Validity of—Right to question.*—A subordinate Magistrate cannot question the validity of the order of a superior Magistrate sanctioning a prosecution. The validity of such sanction can be questioned only by the accused before a competent Court. EMPRESS v. IRADALLY, **4 C. 869=3 Shome L.R. Cr. 7.**

Sanction to prosecute—continued.

——10.—Miscellaneous Cases—*continued.*

(12)—*Power to question grant of sanction—Power of Deputy Magistrate to question sanction.*—A Deputy Magistrate has no power to question an order made by his superior, sanctioning a prosecution under ss. 182 and 211, I.P.C. Whether such sanction has been rightly or wrongly given, is a question for the accused to raise before a competent Court. *In re* HUSEN BEG, **Cr. Rg. 27-6-1889.**

(13)—*Crim. Pro. Code* (*Act* XXV *of* 1861), s. 169—*Committing Magistrate same as the one before whom offence committed.*—Where a false evidence was given before a Magistrate who himself committed the accused for trial by the Sessions Court, *held* that no formal sanction was necessary as it could be implied in such cases. The objection as to want of sanction was taken only in appeal in this case. REG v. MUHAMMAD KHAN, **6 B.H.C. Cr. 54.**

(14)—*Crim. Pro. Code* (*Act* XXV *of* 1861), *ss.* 169, 170—*Leave to prosecute—Wrong section quoted—Legality.*—Where an accused person was convicted of an offence mentioned in s. 169 of the Crim. Pro. Code, but the order sanctioning his prosecution referred to s. 170 of the Code, *held* that the mention of the section in the leave to prosecute was mere surplusage and that the conviction was legal. REG v. KHUSHAL HIRAMAN, **4 B.H.C. Cr. 28.** [*Cons.*, 8 B.H.C. 28; *R.*, 8 B.H.C. 24.]

(15)—*Crim. Pro. Code* (*Act* XXV *of* 1861), s. 167—*Sanction—Penal Code, s.* 384—*Nature of offence.*—In the case of offences falling within s. 167 of the Crim. Pro. Code, a Magistrate has no jurisdiction to try them before the requisite sanction is obtained, and proceedings conducted by him without such sanction are void. S. 167 of the Crim Pro. Code relates only to those acts and omissions which are declared in the Penal Code to be offences when they are committed by public servants. Thus, where a public servant was convicted under s. 384 of extortion for an act which would also amount to an offence under s. 161, *held* that the conviction was not illegal, though it might have been more judicious to proceed with the trial under s. 161. REG v. PARSHRAM KESHAV, **7 B.H.C. Cr. 61.** [*Appr.*, 26 C. 852=3 C.W.N. 539; *R.*, 2 B. 481, 10 Bom. L.R. 1053, 13 C. P.L.R. 126, 25 M. 15, 26 M. 1, 9 Cr. L.J. 183, 7 Cr. L.J. 163.]

(16)—*Crim. Pro. Code* (1898), *ss.* 195 *and* 203—*Dismissal of complaint for omission to obtain sanction—Fresh complaint.*—Where a Magistrate, before whom a complaint was preferred, dismissed it under s. 203, on the ground that the necessary sanction had not been previously obtained, *held*, that the Magistrate could entertain a fresh complaint presented after such sanction had been obtained. QUEEN-EMPRESS v. KUNIYIL RARU, **24 M. 337=2 Weir 251.**

(17)—*Crim. Pro. Code* (1882), s. 476—"*Nearest Magistrate of the first class*"—*Jurisdiction.*—S. 476 says that the Court, before which an offence is committed, may send the case for inquiry or trial to the nearest Magistrate of the first class. It is not necessary that such Magistrate should be a Magistrate having jurisdiction over the division in which the offence was committed. The order making the transfer is of itself sufficient to confer jurisdiction on such Magistrate. QUEEN-EMPRESS v. NAGAPPA, **16 M. 461=2 Weir 590** [*R.*, 9 Cr. L.J. 41=32 M. 49=4 M.L.T. 404=19 M. L.J. 42, 8 Cr. L.J. 209=1 S.L.R. 84, 1 Ind. Cas. 597.]

(18)—*Crim. Pro. Code* (1882), *s.* 195—*Right of prosecution.*—A sanction granted under s. 195 is a condition precedent to the entertainment of a complaint by the Magistrate. There is nothing in the section to restrict the right of complaint to any particular individual, when a sanction has been granted under that section. Where the person in whose favour the Civil Court had granted a sanction to prosecute certain witnesses, under s. 193, died, without having lodged the complaint and his brother preferred the complaint after the former's death, *held*, the complaint was validly made. *In re* TATHAYA, **12 M. 47=2 Weir 164.** [*F.*, 13 Cr. L.J. 206=14 Ind. Cas. 206, 27 P.R. 1902=5 P.L.R. 1903; *R.*, 32 C. 469=8 C.W.N. 883, 32 M. 49=19 M.L.J. 42=4 M.L.T. 409=9 Cr. L. J. 41=1 Ind. Cas. 597.]

(19)—*Crim. Pro. Code, ss.* 476, 4 (*m*)—*Execution proceeding, resisting process in—Report to Munsiff—Order for prosecution by his successor in office—"Court," meaning of—Execution proceeding, if "Judicial proceeding"—Order under s.* 476 *to be promptly made.*—The word "Court" in s. 476, Crim. Pro. Code, is to be understood as bearing its natural meaning, with the sense of continuity which it implies notwithstanding any change of officers. An execution proceeding is a "judicial proceeding" within the meaning of s. 476 of the Code, the definition in s. 4, cl. (*m*) being clearly not exhaustive. Action under s. 476, Crim. Pro. Code, should, as far as possible, be prompt and expeditious. BAHADUR v. ERADATULLAH MULLICK, **37 C. 642=14 C.W.N. 799=12 C.L.J. 45=6 Ind Cas. 801=11 Cr. L.J. 407.** [*F.*, 9 A.L.J. 481=13 Cr. L.J. 302=14 Ind. Cas. 766; *R.*, 40 C. 477=17 C.L.J. 245=17 C.W.N. 647=14 Cr.L.J. 197=19 Ind. Cas. 197, 12 A.L.J. 1003, 14 C.L.J. 123=15 C.W.N. 691=12 Cr. L.J. 209=10 Ind Cas. 66.]

(20)—*Crim. Pro. Code* (1882), *ss.* 195, 537—*Disobedience to a summons — Prosecution without previous sanction.*—The want of sanction to a prosecution under s. 195 of the Code is, under s. 537, no valid ground for the reversal of a conviction, unless such want has occasioned a failure of justice. KALI MOHUN MOOKERJEE v. EMPRESS, **13 C.L.R. 117.**

(21)—*Crim. Pro. Code, s.* 195—*Sanction for prosecution—Jurisdiction of Presidency Magistrate—Penal Code, ss.* 116, 193.—Where a person, without having obtained sanction under

Sanction to prosecute—continued.

——10.—**Miscellaneous Cases**—*continued.*

s. 195, charged the correspondent in a divorce suit with having instigated her to give false evidence on his behalf in the divorce suit, *held*, that, under s 195, the Chief Presidency Magistrate, to whom the complaint was made, had no jurisdiction to try the case without the sanction of the Court before which the divorce suit was pending. CHANDRA MOHAN BANERJEE v. BALFOUR, **26 C. 359.** [*D.*, 26 C. 786.]

(22)—*Crim. Pro. Code* (1882), *ss.* 195 (*b*), 215 —*Complaint of false charge by police—Sanction.* —The complaint made by the accused was reported by the police to be false and he was charged by them with an offence under s. 211, I.P.C. The accused thereupon applied for and had a judicial enquiry into his complaint in which the complaint was found to be false. The case against the accused under s. 211, I.P C., was transferred to another Magistrate and the accused was committed to the Sessions. *Held, per Jardine, J.*, that the provisions of s. 195 (*b*) were inapplicable, as there was not in existence any proceeding in any Court, when the police made the complaint, and that, therefore, there was no ground of law under s. 215 to justify the quashing of the commitment by the High Court. *Held, per Ranade, J.*, that the commitment could be regarded as having been made under s. 476, the offence being brought to the Magistrate's notice in the course of a judicial proceeding, and he could commit himself to the Sessions Court. QUEEN-EMPRESS v. GANPAT, **Rat. Un. Cr. C. 704 = Cr. Rg. 36 of 1894.**

(23)—*Crim Pro. Code* (*Act X of* 1882), *s.* 195 — *Sanction — Civil suit in appeal — Stay.*— Where sanction was given by a Civil Court against a defendant in a suit, for prosecution for giving false evidence, and the accused before the Magistrate applied for stay of criminal proceedings pending the decision of an appeal he had preferred from the decree in the civil suit, *held* that the stay should be granted. *In re* EBRAHIM, **Rat. Un. Cr. C. 587.**

(24)—*Crim. Pro. Code* (*Act* XXV *of* 1861), *s.* 168—*Sanction to private person—Withdrawal —Legality.*—Where a Court or public servant grants sanction, under s. 168 of the Crim Pro. Code, for prosecuting a person who has committed an offence under s. 188 of the Penal Code by disobeying the order of such Court or public servant, to the person injured by such disobedience, such injured person is the complainant in the case and may withdraw his complaint in cases falling within Ch. XV of the Crim. Pro. Code. REG. v. JEEJIBHAI NATHUBHAI, **Rat. Un. Cr. C. 45.** [*R.*, Rat. Un. Cr. C. 64.]

(25)—*Crim. Pro. Code, s.* 195 (1) (*c*)—*Sanction to prosecute—Forgery—Penal Code* (*Act* XLV *of* 1860), *ss.* 476, 40—*Offence—Interpretation.*—In s. 195 (1) (*c*), the word "offence" occurring as the third word is designedly used in a somewhat abstract manner. It is the "offence" in itself, not any particular offender's offence, which the section aims at; and that is in accordance with s. 40, Penal Code, where "offence" is defined as the thing made punishable by the Code. In other words, the clause deals with the case where there is a substantive offence committed by a party to a suit. *In re* NARAIN DHONDDEV RISBUD, **12 Bom. L.R. 383 = 6 Ind. Cas. 529 = 11 Cr. L J. 368.**

(26)—*Crim. Pro. Code* (1898), *s.* 195—*Sanction—Criminal proceedings—Cognizance of a case by the Magistrate.*—Where the complaint has been filed and sanction subsequently obtained, any action taken by the Magistrate before the grant of the sanction is illegal; but that does not prevent the Magistrate from taking cognizance of the complaint after the sanction has been obtained. *In re* MANJNATH SHIVNATH, **10 Bom. L. R. 1053 = 9 Cr. L.J. 183.**

(27)—*Crim. Pro. Code* (1898), *s.* 195 (*c*) — "*Produced or given in evidence*"—*Interpretation—Sanction—Indian Penal Code* (*Act* XLV *of* 1860), *ss.* 471 *and* 477.—S. 195 (*c*) of the Crim. Pro. Code, 1898, applies to a document, which is alleged to have been forged, and which is produced in a Court of Justice. Under the section, the "production" of a document in a Court is not the same thing as "giving it in evidence." A document produced in a Court means one, which is produced for the purpose of being tendered in evidence or for some other purpose. *In re* GOPAL LIDHESHVAR, **9 Bom. L.R. 735 = 6 Cr. L.J. 78.**

(28)—*Crim. Pro. Code* (1898), *ss.* 190, 195 *and* 478—*Indian Penal Code* (*Act* XLV *of* 1860), *s.* 193—*Witness — False deposition—Prosecution for perjury—Deposition taken before the Assistant Judge—Trial for perjury by the same officer as District Magistrate—Sanction—Practice—Evidence—Criminal trial.*—An Assistant Judge, before whom a witness gave a false deposition, took cognizance of the case, as a District Magistrate, under s. 190 (*c*) of the Code of Criminal Procedure, on the statement in the deposition. To this course an objection was taken that sanction was required under s. 195 of the Code and that action taken by the officer as District Magistrate was not tantamount to a sanction by him as Civil Judge. *Held*, that the action taken by the officer was, in effect, action which, as a Civil Judge, he was perfectly competent to take under s. 478 of the Code, as the offence was brought under his notice as a Civil Court, in the course of a judicial proceeding. As a Civil Judge, he could either transfer the case to himself as a Magistrate for inquiry, or completing the inquiry as a Civil Judge, commit the accused. A criminal trial is not a litigious proceeding. When there is unmistakable conflict in the evidence of a witness for the prosecution, the alternative most unfavorable to the accused is not to be accepted as a necessity, merely because the witness has not been asked which version he prefers. EMPEROR v. RASHID KARMALLI, **9 Bom. L.R. 212 = 5 Cr. L.J. 202.**

Sanction to prosecute—continued.

——10.—**Miscellaneous Cases**—*continued.*

(29)—*Crim. Pro. Code, ss.* 195 (1) (*b*), 476—*Sanction under the sections.*—Where a Court, purporting to act under ss. 195 (1) (*b*) and 476, grants sanction for the prosecution of a party, the order would be construed to fall within the words "on the complaint of such Court" and not within "with the previous sanction of the Court." *In re* JIVABHAI KHUSAL, **7 Bom. L. R. 84 = 2 Cr. L.J. 54.** [*Not F.*, 103 P.L.R. 1908 = 5 P.R. 1908, Cr. = 7 P.W.R. 1908, Cr.; *R.*, 7 Cr. L J. 143.]

(30)—*Sanction for prosecution of a witness granted in course of inquiry—Effect on inquiry.*—When the Judge conducting the inquiry above referred to, before the inquiry had closed, granted sanction for the prosecution of one of the witnesses for the accused for perjury, *held*, that the effect of such a step should be to induce subsequent witnesses to depose in favour of the Crown and that, therefore, the oral evidence subsequently taken for the Crown cannot be regarded as of any weight. REG. v. KASHINATH DINKAR, **8 B.H.C. Cr. 126.** [*F.*, Rat. Un. Cr. C. 477.]

(31)—*Crim. Pro. Code* (*Act* XXV *of* 1861), *s.* 167—*Power of Government to limit procedure—Failure to comply with order— Effect.*—The Local Government has power, under s. 167 of the Crim. Pro. Code, to authorize some one person in particular to prefer charges against a public servant, and when it has limited the manner in which the prosecution is to be launched, the specification should be adhered to. Thus, where, in the resolution sanctioning the prosecution of a public servant for corrupt practices, the Government directed that a particular person should prefer the charges to be tried by a particular tribunal, *held* that the conviction on charges preferred by a person other than the one specified was illegal, and also that the result would be the same if the authorized person had delegated the function to some other (*delegatus non potest delegare*). REG v. VINAYAK DIVAKAR, **8 B H.C. Cr. 32.** [*R.*, 17 B. 369, 21 B. 257, Rat. Un. Cr. C. 888; *D.*, 10 Cr. L J. 463 = 13 C.W.N. 1062 = 4 Ind. Cas. 13.]

(32)—*Sanction to prosecute—Penal Code, ss.* 463, 471 *specified—Commitment under s.* 193 *—Legality.*—Where a Civil Court, in a letter sanctioning the prosecution of a person, apparently acting under ss. 171 and 169 of the Crim. Pro. Code, specified only offences under ss. 463, 471 of the Penal Code, *held* that the Magistrate, to whom the letter was sent, had no power to commit the person to the Sessions Court for the trial of an offence under s. 193 of the Penal Code. REG. v. SUBI SANI, **8 B.H.C. Cr. 28.** (4 B.H.C Cr. 28, 6 W.R. Cr. 11, 17, 25, 31, 41, 58, 8 B.H.C. Cr. 24, 31, *Not F.*)

(33)—*Crim. Pro. Code, ss.* 195, 478—*Sanction to prosecute—Power of Court to proceed under s.* 478.—The granting of a sanction under cl. (c) of s. 195, Crim. Pro. Code, to a private person, does not bar a Civil Court from proceeding under s. 478; nor can the dismissal by a Magistrate of a complaint made by the private person be held to be a bar, till set aside, to a proceeding under that section. QUEEN-EMPRESS v. SHANKAR, **13 B 384 = Rat. Un Cr. C. 422.** [*F.*, 34 B. 88 = 11 Bom. L.R. 855 = 10 Cr. L.J. 431 = 3 Ind. Cas. 962; *R.*, 31 M 140, F.B. = 7 Cr. L.J. 54 = 17 M.L.J. 584 = 3 M.L. T. 779, 8 Bom. L.R. 694, Rat. Un. Rep. Cr. Cas. 587.]

(34)—*Crim. Pro. Code* (1882), *s.* 195—*Forgery as mentioned in the section—Scope—Penal Code, ss.* 463, 467.—The expression forgery is used as a general term in s. 463, I.P.C., and that section is referred to in a comprehensive sense in s. 195, Crim. Pro. Code, so as to embrace all the species of forgery afterwards provided for as to punishment, and this includes a case falling under s. 467, I.P.C. QUEEN-EMPRESS v. TULJA, **12 B. 36.**

(35)—*Sanction "at any time"—Crim. Pro. Code* (1861), *s.* 169—*"At any time."*—The words "such sanction may be given at any time" in the above section must be construed reasonably; "any time" means a time which does not unduly prejudice the party to be prosecuted, or put him in a worse position than he was before. SEETARAM SAHOO v. RAI BABOO SHEOGOLAM SAHOO BAHADOOR, **18 W. R Cr. 62.**

(36)—*Initiation of case needing sanction—Initiation by party and by Court—Crim. Pro. Code* (1861), *ss.* 170, 171.—Under s. 171, Crim. Pro. Code (1861), the initiation was taken by the interested party, and the Court should simply be giving or refusing its sanction; s. 170 contemplated cases in which the Court itself, for sufficient reason, took the initiative, and it was not intended that the Court should proceed in the manner there described, except where the propriety or necessity of doing so was unmistakable. *In the matter of* KOONJ BEHAREE GHUR, **11 W.R. 171.**

(37)—*Charge of forgery—Forged document used in civil cases—Power of Deputy Magistrate—Crim. Pro. Code* (1861), *ss.* 169, 170.—When the Civil Court chose to sanction a person's committal under s. 169 of the Crim. Pro. Code, *held* that a Deputy Magistrate should carry out the instruction and should not commit such person under ss. 467, 471, Penal Code, which were referable to s. 170, Crim. Pro. Code, 1861, for which he had no sanction. QUEEN v. DWARKANATH BOSE, **2 W.R Cr. 31.** [*Appr.*, 8 B.H.C. Cr. 28; *R.*, 25 W.R. Cr. 74.]

(38)—*Offence committed in judicial proceeding.*—Where criminal proceedings are instituted against a person for giving false evidence in a judicial proceeding, *held* that no special sanction was necessary for such prosecution. QUEEN v. RAMAOTAR PANDE, **25 W.R Cr. 5.**

See ACT XIII OF 1859, s. 1, 2 L.B.R 300.

Sanction to prosecute—continued.

——10.—**Miscellaneous Cases**—*continued.*

See ACT XXVII OF 1870, s. 10, 15 W.R.Cr. 2=6 B.L.R. Ap. 98.

Sub-Registrar, whether a "Court"—*See* ACT III OF 1877, s. 34, 11 M. 3.

Presentation of forged document for registration—Sanction of Sub-Registrar—*See* ACT III OF 1877, ss. 34, 35, 41, 12 M. 201.

Sub-Registrar acting under s. 41, Registration Act, whether a "Court"—*See* ACT III OF 1877, s. 41, 10 M. 154=2 Weir 170.

"Court"—*See* ACT III OF 1877, ss. 72, 73, 74 and 75, 15 M. 138=2 M.L.J. 64, F.B.

For instituting charge under s. 82 of Act III of 1877—*See* ACT III OF 1877, s. 82, 11 C. 566, F.B.

Sanction to prosecute for forgery under s. 82, Registration Act, whether necessary—*See* ACT III OF 1877, s. 82, 11 M. 500.

Nature and sufficiency of—*See* ACT III OF 1877, s. 83, 4 B.L.R. Ap. 69=13 W.R. Cr. 21.

Municipal Corporation, not a public servant—*See* ACT IV OF 1877, s. 39, 3 C. 758=2 C.L.R. 520.

Limitation—*See* ACT XV OF 1877, art. 178, 10 A. 350=A.W.N. 1888, 92.

Being in possession of arms without license—Sanction of Collector to prosecute—*See* ACT XI OF 1878, ss. 14, 19 and 28, 5 M. 26 =1 Weir 662.

See ACT XI OF 1878, s. 19, 9 C.P.L.R, Cr. 26, 5 M.L.T. 162, 27 C. 692=4 C.W.N. 750, U.B.R. 1892—1896, Vol. I, 2, 4 L.B.R. 247=8 Cr. L.J. 65.

Prosecution under the Act—Recording of proceeding, whether necessary—*See* ACT I OF 1879, ss. 37 and 40, 7 M. 537=1 Weir 899.

Under Stamp Act, whether invalidated by irregularity in mode of reference by Civil Court—*See* ACT I OF 1879, ss. 61 and 69, 10 C. P.L.R. Cr. 1.

Prosecution under s. 64, Stamp Act, 1879—Collector's sanction—*See* ACT I OF 1879, ss. 64, 69, 9 B. 27.

See ACT V OF 1881, s. 98, cls. 3, 4, 2 C.W. N. 597.

See ACT II OF 1886, s. 25, 44 P.R. 1905, Cr. =187 P.L.R. 1905=3 Cr. L.J. 128.

Prosecution commenced six months after granting of the sanction—Intervention of holidays—*See* ACT I OF 1887, ss. 2, 7, 22 C. 176.

See ACT IX OF 1890, s. 101, 9 P.R. 1892 Cr.

See ACT II OF 1899, s. 33, U.B.R. 1892—1896, Vol. I, 313.

See BEN. ACT VIII OF 1885, ss. 69 and 70, 17 C. 872.

See MAD. ACT IV OF 1884, 2 Ind. Cas. 426.

See PUN. ACT I OF 1903, ss. 29 and 30, 12 P.R. 1908, Cr.=25 P.W.R. 1908=8 Cr. L.J. 243.

See COMPENSATION—GENERAL, 30 P.W.R. 1907, Cr.=7 Cr. L.J. 231, 9 Cr. L.J. 268, F.B. =1 S.L.R. 28, Cr.

See COMPLAINT — PROCEDURE ON RECEIPT OF COMPLAINTS, 5 M.L.T. 1=32 M. 3=9 Cr. L.J. 108=1 Ind Cas. 22.

See COMPLAINT — WHAT IS, AND WHO SHOULD INSTITUTE, L B.R. 1893—1900, 388, 27 P.R. 1902, Cr.=5 P.L.R. 1903.

See COMPLAINT — WITHDRAWAL AND REVIVAL OF COMPLAINTS, 3 C.W.N. 490.

See CRIMINAL PROCEEDINGS, 16 B. 729.

See CRIM. PRO. CODE, 1898, ss. 4, 195 and 487, 20 M. 383=2 Weir 613.

See CRIM. PRO. CODE, 1898, ss. 155, 156, 164, 190, 476, 8 Bom. L R. 589=4 Cr. L.J. 183.

See CRIM. PRO. CODE, 1898, ss. 190, 195, S.C. 49, Oudh.

Difference between sanction and complaint—*See* CRIM. PRO. CODE, 1898, ss. 190, 195, 436, 439, 6 Cr. L.J. 25=U.B.R. 1907, Crim. Pro. Code 1.

Dismissal of complaint without examining complainant on oath—Validity of sanction to prosecute complainant—*See* CRIM. PRO. CODE, 1898, ss. 190 and 202, 4 O.C. 127.

See CRIM. PRO. CODE, 1898, ss. 248, 253, 403, 22 B. 711.

Grant of sanction—Power to question grant of sanction—*See* CRIM PRO CODE, 1898, ss. 439, 476, 23 A. 249=A.W.N. 1901, 59.

See CRIM. PRO. CODE, 1898, ss. 439, 476, 26 A. 249=A.W.N. 1904, 15.

Cases of—Whether triable by those persons before whom the offence was committed—*See* CRIM. PRO. CODE, 1898, s. 487, U.B.R. 1892—1896, Vol. I, 53.

See CRIM. PRO. CODE, 1898, ss. 487, 195, 16 C. 766, F.B.

See CRIM. PRO. CODE, 1898, ss. 537, 197, 2 Weir 710.

See EUROPEAN BRITISH SUBJECT, 9 B. 288, F.B.

See FALSE CHARGE, 32 C. 180, 7 M. 292= 1 Weir 185=8 Ind. Jur. 139, 8 A. 382=A.W.N. 1886, 133, 4 C.W.N. 347.

See FALSE EVIDENCE, 6 C. 440=7 C.L.R. 330.

See FORGERY, 12 B. 36, Rat. Un. Cr. C. 83.

See MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION, L.B.R. 1893—1900, 190.

See PENAL CODE, s. 124-A, 5 M.L.T. 415 =32 M. 338=9 Cr. L.J. 506=2 Ind. Cas. 193.

See PENAL CODE, s. 182, 11 Cr. L.J. 3=4 Ind. Cas. 477=3 S.L.R. 132.

Sanction to prosecute—concluded.

——10.—Miscellaneous Cases—*concluded.*

See PENAL CODE, ss. 182 and 211, 4 N.L.R. 136.

See PENAL CODE, s. 183, 3 P.L.R. 1904.

Incorrect statement in answer to irrelevant question—Whether sanction may be given—Intention—Mistake—Effect--*See* PENAL CODE, s. 193, 72 P.L.R. 1911=14 P.W.R. 1911=10 Ind. Cas. 840=12 Cr. L.J. 265.

See REFERENCE TO HIGH COURT, Rat. Un. Cr. C. 623=Cr. Rg. 48 of 1892.

See REVISION—GENERAL PRINCIPLES, 7 Bom. L.R. 84=2 Cr. L.J. 54, 4 L.B.R. 339=9 Cr. L.J. 24, Rat. Un. Cr Cas. 895=Cr. Rg. 9 of 1897.

See REVISION—MISCELLANEOUS CASES, 4 A.L.J. 805=6 Cr. L.J. 454=A.W.N. 1908, 28.

See SESSIONS JUDGE, JURISDICTION OF, 23 B. 50, 20 C. 633, 23 M. 205=2 Weir 161.

Application for sanction to prosecute—Transfer of, to what Court to be made—*See* TRANSFER OF CRIMINAL CASES—MISCELLANEOUS CASES, 8 M.L.T. 297=7 Ind. Cas. 861=11 Cr. L J. 534=20 M.L.J. 982.

Sandoor.

The state of Sandoor—Jurisdiction of Bellary Sessions Court—*See* JURISDICTION OF CRIMINAL COURTS—GENERAL, 3 M.H.C 354.

Sanitary Inspector.

Appointed by Local Board, whether a public servant—*See* MAD. ACT V OF 1884, s. 43, 21 M. 428=1 Weir 729.

Santhal Parganas Act.

See BEN. ACT XXXVII OF 1855.

Sanyasi.

(1)—*Resumption by Sanyasi of renounced rights.*—Where a man has lost his rights when he became a sanyasi, it is not open to him to resume them. The ordinary rule of Hindu Law is that rights once vested are not divested, and he does not regain his status in his natural family he has renounced. MUTHUSAMY SASTRY v. NARAYANA SASTRY, **8 M.L.T. 300=8 Ind. Cas. 393=21 M.L.J. 195=1191, 1 M.W.N. 36=11 Cr. L.J 641.**

Sarkhat.

Containing entries of payments and receipts—Several items of over Rs. 20—Each item to be stamped—*See* ACT II OF 1899, ss. 2 (23), 62, 63, 11 A L.J. 309=35 A. 390=14 Cr. L.J. 392=20 Ind. Cas. 216.

Saving Clause.

See STATUTES, CONSTRUCTION OF, 11 B. 657.

Scandalous or Defamatory matter.

See DEFAMATION.

See LIBEL.

See APPLICATION TO HIGH COURT, Rat. Un. Cr. C. 480.

Scheduled Districts Act.

See ACT XIV OF 1874.

Schools, (Reformatory) Act.

See ACT V OF 1876.

See ACT VIII OF 1897.

Sea-customs Act.

Ses ACT VIII OF 1878.

Sea Customs, and Merchandise Marks Acts, Amendment of.

See ACT IX OF 1891.

Seals.

Comparison of native—*See* EVIDENCE—GENERAL, 6 W.R. Cr. 5.

Several—of different descriptions found in the possession of the accused—Complete and separate offence committed in respect of each seal—*See* FORGERY, 13 W. R. Cr. 16.

Seamen.

See ACT I OF 1859, s 83, cls. 1 and 2, 12 C. 438.

Search.

See CRIM. PRO. CODE, 1898, ss. 100, 103.

(1)—*Crim. Pro. Code* (1898), s. 165—*Search—Inspector seated outside the house—Search by constable without written authority—Penal Code,* s. 353.—An Inspector, acting under s. 165 of the Code, seated himself outside the house of the accused and sent a constable into the house to conduct the search. The accused asked the constable for a list of articles he had come to search for, and, when none was produced, he objected to the search being carried out by the constable and pushed him out. *Held*, that the accused could not be convicted under s. 353 of the Penal Code. The Inspector himself should have personally conducted the search and he was not justified in sitting outside and directing a subordinate to search, without giving a written order specifying the articles to be searched for. VENKATAPPA NAIDU v. KING-EMPEROR, **17 M.L J. 323=6 Cr.L.J. 105.** [*R.*, 13 Cr. L.J. 763=17 Ind. Cas. 75=23 M.L.J. 445=1912 M.W.N. 1111.]

(2)—*Person requisitioned to attend— Failure to attend—Penal Code, s.* 187.—A person required to attend a search, failing to do so without reasonable excuse, is liable to conviction and punishment under s. 187, Penal Code. QUEEN-EMPRESS v. NGA HAT, **L B.R. 1893—1900, 406.**

(3)— *Disregard of legal provisions in conducting search—Effect on admissibility of evidence.*—Where, in conducting a search, the provisions of s. 103, Crim. Pro. Code, have been completely disregarded, *held* that what would otherwise be relevant does not become irrelevant, because it was discovered in the course of a search in which those provisions were disregarded. BARINDRA KUMAR GHOSE v. EMPEROR, **37 C. 467=14 C.W.N. 1114=7 Ind. Cas. 359=11 Cr. L.J. 453.**

Search—*concluded.*

Possession of arms — Illegality of—*See* ACT XXXI OF 1860, s. 32 (6), 2 N.W.P. 57.

Witness to search—*See* ACT I OF 1878, ss. 14, 15 and 16, 4 L.B.R. 121=14 Bur. L.R. 202=7 Cr. L.J. 87.

See ACT I OF 1878, s. 9, 2 O.C. 99.

Entry and search of boat between sunset and sunrise without warrant—*See* ACT I OF 1878, ss. 15, 19, 5 L.B.R. 56, F.B.=2 Ind. Cas. 546.

Having in possession or control arms and ammunitions without license—Search for arms —Legality of the search—*See* ACT XI OF 1878, ss. 19 *(f)*, 20, 25 and 29, 27 C. 692=4 C.W.N. 750.

Illegal search, if objection to conviction—*See* ACT XII OF 1896, s. 45, L.B.R. 1893—1900, 369.

Mixture of cocaine and another drug found—Search without warrant — Legality of — Illegality of search whether a bar to conviction —*See* U. P. ACT IV OF 1910, s. 63, 11 A.L.J. 442=19 Ind. Cas. 332=14 Cr. L.J. 236=35 A. 358.

For stolen property without warrant — Legality—Right of private defence—*See* CRIM. PRO. CODE, 1898, ss. 94, 98, 165, 9 Ind. Cas. 64=15 C.W.N. 343=12 Cr. L.J. 8=13 C.L.J. 639=38 C. 304.

See CRIM. PRO. CODE, 1898, ss. 96, 105, 165, 13 C W.N. 458=9 C.L.J. 298=36 C. 433 =5 M.L.T. 367.

See CRIM. PRO. CODE, 1898, ss. 102, 103, 3 L.B.R. 229=4 Cr. L.J. 390.

House-search by Police —General search—Search for specific article—Criminal trespass—Right of private defence—*See* CRIM. PRO. CODE, 1898, ss. 435, 437, 16 C.W.N. 1078=17 Ind. Cas. 76=13 Cr. L.J. 764.

Police search—Place beyond the limits of the station of the Police officer conducting search—Illegality—*See* PENAL CODE, ss. 332, 147, 99, 8 S.L.R. 1.

Right of occupant to be present at search —Denial of this right, effect of—Meaning of 'occupant'—Finding of incriminating articles in a house—Presumption—*See* PENAL CODE, ss. 399, 402, 18 C.W N. 498=41 C. 350=15 Cr. L.J. 385=23 Ind. Cas. 985.

Search List.

See CRIM. PRO. CODE, 1898, ss. 101, 103.

See SEARCH.

(1)—*Search list—Testimony of a witness to it—Crim. Pro. Code, s. 288—Testimony of a witness before the committing Magistrate—Forgery—Handwriting—Expert testimony—Conviction thereon.*—The statement of a witness in a search list which he attested, that the accused lived in the house which was searched, but which he retracted at the trial, could not be taken as evidence of that fact. The testimony of a witness given before the committing Magistrate may, by the special provisions of s. 288 of the Crim. Pro. Code, be accepted as

Search List—*concluded.*

substantive evidence, if he is examined at the trial before the Sessions Court, and may be preferred to the statement made by him at the trial; but a statement made on any other occasion by him cannot be used except to corroborate or contradict the evidence given by him at the trial. The question whether the standard writings compared by the expert with the disputed ones are properly proved is a matter of great importance when it is sought to prove that the disputed writings are in the handwriting of any particular person, and it is the duty of the prosecution to adduce very satisfactory evidence to show that the documents given to the expert for comparison were in the handwriting of the person whose writing they purport to be. If the standrad writings and the disputed writings were grouped separately before submission to the expert, and the expert knew what the prosecution wished to be proved, this circumstance would detract from the weight to be attached to the expert's testimony. It is unsafe to convict an accused person of forgery on the uncorroborated testimony of an expert alone, especially when the handwriting of the accused is not marked by any striking peculiarities which he could not avoid. BASRUR VENKAT ROW v. EMPEROR, **1912 M.W.N 125 =11 M.L.T. 93=22 M.L.J. 270=14 Ind. Cas. 418=13 Cr. L.J. 226=36 M. 159.** (11 Cr. L.J. 114, 2 A.L.J. 444, 6 A.L.J. 184, *Appr.*)

See CRIM. PRO. CODE, 1898, s. 103, 11 Cr. L.J. 136=5 Ind. Cas. 438=7 M.L.T. 362, 2 Weir 47=2 Weir 515.

See CRIM. PRO. CODE, 1898, ss. 103, 166, 8 Ind. Cas. 178=8 M.L.T. 451=11 Cr. L.J. 576 =21 M.L.J. 281.

Falsity of—Sanction to prosecute—*See* CRIM. PRO. CODE, 1898, s. 476, 11 M.L.T. 191=13 Ind. Cas. 832=13 Cr. L.J. 144=1912 M.W.N. 400.

Search Warrant.

See CRIM. PRO. CODE, 1898, ss. 94 to 99.

See WARRANT.

(1)—*Crim. Pro. Code* (1882), *ss.* 94, 96—*Search warrants.*—In order to justify the issue of a search warrant, it is necessary that there shall be some investigation, inquiry, trial or other proceedings under the Crim. Pro. Code, pending before the Magistrate. He can act upon information which he considers to be credible, provided it is based upon a complaint, and the complainant is examined upon solemn affirmation according to law. In the absence of these requisites, the issuing of a search warrant is *ultra vires.* All subsequent orders relating to the detention and delivery of the property seized, except to him from whose possession it has been taken, are also *ultra vires. In re* HARI LAL BUCH, **22 B. 949.** [*F.*, 35 C. 1076=12 C.W.N. 1075=8 Cr. L.J. 235; *R.*, 2 L.B.R. 76, 29 M. 126=16 M.L.J. 79= 1 M.L.T. 31=3 Cr. L.J. 274.]

(2)—*Crim. Pro. Code* (1898), *s.* 100—*Complaint by guardian of wrongful confinement*—

Search Warrant—*concluded.*

Warrant for production of ward—Grown-up ward voluntarily appearing and denying allegations of wrongful confinement—Proceedings directed to be stayed—Guardian's civil remedy.—A search warrant was issued for the production of a ward, alleged by the complainant, as his guardian, to have been wrongfully confined. The boy, who was quite grown up and able to look after himself, voluntarily appeared and denied complainant's allegations of wrongful confinement. *Held* that, under the circumstances, the Magistrate should have declined to take any further action in the criminal proceeding, leaving the complainant to take such civil action as he may be advised for the recovery of the person of the ward under s. 25 of the Guardian and Wards Act (VIII of 1890). IMPERATOR v. PIRU, **2 S.L R. 2, Cr. = 10 Cr. L.J. 219.**

(3)—*Signing search warrant with pencil.*—It is objectionable to sign search warrants with a pencil. NARAIN DAS v. KING-EMPEROR, **5 O.C. 37.**

Credible information — Presumption— *See* ACT III OF 1867, ss. 3, 4, 5, 6, 10, 9 N.L.R. 68 = 14 Cr. L J. 293 = 19 Ind. Cas. 949.

See ACT III OF 1867, ss. 3, 4, 6, 29 P.R. 1881, Cr.

See ACT III OF 1867, ss. 3, 6, A.W.N. 1905, 105 = 2 Cr. L.J. 243.

See ACT III OF 1867, ss. 4, 5, 6, A.W.N. 1905, 257 = 28 A. 210.

Issued without affixing Court seal—Warrant signed by Magistrate outside his jurisdiction—*See* ACT III OF 1867, s. 5, 23 P.R. 1910, Cr. = 8 Ind. Cas. 137 = 85 P.L.R. 1910.

See ACT III OF 1867, s. 5, 9 P.R. 1876, Cr., 19 P.R. 1871, Cr., 7 P.R. 1882, Cr. F.B., 22 P.R. 1895, Cr.

See ACT III OF 1867, ss. 5, 6, 5 A.L.J. 59 = A.W.N. 1908, 9 = 7 Cr. L.J. 19 = 30 A. 60.

See ACT III OF 1867, s. 6, 1 A.L.J. 115.

Form of—*See* ACT XI OF 1878, s. 25, 15 A. 129 = A.W.N. 1893, 48.

See BOM. ACT IV OF 1887, s. 6, Rat. Un. Cr. C. 825 = Cr. Rg. 68 of 1895.

See BOM. ACT IV OF 1887, s. 8, 26 B. 641 = 4 Bom. L.R. 427.

See BUR. ACT I OF 1899, ss. 6 and 7, 1 L.B.R. 120.

See CRIM. PRO. CODE, 1898, s. 100, 2 S.L.R. 2, Cr. = 10 Cr. L.J. 219.

See CRIM. PRO. CODE, 1898, s. 523, 26 B. 552 = 4 Bom. L.R. 276.

See PRIVATE DEFENCE, RIGHT OF, 11 C. W.N. 836 = 6 C.L J. 127 = 6 Cr. L.J. 38.

See UNLAWFUL ASSEMBLY, 7 N.W.P. 209.

Seas.

See HIGH SEAS, OFFENCES COMMITTED IN.

Crim. Pro. Code, 1898, s. 188—Trial of Native Indian subject for offence committed in the

Seas—*concluded.*

High Seas—Sanction of Local Government not necessary—"Territory" meaning—Law applicable—*See* CRIM. PRO. CODE, 1898, s. 188, 5 L B.R. 221 = 10 Ind. Cas. 705 = 12 Cr. L.J. 198.

Right to fish in the—*See* MISCHIEF, 8 B.H. C. Cr. 63.

Season Ticket-holder.

Travelling without ticket—*See* ACT IV OF 1879, s. 31, 12 C. 192.

Seat.

See PRACTICE AND PROCEDURE, 7 O.C. 82.

Sea-water.

Possession of—*See* MAD. ACT IV OF 1889 ss. 3, 74 (*b*), 1 Weir 896.

Second Appeal.

See SPECIAL OR SECOND APPEAL.

Second Marriage.

See MAINTENANCE, 7 C.P. L.R. Cr. 39.

Hindu wife, whether entitled to separate maintenance on the ground of husband's—*See* MAINTENANCE, 7 M. 187 = 2 Weir 640.

Second Requisition for Security.

See SECURITY TO KEEP THE PEACE—SECOND REQUISITION FOR SECURITY.

Second Wife.

Husband marrying a—*See* MAINTENANCE, 66 P.R. 1887, Cr., 14 P.R. 1901, Cr. = 122 P.L. R. 1901, Cr.

Secretary of State.

Contract entered into with, to work in Government plantations, Burma—Neglect of labourer to do work contracted for—Right of, to proceed under the Act—*See* ACT XIII OF 1859, s. 1, 3 L.B.R. 33.

Secrets (Official) Act.

See ACT XV OF 1889.

Security.

Admission by person required to furnish—*See* ADMISSION, 17 M.L.J. 438.

For performance of order—*See* MAINTENANCE, 24 W.R. Cr. 72.

See STOLEN PROPERTY, 2 Bom. L.R. 343.

Security Bond.

See CRIM. PRO. CODE, 1898, ss. 106 to 126.

See SECURITY FOR GOOD BEHAVIOUR.

See SECURITY PROCEEDINGS.

See SECURITY TO KEEP THE PEACE.

See SURETY.

(1)—*Crim. Pro. Code* (1882), ss. 109, 110, 123—*Cumulative security bonds.*—A Magistrate cannot legally amalgamate ss. 109 and 110, Crim. Pro. Code, and require the execution of two bonds for good behaviour for an aggregate period of eighteen months and, in default of the same being furnished, commit to

Security Bond—*continued.*

prison for eighteen months' rigorous imprisonment. At any rate, in such a case, the provisions of cl. 2 of s. 123 should be observed. QUEEN-EMPRESS v. BALYA *bin* BHIMAPPA, **Rat. Un. Cr. C. 946 = Cr. Rg. 52 of 1897.**

(2)—*Crim. Pro. Code* (1882), s. 514—*Security bond—Denial of execution.*—A Magistrate, acting under s. 514, must proceed on legal evidence and the penalty can be enforced only on proof that the bond has been duly executed and forfeited. The denial of execution makes it incumbent on the Magistrate to take evidence as to the fact of execution. *In the matter of* CHANDRA SEKHAR RAI, **11 C. 77.**

(3)—*Crim. Pro. Code* (1898), s. 125—*Power of District Magistrate to direct cancellation of security bond* —A District Magistrate has power under s. 125 of the Crim. Pro. Code, to direct the cancellation of a bond to keep the peace executed on an order by a subordinate Magistrate on other grounds than that the bond is no longer necessary. The language of the section is sufficiently wide and there is nothing in the section to qualify or restrict the natural meaning of the language used, or to indicate that sufficient reasons mean reasons in connection with something which has occurred after the execution of the bond. NABU SARDAR v. EMPEROR, **34 C. 1 F.B. = 11 C.W.N. 25 = 4 C.L. J. 428 = 4 Cr. L J. 399 = 1 M.L T. 368.** (32 C. 948, *Overruled*). [*F.*, 7 Cr L.J. 348 = 12 P. W.R. 1908, Cr.; *R.*, 37 C. 72 = 14 C.W.N. 306 = 5 Ind. Cas. 555 = 11 Cr. L.J. 147. 34 M. 139 = 7 M.L.T. 304 = 6 Ind. Cas. 682 = 11 Cr. L.J. 393, 25 M.L.J. 459 = 14 M.L.T 328 = 1913 M. W.N. 715 = 21 Ind. Cas. 756 = 14 Cr. L.J. 546.]

(4)—*Crim. Pro. Code* (1898), *ss.* 109 *and* 110 —*Security bonds under both sections.*—There is no provision for taking security bonds from an accused person both under s. 109 and s. 110 of the Code. MANIKKAM v. EMPEROR, **6 M. L T. 158 = 3 Ind. Cas. 77 = 10 Cr. L.J. 243.**

(5)—*Crim. Pro. Code* (1898), *ss.* 110 *to* 123, 438, 439—*Illegality of the order sending the security to the Tahsildar and Sub-Inspector of Police for attestation.*—Where the accused's security-bond was forwarded to the Tahsildar and the Sub-Inspector of Police for attestation, *held*, that the procedure adopted by the Magistrate was illegal and he was directed to make the inquiry himself. MITHOO v. CROWN, **7 P W.R. 1907, Cr. = 87 P.L.R. 1907 = 8 Cr. L.J. 181**

(6)—*Crim. Pro. Code* (1898), *ss.* 514 *and* 516 —*Bond for appearance before Court—Forfeiture—Court which can order forfeiture—Levy of the amount* —In the case of a bond for appearance before a Court, the tribunal empowered to forfeit it, is that Court, and no other Court has jurisdiction to do so. Therefore, where a surety executed a bond for appearance of a certain accused before the Court of Sessions, and an order was made by a Deputy Magistrate that the bond be forfeited as the accused failed to appear : *Held*, that the Deputy Magistrate had no jurisdiction to make the

Security Bond—*concluded.*

order. S. 516, Crim. Pro. Code, is only concerned with the power to direct levy of the amount, (which power may be delegated), and not with the forfeiture which is a condition precedent to the levy. HIRA LAL SAHU v. EMPEROR, **10 Cr.L J. 248 = 3 Ind. Cas. 113.**

When to be taken—*See* BREACH OF THE PEACE, 14 B. 25.

See CRIM. PRO. CODE, 1898, s. 91, **A.W.N.** 1901, 35.

Enforcement of penalty of—*See* CRIM. PRO. CODE, 1898, s. 514, 9 C.P.L.R. Cr. 8.

See CRIM. PRO. CODE, 1898, s. 514, 15 P.L. R. 1904

Construction of security bond—*See* CRIM. PRO. CODE, 1898. s 514 (1 to 5), Rat. Un. Cr. C. 547 = Cr. Rg. 22 of 1891.

Order to furnish security whether a sentence. —*See* SENTENCE—GENERAL, 14 Bom L.R. 144 = 1 Bom. Cr. C. 85 = 14 Ind. Cas. 672 = 13 Cr. L J. 288.

See WITNESS—MISCELLANEOUS CASES, 22 P.W. R. 1907 Cr. = 6 Cr. L.J. 275.

Security, Forfeiture of.

See SECURITY FOR GOOD BEHAVIOUR, A.W.N. 1906. 13 = 3 Cr.L.J. 91.

Security for Good Behaviour.

See CRIM. PRO. CODE, 1898, ss. 107—126.

See SECURITY BOND.

See SECURITY PROCEEDINGS.

See SECURITY TO KEEP THE PEACE.

See SURETY.

(1)—*Crim. Pro. Code* (1872), *ss.* 504, 505—*Security for good behaviour on conviction.*—Where a person was sentenced to a period of imprisonment for having dishonestly received stolen property, and also to furnish security for good behaviour *held*, that the order requiring security should not have formed part of the sentence. There should have been a proceeding drawn out representing that the Magistrate was satisfied, from the evidence as to the general character adduced before him, that the accused before him was by repute an offender within the terms of s. 500, Crim. Pro. Code, and therefore security would be required of him. An order also should have been recorded to the effect that, on the expiration of the term of imprisonment, the prisoner should be brought up for the purpose of being bound over. EMPRESS OF INDIA v. PARTAB, **1 A. 666.** [*F.*, 9 C. 215.]

(2)—*Crim. Pro. Code* (1872), *s.* 506—*Security for good behaviour.*—S. 506 solely relates to the calling upon persons of habitually dishonest lives and in that sense "desperate and dangerous," to find security for good behaviour as a protection to the public against a repetition of crimes by them, in which the safety of property is menaced, and not the security of person alone is jeopardised. A person merely guilty of acts of violence, could not be ordered

Security for Good Behaviour—*continued.*

to furnish security for good behaviour. EMPRESS OF INDIA v. NAWAB, 2 **A. 835.** [*R.*, 6 A. 132, 14 Cr. L.J. 5=18 Ind. Cas. 149=16 C.L.J. 467=17 C.W.N. 238.]

(3)—*Crim. Pro. Code* (1882), *ss.* 107, 110—*Order to furnish security for good behaviour for three years.*—A Magistrate has no authority under the law, upon information that suggested the likelihood of an assault being committed and the public peace endangered, to resort to s. 110, and it is altogether *ultra vires* for him to demand security for three years in such a case. EMPRESS v. BABUA, **6 A. 132=A.W N. 1883, 260.** [*R.*, 36 A. 262=15 Cr.L.J.288=12 A.L J. 365=23 Ind. Cas. 496.]

(4)—*Crim. Pro. Code* (1882), *ss.* 110, 526—*Transfer of a proceeding for security for good behaviour.*—Proceedings under s. 110 must be held within the district in which the person from whom it is sought to take security is residing, and not in any other district. Such a proceeding, therefore, cannot be transferred to any Court outside the district within which the accused is residing. *In the matter of the petition of* ARMAR SINGH, **16 A. 9=A.W.N. 1893, 183.** [*Diss.*, 3 O.C. 247, 1 S.L.R. 98=8 Cr. L.J. 356; *Not F.*, 30 A. 47=A.W.N. 1907, 268=7 Cr. L.J. 214, 32 A. 642=7 A.L.J. 813=8 Cr. L.J. 412=6 Ind. Cas. 874; *R.*, 28 C. 709=5 C.W.N. 749, 34 M. 186=8 M.L T. 297=7 Ind. Cas. 861=11 Cr. L.J. 534=20 M.L.J. 982=1910 M.W.N. 459; *D.*, 2 Weir 53.]

(5)—*Crim. Pro. Code* (1882), *ss.* 110, 117, 526—*Transfer of proceeding for security for good behaviour.*—Where a Magistrate has "acted" within the meaning of s. 117, the High Court has no power to make an order of transfer of the case from his Court. *In the matter of the petition of* GUDAR SINGH, **19 A. 291=A.W.N. 1897, 52.** [*R.*, 30 A. 47=A.W. N. 1907, 268=7 Cr. L. J. 214.]

(6)—*Crim. Pro. Code, s.* 110—*Object of requiring security for good behaviour—Sureties.*—The object of requiring security to be of good behaviour is, not to obtain money for the Crown by the forfeiture of recognizances, but to insure that the particular accused person shall be of good behaviour for the time mentioned in the order. It is reasonable to expect and require that the sureties to be tendered should not be sureties from such a distance as would make it unlikely that they could exercise any control over the man for whom they were willing to stand surety. QUEEN-EMPRESS v. RAHIM BAKSH, **20 A 206=A.W.N. 1898, 21.** (22 W.R. Cr. 37, *N.F.*) [*Diss.*, 35 C. 400=7 Cr. L J. 439; *F.*, 36 C. 562=9 C.L.J. 296=13 C.W.N. 556=10 Cr. L.J. 89=2 Ind. Cas. 592, 8 Cr. L.J. 166=1 S L.R. 46, Cr.; *R.*, 24 A. 471, 1 Bom. L.R. 520, 8 Cr. L.J. 344=11 O.C. 267.]

(7)—*Crim. Pro. Code, ss.* 110, 121, 514—*Security for good behaviour—Forfeiture of security bond on conviction of principal.*—Where a person who has given a security bond with surety for good behaviour is convicted of an offence punishable under s. 323, the production of the conviction, and, if necessary, of proof of the identity of the principal, is sufficient evidence upon which a Magistrate is authorized to issue notice to the surety. The surety should show cause why his security bond should not be forfeited. It is not incumbent on the prosecution to prove that the principal was properly convicted, by re-summoning the witnesses on whose evidence the principal was convicted. QUEEN-EMPRESS v. MAN MOHAN LAL, **21 A. 86=A W.N. 1898, 162.** [*R.*, 12 Cr.L.J. 404=11 Ind. Cas. 588=226 P.L.R. 1911=35 P.W. R. 1911, Cr.]

(8)—*Crim. Pro. Code* (1898), *s.* 110—*Forfeiture of security.*—A person who was under security for good behaviour under s. 110, Crim. Pro, Code, does not merely on proof of conviction for dishonest receipt of stolen property by a Court in a Native State, forfeit his security. *Obiter.*—But proof of commission of an offence punishable by the Code entails such forfeiture. CROWN v. DEWA SINGH, **28 P.R. 1910, Cr.=199 P.L R. 1910=45 P.W.R. 1910=8 Ind. Cas. 363=11 Cr.L J. 635.** (2 P.R. 1884, Cr., 17 P.R. 1904, Cr., *D.*)

(9)—*Form of security-bond—Crim. Pro. Code* (1861), ss. 305, 306—*Forfeiture of bond.*—Certain sureties called upon to explain, under s. 305 of the Code of Criminal Procedure, why the bond executed by them should not be enforced, failed to prove the statements which they made; *held* that the order enforcing the bond was valid. *Per Phear, J.*—Although the form of security-bond, Form (F), given in the Appendix to the Code, combined two bonds, namely, one for the principal and one on the part of sureties, the provisions even of s. 300 would be complied with, if these two bonds were upon two pieces of paper instead of one. *In the matter of* BRINDABUN CHUNDER DASS, *In re* TARINEE CHURN MOZOOMDAR, **19 W.R. Cr. 29.**

(10)—*Forfeiture—Offence under Act* XXVI *of* 1870, *of a breach of jail rules.*—Where a person, who had been required to furnish security for good behaviour, was convicted under s. 45, Act XXVI of 1870, of a breach of jail rules, *held*, that an order for the forfeiture of penalty was a proper order, as the word "offence" in s. 514, Crim. Pro. Code, 1872, includes offences under special and local laws as well as under the Penal Code. CROWN v. RAHMAN, **12 P.R. 1875, Cr.** [*R.*, 27 P R. 1881, Cr.]

(11)—*Partial forfeiture of security bond—Court remitting portion of penalty—Subsequent breach—Power to enforce bond.*—Where the accused having furnished security under s. 121 was convicted under s. 352, I.P.C., and thereupon the District Magistrate ordered a partial forfeiture of the bond, and where the accused was again convicted under the same section, and the District Magistrate proceeded to forfeit another portion of the

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amount of the bond, *held*, that the latter order was not justified under s. 514, and that, although the Magistrate could, on the first occasion, remit any portion of the penalty, yet when once remitted, the right of the State to recover it was at an end, and it could not be regarded as forming the penalty of a new bond for the value of the balance of the amount. NATHU v. EMPRESS, **11 P.R. 1889, Cr.** [*R.*, 20 Ind. Cas. 414=14 Cr. L.J. 430.]

(12)—*Crim. Pro. Code*, *ss.* 110, 119, 437—*Discharge of a person called upon to furnish security for good behaviour—Further enquiry.*—The term "accused" means "a person over whom a Magistrate or other Court is exercising jurisdiction." A person called upon to furnish security for good behaviour is an accused person, and a District Magistrate is competent under s. 437, to order further enquiry in cases where the subordinate Magistrate has discharged the person under s. 119. QUEEN-EMPRESS v. MUTASADDI LAL, **21 A. 107=A.W.N. 1898, 185.** (16 B. 661, 23 C. 493, *F.*) [*Diss.*, 42 P.R. 1905. Cr.=131 P.L.R. 1905; *F.*, 35 B 401=13 Bom.L R. 505=1 Bom. Cr. C. 49=12 Cr. L.J. 430=11 Ind Cas. 614, 36 C. 163=8 C.L.J. 565=13 C.W.N. 151=9 Cr. L.J. 36=1 Ind. Cas. 737; *Appl.*, 25 A. 375 =A.W.N. 1903, 79; *R.*, 24 A. 148=A.W.N. 1901, 206, 34 A. 533=10 A.L.J. 27=13 Cr.L. J. 452=15 Ind. Cas. 84, 36 A. 147=12 A.L.J. 167=15 Cr. L.J. 39=22 Ind. Cas. 183, 28 C. 709=5 C.W.N. 749, 36 M. 315=14 Cr. L.J. 559=21 Ind. Cas. 159.]

(13)—*Crim. Pro. Code*, *ss.* 110, 118—*Security for good behaviour—Fresh proceedings taken immediately after the period of a previous security bond has expired.*—Locus pœnitentiæ.—Ranjit was bound to over to be of good behaviour for a period of three years, which term expired on the 13th of June, 1905. On the 20th of June, 1905, fresh proceedings were started against him under s. 110 of the Code of Criminal Procedure. *Held*, that the interval was not long enough to give Ranjit any opportunity of showing that he was willing to adopt an honest livelihood, and that evidence relating to events prior to the 13th June, 1905, was inadmissible in support of a fresh order under s. 110. EMPEROR v. RANJIT, **A.W.N. 1906, 30=3 A.L.J. 29=3 Cr.L.J. 196=1 M.L.T. 58=28 A. 306.** (A.W.N. 1905, 34, *F.*) [*R.*, 14 Cr. L.J. 5=16 C.L.J. 467=17 C.W.N 238=18 Ind. Cas. 149.]

(14)—*Crim. Pro. Code* (1898), *ss.* 123, 397—*Failure to give security—Imprisonment.*—The words "committed to prison" used in s. 121 (1), Code of Criminal Procedure, are equivalent to a sentence of imprisonment, and do not merely mean committed to custody. The words "detained in prison" in sub-s. (2), have also a similar meaning. A person failing to give security for good behaviour is liable to imprisonment, and the imprisonment takes effect from the day on which the warrant of the Magistrate directing detention in prison has been executed. A person was ordered to furnish security to be of good behaviour or to be rigorously imprisoned for three years. The order was submitted to the Sessions Judge, and the person was ordered to be rigorously imprisoned, pending the order of the Sessions Judge. In the meantime, he was convicted of another offence by another Magistrate. *Held*, that the former sentence should be carried out first. EMPEROR v. TULA KHAN, **30 A. 334= A W.N. 1908, 133=5 A.L.J. 318=7 Cr. L.J. 427=4 M.L T. 41, F.B** (P.R. 1895,Cr., p. 5, *R.*) [*Not F.*, 31 M. 515=8 Cr. L J. 402=4 M.L.T. 415; *R.*, 9 C.L.J 439=13 C.W.N. 318=10 Cr. L.J. 122=2 Ind. Cas. 651, 11 Cr. L.J. 251=5 Ind. Cas. 809=7 M.L.T. 104; *D.*, 13 Cr. L.J. 189=13 Ind. Cas. 1005=8 N.L.R. 20.]

(15)—*Crim. Pro. Code* (1872), *Ch.* XXXVIII *and s.* 280—*Conviction for theft—Security for good behaviour without separate proceedings—Appeal.*—A person being convicted of theft, was sentenced to two years' rigorous imprisonment, and to pay a fine of Rs. 50 or in default to suffer further rigorous imprisonment for six months. It was further directed, but without taking any proceedings under Ch XXXVIII of the Crim. Pro. Code, 1872, that "at the expiry of the sentence now passed on him he should be brought in Court and enter into recognizances in Rs. 100 with two sureties in Rs. 100 each for good behaviour for a further term of one year, or until he furnishes the decided sureties." *Held*, that the Magistrate's order with regard to the securities was illegal, that the order without any proceeding under Ch. XXXVIII, Crim. Pro. Code, could not be treated as an order made under that chapter, and that, as it was made part and parcel of the sentence passed under s 379, I.P.C., it could, under s. 280, Crim. Pro. Code, be reversed by the Sessions Judge. EMPRESS v. JEONATH, **A. W.N. 1881, 154.**

(16)—*Crim. Pro. Code* (*Act* X *of* 1872), *s.* 505—*Joint inquiry—Several persons.*—Every proceeding for requiring security for good behaviour should be individual and distinct for each person proceeded against. Where several persons form a gang with the object of committing theft of robbery, they should be proceeded against under s. 401 of the Penal Code. EMPRESS v. NAKCHED, **A.W.N. 1882, 92.**

(17)—*Crim. Pro. Code* (*Act* X *of* 1882), *s.* 110—*Accused brought in custody from another district*—No order for security for good behaviour can be made in respect of persons brought as accused of some offence under police custody and discharged from such custody on their own recognisance to appear when called upon. EMPRESS v. CHETA, **A.W.N. 1884, 85.**

(18)—*Crim. Pro. Code* (*Act* X *of* 1882), *ss.* 110 *to* 113, 537—*Irregularities in procedure.*—The failure on the part of a Magistrate, who has passed an order for security for good behaviour, to make an order in writing setting forth the information received and other details, is not an irregularity which could vitiate the

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order unless it has caused a failure of justice. QUEEN-EMPRESS v. BHAGWAN DAS, **A.W.N. 1891, 40.**

(19)—*Crim. Pro. Code* (1882), ss. 123, 124—*Security for good behaviour—Imprisonment in default of finding security—Powers of District Magistrate.*—As long as proceedings under s. 110 coupled with s. 123 are before the Magisterial Court, an appeal lies under s. 406 to the Magistrate of the District from any order passed by a Magistrate other than the Magistrate of the District, and very probably an appeal would continue to lie until the Sessions Judge has passed an order under s. 123. But when once the Sessions Judge, in the exercise of the powers given to him by s. 123, passes an order calling for security and directing that rigorous imprisonment be inflicted in default, that order is not appealable to the District Magistrate, and, as a matter of course, it follows that it is not appealable to the Sessions Judge. EMPRESS v. CHHOTIA, **A.W.N. 1893, 183.**

(20)—*Crim. Pro. Code (Act X of 1882)*, ss. 90, 107, 112, 114—*Security for good behaviour—Information—Issue of warrant in first instance.*—While it is necessary that, before an order under either s. 107 or s. 110 of the Crim. Pro. Code, is issued, there must be credible information on which the Magistrate has taken the proceeding, there is a difference in the quality of the information necessary in the two cases. In cases under s. 107, there must be clear and definite information that a party is likely to commit a breach of the peace, while, in most cases under s. 110, what is available is merely some reliable information not definite, that a man is a habitual thief or receiver of stolen property. And a statement by the Magistrate that he had information to that effect is a sufficient compliance with the terms of s. 112. Though the issue of a warrant in the first instance in security cases, instead of a summons, is not strictly justified under s. 114 of the Crim. Pro. Code, the issue is justified under s. 90 when the Magistrate thinks that the accused may not appear in answer to a summons. And the irregularity, if it is one, is cured by s. 257. *In the matter of the petition of* KALA, **A.W.N. 1896, 73.** (6 A. 26, 6 A. 214, *D.*)

(21)—*Crim. Pro. Code* (1882), ss. 110, 406—*Order for security for good behaviour—Appeal.*—No appeal lies from the order of a District Magistrate, under s. 110, Crim. Pro. Code, requiring security for good behaviour. EMPRESS v. PHULLU, **A.W N. 1898, 127.**

(22)—*Crim. Pro. Code* (1898), s. 110—*Security for good behaviour—Discretion of Magistrate to accept or reject security offered.*—The question whether the security offered by a person called upon to give security for good behaviour is sufficient or not is a question to be decided upon the merits of each case. The mere fact that the sureties tendered live in a different district from that of the person called upon to furnish security does not, of itself, disqualify them. At the same time, the sureties should not be persons resident at such a distance as to make it unlikely that they could exercise any control over the man for whom they were willing to stand surety. EMPRESS v. BABU, **A.W.N. 1898, 199.** (20 A. 206, *R.*)

(23)—*Crim. Pro. Code*, ss. 110, 123—*Order for imprisonment in default of payment of security passed by Magistrate and confirmed by Sessions Judge—Validity.*—Where a Magistrate directed the accused to furnish security for good behaviour and also directed that, in the event of security not being furnished, the accused should be rigorously imprisoned for three years, and the order was confirmed by the Sessions Judge, *held* that, although the Magistrate was not competent to direct the imprisonment of the accused in default of furnishing security, yet, the order of the Sessions Judge confirming the order could be taken as an order under s. 123. The High Court, therefore, declined to interfere. EMPEROR v. JAWAHIR, **A.W N. 1903, 28.** (A W.N. 1899, 151,) [*R.*, 30 A. 334 = A.W.N. 1908, 133 = 5 A.L.J. 318 = 7 Cr. L. J. 427 = 4 M.L.T. 41, F.B.]

(24)—*Crim. Pro. Code* (1898), s. 117 (3)—*Security for good behaviour—Evidence, general repute.*—The power given by s. 110 is an extensive one, and one which requires to be exercised with discretion and with caution. For the purpose of ascertaining whether a person is an habitual offender, evidence of general repute may be accepted. EMPEROR v. JAGANNATH, **A.W.N. 1903, 181.** (Definition of term "general repute" is defined in 23 C. 621, *F.*) [*R.*, A.W.N. 1904, 140.]

(25)—*Amount of security.*—In fixing the amount of security, the Magistrate should see that a fair chance at least of complying with the required conditions is afforded to the accused, and the amount of security should be fixed according to the station in life of the accused. BARKAT v. EMPRESS, **24 P.R. 1900, Cr. = 24 P.L.R. 1901.**

(26)—*Amount of security.*—The Chief Court can call upon a Magistrate to state the grounds or information on which the amount of the security has been fixed under s. 505, Crim. Pro. Code, 1872. RAM SINGH v. EMPRESS, **1 P.R. 1883, Cr.**

(27)—*Amount of security.*—In fixing the amount of the security, the means and station in life of the person concerned should also be considered along with the danger to the public. There is no warrant in law for taking separate bonds from the accused and his sureties individually and severally, exceeding in the aggregate the amount for which the accused is liable. JAWAYA v. EMPRESS, **30 P.R. 1890, Cr.** [*F.*, 17 P.R. 1900, Cr.]

(28)—*Amount of security.*— In fixing the amount of security, the station of life of the person concerned should be considered and a fair chance of complying with the required conditions afforded. A condition that the is sureto

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should be respectable landowners is obviously opposed to justice. WASYA v. EMPEROR, 28 P R. 1901, Cr. (23 C. 80, 16 B. 372, 2 C. 384, *R.*) [*R.*, 142 P.L.R. 1914=6 P.R. 1914, Cr., 16 P.R. 1905, Cr., 18 P.R. 1906, Cr.]

(29)—*Amount of security— Discretion to be exercised.*—A Magistrate ought, in taking security for good behaviour, to exercise a reasonable discretion. He ought not to order security to be furnished in unreasonably large sums out of all proportion to the means of the parties. *In the matter of* JUGGUT CHUNDER CHUCKERBUTTY, 2 C. 110.

(30)—*Crim. Pro. Code* (X *of* 1872), *s.* 505= *s.* 110 *of the Act* V *of* 1898—*Amount of security.*—In a case of security for good behaviour, it is competent for the High Court to call upon a Magistrate to state the grounds on which he fixed the amount of security. A person from whom security is demanded should be afforded a fair chance of complying with the required conditions of security. EMPRESS v. DEDAR SIRCAR, 2 C 384=1 C.L.R. 95. [*Appr.*, 16 B. 372; *R.*, 28 P.R. 1901, Cr.]

(31)—*Crim. Pro Code* (1861), *s.* 296 (=*s* 109, *Crim. Pro. Code,* 1898)—*Security for good behaviour—Separate proceedings— Amount of security.*—Separate proceedings should be instituted against each person charged under s. 296, unless there is association between them which would justify a contrary course. The power given by s. 296 is one that should be exercised discreetly, and in fixing the amount of security, the Magistrate should consider the station in life of the person concerned and should not go beyond a sum for which there is a fair probability of his being able to find security. The imprisonment is provided as a protection to society against the perpetration of crime by individual and not as a punishment for a crime committed, and being made conditional on default of finding security, it is only reasonable and just that the individual should be afforded a fair chance at least of complying with the required condition of security. HIGH COURT PROCEEDINGS, 26TH APRIL 1869, NO 767, 2 Weir 52=4 M.H.C. Ap. 46. [*F.*, 16 B. 372.]

(32)—*Considerotions for fixing the amount of the security.*—The amount of the security required must be within the means and station in life of the accused. The amount fixed should not be beyond the means of the accused ALI *alias* TOTA v. EMPRESS, 17 P.R. 1900, Cr. (30 P.R. 1890, Cr., *R.*)

(33)—*Crim. Pro. Code*, *s.* 118—*Security—Station in life of person concerned.*—In fixing the amount of security under s. 118, Crim. Pro. Code, the Magistrate should consider the station in life of the person concerned and should not go beyond a sum for which there is a fair probability of his being able to find a security. REG. v. RAMA, Cr. Rg. 2 of 1892.

(34)—*Requiring cash deposit in lieu of bond illegal* —An order requiring persons to deposit

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cash, in lieu of entering into a bond as security for their future good behaviour, is illegal. *In re* KALA CHAND DASS, 3 J.G. 14=6 C. 14=6 C. L.R. 128. (7 W.R. Cr. 30, *R.*)

(35)—*Crim. Pro. Code* (1882), *ss.* 110 *and* 118—*Condition as to sureties — Validity.*—Where a Magistrate ordering a person to give security under s. 118 of the Code, required that the sureties should be persons of adequate means, position, and respectability residing in the neighbourhood of the person and able to exercise a control over his behaviour, *held,* that the limitations imposed by the Magistrate would not prevent the petitioner from offering any person as surety, but only conveyed to him an intimation as to the class of persons. JHOJHA SINGH v. QUEEN-EMPRESS, 24 C. 155. [*R.*, 2 L.B.R. 76, 6 O.C. 199, 5 Cr. L. J. 148=14 P L.R. 1907=5 P.W.R. 1907, Cr. =18 P.R. 1906, Cr., 8 Cr. L.J. 344=11 O.C. 267.]

(36)—*Crim. Pro. Code*, *ss.* 109, 110—*Security for good behaviour—Restriction as to place of residence and caste of surety—Validity*—A Magistrate, while ordering a person to furnish security for good behaviour for one year, ordered that "surety must not be from Karhati and must not be of Kunbi class as those persons assist accused for the sake of money." *Held,* both the prohibitions were illegal. QUEEN-EMPRESS v. YESU, 1 Bom. L R. 520.

(37)—*Object—Proceeding, nature of—Evidence—Revision.*—Although the object of taking security for good behaviour is to suppress crime, the inquiry under s. 110, Crim. Pro. Code, 1898, must be conducted judicially and is a judicial proceeding. In order to justify an order under s. 110 or s. 118, Crim. Pro. Code, 1898, it must be proved, in the ordinary way by evidence of general repute or otherwise, that the accused does come within the category of one of the sub-ss. (*a*) to (*f*) of s. 110, due weight being given to the evidence showing the accused to be such a person as is described under s. 110, and also to the contrary SHER ZAMAN SHAH v. EMPRESS, 10 P.R. 1899, Cr. [*R.*, 1 P.R. 1913, Cr.=254 P.L R. 1912=17 Ind. Cas. 58=13 Cr. L.J. 746=42 P.W.R. 1912.]

(38)—*Crim. Pro. Code* (1872), *s.* 515—*Failure to record evidence on which order based.*—The failure of the Magistrate to record the evidence on which he passed an order requiring security makes the order untenable under this section of the Code; and so the person ordered to furnish security, if in jail, should be released and dealt with anew, if necessary. POLICE v. BHAWANI PASI, Colm. Dig. Cr. 20 of 1874.

(39)—*Crim. Pro. Code* (1872), *s.* 515—*Evidence to be recorded.*—Where proceedings under Ch. XXXVIII, Crim. Pro. Code, 1872, were conducted as in a summary trial, *held,* that the evidence on which the order requiring security was passed should, under s. 515, para 3, be recorded to sustain the order. POLICE v. NANAK, Colm. Dig. Cr. 36 of 1876.

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(40)—*Crim. Pro. Code* (*Act* V *of* 1898), *ss.* 110, 117—*Security for good behaviour—Nature of evidence necessary.*—The legislature intended to leave Magistrates a very wide discretion in relation to the admission of evidence as to "general repute or otherwise" as described in s. 117 of the Crim. Pro. Code. The word "otherwise" should be read as meaning something *ejusdem generis* with the particular or particulars alleged about it. EMPEROR v. KALLU MAL, **A.W. N. 1904, 140 = 1 Cr. L.J. 534.**

(41)—*Crim. Pro. Code, s.* 110—*Nature of evidence necessary—Evidence that a man was merely of bad character—Effect.*—Where all the evidence proved was that a person was of bad character, such a finding does not bring the case within s. 110. *In re* E.V. KARUPPANAN SERVAI, **8 M.L.T. 246 = 8 Ind. Cas. 320 = 11 Cr. L.J. 638.**

(42)—*Crim. Pro. Code, s.* 110—*Security for good behaviour — Evidence necessary.*—In a case under s. 110, Crim. Pro. Code, it is not enough to prove by evidence as to general character that a man is by repute a habitual thief, robber or house-breaker. It must be further proved that he is a habitual offender, though this fact may be proved by evidence of general repute, and it is not always possible or necessary to prove bad character by proof of actual previous convictions. Where actual convictions are not relied on, great care should be taken to test "the evidence on behalf of the prosecution, with a view to ascertain what their witnesses' means of knowing the facts stated by them may be, the accused's movements, his constant companions, his way of earning his livelihood, his antecedents, etc." QUEEN-EMPRESS v. TALAKCHAND, **2 Bom. L.R. 87.**

(43)—*Crim. Pro. Code, s.* 110—*Evidence necessary for—Security for good behaviour.*—A Magistrate called upon an accused to show cause why he should not furnish securities for his conduct. The accused said that he could furnish no securities and show no cause, stating that he was of bad character and had been in jail. On this evidence, the Magistrate ordered the accused to furnish securities. *Held*, that the Magistrate's order should be set aside, because, as the record stood, there was merely the accused's admission that he was of bad character and that he had been in jail, but it was nowhere shown that he was a habitual thief. KING-EMPEROR v. KAKA, **3 Bom. L. R. 269.**

(44)—*Crim. Pro. Code, s.* 107—*Security for good behaviour—Evidence necessary.*—S. 107 presupposes that the person sought to be put upon a rule of bail is likely (not *was* likely) to commit a breach of the peace; and that it cannot be presumed from the fact that a person has done a wrongful act in the past that he is likely to do the same again. *In re* SHIVRAM PARASHRAM, **6 Bom. L.R. 663 = 1 Cr. L.J. 755.**

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(45)—*Crim. Pro. Code, s.* 107—*Security for good behaviour—Evidence necessary.*—To bring a case within the provisions of s. 107, Crim. Pro. Code, it is not enough to show that there is a great probability of a breach of the peace ensuing; it must further be shown that the party is likely to do illegal acts of violence. EMPEROR v. CHANBASAWA *kom* RUDRAPPA, **6 Bom. L.R. 862 = 1 Cr. L.J. 940.**

(46)—*Crim. Pro. Code* (*Act* X *of* 1882), *s.* 110—*Security for good behaviour—Evidence necessary.*—Before making an order for security under s. 110 of the Crim. Pro. Code, against a person who has never before been convicted of any offence, the Magistrate should be completely and beyond doubt satisfied that the accused has really committed offences. Mere evidence of general repute as a habitual offender will not do unless it is so overwhelming as to leave no doubt in the mind of the Magistrate. QUEEN-EMPRESS v. SHER KHAN, **Rat. Un. Cr. C. 639 = Cr. Rg. 15 of 1893.**

(47)—*Crim. Pro. Code* (1882), *ss.* 109, 118—*Security for good behaviour—Evidence necessary.*—Mere proof of want of ostensible means of subsistence is not of itself a sufficient reason for passing an order under s. 118, Crim. Pro. Code. A Magistrate, however, is bound by the section to consider whether the order is really necessary in order to secure good behaviour, which is a matter for the Magistrate's own judicial discretion, and he ought not to send people to jail simply because the opinions of the Police witnesses are unfavourable to them. QUEEN-EMPRESS v. KALA, **Rat. Un. Cr. C. 723 = Cr. Rg. 49 of 1894.**

(48)—*Admissibility of evidence of general repute in cases where a person has been called on to give security for good behaviour.*—Observations upon the nature of evidence of general repute are admissible in proceedings under s. 117, cl. (3) of the Code of Criminal Procedure. GOKUL v. KING-EMPEROR, **10 O.C. 132 = 6 Cr. L.J. 97.** (5 O.C. 203, *Appr.*; 23 C. 621, *R.*) [*R.*, 12 Cr. L.J. 542 = 12 Ind. Cas. 518.]

(49)—*Crim. Pro. Code, ss.* 110, *cl.* (*f*), 112 *and* 117—*Evidence of general repute, admissibility of—Desperate and dangerous character, definite facts necessary to establish charge of being—Joint trial not prejudicing the accused, illegality of.*—*Held*, that where there is no evidence of habitual association beyond the fact of the two accused being master and servant, a joint trial is illegal, but it need not be set aside unless it is shown that the accused was actually prejudiced or that the trial led to an improper order being passed. *Held*, further, that, under ss. 110, cl. (*f*), 112 and 117 of the Code, evidence of mere general repute is not sufficient to prove that a person is of so desperate and dangerous a character that he cannot be allowed to remain at large, but that such a finding must be based on evidence of facts. It is not sufficient to do so on vague and general evidence that some one was robbed or beaten and people

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say that accused was responsible for it. BABU MURTAZA HUSAIN v. KING-EMPEROR, **9 O.C. 69=3 Cr. L J 290.** (5 C.W N. 249, 29 C. 779, *F.*) [*R.*, 12 Cr. L J. 542=12 Ind. Cas. 518.]

(50)—*Crim. Pro. Code* (1898), s. 110—*Evidence of general repute.*—In this case, the Chief Court set aside the order demanding security for good behaviour on the ground, among others, that the petitioner had not had a fair trial in the matter of the recording of the statements of his witnesses and that the evidence for the defence was, so far as it was recorded, nearly, if not quite, as weighty as the evidence for the prosecution. The Court observed that, if security is to be demanded on evidence of general repute, there should be no doubt what a man's general repute is. NASIR BAKHSH v. EMPRESS OF INDIA, **18 P.L.R. 1901.** (2 P.R. 1898, Cr., *F.*; 4 P.R. 1894, Cr., *R.*)

(51)—*Crim. Pro. Code* (1898), s. 110—*General repute, evidence of—Police officer, list of cases prepared by, inadmissible—Admissibility of evidence given by a Police officer not based on personal knowledge.*—*Held*, that evidence of the general repute of a person includes what is *generally said* of him in the neighbourhood in which he lives. *Held* also, that a Police officer should not be permitted to depose to the result of enquiries made by him for the purpose of the case, or to put in a list of cases, in which the person to whom the inquiry relates is said to have been suspected by others. RAGHUBER DIAL v. KING-EMPEROR, **10 O C. 168=6 Cr. L.J. 256.** (5 O.C. 203, 10 O.C. 132, *F.*; 23 C. 621, *R.*) [*R.*, 12 Cr. L.J. 542=12 Ind. Cas. 518.]

(52)—*Crim. Pro. Code, Ch.* VIII—*Security for good behaviour—Evidence of general repute.*—Hearsay evidence amounting to evidence of general repute is admissible for the purposes of proceedings under Ch. VIII, Crim. Pro. Code. The object of Ch. VIII of the Crim. Pro. Code is the prevention, not the punishment, of offences. The chapter gives a certain amount of discretion to Magistrates; and the High Court must be always slow to interfere with that discretion unless there is an error of law. EMPEROR v. RAOJI FULCHAND, **6 Bom. L.R. 34=1 Cr. L.J. 3** [*R.*, 10 Cr. L.J. 355=3 Ind. Cas. 681=5 L.B.R. 72.]

(53)—*Crim. Pro. Code, ss.* 110 (*f*), 117—*Security for good behaviour—When to be ordered—Evidence of general repute—Admissibility.*—Where a person is solely charged under s. 110, cl. (*f*), evidence of general repute is not admissible, as a provision of law which is an exception to the general rules of evidence must be only applied to the cases to which it is confined by the Legislature. Such evidence is only admissible under s. 117 to prove that a person is habitual offender, under s. 110, but not to prove a charge under s. 110, cl. (*f*) of being a desperate and dangerous character. *In re* MUTHU PILLAI, **8 M.L.T. 347=8 Ind. Cas. 493=11 Cr. L.J. 663.**

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(54)—*Crim. Pro. Code* (1898), *ss.* 110, 117, 192, 256, 540 *and* 529—*Bad livelihood—General repute, evidence of—Evidence of persons who are not neighbours—Transfer of a case under s.* 110, *power of the District Magistrate to direct—S.* 256, *whether applies to cases under s.* 110—*Evidence, testing of, in cases under ch.* VIII *of Code.*—When a proceeding under s. 110, Crim. Pro. Code, is drawn up against a person on a police report and an order is made by the Magistrate under s. 112 requiring the person to show cause, it is not necessary to give a list of witnesses in support of the proceeding either in the report or in the order under s. 112. A case under s. 110, Crim. Pro. Code, can be transferred by a District Magistrate as he is competent under s. 192, Crim. Pro. Code, to transfer any case cognizable by a Criminal Court and his power of transfer is not restricted to criminal cases only. When a Magistrate having no power to transfer a case under s. 110, Crim. Pro. Code, transfers the case erroneously and in good faith to another Magistrate, the proceeding before the latter Magistrate will not be void, as such transfer would only amount to an irregularity which would be covered by the provisions of s. 529, cl. (*f*), Crim. Pro. Code, s. 256, Crim. Pro. Code, has no application to a case under s. 110, Crim. Pro. Code, and a person called upon to show cause under s. 110, Crim. Pro. Code, has no right to further cross-examine the prosecution witnesses under s. 256, Crim. Pro. Code. In dealing with cases under Ch. VIII of the Crim. Pro. Code, Magistrates ought, especially where no previous conviction is proved, to take great care to test the evidence for the prosecution. Where in consequence of a series of dacoities having taken place in certain villages, a proceeding under s. 110, Crim. Pro. Code, is instituted against a person for being a robber by habit, the evidence of general reputation, coming from the people of the villages where dacoities had taken place, is certainly to be treated as evidence of general repute as required by s. 117, Crim. Pro. Code, although that person did not live amidst those people. When a witness is called by the Court under s. 540, Crim. Pro. Code, his cross-examination by the parties cannot, under the law, be restricted to the points on which he has been examined by the Court. CHINTAMON SINGH v. EMPEROR, **35 C. 243=12 C.W N. 299=7 Cr. L.J. 146=7 C.L.J. 177.** (4 C.W.N. 821, *F.*; 23 C. 621, *D.*) [*R.*, 16 C.L.J. 467=17 C.W.N. 238=14 Cr L.J. 5=18 Ind. Cas. 149.]

(55)—*Crim. Pro. Code* (1898), *s.* 110, *cls.* (*a*) (*f*)—*Bad livelihood—Evidence—How to be considered where several persons are proceeded against and their association is proved—General repute, evidence of—How for admissible in a charge under cl.* (*f*)—*Judgment in appeal—Defects of.*—Where, in a proceeding under s. 110 Crim. Pro. Code, it was clearly established that the petitioners, who were members of the same family, being the father and his three sons, were associated together and formed a gang,

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and the evidence against all of them was the same. *Held*, that the case was one in which the evidence against the petitioners could rightly be dealt with together, and that any minute enquiry into the complicity of each of the accused individually was not necessary. How far evidence of general repute may be taken into consideration in establishing the charge under cl. (*f*) discussed. PARASULLA v. KING-EMPEROR, **13 C.W.N. 244=10 C.L.J. 460=4 Ind. Cas. 10.** (5 C.W.N. 249, 11 C.W.N. 789, *R. & Expl.*) [*R.*, 34 M. 255=21 M.L.J. 488=8 M.L.T. 347=1911. 2 M.W.N. 34=8 Ind. Cas. 493=11 Cr. L.J. 663.]

(56)—*Procedure of Magistrate in case of—Proof of general reputation to justify an order for—Crim. Pro. Code* (1898), *s.* 118.—Before a Magistrate can make an order for security for good behaviour under s. 118, Crim. Pro. Code, he must, besides being satisfied by the evidence that the respondent falls within one of the classes from whom such security can be demanded, be also satisfied and find it proved that it is necessary for maintaining good behaviour that such an order should be made, and in his judgment he should give his reasons for coming to the conclusion that such necessity has been proved. In order to justify an order, on the ground that a person has been proved by evidence of repute to be an habitual offender, the general reputation that he is so must be proved. A man's general reputation is the reputation which he bears, in the place in which he lives, amongst the body of the inhabitants of the place. CROWN v. NGA NYEIN, **1 L.B.R 90.** (23 C. 621, *F.*)

(57)—*Crim. Pro. Code* (1872), *s.* 505.—*Order under section without proof of positive evidence of the dangerous character of the accused person —Witnesses to general character and repute—Habits of suspected person.*—The power given by s. 505 is one which should always be exercised with nice discretion by the Magistracy, but its exercise is not confined to cases in which positive evidence is forthcoming of the commission of crime by the persons against whom it is sought to enforce the law. The power is a preventive and not a punitive power. [*F.*, 6 Bom. L.R. 34.] Although when witnesses are examined as to general character, their testimony is not of much value as to the habits of a suspected person, unless they can, in support of their opinion, adduce instances of the misconduct imputed, when the question is only as to his repute, the evidence of witnesses, if reliable, is not without value, though they may not be able to connect the suspected person with the actual commission of the crime. *In the matter of the petition of* PEDDA SIVA REDDI, **3 M. 238=2 Weir 54.** [*F.*, 6 Bom. L.R. 34.]

(58)—*Crim. Pro. Code* (1898), *ss.* 110, 123 *and* 362—*Presidency Magistrate—Whether should record evidence in a case under s.* 100, *where he has to make reference to the High Court—S.* 362 *—Evidence of repute—Association with bad characters—Previous conviction, value of, as evidence.*—S. 362, Crim. Pro. Code, does not apply to a case under s. 110, Crim. Pro. Code, in which the Presidency Magistrate has to make a reference to the High Court under s. 123 (2), Crim. Pro. Code, so as to absolve him from the duty of recording evidence. But the record of evidence by the Presidency Magistrate in such a case need not be as full as in a similar case in the Court of a Mofussil Magistrate. Evidence of association with bad characters, against the accused, in a proceeding under s. 110, Crim. Pro. Code, is evidence of reputation, but such reputation can only be based upon association with proved bad characters and not with reputed bad characters. Previous convictions are not substantive evidence in a case under s. 110, Crim. Pro. Code, though they may have an effect in deciding for what length of time the accused is to be bound down. EMPEROR v. NEPAL SHIKARY. **13 C.W.N. 318=9 C.L.J. 439=2 Ind. Cas. 651,** (33 C. 1036, *D.*; 16 C. 799, 30 A. 334, *R.*)

(59)—*General reputation.*—Where, in proving general repute of bad character, some witnesses state that the accused's reputation is good, the reputation of the accused cannot be held to be bad, unless there is something to corroborate the witnesses against him. AJMAL SHAH v. EMPRESS, **2 P.R. 1898, Cr.** (2 P.R. 1897, *Expl.*)

(60)—*Proof of general reputation.*—The burden of proving that an accused is of bad character lies on the prosecution, and, therefore, when the evidence on both sides is of an indifferent and interested character, the prosecution must fail. Evidence as a rule should be tested by its quality rather than its quantity and a Magistrate should not rely on his own personal knowledge. The law relating to security should not be enforced except on the best possible grounds. SUKHA v. EMPRESS, **4 P.R. 1898, Cr.** [*R.*, 27 P.R. 1903, Cr.]

(61)—*General repute.* — Where proof of general repute is given, the repute should be universal, without any doubt attaching to it. MASTI KHAN v. EMPRESS, **2 P.R. 1897, Cr.** [*Expl.*, 2 P.R. 1898, Cr.]

(62)—*Term "general character" explained.*—The expression "general character" includes general reputation as well as general disposition. ADIL v. EMPRESS, **6 P.R. 1880, Cr.**

(63)—*Term "general character"—Evidence —General reputation — General disposition—Crim. Pro. Code* (1872), *s.* 505.—The words "general character" in s. 505, Crim. Pro. Code, 1872, include general reputation as well as general disposition. CROWN v. YARAM, **1 P.R. 1878, Cr.**

(64)—*Bad character— Evidence of.*—Where the evidence merely showed that the accused had been suspected of a single act of theft, and kept bad company, the order requiring the security for good behaviour was held not to be a proper order, as it did not amount to his being a robber by habit, to prove that he was so

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dangerous that he could not safely be released after one year. ISHAR SINGH v. EMPRESS, **32 P.R. 1880, Cr.**

(65)—*Bad character—Habitual gambler.*—A man of some means does not become a "dangerous character" by his being a habitual gambler, although it may be otherwise, if he had to depend for his livelihood solely on gambling. A Magistrate acting under Ch. XXXVIII, Crim. Pro. Code, should pass an order of acquittal if he thinks sureties unnecessary. SHIBDAT v. EMPRESS, **33 P.R 1880, Cr.** [*R.*, 38 P.R. 1881, Cr.]

(66)—*Bad character.*—A finding that the accused was of a bad character and earned his livelihood by prostituting one of his wives is not sufficient to require from him security for good behaviour. Magistrates, in requiring security for good behaviour, have a judicial discretion to exercise, and that should be exercised in a judicial manner. YAGHI v. EMPRESS, **5 P.R. 1892, Cr.**

(67)—*Crim. Pro. Code (Act* V *of* 1898), *s.* 118. —*Security for good behaviour—Evidence of bad character.*—On revision, the Chief Court, after examining the evidence on record, found that it could not be held that the evidence that the petitioner's character was bad was of more weight than the evidence that it was good, and set aside the order demanding security for good behaviour. BISHEN SINGH v. EMPEROR, **128 P.L.R. 1901.**

(68)—*Crim. Pro. Code* (1898), s. 110—*Proceeding under—Means of punishment—Evidence of character—Admissibility of.*—The High Court will not interfere on the merits with proceedings under s. 110 of the Crim. Pro. Code, provided that the Court hearing the appeal, under s. 406, shows in its judgment that it has really and not merely nominally considered the evidence on the record. When proceedings under s. 110 are started against a man soon after a discharge or acquittal from a charge of burglary of which he was suspected, it is always necessary to make it clear that the proceedings were not taken as a means of punishing, in an indirect way, a man, who, the police were convinced, was guilty. The accused was continuously for a period of ten or eleven years employed as a servant of the Tahsildars of Orai. He was suspected by his master of burglary and prosecuted. He was discharged, and proceedings were taken against him under s. 110, Crim. Pro. Code. He produced evidence to show that his character while he was in the service of his former masters was satisfactory. *Held,* that such evidence was material to the case. SHIAM LAL v. KING-EMPEROR, 6 **A.L J. 487 =9 Cr. L J. 528=2 Ind. Cas. 225.** [*R.*, 13 Cr. L.J. 9=13 Ind. Cas. 102.]

(69)—*Ground for ordering security—Crim. Pro. Code* (1872), *s.* 505—*Evidence of character.* —The above section enabled a Magistrate whenever it appeared to him from the evidence as to general character adduced before him, that any person was by repute a robber, house-breaker or thief, or a receiver of stolen property, knowing the same to have been stolen, or of notoriously bad lievlihood or was a dangerous character to demand security for good behaviour. But when the evidence was entirely and overwhelmingly in a person's favour, and showed him to be a person of excellent character, of station, means and education and everything that is in fact the direct contrary to the sort of person against whom the section was directed, to apply its provisions to him on a weak, unsupported and gossiping charge of mischief by fire was an application of the provisions of the Code of Criminal Procedure as far removed from the intentions of the Legislature as it is possible to conceive, and illegal and oppressive. *In re* HAMIDOODDEEN AHMED, **24 W.R. Cr. 37.**

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(70)—*Bad livelihood, what amounts to.*—The mere fact that the accused derived their subsistence from keeping prostitutes in their houses, although sometimes bad characters resorted to them for purposes of prostitution, would not be sufficient for passing an order under s. 506, Crim. Pro. Code, 1872. SULTAN v. EMPRESS, **2 P.R. 1881, Cr.**

(71)—*Crim. Pro. Code* (1898), s. 110—*Security proceedings—Order under s.* 110—*How to be made—Approver in a previous case—Uncorroborated evidence—Admissibility of hearsay evidence—Admissibility in security-proceedings.*—In proceedings under s. 110, Crim. Pro. Code, the words of that section should be strictly adhered to in the order thereunder. In such proceedings, the uncorroborated evidence of a person who had been an approver in a previous case is useless and should not be admitted. *Held,* that the words "current repute" used by the Magistrate were synonymous with the words "general repute" found in s. 110. *Held,* that statements of general repute were hearsay and that hearsay evidence is admissible in enquiries of this nature. KING EMPEROR v. NGA PO, **5 L.B.R. 72=3 Ind. Cas. 681=10 Cr. L.J. 355.** (2 L.B.R. 166, 6 Bom. L.R. 34, *R.*)

(72)—*Crim. Pro. Code* (1898), *ss.* 109, 112—*Person without ostensible means of subsistence—Admissibility of admissions made by accused to police, if not amounting to confession—Evidence Act, s.* 25.—Where the police have adduced satisfactory evidence in support of their allegation that a person has no ostensible means of subsistence, which was all they were required to prove by an order under s. 112 of the Code, a Magistrate should not discharge the accused, merely on the ground that no statement made by an "accused" person to the police can be proved before the Magistrate conducting the proceedings against him. Under the Evidence Act, admissibility is the rule and exclusion is the exception. S. 25, Evidence Act, excludes only "confessions" made by persons accused of any offence; an admission made by an accused person to a

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Police Officer may be proved, if it does not amount to a confession. Moreover, inability to give a satisfactory account of oneself or want of ostensible means of subsistence does not amount to an offence (see the heading to the Ch. VIII of the Code). and the definition of the term "offence" in s. 4 (o), *ibid*, EMPEROR v. BUDDHU, **3 N L R. 51=5 Cr. L.J. 434.** [*R.*, 12 Cr. L J. 60=8 Ind. Cas. 1181 =6 N.L.R. 180.]

(73)—*Crim. Pro. Code, s.* 110—*Security for good behaviour—Evidence—Magistrate's personal knowledge and suspicion— Jurisdiction to try—Oath*—Kalma—*Judgment—Magistrate passing strictures on evidence.*—The proceedings under s. 110 of the Crim. Pro. Code are judicial and not executive, and a Magistrate is not entitled to base his order in such proceedings on his local and personal knowledge of the accused and witnesses. If it be important to utilize the personal knowledge of a Magistrate, the proper procedure is for the case to be tried by another Magistrate and the Magistrate with personal knowledge to give evidence as a witness. A Magistrate cannot himself be a witness in a case in which he is the sole judge of law and fact. There is no authority for a Magistrate requiring a witness to take *Kalma* oath, when the witness does not volunteer to do so. The right of Magistrates to make disparaging remarks on persons who appear, or are named, in the course of a trial is one that should be exercised with great reserve and moderation, especially where the person disparaged has had little or no opportunity of explaining or defending himself. It would involve a great danger to the administration of justice, if witnesses were restrained from stating their real opinions for fear of displeasing the Magistrate before whom they are giving evidence and great caution should be taken to avoid producing any such unfortunate result. NURDIN *alias* KADA v. EMPEROR, **21 P.L.R. 1904=27 P.R. 1903, Cr.=1 Cr. L.J. 99.** (29 C. 392, 4 P.R. 1898, Cr., 2 C. 405, *R.*)

(74)—*Crim. Pro. Code* (1898), *ss.* 110 *and* 439—*Security for good behaviour—Evidence—Revision—Criminal cases.*—It is most important that the provisions of Ch. VIII of the Crim. Pro. Code should not be abused, and there must be reliable evidence against a man, before he can be called to give security. The person, who was required to give security for good behaviour, had been convicted once of the offence of theft. His house was searched on three occasions, but no stolen property was found. There was no suggestion that he protected or harboured thieves, but he was said to have associated with two or three persons of bad character. *Held*, that no security should have been demanded in this case. KASIM SHAH v. CROWN, **23 P.L.R. 1907=5 Cr. L.J. 24=P.W.R. 1906, p. 44, Cr.** [*R.*, 11 Cr. L.J. 387=6 Ind. Cas. 624=17 P.W.R. 1910, Cr.]

(75)—*Crim. Pro. Code* (*Act* V *of* 1898), *s.* 110—*Security for good behaviour—Evidence.*—

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Before a person can be ordered to give security for good behaviour on evidence of general bad repute, the bad repute must be universal and there should be no doubt as to this. The evidence produced by both parties as to the repute of the person required to furnish security should be properly weighed. It was pointed out that the security taken in this case was not on Form XI, Sch. V of the Crim. Pro. Code, and the remarks contained in 30 P.R. 1890, Cr., regarding the manner in which security should have been taken, had been overlooked by the Magistrate. SHER SINGH v. EMPEROR, **59 P.L R. 1903.**

(76)—*Evidence—Previous trial for dacoity—Crim Pro. Code* (1861), *s.*296.—Where a person had been adjudicated under s. 296, Crim. Pro. Code, 1861, to be a person of notorious bad livelihood, under s. 296, Code of Criminal Procedure, on evidence taken when he stood accused of dacoity, *held*, that the evidence taken in the dacoity case was inadmissible against him with reference to the accusation under s. 296, for which evidence should be taken separately. *In the matter of* ROJONI KANT BHOOMICK, **13 W.R. Cr. 24.**

(77)—*Proof of the accused being habitual offender.*—In cases of security for good behaviour, there must be at least evidence of general repute that he is an habitual offender of the classes described in s. 110. DHARI v. EMPRESS, **12 P.R. 1892, Cr.**

(78)—*Habitual forger—Crim. Pro. Code* (1898), *s.* 110.—The mere fact of a person being an habitual forger does not justify an order requiring from him security for good behaviour. MAHIAN MAL v. EMPRESS, **28 P.R. 1900, Cr.** [*R.*, 21 P.R. 1914, Cr.]

(79)—*Criminal tribe—Joint trial.*—Where a number of accused belonging to the same tribe, who were not placed under the Criminal Tribes Act, 1871, were jointly tried under s. 110, Crim. Pro. Code, 1882, as belonging to a gang of habitual thieves, *held* that the joint trial was not valid, in the absence of proof that they constituted a gang. MURAD v. EMPRESS, **1 P.R. 1895, Cr.**

(80)—*Crim. Pro. Code, ss.* 110 *and* 514—*Act* III *of* 1867 (*Gambling Act*). *s.* 13 — *Security for good behaviour — Conviction for gambling in a public place—Forfeiture of security.*—Where a conviction for an offence under the Gambling Act was bad against a person, who was, at the time, under security to be of good behaviour, it was *held* that such a conviction was a good ground for taking action under s. 514 of the Code of Criminal Procedure, although, having regard to the nature of the offence, the Magistrate might well exercise the discretion conferred on him by cl (5) of the section. EMPEROR v. ABDUL HAI, **A.W.N. 1906, 13=3 Cr. L.J. 91.**

(81)—*Crim. Pro. Code, s.* 110—*Security for good behaviour—Subsequent conviction—Forfeiture of bond—Imprisonment for unexpired*

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portion of period for which security had been given.—Held, that where a person has given security for good behaviour and is subsequently convicted (of criminal trespass) the amount of his forfeited bond may be exacted, but he cannot be forthwith committed to prison for the unexpired portion of the term for which security had been taken. *Semble.*—The Magistrate's remedy is to take fresh proceedings under Ch. VIII. JAGDEO SINGH v. EMPEROR, **A.W.N. 1906, 142=3 Cr. L.J. 456=28 A. 629.**

(82)—*Crim. Pro. Code, ss.* 110, 112 *and* 118—*Security for good behaviour—Ultimate order for security differing from terms of notice to show cause.*—Where a Magistrate orders any person to furnish security for good behaviour, his final order under s. 118 of the Code must correspond with the notice to show cause issued under s. 112. He cannot in the final order impose conditions as to the nature of the security required which were not in the notice. EMPEROR v. JANGI SINGH, **A.W.N. 1906, 276=4 Cr. L.J. 405.** [*R.*, 11 O.C. 267.]

(83)—*Crim. Pro. Code* (1898), *ss.* 110 *and* 526—*Security for good behaviour—Transfer.*—*Held,* that proceedings under s. 110 of the Code of Criminal Procedure cannot be transferred to any Court ouside the district within which such proceedings have been lawfully instituted. EMPEROR v. MAHENDRA SINGH. **A.W.N. 1907, 268=7 Cr. L.J. 214=30 A. 47.** (16 A. 9, 19 A. 291, *F.*) [*R.*, 34 M. 186=11 Cr. L.J. 534=20 M.L.J. 982=8 M.L.T. 297=1910 M.W.N. 459=7 Ind. Cas. 861.]

(84)—*Crim. Pro. Code, ss.* 123 (1 *and* 2), 397—*Failure to give security—"Committed to prison" and "detained in prison."—Nature of imprisonment—Second sentence—How to be carried into effect.*—The words "committed to prison," used in s. 123 (1), Code of Criminal Procedure, 1898, are equivalent to a sentence of imprisonment, and do not merely mean committed to custody. The words, "detained in prison," in sub-s. 2, have also a similar meaning. A person failing to give security for his good behaviour is liable to imprisonment, and the imprisonment takes effect from the day, on which the warrant of the Magistrate directing detention in prison has been executed. T was ordered to furnish security to be of good behaviour, or to be rigorously imprisoned for three years. The order was submitted to the Sessions Judge, and T was ordered to be rigorously imprisoned, pending the order of the Sessions Judge. In the meantime, T was convicted for another offence by another Magistrate. *Held* that the former sentence should be carried out first. KING-EMPEROR v. TULA KHAN, **5 A.L.J. 318. F B.=30 A. 334=A.W.N. 1908, 133=7 Cr. L J. 427=4 M.L.T. 41.**

(85)—*Crim. Pro. Code, ss.* 110 *and* 123, *cls.* 2 *and* 3—*District Magistrate calling for security under s.* 110—*Failure to furnish same—Sentence of imprisonment by District Magistrate subject to confirmation by Sessions Judge—Confirmation by latter—Legality—Proper procedure under s.* 123, *cls.* 2 *and* 3—*Gist of s.* 123, *cls.* 2 *and* 3—*Reference under s.* 123—*Duty of Sessions Judge to weigh evidence.*—Where, on failure to furnish security by a person called upon by the District Magistrate to execute a bond under s. 110 for three years, the Magistrate sentenced him to three years' rigorous imprisonment subject to confirmation by the Sessions Judge, and where the latter simply confirmed the District Magistrate's sentence, *held,* that the Magistrate's procedure was not according to ss. 123, sub s. 2 and 3, Crim. Pro. Code, and that he had no authority to pass the order which he did. The gist of s. 123, sub-ss. 2 and 3, is that the Magistrate commits the person, from whom security has been demanded, to prison and sends the proceedings to the Sessions Judge for disposal as he thinks fit. There is nothing in the section about the Magistrate's order being confirmed. It is the duty of a Sessions Judge, in a reference under s. 123, Crim. Pro. Code, to consider the evidence and pass an order after doing so. He should not, as a matter of course and without regard to the evidence, send the person to prison. NANKU *alias* MUHAMMAD DIN v. CROWN, **29 P.R. 1910, Cr.=196 P.L.R. 1910=8 Ind. Cas. 385=11 Cr. L.J. 637.**

(86)—*Crim.Pro.Code* (1898), *s.* 109—*Security for good behaviour.*—Where a Magistrate ordered certain persons, who belonged to a gang which frequented *melas* and carried on a game played with rings, to furnish security to be of good behaviour, under s. 109, Crim. Pro. Code, *held* (1) that the conviction under cl. (*a*) of the section was illegal, that game being legal or illegal according to the manner in which it was played; (2) that cl. (*b*) was very wide, and the Magistrate, upon the evidence, did not act illegally. MAHADEO v. KING-EMPEROR, **6 A.L.J. 253=9 Cr. L.J. 527=2 Ind. Cas. 219.**

(87)—*Crim. Pro. Code* (1898), *s.* 110—*Good behaviour—Proceedings to bind down persons—Indefinite charges—After failure of definite charges.*—Where a charge of dacoity against certain persons failed for want of evidence, but the District Magistrate upon police information took proceedings against some of them under s. 110, and, upon the whole evidence before him, bound them over to be of good behaviour, *held,* that the order under the circumstances was a proper one. RAJ KARAN v. KING-EMPEROR, **6 A.L.J. 961=32 A. 55=4 Ind. Cas. 709=11 Cr.L J. 36.** (11 C.W.N. 413, *D.*)

(88)—*Security for good behaviour—Object.*—The object of the law providing for security for good behaviour is that sureties should be responsible for the good behaviour of persons called upon to furnish security. The Magistrate, in an order directing the furnishing of security for good behaviour, should state the number of sureties required. QUEEN v. SHEO BUKSH, **2 N.W.P. 295.**

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(89)—*Examination of witnesses.*— The evidence against a person, against whom proceedings for furnishing security for good behaviour have to be taken, must be taken in his presence, and he should be permitted to cross-examine them. QUEEN v. SHUNKER, **2 N W.P. 406.** *See also* MAGHAN MISRA v. CHAMMAN TELI, **2 B.L.R. A. Cr. 7=10 W.R. Cr. 46**; *In re* NARSING NARRAYAN, **2 B L.R. A. Cr. 7, Note =10 W.R. Cr. 1.** [*R.*, 2 N.W.P. 461.]

(90)—*Crim. Pro Code* (1861), *s.* 296 (=*s.* 109 *of the Code of* 1898)—*Order requiring security for good behaviour from a person of bad character.*—To justify a Magistrate in taking action under s. 296 of the Code of 1861, there must be evidence before him, and that evidence must be legally sufficient to establish the fact that the person charged is a person of the character mentioned in the section. He cannot proceed to pass an order under this section either without evidence or in opposition to the evidence before him; an order so passed cannot but be held illegal. QUEEN v. BUDLA, **2 N. W.P. 455.**

(91)—*Absconding offender—Crim. Pro. Code* (1861), *s.* 306.—Where a person was arrested as an absconded offender, and the Magistrate, instead of releasing him, there being no proof that he was an absconding offender, made enquiries into the accused's mode of livelihood, when there was no summons issued as directed by s. 306 of the Crim. Pro. Code of 1861, *held* that the proceeding was irregular. QUEEN v. HUTTOOA, **3 N.W.P 2.**

(92)—*Security for good behaviour—Crim. Pro. Code* (1861), *ss.* 296, 299.—Mere previous conviction for a simple breach of the peace, without any evidence to show that the accused is by repute a robber, house-breaker, or thief, or receiver of stolen property, or of notoriously bad livelihood, is not sufficient for passing an order for security for good behaviour under s. 296 of the Code of 1861, or under s. 297. QUEEN v. MISRU LALL, **4 N.W.P. 117.**

(93)—*Crim. Pro. Code* (1872), *ss.* 504, 505, 509.—An order for security for good behaviour directing that the surety should pledge all his rights in the land was held to be illegal. QUEEN v. GANNI, **7 N.W P. 249.**

(94)—*Crim. Pro. Code* (1898), *ss.* 110, 117, 118—*Security for good behaviour—Previous conviction.*—The object of taking security for good behaviour, is solely to secure good behaviour, in future, and it is wrong to use these provisions so as to add to the punishment for past offences. The mere record of certain previous convictions, on account of which the person has undergone punishment, does not satisfy the requirements of these sections. *In re* RAJAH *valad* HUSSEIN SAHEB, **10 B. 174.**

(95)—*Crim. Pro. Code* (1898), *s.* 118—*Excessive security—Discretion, when not properly exercised.*—The accused was ordered under s. 118, Crim. Pro. Code, to execute a bond for Rs. 500 for good behaviour for a period of one year, and

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to find two sureties for the same amount. The Magistrate fixed this amount after taking into consideration five previous convictions recorded against the accused and the fact of his being a habitual thief. *Held,* that the Magistrate had not exercised a proper discretion in requiring security in so large a sum from a person in the position of the accused. The High Court modified the Magistrate's order and reduced the amount of the bond to Rs. 100, with one surety for the same amount. QUEEN-EMPRESS v. RAMA, **16 B. 372.** [*F.*, 23 A. 80, 12 Cr. L J. 110=9 Ind. Cas. 651=5 S.L.R. 10; *R.*, 28 P.R. 1901, Cr.]

(96)—*Crim. Pro. Code* (1898), *s.* 110—*Security for good behaviour from habitual offender—Finding to support action under the section—Specific instances need not be proved.*—The finding, that an accused person is, by general repute, a habitual offender committing mischief, and that he protects thieves, is sufficient to warrant action, under s. 110 of the Crim. Pro. Code. It is not necessary, for the purposes of the section, that specific instances should be given. EMPEROR v. SHAHUKHA, **9 Bom. L.R. 164=5 Cr. L.J. 178.**

(97)—*Crim. Pro. Code* (1898), *s.* 110—*Habitual offenders—Security for good behaviour—"Person within"—Interpretation.*—In s. 110 of the Crim. Pro. Code, 1898, the legislature has advisedly adopted the expression "any person within the local limits" to exclude the necessity of proving anything approaching permanent residence, and to leave it in the power of the Magistracy to deal with what are perhaps the most dangerous habitual criminals, who wander from place to place and have no well-known residence, where the Police or the Magistracy could be sure at any time of finding them. EMPEROR v. BAPOO YELLAPA, **9 Bom. L. R. 244=5 Cr. L J. 247.**

(98)—*Crim. Pro. Code* (1898), *ss.* 112, 114, 402, 537—*Security to keep peace—Appeal—Practice and procedure.*—The omission of a Magistrate to send a copy of the order under s. 112, Crim. Pro. Code, with the summons issued under s. 114 of the Code, does not invalidate the trial. It is an irregularity cured by s. 537 of the Code. Where the Legislature has directed certain procedure to be followed and certain forms to be adopted in a criminal case, the Magistrate ought to adhere to the law and see that no prejudice is created so far as the accused is concerned. The Code of Criminal Procedure, 1898, makes a careful distinction between an order directing security to be given for keeping the peace and an order directing security to be given for good behaviour. It allows an appeal in the latter case only. EMPEROR v. SULEMAN, **11 Bom L R. 740=3 Ind. Cas. 774=10 Cr. L J. 375.**

(99)—*Crim. Pro. Code* (1898), *s* 108—*Security for good behaviour.*—The provisions of Chap. VIII of the Crim. Pro. Code, 1898, are preventive in their scope and object, and are aimed at persons who are a danger to the public, by reason

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of the commission by them of certain offences. The test under s. 108 of the Code is, whether the person proceeded against has been disseminating seditious matter, and whether there is a fear of a repetition of the offence. In each case, it is a question of fact which must be determined with reference to the antecedents of the person and other surrounding circumstances. EMPEROR v. VAMAN, **11 Bom. L R. 743 = 3 Ind. Cas. 776 = 10 Cr. L.J. 379.**

(100)—*Crim. Pro. Code* (*Act* XXV *of* 1861), *s.* 295—*Applicability.*—S. 295 of the Crim. Pro. Code does not apply to the case of persons suspected of a particular offence, but to persons who have no ostensible means of living or cannot give a satisfactory account of themselves. REG. v. BHUJA, **Rat. Un. Cr. C. 63 = Cr. Rg. 29-2-1872.**

(101)—*Crim. Pro. Code* (1882), *ss.* 118, 123—*Security for good behaviour—Imprisonment in default.*—An order for the imprisonment of an accused person made in anticipation of his default to give security under s. 118, Crim. Pro. Code, is opposed to s. 123. QUEEN-EMPRESS v. LALU, **Rat. Un. Cr. C. 408 = Cr. Rg. 73 of 1888.**

(102)—*Crim. Pro. Code* (1882), *ss.* 118, 123—*Security for good behaviour—Imprisonment in anticipation of default.*—It is not competent to a Magistrate to pass an order for the imprisonment of the accused in anticipation of his default to give security under s. 118. QUEEN-EMPRESS v. HIRALAL, **Rat. Un. Cr. C. 408.**

(103)—*Crim. Pro. Code* (*Act* X *of* 1882), *ss.* 117, 118—*Need for enquiry.*—An order to execute a bond for security for good behaviour cannot be made without inquiry and proof. QUEEN-EMPRESS v. GAIBA, **Rat. Un. Cr. C. 585 = Cr. Rg. 46 of 1891.**

(104)—*Crim. Pro. Code* (1882), *ss.* 109, 118, 513—*Security for good behaviour—Order for deposit.*—The accused being found loitering was searched. He was found to have a big iron bar in his possession and could not give a satisfactory account of himself. He was, therefore, ordered by the First Class Magistrate to execute a bond for Rs. 25 and to deposit as security the sum of Rs. 7 found in his possession. *Held*, that the order as to the deposit was illegal. QUEEN-EMPRESS v. FATA, **Rat. Un. Cr. C. 671 = Cr. Rg. 33 of 1893.**

(105)—*Crim. Pro. Code* (1882), *ss.* 120, 123—*Security for good behaviour—Convict undergoing sentence.*—Under ss. 120 and 123, Crim. Pro. Code, a convict undergoing a sentence of imprisonment cannot be obliged to give security for good behaviour until that period of imprisonment ends, nor can the order for imprisonment in default be made till then. QUEEN-EMPRESS v. APPA, **Rat. Un. Cr. C. 765 = Cr.** Rg. 29 of 1895.

(106)—*Crim. Pro. Code* (1882), *ss.* 123, 396—*Convict undergoing imprisonment ordered to furnish security—Sentence under s.* 123, *Crim. Pro. Code, when to begin.*—If a person, undergoing a sentence of imprisonment, is ordered, under s. 118, to give security for good behaviour, it is premature and illegal to pass against him an order under s. 123, whilst the imprisonment lasts. If, in the meantime, he is convicted of another offence and sentenced to a fresh term of imprisonment, the order should not be passed, until the expiry of both imprisonments. If before such expiry, the prisoner gives the required security, the Magistrate cannot pass an order of imprisonment under s. 123 of the Code. The order of imprisonment under s. 123, Crim. Pro. Code, is one to which the word sentence as used in s. 396 of the Code, applies. QUEEN-EMPRESS v. PANDU KHANDU, **Rat. Un. Cr. C. 774 = Cr. Rg. 38 of 1895.** [*R.*, 2 L. B.R. 72, 7 Cr. L.J. 472 = 4 L.B.R. 205, 37 B. 178 = 14 Bom. L.R. 965 = 1 Bom. Cr. C. 209 = 13 Cr. L.J. 849 = 17 Ind. Cas. 785.]

(107)—*Crim. Pro. Code* (*Act* X *of* 1882), *s.* 118—*Security of respectable land-holders—Legality.*—It is not competent to a Magistrate under s. 118 of the Crim. Pro. Code to require the accused person to give security of respectable land-holders. QUEEN-EMPRESS v. JAMAL LAKHAN, **Rat Un. Cr. C. 876 = Cr. Rg. 57 of 1896.**

(108)—*Crim. Pro. Code, s.* 110 (*e*)—*Zemindar, when may be bound down for the oppressive acts of the naib—Private spite wreaked through public prosecution.*—Offences involving a breach of the peace mean offences of which breach of the peace is an ingredient, and persons cannot be bound down under s. 110, cl. (*e*) of the Crim. Pro. Code, unless they are found to have habitually committed, attempted to commit or abetted the commitment of such offences. Where it was found that the naib of two co-sharer zemindars, who were brothers, had led several riots in their interest and had been convicted in several cases, and that certain lathials were always employed to help their cause: *Held*—That one of them who was a Mukhtear practising and residing elsewhere and who was not shown to have been implicated in the acts should not have been bound down, but the other who resided at the place, and whose complicity was established by the evidence was rightly bound down. The prosecution in this case being found to have been supported by persons more or less interested in the downfall and humiliation of accused: *Held*, per *Chatterjee, J.*—It is notorious that accusations under this section are constantly made with the object of blackening an enemy's character and of satisfying feelings of spite and hatred, and a Magistrate cannot be too cautious in making sure that provisions intended for securing the peace of the community are not utilised for wreaking private vengeance under the *aegis* of a Crown prosecution. KALI PRASANNA BASU ROY CHOWDRY v. EMPEROR, **13 C.W. N. 366 = 9 Ind. Cas. 916 = 38 C. 156 = 12 Cr. L. J. 164.**

(109)—*Crim. Pro. Code* (1898), *s.* 110—*Non-liability of manager of a shrine freely open to*

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public where thieves resort—Previous convictions of gambling and of offences not relating to property.—Held that the manager of a public shrine, which does not belong to him and is not under his exclusive control, and which is freely open to the public, cannot be called upon to furnish security for good behaviour under s. 110 (c), although some thieves have been arrested there on several occasions and it is generally used as a gambling resort, and among the people, who come up there, are a number of thieves and bad characters; and although the manager himself has nine convictions against him, none of which has anything to do with property and six of which are for gambling, inasmuch as the shrine is not his house and he cannot be said to harbour thieves and such like, convictions cannot fairly be raked against a person involved in the proceedings under the said s. 110 (c) : *Held*, also, that an order under this section is not justifiable, where, apart from the Police officials, only two persons are produced to support the prosecution, against a large body of apparently respectable witnesses of an immediate neighbourhood who testify in favour of the accused. SOMAN v. CROWN, **37 P.W.R. 1910, Cr. = 8 Ind. Cas. 249 = 11 Cr. L. J. 603.**

(110)—*Passing sentence of imprisonment on person ordered to give security for good behaviour.*—If a person, undergoing a sentence of imprisonment, is ordered, under s. 118, Crim. Pro. Code, to give security for good behaviour, it is premature and illegal to pass against him an order under s. 123, Crim. Pro. Code, while the imprisonment lasts. If, in the meantime, he is convicted of another offence and sentenced to a fresh term of imprisonment, the order should not be passed, until the expiry of both imprisonments. If, before such expiry, the prisoner gives the required security, the Magistrate cannot pass an order of imprisonment under s. 123. REG. v. PANDU, **Cr. Rg. 33 of 1895.**

(111)—*Sentence for specific offence and security for future good behaviour.*—An order for security for future good behaviour, in addition to a sentence for a specific offence, and a further sentence failing security, is bad ; the course prescribed in s. 504, cl. 2 of the Crim. Pro. Code, should be followed if necessary. TAMIZ MANDAL v. UMID KARIGAR, **9 C. 215.** (1 A. 666, *F.*)

(112)—*Crim. Pro. Code* (1882), ss. 109, 110 *and* 112—*Security for good behaviour—Right of accused.*—In a case of security for good behaviour, the accused must be given an opportunity of entering upon his defence, or of citing witnesses, and must be clearly informed of the nature of the accusation, which he has to meet. QUEEN-EMPRESS v. ISHWAR CHANDRA SUR, **11 C. 13.**

(113)—*Crim. Pro. Code* (1882), s. 110.—The mere fact that a person, from whom security is required, has been previously convicted of offences against property, is not sufficient to justify proceedings under s. 110 of the Crim. Pro. Code, unless there is additional evidence that the person complained against has done some act, or resumed avocations, indicating, on his part an intention to return to his former course of life. *In the matter of the petition of* HAIDAR ALI, **12 C. 520.** [*R.*, 16 C.L.J. 467 = 17 C.W.N. 238 = 18 Ind. Cas. 149 = 14 Cr. L. J. 5.]

(114)—*Crim. Pro. Code* (1882), ss. 118, 123, 340—*Person called upon to furnish security for good behaviour, if accused person—Right to be heard by his pleader.*—A Sessions Judge, to whom, the proceedings taken against a person, calling upon him to show cause why he should not give security for his good behaviour, has been forwarded under s. 123, Crim. Pro. Code, is bound to hear the pleader appointed by such person as he is an accused person. (16 B. 661, *F*). [*F.*, 25 A. 376 = A.W.N. 1903, 79, 15 P.R. 1900, Cr. = P.L.R. 1900, 59; *R.*, 4 C.W.N. 797.] Although a person who is called upon to furnish security for good behaviour is not accused of an offence, yet, he is an accused person. JHOJA SINGH v. QUEEN-EMPRESS, **23 C. 493** [*F.*, 21 A. 107 = A.W.N. 1898, 185; *R.*, 34 A. 533 = 10 A.L.J. 27 = 13 Cr.L J. 452 = 15 Ind.Cas. 84, 28 C. 709 = 5 C.W.N. 749, 36 C. 163 = 13 C.W. N. 151 = 8 C L.J. 565 = 1 Ind. Cas. 737 = 9 Cr. L.J. 36 = 9 Cr. L.J. 359, 2 L.B.R. 80, 135 P. L.R. 1904 = 21 P.R. 1904, Cr., 131 P.L.R. 1905 = 42 P.R. 1905, Cr., 8 Cr. L.J. 20 = 4 N. L. R. 81, 11 Cr. L.J. 501 = 7 Ind. Cas. 606 = 4 S. L.R. 49; *D.*, 2 C.L.J. 149 = 9 C.W.N. 983.]

(115)—*Crim. Pro.Code* (1898), ss. 122, 123 (2) —*Right to be heard by a pleader—Refusal to accept a surety.*—In a case referred to a Sessions Judge under s. 123 (2), the Judge is bound to hear a pleader who may appear on behalf of the defendant. A Magistrate cannot refuse to accept a surety on the ground that he lives at a distance from the accused. ABINASH MALAKAR v. EMPRESS, **4 C.W.N. 797.** [*Diss.*, 8 Cr. L.J. 166 = 1 S.L R. 46, Cr.; *F.*, 35 C. 400, 6 C W.N. 593 ; *R.*, 8 Cr. L.J. 344, 6 O.C. 199, 11 O.C. 267 ; *D.*, 8 C. L.J. 243 = 13 C.W.N. 80 = 8 Cr. L.J. 388 = 4 Ind. Cas. 560.]

(116)—*Crim Pro. Code* (1898), ss. 123 *and* 340—*Reference to Sessions Judge under s.* 123 —*Right to be heard by pleader—"Accused."*— In a case referred to, under s. 123, the Sessions Judge is bound to give notice to the person concerned and also to hear him by pleader, if he should be so represented ; inasmuch as such a person comes within the term "accused" in s. 340. NAKHI LAL JHA v. QUEEN-EMPRESS, **27 C. 656.** [*F.*, A.W.N. 1903, 79 = 24 A. 375 ; *Diss.*, 6 O.C. 262]

(117)—*Crim. Pro. Code*, ss. 110, 112, 190, 191 —*Transfer on the ground of Magistrate acting on private information.*—The language of ss. 110, 112 does not place any limit as to the resources from which a Magistrate may derive his information regarding the accused, and

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these sections are not controlled by ss. 190, 191, Crim. Pro. Code. That the Magistrate is acting on private information cannot, therefore, be a ground for applying for the transfer of such proceedings. *In the matter of the petition of* MITHU KHAN, **27 A. 172 = 1 A.L.J. 685 = A.W. N. 1904, 206 = 1 Cr. L.J. 807.** *See also* ALIMUDDIN HOWLADAR v. EMPEROR, 29 C. 392 = **6 C.W.N. 595.**

(118)—*Crim. Pro. Code* (1898), *ss.* 110 *and* 437—*Release of person called upon—Order for further enquiry, legality of—Scope of s.* 437.—The further enquiry, which can be ordered under s. 437 is into a complaint which has been dismissed, or into the case of an accused person who has been discharged. Proceedings under s. 110 cannot be regarded as on a complaint, as it does not relate to commission of an offence. Nor can they be regarded as a case in which an accused person has been discharged, for the terms "accused person" and "discharge" clearly refer to a person accused of an offence who has been discharged from a charge of that offence, within the terms of Ch. XIX of the Crim. Pro. Code. An order for further enquiry cannot, therefore, be made in the case of a person against whom proceedings under s. 110 have been taken and who has been released. If it be considered by the Magistrate that it is necessary to institute further proceedings, he is competent to do so under the law on fresh information received. QUEEN-EMPRESS v. IMAN MONDAL, **27 C. 662.** [*Diss.*, 24 A. 148 = A.W. N. 1901, 206, 2 L.B.R. 80, 24 P.R. 1903, Cr. = 20 P.L.R. 1904; *Not F.*, 35 B. 401 = 1 Bom. Cr. C. 49 = 13 Bom. L.R. 505 = 12 Cr. L.J. 430 = 11 Ind. Cas. 614 ; *F.*, 20 A.W.N. 206, 42 P.R. 1905, Cr. = 131 P.L.R. 1905 ; *R.*, 17 C.P.L.R. 127, 36 M. 315 = 14 Cr. L.J. 559 = 21 Ind. Cas. 159, 6 O.C. 262, 36 A. 147 = 12 A.L.J. 167 = 15 Cr. L.J. 39 = 22 Ind. Cas. 183, 15 Cr. L.J. 531 = 24 Ind. Cas. 843 = U.B.R. 1914, 1st Qr., p. 3.]

(119)—*Crim. Pro. Code* (1898), *ss.* 110 *and* 117 (4)—*Security for good behaviour—Acts of oppression committed by* burkandazes *of a zamindari—Habitual association—Joint trial—Object of taking security for good behaviour.*—Certain acts amounting to extortion having been committed by the *burkandazes* of a zemindari in performance of their duties, they were called upon to furnish security for good behaviour, under s. 110 on three grounds, first, that they habitually committed extortion ; second, that they habitually committed, or attempted to commit, or to abet the commission of, offences involving a breach of the peace ; and, third, that they were dangerous persons so as to render their being at large without security hazardous to the community. The Magistrate tried them jointly and each of them was ordered to execute a bond with two sureties for his good behaviour for three years. *Held*, that, even supposing that the Magistrate was right in considering that there was habitual association between them in regard to the first and second points mentioned, there certainly would be no such connection between them in regard to their character as to make them dangerous persons and thus render their being at large without security hazardous to the community, and that, therefore, the proceedings shoud have been separately taken against each of the persons. [*D.*, 6 Bom. L.R. 34.] S. 110 is not applicable to the case of persons who, as *burkandazes* in a zemindari, commit acts of extortion in respect of tenants in the performance of their duties, as it cannot be said that they are in the habit of committing extortion as individual members of the community, because, if it should so happen that they were discharged by the zemindar or cease to be in his employ, the acts would no longer be committed by them for, it would no longer be their interest to do such acts in the interests of their employers and certainly they would not be likely to commit them in their own private capacities. The proper course of dealing with the case is to prosecute them, or those under whose orders they act, for specific acts of oppression. The object of enabling a Magistrate to take security for good behaviour, is for the prevention and not for the punishment of offences. In a case where certain persons are liable to be prosecuted for acts of extortion committed by them, an order requiring them to furnish security for good behaviour would seriously prejudice them in that prosecution. HARI TELANG v. QUEEN-EMPRESS, **27 C. 781 = 4 C.W.N. 531.** [*F.*, 9 C.W.N. 898 = 1 C.L.J. 616.]

(120)—*Crim. Pro. Code* (1898), *ss.* 110, 117 *and* 191—*Security for good behaviour — Security proceedings instituted by Magistrate on his own knowledge—Competency of Magistrates to try the case.*—S. 191 declares the course to be taken when a Magistrate has taken cognizance of an offence upon his own knowledge or suspicion. Although the law does not expressly provide for a case under s. 110, still the principle that no man ought to be a Judge in his own cause applies to a proceeding under s. 110. Therefore a Magistrate, who institutes proceedings under s. 110, and has proceeded in some measure, if not mainly on his own knowledge of the character of the accused is not the proper person to proceed with the trial and inquire into the truth of the information upon which the action has been taken. ALIMUDDIN HOWLADAR v. EMPEROR, **29 C. 392 = 6 C.W.N. 595.** [*R.*, 27 P.R. 1903, Cr. = 21 P.L.R. 1904, 14 Cr. L.J. 5 = 18 Ind. Cas. 149 = 16 C.L.J. 467 = 17 C.W.N. 238.] *See also* MITHU KHAN v. KING-EMPEROR, **1 A.L.J. 685 = A.W.N. 1904, 206 = 27 A. 172 = 1 Cr. L.J. 807.**

(121)—*Crim. Pro. Code, s.* 110—*Order for security for good behaviour, power of District Magistrate on appeal from—Further inquiry, power to order.*—An order was passed by a Deputy Magistrate binding the applicants to give security for their good behaviour under s. 110, Crim. Pro. Code. On appeal to the District Magistrate, he set aside the order and

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directed a further enquiry, at the same time requiring increased security from the applicants. *Held*, there is no provision of law authorising District Magistrates to direct "further enquiry" in proceedings for security for good behaviour; and the District Magistrate, in this case, had, therefore, no power to pass the order in the terms in which he did, which should, therefore, be set aside as illegal. DAYA NATH TALUQDAR v. EMPEROR, **33 C. 8=3 Cr. L.J. 243.** [*R.*, 36 A. 147=12 C.L.J. 167=15 Cr. L.J. 39=22 Ind. Cas. 183.]

(122)—*Crim. Pro. Code*, ss. 108 *and* 118—*Security for good behaviour—Meaning of the terms* "swaraj"—*Penal Code*, s. 124-*A*.—The word "*swaraj*" does not necessarily mean Government of the country to the exclusion of the present Government. The word, if literally translated, means self Government, *i.e.*, Government by the people themselves, under the king and under British Sovereignty, *i.e.*, "Home Rule" under the Government. Where a person used in addressing an audience the word "*swaraj*" and incited the members of the meeting to exert themselves to secure "*swaraj*," *held*, that there was nothing which brought the case in s 124-A of the Penal Code nor would s. 108, Crim. Pro. Code, apply to the case. BENI BHUSHAN ROY v. EMPEROR, **34 C 991 =6 C.L.J. 699=11 C.W.N 1050=6 Cr. L.J. 297.** [*R.*, 32 M. 3, 5 M.L.T. 1, 1 Ind Cas. 22.]

(123)—*Crim. Pro. Code* (1872), s. 505—*Bad livelihood—Procedure*:—A person, against whom proceedings under s. 505 are instituted, is entitled to have the precise matter, which the Magistrate considers established by evidence against him, embodied in the charge. It is not sufficient for the Magistrate to say generally that there is suspicion. He ought not to refuse him bail. *In the matter of the petition of* KOOKAR SINGH, **1 C L.R. 130.**

(124)—*Crim. Pro. Code* (1872), s. 505—*Object—Discretion of Magistrate.*—The object of Chap. XXXVIII is the prevention, not the punishment, of crime; and with that object it authorizes Magistrate to take from certain persons good and sufficient security for their good behaviour. But it is solely for the purpose of securing future good behaviour that s. 505 can be used; and any attempt to use it for the purpose of punishing for past offences is wrong, and not sanctioned by law. [*R.*, 7 A. 67, Rat. Un. Cr. C. 830]. Where in the case of a man who has never been convicted of any offence, the Magistrate orders that security shall be given of a description which it must be necessarily difficult to find, and directs that, in default, the imprisonment shall be rigorous, it is an unreasonable exercise of discretion, especially when the Magistrate indicates no reason why, with a view to the prisoner's future good behaviour, it is desirable that the imprisonment shall be of the more severe kind. *In the matter of* UMBICA PROSHAD, **1 C.L.R. 268** (2 C. 110, *F.*)

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(125)—*Crim. Pro. Code* (1882), ss 109, 122, 125—*Power of Magistrate to cancel a security bond once accepted.*—When a surety, furnished by a person directed to furnish security for good behaviour, has been offered and accepted, the Magistrate has no authority to require fresh security, merely because he is dissatisfied with the old security already accepted. EMPRESS v. RAM LAL ACHARJIA, **1 C.W.N. 394.** [*F.*, 16 P.R. 1905 Cr.=120 P.L.R. 1905=2 Cr. L. J. 278; *R.*, 2 L.B.R. 76, 8 O C. 245=2 Cr. L. J. 507.]

(126)—*Crim. Pro. Code*, s. 110—*Previous acquittal for dacoity—Proceeding to bind down on failure of prosecution, if legal.*—Where a person has been tried for dacoity and acquitted, he ought not to be proceeded against under s. 110 of the Code, on matters deposed to and disbelieved at the trial for dacoity. A person acquitted of dacoity cannot be bound over under s. 110 of the Code, on the evidence merely of persons stating that they began to suspect him since the dacoity case. KISMAT AKANDA v. EMPEROR, **11 C.W.N. 129=4 Cr. L J. 464.** [*R*, 15 Cr. L J. 255=23 Ind. Cas. 207.]

(127)—*Crim. Pro. Code* (1898), s. 123—*Security for good behaviour—Term exceeding one year—Reference to Sessions Judge—Sessions Judge's power to go into the merits and to consider the sufficiency of the security.*—Sub s. (3) of s. 123 of the Crim. Pro. Code, contemplates a decision by the Sessions Judge on the merits of the order demanding security for good behaviour. It does not authorize the Sessions Judge to consider the sufficiency of the security offered GAGAN CHANDRA DAS CHOWDHURY v. EMPEROR, **12 C.W.N. 463= 7 Cr. L.J 323.**

(128)—*Crim. Pro Code* (1898), ss. 110, 122, 123, *sub-s.* (3). 367 *and* 424—*Bad livelihood—Order under s.* 123, *sub s.* (3) *should show that the case of each individual prisoner was considered — Sureties, fitness of, enquiry into, to be held by whom—Reasons for refusing to accept sureties, necessity for recording—Refusal of sureties, proper grounds for—Enquiry under s.* 122, *Crim. Pro. Code, whether a judicial enquiry—Delegation of an enquiry under s.* 122, *Crim Pro. Code—Evidence, relevancy of—Indian Evidence Act* (I *of* 1872), s. 11.—It is open to doubt whether the provisions of ss. 367, 424, Crim. Pro. Code, govern orders under s. 123, sub-s. (3). But even if they do not, the Sessions Judge's order under s. 123, sub-s. (3), Crim. Pro. Code, should show that he has considered the case of each individual prisoner. Even if the order need not contain all the details required by s. 367, Crim. Pro. Code, still each prisoner has a right to have his case considered on its own merits, and the order should show that this has not been lost sight of. When the question is whether a man is a habitual cheat, the fact that he belongs to an organisation formed for the purpose of habitually cheating in concert is relevant under

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s. 11 of the Evidence Act. A Magistrate is justified in refusing to accept sureties who, being called upon by the Magistrate to attend for examination, do not do so. But it would not be proper for a Magistrate to reject the security offered by the sureties simply on the ground that they, having been asked by the Magistrate to state in writing what influence they have over the persons bound down for good behaviour, have failed to do so. Where the Magistrate, after his decision of a bad livelihood case, asked a subordinate Magistrate to make an enquiry into the fitness of the sureties offered and, on his report, refused to accept the sureties without recording any independent reasons of his own. *Held* per *Ryves, J.* (*Coxe, J.*, contra).—Under s 122, Crim. Pro. Code, the Magistrate, who decides the bad livelihood case, should himself hold an enquiry into the fitness of proposed sureties. Per *Coxe, J.*—That the procedure adopted by the Magistrate was not illegal. That s. 122, Crim. Pro. Code, does not necessitate a judicial enquiry, and even if it does, there is no reason why such an enquiry should not be delegated to another Magistrate. In refusing to accept sureties, the Magistrate should record his reasons, but his omission to do so in this case did not justify any interference by the High Court, as it is clear the Magistrate adopted the reasons of the subordinate Magistrate who enquired into the fitness of the sureties. KALU MIRZA v. EMPEROR, **37 C. 91 = 14 C.W.N. 49 = 5 Ind. Cas. 29 = 11 Cr. L.J. 23.** (35 C. 138, *R.*; A.W N. 1898, 154, 25 A. 272, 27 A. 293, 10 C.W.N. 1027, 3 C.L.J. 575.)

(129)—*Crim. Pro. Code, s. 122—Refusal to accept sureties upon invalid and unreasonable grounds—Acting on a Police report, and not on enquiry by the Magistrate himself, improper.*—Where a Magistrate refused to accept sureties tendered by a person bound down under s. 110, upon the following grounds, (i) that three out of four sureties were not residents of the village where the defendants lived, (ii) that none of them had sufficient moveable property, (iii) that all of them were reported to be of bad character and (iv) that three of them were relations of a person who was suspected of receiving stolen property. *Held*, that the first, second and fourth grounds were not sufficient; that the third ground might be sufficient, but the Magistrate, in determining that question could not act on a report submitted by the Police, but must hold an enquiry in respect thereto. SURESH CHANDRA BASU v. EMPEROR, **3 C.L.J. 575 = 3 Cr L J. 468.** [*F.*, 37 C. 91 = 5 Ind. Cas. 29 = 14 C.W.N. 49 = 11 Cr. L.J. 23.]

(130)—*Crim. Pro. Code, s. 110—Security for good behaviour—Enquiry held outside the local limits of the Magistrate's jurisdiction—Proceedings taken when the person is outside such jurisdiction.*—An enquiry, under s. 110, should not be conducted by a Magistrate at a place, which is outside the local limits of his jurisdiction and where he has no power to conduct any proceedings. The person, against whom proceedings are taken under s. 110, must be, at the time when such proceedings are taken, within the local limits of the jurisdiction of the Magistrate taking such proceedings. Non-compliance with these provisions vitiates the proceedings, as made without jurisdiction, and the order passed must be set aside. SONA RAM, R SANGMA v. KING-EMPEROR, **3 C L. J. 195 = 3 Cr. L. J. 246.**

(131)—*Crim. Pro Code* (1898), *s.* 110—*Landlord — Tenants of bad character — Lending money and settling dispute—Association.*—The facts that a landlord has tenants of bad character, that he lends money or paddy when the latter are in difficulty, and because they are his tenants, and that he settles disputes between two men, one of whom is a thief and the other is not, do not subject him to a proceeding under s. 110 of the Crim. Pro. Code. The mere association with men of bad character is not sufficient, unless the association is to commit theft or dacoity, to bring him under s. 110 of the Crim. Pro. Code. NILKAMAL DAS v. EMPEROR, **6 C.L J. 711 = 6 Cr. L.J. 403**

(132)—*Crim. Pro. Code* (1898), s. 122—*Security for good behaviour—" Unfit "—Discretion of Magistrate.*—The 'unfitness' of a surety under s. 122, Crim. Pro. Code, is not limited to pecuniary unfitness. The question as to whether a particular person is 'fit' or not is for the Magistrate to decide. The matter is left to his discretion, which is not fettered in any way. *In re* JALIL, **8 C.L.J. 243 = 13 C. W.N. 80 = 4 Ind. Cas. 560 = 8 Cr. L J 388.** (4 C.W.N. 797, 6 C.W.N. 593, *D.*) [*R.*, 37 C. 446 = 14 C.W.N. 666 = 11 Cr.L.J. 392 = 6 Ind. Cas. 668, 41 C. 764 = 15 Cr. L.J. 169 = 22 Ind. Cas. 745.]

(133)—*Procedure where prisoners under trial appear to be bad characters.*—If it appears to the Deputy Magistrate from the evidence adduced, that the prisoners were bad characters, being robbers by repute, he must, as a precautionary measure, demand security of them for one year under s. 296 of the Crim Pro. Code, 1861, and then, on the expiry of that term, he can, if necessary, proceed under the provisions of ss. 297 and 298 of that Code. Any action, however, under each of any of the sections cited, should be taken separately and irrespectively of any commitment to the Sessions for offences committed under the Penal Code. **1 W.R. Cr. Letters, 14.**

(134)—*Crim. Pro. Code* (1861), *Ch.* XIX—*Security proceedings, nature of—Procedure.*—A person dealt with under Ch. XIX is not a person charged with or convicted of an offence, and a requisition for security cannot be called a punishment. The defendant in a security proceeding should have every opportunity of cross-examining the witnesses produced against him, of making his own statement, and of calling witnesses on his own behalf. HIGH COURT PROCEEDINGS, 3RD NOV. 1868, **4 M. H.C. App. 22.**

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(135)—*Crim. Pro. Code, ss.* 123 *and* 397—*Imprisonment in default of security—Subsequent sentence for offence under s.* 176, *I.P C.—Date of commencement.*—A person committed to prison under s. 123, Crim. Pro. Code, does not undergo sentence of imprisonment. He is committed to prison under s. 123, Crim. Pro. Code, not for the commission of any offence, and s. 397, Crim. Pro. Code, therefore is not applicable. So where a person undergoing imprisonment under s. 123, Crim. Pro. Code, is convicted, the sentence of imprisonment under s. 176, I.P.C., commences from the date of the order. *In re* JOGHI KANNIGAN, **4 M.L.T. 223 = 8 Cr. L.J. 402 = 31 M. 515.**

(136)—*Crim. Pro. Code* (1898), *ss.* 118, 123—*Order to give security for good behaviour for one year—Failure to find securities—Order for imprisonment after one year—Legality.*—A, was on the 17th December, 1907, ordered to enter into a bond with sureties to be of good behaviour for one year. When he failed to do so, instead of being committed to prison at once under s. 123, he was given time to find sureties, and finally on the 24th February, 1909, was directed to undergo rigorous imprisonment for his failure to find sureties as directed by the first order. It was *held*, as one year had elapsed from the date of the first order, the order under s. 123 was illegal. *In re* MUTHU GOWNDEN, **6 M.L.T. 308 = 4 Ind. Cas. 36 = 10 Cr. L J. 481.**

(137)—*Crim. Pro. Code* (1872), *s.* 504—*Rigorous imprisonment of person informed against.*—Sentencing a person, against whom information was given, to rigorous imprisonment without demanding security from him is illegal. POLICE v. NARAIN, **Colm. Dig. Cr. 32 of 1876.**

(138)—*Object of—Sureties being residents of a certain locality, condition as to—Magistrate's discretion in taking security for good behaviour, how to be exercised—Crim Pro. Code* (1898), *ss.* 112, 118 *and* 122.—When drawing up an order for security, a Magistrate should remember that the object is to obtain security for good behaviour, not to punish the person concerned with imprisonment, and should, therefore, abstain from imposing conditions likely to unduly embarrass the person to be bound over. It is not competent to a Magistrate to include, in an order under s. 112 or s. 118, a condition that the sureties shall be residents of a certain locality, and, therefore, an order requiring the sureties to be persons residing within a radius of two miles is bad. It is not possible to lay down any rule as to the reasons for which a surety may be rejected under s. 122. KING-EMPEROR v. MANGAL, **6 O.C 199.** (20 A. 206, 21 A. 471, *Not F*; 22 W.R. Cr. 37, 24 C. 155, 4 C.W.N 797, 6 C.W.N. 593, 91 P R. 1880, Cr., *F.*)

(139)—*Discharge of person called upon to give security for good behaviour, second enquiry after — Jurisdiction of District Magistrate—"Accused" meaning of—" Discharge," meaning of—Crim. Pro. Code* (1898), *ss.* 112, 119 *and* 437.—A Magistrate receiving information from the police proceeded to take security for good behaviour for three years from the applicant, but, after a full enquiry, discharged him. The District Magistrate, being moved by the District Superintendent of Police, again took proceedings against him and finally ordered him to furnish the security. *Held* that the proceedings of the District Magistrate were without jurisdiction; he was incompetent under s. 437, Crim. Pro. Code, to make or to order further enquiry into the case; for, it is probable that the words "accused person" in s. 437, Crim. Pro. Code, were not intended to apply to a person called upon to furnish security under s. 112; also, the word "discharged" in the same section refers to a person who has been accused of an offence and has been discharged from the accusation or charge. It is altogether contrary to principle that, when a competent Magistrate has held a full inquiry and decided that it is not necessary to call upon a person to give security for his good behaviour, the same or any other Magistrate should re-open the proceedings; but an order to discharge or release under s. 119, even after a full inquiry, does not for ever bar further proceedings against the same person. *Held*, therefore, that proceedings of the kind held by the Sub-Divisional Magistrate in the present case could not be re-opened by the District Magistrate. SHEO DIN v. KING-EMPEROR, **6 O.C. 262.** (1 C.L.R. 89. *R.*) [*R.*, 36 A. 147 = 12 A.L.J. 167 = 15 Cr. L.J. 39 = 22 Ind. Cas. 183.]

(140)—*Surety, rejection of, upon Police report—Procedure to be followed where Police report unfavourable to surety—Crim. Pro. Code* (1898), *ss.* 110 *and* 117.—When sureties are tendered, a Magistrate should not refuse to accept them simply on an unfavourable report by the police, without giving notice to the person who has tendered them, and giving both him and the police an opportunity of adducing evidence. KING-EMPEROR v. PARMESHUR, **7 O.C 113 = 1 Cr. L.J. 459.** [*Appr.*, 13 Cr. L.J. 760 = 17 Ind. Cas. 72 = 15 O.C. 263; *R.*, 11 O. C. 267.]

(141)—*Crim. Pro. Code (Act V of 1898), ss.* 124, 125 *and* 126—*Security for good behaviour—Order of Deputy Magistrate accepting security, District Magistrate's order passed without notice to parties cancelling—Criminal revision.*—The applicant was directed by a Deputy Magistrate to furnish two securities, in Rs. 400 each, for good behaviour. The securities were forthcoming and were accepted by the Deputy Magistrate. Some how, the matter came before the Deputy Commissioner, who, on the ground that the securities were not sufficient, cancelled the order of the Deputy Magistrate accepting them and ordered issue of warrants for the applicant's arrest. *Held*, that the order of the Deputy Commissioner was inconsistent with the spirit of s. 125, read with ss. 124 and 126, and was illegal. If he was dissatisfied with his subordinate's inquiry as to the insufficiency of the security, he should have held such

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inquiry as he thought necessary, after notice to the parties concerned, and reported the matter to the Court of the Judicial Commissioner. The law gave him no power to deal with it himself. MAHABIR v. KING-EMPEROR, **8 O. C. 245=2 Cr. L.J. 507.**

(142)—*Crim. Pro. Code* (1898), *s.* 110—*Security for good behaviour.*—*Held,* that the person proceeded against under s. 110, Crim. Pro. Code, must be resident within the jurisdiction of the Magistrate, who institutes proceedings; otherwise the proceedings are *ultra vires.* EMPEROR v. KALU, **91 P.L.R. 1901=12 P.R. 1901, Cr.** (27 C. 993, *F.*)

(143)—*Conviction under the Penal Code—Sessions Judge, jurisdiction of.*—A person charged with a specific offence under the Penal Code could only be punished with the sentence provided for under the Penal Code. He could not be required to furnish security for good behaviour. A Sessions judge cannot order security, unless set in motion by a Magistrate. MEGH SINGH v. JEYMUL SINGH, **18 P R. 1866, Cr.** *See also* CROWN v. MOOSSUMAT MOONEAH, **53 P.R. 1866, Cr.** [*F.*, 34 P.R. 1867, Cr.]

(144)—*Crim. Pro. Code, ss.* 123, 406—*Security for good behaviour—Appeal to District Magistrate—Sessions Judge, submission of proceedings to—Procedure to be adopted by Sessions Judge—Presentation of appeal to Session Judge, procedure in case of—Crim. Pro. Code, ss.* 123 *and* 406.—A person ordered to give security for good behaviour by a Magistrate is entitled to appeal to the District Magistrate, notwithstanding that the proceedings may have been laid before the Sessions Judge under s. 123, Crim. Pro. Code. But the right of appeal is lost as soon as the Sessions Judge has passed orders on the case under sub-s. (3) of s. 123. The Sessions Judge, on receiving a record under sub-s. (2) of s. 123, should at once give notice to the person ordered to give security of the date on which the case will be taken up. If before the last mentioned date the person ordered to give security does not object to the case being taken up by the Sessions Judge on the ground that he has appealed, or the Sessions Judge does not become aware that an appeal has been filed in the Court of the District Magistrate, the Sessions Judge should proceed to dispose of the case. If, on the other hand, the Sessions Judge is informed or becomes aware that an appeal has been filed, he should stay his hand until the appeal has been disposed of. Where the person ordered to give security presented an appeal to the Sessions Judge, *held,* that the Sessions Judge should have returned the memorandum of appeal to him for presentation to the District Magistrate, instead of forwarding the appeal to the District Magistrate directly. PUTTU *alias* GHULAM HUSAIN v. KING-EMPEROR, **13 O C. 354=8 Ind. Cas. 879=11 Cr. L J. 725.**

(145)—*Person convicted of theft.*—Security could not be required from a person convicted

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of theft merely because of the conviction alone. ALADEE v. MAMMOO, **34 P.R. 1867, Cr.**

(146)—*Power to arrest or demand security.*—Only the Magistrate of the District in which a person was arrested on suspicion of bad livelihood, has jurisdiction to detain the accused or demand security for good behaviour. CROWN v. KOOTBA, **40 P.R. 1867. Cr.**; *See also,* CROWN v. KALU, **12 P.R. 1901, Cr.=91 P.L.R. 1901.**

(147)—*Jurisdiction of Magistrate.*—A Magistrate is only competent to enquire into the sufficiency of the security offered, but he is not competent to require it from a particular person. CROWN v. GULLOO, **49 P.R. 1867.** [*F.*, 18 P. R. 1906, Cr.]

(148)—*Sentence of imprisonment and order for security to be furnished on release.*—Where a person is convicted of an offence, the Magistrate cannot add to a sentence of imprisonment, an order that he should be required to give security for good behaviour immediately on his release. He may, after discharge from imprisonment, be brought and dealt with under s. 296, Crim. Pro. Code. 1861. CROWN v. DANEE, **38 P R. 1869, Cr.** [*F.*, 21 P.R. 1880, Cr., 6 P.R. 1883, Cr.]

(149)—*Register of bad characters.*—A Magistrate was not competent, under Act XXV of 1861, to authorize a Magistrate to enter an offender's name in a register of bad charaeters. RATTUN SINGH v. RUKHEE, **29 P R. 1870, Cr.**

(150)—*Sentence of imprisonment—Order for security.*—Where an accused person was sentenced to five years' rigorous imprisonment and was ordered to furnish security for good behaviour for two years, or in default to be detained in custody for that period, *held,* that the order requiring security was illegal. CROWN v. BULDEO, **9 P.R. 1871, Cr.**

(151)—*Personal security and sureties.*—A person proceeded against under ss. 505 and 506, Crim. Pro. Code, 1872, may be required to furnish a personal security in addition to the security for his good behaviour. A surety should bind himself only to the same amount as the principal. If there are more than one surety, they should bind themselves for the same amount jointly and severally. *Per Lindsay, J.*—Under the Code, there is no provision for the recovery of the amount mentioned in the bad character's bond, the surety being responsible for the sum. CROWN v. YARAM, **1 P.R. 1878, Cr.**

(152)—*Crim. Pro. Code* (1872), *s.* 505—*Convict required to be produced before Court immediately on release.*—An order requiring a convicted person to be brought before the Magistrate immediately on his release for the purpose of requiring him to furnish security for good behaviour is not a proper order. EMPRESS v. BUDHA SINGH, **21 P.R. 1880, Cr.** [*F.*, 6 P.R. 1883, Cr.]

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(153)—*Residence of sureties.*—A condition that the sureties should be residents of a certain locality cannot be attached to an order under s. 506, Crim. Pro. Code, 1872. TARA SINGH v. EMPRESS, **38 P.R. 1880, Cr.**

(154)—*Offence under Act* III *of* 1867.—The committal of an act under s. 4 of Act III of 1867 being an offence, the sureties of a person under security for good behaviour are liable to be proceeded against under s. 514, Crim. Pro. Code, 1872, if the latter commits an offence under s. 4 of Act III of 1867. MUHAMMAD HUSSAN v. EMPRESS, **27 P.R. 1881, Cr.** (12 P.R. 1875, Cr., *R.*)

(155)—*Crim. Pro. Code* (1872), *ss.* 505, 506. —Where an order of Magistrate under s. 506, which was confirmed on appeal by the Sessions Judge, did not contain an opinion that the accused answered to any of the descriptions mentioned in s. 506, the finding of the Magistrate merely amounting to one that the accused was a dangerous character, *held* that an order under s. 506, Crim. Pro. Code, 1872, was not right, and that the proper order would be under s. 505. HAKU v. EMPRESS, **12 P.R. 1881, Cr.**

(156)—*Accused convicted under s.* 242, *I P.C., required to furnish security on the same day.*—Where a person was convicted of an offence under s. 242, I.P.C., to six months' imprisonment, and was also ordered by the same order to furnish security for three months under s. 504, Crim. Pro. Code, 1872, the latter order to take effect after the expiry of the sentence of imprisonment, *held* that, the order for imprisonment being subsequent to the order to furnish security, the latter should be cancelled. EMPRESS v. CHANDA SINGH, **35 P.R. 1881, Cr.**

(157)—*Personal recognizance — Recovery.*—The mere fact that the amount of the bond executed by a person required to furnish security for good behaviour cannot be realized, under the provision of the Code, by any summary process, is not a ground for binding the principal personally. The amount can be recovered by a suit in a Civil Court. EMPRESS v. MITTA, **38 P.R. 1881, Cr.** (33 P.R. 1880, *Overruled.*)

(158)—*Order directing accused to be brought on release before Magistrate for taking security.*—An order convicting an accused person and directing him to be brought up on his release from jail with a view to furnish security for good behaviour being taken from him is illegal. EMPRESS v. RAHIM BAKSH, **6 P.R. 1883, Cr.** (21 P.R. 1880, Cr., *F.*)

(159)—*Habitually bringing false claims by forged entries.*—S. 110, Crim. Pro. Code, 1882, does not apply to the case of a person who is charged with the habit of bringing false claims by forged entries. GANESHI v. EMPRESS, **25 P.R. 1884, Cr.** [*R.*, 21 P.R. 1914, Cr.]

(160)—*Jurisdiction—The object of Ch.* VIII, *Crim. Pro. Code, is not the punishment of offences, but the prevention of crimes.*—The jurisdiction conferred by s. 110, is intended to be confined to persons within the limits of the Magistrate's jurisdiction, and is not meant to extend to persons who are within those limits, merely because they have been brought there in police custody. EMPRESS v. MURLI, **43 P. R. 1885, Cr.**

(161)—*Revision — Chief Court's power to interfere with findings of fact.*—Where it was contended that the Chief Court should not, on a revision from an order under s. 110, be bound by the findings of fact of the District Magistrate, but should consider the application as a *quasi* appeal, *held* that, as the responsibility for the due exercise of the provisions of the section should rest with the District Magistrate, a remedy in the nature of appeal would be against the spirit of the Code. BALMUKAND v. EMPRESS, **23 P.R. 1889, Cr.**

(162)—*Crim. Pro. Code* (*Act* V *of* 1898), s. 117 (2)—*Procedure on trial for security for good behaviour* —Where the Magistrate, after recording the deposition of only one witness for the prosecution and without examining the witnesses named by the petitioner, ordered him to furnish security for good behaviour and the order was upheld on appeal, the Chief Court, on revision, set aside the order and directed a fresh trial according to law. NARAIN DAS v. EMPEROR, **129 P L R. 1901.**

(163)—*Power to remit penalty on forfeiture of security bond—Powers of High Court and District Magistrates.*—Under the Crim. Pro. Code of 1898, Magistrates have power to remit any part of the penalty or forfeiture of a bond executed by a surety for a person bound over under s. 118 of the Code. District Magistrates have power to deal, on appeal or in revision, with orders passed by a Magistrate after the penalty has been forfeited. The High Court has power under ss. 435 and 439 to revise orders passed by Magistrates under s. 514 or by District Magistrates under s. 515. MASTA v. EMPEROR, **15 P.R. 1905 = 2 Cr. L.J. 131 = 99 P.L.R. 1905.** (2 P.R. 1883, Cr., 3 C. 757, 8 C.L.R. 72, 19 W.R. Cr. 1, *D*) [*R.*, 15 Cr. L. J. 485 = 24 Ind. Cas. 573 = 7 P.W.R. 1914, Cr. = 62 P.L.R. 1914.]

(164)—*Crim. Pro. Code, ss* 110-118—*Security for good behaviour—Power of Magistrate to delegate the duty of enquiring as to the sufficiency of security—Prohibition of particular persons as sureties—Enquiry by police officers as to character of sureties — Reports from Revenue officers as to sufficiency of the security —Security may be moveable or immoveable.*—A Magistrate, who has passed an order under s. 118 cannot delegate to another the duty of enquiring into the sufficiency of the security rendered, and such enquiry must be made by the Magistrate, who cannot send the security bond to a Tahsildar for report. The party called into furnish security should appear in Court with evidence of the adequacy of the security tendered, and evidence to the contrary

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should be tendered at the same time, or as soon afterwards as possible, if the adequacy is contested. The Tahsildar, if his evidence is necessary, should be examined, and the Magistrate should call for a report in those cases only, in which extracts from revenue records, etc., will supply the necessary information. The practice of calling in a Police Officer for a report on the character of the surety, his relationship to the principal, etc., is illegal and the Police Officer should, if his evidence is necessary, be examined as a witness. A Magistrate has no power to order that security be given by any particular person or class of persons, or to prohibit the acceptance of security from *lambardars*, *inamkhors*, *and chaukidars.* The exclusion of immoveable property from the security to be furnished is illegal. The practice of sending a person to jail against whom an order under ss. 110—118—has been passed, pending the receipt of the report from the Revenue and Police officers, is illegal. Imprisonment should follow failure to furnish adequate security, and should not precede a finding that the security is inadequate. KING-EMPEROR v. KAIM KHAN, **18 P R. 1906, Cr. = 14 P.L.R. 1907 = 5 Cr. L J. 148 = 5 P.W.R. 1907, Cr.** (A.W.N. 1898, 154, 25 A. 272, 27 A. 293, 24 C., 155, 49 P.R. 1867, Cr., *F.*; 28 P.R. 1901, *R.*) [*R.*, 142 P.L.R. 1914 = 6 P.R. 1914, Cr.]

(165)—*Crim. Pro. Code* (1898), ss. 110 *to* 123, 438, 439—*Security for good behaviour rejected on the report of the Tahsildar and Sub-Inspector —Illegality of the procedure—Revision.*—The Magistrate sent a security to the Tahsildar for inquiry as to its sufficiency. On the report of the Tahsildar and the Sub-Inspector, which was to the effect that the surety was a man of property, but was objectionable on other grounds, the Magistrate rejected the security. *Held*, following the ruling in Kaim Khan's case, that the order of the Magistrate was illegal, and he was directed to accept the security offered, unless he was satisfied, by personal inquiry, that it was inadequate in value. JAWAHIRA v. CROWN, **6 P.W.R 1907, Cr. = 56 P.L.R. 1907 = 5 Cr. L J. 179.**

(166)—*Crim. Pro. Code* (1898), *ss.* 112, 118 *and* 439—*Security for good behaviour—Ss.* 112, 118—*Ordering security for a larger amount than what was communicated to an accused.*—*Held*, that a Magistrate is precluded by s. 118, Crim. Pro. Code, from ordering security for a larger amount than what has been communicated by him under s. 112 of the Code to the accused. KISHEN SINGH v. CROWN, **11 P.W. R. 1907, Cr. = 5 Cr. L.J. 219.**

(167)—*Security for good behaviour—Accused recently released from jail after completion of sentence—Not to be called on to give security until proof of return to evil courses.*—When a man has been released from jail after the completion of his sentence, he must be given a fair chance of reformation, and must not be called on to give security for good behaviour, till there

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is satisfactory evidence to prove that he has returned to evil courses. QUEEN-EMPRESS v. NGA LEIN BAW U **L.B R. 1872—1892, 533.**

(168)—*Fact of habitual offender provable by general repute—Absence of proof of conviction—Magistrate to cautiously test the evidence and assure himself beyond reasonable doubt.*—*Held*, that having regard to the last clause of s. 117 of the Crim. Pro. Code that the fact that a person is an habitual offender may be proved by evidence of general repute, it would not be right to lay down as a hard and fast rule that evidence must be given to show that the person against whom proceedings are instituted under Ch. VIII of the Crim. Pro. Code has actually been convicted of any of the offences mentioned. But, in dealing with cases under this Chapter, Magistrates ought, especially where no conviction is proved, to take great care to test the evidence for the prosecution, and to assure themselves beyond reasonable doubt that the accused really is an habitual offender of the class named. They should not rest satisfied merely with bare statements that the accused is reputed to be an habitual offender. QUEEN-EMPRESS v. NGA SHWE PYU, **L.B.R. 1872—1892, 542.**

(169)—*Accused not previously convicted — Order for security on the habitual offender to be made after a patient and exhaustive enquiry —Enquiry to be held, if possible, in the village where parties reside—Reasonable opportunity to be given to procure attendance of securities—Prosecutions in such cases not to be readily sanctioned.*—Orders requiring security for good behaviour, on the ground that an accused person, who has never been convicted, is nevertheless an habitual offender, should never be made, except after a patient and exhaustive enquiry which will show, beyond all reasonable doubt, that the accused is in the habit of committing theft or other similar offences, and that it is essential to send him to jail in case he fail to give security for good behaviour. The enquiry, if possible, should be held in the village where the parties reside, so as to avoid the witnesses, being needlessly harassed and to enable the accused without difficulty to procure the attendance of persons willing to speak in his favour. If the order requiring security is necessary, the Magistrate should give the accused reasonable opportunity of procuring the attendance of his sureties, if any. Prosecutions under s. 110, in regard to persons who have never before been convicted, should not be very readily sanctioned. QUEEN-EMPRESS v. NGA SEIK, **L.B.R. 1872—1892, 546.**

(170)—*Preventive jurisdiction of Magistrates —Crim. Pro. Code* (1882), *Ch. VIII.*—The preventive provisions of Ch. VIII of the Code are more successfully and more legally enforced by the Magistrates, who enlist the aid of private individuals in maintaining order, by placing habitual offenders under a bond

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with sureties undertaking responsibility for their good behaviour, than by those Magistrates who, with slight regard for the future, allow those provisions to be used merely as a means to commit habitual offenders to prison, when no fresh offence can be proved against them. QUEEN-EMPRESS v. NGA SAING GYI, **L.B.R. 1893—1900, 245.**

(171)—*Preventive jurisdiction of Magistrates —Proceedings under ss.* 109,110, *Crim.Pro.Code —What they should disclose—Crim. Pro. Code* (1882), *ss,* 55, 61—*Sanction to prosecute—Judicial Department Circular No.* 17 *of* 1888.—Neither can justice be properly administered in cases where proceedings have been taken under Ch. VIII of the Crim Pro. Code, nor can the High Court ascertain whether the orders of the Chief Commissioner in the Judicial Department Circular No. 17 of 1888 have been obeyed by Magistrates, if such records do not disclose whether the proceedings under ss. 109, 110, Crim. Pro. Code, were initiated upon Magisterial sanction, or whether the power of deciding what persons should be proceeded against under those sections was improperly allowed to rest entirely with the police. Judicial Department Circular No. 17 of 1888 makes it necessary, therefore, to point out that when the preventive jurisdiction of a Magistrate, under ss. 109, 110 of the Crim. Pro. Code, is invoked by the police, as must be inferred when the record begins with information purporting to be laid by the police or under police direction, the record must always show, before an order under s. 112 is made by a Magistrate, that sanction has been given by a competent Magistrate for such proceedings to be instituted. If the defendant has been arrested by the police under s. 55, on the initiative of the police, and is produced before a Magistrate under s. 61, the record must show this. But whilst s. 55 of the Code would authorize the arrest by an officer in charge of a police station of a suspect of the sort described in that section, when his conduct gives fresh cause for reasonable suspicion as to the honesty of his intentions, it would clearly be a contravention of the orders of the Chief Commissioner in the Judicial Department Circular No. 17 of 1888, if the police powers conferred by ss. 55 and 61 were directed generally on police initiative against suspects, in order to invoke the preventive jurisdiction of a Magistrate under Ch. VIII of the Code. QUEEN-EMPRESS v. NGA PO SAING, **L.B.R. 1893—1900, 270.**

(172)—*Order by Magistrate to give security for two years—Imprisonment for two years on default—Confirmative order of Sessions Judge operative and not appealable — Crim. Pro. Code* (1882), *s.* 123.—A duly empowered Magistrate, who passes an order requiring the accused to give security for good behaviour for a period exceeding one year, is not empowered to direct that, in default of his giving such security, the accused be detained in rigorous imprisonment for such period. But, upon the accused failing to give the required security, he should issue a warrant under s. 123 (2), Crim. Pro. Code, directing that the accused be detained in prison pending the orders of the Sessions Court. The order passed by the Sessions Judge becomes the operative order, and no appeal lies to the District Magistrate from such an order. QUEEN-EMPRESS v. SHWE GYAW AUNG, **L.B.R. 1893—1900, 381.** (9 C. 878, *F.*)

(173)—*Youthful offender—Security for good behaviour, punishment in default to furnish—Commutation of order to one of detention in a reformatory—Crim. Pro. Code, ss.* 118 *and* 123.—An order under ss. 118 and 123, Crim. Pro. Code, committing a person to prison until he furnishes security, is not a sentence of imprisonment and a Magistrate has no power to commute this order to one of detention in the Reformatory. MAHOMAD KASIM v. QUEEN-EMPRESS, **1 L B.R. 42.**

(174)—*Procedure in case of—Duty of Magistrate and Judge in security proceedings—Crim. Pro. Code* (1898), *ss.* 111, 112, 118 *and* 123.—Before a Magistrate can take action under s. 110, Crim. Pro. Code, he must have information from some body that the accused is an habitual offender. In issuing an order under s. 112, he is bound to set forth the substance of the information he received, and require the accused to show cause why he should not execute a bond. When the time comes for hearing the respondent, the Magistrate is bound to inquire into the truth of the information on which he acts and after hearing the respondent, to consider whether, on the evidence before him, it is proved or not proved that a bond is necessary for maintaining a good behaviour, and, if he found such bond necessary, to fix the amount with due regard to the circumstances of the case, so that it may not be excessive. Under s. 123 of the Code, the Judge is bound to examine the proceedings as a Judge, that is to say, with a view to seeing whether the proceedings are in due accordance with law and correct procedure, and to form his own judgment whether, upon the evidence in the case and for the reasons given by the Magistrate, it is necessary for maintaining good behaviour that the respondent should execute a bond, or, in default, should be imprisoned. The mere fact that the Magistrate finds the respondent to be an habitual thief is not sufficient to justify an order confirming the Magistrate's order and directing imprisonment in default of security being furnished. CROWN v. NGA KYAUK LON, **1 L.B.R. 75.**

(175)—*Allegations made by complainant while giving evidence—No information—Procedure of the Magistrate in cases of—Sureties, amount for which they are liable—Crim. Pro. Code, ss.* 110, 117—*Sch. V, Form* XI—An allegation made by a complainant, while giving evidence, should not be regarded as information given, and the Magistrate is bound to examine the accused and to make inquiry into the truth of the complainant's allegation. Further, under s. 117, the Magistrate is bound to conduct the

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inquiry as nearly as may be practicable in the manner prescribed for conducting trials and recording evidence in warrant cases, that is to say, he is bound to take all the evidence which may be produced to show that the respondent comes within terms of s. 110, before calling upon him for his answer or defence. *Held* that the order made in the case as to the security to be furnished by the sureties was wrong. The amount for which the sureties should be made liable on a bond in Form XI of Schedule V of the Code should be the same as that for which the accused is made liable. CROWN v. MAUNG NAING, **1 L.B.R. 79.** (U. B.R. 1899, 1st Qr., 93, *F.*)

(176)—*Duty of Magistrate in security proceedings—Character and class of sureties to be specified in preliminary order—Crim. Pro. Code, ss.* 109, 110, 112 *and* 118—Before any person is accepted as a surety for good behaviour, the Magistrate should satisfy himself that that person is of good character, is able to pay the penalty in the bond, and is living in a place where he is likely to be able to exercise some supervision over the conduct of the suspect. The character and class of sureties should be specified both in the preliminary order under s. 112 and in the order under s. 118, Crim. Pro. Code. A bond taken on a day subsequent to the day fixed for commencement of security must be limited to the period, counted from the day fixed, in the order under s. 118. No person ought to be proceeded against under both ss. 109 and 110 of the Crim. Pro. Code in the same proceeding. When action is taken under s. 110, the question of having an ostensible means of subsistence should be excluded from the preliminary order and treated as irrelevant. KING-EMPEROR v. NGA PO SAUNG, **2 L.B.R. 40.**

(177)—*Crim. Pro. Code* (1898), *ss.* 118, *Prov.* (3), 562—*Execution by minor of bond for good behaviour, &c.—First offender, release of.*—The third proviso to s. 118 applies in terms only to bonds given under that section, which is seldom used against minors, and when a similar provision is not found in s. 562, which was enacted chiefly for the benefit of youthful offenders, it must be presumed that the omission was intentional. Therefore, the third proviso to s. 118 does not apply to bonds of first offenders released under s. 562. The words of s. 562 " on his entering into a bond with or without sureties" are clear. KING-EMPEROR v. MIPYU, **4 L.B. R. 12 = 6 Cr. L.J. 123.** (2 L.B.R. 137, *Overruled*; 2 L.B.R. 168, *R.*)

(178)—*Crim. Pro. Code* (1898), *s.* 110—*Security demanded from person undergoing imprisonment, legality of.*—Security for good behaviour was demanded, by a Magistrate, from a person, who was undergoing imprisonment for an offence. *Held*, the words of s. 110 ' any person within the local limits of his jurisdiction,' are obviously not intended to apply to persons undergoing imprisonment, whether the jail happens to be within the local limits of the Magistrate's jurisdiction or not. The Magistrate in this case, had, therefore, no jurisdiction to commence the proceedings. KING-EMPEROR v. PO THAW. **4 L.B.R. 148 = 7 Cr. L.J. 447.**

(179)—*Crim. Pro. Code* (1882), *ss.* 109, 110 *and* 121—*Security for good behaviour.*—S. 121 of the Crim. Pro. Code does not make the passing of an order to furnish security for good behaviour a breach of a previous bond to be of good behaviour so as to compel the sureties to pay the amount of the security in the original bond, as though the latter had been forfeited. QUEEN-EMPRESS v. NGA YO, **U.B.R. 1892—1896, Vol. I, 20.**

(180)—An order for imprisonment in default of furnishing security is not a sentence of imprisonment. QUEEN-EMPRESS v. NGA PO SU, **U.B.R. 1897—1901, Vol. I, 375.**

(181)—*Crim. Pro. Code* (1898), *ss.* 109, 110, 112—*Desirability of Magistrate's taking information on oath before framing an order under s.* 212.—The question for decision was as to the desirability of a Magistrate taking information on oath in the presence of the accused before framing an order under s. 112. *Held*, the reference to ' further evidence ' in s. 117 seems to indicate that some evidence may be taken before the order under s. 112 is framed. Moreover, both ss. 109 and 110 show that the Magistrate's action must be based on information received, and there is no reason why the Magistrate should confine himself to the information contained in the Police papers. He can, if he thinks fit, take information on oath in the presence of the accused before deciding whether he will take action under s. 109 or s. 110. A Magistrate would generally exercise a wise discretion by taking some information on oath before framing the order under s. 112. KING-EMPEROR v. NGA PO THAUNG, **U B.R. 1905, Crim. Pro. Code 29 = 2 Cr. L.J. 462.** (2 L B.R. 40, *F.*)

(182)—*Crim. Pro. Code* (1898), *ss.* 109, 110, 514—*Security for good behaviour—Breach by principal—Payment of penalty by principal and sureties ordered—Legality of double payment.*—A person gave a bond for Rs. 100, with two sureties, for his good behaviour for one year. However, he committed an offence punishable with imprisonment for one year and the Magistrate required him to pay Rs. 100 and his sureties also Rs. 100. *Held*, that the language of ss. 109 and 110, leaves no doubt that the sureties to be required under these sections are sureties in the ordinary sense of the term. They undertake that their principal will be of good behaviour, and in case of a breach, the principal and sureties are jointly and severally liable for the sum named in the bond and no more. The penalty is not required to be paid twice over. Rs. 100 paid by sureties was ordered to be refunded to them. KING-EMPEROR v. NGA KAUNG, **U.B.R. 1905, Crim. Pro. Code 31 = 2 Cr. L.J. 463.** (U.B.R. 1904, Cr. P.C. 13, *R.*) [*R.*, 20 Ind. Cas. 414 = 14 Cr. L.J. 430, U.B.R. 1913, 159.]

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(183)—*Crim. Pro. Code* (1898), *ss.* 110, 177, 191, 406, 526 *and* 556—*Proceedings, under ch. VIII, Crim. Pro. Code, instituted by District Magistrate—Appeal heard by the same District Magistrate—Validity of such procedure—Effect of accused's waiver on validity of such procedure—Whether proceedings under ch. VIII can be transferred outside the District where they were instituted.*—Where it appeared that a District Magistrate was not only actively concerned in the institution of proceedings against a person under ch. VIII of the Crim. Pro. Code, but that those proceedings originated in, and with him, in the discharge of his duties as executive head of the district, responsible for the maintenance of law and order, *held* that s. 556, Crim. Pro. Code, debarred him from entertaining an appeal, under s. 406, Crim. Pro. Code, without the permission of the Sessions Court, and that the inherent disability of the Magistrate could not be cured by any act of waiver on the part of the accused. *Held*, also, that proceedings under s. 110, Crim. Pro. Code, could be transferred to any Court outside the district within which such proceedings have been lawfully instituted. CROWN v. MAHOMED SHAH KAMIL, **1 S.L R. Cr. 98 = 8 Cr. L.J. 356.** (16 A. 9, *Diss.*) [*R.*, 11 Cr. L.J. 500 = 7 Ind Cas. 603 = 4 S.L R. 42, 14 Cr. L.J. 385 = 9 N.L R. 81 = 20 Ind. Cas. 209.]

(184)—*Crim. Pro. Code* (1898), *ss.* 123, 397—*Detention in prison for default of giving security for good behaviour—Punishment for substantive offence during detention—Whether concurrent or otherwise.*—P, who was undergoing twelve months' rigorous imprisonment under s. 123, Crim. Pro. Code, in default of giving security for good behaviour, was sentenced to four months' rigorous imprisonment under s. 224, I.P.C., and it was directed by the convicting Magistrate that the sentence under s. 224, I.P.C., should commence after the expiry of the twelve months' term. *Held*, setting aside, the Magistrate's order, that the sentence of four months' rigorous imprisonment should have commenced from the date of conviction, and should run concurrently with the period of detention imposed under s. 123. A person who has been "committed to prison" or "detained in prison" under s. 123, Crim. Pro. Code, is not "undergoing a sentence of imprisonment" within the meaning of s. 397, Crim. Pro. Code. CROWN v. PANDHI *wd.* BAKAS, **3 S.L.R. 114 = 11 Cr. L J 15 = 4 Ind. Cas. 603.**

(185)—*Crim. Pro. Code* (1898), s. 110—*Proceedings under—Transfer to a Magistrate not specially empowered.*—It is competent to a District Magistrate to transfer proceedings, which had been properly instituted before a competent Magistrate, to a Magistrate subordinate to himself, though such Magistrate was not competent to institute the same. CROWN v. ALLAHYAR *walad* GULBEG JAMALI, **9 Cr. L.J. 246 = 1 S. L.R. 20 Cr.**

(186)—*Crim. Pro. Code*, s. 110—*Separate trial—Conduct before previous bond.*—In cases under s. 110, Crim. Pro. Code, each accused is entitled to an entirely independent examination of his own case. To take up facts, against an accused, of dates older than the previous security bond, is against law and justice, and cannot be made ground of fresh proceedings: BAHADUR SHAH v. EMPEROR, **4 Ind. Cas. 432 = 25 P.W.R. 1909, Cr. = 4 P.R. 1910, Cr. = 149 P.L.R. 1909 = 10 Cr. L J. 591.**

(187)—*Crim. Pro. Code* (1898), s. 110—*Proceeding to bind down for good behaviour upon failure of prosecution for offences under ss.* 380, 412 *and* 457, *Penal Code* (*Act* XLV *of* 1860)—*Evidence of repute.*—Proceedings under s. 110 of the Crim. Pro. Code, ought not to be instituted, with a view to bind down persons on an indefinite charge, after prosecutions against them, on definite charges under the Penal Code, have failed. Persons ought not to be bound down under s. 110 of the Crim. Pro. Code, upon the mere statements of witnesses that they suspect, or are under the impression that the persons proceeded against are thieves or dacoits, when no fact is mentioned to indicate, that there was sufficient reason for their suspicion or impression. ALEP PRAMANIK v. KING-EMPEROR, **11 C.W.N. 413 = 5 Cr. L.J. 131.** [*R.*, 23 Ind. Cas. 207 = 15 Cr. L.J. 255; *D.*, 32 A. 55 = 6 A.L.J. 961 = 11 Cr. L.J. 36 = 4 Ind. Cas. 709.]

(188)—*Person of violent or turbulent character—Crim. Pro. Code* (1861), s. 297.—S. 297 of the Code of Criminal Procedure, 1861, did not refer to persons of a violent or turbulent character. *In re* NARAIN SOOBODDHEE, **6 W. R. Cr. 6.**

(189)—*Person convicted of theft—Crim. Pro. Code* (1861), s. 295—*Theft.*—*Held* that s. 295 did not apply to persons convicted and punished for theft, from whom no security could be demanded. QUEEN v. KUNEE SONAR, **7 W. R. Cr. 57.**

(190)—*Crim. Pro. Code* (1861), s. 306—*Information of police.*—Whatever may be the exact form of procedure applicable to an enquiry under s. 306, Crim. Pro. Code, 1861, against persons required to furnish security for good behaviour, the Magistrate could have no power to use the information which the police had obtained as evidence in the case. QUEEN v. KOMUL KISHEN, **11 W.R. Cr. 35.**

(191)—*Inquiry as to necessity for security—Crim. Pro. Code* (1872), s. 504—*Power of Sessions Judge—Jurisdiction of Magistrate.*—*Held* that s. 504, cl. 3, Crim. Pro. Code, 1872, or any of the preceding section gave the Sessions Judge no power to decide as to the necessity for taking security for good behaviour, or, without any inquiry being made, to pass orders as to the nature of the security to be furnished, or as to the time it was to remain in force. The jurisdiction as to the necessity was in the Magistrate, and after sending the accused to the Magistrate under the above section, the Sessions Judge was *functus officio.* QUEEN v. GUNGA RAM POTDAR, **24 W R. Cr. 10.**

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(192)—*Order with arbitrary condition imposed —Crim. Pro. Code* (1872), *ss.* 505, 516—*Sureties.—Held* that under s. 505, Crim. Pro. Code, 1872, a Magistrate was not competent to impose arbitrary conditions not essential for the object in view, *viz.*, to restrain a party from the infringement of the law, still less impossible conditions, *e.g.*, a condition requiring the accused to furnish two sureties, being persons of respectability and substance, not related to him, and residing within one mile of his house, knowing that such a condition was impossible of fulfilment; the ground on which a Magistrate could be justified in refusing to accept any surety under s. 516 must be a valid and reasonable ground. The object of the law is that the person charged should furnish, if possible, good and sufficient security. *In re* NARAIN SOOBODDHEE, **22 W.R. Cr. 37.** [*Not F.*, 20 A. 206 ; *F.*, 10 C.W.N. 1027.]

(193)—*Second order for security without further proof—Crim.Pro.Code* (1861), *ch.* XIX.—Where a person is confined, in default of giving security for his good behaviour, under ch. XIX of the Code of Criminal Procedure, a second security cannot be demanded after the expiration of the first term of confinement in default of security, without fresh proof of bad livelihood, or of the fact that the person was not capable of pursuing an honest livelihood. *In re* JUSWUNT SINGH, **1 Ind. Jur. N.S. 301=6 W.R. Cr. 18.** *See also* MAHOMED ABDUL BARI v. EMPRESS, **4 C.W.N. 121.**

(194)—*Crim. Pro. Code, s* 106, *cl.* 3—*Order by appellate Court—Jurisdiction of original Court—Limitation on appellate Court's power —Indian Penal Code* (*Act* XLV *of* 1860), *s.* 71—*Conviction for several offences.*—An appellate Court is entitled to order an appellant to furnish security to be of good behaviour under s. 106, Crim. Pro. Code, and the power of the appellate Court under cl. 3 of that section is not limited in any way by the powers of the original Court which tried the case. A Magistrate of the second class convicted the accused under several sections and sentenced them to several terms amounting to nine months *Held* that s. 71, Penal Code, did not apply, and the Magistrate was empowered to pass separate sentences for different offences. DHARAM DAS v. KING-EMPEROR, **7 A.L.J. 910=11 Cr. L.J. 480=7 Ind. Cas. 412=33 A. 48**

(195)—*Crim. Pro. Code* (1898), *s.* 112—*Sureties for good behaviour— Sureties living ten miles away—Friends of accused—Whether proper sureties.* — Unnecessary difficulties should not be thrown in the way of people required to give security. Where a man is called upon to produce persons who would be sureties for him and he produces them, *held* that they should not be rejected merely on the ground that they lived ten miles away from him and were on friendly terms with him. BHAGWAN SAHAI v. KING-EMPEROR, **7 A.L.J. 993=11 Cr. L.J. 536=7 Ind. Cas. 910.**

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See ACCUSED PERSON, 15 P.R. 1900, Cr.= P.L.R. 1900, Cr. 59.

See BUR. ACT IV OF 1899, ss. 30, 31-A, 4 L.B.R. 359=9 Cr. L.J. 368.

See APPEAL—CASES WHERE APPEAL DOES NOT LIE, 9 C. 878.

See APPELLATE COURT, A.W.N. 1890, 170.

See CHARGE—GENERAL, 6 P.R. 1896, Cr.

See CRIM. PRO. CODE, 1898, s. 397, 2 Weir 452.

See ESCAPE FROM LAWFUL CUSTODY, 7 A. 67, 8 C. 331=10 C.L.R. 290, 1 Weir 198=7 M.H.C. App. 41.

See EVIDENCE—GENERAL REPUTE, 11 C. W.N. 789=6 Cr. L.J. 1.

See HOUSE TRESPASS, 1 L.B.R. 279.

See JOINT TRIAL, Rat. Un. Cr. C. 585=Cr. Rg. 46 of 1891.

See JURISDICTION OF CRIMINAL COURTS—GENERAL, 12 P R 1901, Cr.

See MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION, L.B.R. 1893—1900, 245.

See MAGISTRATE, JURISDICTION OF—MISCELLANEOUS CASES, 3 B.H.C. Cr. 39.

See NOTICE, 30 M. 282=2 M.L.T. 183=5 Cr. L.J. 397.

See REVISION—QUESTIONS OF FACT, 9 Bom. L.R. 1385=7 Cr. L J. 24=3 M.L.T. 53.

See SENTENCE—GENERAL, L.B.R. 1893—1900, 187, Rat Un. Cr. C. 970=Cr. Rg. 26 of 1898.

See SENTENCE — IMPRISONMENT — IMPRISONMENT IN DEFAULT OF PAYMENT OF FINE, ETC., 3 N.W.P. 126.

See SESSIONS JUDGE, JURISDICTION OF, 27 C. 656.

Security Proceedings.

(1)— *Crim. Pro. Code* (*Act* X *of* 1882), *ch.* VIII—*Procedure—Object of chapter.*—Clear, full and cogent evidence, with as much detail as possible, should be required by the Magistrate, before he is justified in making an order under s. 118 read in conjunction with s. 110. The object of ch. VIII of the Crim. Pro. Code is not to punish for evil reputation, but to protect society from habitual and possible offenders by putting them under such substantial, but not excessive, security, as will prevent them from resorting to evil courses. EMPRESS v. HAMIDULLAH KHAN, **A.W.N. 1889, 114.**

(2)—*Crim. Pro. Code* (1882), *ss.* 118 *and* 123 —*Object of Legislature — Sentence, use of —Security provisions if applicable to minors—Inability to give security no ground for detention in reformatory.*—The intention of the Legislature is not that a person called upon to furnish security should be punished for not being able to do so, but that the safeguard, which the security was intended to provide, should be provided by his detention in custody. The use of the term 'sentence' in proceedings of

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this kind is improper. In discussing whether the provisions of the law for requiring security are applicable to minors, the 3rd proviso to s. 118 should not be overlooked. A person should not be directed to be detained in a reformatory, simply because he is unable to furnish security. EMPRESS v. DALBUX, **6 C. P.L R. Cr 13.**

(3)—*Crim. Pro. Code* (1898), s. 123 —*Security proceedings—Powers of Sessions Judge—Object of security sections.*—A Sessions Judge, to whom a case is referred under s. 123 (2) of the Crim. Pro. Code, may impose conditions under sub-section (3), regarding the character of the sureties who may be accepted. He has a very wide discretion, and is not even bound by the term for which security has been demanded by the Magistrate. But the conditions imposed must be reasonable and such as are capable of being fulfilled. In such a case, the Sessions Judge should himself pass orders regarding the acceptance of securities tendered and cannot subsequently cancel an order accepting a security. He has a general power of accepting or rejecting sureties for good cause shown, provided that the power is exercised with due and judicial care and discretion. The object of ch. VIII of the Crim. Pro. Code is that persons of ill-repute should be placed on security as a preventive against possible hazard to the community, and not that they should be imprisoned as a punishment or as a safeguard. NGA PO NYUN v. KING-EMPEROR, **2 L.B.R. 76.** (22 B 949, 1 C W.N. 394, 24 C. 155, 2 L. B.R. 72, *R.*)

(4)—*Crim. Pro Code* (*Act X of* 1882), ss 107, 112, 118—*Procedure to be strictly followed.*—An order under s. 118 of the Crim. Pro. Code can be passed by a Magistrate only after the procedure specified in ss 107 and 112 has been gone through. QUEEN-EMPRESS v. ADAM, **Rat. Un. Cr. C. 421 = Cr. Rg. 87 of 1888.**

(5)—*Procedure as to—Crim. Pro. Code* (1882), s. 123.—The procedure enjoined by provisions of ch. VIII of Crim. Pro. Code, is that a date shall be fixed, on which the period for which the security is to be given shall commence (s. 123), and that, after the order to give security had been recorded, an opportunity shall be given to furnish the security on or before the date so fixed. If the security be not furnished on or before that date, then a further order may be made QUEEN-EMPRESS v. NGA SAING GYI, **L B R. 1893—1900 245.**

(6)—*Crim. Pro. Code* (1898), ss. 87, 112, 243 —*Notice under s.* 112, *requisities of, Proclamation for persons absconding—Admission by person ordered to furnish security.*—Where the requisition contained in s 112 of the Code, with reference to notice being accompanied by a copy of the order, has not been complied with, the proceedings are invalid. A proclamation issued under s. 87 of the Code against an absconding person should give thirty days' time for his appearance from the date of the proclamation. Where this is not done, the proceedings are liable to be set aside. An admission by a person required to furnish security expressing willingness to give security should be duly recorded under s. 243 of the Code. *In re* SUBBA NAICKAN, **17 M.L.J. 438 = 1 Cr. L. J. 332.**

(7)—*Order of—Procedure before confirmation —Readiness to give security, whether a plea of guilty—Crim Pro. Code* (1898), ss. 112, 117 *and* 242.—S. 117 requires that before an order, under s. 112, calling upon an accused person to find security can be confirmed, the truth of the information upon which the Magistrate has acted shall be inquired into and such further evidence, as may be necessary, taken. Unless the procedure is strictly complied with, the order cannot legally be confirmed. The accused's readiness to give security cannot be accepted as plea of guilty under s. 242, Crim. Pro. Code. QUEEN-EMPRESS v. NGA KUM, **L.B. R. 1893—1900, 637.**

(8)—*Crim. Pro. Code,* ss. 109 *and* 110—*Security demanded under both sections, whether legal—Single enquiry in the case of two persons —Proof of association or concert.*—Security should not be demanded of a person under both ss. 109 and 110, Crim. Pro. Code. A Magistrate should not hold a single enquiry, under ss. 109 and 110, in the case of two persons, unless he is satisfied that the two men were acting in concert, *i.e.*, were associated in the acts charged. KAKKAL REDDI *alias* GOVINDAN v. EMPEROR, **5 Ind. Cas. 156 = 11 Cr. L. J. 50.**

(9)—*Crim. Pro. Code* (1898), *ss.* 109, 110, 112 *and* 117—*Joint trial of persons ordered to give security under s.* 109 *and s.* 100, *legality of.*—A person called upon to give security under s. 109, and another person ordered to give security under s. 110, cannot be dealt with together in one and the same enquiry under s. 117. Proceedings under ss. 109 and 112 against the same person could not be amalgamated with proceedings under ss. 110 and 112, the scope of the two proceedings being essentially different. KING-EMPEROR v. MEHEN *alias* BHAGWAN DAS, **8 O.C. 91 = 2 Cr. L.J. 224.**

(10)—*Crim. Pro. Code* (1898), *ss.* 112 *and* 118—*Failure to record an order under s.* 112, *effect of—Irregularity of procedure.*—A Magistrate, in framing his order under ss. 112 and 118 of the Crim. Pro. Code, would be well advised in having a somewhat close regard to the precise requirements of these provisions, but, with reference to the particular matter before it, the Court *held* that the provisions of s. 112 of the Code of Criminal Procedure, are merely directory, and a failure to record an order, under the section, should be treated as a mere irregularity. PRAGI v. KING-EMPEROR, **10 O.C. 365 = 7 Cr. L.J. 94.**

(11)—*Preventive provisions of criminal law applied against a person unsuccessfully prosecuted.*—If there are any grounds for putting the preventive provisions of the Criminal law in motion against any person, such grounds should

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be apparent before that person has been unsuccessfully prosecuted for a criminal offence. NGA HME v. QUEEN-EMPRESS, **L.B.R. 1893—1900, 254.**

(12)—*Crim. Pro. Code (Act X of 1882), ss. 110, 117—Opportunity to accused of showing cause—Procedure.*—Where a District Magistrate made an order of security under s. 110 of the Crim. Pro. Code, without giving the accused an opportunity of showing cause, and relying on evidence recorded by the Assistant Magistrate, *held* that the procedure was illegal. EMPRESS v. RAGHUNATH, **A.W.N. 1885, 30.**

(13) -*Crim. Pro. Code* (1882), *ss.* 107, 110, 112, 117—*Security to keep the peace—Security for good behaviour—Evidence.*—Conversations out of Court with persons, however respectable, are not legal or proper material upon which to adopt proceedings under ss. 107, 110. Although the information to be required by a Magistrate before issuing an order under s. 112 may to some extent be of a hearsay and general description, yet, when the party to whom the order is directed appears in Court in obedience to such order, the enquiry must be conducted on the lines laid down in s. 117. It is not because a man has a bad character that he is, therefore, necessarily, liable to be called upon for security to keep the peace or for good behaviour. There must be satisfactory evidence in the one case, that he has done something, or has taken some step, that indicates an intention to break the peace, or that is likely to occasion a breach of the peace; and in the other, that he is within the category of persons mentioned in s. 110, the determination of which questions must always be guided by the considerations pointed out in 2 A. 835. EMPRESS v. BABUA, **6 A. 132.**

(14)—*Crim. Pro. Code (Act* V of 1898), *ss.* 110, 118—*Nature of evidence for order—Improper arrest.*—The fact that certain persons belonged to a class of *Mewatis* of a particular place generally regarded by the other inhabitants of the neighbourhood as bad characters and dangerous persons, is not sufficient evidence for an order under ss. 100 and 118 of the Crim. Pro. Code. Where the above persons were not known to the officer arresting them and were arrested on the only ground that they were *Mewatis*, and they had come to give evidence on behalf of others of their class, *held* that the arrest was improper. EMPEROR v. HURMAT KHAN, **A.W N. 1905, 41**=**2 A.L.J. 174**=**2 Cr. L.J. 88.**

(15)—*Crim. Pro. Code* (1898), *s.* 122—*Proceedings under, if judicial proceedings—Order based on Police report, effect of—Police report, if evidence.*—Though proceedings under s. 122, Crim. Pro. Code, are judicial proceedings as defined in s. 4 (1) (*m*), Crim. Pro. Code, and s. 5 of the Oaths Act (X of 1873), and are therefore proceedings governed by the regular rules as to admitted facts and legal evidence under the Indian Evidence Act or other law relating to evidence, nevertheless, they are not proceedings for which any formal procedure has been provided beyond the formal record in writing of the reasons for refusing to accept sureties offered under ch. VIII, Crim. Pro. Code. It is not necessary formally to record the evidence. There is no law rendering reports of Police Inspector or *Mukhtyarkars* admissible evidence in proceedings either under division B or division C of ch. VIII, Crim. Pro. Code. IMPERATOR v. HAJI USMAN, **4 S.L.R. 18**=**7 Ind. Cas. 592**=**11 Cr. L.J. 497.** (2 S.L.R. 11, 2 S L.R. 15, *F.*) [*R.*, 7 S.L.R. 94,]

(16)—*Crim. Pro. Code* (1882), *ss.* 110, 118—*Inquiry as to sufficiency of security—Delegation—Validity.*—A Magistrate making an order under ss. 110 and 118 must satisfy himself by legal methods of the sufficiency of the security tendered by the person against whom such order is passed. He cannot delegate his functions in this respect to a subordinate officer as, for example, by sending a security bond tendered to the Tahsildar for report. EMPRESS v. PRITHI PAL SINGH, **A.W.N. 1898, 154.** [*F.*, 25 A. 272, 27 A. 293=1 A.L.J. 601=A.W.N. 1904, 231; *R.*, 26 A. 371=A.W N. 1904, 52, 37 C. 91=14 C.W.N. 49=5 Ind. Cas. 29=11 Cr. L.J. 23.]

(17)—*Crim. Pro. Code, ss.* 110 *and* 122—*Refusal to accept surety—Reasonable grounds—Relationship.*—The grounds on which a Magistrate has power to refuse to accept any surety must be valid and reasonable grounds which must be stated by the Magistrate under s. 122 of the Code. Mere conjectures and surmises are not sufficient. Relationship of the surety to the accused is not a disqualification. Scope of s. 122, Crim. Pro. Code, and procedure thereunder explained. *In re* ABDUL KHAN, **10 C.W.N. 1027**=**4 Cr. L.J. 169.** (22 W.R. 47, Cr., *F.*) [*F.*, 37 C. 91=14 C.W.N. 49=11 Cr. L.J. 23=5 Ind. Cas. 29.]

(18)—*Crim. Pro. Code* (1898), *ss.* 110 *and* 118—*Bad livelihood—Sureties, fitness of—Pecuniary fitness of the surety, whether the only test.*—In deciding whether sureties tendered in bad livelihood cases are to be accepted or refused, the first matter to be inquired into is the ability of the sureties to pay the sums for which they become bound, in case of default of the persons who are bound down for good behaviour; but there may be other objections to be considered, but any such objection must be dealt with in each case as it arises. Where the sureties were found to be competent from the pecuniary point of view, but no other cause of unfitness was made out, the sureties were wrongly rejected. JAFAR ALI PANJALIA v. EMPEROR, **37 C. 446**=**14 C.W.N. 666**=**6 Ind. Cas. 668**=**11 Cr. L.J. 392.** (6 C.W.N. 593, 35 C. 400, 13 C.W.N. 80, *R.*) [*R.*, 41 C. 764=15 Cr. L.J. 169=22 Ind. Cas. 745.]

(19)—*Crim. Pro. Code* (1898), *ss.* 118 *and* 122—*Sureties in bad livelihood cases, refusal of—Reasons for the refusal—Testing reasons.*—The Magistrate, in rejecting sureties under s. 122, Crim. Pro. Code, has to record his reasons for doing so. Before recording the reasons, he should carefully consider and test

Security Proceedings—*continued.*

them. This could be best done by bringing them to the notice of the persons offered as sureties, and allowing them an opportunity of controverting them. ELA BUKSH v. EMPEROR, **14 C.W.N. 709=6 Ind. Cas. 124=11 Cr. L.J. 243.**

(20)—*Crim. Pro. Code* (*Act* X *of* 1882), *s.* 110—*Supervision by District Magistrate in regard to amount of security demanded.*—The District Magistrate should exercise some supervision over the subordinate Magistrates in respect of the amount of security demanded in security cases under the Crim. Pro. Code. EMPRESS v. DULLA, **A.W.N. 1885, 286.**

(21)—*Crim. Pro. Code* (*Act* V *of* 1898), *ss.* 110, 437—*Order not made absolute—Further inquiry.*—A Magistrate who took proceedings under s. 110 of the Crim. Pro. Code in which the accused showed cause, cannot, without making the original order absolute, direct a further inquiry on the same facts under s. 437 EMPRESS v. AHMAD KHAN, **A.W.N. 1900, 206.** (27 C. 662, *F.*) [*R.*, 36 A. 147=12 A.L.J.167=15 Cr. L.J. 39=22 Ind. Cas. 183.]

(22)—*Crim. Pro. Code* (*Act* X *of* 1882), *ss.* 107 118—*Power to enhance amount—Evidence of overt acts.*—A Magistrate, who has issued an order to show cause why security should not be ordered for keeping the peace, has power to enhance the amount of security in the final order, provided the accused have had an opportunity to show cause against the order for the enhanced amount. It is not necessary that, in all cases, overt acts should be proved to support an order for security. A general impression that the accused are likely to commit disturbance and breach of the peace, is sufficient. EMPRESS v. BARJORE SINGH, **A.W.N. 1895, 241.**

(23)—*Crim. Pro. Code* (*Act* V *of* 1898), *s.* 123—*Power of Magistrate to order imprisonment in default of security.*—It is the Sessions Judge and not the Magistrate who is empowered to order imprisonment in default of furnishing security, under s. 123 of the Crim. Pro Code. The Magistrate can only order the detention of the person pending the orders of the Sessions Judge to whom he is to submit the record. EMPRESS v. JAFAR, **A.W.N. 1899, 151.** [*R.*, 23 A. 422=A.W.N. 1901, 114, A.W.N. 1903, 28, 30 A. 334=A.W.N. 1908, 133=5 A.L.J. 318=7 Cr. L.J. 427=4 M.L.T. 41.]

(24)—*Conviction to be recorded—Imprisonment in default to be simple—Joint and several liability of sureties—Crim. Pro. Code, s.* 106.—The Court must not only record a conviction, but pass some sentence before the provisions of s. 106, Crim. Pro. Code, become applicable. Imprisonment for failure to furnish security must be simple. The sureties are jointly and severally liable for the amount in which their principal is bound down. KING-EMPEROR v. NGA SHWE TUN, **2 L.B.R. 53.** (1 L.B.R. 79, *R.*)

(25)—*Crim. Pro. Code* (1898), *ss.* 118 *and* 123—*Proceedings for security—Imprisonment in default of security being given—Laying proceedings before Sessions Judge—Imprisonment in default of security, period of.*—When a Magistrate makes an order requiring an accused to give security for over a year, the Magistrate is not himself empowered to pass an order for imprisonment in default of the security being given. All he is empowered to do is, to issue a warrant, directing that the accused be detained in prison, pending the orders of the Sessions Judge. The proceedings in such a case are not before the Sessions Judge for confirmation of the order of the Magistrate. It is before him for the purpose of his passing an order under sub-s. 3 of s. 123. The period for which the accused is to be imprisoned in default of giving security should always coincide with the period for which security is demanded. KING-EMPEROR v. MYAT AUNG, **4 L.B.R. 135=7 Cr. L.J. 412.**

(26)—*Crim. Pro. Code* (*Act* V *of* 1898), *s.* 110—*Imprisonment for default in furnishing security—Release—Fresh proceeding—Two months—Evidence.*—Where a person has been imprisoned for default in furnishing security and released, and a fresh security proceeding was taken against him within two months after his release, *held* that this was too short a time to give him an opportunity of showing that he was willing to adopt an honest livelihood. [*F.*, 28 A. 306=A.W.N. 1906, 30=3 A.L.J. 29=3 Cr. L.J. 96=1 M.L.T. 58.] Where, in the above case, there was no evidence of any complaint of the commission of an offence having been made to the police or the Magistrate against the person called on to furnish security for good behaviour, and no other evidence of character than what related to a period prior to his previous imprisonment, *held* that there was no sufficient warrant for an order under ss. 110, 118, Crim. Pro. Code, being passed against him. EMPEROR v. HUSAIN AHMAD KHAN, **A.W.N. 1905, 34=2 Cr. L.J. 86.** [*R.*, 16 C.L.J. 467=14 Cr. L.J. 5=17 C.W.N. 238=18 Ind. Cas. 149.]

(27)—*Crim. Pro. Code* (*Act* X *of* 1882), *s.* 123—*Security—Order as to imprisonment in anticipation of default.*—Under s. 123 of the Crim. Pro. Code, a Magistrate cannot make an order for imprisonment in anticipation of default of giving security under s. 188. But on the analogy of cases where security is required for a period commencing on the expiry of a term of imprisonment, the accused is at once liable under s. 123 to be detained in prison till he furnishes security, and no warrant for detention is necessary. LETTER FROM THE REGISTRAR, HIGH COURT, NO. 1301, 30TH JULY 1890, **Rat. Un. Cr. C. 511=Cr. Rg. 33 of 1890.**

(28)—*Crim. Pro. Code* (1882), *s.* 123—*Warrant for detention of accused when can be made.*—A warrant for the detention of the accused in prison, under s. 123 of the Crim. Pro. Code, can be issued only on default of the accused in giving security and on the commencement of the period for which the security is required. An order for imprisonment made in

Security Proceedings—*continued.*

anticipation of such default is illegal. QUEEN-EMPRESS v. HARI LAL, **Rat. Un. Cr. C. 432=Cr. Rg. 3 of 1889.** [*R.*, 7 Cr. L.J. 472=4 L.B. R. 205, F.B.]

(29)—*Appellate Court acquitting accused, but holding that security should be furnished—Procedure.*—Where a Sessions Judge acquits a person of the offence with which he is charged, but does not discharge him, but sends him in custody to the Magistrate, ordering that security should be taken from him, *held*, that that was not the proper procedure. The Judge should have ordered his discharge. He may bring to the notice of the Magistrate his opinion that security for his good behaviour should be taken, leaving the Magistrate to take the necessary steps for that purpose. REG v. BYHA *valad* SURJIM, **1 B.H.C. 91.**

(30)—*Crim. Pro. Code* (1861), *s.* 273 (*s.* 192 *of the Code of* 1898)—*Transfer of security proceedings.*—A Magistrate of the District or a Division is competent to transfer security proceedings to his subordinates. QUEEN v. ABDOOLLAH, **2 N.W.P. 401.**

(31)—*Crim. Pro. Code* (*Act* X *of* 1882), *s.* 106—*Appellate Court, whether can order security to be furnished.*—An appellate Court cannot, in an appeal from a conviction, order security to be furnished under s. 106 of the Crim. Pro. Code. EMPRESS v. PEMAN, **A.W.N. 1890, 170**

(32)—*Crim. Pro. Code* (*Act* X *of* 1882), *s.* 106—*Order for security on conviction—Reversal of conviction—Effect on order for security.*—Where a conviction is reserved in appeal, the order for security under s. 106 passed by the lower Court abates *ipso facto* and the appellate Court cannot retain that order. EMPRESS v. CHAJJU MAL, **A.W.N. 1895, 141.**

(33)—*Crim. Pro. Code* (1898), ss. 110, 112 *and* 439—*Defective proceedings—High Court's power to set them aside before their termination.*—*Held*, that the proceedings of a Magistrate are liable to be set aside by the High Court in revision, even before they are terminated against the accused, if the notice issued under s. 110, Crim. Pro. Code, omits to give substance of the information received as required by s. 112 of the Code, purports to issue under the old Code of 1882, requires more security than what is entered in the original order, and is not personally served upon the person to whom it is given. BAHADOOR SINGH v. CROWN, **18 P.W.R. 1910, Cr.=6 Ind. Cas. 626=11 Cr. L.J. 388.** (22 C. 131, 20 B. 513, 17 P.W.R. 1910, Cr. *F.*)

(34)—*Crim. Pro. Code* (*Act* V *of* 1898), ss. 107, 125, 439—*District Magistrate not moved—Refusal of the High Court to interfere.*—The High Court will decline to interfere in revision with an order under s. 107 of the Crim. Pro. Code passed by a first class Magistrate, where the District Magistrate has not been moved under s. 125 to cancel the security bonds. EMPEROR v. ABDUR RAHIM, **A.W.N. 1905, 143=2 Cr. L.J. 335.** [*R.*, 14 Cr. L.J. 546=1913 M.W.N. 715=21 Ind. Cas. 456=14 M.L.T. 328=25 M.L.J. 459.]

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(35)—*Crim. Pro. Code*, ss. 107, 125—*High Court, practice of.*—The High Court will decline to interfere in revision with an order under s. 107 of the Crim. Pro. Code, passed by a Magistrate unless an application has been made to the District Magistrate under s. 125. CRIMINAL REVISION CASE NO. 114 OF 1905, **A.W.N. 1905, 143, note.**

(36)—*Crim. Pro. Code*, s. 110 (*c*)—*Employment of or association with ex-convicts or reputed thieves—Whether amounts to 'harbouring' or 'protecting' them —When security cannot be required.*—Where the applicant employed or associated with two ex-convicts, of whom one subsequently committed a new offence and was sent to jail again some four or five years prior to the present proceedings against the applicant, or where he employed or associated with two persons who were reputed to be thieves, of whom one was convicted for committing dacoity at the applicant's house, *held*, that the applicant, in either case, protected or harboured them within the meaning of s. 110 (c), Crim. Pro. Code. NGA PU GYI v. KING-EMPEROR, **U.B.R. 1910, 1st Qr., Crim. Pro. Code, 4=11 Cr. L.J. 490=7 Ind. Cas. 462.** (U.B.R. 1897—1901, I, 133, *R.*)

(37)—*Crim. Pro. Code*, s. 106—*Attempt to commit theft.*—A person convicted of an attempt to commit theft cannot be asked to furnish security under s. 106 of the Crim. Pro. Code. QUEEN-EMPRESS v. MUNI RANI, **Rat. Un. Cr. C. 622=Cr. Rg. 45 of 1892.**

Right of representation by pleader in—*See* LEGAL PRACTITIONERS—PLEADER, 4 S.L.R. 49.

" Duty of Magistrate in—Crim. Pro. Code, 1898, ss. 110 and 117—Procedure"—*See* MAGISTRATE, DUTY OF, 2 L.B.R. 166.

See SURETY, 11 O.C. 267, 9 Cr. L.J. 247=1 S L.R. 3, Cr.

Security to keep the peace.

1.—GENERAL POSITION OF PARTIES REQUIRED TO FURNISH SECURITY —WHEN IT MAY BE TAKEN.
2.—ON CONVICTION.
3.—ON CREDIBLE INFORMATION.
4.—PERSONS WHO MAY BE REQUIRED TO GIVE SECURITY AND PERSONS OUTSIDE JURISDICTION.
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10.—AMOUNT OF SECURITY—SURETY.
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13.—EFFECT OF SIGNING WRONG BOND AND POSTPONING PROCEEDINGS FOR CIVIL SUIT.
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See CRIM. PRO. CODE, 1898, ss. 106—126.
See SECURITY BOND.
See SECURITY FOR GOOD BEHAVIOUR.
See SECURITY PROCEEDINGS.
See SURETY.

——1.—General—Position of parties required to furnish security—When it may be taken.

(1)—*Crim Pro. Code* (1882), *ss.* 107, 112, 117 118, 239, 537—*Person called upon to furnish security, whether a person charged with an "offence."*—A person called upon to furnish security for keeping the peace or for good behaviour cannot be regarded as a person charged with any offence, and cannot be dealt with as an offender. QUEEN-EMPRESS v. ABDUL KADIR, **9 A. 452=A W.N. 1887, 111.**

(2)—*Crim. Pro. Code*, *s.* 107—*Principle on which a person may be bound over.*—Before a person is bound over to keep the peace, it must be shown that he is himself likely to commit a breach of peace or do a wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity. He cannot be bound down merely because he is a wealthy or influential member of a party JAGAT NARAIN v. KING-EMPEROR, **7 A L.J. 1161=8 Ind. Cas. 818=11 Cr. L.J. 719.**

(3)—*Crim. Pro Code, s* 106, *in what cases may be demanded.*—S. 106 of the Crim. Pro. Code, is not applicable to a person not convicted of riot, assault, or other offence involving a breach of the peace, or of abetting the same, or of assembling armed men, or taking other unlawful measures with evident intention of committing the same, or committing criminal intimidation. The latter offence is defined by s. 503 of the Penal Code and it is made punishable by s. 506 with rigorous imprisonment for two years or fine or both. Although intimidation is one of the elements of an unlawful assembly, the criminal intimidation specified in s. 106 is the offence specifically defined by s. 503, the sentence provided by s. 506 being more severe than that provided by s. 143, and s. 106 cannot be applied to a person convicted under s. 143, merely because intimidation by show of criminal force is in the fourth and fifth parts of the definition in s. 141 an element of the offence punishable under s. 143. ABDULLA KHAN v. CROWN, **128 P L R. 1910=8 Ind Cas. 551=11 Cr. L.J. 680.** (143 P.R. 1890, Cr., *R.*)

(4)—*Crim. Pro. Code* (1898), *ss* 107 *and* 443 —*European British subject, right of, in regard to*

Security to keep the peace—continued.

——1.—General—Position of parties required to furnish security—When it may be taken—*continued.*

a proceeding under s. 107, *Crim. Pro. Code—Transfer—Person required to give security if an accused person.*—A person against whom proceedings under s 107, Crim. Pro. Code, are instituted is in the position of an accused person. When a proceeding under s. 107, Crim. Pro. Code, is instituted against a European British subject, his case falls within the purview of s. 443, Crim. Pro. Code, and he is entitled to claim that he should be tried by a Justice of the Peace, or a District Magistrate, or Presidency Magistrate, provided the Justice of the Peace is a Magistrate of the first class and a European British subject. Where a proceeding under s. 107, Crim. Pro. Code, was instituted against a European British subject by a Magistrate not competent to try a European British subject, on application to the High Court, the proceeding was directed to be transferred to the file of a Magistrate competent to try him under s. 443, Crim. Pro. Code. HOPCROFT v EMPEROR, **36 C. 163=13 C.W. N. 151=8 C L.J. 565=9 Cr. L.J. 36=9 Cr.L.J. 359=1 Ind. Cas. 737.** (21 A. 107, 16 B. 661, 23 C. 493, *R.*) [*R* , 36 A. 147=12 A.L J. 167=15 Cr. L.J. 39=22 Ind. Cas. 183.]

(5)—*Crim. Pro. Code* (1898), *ss.* 107, 119, 437—*Security to keep peace—Accused person—Discharge—Further enquiry.*—S. 437 of the Code is applicable to proceedings under Ch. VIII of the Code. It authorises an order for further enquiry to be made into a case under s. 107, in which the person proceeded against has been discharged under s. 119. The person proceeded against is an accused person within the meaning of s. 437 of the Code. GOKHA SINGH v. CHETU, **149 P.L.R 1905=33 P.R. 1905, Cr.=2 Cr L J. 715.**

(6)—*Crim. Pro. Code* (1882), *ss.* 107, 118—*Object of proceedings—Immoveable property—Dispute as to possession—Owner not in possession—Grant of lease—Wrongful act—Notice for binding down to keep peace—Order to execute bonds for good behaviour, validity of—Rule issued upon Magistrate—Party entitled to be heard.*—Proceedings under s. 107 are only intended for the security of the public peace, and not for the purpose of enabling one of two contending parties to help themselves in recovering or retaining possession of immoveable property, after having their adversary's hands tied down by an order under that section. The proper procedure in such cases to follow is to take proceedings under s. 145. The mere fact that an owner not in possession grants leases to tenants does not constitute as wrongful act such as s. 107 contemplates. Where a notice directs a person to show cause why he should not be bound down to keep the peace, an order directing him to execute bonds for his good behaviour is an improper order. Where the order, sought to be set aside, is one that is only intended to secure the peace of the district by binding down the petitioner, the party entitled

Security to keep the peace—continued.

——1.—General—Position of parties required to furnish security—When it may be taken—*continued.*

to be heard, on a rule being issued to the Magistrate to show cause, is the Magistrate only. DRIVER v. QUEEN-EMPRESS, **25 C. 798.**

(7)—*Crim. Pro. Code* (1898), s. 107—*Breach of peace—Propriety of binding down one party only, whether both parties should be bound down—Duty of the Magistrate to ascertain rights and obligations of parties—Preventive jurisdiction of Magistrate how to be exercised.*—The preventive jurisdiction of a Magistrate under s. 107, Crim. Pro. Code, must be exercised with caution. Where its exercise may lead to the infringement of an undoubted civil right, where an obligation, which the law of the country imposes, becomes incapable of being enforced owing to the exercise of such a jurisdiction, and where the breach of the peace apprehended by the Magistrate is a likely result of the enforcement of his legal right by a party in a legal way, and the illegal denial of the corresponding obligation of the other party, the Magistrate should not bind down the party who has the legal right in him. In a proceeding under s. 107, Crim. Pro. Code, if there are doubts as to the existence of the respective rights and obligations of the parties, the Magistrate should bind down both parties, so that his order may not be detrimental to either. Where, however, no doubt exists, the party in the wrong should be bound down. An attempt to ascertain legal rights of the parties should always be made by the Magistrate, before he binds down one or the other party under s. 107, Crim. Pro. Code. Where, in a proceeding under s. 107, Crim. Pro. Code, one party, under a claim of proprietorship of a certain place, wanted to levy certain cesses upon the other party for their use of the place, which the latter refused to pay, and the Magistrate, without attempting to ascertain the respective rights and obligations of the two parties, bound down the former. *Held*, that the Magistrate's order was bad in law. He ought to have tried to ascertain the truth or otherwise of the allegations of both sides, and if he found that the question of the respective rights and obligations of the parties was not easy of solution by him in the proceeding, he ought not to have bound down one party only. DINDYAL MOZUMDAR v. EMPEROR, **34 C. 935=11 C.W.N. 1002=6 Cr. L.J. 230.** (9 C.L R. 279, *F.*)

(8)—*Crim. Pro. Code* (1898), s. 107—*Order for security to keep the peace—"Proceeding," if a "trial."*—The order of a Magistrate requiring a person to furnish security to keep the peace is an order in a criminal trial, and the proceedings are proceedings in a criminal matter or cause, within the meaning of s. 15, Letters Patent. The term "trial" according to the passages in Wharton's "Law Lexicon" means "the examination of a cause, civil, or criminal, before a Judge who has jurisdiction over it, according to the laws of the land." The explanation of the same term in "Stroud" is that

Security to keep the peace—continued.

——1.—General—Position of parties required to furnish security—When it may be taken—*continued.*

it is the "conclusion by a competent tribunal of questions in issue in legal proceedings whether civil or criminal." Again in Bouvier's "Law Dictionary" the term is stated to mean the examination, before a competent tribunal, according to the law of the land, of the facts put in issue in a cause, for the purpose of determining such issue. These express in different words, the same idea. "Proceedings," under s. 107, Crim. Pro. Code, comes within the definition of the term "trial."—Per *Subrahmania Ayyar, J. In the matter of* RAMASAMY CHETTY, **27 M. 510=1 Weir 787=14 M.L.J. 394.**

(9)—*Crim Pro. Code* (1898), s. 107—*When security should be demanded—Disobeying illegal order.*—To justify an order under s. 107, the Magistrate must believe that the person against whom he makes the order is about to commit a breach of the peace or to disturb the public tranquillity or to do some wrongful act that may occasion a breach of the peace. Where an order was passed prohibiting the applicants from killing cows, and the Magistrate, believing that they would disobey the order, bound them down to keep the peace, *held*, that, the order being illegal, the applicants could not be bound down. MUHAMMAD YAKUB v. KING-EMPEROR, **7 A.L.J. 649=32 A. 571=11 Cr. L.J. 355=6 Ind. Cas. 454.**

(10)—*Order for—When can be made—Sufficient ground, what is—Crim Pro. Code* (1882), ss. 107, 117.—The fact that the accused attempted to get up *false* cases and that he might continue to do so would not afford grounds for binding him over to keep the peace. EMPRESS v. BADHAWA SINGH, **64 P.R. 1887, Cr.** [*F.*, 125 P.L.R. 1912=11 P.W.R. 1912=13 Ind. Cas. 782=13 Cr. L.J. 126=4 P.R. 1912, Cr.]

(11)—*Order not to collect cesses—Crim. Pro. Code*, 1861, *ss.* 62, 282.—In the words of s. 62, Crim. Pro. Code, 1861, a Magistrate is not entitled to give a direction to a person to abstain from a certain act unless he considers that such a direction on his part is likely to prevent, or tends to prevent a riot or affray. A Magistrate has no authority to require a person to enter into recognizance not to collect certain *Shadi Salami* cesses from certain ryots, though he may bind him down to keep the peace if there has been sufficient evidence to show that a breach of the peace is imminent through his acts. *In re* LUCHIMPUT SINGH, **14 W.R. Cr. 3.**

(12)—*Crim. Pro. Code* (1898), s 107—*Order to prevent a party from taking a procession along a road—Procession, right to take*—A party insisting upon their right to take a procession along a certain road, to which another party objected, cannot be bound down under s. 107, Crim. Pro Code, to keep the peace, unless there is a finding that the taking of the procession along the particular path is

Security to keep the peace—continued.

——1.—General—Position of parties required to furnish security—When it may be taken—*continued.*

a wrongful act or that the processionists are themselves likely to commit a breach of the peace or disturb the public tranquillity. Per *Woodroffe, J.*—When a party have the right to take a procession along a particular road, they cannot be properly bound down, because some one else proposes to interfere with that right. The proper course in such a case is to bind down the other party. FEROZE ALI MULLIK v. EMPEROR, **12 C.W.N. 703=7 Cr. L.J. 504.**

(13)—*Prevention of wrongful act—Act* XXV *of* 1861, *s.* 282—*Act* X *of* 1872, *s.* 491—*Power of Magistrate—Breach of the peace—Wrongful act.*—*Held* that under s. 282 of Act XXV of 1861, a person might be prevented from doing a wrongful act, but not one which he could lawfully do; the intention was not to prohibit a person from exercising his rights of property, simply because another person would be likely to commit a breach of the peace, if he did so. *In the matter of the petition of* KASHICHUNDER DOSS, **10 B.L.R. 441=19 W.R. Cr. 47** [*F.*, 9 A. 452; *Appl.*, 15 C. 388.]

(14)—*Crim. Pro. Code* (1898), ss. 107, 112, 115, *sch.* V, *No.* 12—*Order to execute bond to keep the peace—Procedure prescribed in ch.* VIII, *Crim. Pro. Code, must be complied with—Revision.*—Where a Magistrate, while acting under s. 107, Crim. Pro. Code, did not comply with the procedure prescribed in ch. VIII of the Code, inasmuch as the summonses issued were not in accord with the form set out in sch. V, No. 12, nor were they accompanied by a copy of the order under s. 112, his order requiring bonds to keep the peace was set aside as illegal. *In re* NAND PRASAD, **1 Ind. Cas. 211=9 Cr. L.J. 179.**

(15)—*Crim. Pro. Code* (1898), *ss.* 107 *and* 145—Bona fide *dispute as to the right of possession—Binding down one party under s.* 107—*Proceeding under s.* 145, *proper procedure.*—When there is a *bona fide* dispute as to the right to the possession of land between two rival parties, giving rise to a likelihood of a breach of the peace, it is unfair to bind down only the party who happens to be in possession under s. 107, Crim. Pro. Code, to keep the peace. The proper order in such a case would be to bind down both the parties under s. 107, Crim. Pro. Code, or to institute a proceeding under s. 145, Crim. Pro. Code. BAISNAB DAS BABAJI v. EMPEROR, **12 C.W.N. 606=7 Cr. L.J. 403.**

(16)—*Crim. Pro. Code* (1898), *ss.* 107, 145—*Dispute as to possession of land—Existence of—Whether a bar to proceedings under s.* 107.—*Held*, that the fact that there is a dispute about land, which might be made the subject of proceedings under s. 145, Crim. Pro. Code, is no bar to proceedings under s. 107 thereof. HIRA SINGH v. MOHAN SINGH, **5 N.L.R. 94=10 Cr. L.J. 221=3 Ind. Cas. 64.** (26 M. 471, 7 C.W.N. 746, 25 C. 559, 6 C.W.N. 883, 7 C.W.N. 29, 7 C.W.N. 142, 25 A. 537, *Diss.*)

(17)—*Crim. Pro. Code* (1898), ss. 107 *and* 145—*Dispute concerning Jalkar Procedure*—Where a dispute likely to cause a breach of the peace is a *bona fide* one relating to a fishery right, proceedings under s. 145 and not under s. 107 of the Crim. Pro. Code should be instituted. The words in s. 145 are mandatory while those in s. 107 are discretionary. BALAJIT SINGH v. BHOJU GHOSE, **35 C. 117=6 C. L.J. 697=12 C.W.N. 487=6 Cr. L.J. 398.** (25 C. 559, *F.*) [*Diss.*, 2 S.L.R. Cr. 18; *Not F.*, 34 A. 449=9 A.L.J. 582=15 Ind. Cas. 798 =13 Cr.L.J. 526.]

(18)—*Crim. Pro. Code* (1898), s. 107—*Object of proceedings under that section—Order set aside as improper.*—There being a dispute between the Zemindars on the one hand, and the tenants on the other, with regard to possession of certain land, the Deputy Magistrate instituted proceedings under s. 145, Crim. Pro. Code, between the parties, and attached the land and made a temporary settlement thereof with a third party. One of the parties to the proceedings having moved the High Court, the proceedings were held to be defective, and the Deputy Magistrate allowed them to be dropped, holding that there was no further apprehension of a breach of the peace. The third party, however, remained in possession of the land, and there being, in the meantime, a survey and settlement of rights in the village, the Settlement Officer recorded them as being persons in possession, and the Zemindars apparently acquiesced in the arrangement. The tenants, however, attempted to interfere and were eventually bound down under s. 107 of the Crim. Pro. Code. *Held*, that proceedings under s. 107 of the Crim. Pro. Code, taken under such circumstances were based on a misunderstanding of the real position of the parties and, therefore, could not be maintained. MAIGH LAL SINGH v. AMBICA JHA, **5 C.L.J. 447=5 Cr. L.J. 344.**

(19)—*Crim Pro. Code* (1898), s. 107—*Proceedings—Bail, whether can be required of person dealt with under s.* 107, *Crim. Pro. Code*, 1898.—No bail should be called for from a person, against whom proceedings under s. 107 of the Code are contemplated, but not actually initiated. The most that can be required of him is to furnish recognizance, and that, only when there is any likelihood of his absenting himself from Court. MEWA LAL THAKUR v. EMPEROR, **11 C.W.N. 415=5 Cr.L.J. 194.** [*D.*, 36 M. 474=1912 M.W.N. 169=15 Ind. Cas. 79=11 M.L.T. 253=22 M.L.J. 357=13 Cr. L. J. 447.]

(20)—*Crim. Pro. Code* (1898), ss. 107, 11 514—*Execution of bond under s.* 107 *by mistaO'*

Security to keep the peace—continued.

——1.—General—Position of parties required to furnish security—When it may be taken—*concluded.*

—*Forfeiture of such bond on conviction of principal under s.* 430, *Penal Code.*—From a person, from whom, after the proper formalities had been observed, a bond with sureties for his good behaviour ought to have been taken under s. 110, Crim. Pro. Code, a bond under s. 107 was, by mistake, taken subsequently, on a conviction under s. 430, Penal Code, an order was duly passed forfeiting his bond. *Held*, that the order was illegal, as the bond had been executed under a mistake and without any justification for a bond under s. 107, Crim. Pro. Code, *held*, also, that after proof before a Magistrate of the forfeiture of a recognisance, the fact of the principal having been duly convicted need not be proved by the prosecution. WADHAWA SINGH v. EMPEROR, **32 P.R. 1903, Cr. = 15 P.L.R. 1904 = 1 Cr.L J. 90.** (21 A. 86, *F.*; 25 C. 44, *Diss.*; 1 C.L.R. 134, 3 C.L.R. 406, *D.*)

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 23 W.R. Cr. 58.

——**2.—On conviction.**

(1)—*Conviction must be for offences specified by law to justify security.*—In order that the recognizance may be ordered to be taken from a person to keep the peace, it is necessary that he should be convicted of any of the offences specified in s. 489, Crim. Pro. Code. It is illegal to take a recognizance from one merely convicted of attempting to commit an assault. ABINASH CHUNDER v. HURISH, **3 J.G. 33**.

(2)—*Crim. Pro. Code* (1898), *s.* 106—*Security to keep the peace—Intention to commit a breach of the peace at the time of committing the offence essential.*—*Held*, that, before an accused can be called upon to give security under s. 106 of the code, it must be proved that there was an intention on his part to commit a breach of the peace, at the time of committing the offence, of which he has been convicted. MAULVI MAQBUL AHMAD v. KING-EMPEROR, **9 O.C. 381 = 5 Cr. L.J. 25.** (26 C. 576, 27 C. 983, 30 C. 93, 26 M. 469, 29 M. 190, *R.*)

(3)—*Crim. Pro. Code* (1882), *ss.* 106 *and* 349—*Conviction to be by superior Magistrate and security order to be passed by convicting Magistrate only.*—Reading ss. 106 and 349 together, there is no doubt that it was the intention of the Legislature that, before an order under s. 106 can be properly passed, the conviction of the accused shall have been by an order made by a Magistrate of a superior class, and not by a Magistrate of a third class, and that the conviction and order under s. 106 shall be passed by one and the same officer. Where a third-class Magistrate convicted the accused person of criminal trespass, and sentenced him to a fine of Rs. 10 or, in default, to rigorous imprisonment for seven days, and further submitted the case to the District Magistrate with a recommendation that the accused should, under s. 106 of the Crim. Pro. Code, be bound over to keep the peace, *held*, that the District Magistrate was not competent to direct the accused to furnish security to keep the peace under s. 106 of the Code. MAHMUDI SHEIKH v. AJI SHEIKH, **21 C. 622.** [*Diss.*, 33 B. 33 = 10 Bom. L. R. 759 = 8 Cr. L.J. 267 = 1 Ind. Cas. 454, 37 M. 153 = 25 M.L.J. 403 = 1913 M.W.N. 769 = 14 M.L.T. 235 = 21 Ind. Cas. 174; *F.*, 30 M. 48 = 1 M.L T. 403 = 5 Cr. L J. 88; *Rel. on*, 12 Cr. L.J. 444 = 11 Ind. Cas. 788 = 7 N.L R. 109; *R.*, 35 C. 434 = 7 C.L.J. 602 = 12 C.W.N. 752 = 4 M. L.T. 340 = 8 Cr. L.J. 9; 7 P.R. 1909, Cr. = 21 P.W.R. 1909, Cr. = 3 Ind. Cas. 577 = 10 Cr.L.J. 309, 11 Cr.L.J. 170 = 5 Ind. Cas. 576.]

Security to keep the peace—continued.

——2.—On conviction—*continued.*

(4)—*Security to keep the peace on conviction should be made simultaneously with the conviction—Crim.Pro. Code* (1861), *s.* 280, *scope of.*—An order, directing the furnishing of security to keep the peace or conviction for an offence, should be simultaneous with the conviction, and should not provide for an engagement to be executed at a future period. [*Appl.*, 2 A. 351]. S. 280 does not refer to offences affecting the human body, but to cases of riot, simple assault or other breach of the peace, being an offence against public tranquillity. QUEEN v. KUNHIYA MUNGRO, **4 N.W.P. 154.**

(5)—*Security to keep the peace on conviction—Crim. Pro. Code* (1872), *s.* 489.—A Magistrate is competent to take security from a person convicted or voluntarily causing grievous hurt. Such order should direct the person convicted to execute the engagement at once or at any time during the term of imprisonment to which he may have been sentenced, but not at the end of that term. QUEEN v. BACHU, **7 N.W.P. 328.** [*R.*, 2 A. 351.]

(6)—*Crim. Pro. Code* (*Act* XXV *of* 1861), *s.* 280—*Conviction under alternative charges—Recognisance for good behaviour, whether valid.*—Where a person convicted under alternative charges of attempt to commit murder and an offence under s. 324 of the Penal Code, was ordered to execute, at the expiration of his sentence, a recognisance for good behaviour for a year, *held*, that the recognisance ordered was to be for keeping the peace, and not for good behaviour. REG v. SHRAVAN, **Rat. Un. Cr. C. 48 = Cr. Rg. 23-2 1871.**

(7)—*Effect of acquittal on security bond—Abatement of order.*—Where a person ordered to give security to keep the peace on conviction is acquitted on appeal, the order abates *ipso facto*, and the appellate Court is not competent to order it to be continued. EMPRESS v. CHAJJU MAL, **A.W.N. 1894, 141.**

(8)—*When security may be required on conviction—Crim. Pro. Code* (1898), *s.* 106—*Conviction under s.* 143, *Penal Code, when can be brought under s.* 106, *Crim. Pro. Code*, 1898.—In order to bring the acts of a person convicted under s. 143, Penal Code, within the terms of s. 106, Crim. Pro. Code, it

Security to keep the peace—continued.

——2.—On conviction—*continued.*

is necessary that the Magistrate should expressly find that his acts amounted to a breach of the peace, or at all events, that the evidence is so clear that, without such an express finding, a superior Court, such as a Court of revision, should be satisfied that the acts do involve a breach of the peace or an evident intention of committing the same. The mere fact that a person is convicted under s. 143, Penal Code, of being a member of an unlawful assembly does not necessarily justify an order against him under s. 106, Crim. Pro. Code. JIB LAL GIR v. JOGMOHAN GIR, **26 C. 576** [*F.*, 30 C. 93, 8 C.W.N. 517; *R.*, 27 C. 983, 31 C. 419, U. B.R. 1904, 1st Qr., Penal Code, 4, 9 O.C. 381.]

(9)—*Crim. Pro. Code* (1898), s. 106—*Conviction under s. 143, Penal Code—Order to furnish security to keep the peace, validity of.*—An offence under s. 143, Penal Code, is not one of the offences specified in s. 106 which would justify an order directing the persons to furnish security, unless there are findings in the case which would justify such an order, if such findings can be brought within the terms of s. 106. SHEO BHAJAN SINGH v. MOSAWI, **27 C. 983=4 C W.N. 795.** [*F.*, 7 C L.J. 172; *R.*, 8 C.W.N. 517, U.B.R. 1904, 1st Qr., Penal Code, 4, 31 C. 419, 9 O.C. 381.]

(10)—*Crim. Pro. Code* (1898), s. 106—*Penal Code*, s. 294—A conviction under s. 294, I.P.C., for uttering obscene abuse in a public place may amount to a conviction for an offence involving a breach of the peace within the meaning of s. 106, Crim Pro.Code. KING-EMPEROR v. MI KUN YA, **U B.R. 1904, 1st Qr., Penal Code 4=1 Cr. L.J. 555** (1 L.B.R. 262, 2 L.B.R. 125, 4 Bom. L.R. 78, 26 C. 576, 27 C. 983, *R.*)

(11)—An order requiring security to keep the peace on the expiration of a sentence for criminal trespass was held to be valid. QUEEN v. GENDOO KHAN, **7 W.R. Cr. 14.**

(12)—*Order for recognizance on conviction of criminal trespass—Crim Pro. Code* (1872), s. 489—*Sentence.*—Where a Sessions Judge recommended that an order requiring security to keep the peace added to a sentence for a conviction of the offence of criminal trespass might be quashed as criminal trespass was not one of the offences detailed in s. 489 for which such security could be taken, *held* that there was nothing illegal in the Joint Magistrate's order, as the conduct of the accused clearly indicated an intention to commit a breach of the peace. QUEEN v. JHAPOO, **20 W.R. Cr. 37.** [*Appr.*, 2 A. 351; *D.*, 25 C. 618, 1 C. W. N. 186, 3 C. W. N. 18; *R.*, 7 C. W. N. 25, 8 C. W. N. 517.]

(13)—*Crim. Pro. Code* (1882), s. 106—*Conviction for house trespass—Penal Code, s. 441—Security to keep the peace—Notice to accused before passing orders under section.*—Where the intention of an accused person, who was convicted for house trespass, in committing the trespass, was to have illicit intercourse with the complainant's wife, *held*, that an order, under s. 106, Crim Pro. Code, binding down the accused to keep the peace could not be made. SUBAL CHUNDER DEY v. RAM KANI SANYASI, **25 C. 628=3 C.W.N. 18.** [*R.*, 8 C. W.N. 517; *D.*, 7 C.W.N. 25.]

(14)—*Offences after conviction for which security to keep the peace may not be demanded—Crim. Pro. Code* (1898), s. 106—*Unlawful assembly—Penal Code*, s. 143—Where the petitioners were convicted only under s. 143, Penal Code, *i.e.*, of being members of an unlawful assembly, which does not necessarily involve the use of force, an order under s. 106, Crim. Pro. Code, was held not to be legal. RAJNARAIN ROY v. BHAGABAT CHUNDER NANDI, **35 C 315=7 Cr.L.J. 392.** [*Diss.*, 33 A. 771=8 A.L.J. 925=12 Cr.L.J 405=11 Ind. Cas. 589.]

(15)—*Crim. Pro. Code* (1898), ss. 106, 107—*Security to keep the peace on conviction under s 143, I P.C.,—Procedure where order would prevent party from taking possession of his property.*—An offence under s. 143, I.P.C., is not necessarily one which would justify a Magistrate, on conviction of the accused, to pass an order under s. 106. But where the evidence goes to show that a number of armed men were assembled with the intention of taking forcible possession which might lead to a breach of the peace, an order under s. 106, Crim. Pro. Code, on a conviction under s. 143, I.P.C., may be made. Where the effect of an order under s. 106 would be to prevent a party entitled to possession from taking possession of the property, it is desirable that the other side should be bound down in a proceeding under s. 107, Crim. Pro. Code. BEPIN BEHARI GUHA v. PRANAKUL MAJUMDAR, **1 C W.N. 176=5 Cr L.J. 19.**

(16)—Ijaradar *of market—Binding him down for exceeding his rights—Crim Pro. Code* (1898), s. 106.—Where the *ijaradar* of a market with a view to prevent the sale of foreign articles used force and caused hurt to certain itinerant stall-keepers, *held*, that, although the *ijaradar* was punishable for having exceeded his rights under the law, he could not be bound down to keep the peace, as an order under s. 106, Crim. Pro. Code, would practically prevent him from exercising his legal rights. NANDA KUMAR SIRKAR v. EMPEROR, **11 C. W.N. 1128=6 Cr.L.J. 321.**

(17)—*Crim. Pro. Code* (1882), s. 106—*Conviction under* s. 144, *I.P C.*—An order requiring security to keep the peace cannot be passed on a conviction for an offence under s. 144, I.P.C. YAR MUHAMMAD v. EMPRESS, **3 P.R. 1890, Cr.** [*R.*, 11 Cr.L J. 680=8 Ind. Cas. 551=126 P.L.R. 1910, 48 P.W.R. 1910, Cr.]

(18)—*Crim. Pro Code* (1898), s. 106—*Penal Code*, ss 379 *and* 143, *conviction under—Recognizance to keep the peace, where justifiable.*—A conviction under s. 143, or s. 379, Indian Penal Code, is not of itself sufficient to sustain an order under s. 106, Crim. Pro. Code, unless

Security to keep the peace—continued.

—— 2.—On conviction—*continued.*

it is clearly found that there was force employed, or that there were armed men present. CHANDRA BHUSAN SEN v. EMPEROR, **7 C.L.J. 172=7 Cr. L J. 200.**

(19)—*Crim. Pro. Code* (1882), s. 106—*Order under the section against a person convicted of theft.*—Before an order under s. 106, Crim. Pro. Code, can be sustained, the person against whom the order is made, must be convicted of some one or other of the offences mentioned or referred to in the section. The offence of theft is one that does not come within the description of offences mentioned or referred to in s. 106. RAM CHARAN MAITIE v. UMESH CHANDRA MONDAL, **1 C.W N 186** (7 W R. Cr. 14, 20 W. R. Cr. 37. *D.*) [*F.*, 8 C.W.N. 517.]

(20)—*Crim. Pro. Code* (1898), s. 106—*Land dispute—Order binding down persons convicted of rioting—Propriety—Indian Penal Code, s.* 147.—Where, on the complainant trying to take possession of land in the occupation of the accused, the accused used more force than was necessary to prevent the complainant's party from doing so, *held* that, although the accused were rightly convicted of the offence of rioting under s. 147, Indian Penal Code, they should not be bound down under s. 106, Crim. Pro. Code, to keep the peace, as that would have the effect of preventing the accused from resisting any further attempt by the complainant to take possession of the land. NAHAR KHAN v. EMPEROR, **11 C.W.N. 840=6 Cr. L. J. 40.**

(21)—*Order for recognizance in case of rioting —Crim. Pro. Code* (1872), s 489—*Personal recognizance.*—*Held* that an order requiring security to keep the peace should not be passed under Act X of 1872, s. 489, unless the accused has been convicted of rioting or of any other offence. SAHEBDI v. KURAN, **21 W.R. Cr. 37.**

(22)—*House trespass with intent to commit theft, whether offence involving breach of peace—Order for security to keep peace—Power of Court to whom case is submitted under proviso to s. 562, Crim. Pro. Code, to pass order other than a sentence or order for release on probation.*—The offence of house-trespass with intent to commit theft is not an offence involving a breach of the peace. Therefore the Judge has no power to pass an order demanding security to keep the peace from a person charged with such offence. *Quære*:—Whether a Magistrate to whom a case is submitted under s. 562 (proviso) of Crim. Pro Code can pass, under s. 380 of the Code, any order other than a sentence or an order for release on probation. MORALI v. KING-EMPEROR, **4 L.B.R. 277 = 8 Cr. L.J. 476.**

(23)—*Accused not liable to furnish on conviction for "insult"—Penal Code, s. 504—Crim. Pro. Code* (1898), s. 106.—The offence under s. 504, Penal Code, does not come within the scope of s. 106, Crim. Pro Code. Therefore a conviction under s. 504, Penal Code, does not render the accused liable to be put on security under s. 106, Crim. Pro. Code. CROWN v. WET TAUNG, **1 L.B.R. 262.**

—— 3.—On credible information.

(1) *Security not following—Conviction for assault—Credible information necessary—Crim. Pro. Code* (1861), s 281.—Although it is competent to a Magistrate, when he convicts and sentences a person for an assault, to call upon him to execute a formal engagement to keep the peace, yet, if he omits to do so, he can only institute proceedings under s. 281, upon receiving some further credible information that the parties so convicted are likely to commit a breach of the peace. QUEEN v. POWELL, **3 N.W.P. 96.** [*R.*, 3 Ind. Cas. 774=11 Bom. L.R. 740.]

(2)—*Crim. Pro. Code*, s. 491—*Security to keep the peace can be ordered only on credible information and adjudication.*—A Magistrate must have a report or information which appears to be credible, and which he believes, before he can issue a summons calling on any person to shew cause why he should not be bound over to keep the peace; but he cannot bind over a person until he has adjudicated on evidence before him, that is, upon evidence taken in the regular way in the presence of the person who is to be bound over. *In the matter of* UMDA KHANUM, **3 C.L.R. 72.** (22 W.R. Cr. 79, *Cited.*)

(3)—*Credible information, what is—Statement of complainant—Expectation of attack by defendant—Crim. Pro. Code* (1861), s. 282.—*Held* that, under s. 282, Crim. Pro. Code, 1861, the statement made by a complainant that he expected the defendant to make an attempt on his person or property at any time is "credible information." QUEEN v. KRISTENDRO ROY, **7 W.R.Cr. 30.**

(4)—*How far complainant's statement is credible information and can be acted upon by Magistrate—Crim. Pro. Code* (1861), s 282, (s. 107 *of the Code of* 1898).—Although a Magistrate may accept the statement of the complainant, made in the first instance before him in the absence of the persons charged, as "credible information" within the terms of s. 282 of the Code of 1861, and act upon it accordingly by summoning them to show cause why they should not be required to enter into bonds to keep the peace, it is not competent for him, on the appearance of the persons so charged, to act upon his previous information, and to proceed to make an order under s. 282, without taking further evidence, or confronting them with the complainant, and giving them an opportunity of cross-examining him. He is bound, before taking bonds for the preservation of the peace, to adjudicate judicially on evidence given before him as to the necessity for taking security from them. QUEEN v. NUSEEROOD-DEEN, **2 N.W.P. 461.** *See, also*, QUEEN v. MAHOMED AFZUL, **7 W.R. Cr. 59.**

Security to keep the peace—continued.

——3.—On credible information—*continued.*

(5)—*Credible information—Report of police officer.—Held*, that the report of a police officer was "credible information" under s. 282 of the Code of Criminal Procedure, 1861. *In the case of* BINDRABUN SHAHA, **10 W.R. Cr. 41.** BEHARI PATAK v. MAHOMED HYAT KHAN, **4 B.L R. F.B. 46=12 W.R. Cr. 60.**

(6)—*Police report is sufficient information—Crim. Pro. Code* (1872), ss. 491, 530.—*Held* that, where a breach of the peace is apprehended, a Magistrate may proceed upon a police report as a piece of credible information. QUEEN v. RAM CHANDRA ROY, **21 W.R.Cr. 28.**

(7)—*Crim. Pro. Code* (*Act* XXV *of* 1861), *s.* 282—*Statement not on oath whether credible information—Summons—Legality—Magistrate's report whether credible information.*—A statement by a private person, not on oath or solemn affirmation, is not credible information on which a Magistrate could issue summonses under s. 282 of Crim. Pro. Code. A report by a subordinate Magistrate of facts within his knowledge may be regarded as such credible information, and, if duly recorded, a Magistrate could issue summons thereon. REG v. JIVANJI LIMIJI, **6 B.H. C. Cr. 1.** [*R.*, 30 M. 330=6 Cr. L.J. 278=17 M.L.J. 407=2 M.L T. 329.]

(8)—*Credible information, what is not—Petition not on oath—Crim. Pro Code* (1861), s. 282.—*Held* that a petition, not based on any complaint or deposition given on solemn affirmation, did not constitute the "credible information," referred to in s. 282, Crim. Pro. Code, 1861. CHAMARO MALO v. KASHI CHUNDER LALLA, **8 W.R Cr. 85.**

(9)—*Crim. Pro. Code* (1882), *s.* 107—*Power of Magistrate to issue process to persons residing beyond the limits of his district—Information acted upon, nature of.*—The Magistrate of a District has not the power under the law, to issue process for taking security to keep the peace, from a resident of another Magistrate's District, concerning whom he has received information that such person is likely to commit a breach of the peace in his district. [*F.*, 11 C. 737, 12 C. 133, 23 B. 32] Information of the kind mentioned in s. 107 must be of a clear and definite kind, directly affecting the person against whom process is issued, and it should disclose tangible facts and details, so that it may afford notice to such person of what he is to come prepared to meet. *In the matter of the petition of* JAIPRAKASH LAL, **6 A. 26, F.B.=A. W N. 1883, 208** [*R.*, 11 Bom L.R. 740=3 Ind. Cas. 774, 26 M. 592; *D.*, 16 A.W.N. 1896, 73, 24 C. 344.]

(10)—*Procedure after deciding as to credibility of information—Statement of complainant on oath—Crim. Pro. Code* (1861), *s.* 282.—*Held* that, where a Magistrate treated the complainant's statement on oath as credible information, there was nothing to prevent him from requiring the accused to furnish security, the Magistrate being generally competent to decide as to the sufficiency of such information. *In the matter of* TARINEE KANT LAHOORY CHOWDHRY, **8 W.R. Cr. 79** [*Expl.*, 12 W.R. Cr. 60; *R.*, 2 N.W.P. 461, 4 B.L.R. F.B. 46.]

Security to keep the peace—continued.

——3.—On credible information—*concluded.*

(11)—*Credible information—Information unsupported by witnesses—Necessity for witnesses.*—*Held* that, prior to passing an order requiring security to keep the peace, witnesses need not be summoned to prove the information laid before the Magistrate. *In the case of* MULLICK FUKEERUN, **11 W.R. Cr. 6.**

(12)—*Crim. Pro. Code* (1882), *s.* 114—*Arrest under the section, when can be made.*—To justify an arrest under s. 114, the Magistrate must act upon information that has been recorded. It is not enough for him to merely express that such a course is necessary. Not only must he have "reason to fear the commission of a breach of the peace," but "that such breach of the peace cannot be prevented otherwise than by the immediate arrest of such person." EMPRESS v. BABUA, **6 A. 132**

—— 4.—Persons who may be required to give security and persons outside jurisdiction.

(1)—*Complainant, if can be ordered to give security—Crim. Pro. Code* (*Act* V *of* 1898), *ss.* 106, 117 *and* 118—*Procedure where Magistrate thinks security necessary in such case.*—Under s. 106 of the Crim. Pro. Code, a Magistrate is not authorized to demand from the complainant security to keep the peace. If the Magistrate considers it necessary to demand security from the complainant in a case before him, he must record a separate proceeding and give the complainant an opportunity to be heard under ss. 117 and 118 of the Crim. Pro. Code. CROWN v. KALLU, **82 P L.R. 1902.**

(2)—*Whether these provisions apply to minors—Previous conviction to be recorded—Signature of minor accused not required—Crim. Pro. Code* (1898), *ss.* 380, 562 *and* 563—S. 380 requires that there must be a formal conviction prior to the order for the bond. Therefore, a formal conviction should be recorded before a bond can be required under s. 562, Crim. Pro. Code. S. 563 provides for the apprehension of the accused, if the Court is satisfied that the offender has failed to observe the conditions of his bond. Where the accused is a minor, the provisions of s. 118, cl. 3, apply, and the offender's signature is not required. KING-EMPEROR v. NGA PAN TIN, **2 L.B.R. 137.** [*Overruled*, 4 L.B.R. 12.]

(3)—*Crim. Pro. Code* (1882), *s.* 107—*Power to require a person residing in another district to furnish security.*—A Magistrate, acting under s. 107, has no jurisdiction over a person residing beyond his local jurisdiction. *In the matter of* ABDUL AZIZ, **14 A. 49=A.W.N. 1891, 182.** (6 A. 26, *F.*; 11 C. 737, 12 C. 133, *Appr.*) [*F.*, 23 B. 32.]

Security to keep the peace—continued.

——4.—**Persons who may be required to give security and persons outside jurisdiction** —*continued.*

(4)—*Crim. Pro. Code* (1898), *s.* 107—*Person residing beyond local jurisdiction.*—A Magistrate cannot call a person residing beyond his local jurisdiction to give security against a breach of the peace within his jurisdiction. *In re* KRISHNAJI PANDURANG JOGLEKAR, **23 B. 32.**

(5)—*Crim. Pro. Code* (1882), *s.* 107—*Security to keep the peace—Persons residing outside district—Powers of Magistrate—Procedure.*—A Magistrate is not authorized by s. 107 of the Crim. Pro. Code of 1882 to issue process on persons resident beyond his jurisdiction. (6 A. 26, *F.*) [*F.*, 12 C. 133, 14 A. 49=A.W.N. 1891 132, 23 B. 32; *D.*, 24 C. 344] The proper course to be followed in cases, where it is believed that persons residing in another district are likely to commit breach of the peace within the district, is to have information, supported by proper evidence of such fact, laid before the Magistrate, having jurisdiction over such persons, in order that proceedings may be taken by such Magistrate. *In the matter of the petition of* RAJENDRO CHUNDER ROY CHOWDHURY, **11 C. 737**

(6)—*Power of Magistrate over person residing beyond jurisdiction—Crim. Pro. Code* (1882), ss. 107, 116—*Personal attendance when not necessary.*—A Magistrate cannot take proceedings under s. 107 of the Code, against a person, who is not within the local limits of his jurisdiction. (6 A 26 and 11 C. 737, *F.*) [*F.*, 23 B. 32, 24 C. 344, 14 A. 49=A.W.N. 1891 182.] Where the person, against whom proceedings were taken, was at a distance (even assuming the Magistrate had jurisdiction), and there was no special circumstance making his personal attendance necessary, it would be a very unwise exercise of jurisdiction to require him to appear personally, seeing that the Magistrate could, under s. 116, allow him to appear by a pleader. DINONATH MULLICK v. GIRIJA PROSONNO MOOKERJEE, **12 C. 133.**

(7)—*Crim. Pro. Code* (1882), s. 107—*Jurisdiction of Magistrate—Person not habitually residing within the jurisdiction.*—For a Magistrate to institute proceedings against any person under s. 107 of the Code of Criminal Procedure and bind him down to keep the peace, it is not necessary that such person should be permanently or habitually residing within his jurisdiction, but it is sufficient that at the time when the Magistrate receives information and institutes proceedings that the accused person is residing within the local limits of his jurisdiction. SHAMA CHARAN CHAKRAVARTI v. KATU MUNDAL **24 C. 344=1 C.W.N. 129.** [*D.*, 23 B. 32.]

(8)—*Crim. Pro. Code* (1872), *s.* 491—*Security to keep the peace—Non-resident Zemindar.*—A non-resident Zemindar cannot be bound over to keep the peace, merely because his local agents are committing acts likely to cause a breach of the peace. *In the matter of* CHAROO CHUNDRA MULLICK, **10 C.L.R. 430.**

Security to keep the peace—continued.

——4.—**Persons who may be required to give security and persons outside jurisdiction** —*concluded.*

(9)—*Crim. Pro. Code* (1898), *s.* 107—*Subordinate Magistrate, if may take proceeding at the direction of the District Magistrate, when the person informed against does not reside within the local limits of the jurisdiction.*—Even on the direction of the District Magistrate, a subordinate Magistrate has no jurisdiction to draw up a proceeding under s. 107, Crim. Pro. Code, against a person residing in another jurisdiction. In such a case the proceeding must take place and be brought to a conclusion before the District Magistrate himself. NIRBEEKAR CHANDRA MUKERJEE v. EMPEROR, **13 C.W.N. 580=9 Cr. L.J. 148=1 Ind. Cas. 78.**

(10)—*Crim. Pro. Code* (*Act* X *of* 1882), *s.* 107—*Penal Code, s.* 141—*Servants of proprietor who assemble to plough.*—Servants of a proprietor, who assemble for the purpose of ploughing a land already lawfully put into the possession of their master, do not form an unlawful assembly. They cannot be required to give security to keep the peace, under s. 107 of the Crim. Pro. Code. *In the matter of* SYED HUSAIN, **A.W.N. 1884, 57.**

——5.—**Summons to show cause, Form and Nature of, Notice, etc.**

(1)—*Notice to show cause must be issued before passing order for security.*—An order directing certain persons to furnish security to keep the peace is not proper and legal, if the parties were not summoned to show cause why they should not be required to enter into a bond to keep the peace. QUEEN v. MOONEE DOOBEY, **2 N.W.P. 189.** *See also* KALIPERSHAD SIRDAR v FUTTEHCHUND DASS, **9 W R. Cr. 16.**

(2)—*Magistrate's duty—Notice to show cause.*—Notice to show cause why security should not be demanded must be served previous to the passing of the order for security. KALIPERSHAD SIRDAR v. FUTTEH CHUND DASS, **9 W R Cr. 16.**

(3)—It is necessary, before an order under s. 106 can be made, that the party should have an opportunity of answering to an accusation for an offence of the kind, upon a conviction for which such an order can be made. SUBAL CHUNDER DEY v. RAM KANAI SANYASI, **25 C. 628=3 C.W.N. 18.** (7 W.R. Cr. 14, 20 W.R. Cr. 37, *D.*)

(4)—*Crim. Pro. Code* (1882), *ss.* 107, 112, 115—*What a summons to show cause should contain.*—Every person, to whom a summons is issued calling on him to show cause why he should not find security to keep the peace, is entitled to proper information as to the

Security to keep the peace—continued.

——5.—Summons to show cause, Form and Nature of, Notice, etc.—*continued.*

materials upon which process has been granted against him, and to a reasonable interval within which to prepare himself to meet such information, by evidence or otherwise, as the matter may require. His case should be considered by itself and on its own merits and except in rare instances, it should not be mixed up with, and should never be prejudiced by, that of other persons. Nor should the order for security be in an excessive sum, or for the extreme term of twelve months, except when absolutely necessary. QUEEN-EMPRESS v. NATHU, 6 A. 214=A.W N. 1884, 51. [*R.*, 11 Bom. L.R. 740=3 Ind. Cas. 774, 11 C. L.J. 388=6 Ind. Cas. 626=18 P.W.R. 1910, Cr., 9 A. 452 ; *D.*, 1896 A.W.N. 73.]

(5)—*Crim. Pro. Code* (1861), *s.* 282 (=*s.* 107 *of the Code of* 1898).—A summons, under s 282 of the Code of 1861, should set forth "the substance of the information." It should call upon the person summoned "to show cause." QUEEN v. NIJABUT HOSSEIN, 1 N W.P. 304.

(6)—*Summons should set out gist of information--Crim.Pro.Code* (1861), *s.* 283.—A summons which merely calls upon the parties to show cause why they should not be bound to keep the peace, without saying on whose information or in reference to what cause of quarrel the bond is required, is an irregularity which would not vitiate the proceedings in the absence of prejudice. But the substance of the information should be set out in the summons. KOONJ BEHARY CHOWDRY v. EKNATH GURAIN, 15 W.R. Cr. 43.

(7)—*Security to keep the peace – Magistrate's. essentials of.—Held* that a Magistrate's order calling upon a person to furnish security should contain on its face the fact that he had received credible information, that such person was likely to commit a breach of the peace or to do any act that might probably occasion a breach of the peace. *In the petition of* BIRRESHUREE PERSHAD 6 W.R Cr. 93.

(8)—*Summons, form of—Omission to take evidence.*—The Chief Court set aside an order requiring security to keep the peace, on the ground that the summons did not contain the substance of the report or information on which it was issued, nor the amount of the security bond and that the Magistrate notwithstanding the accused's denial of the charge, passed the order without taking any evidence KHUDA BAKHSH v. EMPRESS, 27 P.R. 1882, Cr.

(9)—*Crim Pro. Code* (1872), *ss.* 491, 492.—The accused were ordered by the Magistrate to furnish security to keep the peace. The summons did not set forth the substance of the report or information on which the Magistrate acted, nor did the Magistrate adjudicate on evidence before him, nor was there any thing on the record to show that the parties were given an opportunity to show cause why they should not be bound over. *Held* that the proceedings should be annulled and the case disposed of according to law. GHOLAM HAIDAR v. GHOLAM KHADAR, A.W.N. 1881, 155.

(10)—*Crim. Pro. Code* (1872), *ss.* 491, 492—*Defect in form of summons.*—Where an order requiring the accused to furnish security to keep the peace was impugned on the ground, that the summons had not set forth the report or information on which it was issued, *held*, that, as the defect had not prejudiced the accused, the order could not be set aside. EMPRESS OF INDIA v. MUHAMMAD JAFIR, 3 A. 545, F.B.=A.W N. 1881, 33.

(11)—*Separate summons to each accused essential.*—A separate summons should be issued to each of the persons called upon to give security. It should contain a statement of the substance of the credible information which moved the Magistrate to issue it and also of the other particulars required by the Act. QUEEN v. POWELL, 3 N.W.P. 96.

(12)—*Summons should specify nature and amount of security required—Crim. Pro. Code* (1872), *ss.* 491, 492.—*Held*, that the amount and the nature of the security required and the period for which the security was to run should be distinctly specified on the summons. QUEEN v. GUNGA SINGH, 20 W.R. Cr. 36.

(13)—*Summons under s.* 492 *of the Crim. Pro. Code (Act X of* 1872) *informally issued—Validity of subsequent proceedings Omission to specify amount of security, effect of.*—The precepts in s. 492 of the Crim Pro. Code are not imperative, but directory merely ; on omission to insert in the summons the amount of the recognizance and security required will not invalidate all proceedings had upon a summons so informally issued. ABASU BEGUM v. UMDA KHANUM, 8 C. 724. [*R.*, 5 O.C. 313, 11 Bom. L.R. 740=3 Ind. Cas. 774=10 Cr. L.J. 375, 8 Cr. L.J. 170=1 S.L.R. 50 ; *D.*, 7 A. 79.]

(14)—*Omission to give opportunity to show cause—Crim. Pro. Code* (1872), *s.* 492.—Where in a case of criminal trespass and assault, the Magistrate recorded that, after examining the witnesses, he found that a breach of the peace was about to happen and proceeded to examine the complainant and two of his witnesses and the accused, and then required the parties to furnish security to keep the peace ; *held*, that the parties had no opportunity given them under s. 492, Crim. Pro. Code, to show cause why they should not be bound. QUEEN v. SHUKUR MAHOMED, 22 W.R. Cr. 68.

(15)—*Notice to show cause must allow sufficient time—Adjudication to furnish security must be on evidence—Crim. Pro. Code* (1872), *s.* 491.—A Magistrate may summon on credible information a person to show cause why he should not be bound over to keep the peace, but he must, under s. 491, Crim. Pro. Code, 1872, adjudicate upon evidence before he can pass the

Security to keep the peace—continued.

——5.—**Summons to show cause, Form and Nature of, Notice, etc**—*concluded.*

order to bind over; the intention of the Legislature being that the accused must be given sufficient time to adduce evidence to exculpate himself. QUEEN v. ISREE PERSHAD SINGH, **20 W.R. Cr. 18.**

(16)—*Order giving sufficient time to show cause—Irregular order—Crim. Pro. Code* (1872), *s.* 491.—An order of the 1st July, calling upon certain parties to show cause on the 9th why they should not furnish security to keep the peace was served on them on the 5th and the 7th idem. *Held*, that the order should be set aside as it did not allow them sufficient time for the purpose. QUEEN v. CHEYT SINGH, **22 W.R. Cr. 70.** [*D.*, 23 W. R. Cr. 9.]

(17)—*Whether summons should be freshly issued after charge of trespass is dismissed—Order for recognisance on dismissal of charge of criminal trespass—Crim. Pro. Code* (*Act* XXV *of* 1861), *s.* 283.—A charge of criminal trespass and mischief was dismissed: thereupon the Magistrate recorded an order in the presence of both parties, calling on them to show cause, on a day fixed, why they should not execute security bonds to keep the peace. *Held*, it was not necessary also to issue a summons to them under s. 283 of the Crim. Pro. Code. QUEEN v. CHOWDHRY, **2 B.L R. App 28.**

(18)—*Error in the taking of the bond—Forfeiture.*—Where the proceedings were instituted under s. 110, and the order passed purported to be under that section, but the form for a bond under s. 107 was substituted by mistake. *Held* (i) that an act likely to cause a breach of the peace had been committed by the petitioner; (ii) that the Magistrate anticipated the forfeiture of the security as a result of the conviction under s. 430, I.P.C., (iii) that it was not incumbent on the prosecution to prove, at the hearing after notice that the principal was properly convicted, and it was for the sureties to show cause against the forfeiture and prove that the conviction was bad. But (iv) that a bond executed under the Code must be strictly construed, and the error of taking the bond under s. 107 instead of under s. 110 was not cured by s. 537, Crim. Pro. Code, and the bond being bad, by reason of no order for such bond being executed having been passed, the offender was not liable to forfeiture. WADHAWA SINGH v. EMPEROR, **32 P.R. 1903, Cr. = 15 P.L R. 1904 = 1 Cr. L.J. 90.**

——6.—**Summoning witnesses.**

(1)—*Crim. Pro. Code* (1898), *ss.* 106, 257, 349 —*Issue of summons for attendance of witnesses —Magistrate bound to enforce process before disposing case—Power of second or third class Magistrate to pass sentence and then to refer the case to a superior Magistrate for binding down the accused under s.* 106, *Crim. Pro. Code.*—Where a Magistrate has once issued summonses for the attendance of witnesses, it is an error in law for the Magistrate to dispose of the case before having the processes enforced. If a Magistrate of the second or third class be of opinion that it is necessary for the accused in a case before him to be bound down under s. 106, Crim. Pro. Code, he must refer the whole case to the proper authority for him to pass the sentence; and it is not open to such Magistrate to pass any part of the sentence himself. ROHIMUDDI HOWLADAR v. EMPEROR, **35 C. 1093 = 9 Cr. L.J. 72.** [*R.*, 11 Cr. L.J. 170 = 5 Ind. Cas. 576.]

Security to keep the peace—continued.

——6.—**Summoning witnesses**—*concluded.*

(2)—*Summoning witnesses — Obligation of Magistrate to assist party—Crim. Pro. Code* (1872), *s.* 491.—A Magistrate is bound to issue summons to witnesses named by the party from whom security is required. QUEEN v. CHEYT SINGH, **22 W.R. Cr. 70.** [*D.*, 23 W. R. Cr. 9.]

(3)—*Summoning witnesses—Right to adjournment to produce witnesses — Crim. Pro Code* (1872), *ss* 491. 496, 497.—*Held*, that under these sections of the Crim. Pro Code, dealing with security to keep the peace, a person proceeded against cannot, when sufficient time had been allowed him to show cause and to produce his witnesses, claim an adjournment in order to enable him to take out summons; in such cases, he may bring his witnesses with him if he likes, but if it is necessary for him to take out summons he is bound to apply in such time as to enable him to bring his witnesses into Court on the day fixed. CHALUM TEWARI v. SUKEDAD KHAN, **23 W.R. Cr. 9.** (22 W.R. Cr. 70, *D*).

(4)—*Crim. Pro Code* (1872), *ss* 328, 491—*Security to keep the peace—Transfer of Magistrate before whom part of the evidence was recorded—Duty of the succeeding Magistrate.*—S. 328, notwithstanding the introduction of the words "the accused person and conviction," applies to a case of an enquiry into giving security to keep the peace under s. 491. Therefore, where the Magistrate, before whom some of the prosecution witnesses have been examined, is transferred, and is succeeded by another Magistrate, the person called upon to show cause why he should not give security, has a right to ask for the re-summoning and the re-hearing of these witnesses. BURODA KANT ROY v. KORIMUDDI MOONSHEE, **4 C.L.R. 452.** [*R.*, 2 L.B.R. 80, 42 P.R. 1905 = 131 P.L.R. 1905.]

——7.—**Likelihood of breach of the peace.**

(1)—*Crim. Pro. Code* (1898), *ss.* 107, 145—*Validity of proceedings—Power of High Court to direct Magistrate to take proceedings under s.* 145—*Meaning of the word "shall."*—Where there is a dispute between the accused as to the partition of land, and there is a likelihood of the occurrence of a breach of the peace, the Magistrate may take proceedings under s. 107, Crim. Pro. Code, and it is not incumbent on him to take action under s. 145. The use of

Security to keep the peace—continued.

——7.—Likelihood of breach of the peace —*continued.*

the word "shall" in s. 145, Crim. Pro. Code, is not mandatory. In matters of procedure, the word is generally construed as directory. As the High Court has no power to revise orders under s. 145, Crim. Pro. Code, *a fortiori*, it has no power to direct a Magistrate to initiate proceedings under that section. IMPERATOR v. LAKHANO *wd.* MURID, **2 S.L.R. 18, Cr. = 10 Cr. L.J. 231.**

(2)—*Crim. Pro. Code* (1898), *ss.* 107, 145 *and* 435 (3)—*Breach of the peace — "Likely," meaning of—Probable or imminent—Scope of s.* 145— "*Shall," meaning of—'Mandatory' and 'directory,' force of—Jurisdiction—Revision — Magistrate, discretion of.— Held, per Lucas, J.C. and Crouch, A.J.C., Pratt, A.J.C. dissenting.* The term "likely" in s. 145, Crim. Pro. Code, does not mean that the breach of the peace complained of must be "imminent" or "likely to happen immediately," but simply signifies that there should be a *probability* or *likelihood* of a breach of the peace. Though a Magistrate must proceed under s. 145, when satisfied that a proper case has arisen, he has, in effect, and almost certainly, by the intention of the Legislature, a discretion to determine whether or not a proper case has arisen, and has to be personally satisfied. The word "shall" used in the section leaves no discretion to the Magistrate if he finds that a certain circumstance exists whether it is mandatory or directory. *Per Lucas, J.C and Pratt, A.C.J.*—Under cl. (3) of s. 435, Crim. Pro. Code, proceedings under Ch. XII are excluded from the cognizance of the Judicial Commissioner's Court in revision. *Per Pratt, A.J.C.*—The breach of the peace contemplated must be coincident with the present existence of the dispute. The breach of the peace contemplated by the section is one that is imminent or likely to occur in the future. Although there may be a dispute about possession and the apprehension of an imminent breach of the peace, the Magistrate may, if he finds one party already in possession and another party committing acts of agression, think it more appropriate to take action against the agressor under Ch. VIII, instead of taking action under s. 145. The word "shall" in s. 145 is not mandatory, but merely directory; the Magistrate has, therefore, discretion to proceed under s. 107, even though he may find that the conditions essential to the exercise of his jurisdiction under s. 145 existed; and the Court of the Judicial Commissioner will not, in such a case, interfere with his discretion. *Per Crouch, A.J.C.*—Though the words "mandatory" and "directory" are arbitrary terms used to distinguish those cases in which a breach of a rule of law has fatal results, and those in which it has not fatal results, yet there is no authority for supposing that the Court thereby intend to imply that an Officer can thereafter obey or disobey a rule of law at his discretion.

Security to keep the peace—continued.

——7.—Likelihood of breach of the peace —*continued.*

BALMUKAND JAGANATH v. CROWN, **1 S L.R. 50, Cr. = 8 Cr L J. 170.** [*R.*, 2 S L.R. 18, Cr. = 10 Cr. L.J. 231.]

(3)—*Crim. Pro Code* (1898), *s.* 106—"*Offence involving breach of peace," meaning of—Conviction under s* 448, *I.P.C., nature of.*—The words "offence involving breach of peace," in s. 106, Crim. Pro. Code, must be construed to mean an offence into which breach of peace necessarily enters as a constituting element. An offence punishable under s. 448, I.P.C., is not one of which breach of peace is a necessary ingredient. So, when a person is convicted of such an offence (though the facts found show that in committing the offence the accused did acts involving breach of peace), an order under s. 106 cannot be passed. *In re* PANTTANBI MOIDEEN, **4 M.L.T. 468 = 9 Cr. L.J. 88 = 19 M.L.J. 66.**

(4)—*Crim. Pro. Code* (1872), *s.* 491—*Order to find security when to be made—Likelihood of breach of peace.*—To justify an order under s. 491, Crim. Pro. Code, 1872, calling on a person to give security to keep the peace, there must be a reasonable probability of a breach of the peace being committed and not merely a bare possibility of a breach of the peace. *In re* SYKES, **3 J.G. 37.**

(5)—*Crim. Pro. Code* (*Act* X *of* 1882), *s.* 106 —*Security on conviction — Conditions.*—An order for security on conviction under s. 106 of the Crim. Pro. Code, is bad if the offence does not indicate also a breach of the peace. EMPRESS v. KUNDAN SINGH, **A.W.N. 1885, 303.**

(6)—*Crim. Pro. Code* (1898), *s.* 107—*Prevention of a breach of the peace.*—The proper way of preventing a breach of the peace is to proceed under s. 107, Crim. Pro. Code. BIDHU RANJAN MAZUMDAR v. RAMESH CHANDRA RAI, **11 C.W.N. 223 = 5 Cr. L.J. 43.**

(7)—*Determination of rights by competent Court—Duty of Magistrate—Proper course for Magistrate—Crim. Pro Code* (1872), *s.* 491— When the rights of parties have been determined by a competent Court, the dispute is at an end, and it is the duty of the Magistracy to maintain the rights of the successful party; and the defeated party will not be allowed to invoke the aid of the Magistrate and the police to neutralise the effect of the decree of a competent Civil Court. The proper course for a Magistrate to pursue, if the defeated party does any act that may probably occasion a breach of the peace, is to take action under s. 491, Crim. Pro. Code, and require from such person security to keep the peace.—*Per Field, J.* GOBIND CHANDER MOITRA v. ABDUL SAYED, **6 C. 835 = 8 C L R. 217.** [*F.*, Rat. Un. Cr. C. 462; *D.*, 33 C. 33 = 2 C.L.J. 271 = 10 C.W.N. 257 = 2 Cr. L.J. 670, 8 Cr. L.J 170 = 1 S.L.R. 50, Cr.]

Security to keep the peace—continued.

——7.—**Likelihood of breach of the peace** —*continued.*

(8)—*Crim. Pro. Code*, ss. 107, 144 *and* 145—*Dispute relating to land likely to cause breach of peace—Discretion of Magistrate to proceed either under s* 107, *or ss.* 144, 145 *of the Code.*—A dispute likely to cause a breach of peace, in which the applicants were concerned, occurred about some lands and a Magistrate instituted proceedings against them under s. 107 of the Code. On a motion to quash the said proceedings, the High Court held that the mere fact of the dispute being one relating to possession of lands will not preclude the Magistrate from proceeding under s. 107 and that, in such cases, the Magistrate is not bound to act only under ss. 144, 145, but has a discretion to proceed either under those sections or under s. 107 as in this case. SHEORAJ ROY v. CHATTER ROY, 32 **C. 966=2 Cr. L J. 769 =10 C.W.N. 288.** (7 C.W.N. 142, *N F.*; 7 C. W.N. 746, 26 M. 471, *F.*) [*F.*, 34 A. 449=9 A.L J. 582=13 Cr. L.J. 526=15 Ind. Cas. 798; *R.*, 36 M. 315=21 Ind Cas. 159=14 Cr. L.J. 559, 8 Cr. L J. 170=1 S.L.R. 50, Cr, 10 Cr. L.J. 231=2 S.L.R. 18, Cr.]

(9)—*Likelihood of a breach of the peace—Onus as to, on party obtaining summons.*—*Held*, that the fact that the defendant was likely to commit a breach of the peace must be proved by the person who moved for the issue of the summons. BEHARI PAKAT v. MAHOMED HYAT KHAN, A.D. DUNNE v. HEM CHANDRA CHOWDRY, GOVERNMENT v. BEHARI LAL BRAJABASI, **4 B.L.R.F.B 46=12 W.R. Cr. 60.**

(10)—*Crim. Pro. Code* (1872), s. 491—*Resistance to lawful collection of rents, probability of—Security to keep the peace* —Where it was not found that the petitioner was himself likely to commit a breach of the peace, *held*, that he should not be ordered to furnish security to keep the peace on the ground that the result of his attaching the ryots' crops for arrears of rent would be a riot which would be caused from the resistance of the cultivators to the attachment. *In the matter of* SHEO SURN LALL, **3 C.L R. 280=2 J. G. 17.** [*R.*, 104 P. L.R. 1902, F.B.=15 P.R. 1902, Cr.]

(11)—*Crim. Pro. Code* (1898), ss. 107 *and* 118—*Security for keeping the peace.*—In order to justify an order under s. 118, it is necessary that it should show that the person so called upon is likely to commit a breach of the peace or disturb the public tranquillity or to do some wrongful act that may occasion a breach of the peace or disturb the public tranquillity. The mere fact that the persons ordered to furnish security have used their influence for the purpose of stopping the service of the village barber, washermen and others from being rendered to the complainant and having committed diverse other acts of oppression, would not justify an order under s. 118. SHEIKH JINUAT CHOWDRY v. SHEIKH HUSEN, **7 C.W.N. 32.**

Security to keep the peace—continued.

——7.—**Likelihood of breach of the peace** —*continued.*

(12)—*Crim Pro. Code* (*Act* V *of* 1898), s. 107—*Security to keep the peace—Right to perform devotions in mosque — Uttering* amin *in loud voice during prayers.*—The petitioner, a *ghairmukalid* Muhammadan, was bound over, under s. 107 of the Crim. Pro. Code, to keep the peace. The act charged as likely to occasion a breach of the peace, or to disturb the public tranquillity, was the use of the word *amin*, in a loud voice, during a service attended by a congregation, composed almost entirely of *mukalids* in the mosque of the *mohalla* in which the petitioner resided. It was not found that his object was to disturb other worshippers, or that he said *amin* in a loud voice otherwise than in the *bona fide* performance of his devotions. No exclusive appropriation of the mosque to any particular sect of Muhammadans was established. *Held*, that the order requiring security was bad. The petitioner had a right to perform his devotions in the mosque in question, and he was not doing a wrongful act, when he said *amin* in a loud voice during the service. It could not be said that the petitioner was likely to disturb the public tranquillity by his habit of performing his devotions in that mosque, and the fact that other worshippers, might object to his form of worship did not justify the order passed. What those worshippers were likely to do was beside the question of the probable action of the petitioner It is not intended by the legislature that a person should be prevented by a Magistrate from exercising his rights, because another person would be likely to commit a breach of the peace, if he did so. KHUDA BAKSH v. EMPEROR, **104 P.L.R. 1902=15 P.R. 1902, Cr.** (19 W.R. Cr. 47, 3 C.L.R. 280, 21 P.R. 1888, Cr., *F.*; 13 A. 419, 18 C. 448, P.C., 7 A. 461, 12 A. 494, F.B., *R.*)

(13)—*Crim. Pro. Code* (1882), ss. 107, 112, 117, 118 *and* 119—*Breach of the peace and security to keep the same.*—The mere fact that a man is "on bad terms with" others affords no ground in law for binding him over to keep the peace, nor does the fact that those others have been punished for committing an offence against him and have been bound over to keep the peace. The only ground on which a Magistrate can legally proceed under s. 107, Crim. Pro. Code, is that, according to the information before him, a person "is likely to commit a breach of the peace or to do any wrongful act that may properly occasion a breach of the peace." Under ss. 118 and 119, Crim. Pro. Code, the burden of proof does not lie on the person called upon to show cause, but the existence of one of the states of things described in s. 107 must be established against him before he can be required to furnish security. EMPRESS v. BALAJEE DADA SINGROO, **7 C.P. L.R. Cr. 9.**

(14)—*Singing of ballads in the streets.*—The singing of ballads in the streets is not in itself

Security to keep the peace—continued.

——7.—**Likelihood of breach of the peace**—*concluded.*

a wrongful act, nor will a possible obstruction in the streets, by crowds collecting to hear the same, be held to be a wrongful act likely to lead to a breach of the peace. GHULAM NABI v. EMPRESS, **13 P.R. 1889, Cr.**

(15)—*Crim. Pro. Code*, s. 107—*Security to keep peace—Speech likely to break the peace—Effect of passing away fear of breach of peace before an order to keep peace is given.*—A hasty speech likely to break the peace does not justify an order under s. 107, Crim. Pro. Code, 1898, against the speaker, particularly when all fear of a breach of the peace passes away before the order is passed. BELIRAM v. CROWN, **31 P. W.R. Cr. 1907=7 Cr. L.J. 232**

(16)—*Husband and wife.*—The accused left her husband to live with another man. After a time, she returned to her husband who received her back. The parties being *pathans*, the Magistrate ordered the husband to furnish security to keep the peace, and in default committed him to jail. The Magistrate, however, fearing that the woman might again repeat her misconduct and thus provoke her husband to commit murder, ordered her also to furnish security to keep the peace. *Held*, that the security could not be recovered from the wife. CROWN v. ZENURA, **1 P.R. 1877, Cr.**

(17)—*Order of Court prescribing hours of prayer in a mosque.*—On a dispute arising between the *sunnis* and the *wahabis* about the using of a single mosque in a village for prayers, the Magistrate ordered that there should be an interval of half an hour between the attendance of one set and that of another and bound down the parties, under s. 491, Crim. Pro. Code, 1872, in their own recognizances to observe the order; *held*, that the order was not a lawful one either under s. 491 or s. 518, Crim. Pro. Code, 1872, and that the only order that was competent for the Magistrate to pass, was to bind the parties over to keep the peace. SHAHAB-UD-DIN v. CROWN, **10 P.R. 1876, Cr.**

——8.—**Evidence and Procedure.**

(1)—*Crim. Pro Code*, s. 107—*Evidence to be recorded before passing order—Party agreeing to be bound down—Order without jurisdiction.*—No person can be bound down under s. 107 of the Crim. Pro. Code without any evidence being recorded that he is about to commit a breach of the peace, even though he may agree to be bound down. RAM CHANDRA HALDAR v. EMPEROR, **35 C. 674=8 C.L.J. 68=8 Cr. L.J. 628.**

(2)—*Security to keep the peace—Crim. Pro. Code* (1872), s. 491.—A Magistrate cannot bind a person over, until he has adjudicated on evidence before him. QUEEN v. NIAZALI, **5 N.W.P. 80.**

(3)—*Breach of peace—Complaint—Evidence.*—In the absence of a complaint before a Magistrate with regard to a breach of peace being likely to be committed by a person and without any evidence being taken, a Magistrate is not justified to make an order binding such person to keep the peace. *In re* BROJENDRO KOOMAR RAI CHOWDHRY *alias* DIGHOO BABOO, **17 W.R. Cr. 35.**

Security to keep the peace—continued.

——8.—**Evidence and Procedure**—*continued.*

(4)—*Crim. Pro. Code* (1872), s. 492.—A person can be asked to furnish security to keep the peace, only when there is evidence to show that he was likely to commit a breach of the peace, or to do any act that might probably occasion a breach of the peace. QUEEN v. KIDAR NATH, **7 N W.P. 233.** *See, also, In re* BROJENDRO KOOMAR RAI CHOWDHRY *alias* DIGHOO, BABOO, **17 W.R. Cr. 35.**

(5)—*Crim. Pro. Code* (1861), ss. 282, 288, 307—*Security to keep the peace—Evidence.*—Where a District Magistrate ordered the furnishing of security to keep the peace, without any legal evidence, the High Court set aside the order. REG. v. DALPATRAM PEMA BHAI, **5 B H.C. Cr. 105.** [*F.*, 6 B.H.C. Cr. 1; *R.*, 8 B.H.C. 162, Cr., 30 M. 330=17 M.L.J. 407=2 M.L.T. 329=6 Cr. L.J. 278.]

(6)—*Crim. Pro. Code* (1861), s. 288—*Order for security—No legal evidence.*—In order to warrant an adjudication under s. 288, there must be a judicial investigation, and the final award should be on legal evidence duly recorded. REG. v. JIVANJI LIMJI, **6 B.H.C. Cr. 1.** (10 W.R. Cr. 1, 5 B.H.C. Cr. 105, *R.*) [*R.*, 30 M. 330=17 M L.J. 407=2 M.L.T. 329=6 Cr. L.J. 278.]

(7)—*Crim. Pro. Code*, ss. 280, 287, 288—*Report of subordinate Magistrate—Need for other evidence.*—The report of a subordinate Magistrate that a breach of the peace was likely to occur, though it is credible information on which the District Magistrate can, under s. 280 of the Crim. Pro. Code, call on the parties to show cause, is not evidence from which he can hold that there is a likelihood of a breach of the peace. Ss. 287 and 288 require a judicial proceeding, *i. e.*, evidence to be recorded REG v. IRAPA *bin* BASAPA, **8 B.H. C. Cr. 162.**

(8)—*Proof necessary—Crim. Pro. Code* (1882), s. 107.—To justify the initiation of proceedings under s. 107, and also of an order under the section, there must be information and proof of some specific conduct on the part of the accused from which a reasonable inference can be drawn that the accused is likely to commit a breach of the peace. EMPRESS v. SHIMBHU NATH, **21 P.R. 1888, Cr.** [*R.*, 15 P.R. 1902, F.B.]

(9)—*Evidence of specific conduct necessary to justify Magistrate in adjudicating under s.* 491, *Crim. Pro. Code*, 1872.—It is only evidence of specific conduct on the part of a person required to give security from which the reasonable and immediate inference is that they are very likely to commit a breach of the peace that will justify a Magistrate in adjudicating under

Security to keep the peace—continued.

——8.—Evidence and Procedure—*continued.*

s. 491 that they were likely to commit a breach of the peace. RAJA RUN BAHADOOR SINGH v. RANEE TILESSUREE KOER, **22 W.R. Cr. 79**; QUEEN v. HUR KUMARI DASSIA, **24 W. R. Cr. 10**; HUREE MOHUN MULLICK v. KALINATH ROY, **25 W.R. Cr. 15**; QUEEN v. ABDOOL HUQ, **20 W.R. Cr. 57.**

(10)—*Likelihood of breach of peace and evidence—Dispute likely to cause breach of peace —Report of police officer.—Held* that it must be previously established that there exists a dispute likely to cause a breach of the peace by legal evidence to enable a Magistrate to require the parties to furnish security to keep the peace, and that the report of a police officer is not such legal evidence. ABHAYA CHOWDHRY v. T. BRAE, **6 B.L.R. Ap. 148 = 15 W.R. Cr. 42.**

(11)—*Notice to show cause must allow sufficient time—Adjudication to furnish security must be on evidence—Crim. Pro. Code*, 1872, *s.* 491.—The new Code, s. 491, prescribes that the Magistrate cannot bind over a person to keep the peace until he has adjudicated on evidence before him. He may summon on credible information a person to show cause why he should not be bound over, but he must adjudicate upon evidence, before he can pass the order to bind over. The notice of the accused should give him sufficient time to come in to produce his evidence. QUEEN v. ISREEPERSHAD SINGH, **20 W.R. Cr. 18.**

(12)—*Inquiry by Magistrate—Crim. Pro. Code*, 1861, *s.* 282.—*Held* that it is not competent to a Magistrate to order the defendant, after calling upon him to show cause why he should not furnish security to keep the peace, to execute such bond without recording evidence and making an investigation. QUEEN v. DEO NUNDAN SINGH, **12 W.R. Cr. 16**; QUEEN v. W. HARVEY, **20 W.R. Cr. 68**; RAMKISSORE ACHARJEE CHOWDHRY v. ARIP KHAN, **21 W.R. Cr. 6**; RAJAH RUN BAHADOOR SINGH v. RANEE TILESSUREE KOER, **22 W.R. Cr. 79**; GOSHAIN LUCHMUN PERSHAD POOREE v. POHOOP NARAIN POOREE, **24 W. R. Cr. 30**; QUEEN v. GOSSAIN MUNRAJ POOREE, **24 W.R. Cr. 23**; QUEEN v. NIAZ ALI, **5 N.W.P. 80.**

(13)—*Want of adjudication as to security for preservation of peace—Recognizance made on admission of accused.—Held* that a Magistrate could not order an accused person to execute a security bond until he makes an adjudication that it is essential for the preservation of the public peace to take such a bond from him and is satisfied on that point, unless there is an admission by the party proceeded against. QUEEN v. LAL BEHAREE SINGH, **11 W.R. Cr. 50.**

(14)—*Crim. Pro. Code* (1898), *s.* 107—*Security proceedings, irregularities in—Effect of.*—In a security proceeding, where the Magistrate treated the statement by the accused's Vakil as an admission of an intention on the part of the accused to commit a breach of the peace, and passed an order calling upon them to furnish security, it was *held* that, in such proceedings, no final action should be taken and no order having the effect of a conviction as against the accused should be passed, without formal evidence being recorded Hence the order was set aside. *In re* VENKATASAMI, **17 M.L.J. 407 = 30 M. 330 = 2 M L T. 329 = 6 Cr. L. J. 278.**

(15)—*Crim. Pro. Code* (1882), *s.* 107 —*Recognizance to keep peace—Conversation out of Court with respectable men not proper material for proceedings under.*—Conversations out of Court with persons however respectable, are not proper or legal material on which Magistrates should adopt proceedings under s. 107, Crim. Pro. Code. *In re* SYKES *and* GOPAL, **3 J.G. 27.**

(16)—*Magistrate acting upon extra judicial knowledge— High Court's power to set aside order—Crim. Pro Code* (1872), *s.* 491.—*Held* that the order, under s. 491, Crim. Pro. Code, 1872, of a Magistrate calling upon the accused to furnish security, based upon the Magistrate's extra-judicial knowledge, and not on evidence judicially taken before him sufficient to show that the accused were contemplating acts which would occasion a breach of the peace, was illegal. RAJAH RUN BAHADOOR SINGH v. RANEE TILESSUREE KOER, **22 W.R. Cr.79.**

(17)—*Evidence of general repute.*—The provisions of s. 117, Crim. Pro. Code, treating general repute as evidence, is not applicable to a proceeding under s. 107, Crim. Pro. Code. BANARSI DAS v. EMPRESS, **16 P.R. 1888, Cr.**

(18)—*Crim. Pro. Code* (1872), *s.* 491—*Witness in a riot case required to furnish security on his own evidence* —A witness for the defence in a case of rioting was, on the conclusion of the trial, required by the Magistrate to give security to keep the peace for a year, on the ground that his evidence in the trial proved that he was one of the rioters in the case then being tried and that it was probable he might at some future time encourage a breach of the peace. *Held*, that, granting that his evidence contained information that he was likely to commit a breach of the peace or to do any act calculated to occasion a breach of the peace, such evidence, being the only evidence recorded at all in the proceedings, was not of the nature on which the Magistrate was at liberty to adjudicate as required by explanation 1, s. 491, Crim. Pro. Code. QUEEN v. KADAR KHAN, **5 M. 380 = 2 Weir 49.**

(19)—*Report of Police Inspector.—Held*, that the report of a Police Inspector was insufficient to justify an order binding a person to keep the peace. *In re* RAJENDRO KISHORE ROY CHOWDHURY, **10 W.R. Cr. 55.**

Security to keep the peace—continued.

——8.—Evidence and Procedure—*continued.*

(20)—*Report of police officer—Procedure—Opportunity to cross-examine.—Held* (*Glover, J., dissentiente*) the report of a police officer, though it justifies the issuing of a summons, is not a sufficient ground on which to bind a man over to keep the peace. The Magistrate must adjudicate on the question whether there is reasonable ground for believing that the defendant is likely to commit a breach of the peace after taking evidence in the presence of the person charged, and giving him an opportunity to cross-examine the witnesses. BEHARI PATAK v. MAHOMED HYAT KHAN ; A. D. DUNNE v. HEM CHANDRA CHOWDRY ; GOVERNMENT v. BEHARI LAL BRAJABASI, **4 B L.R. F.B. 46 = 12 W.R. Cr. 60.** [*F.*, 14 W.R. Cr. 3, 24 W.R. 23, 9 A. 452 ; *R.*, 8 B.H.C. Cr. 162, 16 W.R. Cr. 45, 2 N.W.P. 431, 461.]

(21)—*Omission to prevent rioting—Crim. Pro. Code* (1861), *s.* 282.—*Held*, that persons not found by a Magistrate to be likely to commit a breach of the peace, or do any act that might probably bring about a breach of the peace, cannot be required to furnish security to keep the peace with a view that they should interfere to prevent riot, simply because they did not interfere when they might have done so between the persons actually quarrelling so as to prevent a riot. QUEEN v. OMERTO LALL, **19 W.R. Cr. 32.**

(22)—*Burden of proof in proceedings under* ss. 107, 112, *Crim. Pro. Code*, 1882.—Merely because, in proceedings initiated under s. 107, the Magistrate is authorised to require any person to show cause against orders made under s. 112, such orders cannot be regarded as in the nature of a rule *nisi* implying that the burden of proving his innocence would be upon the person against whom such order has been issued. The *onus probandi* in such cases lies upon the prosecution to establish circumstances which would justify the action of the Magistrate in calling upon him to furnish security for keeping the peace. QUEEN EMPRESS v. ABDUL KADIR, **9 A. 452 = A.W.N. 1887, 111.** (6 A. 214, A.W.N. 1884, 54, 4 B.L R. F.B. 46, 5 N.W.P. 431, *R.*) [*R.*, 10 Cr. L.J. 375 = 3 Ind. Cas. 774 = 11 Bom. L.R. 740.]

(23)—*Proof of necessity for taking security—Burden of proof.*—Before a person may be ordered to furnish security to keep the peace, the Magistrate should adjudicate judicially, on evidence given before him, as to the necessity for taking security. The *onus* in such cases is on the prosecution. QUEEN v. NIRUNJUN SINGH, **2 N.W.P. 431.** [*R.*, 9 A. 452]

(24)—*Procedure to be followed whether that prescribed in summons cases—Crim. Pro. Code* (1882), ss. 107, 117, 119.—The procedure prescribed for conducting trials in summons cases need not be observed in passing a final order under s. 119. JEY SINGH v. KANHYA, **37 P.R. 1884, Cr.**

(25)—*Charge should not be vague—Crim. Pro. Code* (1872), *s.* 497.—An order for security to keep the peace passed without any evidence to show that the accused were likely to commit a breach of the peace, or to do any particular act which might probably occasion a breach of the peace was set aside by the Chief Court on revision, which *held* that evidence amounting to a mere expression of the witnesses' opinion that there might be a breach of the peace and that the accused were gamblers and bad characters, was not sufficient. THANA RAM v. EMPRESS, **11 P.R. 1882, Cr.**

(26)—*Crim. Pro. Code* (1882), *ss.* 107, 117, 118, 239, 537—*Joint trial of persons required to furnish security.*—Upon general principles, each individual member of the community is, in the absence of exceptional authority conferred by the law to the contrary effect, entitled, when required by the Judiciary either to forfeit his liberty or to have it curtailed, to insist that his case shall be separately tried. Under the provisions of s. 117 of the Code, "the enquiry shall be made—as nearly as may be practicable—in the manner hereinafter prescribed for conducting trials in summons cases." S. 239, being of general application to all classes of cases, and being therefore applicable to summons cases, applies to cases of proceedings under ss. 107 and 112, subject to such modifications as s. 117 indicates, and subject also to such procedure as the exigencies of each individual case may render admissible in the interests of justice. A joint trial of several persons required to show cause why they should not severally furnish security to keep the peace is not *ipso facto* illegal. Even in cases where one and the same proceeding taken by the Magistrate under ss. 107, 112, 117, 188, improperly deals with more than one person, the matter must be considered upon the individual merits of the particular case, and it would, at the most, amount to an irregularity, which may or may not, according to the circumstances of each case, be covered by the provisions of s. 537 of the Code. QUEEN-EMPRESS v. ABDUL KADIR, **9 A. 452 = A.W.N. 1887, 111.** [*R.*, Rat. Un. Cr. C. 557, 3 L.B.R. 52]

(27)—*Crim. Pro. Code* (1898), *s.* 107—*Trial of opposing factions in one proceeding, illegal.*—Two opposing parties to a proceeding under s. 107 of the Code, cannot be proceeded against and bound over in one proceeding. KAMAL NARAIN CHOWDHRY v. EMPEROR, **5 C L J. 231 = 11 C.W.N. 472 = 5 Cr. L J. 197.** [*F.*, 31 M. 276 = 3 M.L.T. 408, 9 Cr. L.J. 560 = 2 Ind. Cas. 240 = 5 N.L.R. 65.]

(28)—*Crim. Pro. Code* (1872), *ss.* 491, 500—*Evidence must be recorded against every person called upon.*—Where the evidence recorded by a Magistrate has bearing only on 11 out of 26 persons called upon to show cause why they should not be bound over to keep the peace, his order binding down all the 26 persons is not valid. It is valid only as regards those

Security to keep the peace—continued.

——8.—**Evidence and Procedure**—*continued.*

against whom evidence is recorded. *In the matter of* KASSIM BISWAS, **10 C. L. R. 335.**

(29)—*Presence of accused—Crim. Pro. Code (Act* XXV *of* 1861), *s.* 282—*Procedure.*—Before passing final orders directing a person to enter into a bond to keep the peace, the Magistrate must take the evidence on which he bases the order in the presence of the accused or his agent. MAGHAN MIRSA v. CHAMMAN TELI, **2 B.L.R. A. Cr. 7=10 W.R. Cr. 46.** *In re* NARSING NARRAYAN, **2 B.L R. A. Cr. 7, Note =10 W.R.Cr. 1.**

(30)—*Crim. Pro. Code* (1861), *s.* 282—*Inquiry before taking recognizances—Cross examination of witnesses.—Held*, that the Magistrate must take the evidence in the presence of the parties proceeded against giving them an opportunity to cross-examine the witnesses. NOOR MAHOMED v. NIL RUTUN BAGCHEE, **18 W. R. Cr. 2.**

(31) — *Evidence taken irregularly —Held*, that an order passed by a Magistrate directing security to be given for the preservation of the peace was not bad, where it appeared that the evidence was sufficient to justify the order, although it was taken in the vernacular and in disregard of the provisions of s. 267 of the Code of Criminal Procedure, 1861. QUEEN v. PURIAG SINGH, **13 W.R. Cr. 20.**

(32)—*Crim. Pro. Code* (1872), *s.* 491—*Necessity for adjudication by Magistrate—Notice.*—Where a summons was issued to the accused and the charge to which such summons had reference was found by the Magistrate to be unfounded, *held* that the Magistrate could not proceed to adjudicate that an entirely different ground existed which made it likely that the party charged would commit a breach of the peace. RAM KISSORE ACHARJEE CHOWDHRY v. ARIP KHAN, **21 W.R. Cr. 6.**

(33)—*Crim. Pro. Code, ss.* 107 *and* 145—*Attempt to eject by force a person in possession of immoveable property—Jurisdiction—Procedure.* —Where certain persons wrongfully and without any *bona fide* claim to possession, sought to eject another by force from the possession of certain land, and a breach of the peace was imminent, it was *held* that a Magistrate might legally take action against the aggressors under s. 107 of the Code of Criminal Procedure and it was not necessary, on the finding that their claim was not *bona fide*, to take proceedings under s. 145 of the Code. EMPEROR v. RAM BARAN SINGH, **A W.N. 1906, 61=3 Cr. L. J, 323=28 A. 406.** [*F.*, 34 A. 449=9 A.L.J. 582= 13 Cr.L J. 526=15 Ind Cas. 798 ; *R.*, 8 Cr.L J. 170=1 S L R 50, Cr.]

(34)—*Evidence.—Held*, (1) that there is nothing in s. 133, Crim. Pro. Code, about the Magistrate's order being confirmed, but the procedure provided is that the Magistrate commits the person, from whom security has been demanded to prison, and sends the case to the Sessions Judge for disposal as he thinks fit ; (2) that it is the duty of a Sessions Judge, in a case of reference under s. 123, Crim. Pro. Code, to consider the evidence and to pass an order after doing so and not as mere matter of course ; (3) where there was no evidence except the vague statement of the Sub-Inspector to show that since his last conviction, the accused had been a bad character, or had done anything that would justify an order under s. 110, Crim. Pro. Code, *held* that security should not have been ordered. NAKU v. CROWN, **29 P.R. 1910 Cr.=8 Ind Cas. 385=196 P.L.R. 1910= 11 Cr. L.J. 637.**

Security to keep the peace—continued.

——8.—**Evidence and Procedure**—*concluded.*

——9.—**Final Order—Order limited by requisition.**

(1)—*Order limited by requisition — Order going beyond terms of requisition—Crim. Pro. Code* (1872), *ss.* 491, 492—*Order for other and further security than originally required—Held* that a Magistrate, who requires persons to show cause why they should not be bound down in their own bonds to keep the peace, cannot go beyond the requisition, and on the adjudication of the matter, order them to furnish other securities besides. *In re* ABDOOL BARI, **25 W.R. Cr. 50.**

(2)—*Summons stating the time, amount and number of sureties subsequently demanding sureties for longer period illegal.*—Where, in a summons, the time and the amount of the bond and sureties were stated *held*, it was illegal afterwards to make an order to execute a bond and find sureties for a longer time and a larger amount than what was specified. *In re* MIR BUNJUD ALI, **2 J.G. 2.**

(3)—*Crim. Pro. Code* (1872), *ss.* 491 *and* 492 —*Recognizance to keep peace—Contents of summons—Requiring recognizance for double the amount illegal.*—A summons issued under s. 491, Crim. Pro. Code, should set forth all the particulars mentioned in s. 492. It is illegal to require the accused to enter into a bond for double the amount mentioned in the summons. CHUTTER SINGH v. GOPAL SINGH, **2 J G. 15.**

(4)—*Crim. Pro. Code* (1872), *ss.* 491, 494, 530—*Security to keep the peace in the absence of the party concerned.*—An order of the Magistrate demanding security to keep the peace from one party, and directing the other party to retain possession of the disputed land, was set aside, because it was passed in the absence of the former, and because no proceedings had been taken under s. 530. *In the matter of* OKHIL CHUNDER BISWAS, **1 C.L.R. 48.**

(5)—*Crim. Pro.Code, ss.* 107, 112, 144, 526—*Dispute regarding property*—Bona fide *dispute —Order requiring security from one party if proper—Prejudice to proceedings in another Court—Initiation of proceeding under s.* 107, *ground for—Special constables, appointment of defendants as—Reasonable apprehension of failure of justice—Transfer—Indefinite order under s.* 144—*Validity.*—Where two parties

Security to keep the peace -continued.

——9.—Final Order—Order limited by requisition—*continued.*

had both applied to the Land Registration Court for registration of their names as proprietors of an estate, and pending these proceedings, a Magistrate instituted proceedings under s. 107 of the Code, against one of the disputing parties and it was contended on their behalf that there being a *bona fide* dispute between the parties as to title and possession, the proceeding under s. 107 of the Code, taken against one party alone to the exclusion of the other would prejudice the former in the Land Registration proceedings. *Held*—that such a consideration was foreign to the matter under enquiry in the proceeding under s. 107 of Code. *Held*, further, that the question whether the one party or the other were in peaceful possession would have to be decided in the proceeding, but no objection could, on that account, be taken to the initiation of proceeding under s. 107 of the Code, against one or the other party, if on the facts presented before the Magistrate at the time of its initiation it appeared that such party were out of possession and were seeking to obtain possession by unlawful means which were likely to cause a breach of the peace. Where some of the party against whom proceedings under s. 107 of the Code was instituted were further appointed special constables, although the latter order was in abeyance at the time they moved the High Court: *Held* that, in consequence of the order, the petitioners might have a reasonable apprehension that they would not have a fair and impartial trial. The High Court therefore transferred the case from the Magistrate's file. The Magistrate having allowed bail to the petitioners on condition of their undertaking that no attempt would be made by them or their agents to realise rent by force and nothing would be done to induce a breach of the peace. *Held* that the condition could not be imposed under s. 112 of the Code, and should be struck out of the bail bond. Where an order purporting to be made under s. 144 of the Code, directed the petitioners "not to commit any act that may likely induce a breach of the peace and not to take forcible possession of the village which is not in their possession." *Held* that the order was indefinite and not in accordance with the terms of the section. BIBEE KULSUM v. UMATUL MEHDI, **4 Cr. L. J. 456 = 11 C.W.N. 121.**

(6)—*Crim. Pro. Code* (1898), *ss.* 107, 118—*Order binding down a party without separate finding in regard to each member of the party—Illegality.*—Where, in a proceeding under s. 107, Crim. Pro. Code, against a party consisting of seventeen persons, the Magistrate bound down all of them without coming to a separate finding as regards each of them individually. *Held*, the order is bad in law and ought to be set aside. AJODHYA PRASAD SINGH v. EMPEROR, **35 C. 929 = 12 C.W.N. 992 = 8 Cr. L.J. 207.**

Security to keep the peace - continued.

——9.—Final Order—Order limited by requisition—*continued.*

(7)—On being required to furnish security to keep the peace for one year, with four sureties, the accused agreed to leave the village, and the order for security was kept in abeyance. Notwithstanding his leaving the village, securities were taken from him after appeal and he was forbidden from entering the village. *Held*, that the order was bad. CROWN v. MAHOMED HUSSUN, **24 P R. 1868, Cr.**

(8)—*Crim. Pro. Code, ss.* 106, 120 (1), 123 (2) (3) — *Sentence of transportation — Security to keep peace after release—Order under s.* 106 —*Security to be furnished within one month of date of sentence—Whether such order legal—Failure to furnish security within time—Submission of proceedings to Sessions Judge before expiration of sentence—Order of Sessions Judge for imprisonment, whether legal.*—A person was sentenced to seven years' transportation under s. 326, I.P.C., and was further ordered under s. 106, Crim. Pro Code, to furnish security to keep peace for two years after his release, within a month of the date of the sentence. When he failed to give security within a month, the Magistrate submitted the proceedings to the Sessions Judge for orders under s. 123 (3), Crim. Pro. Code, who accordingly ordered that the person should suffer imprisonment in default of furnishing security demanded by the Magistrate. *Held*, that the order of the Magistrate that the security should be furnished within a month from the date of sentence was illegal by reason of the provisions of s. 120 (1); that the Sessions Judge ought to have given the accused an opportunity of being heard either personally or by pleader; and that the order of the Sessions Judge was uncalled for, when a sentence of transportation for so long a term as seven years was passed for the offence committed. *Held*, also (*Irwin, J., dissenting*), that the Sessions Judge had jurisdiction under s. 123 (3) to deal with the case submitted to him even before the expiration of the sentence of transportation, and that the Magistrate should submit the proceedings in such cases for the order of the Sessions Judge as soon as possible after passing the sentence. *Per Hartnoll, J.*—It could never have been the intention of the Legislature that, in cases under s. 106, the Sessions Judge should not pass orders, until the substantive term of imprisonment inflicted for the proved offence has expired. Under s. 123 (2), the proceedings should be laid, as soon as conveniently may be, before the superior Court. S. 123 (3) contemplates further enquiry and evidence. So, both in the interest of the prosecution and the accused, it stands to reason that any further enquiry necessary should be held, when the facts are fresh and when any further information or evidence necessary can, if possible, be obtained. *Per Irwin, J.*—The law allows the prisoner to give the security at any time before the sentence of transportation expires, and, if he does not

Security to keep the peace—continued.

——9.—Final Order—Order limited by requisition—*concluded.*

give it within that time, the Magistrate is required, under s. 123 (2), when the sentence of transportation expires, to issue a warrant directing the prisoner to be detained in prison, pending the orders of Sessions Judge and to lay the proceedings before the Sessions Judge. So, the submission of proceedings to the Sessions Judge, before the sentence of transportation expired, was not warranted by anything in the Code. And the Sessions Judge had no jurisdiction to pass an order under s. 123 (3). Moreover, it is extremely inconvenient and undesirable that the prisoner should be pressed or even encouraged to furnish security long before the sentence of transportation expires. If he did furnish security now, the sureties might be dead, or worth nothing, or might have removed to a distant place, before the sentence expires; if so, the bond would be worthless. KYAW WA v. KING-EMPEROR, **5 L B.R. 34, F B.=10 Cr L J. 69=2 Ind. Cas. 531.** (3 L. B.R. 43, 4 L.B.R. 205, *R.*)

——10.—Amount of Security—Surety.

(1)—*Crim Pro. Code* (1898), *ss.* 107, 514, 515—*Surety for another to keep the peace—Liability of surety when the bond of the principal is forfeited—Object of taking security for keeping the peace.*—When a person executes a bond for keeping the peace under s. 107, Crim. Pro. Code, and another stands surety for him, on the breach of the bond, both the surety and the principal are liable to pay the penalty of their respective bonds, quite irrespective of the question whether the amount of the bond of the principal has been realised or not. The object of taking a security bond in such cases is not to obtain money for the Crown but to prevent crime, and the liability of the surety is not co-extensive with that of the principal as in the ordinary cases of a surety for a debtor for the payment of his debt. SALIGRAM SINGH v. EMPEROR, **36 C. 562=13 C.W.N. 535=9 C.L J. 296=2 Ind. Cas 592=10 Cr.L.J. 89.** (20 A. 206, *R.*).

(2)—*Crim. Pro. Code* (1872), *s.* 489—*Security to keep the peace—Order must specify amount of bond.*—A Magistrate, having convicted the accused persons of assault and sentenced them for that offence, directed further that they should give a bond to keep the peace for twelve months. He did not direct for what sums such bonds should be executed, or what imprisonment should be inflicted if the same were not given. *Held* that the Magistrate's order so far as it related to the finding of security, was defective and could not be sustained. EMPRESS v. SHEOBALAK, **A.W.N, 1881, 86.**

(3)—*Amount of security—Considerations in fixing amount of security—Crim. Pro. Code* (1861), *s.* 284.—*Held* that in fixing the amount, a Magistrate should have due regard to the circumstances of the case and the means

Security to keep the peace—continued.

——10.—Amount of Security—Surety—*cld.*

of the parties. *In the matter of* NILMADHUB GHOSAL, **19 W.R. Cr. 1** [*F.*, 8 C.L.R. 72, 3 C. 757.] QUEEN v. GHOLAM MAHOMED, **22 W.R. Cr. 17.**

(4)—*Crim. Pro. Code* (*Act* X *of* 1882), *ss.* 107, 112, 118—*Amount of surety bond must be observed in final order* —Where the summons served under s. 112 of the Crim. Pro. Code specified a certain amount as required for the surety and the personal recognizance and the order for surety contained a larger amount, *held* that the final order for surety and recognizance should be those fixed in the summons. EMPRESS v. DEBI, **A.W.N. 1885, 30.**

(5)—*Crim. Pro. Code* (1872), *ss.* 491, 492—*Security to keep the peace—Increase in the amount—Procedure.*—In a case of security to keep the peace, *held* that the Magistrate would have acted more properly or satisfactorily before ordering an increase of security he proposed demanding from that mentioned in the summons, to give notice to the accused. *Held*, further, on the facts, that the Magistrate's action had not so prejudiced the accused as to call for the interference of the High Court. EMPRESS v. MUHAMMAD ISMAIL, **A W.N. 1881, 152.**

(6)—*Amount of security—Power to increase amount—Crim. Pro. Code* (1861), *s.* 290.—*Held* that, though a bond has been taken from a person to keep the peace for a stated period, yet, before the expiry of that period, the amount of the security required may be increased by the Magistrate, under s. 290, Crim. Pro. Code. *In re* GOOROO DASS ROY, **18 W.R. Cr. 57.**

(7) — *Amount of security — Statement of amount in summons—Power of Magistrate to alter amount and form from what is stated in summons.*—Where a summons was issued to a person to show cause why he should not be required to enter into his own bond to keep the peace for six months, the amount specified being Rs. 200, and on his appearing before the Magistrate, he was required to enter into his own bond to the amount of Rs. 4,000 and to find two sureties for Rs. 1,000 each for a period of one year, *held*, the order was bad. QUEEN v. ISREE PERSHAD SINGH, **9 B.L.R. Ap. 44=18 W.R. Cr 61.** *See also In re* ABDOOL BARI, **25 W.R. Cr. 50.**

——11.—Default in giving Security.

(1)—*Crim. Pro. Code, ss.* 106, 123—*Conviction under ss.* 323, 352, *I P.C.—Order for security to keep the peace—Imprisonment in default of security.*—(*a*) A Magistrate at the time of passing sentence under ss. 323 and 352, I.P.C., is competent, under s. 106, Crim. Pro. Code, to order that each of the persons convicted should execute a bond to keep the peace. Sentence of imprisonment in default of security required under s. 106, Crim. Pro. Code, is passed in accordance with the provisions of s. 123 of the same Code. (*b*) A Magistrate having tried an

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——11.—Default in giving Security—*contd.*

accused person, summarily or otherwise, and having convicted him of any of the offences mentioned in s. 106, Crim. Pro. Code, is competent to order him to execute a bond in conformity with the third paragraph of s. 106, Crim. Pro. Code, and if the person thus ordered does not comply with the order, the Magistrate may commit him to prison in accordance with s. 123, Crim. Pro. Code. EMPRESS v. LACHMAN, **A.W.N. 1886, 181.**

(2)—*Personal bond of accused—Imprisonment in default of security, nature of—Crim. Pro. Code, ss.* 106 *and* 123 (5).—S. 106 does not apply except where an offence of the kind specified therein is committed. In cases where it does apply, the accused must give a personal bond. The imprisonment in default must be simple. QUEEN-EMPRESS v. NGA THA EIN, **L.B.R. 1893—1900, 630.**

(3)—*Crim. Pro. Code* (1898), *ss.* 106, 120 *and* 123—*Order for security on expiration of substantive term of imprisonment—Order for imprisonment in default of furnishing security.*—The accused was sentenced to three months' imprisonment and ordered to execute a bond with sureties to keep the peace for six months, and in the same order, the Magistrate directed that in default of furnishing the security, he was to undergo simple imprisonment for six months to commence at the expiry of the substantive sentence. The question was, whether the Magistrate could make an order inflicting imprisonment which was wholly and from its commencement conditional on a future event. The accused could give the security at any time he liked, up to the date on which he had to give the security, and until that date he could not render himself liable to imprisonment for failing to give the required security. In this view, the Magistrate's order was illegal and unauthorized—*Per Irwin, J.* The Magistrate's order was not warranted; but there was no strong objection to it. For, if a warrant for only the sentence for the offence were issued, the Superintendent of the jail would, as a matter of course, release the accused at the expiration of his sentence, whereas the law requires that, if the accused had not given security by that time, he shall be detained in prison for a further time and under certain conditions. So, a warrant which served to inform the jail authorities of what the law required and enable the law to be carried out, was not open to objection—*Per Fox, C.J.* Because the order of the Magistrate was to practically carry out what was the law, it should not be interfered with in revision. KING-EMPEROR v. THA HLAING, **4 L B.R. 203, F.B.=7 Cr. L. J. 472.** (Rat. Un. Cr. C. 432, Rat. Un. Cr. C. 774, *R.*,; P.J.L.B. 245, *Diss.*) [*Relied upon*, 10 Cr. L.J. 69=2 Ind. Cas. 531=5 L.B.R. 34.]

(4)—*Imprisonment in default of furnishing security, not a part of substantive sentence—Non-appealable sentence—Crim. Pro. Code, s.* 106—*Assault.*—There is nothing in the law which prohibits the making of an order under s. 106 of the Code of Criminal Procedure, after a conviction under s. 323, Indian Penal Code, on a summary trial. The imprisonment to be undergone in default of furnishing security is not a part of a substantive sentence. The sentence not being in itself appealable does not become so, because the person convicted has been ordered to find security to keep the peace. MEGHU v. KING-EMPEROR, **7 O C 338=1 Cr. L.J. 1054.** (A.W.N. 1886, 181, *Appr.*)

(5)—*Crim. Pro. Code* (1892), *s.* 123—*Imprisonment in default of security, term of, to be fixed by the Court.*—All that the Magistrate can do under the second para of s. 123, Crim. Pro. Code, "is to issue a warrant directing the defaulter to be detained in prison pending the orders of the Court of Session" and to send his proceedings to that Court. It is then the duty of Sessions Court to pass its own order on the proceedings submitted to it, which should state the period for which the Court requires security to be given and the period for which the prisoner was to be imprisoned for failure to give security. The former period might be longer or shorter than that originally fixed by the Magistrate or it might be the same; the period of imprisonment could only be fixed by the Court of Session. EMPRESS v. REWA AHIR, **6 C.P.L.R. Cr. 27.**

——12.—Forfeiture of Security.

(1)—*Crim. Pro. Code* (1872), *s.* 502—*Recognizance, forfeiture of.*—The parties called upon to forfeit the amounts of their recognizance and their security bond are entitled to demand an exact compliance with the provisions of the law. An order for estreatment of a recognizance or bail bond must be made upon evidence in the case and not upon evidence taken in other cases. A Magistrate is not competent to direct that, in default of payment, the person whose recognizance is forfeited should be imprisoned, without first issuing a warrant for the attachment and sale of his moveable property. *In the matter of* MOHESH CHUNDRA ROY, **10 C.L R. 571.** [*Appl.*, 25 C. 440.]

(2)—*Necessity to record evidence of forfeiture.*—Before a Magistrate can declare that recognizances to keep the peace have been forfeited, he must record legal evidence in the presence of the accused, proving that he was about to do something which would occasion a breach of the peace. *In the case of* KALIKANT ROY CHOWDHRY, **3 B L.R. Ap. 155=12 W R. Cr. 54.**

(3)—*Crim. Pro. Code (Act X of* 1872), *ss* 493, 502—*Order without inquiry.*—S. 502 of the Crim. Pro. Code, 1872, requires that no person who has entered into a recognizance bond should be called on to show cause why he should not have his recognizance declared forfeited without *prima facie* proof, that is, evidence on oath, that the bond has been forfeited. *In re* HARIRAM BIRBHAN, **11 B.H C. 170.** [*F.*, 9 C.P.L. R. Cr. 8.]

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——12.—**Forfeiture of Security**—*continued.*

(4)—*Recognizance, forfeiture of—Cross-examination of witnesses by party—S.* 502, *Crim. Pro. Code* (*of* 1872).—A Magistrate is not justified in forfeiting a recognizance under s. 502 of the Crim. Pro. Code (of 1872), unless the party charged with a breach of the peace has had an opportunity of cross-examining the witnesses, upon whose evidence the rule to show cause against the forfeiture of the recognizance had been issued. EMPRESS v. NOBIN CHUNDER DUTT, **4 C. 865 = 4 C.L.R. 243, F B. = 2 J.G. 33.** [*Appl.*, 25 C. 440; *R.*, 9 O.P.L.R. Cr. 8.]

(5)—*Sufficiency of evidence to prove forfeiture.*—*Held*, that the bare fact that the person bound over is a servant of one of the two rival parties for whose sake a breach of the peace has taken place is not sufficient, but that, before forfeiting a bond, there must be proof that such person has himself broken the peace or abetted some other person or persons in breaking it. QUEEN v. KALLY BHYRUB SANDYAL, **11 W.R. Cr. 52.**

(6)—*Evidence of person bound over is admissible—Power of Magistrate to reduce penalty.*—*Per Ainslie, J.*—*Held* that, in proceedings for forfeiting a bond, the evidence on oath of the person against whom they are held can be taken on his own behalf. *In re* JEHAN BUKSH, **15 W.R. Cr. 87.** [*R.*, 19 W.R. Cr. 1.]

(7)—*Assault.*—Where a person from whom a recognisance was taken at the instance of a party for six months under a penalty of Rs. 500, but, before the expiry of that period, such person assaulted a second party, *held* that he had forfeited his recognisance. JAHA BAX v. GOVERNMENT, **6 B.L R. Ap. 66 = 15 W.R. Cr. 14.**

(8)—*Liability to forfeiture — Commission of offence—Theft.*—Theft not being an offence that will amount to a breach of the peace or that will be likely to occasion a breach of the peace, a person bound over to keep the peace cannot be compelled to pay the amount of the recognisance, if he is guilty of such an offence as theft. *In re* HARAN CHUNDER ROY, **18 W. R. Cr. 63.** [*F.*, 19 W.R Cr. 37.]

(9)—*Order for forfeiture must be made while convicting person under recognisance.*—Where a Magistrate abstains, when convicting a person under a recognisance to keep the peace, for grievous hurt, from making any order for the forfeiture of the bond furnished by him, *held* that no order can be subsequently passed for the forfeiture of the bond. GUL KHAN v. EMPEROR, **26 P.R. 1904, Cr. = 1 Cr. L J. 1100.** (3 C.L.R. 406, *F.*) [*F.*, 13 P R. 1913, Cr = 7 P.W.R. 1913, Cr. = 39 P.L.R. 1913 = 18 Ind. Cas. 403 = 14 Cr. L.J. 67.]

(10)—*Crim. Pro. Code* (1872), *s.* 502—*Forfeiture of recognisance—Punishment for a subsequent offence, without enforcing the penalty, effect of—Recovery of penalty— Forfeiture of bond.*—The petitioners were, on the 20th April, 1877, bound down to keep the peace for one year. On the 14th January, 1878, they were convicted of an offence and sentenced to fine and imprisonment. The Magistrate, although he had referred to the fact that they had been bound over to keep the peace, took no step to enforce the penalty, nor did the District Magistrate who dismissed the appeal. But on 2nd April, 1878, a petition was presented by a third party for the forfeiture of the recognizances and the Magistrate ordered accordingly. *Held*, that the Magistrate's proceedings for the forfeiture of the recognizances should be quashed, as the sentence which the Magistrate had inflicted was passed with the knowledge of the forfeiture of the bond, and was therefore adequate for the offence committed. [*F.*, 26 P.R 1904. Cr.; *D.*, 15 P.L.R. 1904 = 32, P.R. 1903, Cr.; *Diss.*, 26 A. 202 = 23 A.W.N. 237] When the forfeiture of a bond has been proved before a Magistrate, the recovery of the penalty should not be kept suspended over the head of the person liable, for an indefinite period. *In the matter of* PARBUTTI CHURN BOSE, **3 C L R. 406 = 2 J. G. 29.** [*F.*, 13 P.R. 1913, Cr. = 39 P L.R. 1913 = 79 P.W.R. 1913 = 18 Ind. Cas. 403 = 14 Cr. L J. 67.]

(11)—*Forfeiture of recognizance—Crim. Pro. Code* (1872), *s.* 502—*Procedure must be observed.*—Where, on conviction for voluntarily causing grievous hurt, the Magistrate ordered the forfeiture of the recognizance of the accused, who had previously been bound over to keep the peace, as a part of his judgment, without in any way fulfilling the provisions of s. 502, the High Court, on the conviction being set aside by the appellate Court, cancelled the order for forfeiture. QUEEN v. GHISA, **7 N.W.P. 375.**

(12)—*Crim. Pro. Code* (1861), *ss.* 282 *and* 288—*Forfeiture of security bond without issuing summons—Effect of.*—Where a Magistrate took security to keep the peace from certain persons for six months and, finding that an act likely to cause a breach of the peace had been committed, forfeited the recognisances, *held*, that the High Court would not interfere with the order, merely because no formal summons was issued. *Held*, also, that it was for the Magistrate to judge of the character of the act which was alleged to be likely to cause a breach of the peace. HIGH COURT PROCEEDINGS, 8TH MARCH 1869, **4 M H.C App 38.**

(13)—*Crim. Pro. Code* (1861), *s.* 293—*Jurisdiction.*—A executed in District T a recognizance to keep the peace towards B. A was afterwards convicted in District S of having assaulted B in that District. *Held*, A had forfeited his recognizance, and the Magistrate in District T could proceed against him under s. 293 of the Crim. Pro. Code. QUEEN v. SHAM SUNDAR CHOWDHRY, **2 B.L R. A. Cr. 11.**

(14)—*Recognizance to keep peace — Party bound charged once again -Practice--Forfeiture.*—Where a Magistrate has taken recognizance from any person, and that person is brought before him within the period covered by the recognizance, he ought, at the time of making

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——12.—Forfeiture of Security—*continued.*

an order in respect of the offence alleged in the second prosecution, to take into consideration the fact that there is an outstanding recognizance and to determine once for all whether he will proceed upon it or not. Where a Magistrate has before him the fact that a person convicted by him of hurt was under recognizance to keep the peace, and does not, nevertheless, proceed to forfeit it, it must be held that he thought it unnecessary to do so. Proceedings taken after expiry of the period specified in the bond are contrary to the intention of the law. *In re* RAM CHUNDER LALA, **1C.L.R. 134.** [*Diss.*, 26 A. 202=A.W.N. 1903, 237; *F.*, 14 Cr. L.J. 67=18 Ind. Cas. 403=39 P.L.R. 1913=13 P.R. 1913, Cr.=7 P.W.R. 1913; *D.*, 32 P.R. 1903, Cr.=15 P.L.R. 1904.]

(15)—*Forfeiture of surety — Discretion of Magistrate in recovering penalty.*—Where a surety bond is forfeited, the Magistrate has a discretion to relize the penalty or not, but he has no authority to recover a less penalty than that specified in the bond. EMPRESS v. UMRA, **2 P.R. 1883, Cr.** [*D.*, 15 P.R. 1905, Cr.]

(16)—*Forfeiture of portion of recognizances—Crim. Pro. Code* (1861), *s.* 293.—*Held* that, under s. 293, Crim Pro. Code, 1861, a Magistrate could not order the forfeiture of a part of the penalty. *In re* NILMADHUB GHOSAL, **19 W.R. Cr. 1.** [*F.*, 8 C.L.R. 72, 3 C. 757.]

(17)—*Penalty mentioned in recognizance bond—Mitigation—Jurisdiction.*—A Magistrate has no power to order mitigation of penalty mentioned in a recognizance bond, which had become forfeited, unless the Government forego any portion of the penalties. ANONYMOUS, **1 B.H.C. 138.**

(18)—*Forfeiture of recognizances.—Quære.*—Whether on the forfeiture of bonds, a Magistrate should forfeit the whole amount o the bond, and whether the power of reducing the sum to a penalty corresponding to the breach of the peace is left only to the Government. *In re* JEHAN BUKSH, **15 W.R. Cr. 87.** [*R.*, 19 W.R. Cr. 1.]

(19)—*Forfeited recognizances — Powers of High Court.*—The High Court could not reduce the amount of forfeited recognizances. *Obiter*:—If the Magistrate thinks the amount or the recognizances was excessive, he should refer the matter to Government. EMPRESS v. NURUL HUQQ, **3 C 757=2 C.L.R. 408.** (19 W.R. Cr. 1, *F.*) [*F.*, 8 C L.R. 72; *R*, 13 Cr. L.J. 31=13 Ind. Cas. 223=5 S.L.R. 179; *D.*, 15 P.R. 1905, Cr.=99 P.L.R. 1905=2 Cr. L.J. 131.]

(20)—*Security bond, forfeiture of— Reduction of penalty, power of Chief Court to order.*—When a security bond is forfeited, the Court is bound to enforce the full penalty, and the Chief Court, on revision, could not reduce the penalty. CROWN v. KAHN SINGH, **12 P.R. 1871, Cr.**

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——12.—Forfeiture of Security—*concluded.*

(21)—*Crim. Pro. Code* (1882), *s.* 514—*Principal committing breach of peace— Forfeiture of security bond—Final order making person liable must be after evidence taken before surety.*—The mere fact of the person for whom another stands as surety being convicted of a breach of the peace ought not to be sufficient to make the surety bond executed by the latter liable to forfeiture, without any evidence taken in the presence of the surety to show that the forfeiture has been incurred. Although under s. 514, the evidence upon which the Court is satisfied that a forfeiture has been incurred and that the person bound by the bond should be called upon to pay or to show cause, may be taken in the absence of such person, yet, it does not follow that the final order making him liable can be made without taking any evidence in his presence or giving him an opportunity of cross examining the witnesses on whose evidence the forfeiture is held to be established. QUEEN-EMPRESS v. HAR CHANDRA CHOWDHURY, **25 C 440.**

(22)—*Forfeiture of bond of surety—Liability of principal—Crim Pro. Code* (1882), *ss.* 112, 118, 514.—The bond contemplated by ss. 112 and 118 is one bond for one amount and is discharged, on forfeiture, by the payment of the amount due by either the principal or the surety. KAKU v. EMPRESS, **26 P.R. 1894, Cr.**

(23)—*Crim. Pro. Code* (1898), *ss.* 107, 118, 514—*Surety for another person to keep the peace—Forfeiture of bond—Liability of surety.*—When a person has executed a bond to keep the peace and another person has executed a bond as his surety for so doing, if the condition is broken, both are liable to pay. The object of these provisions of the Code is to prevent crime and not to obtain money for the Crown. It is not the case of an ordinary suretyship, where the surety is discharged as soon as the principal debtor pays the money due from him. Here the surety is an additional safeguard against a breach of the peace. EMPEROR v. KULDIP SAHAY, **9 C L J. 296=36 C. 562=13 C.W.N. 555=10 Cr. L J. 89=2 Ind. Cas. 89.** (20 A. 206, *Rel. on*; U.B.R. 1905, 31=2 Cr. L.J. 463, *Diss.*)

(24)—*Breach of peace — Recognizance.*— A person bound over to keep the peace cannot be held to have broken the condition of his bond if he commits extortion wherein he was offered no resistance, or, any other offence which does not involve a breach of the peace. *In the matter of* ZEARUDDIN HOWLADAR, **19 W.R. Cr. 48.**

——13.—Effect of signing wrong bond and postponing proceedings for civil suit.

(1)—*Effect of signing wrong bond—Mistake.*—*Held* that an invalid bond would not create a binding obligation. BINDESSUREE PERSHAD v. GUJADHUR PERSHAD, **23 W.R Cr. 1.**

(2)—*Crim. Pro. Code* (1879), *s.* 491—*Adjournment of proceedings, till the decision of Civil Court.*—An order postponing further

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——13.—Effect of signing wrong bond and postponing proceedings for civil suit—*cld.*

proceedings under s. 491, until the person called upon to show cause why he should not be bound down to keep the peace has established his right to the possession of the property in dispute, and about which there is a likelihood of a breach of the peace, amounts to a discharge. EMPRESS v. DHUNIRAM, **5 C L. R. 366.**

——14.—Appellate Court.

(1)—*Crim. Pro. Code* (1898), *s.* 106 (3)—*Order to furnish security—Appellate Court.*—An order for security, under s. 106 (3) of the Crim. Pro. Code, 1898, may be made in appeal, whether the original Court had jurisdiction to pass such an order or not. The word "also" in the section plainly implies that the order may be independently made by an appellate Court, or by a Court in revision, as well as by the original Courts specified in the first clause; and it is not implied that the powers of the original Court should in any way control or limit those of the appellate or revisional authority. EMPEROR v. BHANSING DHUMALSING, **10 Bom. L.R. 759=8 Cr. L J. 267=33 B. 33=1 Ind. Cas. 434.** (21 C. 622, 29 M. 190, 30 M. 48, *Diss.*; 30 M. 182, *R.*)

(2)—*Crim. Pro. Code* (*Act* X *of* 1872), *ss.* 280, 489—*Power of appellate Court to ask security.*—In an appeal from a conviction and sentence of imprisonment under s. 323 of the Penal Code, the District Magistrate has power to add an order directing the accused to give security to keep the peace for a year after the expiry of the term of imprisonment. EMPRESS v KAMTA PRASAD, **A.W.N. 1882, 12=4 A 212, F.B.**

(3)—*Crim. Pro. Code* (1898), s. 106, *power of appellate Court to bind over accused to keep peace under, when lower Court is of the class specified in.*—The power given to an appellate Court to order that the accused be bound over, under s. 106 of the Code, to keep the peace is not an unlimited power to make such an order in any circumstances, but is to be taken as giving the appellate Court power to do only that which the lower Court could and should have done, and, therefore, such power is to be confined to cases, where the conviction has been by a Court named in the section and in circumstances required by the section. The words 'involving a breach of the peace' in the section, require that a breach of the peace should be an ingredient of the offence proved and, before the section can be put in force, there must be a finding that a breach of the peace has occurred. MUTHIA CHETTY v. EMPEROR, **29 M. 190=3 Cr. L.J. 461.** [*Over.*, 37 M 153=14 Cr. L J. 574=21 Ind. Cas. 174=25 M.L J. 403=14 M. L.T. 235=1913 M.W N. 779; *Diss.*, 33 A. 771 =8 A.L.J. 925=11 Cr. L.J. 588=12 Cr. L.J. 405, 33 A. 48=7 A.L J. 910=11 Cr. L J. 480= 7 Ind. Cas. 412, 33 B. 33=10 Bom. L R. 759= 8 Cr. L.J. 267; *F.*, 1 M.L.T. 403=5 Cr. L.J. 88 =30 M. 48, 6 P.R. 1907, Cr.=23 P.W.R. 1907= 6 Cr. L.J. 111, 1 M.L.T. 343=4 Cr. L.J. 498,

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——14.—Appellate Court—*continued.*

10 O.C. 287, 9 O.C. 381=5 Cr. L J. 25, 9 Cr. L.J. 88=4 Ind.Cas. 616=19 M L.J. 66=4 M. L.T. 468, 21 P.W.R. 1909, Cr.; *Rel. on,* 12 Cr. L.J. 444=11 Ind. Cas. 788=7 N.L R. 109; *R.*, 35 C. 434=7 C.L J. 602=8 Cr. L.J. 9=12 C. W.N. 752, 4 M L.T. 340, 9 Cr. L.J. 84=21 P. W.R 1908, 11 Cr. L.J 640=8 Ind. Cas. 392= 8 M.L.T. 291. 11 Cr L.J. 251=5 Ind. Cas 807 =7 M L.T. 104, 10 Cr. L.J. 309=3 Ind. Cas. 577=7 P.R. 1909, Cr.]

(4)—*Crim. Pro. Code* (1898), s. 106—*Jurisdiction of a criminal appellate Court, limited to that of the Court of first instance—Security to keep peace, order to furnish—Invalidity of such order passed by appellate Court when first Court had no such power to pass.*—The applicant was convicted and sentenced by an Honorary Magistrate of the second class and his appeal was dismissed by the District Magistrate who, however, made an order, in appeal, requiring him to furnish security for keeping peace. *Held*, that the jurisdiction of a Court of appeal is limited to the jurisdiction conferred on the court of first instance, and as in this case the Honorary Magistrate could not pass an order requiring the applicant to furnish security, the order passed to the effect by the District Magistrate in appeal was invalid. BAIJ NATH v. KING-EMPEROR, **10 O.C. 287=6 Cr. L J. 302.** (29 M. 190, *R.*) [*Overruled*, 16 O.C. 281=21 Ind. Cas. 384=14 Cr. L J. 592.]

(5)—*Crim. Pro. Code* (1898), *ss.* 106, 107 *and* 349—*Appellate Court, powers of, to order accused to give security to keep the peace—Procedure.*—Accused were charged of offences under ss. 147 and 325, I.P.C., and were sentenced by a second-class Magistrate to a fine of Rs. 25 each. That Magistrate also submitted his file to the District Magistrate, with a recommendation that security to keep the peace should be taken from the leaders of both parties. On appeal to the District Magistrate, he altered the conviction into one under s. 147 only, reduced the sentence, but ordered, under s. 349, that each accused should execute a bond with three sureties to keep the peace for three years. *Held*, that, as the Magistrate was seized of the case, under s. 107 (3) and (4), he could not have made the summary order allowed by s. 349 (2), but must have gone through the procedure laid down in ss 112 to 118 of the Code. An appellate Court can act under s. 106 (3), only in cases where the lower Court had the power to take security, but did not do it at all or did not do it to the satisfaction of the appellate Court. CROWN v. HARDIT SINGH, **7 P.R. 1909, Cr.= 3 Ind. Cas. 577=21 P.W.R 1909, Cr.=10 Cr. L.J. 309.** (6 P R. 1907, Cr. *F.*; 21 C. 622, 35 C. 434, *Cited*; 29 M. 190, 30 M. 48, *R.*; 21 P.R. 1905, Cr., *D.*)

(6)—*Crim. Pro. Code* (1898), s. 106 (1) *and* (3)—*Security for keeping the peace after conviction—Competency of Court of appeal to require security, when the conviction was not by*

Security to keep the peace—continued.

——14.—Appellate Court—*continued.*

any of the Courts mentioned in sub-s. 1 *of s.* 106 —Where a conviction was by a Magistrate of the second class, *held,* it was not open to the District Magistrate on appeal to exercise the power given by s. 106 (3), Crim. Pro. Code, and so much of his order as directed the accused persons to execute bonds to keep the peace for three years should be set aside. GOPAL SINGH v. KING-EMPEROR, **21 P.R. 1908, Cr.=9 Cr.L J. 84.** (35 C. 434, 29 M. 190, 30 M. 48, *R.*)

(7)—*Crim. Pro. Code* (1898), *s.* 106—*Power of appellate Court to pass order for security.*—An appellate Court cannot make an order under s. 106, unless the conviction, on which the order is based, was by a Court of the description specified in the first paragraph of the section. PARAMASIVA PILLAY v. EMPEROR, **1 M L.T. 403=30 M. 48=5 Cr.L.J. 88.** [*Diss.*, 33 B 33=10 Bom. L.R 759=8 Cr. L J. 267, 33 A. 48=7 A.L.J. 910=11 Cr. L.J. 480=7 Ind. Cas. 412, 15 Cr. L.J. 194=22 Ind. Cas. 768; *Rel. on,* 12 Cr. L.J. 444=11 Ind.Cas. 788 =7 N.L.R. 109; *F.*,12 Cr. L.J 454=11 Ind. Cas. 798=10 M.L.T. 165, 21 P.W.R. 1909, Cr.; *R.*, 11 Cr.L.J. 483=7 Ind. Cas. 415=8 M.L.T. 117, 11 Cr. L.J. 251=5 Ind. Cas. 807=7 M.L.T. 104; 4 M.L.T. 340, 11 Ind. Cas. 798=10 M.L.T. 115=1912 M.W.N. 97, 11 Cr. L J. 640 =8 Ind. Cas. 392=8 M.L.T. 291, 9 Cr. L.J. 84, 21 P.R. 1908, Cr., 10 Cr. L.J. 309=3 Ind. Cas. 577=7 P.R. 1909, Cr., 25 M.L.J. 403=1913 M.W.N 769=14 M.L.T. 235, 7 Cr. L.J. 361=3 M.L.T. 312, 30 M. 182=1 M.L.T. 343=4 Cr. L.J. 498, 12 C.W.N. 752=35 C. 434=7 Cr. L. J. 602.]

(8)—*Crim. Pro. Code* (1898), s. 106, *cl.* (3)—*Conviction of accused by second-class Magistrate —Appeal to first class Magistrate dismissed—Appellants directed by first-class Magistrate to give security to keep the peace—Legality of the appellate Court's order.*—An appellate Court cannot pass an order under s. 106 (3) to furnish security to keep the peace, unless the convicted person has been convicted by one of the Courts specified in cl. (1) of the section, *i.e.*, by a Court not inferior to that of a first-class Magistrate. *Benson and Wallis, JJ.* It may, however, be doubted whether the legislature intended that the power of the appellate Court and of the High Court, when exercising its power of revision, should be confined to such narrow limits. The essentials, for justifying an order to give security to keep the peace, are: -(1) a finding by a Court not inferior to a first-class Magistrate that an offence of the kind specified in the section has been committed and (2) a finding by such Court that an order to give security is desirable. The first essential is virtually complied with when an appellate Court confirms a conviction of such offence by a second or third-class Magistrate or when it makes an order under s. 106, on the recommendation of a second or third-class Magistrate acting under s. 349. As, in either case, the first-class Magistrate's decision may proceed solely on a consideration of the evidence taken by, and the opinion of, the second or third-class Magistrate, it is difficult to see any essential difference between a case of actual conviction and a case of confirmation by a first-class Magistrate. It is desirable that the legislature should make the matter explicit. *In re* DORAISAMI NAIDU, **1 M L T. 343=4 Cr. L.J. 498=30 M. 182.**

(9)—*Crim. Pro. Code* (1898), *s.* 106—*Appellate Magistrate ordering security to keep the peace—Legality*—An order by an appellate Magistrate for the taking of security to keep the peace is illegal. GNANAMUTHU UDAYAN v. EMPEROR, **6 M.L.T. 238=3 Ind. Cas 434=10 Cr. L J. 289.**

(10)—*Crim. Pro. Code, s.* 106 (3)—*Conviction for offences under ss.* 147, 323, *Penal Code —Appellate Court confirming sentence and ordering security to keep peace—Legality.*—Where a Sub-Divisional Magistrate, while confirming the sentence of the lower Court, for offences under ss. 147 and 323, Penal Code, ordered some of the accused to furnish security under s. 106 (3), Crim. Pro. Code, *held* that the order of the Sub-Divisional Magistrate is opposed to the decisions of the Madras High Court, and the order, so far as it directs security to be taken, should be set aside. EMPEROR v. THODDAMATHA, **8 M.L.T. 291=8 Ind. Cas. 392=11 Cr. L.J. 640.**

(11)—*Crim. Pro. Code, s.* 106 (3)—*Order for security by appellate Court—Conviction by Court other than of the description mentioned in the first paragraph of the section—Restriction of powers.*—An appellate Court has no power, under s. 106 (3) of the Code of Criminal Procedure, to order security to be given by the accused person, where he was not tried and convicted by a Court of the description mentioned in the first paragraph of s. 106. Where a District Magistrate on appeal ordered a person, who had been convicted by a second-class Magistrate, to give security: *Held,* the order was bad and must be set aside. EMPEROR v. MOMIN MALITA, **35 C. 434=7 C.L.J. 602=12 C.W.N. 752=8 Cr L J. 9=4 M.L.T. 340.** (29 M. 190, 30 M. 48, 21 C. 622, *R.*) [*Diss.*, 11 Cr. L.J. 480=7 Ind Cas 412=7 A.L.J. 910 =33 A 48, 14 Cr. L.J. 574=21 Ind. Cas. 174 =25 M.L.J. 403=14 M.L.T. 235=1913 M.W.N. 769; *R.*, 9 Cr. L J. 84=21 P.R. 1908, Cr., 10 Cr. L J. 309=7 P.R. 1909, Cr.=3 Ind. Cas. 577, 21 P.W.R. 1909, Cr.]

(12)—*Crim Pro. Code (Act X of 1882), s.* 106 —*Order for security in appeal.*—An appellate Court cannot add to the sentence of the original Court an order under s. 106 of the Crim. Pro. Code, requiring the accused to execute a bond to keep the peace. QUEEN-EMPRESS v. MAHOMED ISA, **Rat. Un. Cr, C. 906=Cr. Rg. 16 of 1897.** (16 C. 779, 17 A. 67, *F.*)

Security to keep the peace—continued.

——14.—**Appellate Court**—*continued.*

(13)—*Crim. Pro. Code* (1892), s. 106—*Power o an appellate Court to make an order under the section.*—The Magistrate of the District, when acting as an appellate Court in criminal cases cannot make an order under s. 106. QUEEN-EMPRESS v. ISHRI, **17 A. 67=A.W N. 1894, 202.** (16 C. 779, A.W.N. 1890, 201, *R.*) [*F.*, Rat. Un. Cr. C. 906.]

(14)—*Crim. Pro. Code* (*Act* X *of* 1882), s. 106—*Appellate Court.*—A Magistrate of a District, when acting as an appellate Court, is not competent to make an order under s. 106 of the Crim. Pro. Code requiring the appellant to furnish security for keeping the peace. EMPRESS v. LACHMAN, **A.W.N. 1890, 201.** (16 C, 779, A. W.N. 1884, 71, *F.*) [*R.*, A.W.N. 1894, 202]

(15)—*Crim. Pro. Code* (*Act* X *of* 1882), ss. 106, 407—*Appellate Court—Order for security to keep the peace.*—A joint Magistrate hearing an appeal from a third-class Magistrate's judgment cannot, in confirming the sentence, add an order for security to keep the peace under s. 106 of the Crim. Pro. Code. EMPRESS v. GHOUGHA SAHAI, **A.W.N. 1884, 71.** [*R.*, A.W.N. 1890, 201.]

(16)—*Crim. Pro. Code* (1882), s. 106—*Power of appellate Court to require security for keeping the peace.*—An appellate Court, affirming a conviction and sentence, has no power to make an order, under s. 106 of the Code, requiring the appellant to execute a bond for keeping the peace. ASLU v. QUEEN-EMPRESS, **16 C. 779.** [*F.*, 17 A. 67, A.W.N. 1890, 201, Rat. Un. Cr. C. 906.]

(17 & 18)—*On conviction—Appellate Court, powers of—Crim. Pro. Code* (1882), ss. 106, 423.—An appellate Court, in confirming a sentence passed upon a person convicted of rioting, assault or other breach of the peace, cannot add an order for security to keep the peace. JAN MUHAMMAD v. EMPRESS, **21 P.R. 1884, Cr.** [*R.*, 23 P.R. 1888, Cr.]

(19)—*Appellate Court, powers of—Crim. Pro. Code* (1882), ss. 106, 423.—An appellete Court, confirming a conviction by the lower Court, is not competent to demand security to keep the peace. NIDHAN SINGH v. EMPRESS, **23 P.R. 1888, Cr.** (21 P.R. 1884, Cr., *R.*)

(20)—*Held*, that s. 106 (3), Crim. Pro. Code, confers powers on appellate Courts (Sessions Judges, District Magistrates and other Magistrates hearing appeals to pass an order demanding security to keep the peace, on appeals by the accused. MIRAN BAKSH v. KING-EMPEROR, **21 P.R. 1905, Cr.=34 P L R. 1905=2 Cr. L.J. 190.**

(21)—*Crim. Pro. Code* (1898), s. 106—*Power of the appellate Court to demand security—Convicting Magistrate not competent to do so.*—A Court of appeal cannot pass an order on appeal to furnish security to keep the peace under 106 of the Code, when the Magistrate, who passed the original order convicting the accused, is incompetent to do so. RADHA SINGH v. KING-EMPEROR, **6 P.R. 1907, Cr.=6 Cr. L J. 276=23 P.W R. 1907 Cr**, (29 M. 190, *F.*) [*R.*, 10 Cr. L.J. 309=3 Ind. Cas. 577=7 P.R. 1909, Cr.]

Security to keep the peace—continued.

——14.—**Appellate Court**—*concluded.*

(22)—*Crim. Pro. Code, Act* V *of* (1898), s 106—*Power of appellate Court to demand security.*—Where, on appeal, the District Magistrate upheld the conviction of the accused for criminal trespass, but further ordered that he should find sureties to keep the peace, *held*, that, as the offence of criminal trespass was not one of the offences mentioned in s. 106 of the Crim. Pro. Code, the order for security to keep peace was *ultra vires* BADAR-UD-DIN v. EMPEROR, **127 P.L.R. 1901.**

(23)—*On conviction—Order when can be made by appellate Court—Crim. Pro. Code* (1898), s. 106.—Before an appellate Court can pass an order under s. 106, there must be a confirmation of the sentence passed by the lower Court, or at least of a part of the sentence. So, where a District Magistrate set aside the sentence of the lower Court, but ordered the party to furnish security, *held*, that the order was bad in law. CROWN v. NURA, **22 P.R. 1901, Cr.**

(24)—*Crim. Pro. Code* (1898), ss. 107 *and* 145—*Power of High Court to direct initiation of proceedings under* s. 145.—Where, in a dispute regarding land, the Magistrate called upon both the parties to show cause why they should not be bound over under s. 107, to keep the peace, *held*, that the High Court was not competent to direct the Magistrate to take proceedings under s. 145, instead of binding over both the parties. [*R.*, 30 C. 112=6 C.W N. 417, 6 Bom. L.R. 862, 1 S.L R. 50, Cr.] The mere binding over both the parties to keep the peace, in a dispute concerning land, does by no means put an end to the contention, whereas by taking proceedings under s. 145 a Magistrate would be able to pass an order by virtue of which, possession of one the contending parties is maintained, until the right has been determined by a competent authority. *In the matter of the petition of* EKRAM SINGH, **3 C W.N. 297.** [*R.*, 35 C. 117=6 C.L.J. 697=6 Cr. L.J. 398, 36 M. 315=14 Cr. L.J. 559=21 Ind. Cas. 159.]

(25)—*Crim. Pro Code* (1898), s 112—*Order to find sureties from Zamindar class—Legality—Revision.*—An order, rejecting sureties, who were not of the class of Zamindars holding twenty acres of land round a particular locality as fixed by an order under s. 112, is not illegal, and cannot be interfered with in revision. CROWN v. JAN MAHOMED, **3 S.L.R 239=6 Ind. Cas. 887=11 Cr. L.J. 417.**

——15.—**Cancelling order and discharging security.**

(1)—*Cancelling order—Power of Magistrate to cancel order — Crim. Pro. Code* (1861), ss. 282, 291.—It is competent to a Magistrate to pass an order cancelling one made by him

Security to keep the peace—continued.

——15—Cancelling order and discharging security—*concluded.*

summoning a person to show cause why he should not execute a bond to keep the peace. MUSSAMMAT ANUNDEE KOOER v. RANEE SOONEET KOOER; GOVERNMENT v. MUST. ANUNDEE KOOER, 10 W.R. Cr. 40. [*F.*, 4 Bom. L.R 936.]

(2)—*Crim. Pro. Code* (1898), *ss.* 107, 125 *and* 439—*Security to keep peace—Extent of District Magistrate's power to cancel security bond—Revision.*—*Held*, that the power conferred on a District Magistrate by s 125 of the Code of Criminal Procedure, 1898, is not limited to cases in which the District Magistrate finds that a bond is no longer necessary but extends also to those in which he (the District Magistrate) thinks that bond ought not to have been required; and for this purpose he has full discretion to consider the evidence and can set aside the order of security on the merits. AUDITTIA NAND v. CROWN, 12 P.W.R. 1908, Cr.=7 Cr. L J. 348. (34 C. 1, F. B., *F.*)

(3)—*Crim. Pro. Code, s.* 125—*Bond to keep the peace, cancellation, grounds of — District Magistrate power of, to cancel bond* —A District Magistrate has power under s. 125 of the Crim. Pro. Code to direct the cancellation of a bond to keep the peace executed pursuant to an order of a subordinate Magistrate, for any reasons which may appear sufficient to him. He is not restricted to grounds which may have arisen subsequent to the execution of the bond and which may render the continuance of the bond unnecessary; he may cancel the bond on the ground that it should never have been required. NABU SARDAR v. EMPEROR, 4 C L. J. 428=11 C W N. 25=4 Cr. L J. 399=1 M.L. T. 363=34 C 1, F.B. [*F.*, 12 P.W.R. 1908, Cr.]

(4)—*Voluntarily causing grievous hurt — Jurisdiction—Procedure—Recognizance to keep peace.*—Where an accused charged with voluntarily causing grievous hurt, was convicted by a magistrate ordered to furnish recognizance to keep the peace, *held* that, as the magistrate had jurisdiction under chap. XVIII of the Code of Criminal Procedure to pass the latter order regarding recognizance, the Sessions Judge could not, on appeal, while upholding the conviction for grievous hurt cancel the order as to recognizance the evidence on the record being sufficient for that purpose. *In re* IMAMOODEEN BHINA, 13 W.R. Cr. 73. [*F.*, 21 W.R. Cr 22.]

(5)—*Discharge of recognizances—Order as to disposition of property in dispute—Illegal order.*—*Held* that a Magistrate exceeded his jurisdiction who also passed orders as to the disposition of the property in dispute between the parties, where apprehending a breach of the peace eventually discharged the bonds he had compelled such parties to give. CHOWDHRY SHEO NUNDUN PROSHAD v. CHOWDHRY NIL KANTH PROSHAD, 13 W.R. Cr. 44.

——16—Second Requisition for Security.

(1)—*Second requisition for security, when not to be made, Crim. Pro. Code* (1882), *s.* 112 —*Second requisition can be made after expiry of sentence.*—Security for keeping the peace or for good behaviour should not be demanded under s 112, Crim. Pro. Code, from a person who is already undergoing a sentence of imprisonment for a criminal offence. If the circumstances of the case justify it, any proceeding already commenced under ss. 107, 109, 110, or 112, Crim. Pro. Code, against such a prisoner can be renewed after his sentence for a criminal offence has expired. QUEEN EMPRESS v. CHI DO BON, L.B.R. 1893—1900, 204.

(2)—*Held* that an order of District Magistrate directing the applicant, who had already furnished security, which had once been accepted, to furnish fresh sureties of men of a particular town was illegal and that in any case such a condition was bad in law. KING-EMPEROR v. PIRYA LAL, 16 P.R. 1905, Cr.=120 P.L.R. 1905=2 Cr. L.J. 278.

(3)—*Order for second recognizance before expiration of first—Crim. Pro. Code* (*Act* XXV *of* 1861), *s* 290—*Execution of second recognizance.*—*Held* that it was illegal, under s. 290 of Crim. Pro. Code, to require a second recognizance to be executed during the period the first is in force. QUEEN v. KUMODINIKANT BANERJEE CHOWDHRY, 9 B.L.R. Ap. 30=18 W.R. Cr. 44.

(4)—*Crim. Pro. Code* (1898), *ss.* 120 (2) *and* 123—*Order to give fresh security on expiry of a previous and existing security bond.*—A security to keep the peace once given is sufficient for that purpose, so long as it is in force, in respect of every act of the person bound over to keep the peace, breaking any of the conditions. A second order inquiring further security from the same person to commence on the expiry of the term of security already given, passed during the continuance of the first one is not a proper order. If at the end of the period the dispute is continued, a further security can be demanded on fresh proceedings properly taken. MAHOMED ABDUL BARI v. EMPRESS, 4 C.W. N. 121. [*R.*, U.B.R. 1904, 1st Qr., Crim. Pro. Code 13.]

(5)—*Crim. Pro. Code* (*Act* XXV *of* 1861), *s.* 298—*Illegal order.*—A was bound over to keep the peace for a year. Before the expiry of the period, he was involved in fresh disputes with other persons. The Deputy Magistrate, instead of referring the case to the Court of Session under s. 298 of the Code of Criminal Procedure, directed A to enter into another recognizance for a further period of one year. *Held*, the order was illegal. QUEEN v. KALINATH BISWAS, 6 B.L R. Ap. 116=15 W R. Cr. 18

(6)—*Second application for security—Order for recognisances not passed at decision of case—Necessity for subsequent proceedings for valid*

Security to keep the peace—continued.

——16.—Second Requisition for Security —*continued.*

order—Crim. Pro. Code (1861), ss. 280, 281.—*Held* that a Magistrate must, at the time of deciding the original case, pass an order requiring recognisances under s. 280 or security under s. 281 and that, if no such order should then be made subsequent proceedings must be taken under s. 282, and the parties summoned to show cause. *In re* GOBIND SOOBOODHEE, **15 W.R. Cr. 56.**

(7)—*Acquitted person, whether can be asked to give security.*—Where a person was acquitted on the charge of being a member of an unlawful assembly, and trespass, the magistrate would be in error in demanding security from him on the same evidence. DILLOO SINGH v. OOTIM SINGH, **22 W.R. Cr. 9.**

(8)—*Second application for security—Use of evidence formerly taken in other proceedings—Crim. Pro. Code* (1872), *s.* 491—*Evidence Act, s.* 33 —*Held* that, under s. 33, Evidence Act, 1872, it is illegal on the part of a Magistrate to use in proceedings under s. 491, Crim. Pro. Code, 1872, evidence taken in a previous criminal trial in supersession of evidence given in the presence of the accused. QUEEN v. PROSONO CHUNDER GOSSAMI, **22 W.R. Cr. 36** RAJAH RUN BAHADOOR SINGH v. RANEE TILESSUREE KOER, **22 W.R. Cr. 79.**

(9)—*Crim. Pro. Code, s.* 290—*Security to keep the peace.*—A magistrate cannot bind down parties to keep the peace beyond the term of their first recognizance, without proceeding as prescribed by s. 290, Crim. Pro. Code. KALLY CHURN SINGH v. BUNKER SINGH, **7 W.R. Cr. 26.**

(10)—*Security to keep the peace.*—Where a matter in respect of which further security is required is the same as that before the magistrate on the first occasion, the case can only be dealt with under s. 290, Crim. Pro. Code. DIEGO DE SILVA v. JEHANGEER, **7 W.R. Cr. 23.**

See CRIMINAL INTIMIDATION, 2 A. 351.

See CRIM. PRO. CODE, 1898, ss. 404, 406, 2 Weir 460.

See CRIM. PRO. CODE, 1898, s. 514, 26 P R. 1904, Cr., 7 P.R. 1906, Cr = 4 Cr. L.J. 278.

See DISCRETION, 9 A. 452 = A W.N. 1887, 111.

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 25 C. 559, 3 C.W.N. 463, 15 M.L.J. 394 = 29 M. 97 = 3 Cr. L.J. 31.

Nature and quantum of evidence before passing order for security—*See* EVIDENCE—GENERAL, 9 A. 452 = A.W.N. 1887, 111.

See JOINDER OF CHARGES—MISJOINDER OF CHARGES, 5 N.L.R. 65 = 9 Cr. L.J. 560 = 2 Ind. Cas. 240.

See JOINT TRIAL, 9 A. 452 = A.W.N. 1887, 111.

Security to keep the peace—concluded.

——16.—Second Requisition for Security —*concluded.*

See MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION, 6 M. 203 = 2 Weir 77, F.B.

See NOTICE, 30 M. 282 = 2 M.L.T. 183 = 5 Cr. L.J. 397.

Not to be required on conviction under s. 294 I.P.C.—*See* PENAL CODE, s. 294, L.B.R. 1893—1900, 50.

Sedition.

See PENAL CODE, s. 124-A.

See SANCTION TO PROSECUTE.

(1)—*Penal Code, s.* 124-*A*—*Disaffection—Sedition—Defence.*—Where the publication of articles in a newspaper evinces a clear attempt to create feelings of hostility to Government, it cannot be urged in defence that the accused had failed in his endeavour. If the attempt is made, the accused cannot shelter himself behind the fact that those to whom he may have addressed himself have either been too discreet or too temperate to act upon the obvious meaning of his teaching. To determine whether the intention of the accused was to call into being hostile feelings, the rule that a man must be taken to intend the natural and reasonable consequences of his act must be applied; so that if, on reading through the artilces, the reasonable and natural and probable effect of the articles on the minds of those to whom they are addressed appears to be that feelings of hatred, contempt or disaffection, would be excited towards the Government, then it is justifiable to say that the articles were written with that intent and that they are an attempt to create the feelings against which the law seeks to provide. The truth of a grievance constitutes no excuse for seditious or criminal publications or writings which it calls into existence. QUEEN-EMPRESS v. LUXMAN NARAYAN JOSHI, **2 Bom. L.R. 286.** [*F.*, 10 Bom. L.R. 848 = 8 Cr. L J. 281.]

(2)—*Penal Code, s.* 124-*A*—*Attempt to commit offence—Liability of publisher.*—To determine whether an attempt to commit the offence mentioned in s. 124-A is committed by the publication of certain articles, it is necessary to determine what is their true meaning, what is the *innuendo* they convey, and what is the covert meaning, if any, they have. The probable or natural effect of the words used must then be decided, that is, whether they are calculated to bring into hatred or contempt the Government, or excite against it feelings of disloyalty or enmity. If they are so, then, it should be considered whether that was not the intention with which the words were used or published. For the purpose of determining whether or not that was the intention, the principle that a man must be taken *prima facie* to intend that which is the natural result of his acts under the circumstances and in the particular case in which that act has taken place or occurs, should

Sedition—concluded.

be applied. In determining whether the intention with which any document is published is or is not seditious, the writer must be deemed to intend the consequences which would naturally follow from his words, taking into consideration the time and circumstances of the case. The existence of a grievance, real or supposed, is no excuse or answer to an attempt to arouse towards Government feelings, of hatred, contempt or disaffection. [*F.*, 10 Bom. L.R. 848=8 Cr. L J. 281.] A publisher is *prima facie* liable for that which appears in his paper, and if he seeks to get rid of that liability, he must establish that the paper was published without his knowledge, authority or consent, and without any acquiescence or connivance on his part. Mere absence, or a want of particular authority, would not constitute a sufficient answer to the charge. The general character of the paper and the way in which it has been carried on must be looked at. QUEEN-EMPRESS v. VINAYAK NARAYAN BHATYE, 2 Bom. L.R. 304. [*R.*, 10 Bom. L.R. 973=9 Cr L.J. 226=4 M.L.T. 450.]

See COMMITMENT TO SESSIONS COURT, 28 P.R. 1882, Cr.

See CRIM. PRO. CODE, 1898, s. 435, 12 Bom. L.R. 21.

Seditious Articles.

Liability of declared printer and publisher when absent during period of publication of—*See* ACT XXV OF 1867, s. 7, 38 C. 227=10 Ind. Cas. 954=12 Cr. L.J 354.

Self-exculpatory Statement.

See EVIDENCE ACT, 1872, s. 30. Rat. Un. Cr. C. 436.

Senior Judge.

Opinion of—to prevail—*See* APPEAL—GENERAL, 2 B L.R. F.B. 25=10 W.R. Cr. 45.

Sentence.

1.—GENERAL.
2.—CAPITAL SENTENCE.
3.—TRANSPORTATION.
4.—PENAL SERVITUDE.
5.—IMPRISONMENT.
 (*a*) GENERAL.
 (*b*) IN DEFAULT OF PAYMENT OF FINE, OF GIVING SECURITY, MAINTENANCE, IN LIEU OF WHIPPING, ETC.
 (*c*) IMPRISONMENT AND FINE.
6.—SOLITARY CONFINEMENT.
7.—FINE.
8.—WHIPPING.
9.—FORFEITURE.
10.—CONFIRMATION OF SENTENCE.
11.—CUMULATIVE AND SEPARATE SENTENCES.
12.—CONCURRENT SENTENCES.
13.—CONSECUTIVE SENTENCES.
14.—ENHANCEMENT OF SENTENCE.
15.—COMMUTATION OF SENTENCE.

Sentence—continued.

16.—JUVENILE OFFENDERS, SENTENCES ON.
17.—CONTEMPT OF COURT, SENTENCE FOR.
18.—SENTENCE AFTER PREVIOUS CONVICTION.
19.—POWERS OF APPELLATE COURT.
 (*a*) GENERAL.
 (*b*) ALTERATION.
 (*c*) ENHANCEMENT.
 (*d*) MITIGATION.
 (*e*) REVERSAL.

See ACT VI OF 1864.

See ACT IV OF 1909.

See ALTERATION OF SENTENCE.

See ALTERNATIVE SENTENCE.

See APPEAL.

See CRIM. PRO. CODE, 1898, ss. 31—35, 123, 390—402, 423, 426.

See JUVENILE OFFENDERS
See PENAL CODE, ss. 53 to 75.
See PREVIOUS CONVICTION.
See PUNISHMENT.
See REVISION—SENTENCES.
See SOLITARY CONFINEMENT.
See WHIPPING.

— 1—General.

(1)—*Finding of guilty—Conviction.*—Where a finding of the Magistrate is one of guilty, he is bound to pass some sentence, though only a nominal one. HIGH COURT PROCEEDINGS, 12TH AUG. 1869, No. 1513, 2 Weir 305 =4 M H.C. Ap 66.

(2)—*Conviction—Necessity for sentence.*—If the accused is convicted, some sentence must be passed. QUEEN-EMPRESS v. MI BAUK, L.B. R. 1872—1892, 409.

(3)—*Necessity of sentence after conviction.*—Every conviction should be followed by a sentence however light it may be. EMPRESS v. KALUA, A.W N. 1884, 219.

(4)—*Sentence, nature of.*—A sentence must be plain and complete in itself, so that the officer who has to act under the warrant may know exactly for what period the person sentenced may be legally detained QUEEN-EMPRESS v. NARAIN, 15 A. 208=A.W.N. 1893, 107. [*R.*, Rat. Un. Cr. C. 708]

(5)—*Sentences, form of.*—As a general proposition it is clearly the duty of a Magistrate, when pronouncing a sentence, to define precisely the nature of the sentence intended. Generally, the sentence, like a decree of a Civil Court, ought to be self-contained so that the functionary, who has to execute it, should have nothing to do but to obey the direction given without making an inquiry on his own account. QUEEN-EMPRESS v. RAMA, 24 M. 13=1 Weir 882.

(6)—*Crim. Pro. Code* (1872), *ss.* 314, 452, 454, 455—*Trial for more offences than one—Conviction—Penal Code, s.* 71.—Where, in the course

Sentence - continued.

—— 1.—General—*continued.*

of one and the same transaction, an accused person appears to have perpetrated several acts, directed to one end and object, which together amount to a more serious offence than each of them taken individually by itself would constitute, although, for purposes of trial, it may be convenient to vary the form of charge, and to designate not only the principal but also the subsidiary crimes alleged to have been committed, yet in the interest of simplicity and convenience, it is best to concentrate the conviction and sentence on the gravest offence proved. Such a course was adopted in a case where the accused was charged under ss. 380, 457, I.P.C., for one and the same offence, and was sentenced to three years' rigorous imprisonment on the charge under s. 457, I.P.C., and was acquitted of the offence under s. 380. EMPRESS OF INDIA v. AJUDHIA, **2 A. 644.** [*F.*, L.B.R. 1872—1892, 390, 8 C.P.L.R. 7, Cr.; *R.*, 10 A. 58, 10 A. 146.]

(7)—*Penal Code, s 302—Discretion in awarding punishment.*—The law does not give any discretion to a Court convicting an accused under s. 302 of the Code to award or not the punishment provided by that section. The only discretion which the law allows to a Court is to determine which of the two punishments prescribed (death or transportation for life) should be awarded. DEWAN SINGH v. QUEEN-EMPRESS, **22 C 805.**

(8)—*Theft—Sentence—Discretion in awarding sentence.*—The discretion conferred by the Penal Code in sentencing a person for theft extends from zero to transportation for life, in such cases as may be aggravated by previous convictions. The discretion so conferred is not an arbitrary or personal discretion, but one which has to be exercised upon judicial grounds and after consideration of the principles intended by the Legislature to be applied. The maximum penalty should be inflicted only for the maximum offence, and in every gradation from the maximum downwards, that principle ought to be kept in sight. EMPRESS v. RAJU, **A.W.N. 1893, 184.**

(9)—*Discretion in awarding sentence.*—If, in a case, it is difficult to determine whether the offence proved to have been committed by the accused is culpable homicide or murder, the proper course is to convict the accused of the lesser offence. NGA PO AUNG v. QUEEN-EMPRESS, **L B.R. 1872–1892, 459.**

(10)—*Technical offence—Nominal sentence.*—In a case of technical offence, a nominal sentence is always quite sufficient to meet the ends of justice. SANT SINGH v. CROWN, **23 P.W. R. 1910, Cr. = 16 P.R. 1910, Cr. = 6 Ind. Cas. 952 = 11 Cr. L.J. 421 = 191 P.L R. 1910.**

(11)—*Petty offences—Punishment—Fine.*—Petty offences are more appropriately punished by fine than by imprisonment, and the sentences of fine, when awarded, should be proportioned

Sentence—continued.

——1.—General - *continued.*

to the means of the offender. HIGH COURT JUDGMENT, 15TH DECEMBER 1879, **1 Weir 894.**

(12)—*Petty offence—Punishment—Sentence—Effect of previous convictions—Sentence for a fresh offence.*—Where the aggregate value of property stolen by the accused was only Rs. 3, but, on account of his previous convictions, he was sentenced to seven years' transportation: *Held*, that the offence was of a very petty kind, and the sentence of seven years' transportation was altogether disproportionate, even after taking the accused's previous convictions into account. NGA PO HNYIN v. EMPEROR, **12 Cr. L.J. 243 = 10 Ind. Cas. 772 = 4 Bur. L.T. 68.**

(13)—*Sentence for deliberate falsehood and for simple mis-statement.*—It is not proper to treat a deliberate mis-statement made in a Court of Justice, whether it tends to endanger the life and property of others or to hamper the progress of justice, as an offence to be lightly passed over; though a simple mis-statement giving no room for such inferences may be punished with a comparatively light sentence, especially where the accused pleads guilty and invokes the mercy of the Court. QUEEN v. GURJOON AHEER, **7 W.R. Cr. 37.** [*R.*, 16 W. R. Cr. 28.]

(14)—*Vicarious punishment.—Per Ahmeer Ali, J.*—Generally speaking, vicarious punishment is not recognised by civilised systems of Criminal law. But the Indian Legislature, for probably sufficient reasons, has in Ch. VIII., Penal Code, departed, in some instances, from this principle and made owners of property responsible for the negligence of their agents and managers, but there is no indication in the law that they are liable for the criminal acts of their servants, except on the ground of abetment. KAZI ZEAMUDDIN AHMED v. QUEEN-EMPRESS, **28 C. 504 = 5 C.W.N. 771.**

(15)—*Exemplary sentence when proper.*—When an offence, in which clear proof is generally most difficult to obtain, is satisfactorily established, an exemplary and deterrent sentence is demanded for the protection of the people. NGA PO MYA v. QUEEN-EMPRESS, **U.B.R. 1897–1901, Vol. I, 320.**

(16)—*Kidnapping — Maximum sentence.*—*Held* that only in cases of the most aggravated nature should the maximum sentence prescribed for the offence of kidnapping be inflicted. QUEEN v. MUSSAMUT BHOODEEA, **8 W.R. Cr. 3.**

(17)—*Practice - Sentence—Deterrent sentence.*—In cases where it is desired by the authorities that an example should be made or that a specially deterrent sentence should be imposed, it is their duty to bring that desire to the notice of the trying Court and to inform the trying Court of the reasons which they put forward in support of the suggestion. EMPEROR v. RAGHA JAGA, **16 Bom L.R. 200 = 15 Cr. L. J. 362 = 23 Ind. Cas. 730 = 2 Bom. Cr. C. 190.**

Sentence—continued.

——1.—General—*continued.*

(18)—*Deterrent sentence.*—In cases under s. 400, Penal Code, against a gang consisting of desperate men prepared to proceed to all lengths in carrying out their crimes, the heaviest possible sentence, should be passed. GHULAM MUSTAFA v CROWN, **68 P.L.R. 1911 = 10 Ind. Cas. 833 = 45 P.W.R. 1911, Cr. = 12 Cr. L.J. 260.**

(19)—*Rioting with deadly weapons—Severe punishment.*—A severer punishment should be properly inflicted on that party, in cases of rioting armed with deadly weapons, which is found guilty of using such weapons and causing grievous hurt. QUEEN v. MOORUT MAHTON, **8 W.R. Cr. 3.**

(20)—*Revision—Interference by Chief Court—Sessions Judge passing heavier sentence than the verdict of the jury.*—The Chief Court will not interfere in revision, in a case where the Sessions Judge passes on the accused a heavier sentence than he would have passed, had he agreed with the verdict of the jury. EMPEROR v. CHIT MAUNG, **8 Ind. Cas. 455 = 11 Cr. L.J. 687 = 3 Bur. L.T. 75.**

(21)—*Penal Code, ss. 62, 406 Criminal breach of trust—Sentence.*—The special sentence provided for by s. 62 of the Code is a sentence, which should only be inflicted in rare cases—those cases in which crimes of an atrocious nature are exposed or in which offences have been committed under aggravated circumstances. EMPEROR v. AMRIT LAL, **29 A. 25 = 3 A.L.J. 772 = A.W N. 1906, 259 = 4 Cr. L.J. 371.** (12 W.R. Cr. 17, *F.*)

(22)—*Prevalence of a particular crime.*—The prevalence of a particular crime may be a ground for inflicting a severe punishment after conviction, but is not a ground for a conviction. EBRAHEEM v. CROWN, **33 P.R. 1868, Cr.**

(23)—*Taking illegal gratification—Order to refund money.*—*Held* that it is not a sufficient sentence, on a conviction for taking illegal gratification, to simply order the refund of the money taken. *In re* MUTTY LALL CHUTTOPADHYA, **16 W.R. Cr. 74.** [*D.*, 24 W.R. Cr. 60.]

(24)—*Rioting and unlawful assembly—Affray.*—Where there was no evidence in a case to establish anything like an unlawful assembly, *held* that the conviction should be reduced from a conviction for rioting and being members of an unlawful assembly to a conviction for affray, although grievous hurt ending in death was caused to one of the persons. The insufficiency of the legal punishment in cases of affray pointed out. QUEEN v. PHOOLLU MISSER, **12 W.R Cr. 72.** [*R*, 2 Bom. L.R. 1129.]

(25)—*Sentence on alternative finding—Penal Code, s. 72.*—*Held* that the sentence on alternative findings, which are quite legal, should observe the law laid down in s. 72, Penal Code. QUEEN v. TARINEE MYTEE, **7 W.R. Cr. 13.**

Sentence—continued.

——1.—General—*continued.*

(26)—*Crim. Pro. Code (1882), ss. 367, 369—Conviction and sentence—Subsequent order changing date of sentence—Validity.*—The prisoner was convicted by a Magistrate and was sentenced to three months' imprisonment, and thereafter, in appeal, the conviction and sentence were set aside and a re-trial directed which resulted in the accused being committed to the Sessions. On 27th August, 1895, the Judge convicted him under s. 468, I.P.C. and sentenced him to three years' imprisonment. On the 29th, he directed that the sentence passed by him should run from 25th June, 1895, the date of the original conviction by the Magistrate. *Held* that, as under s. 367, Crim. Pro. Code, the sentence was part of the judgment, and the express words of s. 369 forbade the Sessions Judge to alter it, the altering order dated the 29th August was a mere nullity. QUEEN-EMPRESS v. SAHADAT MIRAN, **Rat. Un. Cr. C. 804 = Cr. Rg. 62 of 1895.**

(27)—*Retrospective sentence.*—A Sessions Judge has no power to direct that a sentence should run from a period prior to the conviction. QUEEN v. BUL SINGH, **4 N W.P. 8.**

(28)—*Prerogative—Refraining from confirming a sentence of death—Criminal's youth—Clemency.*—To refrain from confirming a sentence of death on account of the criminal's youth is an act of pure mercy. The exercise of mercy is the prerogative of the Crown to be exercised in this country by the very highest authorities, and, if mercy is exercised towards a criminal, he and the public should understand that the mitigation of the sentence passed upon him by the Court of Justice is due to the exercise of the power of clemency, which is an attribute of the King-Emperor alone. NGA PYAN v. CROWN, **1 L B.R. 359.** (L.B.R. 1893—1900, 112, *Diss.*) [*Diss*, 12 Cr. L.J. 448 = 11 Ind. Cas. 792 = U.B.R. 1911, Vol. I, 87.]

(29)—*Grounds of leniency in passing.*—The assistance given by one of the accused to further the ends of justice must be taken into due consideration by a Court trying him, because those ends require the Court to look further than the personal motives of an informer, however selfish and despicable those motives may be. NGA SHWE KYAW v. QUEEN-EMPRESS, **L.B. R. 1893—1900, 192.**

(30)—*Ground for passing lighter sentence—Difference between opinions of Judge and jury.*—When a judge differs from the jury, he should pass such a sentence as he would have passed had he agreed with the jury. QUEEN v SHEIKH GULAM MUSTUFFA, **3 W.R. Cr. 29.**

(31)—*Principals and abettors—Abetment of same offence committed as principal.*—It is illegal to punish the same person both as principal and as abettor in respect of the same offence. QUEEN v. JEETOO CHOWDHRY, **4 W.R. Cr. 23**; QUEEN v. RAMANARAIN JOSH, **4 W.R. Cr. 37.**

Sentence—continued.

——1.—General—*continued*.

(32)—*Abetment—Offence abetted committed—Sentence.*—Under s. 109 of the Penal Code the punishment of the abetment of an offence when the act abetted is committed in consequence of the abetment, is the same as for the offence. In cases where there are no extenuating circumstances the sentence for abetment in such cases may be the same as for the principal offence. CROWN v. MUSSAMMAT MANO, **2 P. R. 1866, Cr.**

(33)—*Registration Act*, 1866, s. 94—*Abetment of offence under—Held* that an abettor might be punished more severely than his principal under s. 94, Act XX of 1866. QUEEN v. GOPAL PROSAUD SEIN, **8 W. R. Cr. 16.**

(34)—*Final sentence, nature of.*—A sentence can only be said to be final when it cannot be set aside or interfered with by any Court or authority, whether on appeal or otherwise. DULAR DAT RAI v. NIJABAT HOSEIN, **12 C. 536.**

(35)—*Alteration of sentence.*—A Magistrate is at liberty to alter his sentence at any time before the despatch of the Calendar to the appellate authority. HIGH COURT PROCEEDINGS 29TH MARCH 1875, **5 M.H.C. App. 19.**

(36)—*Suspension of sentence.*—A Sessions Judge has no authority to suspend his own sentence. HIGH COURT PROCEEDINGS, 17TH JANUARY 1878, **4 M.H.C. App. 1.**

(37)—*Suspension of sentence.*—A Sessions Judge has no authority to suspend a sentence in the absence of an appeal. HIGH COURT PROCEEDINGS, 25TH OCTOBER, 1869, **5 M.H.C. App. 1.**

(38)—*Prisoner admitted to bail, pending appeal.*—Where after sentencing the prisoner, the Magistrate admitted him to bail, so that he may have the means of appealing, such admission to bail did not make the sentence one to commence at a future date, and did not make it, therefore, illegal. *In the matter of* OKHOY KUMAR, **7 C.L.R. 393.** (12 W.R. Cr. 47, *D.*)

(39)—*Aggravating circumstances disclosed—Duty of subordinate Court.*—Magistrates should note that it is an evasion of law to treat an aggravated offence as an ordinary one, and thus introduce a different jurisdiction, or a lower scale of punishment. When the evidence discloses a circumstance of aggravation, which makes the offence one cognizable by a higher Court, it becomes the duty of the trying Magistrate to use the proper procedure for sending the case to the higher Court. QUEEN-EMPRESS v. GUNDYA, **13 B. 502 = 13 Ind. Jur. 469.** [*F.*, 19 B. 340, 7 Cr. L. J. 319 = 4 N. L. R. 18.]

(40)—*Character of accused—Measure of punishment.*—The character of an accused person may fitly be taken into consideration in fixing the measure of punishment, but there must be discretion in the matter. QUEEN-EMPRESS v. NGA SEIK, **U.B.R. 1897—1901. Vol. I, 318.**

(41)—*Good character of the accused—Mitigation of punishment*—The good character of an accused person, and the insignificance of the gain which would result from the offence committed by him, are circumstances which, in criminal cases, have occasionally great weight, but neither of them can dispose of clear and undisputed facts. A man who has to his credit an unblemished character may claim that it be considered on the question of punishment. GOVERNMENT OF BENGAL v. UMESH CHUNDER MITTER, **16 C. 310.** [*R*, 14 P.R. 1914, Cr. = 13 P.W.R 1914, Cr. = 66 P.L. R. 1914 = 15 Cr. L.J. 765 = 23 Ind. Cas. 473.]

(42)—*Sentence to be lenient where illicit purchase is small and to be severe where purchase is great.*—In order to enforce a due observance of the Opium Law, it is necessary that smugglers on a large scale should be severely dealt with, and, while insisting on leniency in the case of opium-eaters or smokers who are unable to resist the temptation of purchasing illicitly the small quantities which they require for consumption, persons, who deal in opium or import it from mercenary motives, must be punished in such a way as to render unprofitable the commission of these offences. QUEEN-EMPRESS v. SHWE KIN, **L.B.R. 1872—1892, 569.**

(43)—*Sentence held severe.*—A sentence of a month's rigorous imprisonment each, passed upon a man and three girls convicted of using indecent language in a fish market, was held to be disproportionately severe. QUEEN-EMPRESS v. NYO KE, **L.B.R. 1872—1892, 332.**

(44)—*Enhancement of—Crim. Pro. Code*, 1872, s. 36 "*Modify.*"— S. 36 of Act X of 1872 does not authorise a Sessions Judge to enhance a sentence, as the term "modify" in that section means "reduce." HARRIA v. CROWN, **15 P R. 1874, Cr.**

(45)—*Case where sentence based on confession was set aside.*—In this case the conviction and sentence based on a confession were set aside as the confession was elicited under suspicious conditions. The uncorroborated testimony of an accomplice is worth very little. NGA PO SA v. QUEEN-EMPRESS, **U.B.R. 1892—1896, Vol. I, 249.**

(46)—*An attempt, sentence in cases of.*—In the case of an attempt, the punishment awardable is half the punishment awardable for the offence attempted to be committed, not half the punishment which the Magistrate passing it is ordinarily competent to inflict. CROWN v. JOWALA, **13 P.R. 1871, Cr.**

(47)—*Penal Code, s. 71—Scope of section—Crim. Pro. Code* (1882), *s. 35—Question of conviction and measure of punishment distinguished.*—S. 71. I.P.C., governs the whole

Sentence—continued.

——1.—General—*continued.*

Code and regulates the limit of punishment in a case in which the greater offence is made up of two or more minor offences. The section, however, is not a rule of adjective law procedure, but a rule of substantive law regulating the measure of punishment and it cannot, therefore, affect the question of conviction, which relates to the province of procedure. The measure of punishment may be affected by s. 71, I.P.C., or by s. 35, Crim. Pro. Code, in the former case by a rule of substantive law, in the latter by a rule of adjective law. Where certain acts constitute more than one offence, whether such offences do or do not fall under the purview of s. 71, I.P.C. and the accused is charged with more than one offence, and the evidence establishes those offences, the Court is bound to convict him of those offences, and a separate sentence must be passed in respect of each such conviction, though, in awarding punishment, the provisions of s. 71, I.P.C., and of s. 35, Crim. Pro. Code, would have to be duly kept in view. QUEEN-EMPRESS v. WAZIR JAN, **10 A. 58 = A.W.N. 1887, 274.** [*R.*, Rat. Un. Cr. C. 369, Rat. Un. Cr. C. 597.]

(48)—*Practice— Sentence— Adjournment of passing of sentence—Court—Inherent powers—Furnishing security—Illegality.*—The accused was found guilty of the offence of theft: and four previous convictions were proved against him. The Sessions Judge, instead of passing sentence upon him, directed that the passing of sentence should be postponed on the accused's furnishing security for good behaviour. If the accused failed to reform himself, the sentence to be five years' rigorous imprisonment; but if he behaved well during the six months, then the passing of sentence would be postponed for a year and a half on same terms. At the end of the term, the accused was to be bound over for three more years on the same condition; and if he continued to be of good behaviour for full five years, the passing of sentence was to be postponed *sine die.* The Government of Bombay appealed against the order:—*Held*, that the order was illegal; for (1) granting that it was an adjournment, no Court had inherent power to adjourn the passing of sentence for an indefinite period: and (2) that the order could not be treated as one of adjournment because the Sessions Judge had, as a matter of fact, directed security to be given, which order was legally and practically one of sentence. EMPEROR v. KESHAVLAL GIRDHAR, **14 Bom. L. R. 144 = 1 Bom. C. C. 85 = 14 Ind. Cas. 672 = 13 Cr. L.J. 288.**

(48-*a*)—*When whipping awardable in addition to imprisonment.*—In order to warrant a sentence of whipping in addition to imprisonment, the previous conviction should have been for the same specific offence as the subsequent conviction. HIGH COURT PROCEEDINGS, 25TH OCTOBER, 1869, **5 M.H.C. App. 1.**

(49)—*Habitual offender— Summary trial—Inadequate punishment.*—Case of inadequate punishment awarded to an old offender under Ch. XXII, Penal Code, owing to his being tried summarily. QUEEN-EMPRESS v. KALU, **L.B.R. 1872—1892, 386.**

(50)—*Crim. Pro. Code, s. 530—Conviction for minor offence triable by Magistrate when facts disclose graver offence triable by Court of Session.*—The accused was tried by a first class Magistrate who convicted him alternatively under s. 363 or s. 498 of the I.P.C., and sentenced him to rigorous imprisonment for one year. The District Magistrate referred the case to the High Court on the grounds that the offence was one under s. 366, exclusively triable by the Court of Sessions and that the trial by the Magistrate, being beyond his jurisdiction, was void. *Held* that the trial could not be regarded as illegal, and that the accused might, no doubt, have been convicted of a graver offence, but the sentence was not so entirely inadequate as to call for a fresh trial. KING-EMPEROR v. RAZYA BHAGWANTA, **4 Bom. L.R. 267.**

(51)—*How to execute sentences on a simultaneous conviction for offence, and order for security for good behaviour.*—*Held* that, where a person is convicted for an offence and is also required to furnish security for good behaviour, the procedure is first to carry out the sentence for the substantive crime and then to bring up the person for the purpose of being bound. QUEEN v. SHONA DAGEE, **24 W.R. Cr. 13.**

(52)—*Illegality of sentence.*—An order directing that a sentence should take effect from a date before it was passed was held to be illegal. QUEEN-EMPRESS v. NGA PO MYA, **L.B.R. 1893—1900, 42.**

(53)—*Crim. Pro. Code* (1898), *ss.* 123, 397—*Accused undergoing sentence of imprisonment for default of furnishing security—Conviction for substantive offence— Beginning of latter sentence.*—A sentence for a substantive offence must commence at once and cannot be postponed to take effect at the expiration of a sentence of imprisonment which the convicted person was, at the date of the conviction, undergoing in default of giving security for good behaviour. QUEEN-EMPRESS v. TULSHYA BAHIRU, **Rat. Un. Cr. C. 970 = Cr. Rg. 26 of 1898.** [*F.*, 34 B. 326 = 12 Bom. L.R. 129 = 11 Cr.L.J. 271 = 5 Ind.Cas. 861; *R.*, 2 L.B.R. 72.]

(54)—*Crim. Pro. Code* (1882), *s.* 397—*Person sentenced in foreign territory—Sentence by a Magistrate in British India.*—It is competent to a Magistrate in British India to pass a sentence which should take effect after the expiration of the sentence in foreign territory. QUEEN-EMPRESS v. VENKATARAM JETTI, **20 M. 444 = 2 Weir 452.**

(55)—*Penal Code, s.* 75—*Crim. Pro. Code (Act* XXV *of* 1861), *ss.* 22, 46.—A subordinate Magistrate cannot inflict a punishment beyond what he can inflict under s. 22 of the Crim. Pro. Code, even in cases falling within s. 75 of

Sentence—continued.

——1.—General—*continued.*

the Penal Code, unless his jurisdiction is enlarged by s. 46 of the Crim. Pro. Code. REG. v. VITHYA, **Rat. Un. Cr. C. 49 = Cr. Rg. 2-3-1871.**

(56)—*Conviction—Penal Code, s. 75—Powers of District Magistrate.*—A Magistrate of the District is not competent, under s. 75, I.P.C., to pass a se tence of imprisonment exceeding seven years. In cases where a more severe punishment is considered to be necessary, the Magistrate should commit the accused to the Court of Sessions. BAHADUR KHAN v. CROWN, **31 P.R. 1872, Cr.**

(57)—*Punishment for escape from custody—Penal Code, s. 224—Additional punishment.*—Where one of the offences of which an accused person was convicted was escaping from lawful custody (Penal Code, s. 224), *held* that the punishment therefor must be "in addition" to any other punishment inflicted for the substantive offence. QUEEN v. DHOONDA BHOOYA, **8 W.R. Cr. 85.**

(58)—*Rape—Measure of sentence.* — *Held* that, in a case of rape, not the social position of the party aggrieved, but the greater or less heinousness of the crime, the conduct of the criminal, and the defenceless and unprotected state of the injured female should form the standard of punishment. QUEEN v. JHANTAH NOSHYO, **6 W.R. Cr. 59.**

(59)—*Criminal trespass — Sentence where civil remedy is available—Illegal taking possession of a house claiming rights of inheritance.*—Where the accused, claiming rights of inheritance, took possession of a house in an illegal manner and against the wishes of the complainant, presumably to cause him annoyance, *held* that, in the absence of a clear finding, the accused was not guilty of criminal trespass. ASA MAL v. EMPRESS, **1 P.R. 1884, Cr.** [*F.*, 13 P.R. 1905, Cr.; *D.*, 12 P.R. 1906, F.B.]

(60)—*Lurking house-trespass—Intention not specified—Sentence.*—Where, in a charge of lurking house-trespass by night, the intention of the accused was specified either as that of committing theft or of adultery, *held*, that the sentence should not be greater than would be appropriate for the lesser offence. SARWAN v. EMPRESS, **41 P.R. 1882, Cr.** (2 P.R. 1877, *R.*) [*R.*, 31 P.R. 1901, Cr.]

(61)—*Punishment under s 369, Penal Code, and also for theft, validity of.*—A prisoner tried, convicted and punished under s. 369 (*b*) of abducting a child with intent dishonestly to take moveable property, cannot also be punished for the theft of a part of the moveable property, which he intended dishonestly to take through the means of abduction. *In re* NOUJAN, **7 M.H C. 375.** [*R.*, 10 A. 58; 15 B. 491, 38 C. 453 = 15 C.W.N. 463 = 12 Cr. L. J. 106 = 9 Ind. Cas. 618; *D.*, 12 M 36 = 2 Weir. 32.]

Sentence—continued.

——1.—General—*continued.*

(62)—*Sentence—Hurt caused to thief.*—The accused were convicted of having trespassed into the *haweli* of the complainant and beaten him causing several injuries and then having carried him to a house of one of the accused where they charged the complainant with having entered his house to commit theft. The accused were sentenced to rigorous imprisonment for 8 months including one month's solitary confinement. The Sessions Judge in appeal believed the version of the accused and disbelieved all the witnesses for the prosecution but maintained the sentence. *Held*, that, under the circumstances, the sentence originally imposed should not have been maintained; for the accused met with great provocation and could hardly be blamed for giving the would-be thief a sound beating. GANDA SINGH v. CROWN, **17 P.L.R. 1915 = 16 Cr. L.J. 175 = 27 Ind. Cas. 559.**

(63)—*In stabbing cases.*—Adequate sentences should be systematically passed in stabbing cases. They are far more likely to have a deterrent effect, on persons inclined to resort too readily to the use of dangerous weapons than spasmodic severity in cases in which death results from the criminal use of such weapons. QUEEN-EMPRESS v. NGA PO KET, **L.B.R. 1893—1900, 186.**

(64)—*Gambling in public place—Sentence—Fine— Rigorous imprisonment excessive.*—An appropriate fine with an appropriate term of imprisonment in default of payment of fine would be proper. A sentence of rigorous imprisonment or of imprisonment, without the option of a fine, is excessive. CROWN v. THA DUN, **1 L.B.R. 267.**

(65)—*Crim. Pro. Code, s. 439—Sentence, enhancement of—Defamation—Unjustifiable and calculated to incite resentment between communities—Nature of punishment — Lapse of time—Imprisonment— Not necessary.*— Where the accused, in reply to a private notice to show cause why he should not be excommunicated from the Khoja Panjibhai community, published, in two newspapers conducted by him, a violent attack declaring that excommunication was merely a prelude to the murder and assassination of seceders to the Khoja Pirai community, and where the publication was found by the Courts not only to have been unjustifiable, but also to have been calculated greatly to enhance the fanatical resentment of the Khoja Panjibhai community, against seceders to the Khoja Pirai community, *held* that, on conviction, a sentence of a fine of Rs. 400 was inadequate, and that, in view of the lapse of over three years after the offending publication, a substantive sentence of imprisonment was unnecessary, but that an enhanced fine of Rs. 1,000 would be sufficient. HOOSEIN ALLAHRAKHIO v. JAFFER FADU, **4 S.L.R. 86 = 8 Ind. Cas. 218 = 11 Cr. L.J. 593.**

***Sentence*—continued.**

——1.—General—*continued.*

(66)—*Charge—Forgery for the purpose of cheating—Sentence.*—In this case the Sudder Court considered that though the conviction of appellant (prisoner) for the forgery was correct yet the punishment was quite out of proportion to the offence, and so modified the sentence. ACHAR PUTWAREE v. CROWN, **1 P.R. 1866, Cr.**

(67)—Liability of accused to be tried after acquittal for using false evidence in his defence. USHGUR ALI v. CROWN, **35 P.R. 1870, Cr.**

(68)—Measure of punishment—*See* NGA PO KYAN v. QUEEN-EMPRESS, **U.B.R. 1897—1901, Vol. I, 162.**

Punishment of some, whether an excuse for refusal to try others—*See* ACCUSED PERSON, 4 C.W.N. 560.

See ACCUSED PERSON, U.B.R. 1897—1901, Vol. I, 318.

See ACT XIII OF 1859, s. 2, Rat. Un. Cr. C. 380=Cr. Rg. 31 of 1888.

See ACT III OF 1867, ss. 4 and 15, A.W.N. 1881, 129.

See ACT I OF 1871, s. 22, 2 C.L.R. 507, L.B.R. 1872—1892, 429.

See ACT V OF 1876, s. 7, A.W.N. 1896, 43.

See ACT I OF 1878, s. 9, L.B.R. 1872—1892, 368, U.B.R. 1897—1901, Vol. I, 241, U.B.R. 1892—1896, Vol. I, 135.

See ACT I OF 1878, ss. 9, 10, U.B.R. 1892—1896, Vol. I, 139.

See ACT XI OF 1878, s. 19, 1 Weir 654.

See ACT IV OF 1879, ss. 101, 29, A.W.N. 1890, 171.

See ACT XII OF 1896, ss. 5, 30, U.B.R. 1892—1896, Vol. I, 93.

Case of doubt—Suspicious circumstances—Unappealable sentence—Legality—*See* ACT XII OF 1896, s. 51, 43 P.W.R. 1913, Cr.

See ACT VIII OF 1897, s. 8, L.B R. 1893—1900, 648.

See ACT VIII OF 1897, s. 16, 1 L.B.R. 63.

Simultaneous sentences of fine and imprisonment—*See* BOM. ACT III OF 1867, ss. 11, 13, 14, 7 B.H.C. Cr. 87.

See BOM. ACT VI OF 1873, ss. 48, 74, Rat. Un. Cr. C. 719=Cr. Rg. 45 of 1894.

See BOM. ACT VI OF 1873, s. 74, 2 Bom. L. R. 611.

See BOM. ACT IV OF 1887, s. 12, Rat. Un. Cr. C. 686=Cr. Rg. 5 of 1894.

Prospective punishment for continuing offence—*See* BOM. ACT III OF 1888, ss. 471, 472, 22 B. 766.

For first offence—*See* BUR. ACT I OF 1867, s. 10, 8 Ind. Cas. 949=11 Cr. L.J. 737.

See BUR. ACT I OF 1899, s. 10, U.B.R. 1892—1896, Vol. I, 119.

***Sentence*—continued.**

——1.—General—*continued.*

See BUR. ACT I OF 1899, s. 12, U.B.R. 1897—1901, Vol. I, 221.

See BUR. ACT I OF 1899, s. 12 (*a*) & (*d*). U B.R. 1897—1901, Vol. I, 224.

Nominal sentence when to be passed—*See* MAD. ACT V OF 1882, s. 21 (*f*), 9 M L T. 216 =9 Ind. Cas. 567=12 Cr. L J. 99.

Order directing repayment to complainant of Court fee, if a part of sentence inflicted on accused—*See* APPELLATE COURT, 31 M. 547 =5 M.L T. 223=9 Cr. L.J. 83.

See APPELLATE COURT, 7 N.L.R. 109=11 Ind. Cas. 788=12 Cr. L.J. 444, 16 P.R. 1895, Cr.

See ATTEMPT, 21 W.R. 35, Cr.

Accused sentenced by Magistrate under two offences, one of which was exclusively triable by Court of Sessions—Sentence under each offence not specified—Objection as to irregularity and want of jurisdiction verbally taken for first time before High Court—Apportionment of aggregate sentence—Setting aside of conviction and sentence in respect of offence triable by Sessions Court—*See* CONFESSION—GENERAL, 15 Cr. L.J. 502=24 Ind. Cas. 590

See CONVICTION, 4 B.H.C. Cr. 37, 2 Weir 454=1 M.H.C. 83, 6 M.H.C. App. 7.

See CRIMINAL BREACH OF TRUST, A.W.N. 1906, 259=3 A.L.J. 772=4 Cr. L.J. 371=29 A. 25.

Powers of Magistrate of first class conferred on a Magistrate of second class during trial—*See* CRIM. PRO. CODE, 1898, ss. 39, 235, 7 A. 414, F.B.=A.W.N. 1885, 105.

See CRIM. PRO. CODE, 1898, ss. 106, 120, 123, 4 L B.R. 205=7 Cr. L.J. 472.

See CRIM. PRO. CODE, 1898, s. 222, 2 Weir 267.

See CRIM. PRO. CODE, 1898, s. 235, Rat. Un. Cr. C 159=Cr. Rg. 10-3-1881, 32 P.R. 1885, Cr., 8 C.L.R. 390.

See CRIM. PRO. CODE, 1898, s. 236, 60 P. L R. 1903.

Whether separate sentences should be passed for offences committed in the same transaction.—*See* CRIM. PRO. CODE, 1898, s. 239, 15 C. W.N. 463=9 Ind. Cas. 618=12 Cr. L.J. 106 =38 C. 453.

See CRIM PRO. CODE, 1898, s. 258, Colm. Dig. Cr. 13 of 1873.

Penalty fixed—Lesser penalty—*See* CRIM. PRO. CODE, 1898, s. 260, 11 A.L J. 196=18 Ind. Cas. 665=14 Cr. L.J. 105=35 A. 173.

See CRIM. PRO. CODE, 1898, ss. 260, 355, 30 and 34, Colm. Dig. Cr. 30 of 1876.

See CRIM. PRO. CODE, 1898, ss. 263, 414, 415, 416, 2 C.L.R. 511.

See CRIM. PRO. CODE, 1898, s. 349, 16 Bom. L.R. 598=2 Bom. Cr. C. 229=38 B. 719, 163 P.L.R. 1903, 1 L.B.R. 124.

Sentence—continued.

——1:—General—*continued.*

Rioting over disputed possession of *chur*—Sentence—Finding of Settlement Officer pronounced after issue of Rule considered by High Court in revising sentence—*See* CRIM. PRO. CODE, 1898, s. 439, 18 C.W.N. 646=15 Cr. L. J. 473=24 Ind. Cas. 561.

Delivery of sentence before writing—Judgment—Effect—*See* CRIM. PRO CODE, 1898, ss. 366, 367, 368. 5 S.L.R. 131=12 Ind. Cas. 986=12 Cr. L.J. 610,

See CRIM. PRO. CODE, 1898, s. 382, 2 Weir 441.

See CRIM. PRO. CODE, 1898, ss. 383, 439, 562, 9 P.W.R. 1907, Cr.=5 Cr. L.J. 217.

See CRIM. PRO. CODE, 1898, s. 386, 2 Weir 444.

See CRIM. PRO. CODE, 1898, ss. 421, 422, Rat. Un. Cr. C. 384.

See CRIM. PRO. CODE, 1898, ss. 421, 423, Rat. Un. Cr. C. 304=Cr. Rg. 53 of 1886.

See CRIM. PRO. CODE, 1898, ss. 435, 439, 4 M.H.C. App. 70.

See CRIM. PRO. CODE, 1898, s. 438, 2 L.B. R. 43.

Inadequate — by subordinate Magistrate — Reference by District Magistrate—*See* CRIM. PRO. CODE, 1898, s. 438, 6 Bom. L.R. 1099.

See CRIM. PRO. CODE, 1898, s. 488, 15 Cr. L.J. 434=24 Ind. Cas. 170=7 Bur. L.T. 225.

Inadequate — Proper course – *See* CRIM. PRO CODE, 1898, s. 494, 1911 2 M.W.N. 74=12 Cr.L.J. 440.

Lenient sentence when accused's guilt doubtful—*See* DOUBT, L.B.R. 1893—1900, 198.

See ESCAPE FROM LAWFUL CUSTODY, A.W.N. 1882, 164.

See EVIDENCE ACT, 1872, s. 27, 2 S.L.R. 27, Cr.=10 Cr. L.J. 239.

See FALSE EVIDENCE, 1 Weir 160=6 M. H.C. App. 27.

See INSANE OFFENDER, L.B R. 1893—1900, 249.

See INSANITY, 109 P.R. 1866, Cr.

See JOINDER OF CHARGES—MISJOINDER OF CHARGES, 2 A. 139.

See JOINDER OF CHARGES—WHEN LEGAL, Rat. Un. Cr. C. 228=Cr. Rg. 6 of 1836, 132 P.L.R. 1902.

See JUDGMENT, 21 C. 121.

See MAGISTRATE, DUTY OF, 2 A.L J. 26 =A.W.N. 1905, 19=2 Cr. L.J. 19.

See MAINTENANCE, 22 C. 291, L.B.R. 1893 —1900, 316, 25 C. 291.

Murder – Wife-murder— Deterrent sentences —Necessity for—*See* MURDER, 5 S.L.R. 256 =15 Ind. Cas. 807=13 Cr. L.J. 535.

Sentence—continued.

——1.—General—*continued.*

Separate sentences, not illegal under what circumstances.—*See* PENAL CODE, ss. 71, 342. 352. 4 C.L.J. 90=4 Cr. L.J. 69.

See PENAL CODE, ss. 71, 380, 457, L.B.R. 1872—1892, 390.

Accused acquitted of some of the offences of which they were convicted—Proportionate reduction of sentence — *See* PENAL CODE, ss. 148, 149, 16 Cr. L J. 446=29 Ind. Cas. 78.

See PENAL CODE, s. 154, 16 C.W.N. 768=14 Ind. Cas. 317=13 Cr.L.J. 221=39 C. 834.

See PENAL CODE, s. 290, L.B.R. 1872—1892, 279.

See PENAL CODE, ss. 300, 302, 304 (1), 140 P.L.R. 1905, L.B.R. 1872—1892, 459.

Accused, a youth—Principle of awarding punishment—*See* PENAL CODE, s. 302, 12 Cr. L.J. 448=U.B.R. 1911, 87=11 Ind. Cas. 792.

See PENAL CODE, s. 302, 11 C W.N. 904=6 Cr. L J. 154, 145 P.L.R. 1902, 9 M.L.T. 103=9 Ind. Cas. 288=12 Cr. L.J. 48.

See PENAL CODE, ss. 304 (2), 323, 2 P.W.R. 1908, Cr.=77 P.L.R. 1908.

See PENAL CODE, s. 326, 29 P.W.R. 1914 (C.)=182 P.L R. 1914=15 Cr.L.J. 540=24 Ind. Cas. 948, L.B.R 1872—1892, 182.

See PENAL CODE, s. 361, 11 Cr.L.J. 9=4 Ind. Cas. 543=13 C.W.N. 754.

Only technical offence committed—Nominal sentence to be awarded—*See* PENAL CODE, s. 363, 24 P.W.R. 1914 (Cr.)=161 P.L. R. 1914=15 Cr.L.J. 639=25 Ind. Cas. 839.

See PENAL CODE, s. 366, 1 O.C. 4.

Theft from railway train—Deterrent sentence—*See* PENAL CODE, s. 379, 14 Bom. L. R. 504=15 Ind. Cas. 803=13 Cr. L.J. 531=1 Bom. Cr. C. 149.

See PENAL CODE, ss. 380, 457, A.W.N. 1883, 228.

Amount of—*See* PENAL CODE, s. 400, L.B. R. 1872—1892, 441.

See PENAL CODE, s. 425, Rat. Un. Cr. C. 690=Cr. Rg. 13 of 1894.

Sentence, mitigating circumstances—*See* PENAL CODE, s. 471, 16 C.W.N. 623=15 C. L. J. 509=39 C. 463=14 Ind. Cas. 201=13 Cr. L.J. 201.

See POLICE, L.B.R. 1872–1892, 150.

See PRACTICE AND PROCEDURE, L.B.R. 1893—1900, 535.

Sentences to be deterrent, where public servants offered violence—*See* PUBLIC SERVANT, L.B.R. 1893—1900, 192.

See REFERENCE TO HIGH COURT, 6 A.L.J. 421=2 Ind. Cas. 475, 8 Cr L.J. 161=1 S.L.R. 40, Cr.

See SANCTION TO PROSECUTE—MISCELLANEOUS CASES, 17 M.L.J. 533=2 M.L.T. 493=6 Cr. L.J. 382=31 M. 80.

Sentence—continued.

— 1.—General—*concluded.*

See SECURITY FOR GOOD BEHAVIOUR, 1 A. 666, 30 A. 334=A.W.N. 1908, 133=5 A.L J. 318=7 Cr. L. J. 427=4 M.L.T. 41, F.B., 3 S. L. R. 114=11 Cr. L. J. 15=4 Ind. Cas. 603, Colm. Dig. Cr. 32 of 1876.

See SECURITY PROCEEDINGS, 6 C.P.L.R. Cr. 13.

See SECURITY TO KEEP THE PEACE—DEFAULT IN GIVING SECURITY, 7 O.C. 338.

See SESSIONS JUDGE, JURISDICTION OF, Rat. Un. Cr. C. 144=Cr. Rg. 1-10-1879.

See STABBING, L.B.R. 1893—1900, 261.

See STOLEN PROPERTY, Rat. Un. Cr. C. 553=Cr. Rg. 28 of 1891, 15 C. 511.

See SUMMARY TRIAL, 4 L.B.R. 338=9 Cr. L. J. 23.

See TRANSFER OF CRIMINAL CASES—TRANSFER BY OTHER COURTS, 2 Weir 690.

The date of commencement of sentence to be specified in warrant—*See* WARRANT, 20 W. R. Cr. Cir. 5.

—2 —Capital Sentence.

(1)—*Penal Code, s. 302—Proper sentence in murder case.*—Death alone is the proper sentence in a case of murder, which, though not premeditated, nevertheless happens in an act of deliberate and persistent ferocity. QUEEN-EMPRESS v. MANGREY, S. C. 210, Oudh. [*R.*, S.C. 216, Oudh.]

(2)—*Penal Code, s. 302—Sentence.*—Murder should be punished with death or transportation for life. There is no other alternative. QUEEN v. AMAN, 5 N W.P. 130. [*R.*, L. B. R. 1872—1892, 164.]

(3)—*Crim. Pro. Code, s. 367 (5)—Conviction for offence punishable with death—Not passing sentence of death, reasons to be assigned for.*—Under s. 367 (5), the Sessions Judge should state his reasons for not passing sentence of death, in a case in which he convicts an accused person of an offence punishable with death. *In re* KURUMBA HOSAKERI, 8 M.L.T. 81=7 Ind. Cas. 397=11 Cr. L.J. 481.

(4)—*Conviction of person under transportation of murder — Penal Code, s. 303.*—*Held* that, under s. 303, I.P.C., death is the proper sentence to be passed on a person who has been transported for life for committing murder and who has again been found guilty of murder on a subsequent and different charge. QUEEN v. DOORJODHUN SHAMONTO, 19 W R. Cr. 45.

(5)—*Duty of Court.*—*Held* that it is incumbent on a Judge to pass a capital sentence in a case of murder, should he believe the evidence, without shrinking from his duty, however painful it may be. QUEEN v. SIBNARAIN PALODHEE, 7 W R. Cr. 33.

(6)—*Sentence on conviction of murder—Sentence of death or transportation.*—*Held* that on a conviction of murder, death or transportation for life are the only legal sentences awardable. QUEEN v. BANI DOSS, 14 W.R. Cr. 2 ; QUEEN v. JAMAL, 16 W.R. Cr. 75.

Sentence—continued.

—2.—Capital Sentence—*continued.*

(7)—*Confirmation of sentence of death by High Court necessary.*—The Legislature has not thought it safe to entrust the Courts below with the power of pronouncing binding decisions followed by the highest penalty known by the law, and even when there has been a verdict of a jury, the confirmatory judgment of the High Court is practically the judgment in the case. In no case ought men to be sentenced when there is reasonable doubt if the crime was committed. QUEEN-EMPRESS v. KALLAPPA, Rat. Un Cr. C. 806.

(8)—*Murder—Sentence of death—Motion by relatives of deceased.*—A person convicted of murder under circumstances which made out a clear case and afforded no room for extenuation was sentenced to transportation for life, and the relatives of the deceased applied to the High Court for enhancing the sentence to one of death. *Held* that though the latter was the proper sentence to be passed, the High Court could not interfere on the motion of the relatives of the deceased, but only on that of the Crown. EMPRESS v. DURGA, A.W.N. 1890, 225.

(9)—*Punishment for murder in absence of common intention.*—Where there is nothing on the record to show that the shot which killed the deceased was fired in furtherance of the common intention of all the prisoners, a sentence of death is uncalled for. NGA KYAW v. QUEEN-EMPRESS, L.B R. 1872—1892, 502.

(10)—*Justification for sentence of death—Convict undergoing transportation.*—*Held* that a Court is not justified in condemning a convict to death on the ground that, except death, no sentence more severe than what he is undergoing at the time of the commission of the offence could be inflicted on him. QUEEN v. NGA SHOAY DE, 19 W R Cr 68.

(11)— *Sentence of death—Sex of accused—Murder ordinary and murder in dacoity—Reservation of death sentence for the principal offender* —The question of sex should be considered in passing sentences of death It is advisable to pass sentences of death on a number of accused persons, who commit murder in dacoity, but it is not necessary to pass sentences of death on all persons taking part in an ordinary murder. A death sentence should be reserved for the principal offenders. MI SHABI v. QUEEN-EMPRESS, L B R. 1893—1900. 564. (L B.R. 1872—1892, 638, *D.*)

(12)—*Murder—Sentence of death Sex-Practice* —The fact that the accused is a woman is not, from a judicial point of view, a reason why sentence of death should not be passed. EMPRESS v. NIBBIA, A.W N. 1888, 134.

(13)—*Suspension of sentence on pregnant woman.*—*Held* that the sentence of death passed on a pregnant accused might not be carried

Sentence—continued.

—2.—**Capital Sentence**—*concluded.*

out until after her delivery. *N.B.*—But, now the present Code of Criminal Procedure makes express provision to this effect. QUEEN v. MUSSAMUT GHURBHURNEE, **W.R. 1864, Cr 1.**

(14)—*Held* that the fact of an accused person's pregnancy was no ground for not pronouncing the sentence of death on her, though the execution of the sentence must be postponed till delivery for that reason. QUEEN v. PANHEE AURUT, **15 W.R. Cr. 66.**

(15)—*Murder — Sentences.* — A Judge is right in convicting the prisoner of the murder of the deceased which was effected according to the prisoner's own confession, by pushing her out of a boat at night; and if the body is not actually found the Judge exercised a proper discretion in not passing sentence of death. QUEEN v. BUDDURUDDIN, **11 W.R. Cr. 20.**

(16)—*Murder.*—In this case the sentence of death passed upon the accused, who murdered his sister to avenge the honor of the family, was confirmed by the Chief Court on reference. CROWN v. KURMOO, **48 P R. 1866, Cr.**

(17)—In this case which was an offence of the murder of a concubine the sentence of death was confirmed. CROWN v. MEHMOOLA, **72 P. R. 1866, Cr.**

Of death—Delay between passing of sentence in Sessions Court, and final orders in the High Court, if sufficient ground for not confirming sentence of death—*See* CRIM. PRO. CODE, 1898, ss. 154, 374, 17 C.W.N. 1213.

Reasons for not passing it on conviction under s. 302, I.P.C.—*See* CRIM. PRO CODE 1898, s. 367, L.B R. 1893—1900, 112.

See CRIM. PRO. CODE, 1898, s. 374, Rat. UN. Cr. C. 710=Cr. Rg. 42 of 1894.

Murder—Evidence purely circumstantial—Sentence of death or transportation for life—Legality—Age of accused also to be taken into account in imposing sentence—*See* CIRCUMSTANTIAL EVIDENCE, 16 M.L.T. 535.

Murder case—Death sentence—Imposition of fine in addition—Award of compensation to deceased's heirs—Practice of Punjab Chief Court—*See* MURDER, 18 P.R. 1913, Cr.=14 Cr. L.J 522=20 Ind. Cas. 1002=41 P.W.R. 1913, Cr.

See MURDER, A.W N. 1882, 160, 3 L.B.R. 163, 8 C.W.N. 218, 1 L.B R. 216, 2 L.B R. 63, L.B.R. 1893—1900, 550, Rat. Un. Cr. C 852, U.B.R. 1892 - 1896, Vol. I, 209.

See PENAL CODE, s. 396, 4 C.P.L.R. 1.

—3.—**Transportation.**

SENTENCE—CAPITAL SENTENCE

See SENTENCE—FINE.

(1)—*Penal Code (Act* XLV *of* 1860), *ss.* 59 *and* 395—*Transportation.*—The Indian Penal Code in no instance specifically provides transportation for any term short of life as a punishment and s. 59 of the Code is the only authority for passing sentences of transportation for shorter periods. The term of transportation under that section cannot exceed the term of imprisonment provided by the section under which a conviction is had. Where the accused was sentenced to transportation for life for having committed an offence under s 395 of the Indian Penal Code, the Chief Court reduced the term of transportation to ten years, the maximum term allowed under the section. ARURA v. EMPEROR, **14 P.L.R. 1904=1 Cr. L.J. 89=31 P.R. 1903, Cr.**

Sentence—continued.

—3.—**Transportation**—*continued.*

(2)—*Sentence of transportation for a term—Commuting sentence of rigorous imprisonment to transportation—Penal Code, s.* 59.—The proper procedure in cases where a Judge desires to pass a sentence of transportation for a term is to pass a sentence of rigorous imprisonment and then, under s. 59, Penal Code, commute the sentence to one of transportation. NGA SHWE LAN v. QUEEN-EMPRESS, **L.B.R. 1893—1900, 482.**

(3)—*Culpable homicide.*—In cases of conviction for culpable homicide, the sentence of transportation must be either transportation for life or for a term not exceeding ten years; transportation for 14 years is not legal. CROWN v. NOOR HUSSUN, **58 P.R. 1866, Cr.**

(4)—*Penal Code s* 59—*Limit of punishment*—*Penal Code, s.* 412.—*Held* that a period of ten years was the maximum which a sentence of transportation under ss. 412 and 59, Penal Code, must not exceed. QUEEN v. MOHANUNDO BHUNDARY, **5 W.R.Cr 16.**

(5)—*Period of transportation in cases of murder.*—*Held* that, where a prisoner is convicted of murder, a sentence of transportation for life alone and no other is legal. QUEEN v. BHOOTOO MULLICK, **6 W.R. Cr. 85.**

(6)—*Transportation for life—Penal Code, s.* 75.—Under s. 75, I.P.C., a Court is competent to sentence the accused to transportation for life, or to double the amount of punishment to which he would have otherwise been liable. CROWN v. NADIR, **26 P.R. 1878, Cr**

(7)—*False evidence and forgery—Transportation—Imprisonment—Penal Code, ss.* 59, 193, 467.—A sentence of transportation cannot, under s. 59. I.P.C., be for a period less than 7 years whatever might be the charge. Where a prisoner has been convicted on two charges, *viz*, one under s. 193, Penal Code, of giving false evidence in a judicial proceeding, and one under s. 467 of the forgery of a receipt and sentenced to 7 years' transportation for the first and after that period of transportation for 3 years for the second, the second sentence was quashed as being illegal. QUEEN v. GOUR CHUNDER ROY, **8 W.R. Cr. 2.**

(8)—*Transportation for life only a sentence for murder—Crim. Pro. Code* (1861), *s.* 380.—*Held* that it was not competent to a Sessions Judge,

Sentence—continued.

—3.—Transportation—*continued.*

under s. 380, Crim. Pro. Code, 1861, to sentence a prisoner convicted of murder to anything short of transportation for life. QUEEN v. DABEE, W. R. 1864, Cr., 27.

(9)—*Penal Code, ss.* 307 *and* 394—*Attempt to murder—Causing hurt in committing robbery.*—*Held* that a sentence of transportation for life or rigorous imprisonment for ten years with fine only could be inflicted under s. 307 or s. 394, I.P.C., and that those sections did not warrant a sentence of 14 years' transportation. QUEEN v. BHAMOUR DOOSADH, 7 W.R. Cr. 41.

(10)—*Commutation of death sentence—Killing a wizard.*—*Held* that the sentence of death inflicted on a prisoner, who committed murder in the belief that the deceased was a wizard and had caused his child's illness and that his child might be saved by killing the wizard, might be commuted into transportation for life. QUEEN v. OORAM SUNGRA, 6 W.R. Cr. 82.

(11)—*Unpremeditated murder.*—*Held* that transportation for life was a sufficient punishment where unpremeditated murder should be committed. QUEEN v. RAM CHURN KURMOKAR, 24 W.R. Cr. 28.

(12)—*Reckless assault with deadly weapon.*—Where death was not intended to be caused, but a reckless assault with a deadly weapon, which inflicted an injury likely in the ordinary course of nature to cause death, transportation for life was held to be sufficient instead of a capital sentence. QUEEN v. KHOAZ SHEIKH, 5 W.R. Cr. 20.

(13)—*Murder by way of retaliation.*—Case where a sentence of death was reduced to transportation for life as the murder was committed in retaliation for an injury rather than under the influence of any worse passion. QUEEN v. TANOO, 6 W.R. Cr. 46.

(14)—*Waging war with Power in alliance with Queen.*—A prisoner convicted of waging war with an Asiatic Power in alliance with the Queen can, under the Penal Code, be sentenced only either to transportation for life or imprisonment of either description up to 7 years. QUEEN v. KEEIFA SINGH, 3 W.R. Cr. 16.

(15)—*Murder—Consideration of the age of the accused in awarding sentence.*—Where the accused, a girl of 16, was held guilty of deliberately killing her husband by means of arsenic poison which she mixed up with the food cooked and served up by herself to the husband, *held*, that, in consideration of her age, she should be transported for life, instead of suffering the extreme penalty of death. EMPEROR v. JASHA BEWA, 11 C W N 904=6 Cr. L J. 184. [*F.*, 12 Cr.L.J. 448=11 Ind. Cas 792=U.B.R 1911, 87.]

(16)—*Penal Code, s.* 75—*Ten years' interval between previous and subsequent convictions for petty offences—Convict of advanced age*—*Held*, that s. 75, I.P.C., should not be applied mechanically in a case where the previous convictions for petty offences are ten years old and the subsequent one is also for a very similar offence, the convict has adopted regular work for earning his livelihood since his release from jail, and is of advanced age with a large family depending upon him for support. Sentence of seven years' transportation for life reduced to one year's rigorous imprisonment KASIM ALI v. CROWN, 10 P.W.R, 1908, Cr =7 Cr. L J. 293.

(17)—*Crim. Pro. Code (Act X of 1882), s.* 35—*Maximum term of transportation—Penal Code, s.* 59—Where a person is convicted for seven charges of offences under s. 328 of the Penal Code and it is thought desirable that the prisoner should be sent beyond British India, for a maximum period, the best course, having regard to s. 59 of the Penal Code and s. 35 of the Crim. Pro. Code is to sentence him to terms of transportation of seven years each, the one to commence at the expiration of the other. EMPRESS v. SAHTU, A.W.N. 1884, 285.

(18)—*Penal Code, ss.* 59, 377—*Transportation in lieu of imprisonment, term of.*—When an offence is punishable, either with transportation for life or imprisonment for a term of years, if a sentence of transportation for a term less than life is awarded, the term cannot exceed the term of imprisonment. QUEEN v. NAIADA, 1 A. 43, F.B.

(19)—*Penal Code, ss.* 59, 307, 440—*Sentence of transportation instead of imprisonment—Offence punishable with less than seven years' imprisonment.*—Where a Magistrate, acting under s. 59, I.P.C., sentenced the accused to seven years' transportation under s. 307, I.P.C., and to three years' transportation under s. 440, I.P.C., it was *held* that the sentence of three years' transportation was not legal; but that it should be altered into one for three years' rigorous imprisonment. For, in order to make s. 59 applicable, (1) the offence must be such as could be punished with seven years' imprisonment or more; (2) no sentence of transportation for a shorter period than seven years can be passed in any case. SAN DA v. KING-EMPEROR, 4 L B.R. 65=6 Cr. L.J. 290.

(20)—*Transportation in lieu of imprisonment—Penal Code, ss.* 59, 75.—In cases where s. 75, I.P.C., applies, transportation can be awarded in lieu of imprisonment, under s. 59, I.P.C., the proper procedure under which is not to commute a sentence of imprisonment to one of transportation, but to pass a sentence of transportation in lieu of a sentence of imprisonment. THA ZAN v. CROWN, 1 L.B.R. 292. (L.B.R. 1893—1900, 482, *Overruled*) [*R.*, 10 Cr. L.J. 120=5 L.B.R. 22=2 Ind. Cas. 620.]

(21)—*Transportation in lieu of imprisonment—Penal Code, ss.* 59 *and* 75.—Where a person is sentenced to eight years' rigorous imprisonment for two distinct offences under s. 411, I P.C., he being sentenced to three years' rigorous imprisonment for the first offence and

Sentence—continued.

—— 3.—**Transportation**—*continued.*

to five years for the second, *held*, that the punishment could not be commuted to transportation for eight years. CROWN v. SUNDA, **63 P.R. 1866, Cr.** [*R.*, 27 P.R. 1901, Cr.]

(22) *Transportation—Penal Code, s.* 59—*Crim. Pro. Code* (1872), *s.* 36—S. 59, Penal Code, enables a Magistrate, who has, under s. 36 of Act X of 1872, power to pass a sentence of imprisonment, to pass, in lieu of such sentence, one of transportation for the same period. EMPRESS v. NURAN, **17 P.R. 1880, Cr.** [*R.*, 14 P R 1886, Cr.]

(23)—*Transportation in lieu of imprisonment —Crim. Pro. Code* (1882), *s.* 380.—Where a sentence of five years' rigorous imprisonment passed by a District Magistrate for offences under ss. 392 and 307, I.P.C., was altered by the Sessions Judge, professing to act under s. 380-A ,Crim. Pro. Code, to one of three years' rigorous imprisonment under s. 392, and seven years' rigorous imprisonment under s. 307, I.P.C , and, in lieu thereof, the Sessions Judge sentenced the accused to transportation for ten years, *held*, that the sentence was not one which the lower Court might have passed, as required by cl. (*a*) of s. 380 of the Crim. Pro. Code, 1882, in so far as it converted the aggregate term of imprisonment into transportation, whereas the latter part of the sentence was alone so convertible. MATHRO v. EMPRESS. **4 P.R. 1886, Cr.**

(24)—*Transportation in lieu of imprisonment —Penal Code, s* 59.—To bring s. 59 of the Penal Code into operation, in cases where the accused is convicted for more offences than one, the punishment awarded to each offence alone must not be less than seven years' imprisonment. SALAR BAKHSH v EMPEROR, **27 P.R. 1901, Cr.** (5 W R. 44, Cr., 8 W.R. 2, Cr., 63 P. R. 1866, Cr., *R.*)

(25)—*Penal Code, s.* 59—*Power to commute punishment after sentence of imprisonment.*—Under s. 59, Penal Code, a Court is empowered to pass a sentence of transportation only where a punishment of imprisonment for seven years or upwards can be inflicted for the offence and may, in passing sentence for the offence, commute the imprisonment to transportation, but not *after* the sentence of imprisonment has been passed. QUEEN v. PREM CHUND OUSOWAL, **W.R. 1864, Cr., 35.**

(26)—*Commutation of sentence after amalgamation of two sentences.*—*Held* that s. 59, Penal Code, applies only to cases where the punishment inflicted on one offence alone is seven years' imprisonment, and not to cases where it is made up by adding two sentences together and then commuting the amalgamated period to transportation. QUEEN v. MOOTKEE KORA, **2 W.R. Cr. 1**; QUEEN v. TONOORAM MALEE, **3 W.R. Cr 44**; QUEEN v. SHONAULLAH, **5 W.R. Cr. 44.**

(27)—*Penal Code, s.* 59—*Transportation in default of payment of fine, validity of.*—S. 59, Penal Code, enacts a general rule to the effect that, in the case of offences for which no transportation is specially mentioned as a punishment and which are punishable with imprisonment for a term of seven years or upwards, it is competent to the Judge to substitute a sentence of transportation as a substantive sentence for that of imprisonment. The section does not authorise the substitution of transportation for the imprisonment provided by the Court in default of payment of fine. KUNHUSSA v. QUEEN, **5 M. 28 = 1 Weir 30.**

(28)—*Transportation in default of fine.*—Transportation cannot be awarded in default of payment of fine. EMPRESS v. NURAN, **17 P.R. 1880, Cr.** [*R.*, 14 P.R. 1886, Cr.]

(29)—*Crim. Pro. Code* (1882), *s.* 397—*Transportation of a convict undergoing imprisonment.*—Where a person who is undergoing a term of imprisonment, is sentenced by the Sessions Judge to transportation for life, the sentence of transportation passed by him will commence at the expiration of the previous sentence of imprisonment, unless he makes a further order under s. 397, that the sentence shall take effect immediately. QUEEN-EMPRESS v. HARI, QUEEN-EMPRESS v. BHIKA, **Rat. Un. Cr. C. 391 = Cr. Rg. 45 of 1888.**

(30)—*Crim. Pro. Code* (1882), *s.* 396—*Attempt to escape from lawful custody—Sentence, when to commence.*—The accused, a life convict imprisoned in the Bijapur prison under transportation for murder, was convicted of the offence of attempting to escape from lawful custody under s. 224, I.P.C , and sentenced to four months' rigorous imprisonment, which was directed to commence immediately to be carried out before his being sent to the Penal Settlement. *Held* that the direction for the immediate execution of the sentence was wrong and should be reversed. QUEEN EMPRESS v. MAHADU NAGU, **Rat. Un. Cr. C. 965 = Cr. Rg. 19 of 1898.**

(31)—*Penal Code, s.* 304—*Charge under s.* 304—*Charge to specify under what part.*—In a charge of culpable homicide not amounting to murder, the Sessions Judge omitted to point out that s. 304 is made up of two parts, and the verdict of guilty, which the jury gave, failed to show to which part it was meant to apply. The Judge, treating the verdict as found on the first part of the section, sentenced the prisoner to transportation for life. *Held*, as there was nothing in the evidence or the charge to suggest that the offence would have been murder, but for one of the exceptions to the definition in s. 300, I.P.C , and as everything pointed to the offences being culpable homicide not amounting to murder, and without reference to these exceptions, the verdict must be treated as a finding on the second part of s. 304, and the sentence of transportation was therefore illegal. QUEEN EMPRESS v. POSHA HARI, **Rat. Un. Cr. C. 735 = Cr. Rg. 4 of 1895.**

Sentence—continued.

—— **3.—Transportation**—*concluded.*

(32)—*Commuted sentence of transportation—Limit of term—Crim. Pro. Code* (1898), *s.* 35, *cl.* 2 (*A*)—*Penal Code*, *s.* 59.—The restriction imposed by s. 35, Crim. Pro. Code, must be read with the sections of the Penal Code which prescribe the limits of punishments for different offences. NGA PO SEIK v. QUEEN-EMPRESS, **L.B.R. 1893—1900, 478.**

See CRIM. PRO. CODE, 1898, ss. 30, 34, 14 P.R. 1886, Cr.

See PENAL CODE, s. 59, 1 W.R.Cr. Letters, 10.

See PENAL CODE, ss. 72, 302 and 201, A.W.N. 1906, 93=3 Cr. L J. 364.

——**4.—Penal Servitude.**

Penal Code, s. 56—*Penal servitude.*—The punishment of penal servitude is only applicable to Europeans and Americans. QUEEN EMPRESS v. DINA BAIDYA, **19 M. 483=1** Weir 298.

——**5.—Imprisonment.**

(*a*)—GENERAL.
(*b*)—IN DEFAULT OF PAYMENT OF FINE, OF GIVING SECURITY, MAINTENANCE, IN LIEU OF WHIPPING, ETC.
(*c*)—IMPRISONMENT AND FINE.
See TRANSPORTATION.
See WHIPPING.

————(*a*)—GENERAL.

(1)—*What constitutes.*—The retaining of a person in a particular place or the compelling of him to go in a particular direction by force of an exterior will overpowering or suppressing, in any way, his own voluntary action, is an imprisonment on the part of him who exercises that exterior will. PARANKUSAM NARASAYA PANTULU v. CAPTAIN R.A.C. STUART, **2 M.H.C. 396.** [*F.*, 13 B. 376.]

(2)—*Penal Code, ss.* 59, 75—*Imprisonment—Meaning.*—The word "imprisonment" in s. 59 or s. 75 of the Penal Code, does not include imprisonment awarded in default of payment of fine. EMPRESS v. YUSAF, **A.W.N. 1882, 116.**

(3)—*Jurisdiction—Imprisonment — Legality.*—A Magistrate is not competent to impose sentence of imprisonment to take effect in continuation of a period which the accused is undergoing in default of sufficient security. *In re* GANDELLA RAMUDU, **1914 M.W.N. 500=16 Cr. L.J. 137=27 Ind. Cas. 201.**

(4)—*Penal Code, s.* 193—*Sentence—Imprisonment.*—S. 193 makes it imperative upon the Court to pass some sentence of imprisonment in every case of conviction under that section. EMPRESS v. KODAI SINGH, 3 C.L R. 527.

(5)—*Crim. Pro. Code, s.* 123—*Failure to give security for good behaviour—Subsequent conviction for an offence.*—Where a person who is committed to prison under s. 123 for failure to give security to be of good behaviour

Sentence—continued.

——**5.—Imprisonment**—*continued.*

————(*a*)—GENERAL—*continued.*

is sentenced to imprisonment on a conviction of an offence, the term of imprisonment cannot be deferred, but must commence at once. EMPEROR v. DURGA BAHIRAV, **6 Bom. L.R. 1098=1 Cr. L.J. 1114.** [*F.*, 37 B. 178=14 Bom L.R. 965=1 Bom. Cr. Cas. 209=13 Cr. L.J. 849=17 Ind. Cas. 785.]

(6)—*Imprisonment in default of security, not punishment for offence—Substantive sentence to the close of such imprisonment—Crim. Pro. Code, ss.* 123, 396 *and* 397.—Imprisonment in default of security, not being a *sentence* of imprisonment within the meaning of ss. 396 and 397 is not a punishment for an offence. A sentence of imprisonment for a substantive offence must commence at once, and cannot be postponed to take effect at the expiration of the sentence of imprisonment which the convicted person is, at the date of the conviction, undergoing in default of giving security for good behaviour. KING-EMPEROR v. NGA PO THIN, **2 L.B.R. 72.** [*R.*, 4 L.B R. 359.]

(7)—*Sentence of imprisonment—Direction to run concurrently with another sentence passed in a different trial—Illegality—Crim Pro. Code, s.* 397.—Where a Judge presiding at a Sessions trial directed that the sentence of imprisonment passed by him on the prisoner in a trial before him should run concurrently with the sentence of imprisonment which had been passed upon him in a former trial: *Held*, that the direction was an error of law. ADVOCATE-GENERAL v. GOVINDASAWMY, **11 M.L T. 213=1912 M.W.N. 396=15 Ind. Cas. 306=13 Cr. L.J. 466.**

(8)—*Penal Code—Ss.* 35, *proviso* 1, 397—*Punishment—Accused convicted of several offences—Aggregate term of imprisonment.*—*Held* that an aggregate sentence of 20 years' rigorous imprisonment is contrary to the provisions of proviso to s. 35, Penal Code. The provisions of s. 35 only apply to a person convicted at one trial of two or more distinct offences. The section has no application whatever when a person is convicted on two or more separate trials even though in all of them the complainant is the same and the offences are similar and they are concluded on the same date. In the case of separate trials s. 397 applies. SHEO NARAIN v. CROWN, **105 P L R. 1910=8 Ind. Cas. 550=11 Cr. L J. 679.**

(9)—*Act* III *of* 1867, *ss.* 3, 4—*Sentence of imprisonment and fine.*—A sentence of imprisonment and fine under s. 3 or s. 4 of Act III of 1867, is illegal. QUEEN-EMPRESS v. NGA THA DIN U, **L.B R. 1872—1892, 434.**

(10)—*Penal Code—Fine prescribed as additional punishment—Imprisonment.*—Where fine is provided for in the Penal Code as an additional punishment, imprisonment, however short in duration, is imperative. CROWN v. ZAHID RAMZAN, **30 P.R. 1866, Cr.**; CROWN v. RAMDYAL, **28 P.R. 1866, Cr.**

Sentence—continued.

——5.—**Imprisonment**—*continued.*

————(a)—GENERAL—*continued.*

(11)—*Crim. Pro. Code* (1882), s. 488—*Nature of imprisonment—General Clauses Act,* 1868, *s.* 2 (18).—Looking to the terms of s. 2 (18) of the General Clauses Act, 1868, imprisonment in s. 488, Crim. Pro. Code, may either be simple or rigorous. QUEEN-EMPRESS v. NARAIN, **9 A. 240 = A.W.N. 1887, 54.** [*R.*, U.B.R. 1892—1896, Vol. I, 70.]

(12)—*Offence under Registration Act,* 1871, *s.* 80—*General Clauses Consolidation Act,* 1868, *s.* 2, *cl.* 18—*Nature of imprisonment to be specified in warrant.*—Case where the failure of a Sessions Judge to specify in his warrant, under s. 2 (18), Act I of 1868, whether the imprisonment awarded to a person convicted under s. 80, Act VIII of 1871, should be simple or rigorous was commented upon, with an order that, as the Sessions Judge had failed to do so at the proper time, simple imprisonment should now be set forth in the sentence. LEGAL REMEMBRANCER v. KADHOO CHURN ASH, **18 W.R. Cr. 3.**

(13)—*Penal Code, ss.* 53, 392, 395, 397—*Conviction under s.* 397—*Imprisonment, nature of.*—The words, "the imprisonment with which such offender shall be punished shall not be less than seven years," do not make it optional to award simple imprisonment. The imprisonment provided in s. 397 must be understood to refer to the nature of imprisonment in ss. 392, 395, I.P.C., which is rigorous. EMPRESS v. RAJWANTA, **A W.N. 1887, 140.**

(14)—*Penal Code* (*Act* XLV *of* 1860), s. 188—*Second part—Sentence.*—A Magistrate is not competent to pass a sentence of rigorous imprisonment in a case under s. 188 of the Penal Code unless the case came within the latter branch of the section. REG. v. RATANRAV *bin* MAHADEVRAV CHAVAN, **3 B.H.C. Cr. 32.**

(15)—*Imposition of non-appealable sentence.*—Magistrates must not impose non-appealable sentences of imprisonment in cases, in which the facts are such as to render it very desirable that an appealable sentence should be passed. JATRA SHEKH v. REAZAT SHEKH, **20 C. 483.**

(16)—*Accumulation of sentences of imprisonment—Crim. Pro. Code* (1861), s. 46—*Sentences not simultaneous.*—*Held* that it was not improper to accumulate sentences of imprisonment beyond the period of 14 years, in spite of s. 46, Crim. Pro. Code, the limit specified in which had reference only to punishments inflicted at the same time or on charges so tried. QUEEN v. PUBAN, **7 W.R. Cr. 1.**

(17)—*Crim. Pro. Code* (1898), *ss.* 383, 439 *and* 562—*Receiving stolen property—S.* 411 *of the Indian Penal Code—Illegality of sentence of imprisonment for the period already passed in lock-up—Accused aged* 18 *years—Whipping not proper in the case of an accused position —Held,* that a sentence of imprisonment for the period passed in lock-up is illegal, but a sentence of imprisonment until the rising of the Court is good in, and fulfils the requirements of the law. *Held,* also, that a sentence of whipping is not appropriate in the case of an accused person of good position in life. The record was accordingly returned to the lower Court for disposal in accordance with law either for passing proper sentence or to be dealt with under s. 562, Crim. Pro. Code. BHAGEL SINGH v. CROWN, **9 P.W R 1907, Cr. = 5 Cr.L.J. 217.**

(18)—*Sentence of imprisonment—Custody during trial.*—It is not competent to a Magistrate to confine the sentence of imprisonment imposed by him to the days the accused has been in custody during trial and to release him at once. QUEEN-EMPRESS v. SADU, **Rat. Un. Cr. C. 892 = Cr. Rg. 4 of 1897.**

(19)—*Sentence of imprisonment—Ante-dating sentence—Detention under trial—Custody.*—The accused, after he had been in custody for a week, was convicted of a petty theft and sentenced "to undergo the imprisonment he has already suffered." *Held,* there is nothing in the Crim. Pro. Code to authorize a Magistrate to ante-date the commencement of a sentence. The proper course would be, to sentence the accused to a day's imprisonment. KING-EMPEROR v. THA HMUN, **4 L.B R. 152 = 7 Cr.L.J. 453.**

(20)—*Commencement of sentence of imprisonment—Postponement of sentence—Crim. Pro. Code* (*Act* XXV *of* 1861), *ss* 46, 47, 48 *and* 421.—A sentence of imprisonment should commence from the time when the sentence was passed, unless there is some lawful reason for its commencing at some future period. Except as in the case provided for by ss. 46, 47 and 48 of the Crim. Pro. Code, a Magistrate has no power to order a sentence passed by him to take place from some future date, nor, except as provided for by s. 421 of the Code of Criminal Procedure, can he suspend a sentence, which is to take place immediately. *In the matter of* KISHNANAND BHUTTACHARJEE, **3 B.L.R. A. Cr. 50 = 12 W.R. Cr. 47.**

(21)—*Imprisonment for two hours—False evidence.*—Where on a conviction for giving false evidence, the Magistrate sentenced the accused to two hours' simple imprisonment and fine, *held* that the Magistrate had no power under the Penal Code to award two hours' imprisonment for the offence. The High Court altered the sentence into imprisonment for three months. EMPRESS v. PARAMESHAR, **A.W.N. 1889, 206.**

(22)—*Short terms of imprisonment should be avoided.*—Magistrates should avoid passing short sentences, where it is possible to inflict a fine or a sentence of whipping. A short term of imprisonment is of very little use, and there is great risk of converting decent people, who have been guilty of a misdemeanour, into criminals. A sentence of imprisonment permanently marks the convicted person with

Sentence—continued.

——5.—Imprisonment—*continued.*

————(*a*)—GENERAL—*continued.*

disgrace and throws him into the society of the criminal class. Magistrates must bear these considerations in mind in deciding on the sentences they may pass. QUEEN-EMPRESS v. NGA PO SHEIN, **L.B.R. 1872-1892, 423.**

(23)—*General misapprehension as to the interpretation of—Compelling prisoners sentenced to simple imprisonment to labor, unlawful.*—No prisoners sentenced to simple imprisonment can be lawfully compelled to labor while detained in jail. There is, however, no objection to such convicts being employed on any trade or occupation permitted in the jail rules, if they, of their own free will, express their desire for employment. CRIMINAL CIRCULAR NO. 2, 13TH FEBRUARY 1865, **2 W.R. Cr. Cir. 1.**

(24)—*Crim. Pro. Code* (1861), *s.* 294—*Imprisonment of sureties.*—S. 294 makes no provision for the sureties being imprisoned. HIGH COURT PROCEEDINGS, 20TH AUGUST 1869, **4 M.H.C. App 68.**

(25)—*Penal Code, s.* 380—*Punishment of imprisonment only—No fine.*—Fine need not necessarily be added to a punishment of imprisonment for an offence under s. 380 of the Penal Code. QUEEN-EMPRESS v. SAVI, **Rat. Un. Cr. C. 893 = Cr. Rg. 7 of 1897.**

(26)—*Penal Code, s.* 181.—A sentence under s. 181, Penal Code, must award a term of imprisonment. HIGH COURT PROCEEDINGS, 4TH NOVEMBER, 1868, **4 M.H.C. App. 18.**

(27)—*Dacoity—Penal Code, s.* 395.—*Held* that dacoity under s. 395, I.P.C., could not be visited with a sentence of fourteen years' imprisonment. QUEEN v. HAROO RUJWAR, **13 W.R. Cr. 27.**

(28)—*House-trespass—Lurking house-trespass or house-breaking—Penal Code, ss.* 451 *and* 454.—Ss. 451 and 454 must be placed under the heading of serious offences. These sections relate, the one to house-trespass, and the other to lurking house-trespass or house-breaking, in order to the committing of an offence punishable with imprisonment, and include cases in which the offence intended to be committed is theft. Where such intention exists, the imprisonment may be extended to seven years under the one section, and to ten under the other. CRIMINAL CIRCULAR NO 17, 9TH SEPTEMBER 1864, **1 W.R. Cr. Cir. 3.**

(29)—*False evidence to procure acquittal of guilty person—Measure of sentence.*—A sentence of five years' imprisonment was held not to be excessive on a conviction for making a false statement in a judicial proceeding, with the intention of defeating the ends of justice by procuring the acquittal of the accused person. QUEEN v. ANOO, **W.R. 1864, Cr. 16.**

(30)—*Deliberately fabricating false evidence—Measure of sentence.*—*Held* that a deliberate attempt to pervert justice by fabricating in one office false statements to be deliberately and corruptly used in another would not be too severely punished by a sentence of three years' imprisonment. QUEEN v. KALACHAND BOIDYO, **8 W.R Cr. 18.**

(31)—*Grievous hurt—Penal Code, s.* 325—*Fine.*—The punishment for voluntarily causing grievous hurt is not fine alone but imprisonment, the offender being also liable to fine. QUEEN v. SHARODA PESHAGUR, **2 W.R. Cr. 32;** QUEEN v. MENAZOODIN, **2 W.R. Cr. 33.**

(32)—*Attempt to commit offence—Penal Code, s.* 511.—*Held* that an attempt to fabricate false evidence for the purpose of being used in a stage of a judicial proceeding could not be punished with more than an imprisonment of one half of seven years. QUEEN v. SOONDUR PUTNAICK, **3 W.R. Cr. 59.**

(33)—*Trial for two or more offences—Sentence—Crim. Pro. Code* (1861), *s.* 46.—Where a person, charged with the offence of culpable homicide, committed in 1867 and the offences of kidnapping committed in 1868 and 1869, was sentenced to twenty-four years' imprisonment and a fine of Rs. 500, and in default, five and half years' additional imprisonment, *held*, that he could not be sentenced to imprisonment for a longer period than fourteen years. IMAMUDDEEN v. CROWN, **33 P.R. 1870, Cr.**

(34)—*Mad. Act* XXIV *of* 1859, *s.* 48—*Rigorous imprisonment under, if legal.*—Under s. 48 of the Police Act, the award of rigorous imprisonment is not legal. HIGH COURT PROCEEDINGS, 31ST AUGUST 1870, **5 M.H.C. App. 34.**

See ACT I OF 1859, s. 83, cls. 1, 2, 12 C. 438.

See ACT XIII OF 1859, s. 2, 11 A.L.J. 678 = 15 Cr. L J. 592 = 25 Ind. Cas. 344, 4 B.H.C. Cr. 37, 1 Weir 703.

See ACT XIII OF 1859, ss. 2, 3, 13 Cr. L J. 194 = 14 Ind. Cas. 194 = 5 P.R. 1912, Cr.

See ACT XV OF 1862, s. 1, 9 W.R. Cr. 6 = B.L R. Sup. Vol. 869.

Offences under Act III of 1867 (Gambling)—Imprisonment when to be inflicted—*See* ACT III OF 1867, ss. 3, 4, 5, 6, 10, 9 N.L.R. 68 = 14 Cr. L.J. 293 = 19 Ind. Cas. 949.

See ACT III OF 1867, ss. 3 and 15, A.W N. 1881, 111.

See ACT XXVII OF 1871, s. 19 (1), 166 P. L.R. 1905 = 3 Cr. L.J. 77.

Decree ordering wife to return to husband—Enforcing decree under a suit for restitution of conjugal rights against wife—*See* ACT XIV OF 1882, 8 W.R.P.C. 3 = 11 M.I.A. 551.

See ACT XIV OF 1882, s. 359 1 Weir 718.

See ACT IX OF 1890, s. 113, 20 M. 385 = 1 Weir 871.

Sentence—continued.

——5.—**Imprisonment**—*continued.*

————(*a*)—GENERAL—*continued.*

Sentence of imprisonment—Substitution of detention in a Reformatory—Alteration of sentence into whipping—Effect—Court's power—*See* ACT VIII OF 1897, s. 16, 5 S.L.R. 173=13 Ind. Cas. 284=13 Cr. L.J. 44.

See ACT VIII OF 1897, s. 16, 1 L.B.R. 42.

See BEN. ACT XXXVII OF 1855, s. 4 (1), 12 C. 536.

See BOM. ACT III OF 1867, ss. 13, 14, Rat. Un. Cr. C. 221.

See BOM. ACT IV OF 1887, ss. 4, 5, 2 Bom. L.R. 1081.

See MAD. ACT XVII OF 1840, 4 M. 335.

See MAD. ACT III OF 1864, ss. 21, 32, 7 M. 185.

See BAIL, 30 C. 872, P.C.=30 I.A. 154=7 C.W.N. 729=5 Bom. L.R. 490.

See COMPENSATION—GENERAL, 14 P.R. 1902, Cr., Rat. Un. Cr. C. 611=Cr. Rg. 32 of 1892.

See CONTEMPT OF COURT, 4 C. 655.

See CRIM. PRO. CODE, 1898, ss. 30, 34, 349, Colm. Dig. Cr. 64 of 1876.

Accused tried at 4 separate trials upon 4 distinct charges—Various terms of imprisonment—Order that sentences should be served conterminously—Legality—*See* CRIM. PRO. CODE 1898, ss 35, 256, 14 Cr. L.J. 388=20 Ind. Cas. 212=6 Bur. L.T. 67.

Sentence of 6 months' imprisonment on each of 2 counts by Presidency Magistrate—Aggregate sentence—Right of appeal—*See* CRIM. PRO. CODE, ss. 35, 411, 13 Cr. L.J. 787=17 Ind. Cas. 531=17 C.L.J. 392.

See CRIM. PRO. CODE, 1898, s. 106, 6 M. H. C. 25.

See CRIM. PRO. CODE, 1898, s. 109, 2 Weir 52=4 M.H.C. 46.

See CRIM. PRO. CODE, 1898, s. 110, U B.R, 1897—1901, Vol. I, 375.

See CRIM. PRO. CODE (1898), ss. 118, 120. 123, 4 Bom. L.R. 934.

Imprisonment in default of security—*See* CRIM. PRO. CODE, 1898, ss. 110 and 123, 23 A. 422=A.W.N. 1901. 114.

See CRIM PRO. CODE, 1898, ss. 118, 123, 2 Weir 57.

See CRIM. PRO. CODE, 1898, ss. 118, 123, 128, Rat. Un. Cr. C. 395=Cr. Rg. 52 of 1888.

For failure to give security, nature of—*See* CRIM PRO. CODE, 1898, ss. 123 and 397, 27 M. 525.

Person undergoing imprisonment on failure to find security—Subsequent conviction of theft—Postponement of sentence—*See* CRIM. PRO. CODE, 1898, ss. 123, 397, 14 Bom. L.R. 965=1 Bom. Cr. C. 209=13 Cr. L.J. 849=17 Ind. Cas. 785=37 B. 178.

Sentence—continued.

——5.—**Imprisonment**—*continued.*

————(*a*)—GENERAL—*continued.*

See CRIM. PRO. CODE, 1898, s. 250, 28 C. 251.

See CRIM. PRO. CODE, 1898, ss. 263, 414, 415, 416, 2 C.L.R. 511.

Sentencing accused to suffer imprisonment in a Police lock-up—Legality—*See* CRIM. PRO. CODE, 1898, ss. 383, 541, 7 L.B.R. 62.

Order of Magistrate postponing sentence of whipping—Accused already under sentence of imprisonment in another case—Illegality of such order—*See* CRIM. PRO. CODE, 1898, ss. 390, 391, 1 L.B.R. 53.

See CRIM. PRO. CODE, 1898, s. 391 (3), 2 Bom. L.R. 54.

See CRIM. PRO. CODE, 1898, ss. 391, 439 (5), 45 P.L.R. 1902.

See CRIM. PRO. CODE, 1898, s. 395, U.B.R. 1892—1896, Vol. I, 45.

See CRIM. PRO. CODE, 1898, ss. 396, 398 and 426, U.B.R. 1897—1901, Vol. I, 89.

See CRIM. PRO. CODE, 1898, s. 397, 2 Weir 450.

See CRIM. PRO. CODE, 1898, s. 408, 1 L.B. R. 57.

Imprisonment on non-payment of maintenance to wife, order of—Reference by Sessions Judge to High Court on point of law—*See* CRIM. PRO. CODE, 1898, ss. 435, 438, 488 (3), 5 O.C. 316.

See CRIM. PRO. CODE, 1898, ss. 488, 490, U.B.R. 1892—1896, Vol. I, 70.

See CRIM. PRO. CODE, 1898, s. 562, 3 L.B R. 30.

Petty squabbles of young persons—Appropriate sentence—Imprisonment without choice of fine—Legality—*See* CRIM. PRO. CODE, 1898, s. 562, 12 Cr. L.J. 242=10 Ind. Cas. 772.

See CULPABLE HOMICIDE NOT AMOUNTING TO MURDER, 27 P.R. 1900, Cr.

Term of imprisonment for several offences—*See* JOINDER OF CHARGES—MIS-JOINDER OF CHARGES, 3 A. 305, F.B.

Imprisonment in different jails — *See* LOCAL GOVERNMENT, Rat. Un. Cr. C. 827=Cr. Rg. 70 of 1895.

See MAINTENANCE, 22 C. 291, 25 C. 291.

See PENAL CODE, s. 59, 1 W.R. Cr. Letter 10.

See PENAL CODE, ss. 67, 290, 291, 5 B.H. C. Cr. 45.

See PENAL CODE, s. 69, A.W.N. 1882, 85.

See PENAL CODE, ss. 81, 279, 8 Bom. L.R. 414=3 Cr. L.J. 494.

See PENAL CODE, s. 211, 1 B.H.C. 34.

See PENAL CODE, s. 251, 1 Weir 223.

See PENAL CODE, s. 344, 1 B.H.C. 39.

Sentence—continued.

—5.—**Imprisonment**—*continued.*

——(*a*)—GENERAL—*concluded.*

Adultery—Woman going to accused of her own accord—*See* PENAL CODE, s. 494, 33 P. L.R. 1910=8 Ind. Cas. 226=11 Cr. L.J. 597.

See REFERENCE TO HIGH COURT, 24 W.R. Cr. 71.

See BOM. REG. XIV OF 1827, ss. 7, 19, Rat. Un. Cr. C. 41=Cr. Rg. 29-9-1870.

See BUR. REG. V OF 1887, s. 21, U.B.R. 1892—1896, Vol. I, 131.

Confinement in the stocks—*See* MAD. REG. XI OF 1816, s. 10, 1 Weir 928.

See MAD. REG. XI OF 1816, s. 10, 1 Weir 926.

See RIGHT OF SUIT, 3 Agra 390.

See SECURITY FOR GOOD BEHAVIOUR, A. W.N. 1906, 142=3 Cr. L.J. 456=28 A. 629, 6 M.L.T. 308, 30 A. 334=A.W.N. 1908, 133=5 A.L.J. 318=7 Cr. L J. 427=4 M.L.T. 41, F. B., Rat. Un. Cr. C. 408=Cr. Rg. 73 of 1888.

See SECURITY PROCEEDINGS, A.W.N. 1905, 34.

See SECURITY TO KEEP THE PEACE—DEFAULT IN GIVING SECURITY, A.W.N. 1886, 181.

See SECURITY TO KEEP THE PEACE—FINAL ORDER—ORDER LIMITED BY REQUISITION, 5 L.B.R. 34, F.B.

See THEFT — MISCELLANEOUS, L.B.R. 1893—1900, 198.

Warrants of imprisonment to be in English—*See* WARRANT, 20 W.R. Cr. Cir. 18.

——(*b*)—IN DEFAULT OF PAYMENT OF FINE, OF GIVING SECURITY, MAINTENANCE, IN LIEU OF WHIPPING, ETC.

(1)—*Imprisonment in default of payment of fine.*—Only if no sufficient distress could be obtained, could an order for imprisonment in default of payment of fine be ordered under s. 46, Act XXXI of 1860. QUEEN v. GHOLAM HOSSAIN, **120 P.R. 1866, Cr.**

(2)—*Crim. Pro. Code* (1882), s. 395—*Fine in lieu of whipping, validity of—Imprisonment in default of payment of such fine.*—A Magistrate has no power under s. 395 to revise his sentence of whipping by inflicting a fine, and to direct any imprisonment for default in payment of such fine. All that he can do is (1) to remit the whipping altogether and (2) to sentence the offender in lieu of whipping, or so much of the sentence of whipping as was not executed, to *imprisonment*, etc. The term "imprisonment" in s. 395 means a substantive sentence of imprisonment, and not imprisonment in default for payment of fine. QUEEN-EMPRESS v. SHEODIN, **11 A. 308=A.W.N. 1889, 93.** [*R.*, 21 A. 25=A.W.N. 1898, 156, 1 L.B.R. 202]

(3)—*In default of payment of fine.*—The imprisonment awarded in default of payment of fine for an offence punishable under the Penal Code with fine only must be simple, not rigorous. QUEEN-EMPRESS v. NGA SHWE PYAW, **L.B.R. 1872—1892, 57.**

Sentence—continued.

—5.—**Imprisonment**—*continued.*

——(*b*)—IN DEFAULT OF PAYMENT OF FINE, OF GIVING SECURITY, MAINTENANCE, IN LIEU OF WHIPPING, ETC.—*continued.*

(4)—*Imprisonment in default of fine, nature of.*—Imprisonment in default of payment of a fine imposed by a Criminal Court is a punishment imposed not on account of the offence committed, but on account of the accused not paying the fine which the Court has ordered him to pay. It is in short a punishment for contempt of Court, and the law (s. 70, I.P.C.) says that, notwithstanding the imprisonment in default, the accused is liable for the payment of the fine for a period of six years, after the fine has been imposed, or, if the accused is imprisoned for more than six years, he is liable at any time during his period of imprisonment. Sentences of imprisonment in default of payment of fine need not, in all cases, be proportioned to the amount of the fine imposed. QUEEN-EMPRESS v. NGA CHIN, **L.B.R. 1872—1892, 483.**

(5) — *Penal Code*, s. 70—*Imprisonment in default of payment of fine—Recovery of fine of imprisonment.*— Imprisonment in default of payment of fine is not a satisfaction of the fine, but is a punishment in contempt; and the fine may be recovered by distress, within six years, even though the full term of imprisonment in default has been undergone. The bar of six years, provided in s. 70, may save the property of the accused, but not his personal arrest. The liability for any sentence of imprisonment awarded in default of payment of fine continues after the expiration of six years. QUEEN-EMPRESS v. GANU SAKHARAM, **Rat. Un. Cr. C. 207=Cr. Rg. 8-10-1894.**

(6)—*Imprisonment in default of payment of fine.*—The sentence in default of payment of fine should bear a reasonable proportion to the amount of the fine, and regard must be had to the circumstances of the convicted person. QUEEN-EMPRESS v. NGA CHO, L.B.R. 1872—1892, 353.

(7)—*Crim. Pro. Code* (1872), s. 309—*Imprisonment in default of payment of fine—Period of such imprisonment, where the sentence is only fine.*—The proper construction of the final clause of s. 309 is as follows:—If imprisonment and fine and further imprisonment in default of payment of fine is the sentence, the imprisonment in default cannot exceed one fourth of the period of imprisonment, which the Magistrate is competent to inflict for the offence; but if the sentence is fine only, the imprisonment in default of payment may be the whole period of imprisonment which the Magistrate is competent to inflict for the offence. Therefore in convicting a person for an offence under s. 160,

Sentence—continued.

——5.—**Imprisonment**—*continued.*

————(*b*)—IN DEFAULT OF PAYMENT OF FINE, OF GIVING SECURITY, MAINTENANCE, IN LIEU OF WHIPPING, ETC.—*continued.*

Penal Code, the Magistrate was held to be competent to sentence the accused to pay a fine of Rs. 25 or in default to be rigorously imprisoned for one month. REG. v MUHAMMAD SAHIB, **1 M 277, F.B** [*Overruled*, 10 M. 165, F.B., 10 M. 166 Note=2 Weir 26, F.B.]

(8)—*Penal Code*, s 65—*Crim. Pro. Code*, *Act X of* 1872, *s.* 309 (3)—*Default of fine—Imprisonment—Jurisdiction.*—Cl. 3 of s. 309 of the Crim. Pro. Code does not remove the necessity of conforming to the provisions of s. 65 of the Penal Code. It only provides that, when the sentence is one of fine only, the Magistrate may award imprisonment in default up to the full extent of his powers, provided that the extent does not exceed the limit allowed by s. 65 of the Penal Code. When the sentence is one of imprisonment and fine, the period awarded in default of the fine may not exceed one fourth of the amount which the Magistrate is competent to inflict. REG. v. ALI MATYA, **Rat. Un. Cr. C. 68=Cr. Rg. 27-2-1873.**

(9)—*Crim. Pro. Code* (1882), *s.* 33—*Penal Code, s.* 65—*Sentence of imprisonment in default of payment of fine.*—A Magistrate is not empowered, under s. 33, Crim. Pro. Code, to award imprisonment in default of payment of fine, in excess of the term prescribed by s. 65, Penal Code. QUEEN-EMPRESS v. VENKATASAGADU, **10 M. 165=2 Weir 30.** (1 M. 277, *Overruled.*) [*R*, L.B.R. 1893—1900, 494 496, 1 Weir 31, 32.]

(10)—*Crim. Pro. Code* (1872), *s.* 309—*Penal Code, s.* 65—*Imprisonment in default of payment of fine.*—The words, in the 3rd clause of s. 309 of Act X of 1872, 33, cl. (1), of the Code of 1882 "allowed by law" meant allowed by the particular section applicable to the offence, and s. 65 of the Penal Code taken together. HIGH COURT PROCEEDINGS, 18TH MAY 1881, NO. 994, **10 M. 166, Note=2 Weir 26.** (1 M. 277, *Overruled.*) [*R.*, L.B.R. 1893—1900, 494, 1 Weir 31.]

(11)—*Crim. Pro. Code* (1882), *ss.* 32, 33, 262—*Summary trial—Imprisonment in default of payment of fine—Penal Code, s.* 67—*Act* VIII *of* 1882.—The rule of s. 262 of the Code of 1882, limiting the period of imprisonment in summary trials, applies only to substantive sentences of imprisonment. In cases of simple imprisonment ordered as a process for enforcement of payment of fine, the general rules of ss. 32, 33, Crim. Pro Code, are applicable, and the principle of s. 67, I.P.C, read with (Act VIII of 1882) is unaffected by Chap. XXII of the Crim. Pro. Code. EMPRESS v. ASGHAR ALI, **6 A. 61=A.W.N. 1883, 207.**

(12)—*Penal Code, s.* 290—*Nuisance—Sentence of fine—Rigorous imprisonment for a term in default of payment of fine, whether valid.*—Where an accused person was convicted under s. 290, and sentenced to pay a fine, and, in default of payment, to undergo a brief term of rigorous imprisonment, *held*, that the award of rigorous imprisonment was not illegal. QUEEN v. YELLAMANDU, **5 M. 157.**

(13)—*Imprisonment in default of fine—Additional imprisonment—Rigorous imprisonment.*—*Held* that the imprisonment which is inflicted for the offence of dacoity in default of payment of fine must be rigorous imprisonment. QUEEN v. SRIMONTO KOTAL, **7 W.R. Cr. 31.**

(14)—*Imprisonment in default of fine—S.* 12, *Gambling Act*, 1899—*S.* 25, *General Clauses Act*, 1897.—On a conviction for the first offence under s. 12 of the Burma Gambling Act, a sentence of imprisonment in default of payment of fine should not exceed three weeks, one-fourth of three months provided for the offence. The provisions of s. 25, General Clauses Act, 1897, impressed on all Courts. CROWN v. MAUNG YAN WE, **1 L B R. 150.**

(15)—*Penal Code, s.* 65—*Illegal sentence—Limit of term of imprisonment in default of payment of fine.*—*Necessity of patience in the discharge of judicial functions.*—QUEEN-EMPRESS v. KYUN BON AUNG, **L.B.R. 1872—1892, 364.**

(16)—*Penal Code, s.* 64—*Sentence of imprisonment in default of payment of fine—Recording of the sentence—Crim. Pro. Code, s.* 45 (*s.* 33 *of the present Code*).—Although it cannot be held that s. 64 of the Penal Code, read with s. 45 (s. 33 of the Code of Criminal Procedure, 1898), renders it imperative to record a sentence of imprisonment in default of payment of fine, the High Court held that; when such sentence is imposed, it should be duly recorded. HIGH COURT PROCEEDINGS, 5TH APRIL 1870, NO. 672, **1 Weir 31.**

(17)—*Crim. Pro. Code* (*Act* X *of* 1872,) *s.* 307—*District Municipal Act*—(*Bom. Act* VI *of* 1873)—*General Clauses Act* I *of* 1868, *s.* 5.—Award of imprisonment in default of payment of fines imposed under enactments passed after the General Clauses Act came into operation, is quite legal under s. 307 of the Crim. Pro. Code. REG. v. GULABCHAND; REG. v. MAHIPAT, **Rat.Un. Cr. 91=Cr. Rg. 21-6-1875.**

(18)—*Income-tax Act—General Clauses Act.*—The Income-tax Act (IX of 1869), supplemented by Act XXIII of 1869, having been passed subsequently to the General Clauses Act (I of 1868), s. 5 of the latter authorizes the award of imprisonment in default of payment of the fine imposed under s. 25 of the former. *In re* MAHIPAT RAMBHAI, **Cr. Rg. 4-6-1875.**

Sentence—continued.

——5.—**Imprisonment**—*continued.*

————(*b*)—IMPRISONMENT IN DEFAULT OF PAYMENT OF FINE, OF GIVING SECURITIY, OF MAINTENANCE, IN LIEU OF WHIPPING, ETC.—*continued.*

(19)—*Offence under Income-tax Act,* IX *of* 1869—*Power of Magistrate.*—*Held*, that it was not competent to a Magistrate. under s. 25, (Act IX of 1869), to order imprisonment for not paying the fine imposed for failure to pay income-tax. QUEEN v. NODIA CHAND KOONDOO, **14 W.R. Cr. 70.**

(20)—*Assault--Penal Code*, *ss.* 65, 352.—*Held* that a conviction for assault could not be punished with a fine of Rs. 50, and imprisonment for one month in default of the payment of the fine. *In re* JEHAN BUKSH, **16 W.R. Cr. 42.**

(21)—*Imprisonment in default of security, legality of.*—An order for imprisonment, in default of furnishing security, is not a sentence of imprisonment. QUEEN-EMPRESS v. NGA PO SU, **U B.R 1897—1901, Vol. I, 375.**

(22) - *Crim. Pro. Code* (*Act* X *of* 1882), *s.* 123—*Period of imprisonment.*—Where a person is ordered to execute a bond that he should be of good behaviour for a certain period, the period of imprisonment in default thereof ought to be of the same duration as the period for which the security is demanded. QUEEN-EMPRESS v. GANOO, **Rat. Un. Cr. C. 584 = Cr. Rg. 43 of 1891.**

(23)—*Indefinite term of imprisonment in default of security*—An order directing the accused to be imprisoned until he gives security is bad; a definite period of imprisonment not exceeding one year should be stated in the order. MAILAMDI FAKIR v. TARIPULLA PRAMANIK, **8 C. 644.**

(24)—*Security for good behaviour on conviction--Imprisonment in default.*—Where, on a conviction of an accused person, the Magistrate passed upon him an order requiring the furnishing of security for his good behaviour for a period of one year, and providing for imprisonment in default, *held* that the imprisonment should not be ordered to take effect after the expiry of the term of the imprisonment to which he was sentenced for the offence. The term should commence to run from the date of the order, and not from the date of the expiry of the sentence first passed. QUEEN v. TORAL GUJAR, **3 N.W.P. 126.**

(25)—*Act* IX *of* 1894, *s.* 42—*Imprisonment under the section ordered to be commenced after expiry of imprisonment in default of giving security.*—A sentence under Act IX of 1894 should not be ordered to commence after the expiry of the period of imprisonment in default of furnishing security, but should commence from the date on which it was passed. QUEEN-EMPRESS v. DIWAN CHAND, **14 P.R. 1895, Cr.** [*F.*, 13 Cr. L.J. 189 = 13 Ind. Cas. 1005 = 8 N.L.R. 20.]

Sentence—continued.

——5.—**Imprisonment**—*continued.*

————(*b*)—IMPRISONMENT IN DEFAULT OF PAYMENT OF FINE, OF GIVING SECURITY, OF MAINTENANCE, IN LIEU OF WHIPPING, ETC.—*continued.*

(26)—*Crim. Pro. Code, s.* 395—*Sentence of imprisonment in lieu of whipping.*—Under s. 395, upon the offender not being found to be in a fit state of health to undergo the sentence of whipping, the Court may either remit the whipping or may, in lieu of whipping, sentence him to imprisonment not exceeding twelve months, which may be in addition to any term of imprisonment to which he may be sentenced for the same offence. But this term of imprisonment is a substantive term of imprisonment. Therefore, the original imprisonment and that in lieu of whipping should not exceed the term which the Magistrate is competent to inflict. QUEEN-EMPRESS v. RAM BARAN SING, **21 A. 25 = A.W.N. 1898, 156.** (11 A. 303, *R.*) [*F.*, 87 P.L.R. 1901.]

(27)—*Crim. Pro. Code* (1898), *s.* 395—*Imprisonment in lieu of whipping.*—Where a prisoner who has been sentenced to whipping, is found to be unfit to undergo such sentence, and such sentence is accordingly commuted to one of imprisonment, such substituted term of imprisonment must not bring the total term, to which such prisoner is sentenced, up to a term in excess of the maximum which the Court passing the sentence is competent to inflict. CROWN v. BARKAT ALI, **87 P.L.R. 1901 = 11 P.R. 1901, Cr.** (21 A. 25, *F.*)

(28)—*Crim. Pro Code, s* 250—*Imprisonment in default of payment of compensation.*—Imprisonment can only be awarded on failure to recover a fine. An order awarding imprisonment in default of payment of compensation is, therefore, not valid. *In re* VENKATARAYAPPA, **2 Weir 320.**

(29)—*Imprisonment in default of payment of fine, reduction of.*—In this case the period of imprisonment in default of payment of fine awarded by the Magistrate, was in excess of that prescribed by law and hence was reduced. PAHRA RAM v. CROWN, **81 P.R. 1866, Cr.**

(30)—In this case the period of imprisonment awarded in default of payment of fine, being in excess of that prescribed by law was reduced by the appellate Court. MYA v. CROWN, **88 P.R. 1866, Cr.**

(31)—*Illegal imprisonment—Refund of fine.*—In this case the prisoner was sentenced to imprisonment and fine, or in default of payment of the fine to a further term of imprisonment. He paid the fine but was not released until he had undergone both the substantive and the alternative imprisonment. *Held*, in this case that, as the accused underwent the alternative imprisonment, to which, under s. 68, Indian Penal Code, he was not liable, the fine must be refunded. HEERA v. CROWN, **100 P.R. 1866, Cr.**

Sentence—continued.

——5.—**Imprisonment**—*continued.*

————(*b*)—IMPRISONMENT IN DEFAULT OF PAYMENT OF FINE, OF GIVING SECURITY, OF MAINTENANCE, IN LIEU OF WHIPPING, ETC.—*continued.*

See ACT III OF 1857, s. 13, 5 M.H.C. App. 21.

See ACT XXXI OF 1860, ss. 5, 44, 5 M.H.C. Ap. 23.

See ACT XXXI OF 1860, s. 46, 120 P.R. 1866, Cr.

Imprisonment in default of payment of fine, —*See* ACT V OF 1861, s. 34, U.B.R. 1897—1901, Vol. I, 363.

See ACT III OF 1867, s. 4, L.B.R. 1893—1900, 385.

See ACT XXI OF 1867, s. 15, 5 B.H.C. Cr. 44.

See ACT IX OF 1869, 7 B.H.C. Cr. 76.

See ACT I OF 1871, s. 22, 19 M. 238=2 Weir 461, 27 C. 992=5 C.W.N. 32, L.B.R. 1872—1892, 515.

See ACT I OF 1871, ss. 22, 27, 1 Weir 711.

See ACT IV OF 1877, s. 167, 2 M. 30=1 Weir 525.

See ACT III OF 1880, ss. 28, 29, 40 P.R. 1884.

See ACT IX OF 1890, s. 113, 18 B. 440.

See ACT IX OF 1890, ss. 113, 132, 20 A. 95= A.W.N. 1897, 196.

See BOM. ACT XXXI OF 1850, s. 3, 5 B.H.C. Cr. 61.

See BOM. ACT VIII OF 1867, s. 15, 6 Bom. L.R. 357.

See BOM. ACT VI OF 1873, s. 84, 18 B. 400.

See BOM. ACT V OF 1878, Rat. Un. Cr. C. 979=Cr. Rg. 37 of 1898.

See BUR. ACT XIX OF 1881, s. 36, L.B.R. 1872—1892, 410.

See BUR. ACT I OF 1899, ss. 11 and 12, U.B.R. 1897—1901, Vol. I, 220.

See MAD. ACT XVII OF 1840, 4 M. 335 (Note) F.B.

See MAD. ACT XXIV OF 1859, s. 48, 7 M.H.C. Ap. 22.

See MAD. ACT III OF 1864, ss. 21 and 22, 6 M.H.C. Ap. 40.

See MAD. ACT I OF 1866, s. 22, 8 M. 350.

See MAD. ACT IV OF 1884, s. 284, 1 Weir 753.

See MAD. ACT III OF 1889, ss. 3 and 11, 18 M. 490=1 Weir 909=1 Weir 31.

See COMPENSATION—GENERAL, 22 C. 139, 586, 17 C.P.L.R. 104, 3 L.B.R. 32, 13 P.R. 1896 Cr., 18 A. 96=A.W.N. 1895, 241, L.B.R. 1893—1900, 320, 21 C. 979, 5 C.W.N. 213.

See CRIM. PRO. CODE, 1898, ss. 33, 369, 386, 387, U.B.R. 1892—1896, Vol. I, 18.

See CRIM. PRO. CODE, 1898, ss. 118, 123, 397, L.B.R. 1872—1892, 364.

Sentence—continued.

——5.—**Imprisonment**—*concluded.*

————(*b*)—IMPRISONMENT IN DEFAULT OF PAYMENT OF FINE, OF GIVING SECURITY, OF MAINTENANCE, IN LIEU OF WHIPPING, ETC.—*concluded.*

Imprisonment in default of payment of compensation, when legal—*See* CRIM. PRO. CODE, 1898, ss. 250, 386 to 390, 28 C. 164.

See CRIM. PRO. CODE, 1898, s. 388, para 1, 2 Weir 415.

Imprisonment in default of maintenance—*See* CRIM. PRO. CODE, 1898, s 488, 2 Weir 637=5 M.H.C. App. 34, A.W.N. 1881, 19.

See JUSTICE OF THE PEACE, 6 B.H.C. Cr. 14.

See MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION, L.B.R. 1893—1900, 245.

See MAINTENANCE, 8 M. 70=2 Weir 639, 20 M. 3=2 Weir 638.

See PENAL CODE, s. 290, 1 Weir 239.

See SECURITY FOR GOOD BEHAVIOUR, Rat. Un. Cr. C. 765=Cr. Rg. 29 of 1895, A.W.N. 1893, 183.

————(*c*).—IMPRISONMENT AND FINE.

(1)—*Penal Code, ss. 64 and 65—"Punishable with imprisonment as well as fine"—Meaning of the expression.*—S 65 of the Penal Code must be read with s. 64; and it is clear from this latter section that the words "punishable with imprisonment as well as fine" include cases which are punishable with imprisonment or fine (or both), as well as cases in which imprisonment is a necessary part of the punishment—Imprisonment and fine. *In re* THERUMALAI, **1 Weir 31.**

(2)—*S. 65, Penal Code—Imprisonment as well as fine—S. 25, Gambling Act,* 1879.—S. 65, Penal Code, applies to a case in which imprisonment as well as fine is awardable, and it is doubtful if s. 25, Gambling Act, 1879, makes s. 65, Penal Code, apply to ss. 3 and 4 of the Public Gambling Act. QUEEN-EMPRESS v. NGA NGWE HLAING, **L.B.R. 1893—1900, 459.** (L.B.R. 1893—1900, 385, *Doubted.*)

Award of imprisonment and fine for an offence under Burma Gambling Act, Legality of —*See* BUR. ACT I OF 1899, s. 10, U.B.R. 1892—1896, Vol. I, 118.

——6.—**Solitary Confinement.**

(1)—*Offence punishable under Special or Local Act—Penal Code, s. 73.*—S. 73 of the Penal Code requires that an accused must be convicted of an offence under the Penal Code and not one under a Special or Local Act, before solitary confinement can be imposed at all. QUEEN-EMPRESS v. NGA KUN BA, **L.B.R. 1893—1900, 554.**

(2)—A sentence of solitary confinement is illegal in the case of a conviction under any Special or Local law. EMPRESS v. BALDEO BRAHMIN, **14 C.P.L.R. Cr. 39.**

Sentence—continued.

——6.—Solitary Confinement—*continued.*

(3)—*Salutary punishment for old offenders—To whom unfit.*—Solitary confinement is a salutary punishment for old offenders, especially those convicted of offences against property. As a rule, the punishment of solitary confinement is not suitable for persons convicted of culpable homicide not amounting to murder. EMPRESS v. SONHAR, **5 C.P L R. Cr. 48.**

(4)—*Crim. Pro Code* (1882), *ss.* 32 (*a*), 262 —*Solitary confinement in summary trial—Penal Code, s.* 73.—There is nothing in the terms of s. 262, Crim. Pro. Code, to make it illegal to impose solitary confinement as a part of the sentence in summary trials. The effect of s. 262 is only to limit the imprisonment to a term of three months. It does not interfere with a Court's powers under s. 73, I.P.C. to order solitary confinement, or with the similar powers given by s. 32 (*a*), Crim. Pro. Code. EMPRESS v. ANNU KHAN, **6 A. 83 = A.W.N. 1883, 224.**

(5)—*Solitary confinement.*—Solitary confinement can be awarded only on conviction for an offence under the Penal Code. QUEEN v. GHOLAM HOSSAIN, **120 P.R 1866, Cr.**

(6)—*Solitary confinement—Post Office Act, XIV of* 1866, *s.* 48—*Penal Code, s* 73.—Solitary confinement cannot be awarded as a part of sentence passed under s. 48 of the Post Office Act. EMPRESS v. MUKH RAM, **24 P.R. 1879, Cr.**

(7)—*Solitary confinement must be awarded only where imprisonment awarded.*—Solitary confinement cannot be awarded in a case where imprisonment is not a part of the substantive sentence. CROWN v. UMAR SINGH, **20 P R. 1869, Cr.** [*R.*, 9 P.R. 1882, Cr.]

(8)—*Sentence of solitary confinement—Period —Discretion of Court.*—Where a Magistrate convicted a person of three separate offences in one trial and sentenced him to rigorous imprisonment for three terms aggregating to two years and a half, of which eight months were to be passed in solitary confinement, *held* that a term of solitary confinement exceeding three months was contrary to the intention of the Legislature. EMPRESS v. GAMI, **A.W.N 1896, 132.**

(9)—*Solitary confinement—Penal Code, s.* 73—*Crim Pro. Code* (1872), *s* 314—*Separate sentences of imprisonment on simultaneous conviction—Solitary confinement exceeding three months* —In cases of simultaneous convictions for two offences where two separate sentences of imprisonment are passed, the award of separate terms of solitary confinement, which, in the aggregate, exceed three months, is legal. CROWN v NIHALA, **11 P.R. 1877, Cr.**; CROWN v. KHUSHAL, **13 P.R. 1877, Cr.**

(10)—*Solitary confinement—Penal Code, ss.* 73, 420, 496—*Solitary confinement exceeding period of three months.*—Separate offences of solitary confinement, in respect of each of

Sentence—continued.

——6.—Solitary Confinement—*continued.*

several offences, which exceed three months in all, but do not exceed for each offence the maximum provided in s. 73, Penal Code, for one offence, are not illegal, but, as a matter of practice, a sentence of more than three months solitary confinement should not be passed on a person convicted at one trial of more than one offence. IBRAHIM v. EMPRESS, **7 P.R. 1897, Cr.**

(11)—*Limit of.*—It is not against the spirit of the law to make three months' solitary confinement a part of each sentence of rigorous imprisonment which an offender is sentenced to undergo in succession on separate convictions of distinct offences. QUEEN-EMPRESS v. NGO PO TU, **L.B R. 1893—1900, 213.** [*Overruled*, L.B.R. 1893—1900, 596.]

(12)—*Sentences of solitary confinement exceeding three months—Penal Code, s.* 73.—Sentences of solitary confinement, exceeding in the whole three months, are contrary to the spirit of s. 73, Penal Code, although they might not for each offence exceed the maximum provided for each offence. QUEEN-EMPRESS v. NGA PO THAING, **L B.R. 1893—1900, 596.** (L B.R. 1893—1900, 213, *Overruled*).

(13)—*Penal Code, s.* 73—*Solitary confinement, when the period of rigorous imprisonment is one year.*—Under s. 73, Penal Code, if the term of imprisonment shall exceed six months, but *be less than* a year, the period of solitary confinement must not exceed two months; if the period of imprisonment *exceeds* one year, solitary confinement up to three months may be given. But where the whole term of imprisonment is neither *less than*, nor *exceeds* one year, namely where the imprisonment is for a period of one year only, the solitary confinement must not exceed two months, since a longer period can only be awarded if the term of imprisonment shall exceed one year. HIGH COURT PROCEEDINGS, 13TH FEB. 1897, **1 Weir 35.**

(14)—*Penal Code, ss.* 73 *and* 74—*Solitary confinement of three months out of a term of—Imprisonment for one year and one day, validity of.*—Where an accused person was sentenced to be rigorously imprisoned for one year and one day, of which term three months were to be passed in solitary confinement, *held*, that the award of solitary confinement for the period of three months was opposed to the provisions of s. 74, Penal Code, inasmuch as the term of imprisonment awarded being in excess of three months' solitary confinement should be limited to seven days in any month The accused was directed by the High Court to pass eighty-four days of his entire term of imprisonment in solitary confinement. HIGH COURT PROCEEDINGS, 15TH DECEMBER, 1879, No. 2273, **1 Weir 35.**

(15)—*Solitary confinement—Sentence of four months' rigorous imprisonment and one and half month's further imprisonment in default of*

Sentence—continued.

——6.—**Solitary Confinement**—*continued.*

payment of fine—Term of solitary confinement.—Where a person was sentenced to four months' rigorous imprisonment, of which one month was to be the term of solitary confinement, and a fine of Rs. 25, or one and half month's further imprisonment in default, *held*, that the sentence of one month's solitary confinement was legal. For the purpose of executing a sentence of solitary confinement, a month signifies a period equal to the average duration of a calendar month, *i.e.*, disregarding fractions, thirty days. CROWN v. FATTA, **7 P.R. 1878, Cr.**

(16)—*Penal Code, ss.* 73, 74—*Solitary confinement for whole term* —It is illegal to order a convict to suffer solitary confinement for the whole term of imprisonment to which he is sentenced though such term does not exceed the maximum duration of solitary confinement allowed by s. 74 of the Penal Code. EMPRESS v. ACHRAJ, **A.W.N. 1895, 82.**

(17)—*S.* 74, *Penal Code—Duration of solitary confinement.*—Solitary confinement must not be imposed for the whole term of a person's imprisonment. Under s. 74 of the Penal Code, it is to be imposed at intervals. *In the matter of* MYAN SUK METHER, **3 B.L.R.A. Cr. 49.**

(18)—*Imprisonment in lieu of fine—Solitary confinement.*—Solitary confinement cannot be awarded as part of the imprisonment in lieu of fine. CROWN v. JITA, **26 P.R. 1873, Cr.** EMPRESS v. JAMDAD, **53 P.R. 1887, Cr.**

(19)—*Solitary confinement in default of payment of fine.*—Where the sentence passed on an accused person is merely a sentence of fine, solitary confinement cannot be awarded in default of payment of the fine. BUNSI v. EMPRESS, **9 P.R. 1882, Cr.** (20 P.R. 1869, Cr., *F.*)

(20)—*Solitary confinement—Crim. Pro. Code, s.* 395—*Penal Code, s.* 73.—*Held* that solitary confinement may be awarded to persons sentenced to rigorous imprisonment in lieu of whipping, under s. 395, Crim. Pro. Code. QUEEN-EMPRESS v. GAMAN, **4 P.L.R. 1900, Cr. = 14 P.R. 1899, Cr.**

(21)—*Solitary confinement, exact period to be specified.*—The Court should specify the exact amount of the solitary confinement ordered. RAJADA v. CROWN, **33 P.R. 1869, Cr.**

(22)—*Order directing solitary confinement to be executed in first week of every month.*—The infliction of solitary confinement is regulated by the Penal Code. A Magistrate was held to have no power to direct that the sentence of solitary confinement should be executed in the first week of every month commencing from a certain date. EMPRESS v. JIMAN, **5 C.P.L.R. Cr. 17.**

(23)—*Crim. Pro. Code, s.* 423, *cl.* (*b*)—*Solitary confinement.*—When an appellate Court reduces the term of imprisonment but orders terms of solitary confinement, this is an enhancement of the sentence and is illegal. EMPRESS v. PEMAN, **A.W.N. 1890, 170.**

(24)—*Solitary confinement—Offence not within Indian Penal Code.*—Solitary confinement cannot be awarded for an offence not punishable under the Indian Penal Code, but punishable under a Special Act. HURNARAIN v. CROWN, **20 P.R. 1870, Cr.**

(25)—*Frontier Reg.* I *of* 1872—*Solitary confinement.*—Solitary confinement cannot be awarded as part of a sentence of rigorous imprisonment under s. 8, Frontier Reg. I of 1872. EMPRESS v. GULAB DIN, **4 P.R. 1880, Cr.**

(26)—*Procedure — Solitary confinement.*—A Magistrate cannot supplement the sentence of Sub-Magistrate with solitary confinement. HUSSAIN ALI KHAN v. MAHOMED BUKSH KHAN, **79 P. R. 1866, Cr.**

See HABITUAL OFFENDER, L.B.R. 1893—1900, 364.

See PENAL CODE, s. 73, U.B.R. 1892—1896, Vol. I, 146, 5 C.P.L.R. Cr. 23.

——7.—**Fine.**

(1)—*Of fine, to be according to the means of the accused.*—Under no circumstances is a Magistrate justified in passing or confirming a sentence of fine upon the accused which he has every reason to believe the accused cannot possibly pay. QUEEN-EMPRESS v. NGA CHIN, **L.B.R. 1872—1892, 483.**

(2)—*Fine imposed on several—Order as to one reverse—Effect.*—Where the fine imposed on several accused persons jointly has been recovered from one of them and the order fining that person is reversed in appeal, the liability to pay the fine, of all and each of the others, revives. RATNAGIRI MAGISTRATE'S LETTER, No. 205, **Rat. Un. Cr. C. 90.**

(3)—*Penal Code, s.* 63—*Excessive fine on poor persons—Legality.*—The intention of the framers of the Penal Code was that fines inflicted should not be disproportionate to all possible means of the criminals. A Magistrate should not be influenced by the consideration that the criminals, though poor, are backed up by influential persons. QUEEN-EMPRESS v. BHILYA, **Rat. Un. Cr. C. 556 = Cr. Rg. 34 of 1891.**

(4)—*Penal Code, s.* 70—*Realization of fine after death of person fined — Distress of joint moveable property and immoveable property—Crim. Pro. Code* (1882), *s.* 386.— Where a person fined, under the Penal Code, dies before the realization of the fine, the fine can be realized by attachment and sale of moveable property belonging solely to the deceased. It cannot be realized by attachment and sale of joint moveable property, nor can it be enforced

Sentence—continued.

——7.—Fine—*continued.*

by distress of immoveable property. The only remedy in such a case is by a suit. QUEEN-EMPRESS v. SITANATH MITRA, 20 C. 478. (5 B.H.C. 63, *F.*).

(5)—*Order for payment of a daily fine.*—An order for payment of a daily fine is illegal, inasmuch as it is an adjudication in respect of an offence which has not been committed when such order is passed. RAM KRISHNA BISWAS v. MOHENDRA NATH MOZUMDAR, 27 C. 565. (1 B.L.R. O. Cr. 41, 18 W.R. Cr. 44, 25 W.R. Cr. 6, *R.*) [*F.*, 24 A. 309=A.W.N. 1902, 70; *Expl.*, 7 C.W.N. 853.]

(6)—All fines judicially ordered by Magisterial authorities should be shown in the statement of fines which must not be confined to convictions under the Penal Code, but should also include fines under all special or local laws. The only fines to be excluded are those inflicted under the sentence of a Sessions Judge and those under s. 270, Crim. Pro. Code, 1861, Amendment Act VIII of 1869, which, being imposed in cases of complaints dismissed as frivolous and vexatious, would be out of place. CRIMINAL CIRCULAR NO. 3 OF 27TH JANUARY 1870, 13 W.R. Cr. Cir. 2.

(7)—*Register of fines.*—Sessions Judges and Magistrates need not examine the vernacular registers of fines in their offices. CRIMINAL CIRCULAR NO. 5 OF 1872, 18 W.R. Cr. Cir. 10.

(8)—*Cattle Trespass Act, I of* 1871, s. 22—*Fine in addition to compensation.*—S. 22 does not provide for a fine in addition to compensation. HIGH COURT PROCEEDINGS, 1ST AUGUST 1873, NO. 1379, 1 Weir 710=7 M.H.C. App. 24.

(9)—*Fine not to be awarded as compensation—Crim. Pro. Code* (1861), *Ch. XIV—Record of proceedings in cases under Ch. XV, Crim. Pro. Code.*—Inflicting a fine and awarding the same as compensation in a case which falls under the provisions of Ch. XIV of the Code, is illegal. In a case falling under Ch. XV, the statement of the complainant, the evidence of the witnesses, and the reply of the accused, should be recorded. QUEEN v. NIJANUND, 3 W.R. Cr. 60.

(10)—*Offence under a special Act—Act XXI of* 1856—*Power of Magistrate to impose a fine exceeding Rs.* 1,000—*Crim. Pro. Code* (1861), s. 22.—A Magistrate is competent to impose a fine exceeding Rs. 1,000 for an offence under a special Act, such as the Excise Act, XXI of 1856, even though he is not authorized to do so by s. 22, Crim Pro. Code, 1861. QUEEN v. SUROOP CHUNDER DUTT, 7 W.R. Cr. 29.

(11)—*Omission to give notice to party against whom order is made—Order to repair fence.*—A party ought not to be fined for not repairing a fence without an information against him and a hearing. QUEEN v. SHADHU CHURN GHOSE, 23 W.R. Cr. 63.

(12)—*Fine for continuing offence—Beng. Act* VI *of* 1866.—A was convicted before a Justice of the Peace for using a warehouse, etc., in the town of Calcutta for the keeping and storing of jute other than jute screwed for shipment, without a license, and for the said offence was fined Rs. 300, and adjudged to pay a further fine of Rs. 25 for every day after the conviction on which the offence was continued. *Held* that the conviction was bad. *In the matter of* SAGAR DUTT; QUEEN v. JUSTICES OF THE PEACE, 1 B.L.R. O. Cr. 41=18 W.R. Cr. 44, note. [*R.*, 9 B.L.R. Ap. 35=18 W.R. Cr. 44.]

(13)—*Power of Court to dispose of fine.*—The Court had no power to dispose of fines inflicted upon prisoners; such power existed in the Government alone. QUEEN v. GOLUCK CHUNDER DASS, 1 Hyde 282.

(14)—*Power of High Court to award fine to prosecutor on conviction for felony—Felony.*—The High Court had power to award, by way of satisfaction to a prosecutor, the whole or any portion of a fine imposed upon conviction of a felony before the Court, in the exercise of its original criminal jurisdiction. REG v. HOSSEIN JAN, 2 Ind. Jur. N S. 190.

(15)—*Amount of—Crim. Pro. Code* (1861), *s.* 63—*Fines inflicted by Magistrates—Magistrate not bound to enforce attendance of witness when not served with summons.*—The description of fine which it was the object of s. 63, Crim. Pro. Code, 1861, to prohibit was a fine which it would be impossible or very difficult for the accused person to pay, or wholly disproportioned to the character of the offence. *Quære.*—Whether s 63 has any application to fines inflicted by a Magistrate—A Magistrate is not bound under s. 191, Crim. Pro. Code, to enforce the attendance of the witness, by warrant except upon proof of the service of summons. *In re* ABDOOR RUHMAN, 7 W.R. Cr. 37.

(16)—*Order directing to pay a part of fine to witness—Proof of loss to be given.*—An order, directing the payment to a witness of a portion of the fine levied on the accused, in the absence of any proof that the witness has suffered any loss owing to the conduct of the accused, is illegal. QUEEN v. KARTICK CHUNDER HOLDAR, 9 W.R. Cr. 58.

(17)—*Order for payment of part of fine to Ameen—Deputation to restore land-marks—Jurisdiction of Magistrate.*—The Joint Magistrate is not competent to direct, under s. 44, Crim. Pro. Code, 1861, that a portion of the fine inflicted under s. 434 of the Penal Code be paid to an ameen, for the purpose of paying the expense of his deputation to restore the land marks which had been destroyed by the opposite party. QUEEN v. MOORUT LOLL, 6 W.R. Cr. 93.

(18)—*Order for payment of Municipal taxes out of fine—Power of Deputy Magistrate to question legality of attachment by Civil Court.*—A Deputy Magistrate has no authority to order arrears of Municipal tax due by a person to be paid out of a fine levied on him. The legality

Sentence—continued.

—— 7.—**Fine**—*continued.*

or formality of the mode of attachment, allowed by a Civil Court, is not a matter for the Deputy Magistrate's consideration. QUEEN v. BROJO KISHORE DUTT, **8 W.R. Cr. 17.**

(19)—*Levy of fine by distress and sale—Power restricted to Court that imposed it—"Court," meaning of.*—In every case in which an offender is sentenced to fine, the Court which sentences the offender is competent to issue a warrant for the levy of the amount by distress and sale. But this power is restricted to the Court which sentences the offender. This successor in office of a Judge or Magistrate is competent to levy a fine imposed by his predecessor, the word "Court" not being restricted to the particular individual who held the office. CHUNDER COOMAR MITTER v. MODHOOSOODUN DEY, **9 W.R. Cr. 50.**

(20)—*Liability for fine after imprisonment in default—Distress and sale of moveable property whether ordered or not by the officer inflicting fine.*—*Held,* by the majority of the Court, (*Seton-Karr, J., dissenting*) that an offender who has undergone the full term of imprisonment to which he was sentenced in default of the payment of a fine, is still liable to have the amount levied by distress and sale of any moveable property belonging to him, which may be found within the jurisdiction of the Magistrate of the District, whether the Officer who inflicted the fine issued any special directions on the subject or not. QUEEN v. MODOOSOODUN DEY, **3 W.R. Cr. 61.**

(21)—*Act* III *of* 1867, *s.* 4—*Sentence of imprisonment and fine.*—A sentence of imprisonment and fine under s. 3 or s. 4 of Act III of 1867 is illegal. QUEEN-EMPRESS v. NGA THA DIN U, **L B.R. 1872—1892, 434.**

(22)—*Act* XIX *of* 1838, *s.* 13—*Scope.*—The legislature, when it enacted in s 13 of Act XIX of 1838, that persons who committed certain acts should be "subject to a fine of ten times the amount of fees" or "subject to a fine of ten rupees," intended that the penalties specified should be inflicted in full. EMPRESS v. MHASNYA RAMA, **7 B. 280.** [*R.*, 38 B. 111 =2 Bom. Cr. Cas. 161=15 Bom. L.R. 994=14 Cr. L.J. 653=21 Ind. Cas. 893.]

(23)—*Penal Code, s.* 53—*Collective sentence of fine.*—A sentence of fine imposed upon more than one prisoner individually and collectively is not a proper sentence. Certainty with respect to the punishment which each of two or more prisoners is to suffer is as essential in a sentence, when the punishment is a fine, as it is when the punishment is a term of imprisonment. HIGH COURT PROCEEDINGS, 11TH NOVEMBER, 1869, No. 2189, **1 Weir 30=5 M. H.C. App. 5.**

(24)—*Whether appropriate where death is caused—Penal Code, s* 323—*Death caused by kicking—Sentence of fine—Motion by Government Advocate under s.* 435, *Crim. Pro Code.*—The foreman of a company finding the deceased, a labourer employed in the firm, idling at his work, and having repeatedly had occasion to complain of his laziness, got angry and gave him a kick, with the intention of kicking on the buttocks. But the blow fell on the perinæum with the result that the urethra was ruptured and the man died eight days after from inflammation of the bladder and peritonitis, both attributable to the rupture of the urethra. There was no external mark of violence or bruising. The foreman was convicted under s. 323, I.P.C., of simple hurt, and was sentenced to pay a fine of Rs. 200. On the motion of the Government Advocate, the High Court, under the provisions of s. 435, Crim. Pro. Code, called for the record of the case for the purpose of satisfying itself as to the legality and propriety of the finding and sentence, and *held* that, under the circumstances of the case, the conviction and sentence of the Magistrate was proper. EMPRESS v. TRESHAM, **A.W.N. 1898, 109.**

(25)—*Crim. Pro. Code, s.* 388—*Suspension of sentence of imprisonment in default of payment of fine.*—The accused was sentenced to pay a fine, and in default, to three months' imprisonment. The Magistrate allowed her some days to pay the fine and released her, on her giving security. *Held,* the procedure was illegal, unless at the same time, a distress warrant for the levy of the fine was issued. The suspension of the sentence was not lawful in this case. KING-EMPEROR v. THE MYA, **4 L.B.R. 151= 7 Cr. L.J. 452.**

(26)—*Theft in dwelling-house—Penal Code, s.* 380—*Imprisonment.*—A person convicted of theft in a dwelling house must not be fined instead of being ordered to undergo imprisonment, though the fine may be added to the imprisonment. SHEIKH DULLO v. ZAINAH BEBEE, **16 W.R Cr. 17.**

(27)—*Separate offences—Alternative sentence allowed only in one.*—On a conviction under two sections of the Penal Code, in one of which only an alternative sentence of imprisonment or fine is permitted, a sentence of fine would be illegal. QUEEN v. BHOOBUN MOHUN, **11 W.R.Cr. 39.**

(28)—*Infliction of fine on a ship in a corporate capacity—Finding on a mere presumption not authorised — Excise Act, s.* 48 (*e*)—*Proper procedure.*—There is no authority in the Crim. Pro. Code for fining a whole ship's company under s. 48 (*e*) of the Excise Act without specifying the names of the accused, or fining absconding accused on a mere presumption without a hearing The Magistrate's proper course is to ascertain the names of the absconding members of the crew and issue warrants for their arrest. CROWN v. S. S. "CHUPRA," **1 L.B.R. 89.**

(29)—*Abkari Acts—Fine.*—Under the Abkari Act, fines should be imposed by a Magistrate, and not by a Revenue officer. SAWUN v. MOHKUM, **110 P.R. 1866, Cr.**

Sentence—continued.

——7.—Fine—*continued.*

(30)—*Remitting imprisonment on payment of fine—Whether Magistrate can pass such order,* —An order passed by a Magistrate to the effect that, if an accused pay a certain sum of money as fine, the imprisonment adjudged will be remitted, is without jurisdiction. POLICE v. SAWAT SINGH, **Colm. Dig. Cr. 8 of 1873.**

(31)—*Imprisonment in default of payment of fine—Payment into Court—Refund of fine—Penal Code, s. 70.*—Imprisonment in default of payment of fine does not relieve the accused from payment of the fine. If a fine has not been paid, it can be recorded by distress and sale of the moveable property of the accused within the time prescribed by s. 70, Penal Code. The accused is not entitled to any refund of the fine paid into Court on his behalf. QUEEN-EMPRESS v. NGA SHWE KYO, **L.B.R. 1893—1900, 440.**

(32)—*Fine in lieu of whipping—Crim. Pro. Code* (1898), s 395.—In case a whipping cannot be inflicted, the only sentence that can be passed in lieu thereof is one of imprisonment; one of fine cannot be passed. It is in the discretion of a Magistrate to remit a sentence of whipping, under Crim. Pro. Code, s. 395. CROWN v. PO THIT, **1 L.B.R. 202.** (11 A. 308, *F.*).

(33)—*Fine in addition to transportation—Duty of Sessions Judge to intimate levy of fine to Port Blair authorities.*—Where a fine with alternative imprisonment is imposed in addition to transportation, and the whole or part of the fine is afterwards levied, it is the duty of the Sessions Judge to notify the fact to the Port Blair authorities. HIGH COURT PROCEEDINGS, 12TH NOVEMBER 1870, **5 M. H.C. App. 44.**

(34)—*Crim. Pro. Code* (1882), ss. 545, 547—*High Court setting aside a sentence of fine—Recovery when a portion of it has been given to the complainant as compensation.*—Where the High Court directs, in revision, that the fines paid by the accused should be repaid to them, the money, in whosesoever hands it may be, should be payable to them. Where part of the amount has been given to the complainant as compensation, the amount may be recovered by process under s. 547 without having recourse to a civil suit. MUTASADDI v. MANI RAM, **19 A. 112 = A.W.N. 1896, 182.** [*R.*, 29 P.R. 1903 = 2 P.L R. 1904, Cr.]

(35)—*Penal Code, s. 70—Fine—Recovery of—Procedure.*—Every warrant for the levy of a fine must be issued by the Court passing the sentence. If, at any time after the sentence, any portion of the fine remains unpaid, and the Court has reason to think that any moveable property belonging to the offender is within its jurisdiction, it should issue a fresh warrant for the attachment and sale of that property within a specific period, returnable within a specific time. SATTARA SESSIONS JUDGE'S LETTER NO. 562, **Rat. Un. Cr. C. 35.**

Sentence—continued.

——7.—Fine—*continued.*

(36)—*Prospective fine.*—The imposition of a prospective fine is illegal. MAHADEO PRASHAD v. MUNICIPAL BOARD OF LUCKNOW, **11 O. C. 122 = 7 Cr. L. J. 454.**

See ACT XXVI OF 1850, 7 B.H.C. Cr. 55.

See ACT XXVI OF 1850, s. 7, 5 B.H.C. Cr. 103.

See ACT XVIII OF 1854, s. 34, 6 M.H.C. App. 37.

See ACT XXXI OF 1860, s. 32 (6), 1 B. 308, F.B.

When not impossible — *See* ACT VII OF 1865, ss. 3 and 5, Colm. Dig. Cr. 69 of 1877.

Fine is an appropriate form of punishment, when—*See* ACT III OF 1867, ss. 3 and 4, L.B.R. 1872—1892, 428.

See ACT III OF 1867, ss. 3 and 15, A.W.N. 1881, 111.

See ACT XXIX of 1867, s. 3, 9 W.R. 64, Cr.

See ACT XXIX OF 1867, s. 15, 9 W.R. Cr. 62.

Court-fee and the process-fee to be paid in addition to fine imposed—*See* ACT VII OF 1870, s. 31, 1 L.B R. 209.

Order of appellate Court awarding further costs, if—*See* ACT VII OF 1870, s. 31, 22 M. 153 = 1 Weir 724.

See ACT I OF 1871, ss. 21, 22, 2 C.L.R. 507.

See ACT I OF 1871, s. 22, 1 Weir 710 = 7 M H.C. App. 24.

High Court's power to order refund of fine on quashing a conviction—*See* ACT X OF 1875, s. 147, 1 C. 354.

Sentence—Payments of, and confiscations—*See* ACT VII OF 1878. ss. 25, 75, Rat. Un. Cr. C. 960 = Cr. Rg. 13 of 1898.

See ACT I OF 1879, s. 61, A.W.N. 1885, 30.

See ACT XXII OF 1881, 5 C.P.L.R. Cr. 44.

See ACT VI OF 1882, s. 35, 20 C. 676.

Additional, for continuing offence, validity of —*See* ACT XIII OF 1889, s. 26, Rule 2, 22 B. 841.

See ACT IX OF 1890, s. 112, 17 C.P.L.R. 32.

See ACT IX OF 1890, s. 113, 20 M. 385 = 1 Weir 871, 18 B. 440.

See BEN. ACT XXI OF 1856, 7 W.R. Cr. 29.

See BEN. ACT III OF 1864, ss. 65, 66, 20 W. R. Cr. 64 = 12 B.L R. App. 2.

Fine imposed by Sub-Divisional Officer on a member of a Village Punchayat—Nature of the order—Revision by High Court—*See* BEN. ACT VI OF 1870, s. 8, 23 C. 421.

Continuing offences likely to be committed after proceeding—Daily fine—*See* BEN. ACT III OF 1885, s. 140, 37 C. 671 = 7 Ind. Cas. 931 = 11 Cr. L.J. 540.

See BEN. ACT III OF 1899, ss 449, 450, 452 576, 11 C.W.N. 30 = 4 Cr. L.J. 408 = 34 C. 341.

See BOM. ACT III OF 1867, ss. 13, 14, Rat. Un. Cr. C. 221.

Sentence—continued.

——7.—**Fine**—*continued.*

See BOM. ACT VI OF 1873, s. 84, 18 B. 400.

See BOM. ACT IV OF 1887, ss. 4, 5, 2 Bom. L.R. 1081.

Prospective punishment for continuing offence—*See* BOM. ACT III OF 1888, ss. 471, 472, 22 B. 766.

Imposition of daily fine—*See* BUR. ACT XVII OF 1884, s. 104, L.B.R. 1872—1892, 421.

See BUR. ACT III OF 1898, ss. 180, 195 4 L.B.R. 44=6 Cr. L.J. 281.

See MAD. ACT V OF 1882, s. 21 (*f*), 9 M.L.T. 216=9 Ind. Cas. 567=12 Cr. L.J. 99.

See MAD. ACT IV OF 1884, s. 264, 16 M. 230=1 Weir 733.

See PUN. ACT XX OF 1891, s. 169, 13 P.R. 1903, Cr.

Daily fine—Legality of—*See* U. P. ACT I OF 1900, s. 168, 11 O.C. 121-B=8 Cr. L.J. 226.

Recovery of — Attachment—*See* ATTACHMENT, L.B.R. 1872—1892, 332.

Future daily fine—Legality—*See* CANTONMENT CODE, 1899, ss. 89, 104, 12 Cr. L. J. 371=11 Ind. Cas. 139=206 P.L.R. 1911.

See COMPENSATION—GENERAL, 22 C. 139, 5 C.W.N. 214, A.W.N. 1885, 44.

See COMPENSATION—TO COMPLAINANT AND HIS RELATIVES, 12 M. 352=2 Weir 719, 1 Weir 710=7 M.H.C. App. 24.

See CONTEMPT OF COURT, 4 M.H.C. 229.

Imprisonment in default of payment of fine—*See* CONVICTION, 4 B.H.C. Cr. 37.

See CRIM. PRO. CODE, 1898, s. 250, Colm. Dig. Cr. 66 of 1877, 8 C.P.L.R. Cr. 13.

See CRIM. PRO. CODE, 1898, ss. 263, 414, 415, 416, 2 C.L.R. 511.

See CRIM. PRO. CODE, 1898, s. 308, 3 C.L. R. 404.

Legality of inflicting a sentence of, in case of persons not able to withstand full whipping—*See* CRIM. PRO. CODE, 1898, s. 395, U.B.R. 1892—1896, Vol. I, 45.

See DISMISSAL FOR DEFAULT, 17 W.R. Cr. 6.

Compensation for affront—Powers of laskars—*See* GARO HILLS, 9 Ind. Cas. 114=12 Cr. L.J. 10=13 C.L.J. 444.

See GRIEVOUS HURT, 1 L.B.R. 221.

See LEGAL PRACTITIONERS—PLEADER, 7 B.H.C.A.C. 102.

See MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION, 4 M.H.C. App. 28.

See MAINTENANCE, 22 C. 291.

Murder case—Death sentence—Imposition of fine in addition—Award of compensation to deceased's heirs—Practice of Punjab Chief Court —*See* MURDER, 18 P.R. 1913, Cr.=14 Cr.L J. 522=20 Ind. Cas. 1002=41 P.W.R. 1913, Cr.

See NEGLIGENCE, 5 C.P.L.R. 45, Cr.

See OBSTRUCTING RIGHT OF WAY, 1 L.B. R. 48.

Sentence—continued.

——7.—**Fine**—*concluded.*

See PENAL CODE, s. 309, 1 B.H.C. 4.

See PENAL CODE, s. 504, 21 P.W.R. 1911, Cr.=11 Ind. Cas. 619=12 Cr. L.J. 435.

Imposition of separate fine on Mahomedan and Hindu residents—Legality—*See* BOM. REG. XII OF 1827, s. 37, 6 S.L.R. 124=19 Ind. Cas. 505=14 Cr. L.J. 249.

See BUR. REG. V OF 1887, s. 21, U.B.R. 1892—1896, Vol. I, 132.

See MAD. REG. XI OF 1816, s. 10, 5 M.H.C. App. 33.

See RIGHT OF SUIT, 3 Agra 390.

——8.—**Whipping.**

See SENTENCE — COMMUTATION OF SENTENCE.

See SENTENCE—CUMULATIVE and SEPARATE SENTENCES.

See SENTENCE—FINE.

See SENTENCE—IMPRISONMENT.

See SENTENCE—SENTENCE AFTER PREVIOUS CONVICTION.

See SOLITARY CONFINEMENT.

See WHIPPING.

(1)—*Act and section applicable to be quoted—Illegal sentence of whipping—Magistrate's power to revise—Report to the High Court—Crim. Pro. Code* (1882), s. 395.—When a sentence of whipping is passed, the Whipping Act and the section applicable must be quoted in the sentence. An illegal sentence of whipping cannot be passed upon a person over forty-five years of age and such an illegal sentence cannot be revised by a Magistrate under s. 395, Crim. Pro. Code. The illegal sentence should be reported to the High Court for orders. QUEEN-EMPRESS v. NGA PAN BON, **L B.R. 1893—1900, 241.**

(2)—*Sentence of, passed after two years' imprisonment—Crim. Pro. Code* (1882), s. 391.—A sentence of whipping at the expiration of two years' imprisonment to which the accused was also sentenced is illegal. QUEEN-EMPRESS v. NGA TUN THA, **L.B.R. 1893—1900, 78.**

(3)—*Crim. Pro. Code, ss.* 394 *and* 395—*Sentence of whipping—Medical certificate before executing sentence that the accused is fit to receive only a portion of the sentence—Validity—Imprisonment in lieu of whipping.*—A sentence of whipping is wholly prevented from being executed, when, under s. 394, cl. (1) of the Crim. Pro. Code, a medical officer certifies that the offender is not in a fit state of health to undergo the punishment. It is partially prevented from being executed, if, *during* the execution of the sentence, the medical officer certifies that the offender is not in a fit state of health. But there is no provision of law authorizing a medical officer to give a certificate, *before* the commencement of whipping, that the accused is fit to receive only a portion of the sentence, and such a certificate cannot

Sentence—continued.

——8.—**Whipping**—*continued.*

be held as one granted under s. 394 of the Code. The Magistrate is not, in such a case, empowered under s. 395, Crim. Pro. Code, to sentence the offender to imprisonment, in lieu of so much of the sentence as was not executed. *In re* PUBLIC PROSECUTOR, **30 M. 84=3 M.L.T. 31 =7 Cr. L.J. 5=17 M.L.J. 555.**

(4)—*Crim. Pro. Code* (*Act* X *of* 1882), s. 390—*Postponement of whipping.*—S. 390 of the Crim. Pro. Code does not authorize the Court passing a sentence of whipping to postpone the execution to a future day. QUEEN-EMPRESS v. ABDULLAH, **Rat. Un. Cr. C. 906=Cr. Rg. 17 of 1897.**

(5)—*Whipping Act*, VI *of* 1864, s. 9—*Sentence of Whipping—When to be carried out.*—It is illegal in a sentence to direct that the whipping ordered should be carried out at the expiration of the term of imprisonment ordered. It must be carried out either immediately after the expiry of 15 days from the date of the sentence or, where the conviction is appealed against, after the receipt of the appellate Court's order confirming the sentence. REG. v. SHEKH HUSEN, **Rat. Un. Cr. C. 68=Cr. Rg. 13-11-1872.**

(6)—*Crim. Pro. Code* (1882), *s.* 391—*Separate offences—Separate sentences of imprisonment for each and whipping for the second—Whipping when to be inflicted.*—When a person is convicted at one trial of two offences and sentenced to a separate term of imprisonment for each, and also to whipping of the second, the two sentences being directed to be consecutive, the sentence of whipping ought not to be delayed until the expiry of the first sentence, but must be carried into execution in accordance with the provision of s. 391 of the Code, as the word "sentence" in the section means the total punishment inflicted at one trial. QUEEN-EMPRESS v. HABLA SOLA, **Rat. Un. Cr. C. 803=Cr. Rg. 61 of 1895.**

(7)—*Crim. Pro. Code*, 1872, s. 310—*Sentence of whipping.*—S. 310 of the Crim. Pro. Code makes it a duty of the officer responsible to inflict the punishment of whipping to inflict it immediately on the expiration of the time set forth in the enactment. But if, through accident, or neglect, or wilful breach of duty this direction is not obeyed, the prisoner is not thereby in any way freed from the liability of undergoing the sentence then subsisting. QUEEN-EMPRESS v. MOHADHU, **Rat. Un. Cr. C. 136=Cr. Rg. 5-8-1878.**

(8)—*Sentence of whipping by a second-class Magistrate—Right of appeal of accused—Crim. Pro. Code*, ss. 390, 407 *and* 413.—A right of appeal against a sentence of whipping by a second-class Magistrate being provided by ss. 407, 413, Crim. Pro. Code, such right would be practically nullified by executing a sentence of whipping pending the exercise of that right. It is, therefore, an improper exercise of discretion for a second class Magistrate, under s. 390 of the Crim. Pro. Code to order a sentence of

Sentence—continued.

——8.—**Whipping**—*continued.*

whipping to be executed pending appeal. QUEEN-EMPRESS v. CHAN THA AUNG, **L.B. R. 1893-1900, 310.**

(9)—*Penal Code, s.* 75—*Act* VI *of* 1864 (*Whipping*), s. 3.—The liabilities of additional punishment, under s. 3 of Act VI of 1864 and s. 75 of the Penal Code, are distinct matters. HIGH COURT PROCEEDINGS, 20TH JAN. 1875, NO. 135, **1 Weir 39.**

(10)—*Fine in lieu of whipping.*—To pass a sentence of fine in lieu of whipping, which was not inflicted because the Medical Officer could not certify that the accused was fit to bear the stripes is, under s. 313, Crim. Pro. Code, 1872, illegal. RAMJI v. MANIA, **Colm. Dig. Cr. No. 37 of 1876.**

(11)—*Conditional commutation of whipping to imprisonment—Crim. Pro. Code* (1898), *s.* 395.—Where a Magistrate, on conviction of the accused, passes a sentence of whipping and at the same time orders that, if the accused is found unfit for the same, the accused shall suffer imprisonment, the conditional imprisonment, not being warranted by law, is improper. In such cases, the proper procedure to follow is that laid down in s. 395, Crim. Pro. Code. QUEEN-EMPRESS v. NGA CHEIN, **L.B.R. 1893—1900, 631.** (L.B.R. 1893—1900, 42, 3 B.L.R. Cr. 50, *R.*)

(12) *St.* 24 *and* 25 *Vic.*, *Ch.* 100, *s.* 47 *as amended by St.* 27 *and* 28 *Vic.*, *Ch.* 47—*Sentence of—Imprisonment and whipping.*— The accused assaulted a woman, with intent to know her unlawfully and carnally. He was convicted and sentenced to receive 20 lashes with a whip and to be imprisoned and kept to hard labour for two years. *Held* that the statute dealing with the case, 24 and 25 Vic., C. 100, s. 47 amended by 27 and 28 Vic., C. 47,, only provides for a maximum sentence of penal servitude for five years or of imprisonment for two years. It does not authorize a sentence of whipping either alone or in addition to the sentence of penal servitude. QUEEN-EMPRESS v. YAKOBO, **Rat. Un. Cr. C. 971.**

(13)—*Crim. Pro. Code, s.* 391—*Double sentence of whipping.*—An accused cannot be sentenced to a double sentence of whipping, where he is convicted of two offences. QUEEN-EMPRESS v. DAGDU JANAJI, **Rat. Un. Cr. C. 955=Cr. Rg. 7 of 1898.**

(14)—*Sentence of whipping added to imprisonment—Previous conviction to be quoted in the charge—Whipping Act, s.* 3.—When a Criminal Court intends to add the punishment of whipping to imprisonment for an offence so punishable, the previous conviction should be set out in the charge, and s. 3 of the Whipping Act should be quoted in the sentence. QUEEN EMPRESS v. NGA LU GYI, **L.B.R. 1893—1900, 310.**

(15)—*Whipping in addition to imprisonment—Consecutive sentences of whipping—Crim. Pro. Code* (1898), s. 391.—Where a person has been

Sentence—continued.

——8.—**Whipping**—*concluded.*

previously convicted, a Magistrate cannot pass more than one sentence of whipping on him in two or more trials on the same day. If he is already undergoing a sentence of imprisonment, he should ascertain whether a sentence of whipping was added to the sentence he is actually undergoing, and, in that case, should refrain from passing a second sentence of whipping. When a prisoner undergoes a consecutive series of sentences of imprisonment to which whipping has been added, he can only undergo one sentence of whipping, which should be carried out as provided in s. 391, Crim. Pro. Code either at the end of the first fifteen days of his sentence or as soon as practicable after the order of the appellate Court confirming the sentence is received. QUEEN EMPRESS v. NGA PAW DUN, **L.B.R. 1893—1900, 582.** (14 W.R. Cr. 7, *F.*)

(16)—*Adding imprisonment to whipping.*—A sentence of imprisonment cannot be added to that of whipping, when the offence committed by the accused is his first offence. Further, when a sentence of whipping has been carried out, it cannot be enhanced, because that would involve the execution of the sentence considered as a whole by two instalments, which would be illegal. EMPRESS v. PADAM SINGH, **6 C.P.L. R. Cr. 36.**

(17)—*Sentence giving both whipping and imprisonment—Power of Magistrate—Act* XIII *of* 1856, *s.* 27.—*Held* that either imprisonment or whipping, but not both could be awarded by a Magistrate under s. 27, Act XIII of 1856. QUEEN v. FYZO, **Bourke O C. 269.**

(18)—A conviction of theft, after a previous conviction of house-breaking in order to commit theft, is not a second conviction of the same offence so as to authorize a sentence of whipping combined with other punishment. MAKSUD SHAH v. DAD, **101 P.R. 1866, Cr.**

See ACT XXVII OF 1871, s. 19 (1), 166 P. L.R. 1905=3 Cr. L.J. 77.

Whether, in lieu of sentence of whipping, order for detention in Reformatory can be passed—*See* ACT VIII OF 1897, ss. 8, 16, L.B.R. 1893—1900, 493.

See CRIM. PRO. CODE, 1898, s. 391, 5 C. P.L.R. Cr. 31, 2 Weir 446.

Mode of infliction of whipping—*See* CRIM. PRO. CODE, 1898, s. 392, 14 C.P.L.R. Cr. 64.

See CRIM. PRO. CODE, 1898, s. 393, U.B.R. 1892—1896, Vol. I, 44.

See CRIM. PRO. CODE, 1898, s. 395, U.B.R. 1892—1896, Vol. I, 45.

See HABITUAL OFFENDER, 12 Bom. L.R. 901=8 Ind. Cas. 623.

See SMUGGLING, L.B.R. 1893—1900, 567.

——9.—**Forfeiture**.

(1)—*Penal Code, s.* 62—*Sentence of forfeiture of property—Conditions under which it should be awarded.*—A sentence directing forfeiture of property, under s. 62, I.P.C., is not ordinarily appropriate in cases of private crime, however heinous. As a general rule, these very severe measures can be justified only in the case of offences of a political nature against the state or affecting the safety of the public or some section of it. In any case, an order of the kind should never be passed without some previous inquiry as to the amount and nature of the property affected and as to the persons whose rights, as heirs, will be thereby superseded in favour of Government. MAGHAR SINGH v. KING EMPEROR, **7 P.R. 1908, Cr.=13 P.W. R. 1908, Cr.=7 Cr L.J. 349=147 P.L.R. 1908.** (18 P.R. 1908, F.B., *R.*)

(2)—*Abduction — Forfeiture.*—Forfeiture of property cannot be adjudged in a case of abduction. CROWN v. BOOMA, **39 P.R. 1866, Cr.**

See PENAL CODE, s. 61, 132 P.L.R. 1903.

—— 10.—**Confirmation of Sentence.**

(1)—*Crim. Pro. Code* (1861), *s.* 271—*Confirmation of death sentence.*—In cases requiring confirmation of a sentence of death, the High Court shall not grant a longer delay than is allowed by s. 271, for the presentation of the appeal. HIGH COURT PROCEEDINGS, 3RD APRIL 1873, **7 M.H.C. App. 21.**

(2)—*Confirmation of sentence by Sessions Judge —Crim. Pro. Code* (1872), *s.* 36.—S. 36 of the Crim. Pro. Code must, with respect to the confirmation of the sentence by the Sessions Judge, be construed to refer to cases, in which the sentence of imprisonment, is one of upwards of three years, leaving aside any sentence passed by the Magistrate as to fine or whipping. EMPRESS v. SHUMSHER KHAN, **6 C. 624.** [*F.*, 1 L.B.R. 57.]

(3)—*Confirmation of, by Sessions Judge—Right of accused to be heard.*—When a Sessions Judge exercises jurisdiction under s. 380, Crim. Pro. Code, 1882, regarding a sentence submitted to him for confirmation, the accused person is not entitled, as of right, to an opportunity of being heard before the Sessions Judge. BIRU v. EMPRESS, **33 P.R. 1886, Cr., F.B.**

(4)—*Powers of Sessions Judge.*—A Sessions Judge is, under s. 380, Crim. Pro. Code, 1882, competent, whether or not he confirms the convictions, to pass a heavier sentence than the District Magistrate has passed. SARWARKHAN v. EMPRESS, **25 P.R. 1887, Cr.**

(5)—*Crim. Pro. Code* (1882), *ss.* 34, 380.—A Sessions Judge, confirming a sentence passed by a District Magistrate exercising his enhanced powers under s. 34, Crim. Pro. Code, should not consider himself justified in confirming a long sentence of imprisonment, simply because there is some evidence against the prisoners, and the sentence would be suitable, supposing the prisoners were guilty. SOHNA v. EMPRESS, **58 P.R. 1887, Cr.**

Sentence—continued.

——10.—Confirmation of Sentence—*contd.*

(6)—Crim. Pro. Code (1882), ss. 30, 35, 337, 380.—Omission by District Magistrate to submit sentences passed by him for confirmation by Sessions Judge — Appeal by accused to Sessions Judge — Procedure — *See* QUEEN-EMPRESS v. BATERA, **3 P.R. 1898, Cr.**

(7)—*Case where confirmation not required.*—The infliction of a fine also with alternative imprisonment, or of whipping or of both, in addition to a substantive sentence of three years imprisonment, does not require the confirmation of Sessions Judge. CROWN v. SHAMLA, **3 P.R. 1873, Cr.**

(8)—*Powers of Additional Sessions Judge.*—An Additional Sessions Judge is not competent to confirm a decision passed by a District Magistrate in exercise of his special powers under s. 34, Crim. Pro. Code, 1882. HUNAR v. EMPRESS, **43 P.R. 1884, Cr.**

(9)—*Murder of a female through jealousy.*—Accused having confessed to the murder, and there being no ground of extenuation, the Court confirmed the sentence of death. CROWN v. NARAIN, **76 P.R. 1866, Cr.**

(10)—Case where conviction for the offence of murder was upheld and the sentence of death confirmed. CROWN v. JYMUL SING, **90 P.R. 1866, Cr.**

(11)—Charge — Murder and abetment of murder—Conviction upheld and sentence confirmed CROWN v. MUSST. GEETAH, **92 P.R. 1866, Cr.**

(12)—*Murder—To obtain property.*—Charge of sentence of death confirmed. CROWN v. MAHOMED BUKSH, **93 P.R. 1866, Cr.**

(13)—Case where, on a charge of murder, the conviction was upheld on reference and the sentence of death confirmed. CROWN v. HATOO, **104 P.R. 1866, Cr.**

(14)—*Case of murder*—Conviction upheld and sentence of death was confirmed. CROWN v. CHUTTA, **106 P.R. 1866, Cr.**

(15)—*Conviction upheld but for another offence* — Sentence was allowed to stand. QUEEN v. TAHUL RAM, **112 P.R. 1866, Cr.**

(16)—*Charge of murder—Evidence strong but circumstantial.*—Conviction upheld and sentence of death confirmed. QUEEN v. SABU, **123 P.R. 1866, Cr.**

(17)—*Murder from revenge.* — Sentence of death confirmed. CROWN v. JUMMA, **8 P.R. 1867, Cr.**

(18)—*Charge of murder.*—Conviction upheld and sentence of death confirmed. CROWN v. DYAL SINGH, **12 P.R. 1867, Cr.**

(19)—Case where, on a charge of murder the sentence of death was confirmed, the case being one calling for the extreme penalty of the law. CROWN v. DIA RAM, **14 P.R. 1867, Cr.**

Sentence—continued.

——10.—Confirmation of Sentence—*concld.*

(20)—*Charge of murder.*—Conviction upheld and sentence of death confirmed. CROWN v. BAHADOOR, **36 P.R. 1867, Cr.**

(21)—*Charge of murder.*—Conviction upheld and sentence of death confirmed. CROWN v. MUSTAN SING, **14 P.R. 1871, Cr.**

——11.—Cumulative and Separate Sentences.

(1)—*Cumulative sentence—Crim. Pro. Code* (1872), s. 454.—Under s. 454 of the Crim. Pro. Code, the collective punishment awarded under ss. 147 and 324 of the Penal Code must not exceed that which may be given for the graver offence. EMPRESS v. JUBDUR KAZI, **6 C. 718=8 C.L.R. 390.** (1 B. 214,(*F.*) [*R.*, 10 A. 58 ; *Doubted*, 11 C. 349.]

(2)—*Crim. Pro. Code* (1861), ss. 22, 46, 443 —*One continuous transaction, offences forming part of—Separate sentence.*—Where a person is charged under different sections of the Penal Code, but substantially convicted of a single offence, the sentence should not exceed the aggregate sentence which the Court can inflict if he is convicted of one offence only. REG. v. GANU LADU, **2 B.H.C. 126.**

(3)—*Penal Code, ss.* 71,147 *and* 325—*Separate sentences—Rioting and grievous hurt.*—Where the offence of rioting has not been completed until the grievous hurt has been caused, or, in other words, where the causing of the grievous hurt is itself the form of force or violence, which, (with other circumstances), constitutes the offence of rioting, separate sentences cannot be legally imposed, and this is the case not only as regards those persons who do not actually cause the hurt, but also as regards the actual causer of it. Separate sentences are not necessarily illegal, where it is found that the accused individually did not commit any act amounting to voluntarily causing hurt, but was guilty of that offence under s. 149, Penal Code. In a case in which, after the offence of rioting has been fully established, owing to the use of force, or violence, and all the members of the unlawful assembly have been rendered liable for that offence, one or more persons proceed to further acts of violence, such as causing grievous hurt, those who remain members of the unlawful assembly during the latter phases of the offence are guilty of committing grievous hurt in addition to the previously completed offence of rioting and can be punished separately for each offence. Each case must be decided with reference to its special facts. BHAGWAN SINGH v. EMPRESS OF INDIA, **52 P L.R. 1901=4 P.R. 1901, Cr.** (16 C. 442, *F.*)

(4)—*Crim. Pro. Code, Act* X *of* 1882, s. 35—*Two separate sentences for two offences—Legality of concurrent sentences.*—Where a person is convicted at one trial of two distinct offences, and is sentenced to a separate sentence of imprisonment for each, it is illegal to order the imprisonment to run concurrently. QUEEN-EMPRESS v. BHAVA MANSING, **Rat. Un. Cr. C. 878=Cr. Rg. 64 of 1896.**

Sentence—continued.

——11.—Cumulative and Separate Sentences —*continued.*

(5)—*Distinct offences—Separate sentences—Concurrent sentences.*—Where an accused person is convicted of two different offences, separate punishments for each offence must be awarded. If necessary, the punishments may be made to run concurrently. QUEEN-EMPRESS v. UMRAO LAL, **23 A. 84=A.W.N. 1900, 205.** [*F.*, 14 Cr. L.J. 183=19 Ind. Cas. 183=52 P.L.R. 1913=4 P.R. 1913, Cr.]

(6)—*Penal Code, s. 35—Previous convictions—Separate sentences.*—Proof of previous convictions is merely to enhance the sentence in respect of the offence of which the accused is convicted last. No separate sentence can be passed on account of the previous conviction. QUEEN-EMPRESS v. NARAYAN, **Rat. Un. Cr. C. 417=Cr. Rg. 84 of 1888.**

(7)—*Two separate sentences—Consecutive—First reversed—Commencement of second.*—Where a person was convicted on the same day in two separate cases and sentenced to a term of imprisonment in each, and the Court ordered that the sentence in the second case should commence on the expiration of the sentence in the first, and the conviction in the first case was reversed in appeal after the prisoner had undergone the full term of imprisonment, *held* that the sentence in the second case should nevertheless commence only after the expiration of the sentence in the first. QUEEN-EMPRESS v. KHANDU, **Rat. Un. Cr. C. 523.**

(8)—*Crim. Pro. Code* (1898), *s.* 35—*Crim. Pro. Code* (1881), *s.* 46—*Conviction for separate offences—Separate sentences.*—Where a person is convicted of separate offences, a separate sentence for each offence should be passed, directing that the imprisonment in the second offence should commence after the expiration of that for the first and so on. HIGH COURT PROCEEDINGS, 15TH JANUARY 1869, **4 M.H.C. App. 27.** [*R.*, 10 A. 58.]

(9)—*Crim. Pro. Code* (1898), *s.* 35—*Principle as to infliction of separate sentences.*—When an accused is found guilty of two offences, a separate sentence must be passed in respect of each offence. Except where the offences are distinct offences within the meaning of s. 35 of the Code, separate sentences in excess of his ordinary powers in the aggregate must not be passed by the Magistrate. EMPRESS v. RAMESHWARDAS, **13 C.P.L.R. 124.**

(10)—*Conviction for two offences—Single sentence—Appeal—Reversal of one conviction—Effect.*—Where a Magistrate, in convicting a person of two offences, passed a single sentence of imprisonment and fine, *held* that separate sentences ought to have been passed, and that the appellate Court, in reversing the conviction for one offence, cannot regard the imprisonment as imposed for one offence and the fine for the other. QUEEN-EMPRESS v. PASCOE, **Rat. Un. Cr. C. 409=Cr. Rg. 74 of 1888.**

Sentence—continued.

——11.—Cumulative and Separate Sentences —*continued.*

(11)—*Penal Code, ss.* 71, 148, 332 *and* 333—*Distinct offences of rioting and hurt—Punishment.*—Where the offences of rioting and causing hurt are distinct offences, there is nothing in the second clause or in other clauses of s. 71 that limits the punishment that may be imposed for these offences. The second clause of s. 71 is intended to apply to acts which might be offences under different statutes or under different sections of the same statute, as, for instance, offences under ss. 152 and 353 of the Penal Code. FERASAT v. QUEEN-EMPRESS, **19 C. 105.**

(12)—*Penal Code, s.* 71—*Separate sentences for rioting and grievous hurt.*—Per *Oldfield and Duthoit, JJ.*—Where there is no case of an offence made up of parts, any of which parts is itself an offence, s. 71 does not apply. The offences of voluntarily causing grievous hurt and causing hurt form no part of the offence of rioting which is a separate offence. QUEEN-EMPRESS v. PERSHAD, **7 A. 414=A.W.N. 1885, 105.**

(13)—*Crim. Pro. Code* (1882), *s.* 235—*Two separate charges for two distinct offences—Separate sentences.*—When the accused is tried at one trial on two separate charges for two distinct offences, and convictions are recorded on both charges, separate sentences ought to be passed. QUEEN-EMPRESS v. PHAKEERA, **Rat. Un. Cr. C. 369=Cr. Rg. 18 of 1888.** [*R.*, Rat. Un. Cr. C. 597.]

(14)—*Crim. Pro. Code, Act* X *of* 1882, *s.* 35—*Separate sentences—Different offences.*—Where there are two separate convictions for two distinct offences, it is not illegal to pass one sentence for both, but it is generally the proper course to pass a separate sentence for each offence. The word "may" in s. 35 of the Crim. Pro. Code does not necessarily mean "must." The ruling in Rat. Un. Cr. C. 369 appears to be doubtful in view of that in 1 B. 214. F.B. Per *Jardine.* QUEEN EMPRESS v. MAHOMED, **Rat. Un. Cr. C. 597=Cr. Rg. 17 of 1892.**

(15)—*Cumulative sentences—Separate offences where acts combined form one offence—Penal Code, ss.* 71, 143, 147, 353—*Crim. Pro. Code* (1882), *s.* 235.—Where the acts of the accused, separately constitute offences under ss. 143 and 353 of the Penal Code, and when combined an offence under s. 147 of the Code, the accused might, under s. 235 (3) of the Crim. Pro. Code, be charged with, and tried at one trial, for the offence under s. 147 and those under ss. 143 and 353, and, therefore, also separately convicted and sentenced for each such offence, provided the punishment does not exceed the limit imposed by s. 71 of the Penal Code, as amended by s. 4 of Act VIII of 1882. CHANDRA KANT BHATTACHARJEE v. QUEEN-EMPRESS, **12 C. 495.** [*R.*, 9 A. 645, 19 C. 105.]

Sentence—continued.

——11.—**Cumulative and Separate Sentences** —*continued.*

(16)—*Penal Code*, ss. 71, 457, 380—*Crim. Pro. Code*, ss. 35, 235—*Conviction for distinct offences—Sentence.*—Where, for offences punishable under ss. 457, 380, I.P.C., a Magistrate of the first class sentenced the accused to undergo rigorous imprisonment for two years for the first offence and six months for the second offence, *held* that, as the accused had committed two distinct offences, which did not constitute, when combined, "a different offence" under any section of the I.P.C., and as the aggregate punishment did not exceed twice the amount of punishment which the Magistrate was competent to inflict, the sentences were legal under s. 35, Crim. Pro. Code. The rules for assessment of punishment, contained in s. 421 of the older Code, are omitted in s. 235 of the Code of 1882. They must now be sought for in s. 171, I.P.C., and s. 235, Crim. Pro. Code. QUEEN-EMPRESS v. SAKHARAMBHAU, **10 B. 493.** (1 B. 214, *D.*) [*Appr.*; 8 C.P.L.R. 7; *R.*, 10 A. 146, 16 C. 442, A.W.N. 1896, 194, Rat. Un. Cr. C. 597, 1 Weir 34.]

(17)—*Cumulative sentences— Possession of several stolen articles.*— Where an accused person is found in possession of several stolen articles at one and the same time, he may be convicted and punished separately as regards each of those articles as for a separate offence, unless it be clear that the receiving of the several articles took place under such circumstances that they constituted together but a single offence. If, however, the acts of stealing or receiving several articles, which have formed the subject of several charges constitute together but one entire transaction (the burden of proving which will lie on the accused), the offender will be liable to one punishment only. S. 71, Penal Code, does not deal with trials but sentences only. SANT SINGH v. EMPRESS, **26 P. R. 1889, Cr.** (5 P. R. 1874, Cr., *Overruled.*)

(18)—*Penal Code*, ss. 323, 325, 379 *and* 394. —Where the accused entered into a prostitute's house and used violence towards her, and, while being seized by persons, who came to her rescue, ran away, pulling off some gold rings from the woman's ears, which were slit in consequence, causing her hurt, *held*, per *Rattigan, J.*, that the act of the accused being a single act, the provisions of para 2, s. 454, Crim. Pro. Code, 1872, applied, and that the Magistrate could not award a more severe punishment than could be awarded either for theft or for hurt. *Held*, per *Smyth, J.*, that the case fell more properly under cl. 3, s. 454, Crim. Pro. Code, 1872, and that the accused were liable to be convicted under ss. 323 and 394, I.P.C., but that the sentence should not be more severe than the Magistrate could have passed, if he had convicted them only under s. 394, I.P.C. CHAMBELA v. EMPRESS, **5 P. R. 1883, Cr.**

(19)—*Penal Code*, ss. 380, 454—*House-breaking in order to commit theft and theft—Separate convictions and sentences — Crim. Pro. Code*, 1882, ss. 35, 235.—Where a person is charged under s. 454, I.P.C., with house-breaking in order to the commission of theft, and under s. 380, of theft, the Magistrate is competent under ss. 35, 235, Crim. Pro. Code, to convict separately for the two offences, and to sentence him under the first part of s. 454, I.P.C., to two years' rigorous imprisonment for house-breaking, and under s. 379, I.P.C., to two years' rigorous imprisonment for theft. But where the accused has been three times previously convicted, the best course to adopt would be to commit him to the Court of Sessions under ss. 454—475, I.P.C. But the Sessions Judge trying the case under s. 379 or s. 380 and s. 454, I.P.C., would not be justified in passing a sentence of 10 years' imprisonment under the latter part of s. 454 for house-breaking with intent to commit theft, and with reference to the provisions of s. 35, Crim. Pro. Code, of four years' imprisonment under s. 380 for theft in a building, for the latter portions of ss. 454, 457 include the case of house-trespassers and house-breakers who had not only intended to commit theft, but had actually committed that offence. QUEEN-EMPRESS v. ZOR SINGH, **10 A. 146 = A.W.N. 1888, 5.** (2 A. 644, 10 B. 493, *R.*) [*F.*, 11 A. 393; *R.*, A.W.N. 1896, 194, Rat. Un. Cr. C. 597.]

(20)—*Separate sentences for house-breaking for committing theft and theft.*—It is competent to a Magistrate to pass a sentence on a charge of house-breaking in order to the committing of an offence, and on a charge of theft in a building used as a human dwelling, provided that the aggregate amount of punishment awarded on the two charges does not exceed that which the case warrants for the greater of the two offences of which the accused has been convicted, and provided also that such aggregate punishment does not exceed the jurisdiction of the Court convicting the accused. REG. v. ANVARKHAN, **9 B.H.C. 172** [*R.*, 10 A. 58, L.B.R. 1872—1892, 390.]

(21, 22)—*Crim. Pro. Code, Act* X *of* 1872, s. 454—*House-breaking and theft — Separate sentences.*—Where a person is convicted of house-breaking by night in order to commit theft, and of theft, the sentence, whether one for both or separate for each of the offences, should not exceed the punishment which can be imposed for the graver offence. REG. v. TUKAYA, **Rat. Un. Cr. C. 95 = 1 B. 214.** [*F.*, 6 C. 718 = 8 C.L.R. 390; *Appl.*, 9 A. 615; *R.*, 10 A. 58, L.B.R. 1872—1892, 390, Rat. Un. Cr. C. 597; *D.*, 10 B. 493.]

(23)—*Theft on two different occasions at the same place.*—Where the accused stole goods from his master's shop on two different occasions at an interval of two days between them,

Sentence—continued.

——11.—**Cumulative and Separate Sentences** —*continued.*

held, that the accused was guilty of two distinct offences and was punishable as such. MOHUR BANJEE v. CHUNDA, **66 P.R. 1866, Cr.**

(24)—*Penal Code, ss.* 380, 429—*Theft—Mischief—Separate sentences.*—The accused, having stolen a bullock, killed it. *Held* that separate sentences could be passed for theft and for mischief, since the theft preceded the mischief and property was not transferred by the theft. QUEEN-EMPRESS v. KRISHNA, **Rat. Un. Cr. C. 430 = Cr. Rg. 1 of 1889.**

(25)—*Crim. Pro. Code* (1872), s. 454—*Criminal trespass and mischief—Sentence—Punishment.*—Where a person trespasses with the object of committing mischief, and commits criminal trespass and mischief, the Court is not precluded from passing sentences in respect of each offence established, but the collective punishment should not be more severe than that which might be awarded for either of such offences. EMPRESS OF INDIA v. BUDH SINGH, **2 A. 101.** [*R.*, 10 A. 58, 4 Bom. L.R. 936.]

(26)—*Crim. Pro. Code* (1882), *ss.* 35, 253—*Separate sentences for different offences committed in same transaction.*—Where a Magistrate convicted an accused person under s. 457 of house-breaking by night with intent to commit mischief and assault, and also for the offences of mischief and assault and passed separate sentences, the several offences forming part of one criminal transaction, *held*, that the separate sentences were legal under s. 35, Crim. Pro. Code, and that neither ss. 71 and 72, Penal Code, nor s. 253 (3) Crim. Pro. Code, applied to the case. QUEEN-EMPRESS v. NIRICHAN, **12 M. 36 = 2 Weir 32 = 1 Weir 34.** [*R.*, 16 C. 442, F.B. Rat. Un. Cr. C. 597, U.B.R. 1892—1896, 241, 1 Weir 34.]

(27)—*Penal Code, ss.* 71, 148, 149, 324—*Rioting and hurt with dangerous weapons—Separate sentence—Crim. Pro. Code, s.* 235.—The offences of rioting, armed with deadly weapon and voluntarily causing hurt with the same weapon to more than one person are distinct offences, so that an accused person charged with the above offences, can be legally convicted and sentenced in respect of the rioting and of the hurt to each of the injured persons, one sentence to take effect after another. Where the causing of the hurt was not the force of the violence which constituted the rioting, but the rioting was being committed before the hurts were inflicted; the several acts of the accused would not fall under s. 71 of the Penal Code, and separate sentences would be legal. LOKENATH SARKAR v. QUEEN-EMPRESS, **11 C. 349.** [*Overruled*, 16 C. 442, F.B.; *Commented on*, 9 A. 645 = A.W.N. 887, 149; *Disappr.*, 16 C. 725.]

Sentence—continued.

——11.—**Cumulative and Separate Sentences** —*continued.*

(28)—*Rioting with deadly weapon—Grievous hurt—Penal Code, ss.* 148, 149, 324.—Where in a rioting armed with deadly weapons, the person on whose premises the riot occurs is stabbed, the rioting and the stabbing are two distinct offences requiring separate sentences. S. 149, I.P.C., must be read as a proviso to s. 148, I.P.C. QUEEN v. CALLACHAND, **7 W. R. Cr. 60.**

(29)—*Joining unlawful assembly and rioting with deadly weapon—Penal Code, ss.* 144, 148—Though the offence of joining an unlawful assembly armed with a deadly weapon (s. 144, I.P.C.) merges in the offence of rioting armed with a deadly weapon it would yet be not illegal to punish a person for both of them. SREEKISSEN v. JUGLAL, **9 W.R. Cr. 5.**

(30)—*Penal Code, ss.* 147, 323, 325, 109—*Separate sentences for rioting and hurt—Abetment of grievous hurt during riot.*—The decision in 16 C. 442 dealt with liability of one rioter for the offences committed by another rioter. It in no way affects the question of the liability of a rioter for the acts committed by himself. As was observed by *Tottenham, J.*, in that case, the actual perpetrator is unquestionably punishable both for rioting and for any further offence he commits. Therefore, the conviction and punishment of certain accused persons for individual acts of hurt, committed by themselves in the course of the riot, both for rioting and hurt, would not be illegal. [*R.*, 19 C. 105.] Where, in a course of a riot, in which a certain person was attacked and beaten by several of the rioters, one of them caused grievous hurt on him, *held* that the others could not be convicted and sentenced, under ss. 147 and 325 read with s. 109 of the Penal Code, for abetting the causing of the grievous hurt, if there was nothing to show that they abetted in causing the grievous hurt. MOHUR MIR v. QUEEN-EMPRESS; KALI ROY v. QUEEN-EMPRESS, **16 C. 725.** [*R.*, 40 C. 511 = 14 Cr. L.J. 66 = 18 Ind. Cas. 402.]

(31)—*Rioting and hurt.*—Where, in a case, each offender might be convicted of the offence of causing simple hurt or of causing grievous hurt, as the case may be, by reason of the act done by him individually, and, further, each of them might also be convicted under ss. 147 and 323, or ss. 149 and 325 by reason of an act done by him individually, separate sentences may be passed for an offence under s. 149 and s. 323 or s. 325 of the Code. MURDIN KHAN v. EMPRESS, **31 P.R. 1894, Cr.**

(32)—*Penal Code, ss.* 71, 148, 149, 326—*Separate convictions for rioting and hurt.*—Where an accused person is convicted of rioting and hurt, and the conviction for hurt depends on the application of s. 149, I.P.C., it is not,

Sentence—continued.

——11.—**Cumulative and Separate Sentences** —*continued.*

illegal to pass two sentences, one for rioting and one for hurt, if the separate convictions, when combined, do not exceed the maximum under either of the offences. But separate sentences are legal where the prisoner is proved to have himself caused the hurt; and the total punishment can, in such a case, legally exceed the limit which the Court might pass for any one of the offences. QUEEN-EMPRESS v. BANA PUNJA, **17 B. 260, F.B.**

(33)—*Penal Code*, *ss.* 147, 325—*Rioting and grievous hurt—Crim Pro. Code* (1882), *ss* 35, 235—*Separate sentences.*—The offence of rioting, and the offences of voluntarily causing hurt and voluntarily causing grievous hurt, each of the two latter offences being committed against a different person, are all distinct offences. If then a person is accused of having committed the offence of rioting armed with a deadly weapon, and also with having at the same time committed the offences of voluntarily causing hurt to one person, and of voluntarily causing grievous hurt, by means of a dangerous weapon to another person, he may, under the provisions of para 1, s. 235, be charged with and tried, at one trial, for each of the three above-mentioned offences; and he may, under s 35, Crim. Pro. Code, be sentenced separately for each of the three offences. QUEEN-EMPRESS v. DUNGAR SINGH, **7 A. 29=A.W.N. 1884, 220.** [*F.*, 7 A. 757, F.B.; *Appr.*, 32 P.R. 1885 Cr.; *R.*, 11 C. 349, 7 A. 414, F.B., 9 A 645, 10 **A.** 58, 16 C. 442, F.B.]

(34)—*Crim. Pro. Code* (1882), *ss.* 146, 147, 149, 325—*Rioting—Grievous hurt—Distinct offences—Separate sentences.*—Where the evidence in the case showed that three persons had committed individual acts of violence, in the course of rioting, which constituted distinct offences of causing grievous hurt or hurt, separate from and independent of the offence of riot, which was already completed, and the fact of the riot was not an essential portion of the evidence necessary to establish their legal responsibility under s. 325, I.P.C., *held* by *Petheram, C.J., and Straight and Tyrrell, JJ.*, that the three persons were liable to separate punishments under ss. 325, 147, I.P.C. Per *Brodhurst, J.*—It was palpable from the evidence that only one of the accused persons could have caused grievous hurt with his own hand. Therefore the three persons could be properly convicted of that offence only under the provisions of s. 149. Under that section, the separate sentences passed upon all the accused under ss. 147 and 325 were legal. QUEEN-EMPRESS v. RAM SARUP, **7 A. 757, F.B.=A.W.N. 1885, 195.** [*R.*, 9 A. 645, 16 C. 442, 16 C. 725, 19 C. 105, 17 B. 260, 52 P.L.R. 1901.]

(35)—*Penal Code*, *ss.* 71, 147, 149, 325—*Grievous hurt committed in the course of rioting—Separate sentences—Crim. Pro. Code* (1882), s. 235.—S. 149 does not create any offence. The object of the section is to make it clear that an accused person whose case falls within the section, cannot put forward the defence that it was not his hand that inflicted the hurt or the grievous hurt, when the offence was committed by a member of an unlawful assembly, in the prosecution of a common object of that assembly, or such as the members knew to be likely to be committed in prosecution of that object. If a number of people go out with the common object and intention of doing that which would constitute a riot, and of causing, in the course of the riot, grievous hurt to a particular person, and carry the intention into effect, but by chance the grievous hurt is inflicted by the hand of one only of the rioters, all of them would be equally liable to be sentenced for both the offences. To such a case s. 71 does not apply, as the riot cannot be considered as a part of the offence under s. 325, and separate sentences can be passed. Even assuming the section applies, if the terms of imprisonment do not exceed the maximum punishment prescribed for either of the offences, separate sentences will not be illegal. QUEEN-EMPRESS v. BISHESHAR, **9 A. 645=A.W.N. 1887, 149.** (6 A. 121, *Diss.*; 7 A. 29, 7 A. 757, 7 W.R Cr. 13, 11 C. 349=7 A. 414, 12 C. 498, 1 B. 214, *R.*) [*F.*, 33 A. 48=7 A.L.J. 910=7 Ind. Cas. 412=11 Cr. L.J. 480; *R.*, 10 A. 58, 17 B. 260, U.B.R. 1892—1896, Vol. I, 241.]

(36)—*Rioting and causing grievous hurt—Penal Code*, *ss.* 71, 147, 325.—Where the accused being convicted of rioting under s. 147, and of causing grievous hurt in the course of the riot under ss. 149 and 325, I P.C., was separately sentenced for each offence, *held*, that s. 71 was inapplicable to the case and that the separate sentences were, therefore, justifiable. Further, the aggregate sentence in the present case did not exceed the maximum punishment allowed by s. 325, I.P.C. TOKHA v. EMPRESS, **8 P.R. 1895, Cr.**

(37)—*Separate offences—Penal Code*, *ss.* 143, 253.—Case where a cumulative sentence for being a member of an unlawful assembly and for using criminal force against a public servant was held not to be illegal. *In re* GOBIND CHUNDER ROY, **16 W R. Cr. 70.**

(38)—*Kidnapping—Selling for purpose of prostitution.*— Kidnapping girls and selling them for purposes of prostitution can be punished with separate sentences. QUEEN v. DOORGA DOSS, **7 W R. Cr. 104.**

(39)—*Making false charge—Giving false evidence—Separate offences.*—Separate sentences can be inflicted for making a false charge and for intentionally giving false evidence, though they might not be cognate offences or parts of the same offence. QUEEN v. ABDOOL AZEEZ, **7 W.R. Cr. 59.**

Sentence—continued.

——11.—**Cumulative and Separate Sentences**—*continued.*

(40)—*Threatening witnesses—Sentence for each offence.*—A person who at one time criminally intimidates three different persons, when each of those persons brings a separate charge against him, may be convicted for an offence as against each person and be punished separately for each offence, though, in this case, owing to the weakness of the evidence, the sentence was reversed *In the matter of* GOOLZAR KHAN, **9 W.R. Cr. 30.**

(41)—*Cases, where same acts are basis of two charges and convictions.*—Cumulative sentences on each charge are illegal where the same acts are the basis of two charges and convictions. QUEEN v. RADHA KANTH PAUL, **9 W.R. Cr. 12**; QUEEN v. CHUNDER KANT LAHORE, **12 W.R. Cr. 2.**

(42)—*Sentencing twice for same offence—Conviction for two offences, one of which is integral portion of another.*—A conviction for two offences, when the one offence formed an integral portion of the other, was *held* to be in effect punishing twice for the same offence, and, therefore, illegal. GOVERNMENT v. LALAWUN SINGH; **1 Agra 31.**

(43)—*Penal Code, s. 71—Crim. Pro. Code (Act V of 1898), s. 35—Separable offences under s. 71, I.P.C., whether distinct offences, within s. 35, Crim. Pro. Code—Separate sentences under s. 71—Legality—Failure of justice, not happening—Interference in revision.*—Separable offences which come within the provisions of s. 71, I.P.C., cannot be treated as distinct offences within the meaning of s. 35, Crim. Pro. Code, 1898. A Court, in awarding punishment under the provisions of s. 71, I.P.C., should pass one sentence for either of the offences in question, and not a separate one for each offence. Where, however, the aggregate punishment in such a case does not exceed the punishment provided by law for the major offence, and where the irregularity has in fact occasioned no failure of justice, the High Court will not interfere in revision. IMPERATOR v. BARADI, **3 S.L.R. 224 = 6 Ind. Cas. 880 = 11 Cr. L.J. 416.** (23 B. 706, *F.*)

(44)—*Penal Code, s. 72—Crim. Pro. Code, s. 35—Different offences arising out of the same facts—Separate sentences, validity of.*—Where a police constable was charged with offences, under ss. 177 and 218, Penal Code, for sending a false report that a complaint of theft was untrue, *held*, that, although the two offences charged were different, the facts which constituted them being the same, the proper course would be to pass sentence only in respect of one of the offences charged and proved. *In re* VEERASAWMI, **1 Weir 34 = 2 Weir 38.**

(45)—*Crim. Pro. Code* (1871), *ss.* 46, 426, 434—*Aggregate punishment for several offences.*—Where the accused were convicted of forgery and other offences, but were sentenced each to the aggregate punishment which the Court could inflict, without specifying the penalty for each offence, *held*, that it was an irregularity, but that it was not an error or defect in consequence of which the High Court would reverse or alter the sentence. REG. v. VINAYAK TRIMBAK, **2 B H.C. 391.** [*F.*, 5 B.H.C. Cr. 3; *R.*, Rat. Un. Cr. C. 597.]

(46)—*Dacoity with murder—Penal Code, s.* 396.—A person concerned in a dacoity committed murder unintentionally, *held* that he was liable to punishment under s. 396 of the Penal Code, and that separate convictions for murder under s. 302 and for committing dacoity under s. 395 would be illegal. QUEEN v. RUGHOO, **W.R. 1864, Cr. 30.**

(47)—Dacoity and receiving stolen property—Separate convictions and sentences for dacoity and for receiving or retaining the stolen property thereby acquired were held to be illegal. *In re* BHYRUB SEAL, **W.R. 1864, Cr. 27**; QUEEN v. ABDOOL HOSSEIN, **1 W.R Cr. 48.**

(48)—*Crim. Pro. Code (Act X of 1872), s. 454—Penal Code, ss. 380, 457—Separate sentences—Practice.*—Under s. 454 (3) of the Crim. Pro. Code, the offences of house-breaking by night to commit theft, and theft in a dwelling house are, for the purposes of punishment, to be regarded as one. A double sentence of imprisonment for the one and whipping for the other cannot be legally inflicted. REG. v. GOVINDA; **Rat. Un. Cr. C. 79 = Cr. Rg. 11-12-1873**

(49)—*Cumulative sentence—Crim. Pro. Code* (1861), *s.* 46.—Where a Magistrate convicted three persons on five distinct offences of house-breaking by night and sentenced them to two years' imprisonment in each case, *held*, that the sentence was illegal and that he was competent to pass only four years' imprisonment. HIGH COURT PROCEEDINGS, 7TH NOV. 1870, **5 M.H C. App. 42.**

(50)—*House-breaking with intent to commit theft and theft not distinct offences—Several sentences illegal.*—The accused was convicted and sentenced to suffer rigorous imprisonment for six months, for each of the offences under ss. 457 and 380 of the Penal Code. *Held*, annulling the separate sentences, that as the illustration to s. 35, Crim. Pro. Code, clearly states that house-breaking with intent to commit theft, and theft are not distinct offences, the several punishments inflicted by the Magistrate were illegal. *In the matter of* PAKA **Cr. Rg. 36 of 1898.**

(51)—*House-breaking by night and theft.*—House-breaking by night and theft form a single and entire offence, and cannot be punished separately. QUEEN v. TONAOKOCH, **2 W. R. Cr. 63.**

(52)—*Penal Code, ss. 71, 380, 457—House-breaking in order to commit theft, and theft—Separate sentences.*—A person who has committed house-breaking in order to commit theft,

Sentence—continued.

——11.—**Cumulative and Separate Sentences**—*continued.*

and theft, can be charged with and convicted of each of these offences. A Court, in awarding punishment under the provisions of s. 71, I.P.C., should pass one sentence for either of the offences and not a separate one for each offence. If two sentences were passed and the aggregate of them did not exceed the punishment provided by law for any one of the offences, or the jurisdiction of the Court, that would be an irregularity only, and not an illegality requiring interference by a Court of appeal or revision. QUEEN EMPRESS v. MALU, **23 B. 706 = 1 Bom. L.R. 142** [*F.*, 1 L.B.R. 279, 8 Bom.L.R. 850 = 4 Cr.L.J. 455, 8 Bom L.R. 855 = 4 Cr. L.J. 450; *R.*, 2 Weir 35.]

(53)—*House-breaking for committing theft and theft, charges of—Sentence of imprisonment and whipping—Separate sentences—Whipping Act, s. 2.*—Where the accused who was charged with house-breaking in order to commit theft and with having committed theft, was convicted on the first head to one year's rigorous imprisonment and on the second to receive twenty stripes, *held* that, although the passing of separate sentences was not in this case illegal, it was contrary to the spirit and intention of the Whipping Act. REG. v. GENU AKU, **5 B. H.C. Cr. 83.** [*R.*, Rat. Un. Cr. C. 564 = 16 B. 357.]

(54)—*Theft and house-breaking.*—House-breaking and committing theft in the same house constitute only one offence. BISRAM DAS v. SHUNKAR, **80 P R. 1866, Cr.**

(55)—*Penal Code, s. 457—House breaking and theft—Cumulative sentence.*—Theft is the sequel of the house-breaking and cannot be disconnected from the latter offence. The cumulative sentence of three years is illegal, as the Deputy Magistrate was competent to sentence for a term of two years only for the offence of house-breaking. *In re* MUSSAHUR DAOUDH, **6 W.R. Cr. 92.**

(56)—*Dacoity— Theft—Jurisdiction.*—Where the offence is in reality dacoity as defined by s. 391, I P.C., a Deputy Magistrate has no jurisdiction to try it. He must commit the accused to Sessions. SHAMBOO ROY v. AJAIL AHEER, **6 W.R. Cr. 49.**

(57)—*Penal Code, s. 457—House-breaking and theft.*—A prisoner convicted of house-breaking followed immediately by theft, can be punished under s. 457 of the Penal Code only. QUEEN v. CHYTUN BOWRA, **5 W.R Cr. 49.**

(58)—*Theft in building—House breaking by night for commiting theft.*—A person may be committed for theft in a building under s. 380 of the Penal Code, and, for house-breaking by night with intent to commit theft under s. 457 of the Penal Code, though, if the judge considers the punishment for the first sufficient, he need not award any additional sentence for the second. QUEEN v. TINCOUREE, **W.R. 1864, 31, Cr.**

Sentence—continued.

——11.—**Cumulative and Separate Sentences**—*continued.*

(59)—*Cumulative sentences - Lurking house-trespass and theft—Penal Code, ss. 380 and 454.*—*Held* that it was doubtful if cumulative sentences under ss. 454 and 380, I.P.C., could be inflicted for lurking house-trespass and theft. QUEEN v. MUSSAMAT MINA NUGGERBHATIN, **3 W.R Cr. 19.**

(60)—*Penal Code, ss. 71, 379, 147, 149—Separate sentences for rioting and theft, legality of.*—Under s. 71, I.P.C., it is improper to pass separate sentences upon the accused, both for rioting and theft, when the former offence is but an element of the latter. They are liable to punishment in respect of one or other of those offences. MUTHOO SINGH v. GOPAL LAL, **3 C.W.N. 761.**

(61)—*Theft and attempt to conceal stolen property—Penal Code, ss. 414 and 511.*—A conviction of the same person for theft and for attempting to conceal the stolen property is bad. ZINDA v. EMPRESS, **15 P.R. 1896, Cr.**

(62)—*Theft from two persons in same room.*—The mere fact that a person stole at night property belonging to two different persons from a room in a house is no ground for sentencing him to two separate offences of theft. QUEEN v. SHEIKH MONEEAH, **11 W.R.Cr. 38.**

(63)—*Theft — Receiving stolen property.*—Theft and the taking and retention of stolen goods form one and the same offence, and cannot be punished separately. QUEEN v. SREEMUT ADUP, **2 W.R Cr. 63.**

(64)—*Theft, receiving stolen property.*—*Held* that, in respect of the same property, it is illegal to convict a person for robbery or theft and for dishonestly receiving stolen property. QUEEN v. SHEIKH MUDDUN ALLY, **1 W.R.Cr. 27**; QUEEN v. SREEMUNT ADUP, **2 W.R.Cr. 63**; QUEEN v. SEEB CHURN HAREE, **11 W.R.Cr. 12**; *In the case of* SHEEB CHUNDER HAREE, **11 W.R.Cr. 12, Note.**

(65)—*Double conviction—Theft and taking gift to help to recover stolen property—Penal Code, ss. 71, 379 and 215.*—Where a person is proved by recorded evidence to have committed a theft, and is also proved to have committed the offence described in s. 215, Penal Code, such person may be convicted and sentenced for each of such offences, for, the two offences are distinct transactions which may be proved independently of each other. But, where theft is held to be proved, not by direct evidence, but by inference from the facts that a theft has been committed and the accused soon afterwards committed an offence under s 215, Penal Code, it is improper that there should be convictions and sentences for the two offences. Further, if the offences are separate and distinct, they should be separately tried, because they do not form part of the same transaction. CROWN v. NGA SHEIN, **1 L.B. R. 203.** (L.B.R. 1872—1892, 449, L B.R. 1893—1900, 226, *D.*) [*Diss.*, 2 L.B.R. 23; *R.*, 7 Cr. L.J. 464 = 14 Bur. L.R. 67 = 4 L.B.R. 199.]

Sentence—continued.

—— 11.—**Cumulative and Separate Sentences** —*continued.*

(66)—*Receiving stolen property — Several thefts.*—*Held*, that persons found in possession of property stolen at different times could not be convicted of several separate acts of receiving, unless there was proof that they did not receive all the property at one and the same time. CROWN v. RAMPERSHAD, **5 P.R. 1874, Cr.** [*Overruled*, 26 P.R. 1889, Cr.]

(67)—*Retention of property stolen by separate acts of theft.*—Where the accused was found to be in possession of two stolen camels at the same time, the camels having been stolen by some other persons from separate owners, and by separate acts of theft, *held*, that the accused was not guilty of two distinct offences. KAKU SINGH v. EMPRESS, **14 P.R. 1885, Cr.**

(68)—*Theft and dishonest retention of stolen property.*—*Held*, that separate sentences for theft and dishonest retention of stolen property was not legal, when both made up but one offence. JEY SINGH v. RUTTUN SINGH, **26 P.R. 1866, Cr.**

(69)—*Theft and mischief—Double sentence.*—It is not legal to pass a double sentence for theft and mischief. QUEEN v. AMANOOLLAH MOLLAHI, **6 W.R. Cr. 5.**

(70)—*Cumulative sentences—Mischief and theft—House-breaking and theft.*—Separate convictions and sentences under ss. 429 and 379 and under ss. 457 and 380 of the Penal Code were held to be illegal and the convictions under s. 429 in the former case, and under s. 457 in the latter, allowed to stand. QUEEN v. SAHRAE, **8 W.R. Cr. 31.**

(71)—*Penal Code, ss.* 71, 415, 420—*Separate sentences—Same act.*—It is not legal to sentence an accused person to two separate punishments for what is substantially the same act though it falls under two definitions of offences. In this case, the punishments were under ss. 415 and 420. QUEEN-EMPRESS v. FRANCIS XAVIER, **Rat. Un. Cr. C. 506 = Cr. Rg. 20 of 1890.**

(72)—*Abduction of child to get property from its person—Theft after preparation to cause death—Penal Code, ss.* 369, 382.—*Held*, that separate sentences for abducting a child with a view to take property from its person (s. 369) and theft after preparation to cause death, etc., (s. 382) could not be inflicted in one and the same case, where the evidence shows that the act is one and the same. QUEEN v. KASHEE NATH CHANGO, **8 W.R. Cr. 84.**

(73)—*House-trespass and grievous hurt.*—Where the prisoner entered a house for the purpose of committing an assault, and in carrying out that intention, caused grievous hurt, *held*, that it was not necessary to pass a separate sentence for house-trespass over and above sentencing him for the substantive offences, *viz.*, grievous hurt. QUEEN v. BASSOO RANNAH, **2 W.R. Cr. 29.**

Sentence—continued.

—— 11.—**Cumulative and Separate Sentences** —*continued.*

(74)—*Penal Code, ss.* 147, 353—*Cumulative sentence for an offence under s.* 353 *and for a constructive offence under the same section.*—A cumulative sentence, under ss. 147 and 353, is illegal, where the force, which was used and formed one of the component elements of the offence of rioting, was the criminal force used to the public servant. [*R.*, 8 C.W.N. 483.] A sentence under the section for actually committing an offence under the section, and a further sentence under s. 353 read with s. 145, for committing the same offence constructively, would be illegal. RAM DIHUL v. EMPRESS, **3 C.W.N. 174.** [*R.*, 8 C.W.N. 483.]

(75)—*Cumulative sentences.*—Where prisoners were accused of rioting and using criminal force, it was held only one offence was committed. *In the matter of* NILRUTTUN SEIN, **16 W.R. Cr. 45.**

(76)—*Rescuing from lawful custody and using criminal force—Penal Code, ss.* 224, 225 *and* 353.—Where substantially but one offence is committed, and the acts which are the basis of one charge are the same which form the basis of another charge on which the prisoner has also been convicted, cumulative sentences on each charge are illegal. Where prisoners were convicted under s. 224 for escape, s. 225, for rescuing from lawful custody, and under s. 353 for using criminal force in so doing, and sentenced to separate punishments under each section, *held*, that the prisoners had only done one act and were guilty of only one offence, and should be convicted and sentenced under ss. 224 and 225 of "escape" and "rescuing" respectively. QUEEN v. KALISANKAR SANDYAL, **3 B.L.R. A. Cr. 14 = 12 W.R. Cr. 2** [*D.*, 16 W.R. Cr. 60.] QUEEN v. DINA SHEIKH, **3 B.L.R. A. Cr. 15 Note = 10 W.R. Cr. 63.**

(77)—*Penal Code, ss* 146, 147, 149, 325—*Unlawful assembly—Rioting — Grievous hurt—Crim Pro. Code*, 1882, *ss* 234 *and* 235.—Where the accused, being a member of an unlawful assembly, participates in a riot, and, in the course of such riot, grievous hurt is caused by persons other than himself, it is permissible to try him for riot, and for causing hurt or grievous hurt, as the case may be, in respect of each person assaulted, subject to the limitations of s. 234, Crim. Pro. Code, as to the number of charges joined; but while he may be punished for the riot or upon each of the charges of grievous hurt separately, different sentences cannot be passed for the riot and for the offence of grievous hurt. EMPRESS v. RAM PARTAB, **6 A. 121 = A.W.N. 1883, 241.** [*Appr.*, 16 C. 442, F.B.; *D.*, 7 A. 29, 9 A. 649; *R.*, 10 A. 58 Rat. Un. Cr. Cas. 493, 19 C. 105, 17 B. 260, F. B., 7 A. 787, 9 Cr. L.J. 226 = 10 Bom. L.R. 978 = 4 M.L.T. 450.]

(78)—*Penal Code, ss.* 147, 149 *and* 326—*Separate sentences for rioting and grievous hurt. validity of.*—It is illegal to pass separate sentences for the offences of rioting and grievous

Sentence—continued.

——11.—Cumulative and Separate Sentences —*continued.*

hurt upon persons who are not proved to have individually committed any acts which amounted to voluntarily causing hurt, but are guilty of that offence under s. 149. SAHADEV AHIR v. EMPEROR, 8 C.W.N. 344=1 Cr. L J. 199. (16 C. 442, *F.*)

(79)—*Rioting—Being members of an unlawful assembly— Appeal.* — Accused persons cannot be convicted both of "rioting and of being members of an unlawful assembly" inasmuch as the greater charge includes the less and they could not be guilty of rioting without also being members of an illegal assembly. To punish them under both sections of the Penal Code would be cumulative and illegal. Supposing both original sentences are legal, an appeal would lie to the Sessions Judge. MACLEAN HALIFA v. DWARKANATH GOOPTO, 1 W.R. Cr. 7.

(80)—*Penal Code*, ss. 71, 149 *and* 324—*Separate sentences for rioting and hurt.*—*Held* by the Full Bench (*Tottenham, J., dissenting*).—Separate sentences passed upon persons for offences of rioting and hurt are illegal, in a case where it is found that they did not individually commit any act which amounted to voluntarily causing hurt, but are guilty of that offence under s. 149 of the Penal Code. *Contra, per Tottenham, J.*— The actual perpetrator is, unquestionably, punishable both for rioting and for any other further offence he commits; and, if such further offence committed in prosecution of the common object of the rioters, s. 149 declares that each of them is guilty, notwithstanding that he did not do the act or abet it. It places each member of the unlawful assembly in the same position as the actual perpetrators of the further offence. NILMONY PODDAR v. QUEEN-EMPRESS, 16 C. 442, F.B. (6 A. 121, *Appr.*; 11 C 349, *Overruled.*) [*F.*, 3 C.W.N. 761, 8 C.W.N. 344; *R.*, 17 B. 260, 19 C. 105, 22 C. 805; 40 C. 511=14 Cr. L.J 66=18 Ind. Cas. 402, 8 C.W.N. 519, 31 P.R. 1894, Cr, 4 P.R. 1901, Cr., 52 P.L.R. 1901, 11 Cr. L.J. 415=6 Ind. Cas. 880=3 S.L.R. 224; *D.*, 16 C. 725, 17 O.C. 184.]

(81)—*Penal Code*, ss. 71, 148, 302, 326—*Crim. Pro. Code* (1882), s. 235—*Separate sentences—Same transaction.*—An accused person who is punished for murder or for voluntarily causing grievous hurt with a dangerous weapon cannot also be punished for rioting when all the offences formed parts of the same transaction. QUEEN EMPRESS v. MUSE BAGIAS, Rat. Un. Cr. C. 493=Cr. Rg. 63 of 1889. (6 A. 121, *R.*)

(82)—*Culpable homicide and being member of unlawful assembly.*—Where a person was convicted and sentenced separately for culpable homicide not amounting to murder and for being a member of an unlawful assembly, *held* that the conviction and sentence for the second offence were bad. QUEEN v. RUBBEOOLAH, 7 W.R. Cr. 13.

Sentence—continued.

——11.—Cumulative and Separate Sentences —*continued.*

(83)—*Kidnapping — Taking property from child—Penal Code*, ss. 363, 369.—The offence described in s. 369 includes that described in s. 363, the kidnapping and the intention of dishonestly taking property from the kidnapped child is included in the former section. QUEEN v. SHAMA SHEIKH, 8 W.R Cr. 35.

(84)—*Crim. Pro. Code* (1872), s. 454—*Abduction and theft—Separate sentences.*—The accused with intent to steal, induced a boy, under twelve years of age, to go with him to a place where he dishonestly removed certain ornaments from off the boy's person. The lower Court convicted him firstly of abduction with intent to steal, and secondly of theft, and sentenced him, on the first head, to one year's rigorous imprisonment, and, on the second, to seventy-five stripes; *held* that under s. 454 of the Crim. Pro. Code, the double sentence of imprisonment and whipping was illegal. QUEEN-EMPRESS v. DADA, Rat. Un. Cr. C. 135=Cr. Rg. 2-5—1878.

(85)—*Abetment of abduction and wrongful confinement—Penal Code*, ss. 343, 498.—Where the prisoner was sentenced for abetment of the abduction of a woman under ss. 109 and 498, Penal Code, and for wrongful confinement of her under s. 343, *held* that both the sentences were illegal as the essence of the case was abduction, and that the accused, as abettor therein, should be sentenced for it alone. QUEEN v. ISHWAR CHANDRA JOGEE, W.R. 1864, Cr. 21.

(86)—*Penal Code*, ss. 71, 232 *and* 235—*Counterfeiting King's coin—Possessing instruments for counterfeiting—King's coin.* — Separate sentences cannot be passed on an accused person for offences under ss. 232 and 235 of the Indian Penal Code for counterfeiting King's coin and having in his possession instruments used for counterfeiting such coin, HAYAT v KING-EMPEROR, 111 P.L.R. 1904=14 P.R. 1904, Cr. =1 Cr. L J. 946.

(87)—*Penal Code*, ss. 411, 414, 71—*Convictions—Separate sentences.*—Where a person is convicted of offences under ss. 411 and 414 of the Penal Code in respect of the same property, it is not legal to pass separate and consecutive sentences under each head of charge. Only one sentence should be passed for both offences. QUEEN-EMPRESS v. SAKHARAM, Rat. Un. Cr. C. 449=Cr. Rg. 8 of 1889. [*R.*, 29 B. 449=7 Bom. L.R. 527, 2 L.B.R. 19.]

(88)—*Penal Code*, ss. 392, 394—*Separate punishments*—As an offence under s. 392 of the Penal Code is necessarily included in an offence under s. 394, a person convicted under both can be convicted and sentenced only under s. 394. QUEEN-EMPRESS v. DURGA, Rat. Un. Cr. C. 511=Cr. Rg. 31 of 1890.

(89)—*Cumulative—Orders imposing fine to be commuted to imprisonment—Penal Code*, s. 59. —To bring s. 59, Penal Code, into operation,

Sentence—continued.

——11.—Cumulative and Separate Sentences —*continued.*

the punishment awarded on one offence alone must be seven years' imprisonment. Those seven years cannot be made up, as in the present instance, by adding two sentences together, and then commuting the amalgamated period of imprisonment to one of transportation. Such procedure would have the effect of introducing cumulative sentences, which are illegal. An order imposing a fine should be supported by a clause commuting the fine; in default of payment, to imprisonment for an additional period. **1 W.R. Cr. Letters, 1.**

(90)—*Appeal—Several sentences—Crim. Pro. Code* (1872), *ss.* 18, 314.—The combined sentence passed under s. 314, Crim. Pro. Code, in a case of simultaneous convictions for several offences, must be considered a single sentence for the purposes of confirmation or appeal. REG v. RAMA BHIVGOWDA, **1 B. 223.**

(91)—*Crim. Pro. Code* (1872), *ss.* 273, 453—*Separate sentences for several instances of same offence—Appeal.*—Where a person is tried at the same time for several instances of the same offence, it is not absolutely necessary that there should be more than a single sentence, but if separate sentences be passed on each, *held*, an appeal brings the aggregate of those separate sentences, as together constituting the punishment awarded in a single trial, within the jurisdiction of the Court which is competent to hear the appeal. In other words, the whole punishment awarded to one person on one trial is to be regarded, for the purposes of appeal, as one sentence. REG v. GULAM ABAS, **12 B.H.C. 147.** [*R.*, 10 A. 58, Rat. Un. Cr. 597; *Diss.*, 35 A. 154=11 A.L.J. 111=14 Cr. L.J. 119=18 Ind. Cas 679.]

Suspension and confinement for unlimited term—Cumulative punishment—Legality—*See* ACT V OF 1861, ss. 7 and 29, 2 C.L.J. 616=3 Cr. L.J. 110.

See ACT XIII OF 1885, s. 29, A.W.N. 1903, 26.

See ACT IX OF 1890, ss. 68, 112, 11 C.W.N. 100=4 Cr. L.J. 439=5 C.L.J. 47.

Sse BOM. ACT V OF 1878, s. 43, Rat. Un. Cr. C. 523=Cr. Rg. 52 of 1890.

See BOM. ACT V OF 1878, s. 43, cls. (*c*) and (*f*), 1 Bom. L.R. 344.

See EXTORTION, 10 A. 58=A.W.N. 1887, 274.

Separate sentences for forgery and for using forged documents as genuine, validity of —*See* FORGERY, 23 A. 84=A.W.N. 1900, 205.

See HOUSE TRESPASS, 1 L.B.R. 279.

Separate sentences for wrongful confinement and attempt at kidnapping—*See* KIDNAPPING, 6 N.W.P. 293.

Separate sentences for separate offences in respect of the same transaction—*See* PENAL CODE, ss. 35, 71, 380 and 457, 8 C.P.L.R. Cr. 7.

Sentence—continued.

——11.—Cumulative and Separate Sentences —*concluded.*

See PENAL CODE, s. 71, L.B.R. 1872—1892, 168.

Separate sentences for rioting and wrongful confinement, validity of—*See* PENAL CODE, ss. 71, 147, 342, 8 C.W.N. 483.

See PENAL CODE, ss. 75, 379, Rat. Un. Cr. 688=Cr. Rg. 9 of 1894.

Separate sentences for distinct offences—*See* PENAL CODE, s. 147, S.C. 125, Oudh, 14 Cr. L.J. 66=18 Ind. Cas. 402=40 C. 511, 17 O.C. 184=15 Cr. L.J. 625=25 Ind. Cas. 633, 8 C.L.R. 390, 88 P.W.R. 1907, Cr., 4 C W.N. 245.

See PENAL CODE, ss. 148, 152, 19 C. 105.

See PENAL CODE, s. 152, 19 C. 105.

See PENAL CODE, ss. 435, 436, 11 B.H.C. 13.

Separate offences of theft— Stealing two bullocks belonging to two different persons at the same time—*See* THEFT--MISCELLANEOUS, A.W.N. 1881, 154.

Stealing and killing a foul— Separate sentences — *See* THEFT— MISCELLANEOUS, 5 Bom. L.R. 460.

——12.—Concurrent Sentences.

See CRIM. PRO. CODE, 1898, s. 35.

(1)—*Crim. Pro. Code*, *ss.* 35, 367.—The power to pass concurrent sentences has not been conferred by the Code of 1882. QUEEN-EMPRESS v. ISHRI, **20 A. 1, F.B.=A.W.N. 1897, 207.**

(2)—*Crim. Pro. Code* (1882), *s.* 35—*Concurrent sentences—Validity.*—There is no provision in the Code of Criminal Procedure or in any other law, authorising a Court to pass sentences which are to run concurrently. DAITARI DAS v. QUEEN-EMPRESS, **25 C. 557.** (10 A. 58, *R.*)

(3)—*Crim. Pro. Code* (1882), *s.* 35—*Conviction for more than one offence—Concurrent sentences.*—Under s. 35, sentences of imprisonment cannot be passed so as to run concurrently. QUEEN-EMPRESS v. WAZIR JAN, **10 A. 58=A. W. N. 1887, 274.** [*F.*, 12 Cr. L. J. 346=10 Ind. Cas. 946=15 C.W.N. 732; *R.*, 25 C. 557=11 Cr. L J. 415=6 Ind. Cas. 880=3 S.L.R. 224.]

(4)—*Concurrent sentences—Crim. Pro. Code* (1882), *ss.* 35, 367, 397, 398.—There is no provision in the Crim. Pro. Code which enables a District Magistrate, or any other Court, to pass concurrent sentences. MUZAFFAR v. EMPRESS, **12 P.R. 1894, Cr.**

(5)—*Crim. Pro. Code* (1898), *s.* 397—*Sentence of offender already sentenced for another offence.*—It is contrary to s. 397, Crim. Pro. Code, to pass concurrent sentences otherwise than at one trial. EMPEROR v. BUDDHU, **15 C.P.L.R. Cr. 57.**

(6)—*Mode of recording.*—When all the facts in evidence form portion of one entire offence,

Sentence—continued.

——12.—Concurrent Sentences—*continued.*

a verdict should be entered up and sentence passed for that offence only ; and, though a portion of the same facts would, if they stood alone, constitute a second offence, a verdict of "not guilty" should be entered upon any separate charge for the minor offence. If a portion of the facts in evidence constitutes one offence, and another and distinct portion constitutes a second separate and distinct offence under the Penal Code, a verdict on each charge should be entered up, and a substantial sentence passed on the principal offence, and a light one or none on the second offence charged; or a substantial sentence, if necessary, on each offence: the second sentence to commence on the expiry of the first. The Code of Criminal Procedure does not recognize concurrent or cumulative sentences. CRIMINAL CIRCULAR No. 16 OF 20TH AUGUST 1864, **1 W.R. Cr. Cir. 2.**

(7)—*Penal Code, ss. 71, 211, 193—Conviction for offences under ss. 211, 193, I.P.C.—Concurrent sentences, validity of—Crim. Pro. Code, s. 35—Adequacy of sentence.*—Concurrent sentences could not be passed for offences, under ss. 211, 193, I.P. C., as the case does not fall under s. 71, I.P.C. Under s. 35, Crim. Pro. Code, consecutive sentences should be passed, as the accused in such a case is, charged with two distinct offences under the section. [*R.*, 6 C.P.L.R. 9, 8 C.P.L.R. 1, 10 Bom. L.R. 848.] Where a Head constable was found guilty of making a false charge under s. 211, I.P.C., and under s. 192, I.P.C., of giving false evidence; *held*, that sentences of three months' simple imprisonment for each offence to run concurrently were not adequate. QUEEN-EMPRESS v. PIRMAHOMED, 10 B. 254 = **Rat. Un. Cr. C. 225,** (7 W.R. 59, Cr., *R.*)

(8)—*Crim. Pro. Code (Act X of 1882), s. 397—Distinct offences—Concurrent sentences.*—Where an accused person is sentenced to imprisonment, and afterwards another sentence is passed on him for a different offence, it is not legal to make the second sentence run concurrently with the first, under s. 397 of the Crim. Pro. Code. QUEEN-EMPRESS v. MAHOMED, **Rat. Un. Cr. C. 552 = Cr. Rg 27 of 1891.**

(9)—*Contemporaneous sentences.*—There is no warrant in the Penal Code for contemporaneous sentences. QUEEN v. MOHESH CHUNDER SIRCAR, **3 W.R. Cr. 13.**

(10)—*Crim. Pro. Code (1898), ss. 35 and 397—Concurrent sentences—Valid only in separate trials.*—(i) The only case in which a Court may pass concurrent sentences for two offences is when the accused is convicted at the same trial for both offences (s. 35, Crim. Pro. Code.) (ii) But if the trials are separate, s. 397, Crim. Pro. Code, applies, and the sentences must take effect consecutively. (iii) Ordinarily, the first sentence takes effect first. [s. 397 (1).] (iv) But if the second sentence is one of transportation, and the first, of imprisonment, the Court has a discretion to reverse the order and

Sentence—continued.

——12.—Concurrent Sentences—*concluded.*

direct that the sentence of transportation shall take effect first, and the sentence of imprisonment afterwards. [s. 397 (2).] (v) The Court has no power to direct that a sentence of transportation should take effect concurrently with a sentence of rigorous imprisonment that the accused was then undergoing. IMPERATOR v. KHUDABUX, **2 S.L R. Cr. 23 = 10 Cr. L.J. 236.**

(11)—*Accused guilty of more heads of charge than one—Practice.*—Where the Court finds an accused person guilty of more heads of charge than one, and considers a certain term of punishment sufficient, the practice is not to convict on one head and drop the others, but to convict on each head and pass concurrent sentences. REG. v. RAMCHANDRA, **Rat. Un. Cr C. 19 = Cr. Rg. 16-8-1869.**

(12)—*Concurrent— Aggregate —Crim. Pro. Code (1898), s. 33 (3)—Court of Appeal, test of.*—In considering the question whether an appeal from two sentences passsd at one trial and ordered to run concurrently, lies to the Chief Court or to the Court of Session, the real test is what is the maximum period of imprisonment that can be undergone under a given judgment. The word "aggregate" in s. 33 (3), Crim. Pro. Code, does not refer to sentences ordered to run concurrently. NGA SHWE THAW v. QUEEN EMPRESS, **1 L.B.R. 57.** (L. B.R. 1893-1900, 268, *R.*)

See CRIM. PRO. CODE, 1898, s. 397, 2 Bom. L.R. 111.

See WITHDRAWAL OF CHARGE, Rat. Un. Cr. C. 288 = Cr. Rg. 26 of 1886.

——13.—Consecutive Sentences.

(1)—*Transportation—Successive sentences of transportation—Crim.Pro. Code (1861), s. 46.*—*Held* that under s. 46, Crim. Pro. Code, 1861, it was illegal to pass a sentence of transportation for two periods, each of seven years, one to begin after the expiration of the other, and that that section approved such sentences only if the punishments consist of imprisonment. QUEEN v. KASSIM ALLY, **11 W.R. Cr. 10.**

(2)—*Two consecutive sentences of imprisonment.*—When a convict is imprisoned under two warrants, which order consecutive punishments, the first warrant should be completely executed, both in regard to the substantive sentence of imprisonment and the imprisonment in default of payment of fine before any effect is given to the second warrant. DHARWAR DISTRICT MAGISTRATE LETTER, NO. 684, **Rat. Un. Cr. C. 132.**

See CRIM. PRO. CODE, 1898, s. 397, 2 Weir 451.

——14.—Enhancement of Sentences.

See SENTENCE—CUMULATIVE AND SEPARATE SENTENCES.

See SENTENCE—SENTENCE AFTER PREVIOUS CONVICTION.

***Sentence*—continued.**

——14.—Enhancement of Sentences—*contd.*

(1)—*Enhancement of sentence.*—Before a Sessions Judge or Magistrate refers a case to the High Court for an enhancement of sentence, he should satisfy himself that there is trustworthy evidence of the facts which he considers call for a severer punishment. QUEEN-EMPRESS v. NGA SHWE WA, **L.B.R. 1893-1900, 5.**

(2)—*Penal Code, s. 75—Scope of the section.*—S. 75 does not constitute a separate offence, but only imposes a liability to enhanced punishment. HIGH COURT PROCEEDINGS, 2ND NOVEMBER 1869, NO. 2114, **1 Weir 37 = 5 M.H.C. App. 3.**

(3)—*Penal Code, s. 75—Enhanced punishment, conditions of.*—S. 75 of the Penal Code requires that both the previous and subsequent offences shall be offences of the class, punishable with imprisonment for a term of three years or upwards. Where a subsequent offence charged was under s. 447 of the Penal Code, which was punishable with imprisonment only for a term not exceeding three months, *held*, that s. 75 did not apply. HIGH COURT PROCEEDINGS, 24TH DECEMBER 1874, NO. 2143, **1 Weir 38.**

(4)—*Practice —Sentence— Enhancement* — Enhancement of sentence is a very serious proceeding. A proposal to that effect must be supported by the Government Pleader under instructions which would enable him to put before the Court cogent reasons why there should be an enhancement of the sentence. EMPEROR v. SHAMJI RAMACHANDRA GUJAR, **16 Bom. L.R. 202 = 15 Cr.L J. 365 = 23 Ind. Cas. 733 = 2 Bom. Cr. C. 192.**

(5)—*Sentence — Enhancement—Practice.* — It is very undesirable to trust exclusively to the powers of the High Court of correcting sentences of the lower Courts where the sentences ought to be deterrent. In a case of that kind, where the prosecuting authorities think that a sentence ought to be deterrent, they ought to put before the trying Court those circumstances on which they rely and they ought to ask the trying Court to impose a sentence which will serve the purpose that they think should be served. EMPEROR v. SHINVAR BIRSHA, **16 Bom. L R. 203 = 15 Cr. L.J. 367 = 23 Ind. Cas. 734 = 2 Bom. Cr. C. 193.**

(6)—*Crim. Pro. Code—Reference—Long lapse of time—No enhancement of sentence.*— Although a sentence on accused is inadequate, it is not to be enhanced when nine months have elapsed after the sentence. AIYA CHALAMAYA v. EMPEROR, **1912 M.W.N. 50 = 13 Cr. L.J. 121 = 13 Ind. Cas. 777.**

(7)—*Penal Code, ss. 75 and 511—Enhancement of punishment after previous conviction for similar offences —Attempt.*—S. 75 is not applicable to cases in which a previous conviction of an attempt has been had; and there is no reason for applying the section to cases in which the previous conviction was of a complete offence, not of an attempt, and the charge on which the prisoner is being tried is of an attempt. There is authority for holding that s. 75 does not apply, where either the previous conviction or the charge, on which the prisoner is being tried, is of an attempt other than an attempt made punishable otherwise than by s. 511 JHAMMAN LAL v. KING-EMPEROR, **14 P.R 1906, Cr. = 5 Cr L.J. 85 = 12 P.L.R. 1907 = 15 P.W.R. 1907, Cr.** (17 A. 121, 123, *F.*)

(8)—*Grounds for passing a severe sentence—Enhanced sentence distinguished from severe—Penal Code, s. 75.*—A previous conviction of theft admitted by an accused after conviction at a second trial for an offence against property may be properly taken into consideration as a reason for passing a more severe sentence than would otherwise be passed by the Magistrate trying the case under the section of the Penal Code under which the second offence is ordinarily punishable. This is quite a different matter from an enhanced sentence under s. 75, Penal Code. The fact that a person about to be sentenced for an offence against property has previously been ordered to give security for good behaviour is also a matter which may properly induce the convicting Court to pass a more severe sentence than would otherwise be passed. QUEEN-EMPRESS v. NGA ON, **L.B. R. 1893—1900, 186.** (L B.R. 1893—1900, 93, *F.*)

(9)—*Accused a police officer of long standing —Penal Code, s. 161—Enhancement of sentence.* —A police officer of 26 years' standing was convicted of an offence under s. 161, Penal Code, in a simple case of theft, and was sentenced to two months' simple imprisonment. The sentence was enhanced by the addition to it of a further term of ten months' rigorous imprisonment, the learned Judge observing as follows : "If a police officer of the standing of the accused cannot be trusted to investigate a simple case of theft without taking bribes, there will be no security whatever for the detection of crime or the administration of justice. The purity of the police force is a matter of such vital interest to the community that a case of corruption by police officers cannot be passed over with a nominal sentence." CROWN v. ABDUL KHALIK, **2 S.L.R. 1 Cr. = 10 Cr.L J. 217.**

(10)—*Penal Code, ss. 75, 179, 111—Attempt to commit theft—Previous conviction—Enhancement of sentence.*—A person, who has been previously convicted for theft, is not liable to enhanced punishment under s. 75 of the Code on being convicted of an attempt to commit the offence of theft. QUEEN EMPRESS v. SRICHARAN BAURI, **14 C. 357.** [*F.*, 14 C.P.L.R: 72; *R.*, 17 A 120 = A.W N. 1895, 22, 10 Bom. L.R. 26 = 3 M.L.T. 122 = 7 Cr. L.J. 32.]

(11)—*Conviction of theft under Lower Burma Village Act—Subsequent conviction for theft under Penal Code—Enhanced punishment whether awardable—" Offence and previous*

Sentence—continued.

——14.—Enhancement of Sentences—*contd.*

conviction," meaning of—Whipping Act, s. 3—*Penal Code, s.* 75.—An offence in the Whipping Act, 1864, denotes a thing made punishable by the Penal Code. The previous conviction referred to in s. 75, Penal Code, and ss. 3 and 4, Whipping Act, means conviction under the Penal Code. Consequently, when a person has been convicted of theft and punished under the Lower Burma Village Act, and is subsequently convicted under the Penal Code of a theft committed after the first conviction, he is not liable either to enhanced punishment under s. 75 of the Penal Code, or to whipping in addition to imprisonment under s. 3 of the Whipping Act. QUEEN-EMPRESS v. NGA KYA GAING, **L B.R, 1893—1900, 315.** (L.B.R. 1872—1892, 549, *Diss.*)

(12)—*Previous conviction by the headman, whether renders the accused liable to enhanced sentence—Penal Code, s.* 75—*Whipping Act, s.* 3—*Lower Burma Village Act, s.* 7.—A previous conviction of theft by a village headman, under s. 7 of the Lower Burma Villages Act, does not render an accused, upon conviction of a subsequent theft by a competent criminal Court liable to enhanced punishment under s. 75 of the Penal Code, or to whipping in addition to imprisonment under s. 3 of the Whipping Act. But the previous conviction should be taken into consideration in awarding punishment. QUEEN EMPRESS v. NGA THA KAING, **L B. R. 1893—1900, 378.** (L.B.R 1872—1892, 549, *Overruled*; L.B R 1893—1900, 315, *F.*)

(13)—*Attempt to commit extortion—Maximum term of punishment—Penal Code, s.* 75.—S. 75, Penal Code, does not apply to the offence of an *attempt to commit extortion*, because an offence punishable under ss. 384—511 Penal Code, is not an offence punishable under Chapter XVII of that Code, and even if s. 75 were otherwise applicable to an attempt to commit an offence punishable under Chapter XVII, the maximum punishment for the offence (ss. 384—511) being only one and a half years, no enhancement under s. 75 would be legal. NGA PRU TUN v. QUEEN-EMPRESS, **L.B.R. 1893—1900, 496.**

See ACT XXVII OF 1871, s. 19 (1), 166 P.L. R 1905=3 Cr. L.J. 77.

Enhancement of sentence—Discretion of Chief Court—*See* ACT VI OF 1882, s. 74, 37 P.L.R. 1914=16 P.W.R 1914, Cr=15 Cr. L.J. 260=23 Ind. Cas. 468=19 P.R. 1914, Cr.

Enhancement of sentence—District Magistrate can move for enhancement—*See* BOM. ACT V OF 1878, s. 43 (9), 13 Bom. L R. 1185=12 Ind. Cas. 980=12 Cr. L.J. 604.

See CHARGE-GENERAL, 9 M. 284=2 Weir 266.

See CRIM. PRO. CODE, 1898, ss. 179, 222, 235 to 239, 531 and 537, 18 P.W.R. 1908 Cr.=8 Cr. L.J. 75.

See CRIM. PRO. CODE, 1898, s. 349, 2 Weir 424, 4 M. 233, 1 L.B.R. 141, 2 Weir 429.

See CRIM. PRO. CODE 1898, ss. 435, 438, at. Un. Cr. C. 501=Cr. Rg. 20 of 1892.

Sentence—continued.

——14.—Enhancement of Sentences—*concld.*

Sentence passed by Sessions Court—District Magistrate's power to refer case to High Court with a view to enhancement of the—*See* CRIM. PRO. CODE.1898, s. 438, 12 A.L.J. 519=15 Cr. L.J. 407=23 Ind. Cas. 1007=36 A. 378.

(8) Enhancement of—Discretion of Chief Court to interfere—Accused undergone the sentence—Effect—*See* CRIM. PRO. CODE, 1898, s. 439, 29 P.W.R. 1913, Cr.=313 P.L.R. 1913=21 Ind. Cas. 471=14 Cr. L.J. 599.

See CRIM. PRO. CODE, 1898, s. 550, 14 P. W.R. 1909, Cr.

See EVIDENCE ACT, 1872, s. 54, L.B.R. 1893—1900, 93.

See MAGISTRATE, JURISDICTION OF—TRANSFER OF CASES—REFERENCE TO OTHER MAGISTRATES, ETC., 10 B. 196.

See PENAL CODE, ss. 1, 2 and 75, 1 Weir 40.

See PENAL CODE, ss. 147, 379, 1 M.L.T. 403=5 Cr.L.J. 88=30 M. 48.

Conviction by first Court under ss. 147, 447, I.P.C.—Appellate Court upholding conviction under s. 147 and quashing that under s. 447—Enhancement of sentence—Legality—*See* PENAL CODE, ss. 157, 447, 8 Ind. Cas. 880=9 M.L.T. 167=11 Cr. L.J. 727.

See PENAL CODE, ss. 300, 302, 304, 108 P. L.R. 1902.

Enhancement of sentence—*See* PENAL CODE s. 330. U.B.R. 1897—1901, Vol. I, 320.

See PENAL CODE, s. 382, Rat. Un. Cr. C. 537=Cr. Rg. 8 of 1891.

See SESSIONS JUDGE, JURISDICTION OF, 18 B. 751.

——15.—Commutation of Sentence.

See TRANSPORTATION.

See WHIPPING.

(1)—*Commutation of sentence of death into one of transportation for life.*—Where the hanging of a convict might not, owing to an aperture in the neck communicating with the larynx, result in his death, and where it was also uncertain whether no untoward or distressing accident, such as the complete severance of the head, could take place, the High Court commuted the sentence of death into one of transportation for life. *In re* BOODHOO JOLAHA, **2 C.L.R 215.**

(2)—*Powers under Act* XV *of* 1862, *s.* 1—*Imprisonment or transportation.*—An officer, who, in the exercise of the powers described in s. 1, Act XV of 1862, had passed a sentence of imprisonment for seven years, could under s. 59, Penal Code, commute it to transportation for a similar period QUEEN v. BOODHOOA, **B.L.R. Sup. Vol. 869=9 W.R.Cr. 6.**

(3)—*Commutation of sentence—Penal Code, ss.* 376, 511—*Attempt at rape*—Where a person convicted of an attempt to commit rape, was sentenced to rigorous imprisonment for seven years, which was commuted, under s. 59

Sentence—continued.

——15.—**Commutation of Sentence**—*concld.*

Penal Code, to transportation for the same term, *held* that, under ss. 376 and 511, Penal Code, a sentence of imprisonment for the offence committed could not be for a longer term than five years, and such sentence could not, under s. 59, be changed to transportation for a longer term. QUEEN v. JOSEPH MERIAM, **1 B.L.R.A.Cr. 5=10 W.R. Cr. 10.**

(4)—*Transportation—Commutation of sentence—Imprisonment.*—The alternative punishments of death, transportation for life, or rigorous imprisonment extending to ten years being provided by the law, a sentence of fourteen years' transportation is unwarranted. If a sentence of transportation short of life is necessary, the Judge should pass a sentence of imprisonment for the term fixed by law, and then, under s. 59, commute it to transportation for that period. QUEEN v. RUGHOO, **W.R. 1864 Cr.30.**

(5)—*Commutation of fine to imprisonment by appellate Court—Period of imprisonment.*—A Sessions Judge, on appeal from a Magistrate's decision, could not inflict a term of imprisonment in commutation of fine which the Magistrate himself could not have inflicted. REG. v. HARI *bin* VITHOJI, **1 B.H.C. 139.**

(6)—*Imprisonment—House-breaking—Whipping—Rigorous imprisonment—Commutation of punishment.*—After a conviction for the offence of house-breaking, the Magistrate sentenced the accused to six months' rigorous imprisonment and to be whipped; but on appeal, the Judge found that, as this was the first offence, the whipping was illegal, and, setting aside so much of the sentence, passed a sentence of three months' rigorous imprisonment, in addition to the six months' rigorous imprisonment, passed by the Magistrate. *Held* that the commutation of the sentence was illegal. QUEEN v. BANDA ALI, **6 B.L.R. Ap. 95=15 W.R. Cr. 7.**

(7)—In this case the sentence of death passed against the accused commuted to one of transportation for life. CROWN v. DITTOO, **3 P.R. 1866, Cr.**

(8)—*Murder of husband by wife by means of arsenic.*—Sentence of death passed upon the accused commuted to transportation for life. CROWN v. NAJOO, **60 P.R. 1866 Cr.**

(9)—*Murder.*—The Court upheld the conviction for murder, but commuted the sentence to transportation for life. CROWN v. ADALUT, **69 P.R. 1866, Cr.**

(10)—Where in a case of murder the injury to the feelings of the accused, though not sudden or unexpected, was nevertheless great; and there was also some doubt as to whether the murder was premeditated, the Court commuted the sentence of death to one of transportation for life. CROWN v. MOHOMED, **107 P.R. 1866, Cr.**

See MURDER, 8 P.R. 1869, Cr.

Sentence—continued.

——16.—**Juvenile Offenders, Sentences on.**

(1)—*Crim. Pro. Code* (*Act* X *of* 1882), *s.* 399—*Reformatory Schools* (*Act* V *of* 1876), *s.* 8—*North-West Provinces.*—Where a Magistrate in the North-West Provinces, at a time when the Local Government had not brought the provisions of Act V of 1876 into force there, sentenced a boy under sixteen years of age to imprisonment and confinement thereafter in a Reformatory School for one year, *held* that the order was illegal since, by a Government notification, no boy over ten years of age would be ordered to the Reformatory for less than four years or until he should have attained the age of eighteen. QUEEN-EMPRESS v. HIRA, **A.W.N. 1889, 131.**

(2)—*Severity of sentence on a youthful offender.*—A boy of twelve years of age was found with a parcel of opium, which weighed 57 *ticals*. Questioned as to where he had got the opium, he said he had picked it up by the railway station. The boy was tried and convicted under s. 9 of the Opium Act. The sentence was one of six months' rigorous imprisonment and a fine of Rs. 200, and in default "three months' additional imprisonment." *Held* that the sentence was unduly severe QUEEN-EMPRESS v. NGA HMAING, **L.B.R. 1872-1892, 330.**

Detention in Reformatory School in lieu of sentence of imprisonment — Jurisdiction of High Court to alter or set aside the sentence. *See* ACT VIII OF 1897, ss. 1 and 16, 28 C. 423=5 C.W.N. 211.

Substitution of imprisonment for an order of detention in Reformatory Schools by appellate Court—*See* ACT VIII OF 1897, s. 16, 3 C. W.N. 576.

See JUVENILE OFFENDER, Rat. Un. Cr. C. 109=Cr. Rg. 8-6-1876.

——17.—**Contempt of Court, Sentence for.**

(1)—*Crim. Pro. Code* (1861), *s.* 163—*Contempt of Court—Magistrate's powers.*—It is not illegal for a Magistrate to sentence a person, who has been convicted of contempt of Court committed before him to pay a fine and to imprisonment in default. The necessity for commitment to another Magistrate arises only where the Court thinks imprisonment without the option of fine, or a fine of Rs. 200 is demanded by the circumstances of the case. HIGH COURT PROCEEDINGS, 11TH JANUARY 1871, **6 M.H.C. App. 16.**

(2)—*Interruption of public servant in course of judicial proceeding—Penal Code, s.* 228—*Crim. Pro. Code* (1861), *s.* 163.—*Held* that a sentence of imprisonment was illegal under s. 163 of the Code of Criminal Procedure for interruption to a public servant in a stage of a judicial proceeding under s. 228, I.P.C. *In the case of* BUHRAM KHAN, **10 W.R. Cr. 47.**

(3)—*Imprisonment added to fine—Trial of contempt case.*—In proceedings for contempt of Court, where the procedure prescribed by s. 163 of the Code of Criminal Procedure, 1861, is followed, the Court must act as the Court

Sentence—continued.

——17.—**Contempt of Court, Sentences for** —*concluded.*

against which the offence was committed, and not in any other capacity, and ought to take cognizance of the contempt on the day it was committed, and in such cases, imprisonment cannot be added to the fine as a substantive punishment. Where it was, however, dealt with in a summary manner, the offence must, under s. 163, be tried by a Judge other than the Judge before whom the contempt was committed. QUEEN v. CHUNDER SEEKHUR ROY, **12 W. R. Cr. 18.**

See CONTEMPT OF COURT, 4 C. 655.

——**18.—Sentence after previous conviction.**

See SENTENCE—CUMULATIVE AND SEPARATE SENTENCES.

See SENTENCE—ENHANCEMENT OF SENTENCE.

See WHIPPING.

(1)—*Previous conviction—Penal Code*, s. 75, *object of.*—The object of s. 75 is to provide for an additional sentence, not for a less severe sentence, on a second conviction. Recourse should not be had to s. 75, if the punishment for the offence committed is itself sufficient. SHEO SARAN TATO v. EMPRESS, **9 C. 877.** [*R.*, 17 A. 120.]

(2)—*Penal Code, s.* 75 - *Scope of the section.*—A previous conviction is not in itself an offence which deserves a distinct sentence of imprisonment ; it is merely a circumstance, which, when proved against a person convicted of a subsequent offence, renders the offender liable to a larger measure of punishment. HIGH COURT PROCEEDINGS, 20TH FEB. 1878, No. 387, **1 Weir 37.**

(3)—*Previous conviction not a ground for enhanced sentence in all cases—A ground for passing a severe sentence—S.* 5, *Evidence Act, inapplicable to determine information.*—Proof of previous convictions other than those referred to in s. 75 of the Indian Penal Code can be received after the conviction of an accused person for the purpose of justifying a sentence heavier than would otherwise have been passed upon him. But it must not be considered in determining the guilt or innocence of the accused. S. 5 of the Evidence Act is not applicable for determining the kind of information which a Judge is at liberty to use when deciding the extent of a sentence. QUEEN-EMPRESS v. NGA THA DUN, **L.B.R. 1872—1892, 574.**

(4)—*Penal Code, ss.* 40 *and* 75—*S.* 75 *limited to offences punishable under the Code.*—S. 40 of the Penal Code, read with s. 75, renders it clear, that the provisions of s. 75 are confined to offences punishable under the Penal Code. Unless the offender was dealt with under the Penal Code, he cannot be said to have been convicted of an offence punishable under the Penal Code. Therefore, a person convicted, once, by a Village Magistrate, of a petty theft under Reg. IV of 1821, and who is afterwards charged with committing theft, cannot be regarded and treated as an old offender under s. 75 of the Code. HIGH COURT PROCEEDINGS 27TH JULY 1877, NO. 1606, **1 Weir 39.**

(5)—*Previous conviction under Local or Special law.*—The provisions of s. 75, Civ. Pro. Code, do not apply to the case of a previous conviction under any Local or Special law. KING-EMPEROR v. KHAN MAHAMMAD, **17 P. R. 1904, Cr. = 125 P.L R. 1904 = 1 Cr. L.J. 1061.** (3 W.R. 17. Cr., 4 W.R. 9, Cr., 4 B.H.C. A. Cr. 11, 10 C.L.R. 392, *R.*) [*R.*, 11 Cr. L. J. 635 = 8 Ind. Cas. 383 = 28 P.R. 1910, Cr. = 199 P.L.R. 1910.]

(6)—*Previous convictions of offence before Penal Code came into operation.*—*Held* that only convictions for offences committed after the Penal Code came into force come under the view of s. 75, Penal Code. QUEEN v. HURPAL, **4 W.R. Cr. 9** ; REG v. KUSHYA *bin* YESU, **4 B.H C. Cr. 11.**

(7)—*Evidence of previous conviction.*—*Held* that the fact of the accused having been previously convicted under the Penal Code should be proved by clear and precise evidence to render the provisions of s. 75, I.P.C., applicable. QUEEN v. NAIMUDDI SHEIKH, **14 W. R. Cr. 7.**

(8)—*Enhanced punishment — Penal Code, s.* 75.—The enhanced sentence under s. 75, I.P.C., cannot be inflicted on a second conviction, when the previous conviction was before the passing of the Penal Code. HURKISHEN v. CROWN, **31 P.R 1868, Cr.**

(9)—*Penal Code, s.* 75—*Previous conviction.*—An accused person can only be punished under s. 75 of the I.P.C., where the previous conviction had been under that Code. BUDHON RUJWAR v. EMPRESS, **10 C L.R. 392.** [*Appl.*, 125 P.L.R. 1904 = 17 P.R. 1904, Cr.]

(10)—*Penal Code, ss.* 75, 457, 511—*Attempt to commit an offence.*—An attempt to commit an offence punishable under s. 511, I.P.C., is an offence under s. 40 of the Penal Code. It is not an offence punishable under Ch. XVII of the Code. It is an offence punishable under s. 511 ; s. 75, therefore, cannot apply to such a case. Where a person, who has been previously convicted of an offence under s. 457, was subsequently found guilty of an attempt to commit such offence, *held*, that the provisions of s. 75 did not apply to such a case. EMPRESS OF INDIA v. RAM DAYAL, **3 A. 773 = A.W.N 1881, 69.** [*F.*, L.B R. 1872—1892, 531, 17 A. 120 ; *D.*, 10 Bom. L.R. 26 = 3 M.L.T. 122 = 7 Cr. L. J. 32.]

(11)—*Penal Code, ss.* 75, 457, 511—*Previous conviction of offences falling within Ch.* XII *or Ch.* XVII—*Subsequent attempt to commit an offence under s.* 457 — *Enhanced sentence.*—

Sentence—continued.

——18.—**Sentence after previous conviction** —*continued.*

Although the offence of house-breaking by night is punishable under s. 457, which appears in Ch. XVII, an attempt to commit the offence is punishable under s. 511 only. S. 75 does not, therefore, apply to a case of an attempt to commit an offence punishable under s. 457, punishable under s. 511, after previous convictions for offences falling within Ch. XII or Ch. XVII. QUEEN-EMPRESS v. AJUDHIA, **17 A. 120 = A.W.N 1895, 22.** (9 C. 877, 3 A. 773, 5 B. 140, 14 C. 357, *R.*) [*F.*, 14 P.R. 1906, Cr. = 12 P.L.R. 1907 = 15 P.W.R. 1907 = 5 Cr. L.J. 85; *Appr.*, 17 A 123; *R.*, 10 Bom. L. R. 26 = 7 Cr. L.J. 32 = 3 M.L.T. 122.]

(12)—*Penal Code, ss. 75, 511—Applicability of s. 75 to attempt under s. 511.—Held* that cases under s. 511, Penal Code, do not fall under the purview of s. 75, thereof, but must be punished exclusively, independent of s. 75. QUEEN-EMPRESS v. BHAROSA, **17 A. 123 = A. W.N. 1895, 23.** (17 A. 120 = A.W,N. 1895, 22, *Appr.*) [*F.*, 14 P.R. 1906, Cr. = 12 P L.R. 1907 = 15 P.W.R. 1907 = 5 Cr. L.J. 85; *R.*, 10 Bom. L.R. 26 = 7 Cr. L J. 32 = 3 M.L.T. 122.]

(13)—*Penal Code, s. 75—Previous conviction for theft—Subsequent charge of attempt to commit theft—Enhanced punishment.—Held by Westropp, C J., and Kemball, J., Melvill, J., dissentient*—In order to make a person liable to the enhanced sentence provided for in s. 75, I.P.C., not only the previous conviction should be for an offence punishable under Ch. XII or XVII, I.P.C., for a term of three years or upwards, but the subsequent charge should also be for an offence punishable either under Ch. XII or under Ch. XVII. Therefore, a person charged under s. 511, with an attempt to commit theft, is not liable to enhanced punishment under s.75, I.P.C. EMPRESS v. NANA RAHIM, **5 B. 140.** [*R.*, 17 A. 120 = A.W.N. 1895, 22, 10 Bom. L.R. 26 = 7 Cr. L.J. 32 = 3 M.L.T. 122.]

(14)—*Penal Code, ss. 75, 179, 111—Attempt to commit theft— Previous conviction—Enhancement of sentence.*—A person, who has been previously convicted for theft, is not liable to an enhanced punishment under s. 75 of the Code on being convicted of an attempt to commit the offence of theft. QUEEN-EMPRESS v. SRICHARAN BAURI, **14 C. 357** [*F.*, 14 C.P. L.R. 72; *R.*, 17 A. 120 = A.W.N. 1895. 22, 10 Bom. L.R. 26 = 3 M.L.T. 122 = 7 Cr. L.J. 32.]

(15)—*Penal Code, s. 75—Previous conviction of attempt to commit an offence.*—A previous conviction of an attempt to commit an offence would not bring the prisoner within s. 75 of the Penal Code. HIGH COURT PROCEEDINGS, 21ST JULY, 1868. NO. 986, **1 Weir 36.**

(16)—*Penal Code. s. 75—Applicability of the section to attempt to commit an offence punishable under Ch.* XXIII, *Penal Code*.—S. 75 does not apply to cases of conviction of an attempt to commit an offence punishable under Ch. XVII of the Penal Code, the attempt being punishable under Ch. XXIII. *In re* MOTAWEL PAKURAN, **1 Weir 37.**

(17)—*Previous conviction—Subsequent conviction for attempt—Penal Code, ss. 75, 511.*—S. 75 is not applicable to cases in which a previous conviction of an attempt has been had; and there is no reason for applying the section to cases in which the previous conviction was a complete offence, not of an attempt, and the charge on which the prisoner was being tried is of an attempt. There is authority for holding that s. 75 does not apply, where either the previous conviction or the charge on which the prisoner is being tried, is of an attempt or an attempt made punishable otherwise than by s. 511, I.P.C. JHAMMAN LAL v. KING-EMPEROR, **14 P.R. 1906, Cr. = 5 Cr. L.J. 85 = 12 P.L.R. 1907 = 15 P.W.R 1907, Cr.** (17 A. 120, 17 A. 123, *F.*)

(18)—*Previous convictions for substantive offence—Subsequent conviction for attempt—Penal Code, s. 75.*—Where a person, who has been previously convicted of an offence punishable under Ch. XVII, with three years' rigorous imprisonment, is convicted again of an attempt to commit an offence under the same chapter with the same term of imprisonment, *held* that s. 75, I.P.C., does not apply. EMPRESS v. FATTU, **34 P.R. 1884, Cr.**

(19)—*Attempt to commit offence—Penal Code Ch.* XXIII.—An offender is liable for enhanced punishment under s. 75, Penal Code, only for offences under Chs. XII and XVII of the Penal Code, when the period of imprisonment that can be inflicted is three years' imprisonment and upwards; the section does not refer to an attempt to commit any of those offences (Ch. XXIII), nor can any case be brought within it merely on the ground that the sentence that may be awarded for it extends to three years and upwards. QUEEN v. DAMU HAREE, **21 W.R. Cr. 35.**

(20)—*Previous conviction of offence not under Ch.* XVII *of Penal Code*.—The enhanced punishment awardable under s. 75, I.P.C., can only be inflicted where an offence punishable under Ch. XVII has been committed by an offender who has already been punished with imprisonment for the same offence or for an offence punishable under the same chapter. QUEEN v. PUBAN, **5 W.R. Cr. 66.**

(21)—*Penal Code, s. 75—Conviction for an offence committed subsequent to the date of the offence on trial.*—S. 75 clearly postulates the commission of the offence, which forms the subject of the subsequent charge at a period subsequent to the date of the offence of which the accused was before convicted. Therefore, a prisoner cannot be charged, for the purposes of s. 75, with a conviction for an offence committed subsequent to the date of the offence of

Sentence—continued.

——18.—**Sentence after previous conviction** —*continued.*

which the accused was before convicted. HIGH COURT PROCEEDINGS, 20TH JAN. 1875, NO. 135, **1 Weir 39.**

(22)—*Previous conviction—Second conviction, meaning of—Criminal Tribes Act*, XXVII *of* 1871, *ss.* 18 *and* 19.—A second conviction, under the Act, means a conviction subsequent in point of time to a previous conviction. Whether a subsequent conviction is really a subsequent conviction or not is determinable by the time when the charge is framed and by the time when the second conviction occurs. EMPRESS v. SULTANI, **21 P.R. 1879, Cr.**

(23)—*Penal Code*, s. 75—*Enhanced punishment after previous conviction.*—Although s. 75, Penal Code, declares a prisoner liable to double punishment on a second conviction, it gives no authority to the Magistrate to exceed his ordinary jurisdiction. The only provision which enables a Magistrate to award a longer term of imprisonment than two years is s. 46 (s. 35, Crim. Pro. Code, 1898), but that section only applies to the case of a prisoner convicted at one time of two distinct offences; and a former conviction is not an offence at all. Where a prisoner was convicted of house-breaking by night and theft in a building, and a previous conviction of simple theft had also been found against him, *held*, that the sentence passed upon him by the Senior Assistant Magistrate that he should receive hundred lashes and be kept in imprisonment for four years, was illegal. The High Court reduced the sentence to two years' rigorous imprisonment, the whipping being entirely remitted. HIGH COURT PROCEEDINGS, 27TH APRIL, 1865, **1 Weir 36=2 Weir 35.**

(24)—*Penal Code*, s. 75—*Applicability of, to a Feudatory State—Previous conviction in Feudatory State—Magistrate in British India may take such conviction into account in awarding punishment—Sentence not to exceed limits imposed—Applicability of, to foreign conviction.*—The Indian Penal Code could not, as such, be in force in a Feudatory State, which is not part of British India. Where the accused was previously convicted in a Feudatory State under a law identical in terms with the Indian Penal Code, such previous conviction might be taken into account by a Magistrate in British India, when awarding punishment under the Penal Code. But the sentence passed must not exceed the ordinary limits imposed by the particular section of the Penal Code, under which the accused is convicted, and by s. 32 or s. 34 of the Crim. Pro. Code, as the case may be. In such a case, it would be illegal to apply s. 75 of the Penal Code or s. 3 or s. 4 of the Whipping Act or s. 565 of the Crim. Pro. Code, upon the strength of foreign convictions. GHASIA TELI v. EMPEROR, **1 N.L.R. 137=2 Cr. L J. 149.** [*R.*, **9 Cr. L J. 97=4 N.L.R. 177.**]

(25)—*Crim. Pro. Code, s.* 32—*Enhanced sentence after previous conviction—Penal Code, s.* 75.—The accused was convicted of criminal trespass by a First Class Magistrate, who, taking into consideration his previous conviction for an offence under s. 392, and bearing in mind s. 75 of the Code, sentenced him to undergo one month's rigorous imprisonment. *Held*, that the reference to s. 75, I.P.C., in the sentence recorded was meaningless, because the powers of the Magistrate under s. 32, Crim. Pro. Code, are in no way extended by s. 75, I.P.C. *Held* also that, in so far as the offence of criminal trespass was one punishable with three months' rigorous imprisonment and the accused was sentenced and convicted by a First Class Magistrate empowered by law to pass a sentence of two years' rigorous imprisonment, to suffer one month's rigorous imprisonment there was no illegality in the sentence. EMPEROR v. DAVID NARSU, **6 Bom. L.R. 548=1 Cr. L.J. 607.**

(26)—*Previous conviction for dishonestly receiving stolen property—Second conviction for theft—Whipping.*—Where a person who has been previously convicted of the offence of dishonestly receiving stolen property is again convicted of the offence of theft, it is not competent for the Court to award the sentence of whipping in addition to other punishment. KOURI v. EMPRESS, **39 P.R. 1880, Cr.**

(27)—*Previous conviction for theft—Subsequent conviction for the same offence—Penal Code, s.* 75.—A person convicted for a second time of the offence cannot be awarded seven years' rigorous imprisonment under s. 75, I.P.C., but can only be sentenced to six years' rigorous imprisonment, which is double the original term, or to transportation for life. EMPRESS v. ISMAIL, **38 P.R. 1882, Cr.** (58 P.R. 1866, Cr., *R.*)

(28)—*Previous charge of theft, but conviction after the commission of second theft—Penal Code, s.* 75.—Where a person, charged with theft, had been previously charged with another theft, but was convicted only fourteen days after the commission of the second theft, *held*, that there was no previous conviction for theft within the meaning of s. 75, I.P.C. GOBIND v. EMPRESS, **39 P.R. 1882, Cr.**

(29)—*Penal Code, s.* 75—*Enhanced sentence—Period of imprisonment.*—The accused pleaded guilty to a charge of theft and to a number of previous convictions of offences falling under Ch. XII or Ch. XVII, I.P.C., punishable with imprisonment of either description for a term of three years or upwards, and was sentenced to imprisonment for seven years. *Held*, that the sentence was illegal. Under s. 75, I.P.C., the accused might have been sentenced to transportation for life, but not to imprisonment for more than six years. EMPRESS v. MAHADU, **6 B. 690=7 Ind. Jur. 101.**

(30)—*Previous conviction—Conviction in the alternative—Imprisonment and whipping.*—An

Sentence—continued.

——18.—**Sentence after previous conviction** —*concluded.*

accused, who having previously been convicted in the alternative under s. 379 or s. 411 of the Penal Code, is again convicted under s. 379, is not liable to imprisonment and whipping. EMPRESS v. SHEORAM, **13 C.P.L.R. 171.**

(31)—*Previous conviction for house-breaking—Subsequent conviction for attempt to commit house-breaking—Whipping.*—Where a person, who has been previously convicted of the offence of house-breaking, is subsequently convicted of an attempt to commit the offence of house-breaking, *held* that it was not competent for the Court to impose a sentence of whipping in addition to imprisonment, as he could not be said to have been convicted of the "same offence." EMPRESS v. MANSUKH, **42 P.R. 1880, Cr.**

(32)—*Crim. Pro. Code (Act V of 1898), s. 30—Sentence — Habitual offender.*—A person accused of the theft of a pair of shoes under s. 379 of the Indian Penal Code was convicted by a Magistrate of the first class and sentenced to one year's rigorous imprisonment including two months' solitary confinement and thirty stripes. The accused had six previous convictions for offences against property and in two cases the sentences were each for a period of three years' imprisonment *Held*, that the accused should have been committed to the Court of Sessions. as the case was one in which the advisability for transporting him for life should have been carefully considered, but since the accused had been whipped, he could not be sentenced to more than five years' rigorous imprisonment. The Chief Court set aside the order of conviction and directed the accused to be retried by a Magistrate with powers under s. 30 of the Crim. Pro. Code. KING-EMPEROR v. NUR DIN, **27 P.L.R. 1904 = 28 P.R. 1903, Cr. = 1 Cr. L.J. 111.**

(33)—*Crim. Pro. Code* (1882), *s.* 348—*Charge of theft—Previous conviction for theft—Sentence.*—Where a person who has been twice previously convicted of theft, is charged again with the offence of theft, *held*, that the offender should be committed to the Court of Session and should be punished with a severe sentence. EMPRESS v. JHANDA, **A.W.N. 1887, 194.**

——19.—**Powers of Appellate Court.**

(*a*)—GENERAL.
(*b*)—ALTERATION.
(*c*)—ENHANCEMENT.
(*d*)—MITIGATION.
(*e*)—REVERSAL.

————(*a*).—GENERAL.

(1)—*Power of High Court to interfere with sentence.*—A sentence once passed by a competent authority cannot be interfered with by the High Court any more than by a private individual, except upon appeal, or on a reference or in revision, as provided by the Code of Criminal Procedure. QUEEN v. PUBAN, **7 W.R. Cr. 1.**

Sentence—continued.

——19.—**Powers of Appellate Court**—*contd.*

————(*a*)—GENERAL—*concluded.*

(2)—*Sentence under repealed Act—Cattle Trespass Acts,* III *of* 1857 *and* I *of* 1871—*Conviction under wrong Act.*—Where there was evidence to justify the conviction of an accused person for illegally seizing cattle, but the sentence was passed under the old law (Act III of 1857), when the Act had been repealed by Act I of 1871, the High Court declined to interfere with the sentence on the ground that the latter Act was in force at the time of the conviction and sentence, and that no injustice had been done. MOHESH NATH v. HURRO MOHUN GHOSAL, **16 W.R. Cr. 12.**

(3)—*Re-trial.*—In this case the officer who tried the case was not competent to take cognizance of the offence. But as the sentence passed was within the officer's powers and no failure of justice had occurred, the Sudder Court held that it need not order a retrial. INAYUT v. DITTA, **6 P.R. 1866, Cr.**

(4)—*Dacoity with murder.*—In this case it was held that there were no sufficient grounds for interfering with the finding and sentence of the lower Court. GUNDA SINGH v. CROWN, **21 P.R. 1866, Cr.**

(5)—Main charge held not proved by the appellate court—Punishment already undergone by prisoners held sufficient for the minor offence proved—Prisoners ordered to be released. *In re* KAWALRAM, **1 P.R. 1867, Cr.**

(6)—*Revision—Failure to prove previous conviction—Enhancement of sentence.*—*Held*, (i) that the fact of the previous conviction not being made known to the Magistrate at the trial, he did not act with any material irregularity in passing a sentence, which, taken as a first offence, was not grossly inadequate; (ii) that the Chief Court will not, after the accused had served his term of imprisonment, enable the prosecution to supplement the record by producing fresh evidence bearing on the question of punishment, or of enhancement of sentence. KING-EMPEROR v. MAIDHAN, **19 P.R. 1905, Cr. = 46 P.L.R. 1905 = 2 Cr. L J. 228.**

—— —(*b*).—ALTERATION.

(1)—*Duty of appellate Court having illegal sentence before it.*—When an illegal sentence comes to a Court of appeal, the propriety of legalizing the sentence by altering the conviction shold be considered, if the result of not doing so would be an inadequate sentence. KING-EMPEROR v. KYAW HLA AUNG, **3 L.B. R. 112 = 3 Cr. L.J. 348.**

(2)—*Crim. Pro. Code* (1898), *s.* 423—*Accused sentenced to imprisonment by lower Court—Reduction of period of imprisonment on appeal, but with the addition of fine—Alteration or enhancement of sentence—Power of appellate Court.*—Where the lower Court convicts the accused and sentences him to imprisonment

Sentence—continued.

——19.—**Powers of Appellate Court**—*contd.*

————(*b*)—ALTERATION—*continued.*

for a certain period, and, on appeal, the period of imprisonment is reduced, but a fine is imposed in addition, and, in default, a further period of imprisonment, the fact that a fine is imposed by the appellate Court would not in law be an enhancement of the sentence, if the aggregate period of imprisonment, which the accused may have to undergo is to any extent, less than the period of the original sentence. In a case, where such an alteration of the sentence has the effect of rendering it, in the circumstances of the case, excessive or inappropriate, the interference in revision of a superior Court may be called for. BAKTAVATSALU NAIDU v. EMPEROR, **30 M. 103=1 M.L.T. 375=5 Cr.L. J. 36=16 M.L.J. 560, F.B.**[*R.*, 12 A.L.J. 827=15 Cr. L J. 519=24 Ind. Cas. 607.]

(3)—*Powers of Chief Court.*—The Chief Court may alter the several sentences as affixed to the charge by the Sessions Judge, provided that the amount of the sentence is not exceeded upon the whole charge and that the sentence is authorised by law for the offence held to be established. KOURA KHAN v. CROWN, **34 P.R. 1868, Cr.**

(4)—*Penal Code, ss.* 75, 403 *and* 411.—Where the lower appellate Court considered that the conviction of the original Court under s. 411 was not sustainable, as the offence proved was an offence under s. 403, I.P.C., but did not alter the conviction considering the point to be immaterial, the Chief Court held that the conviction should be altered for an offence under s. 403, inasmuch as the original conviction for an offence under s. 411 would materially affect the accused if he were to be charged subsequently for an offence under Ch. XVII, I.P.C. BUTA v. EMPRESS, **59 P.R. 1887, Cr.**

(5)—*Crim. Pro. Code* (1872), s. 280—*Alteration of conviction from culpable homicide to murder.*—Case where the High Court altered a conviction from culpable homicide to murder and thus enhanced the punishment. QUEEN v. SHAIKH ROHEEM, **21 W.R. Cr. 39.**

(6)—*Appellate Court's power to alter a sentence of fine into one of imprisonment.*—A Sessions Judge has no power to enhance a sentence in appeal, by altering a sentence of fine into one of imprisonment. QUEEN-EMPRESS v. DANSANG DADA, **18 B. 751.**

(7)—*Crim. Pro. Code, ss* 278, 279—*Sentence of fine and imprisonment in default—Powers of District Magistrate to alter latter sentence to one of whipping.*—A second class Magistrate convicted an accused person of an offence punishable under s. 411 of the Indian Penal Code, and sentenced him to a fine of Rs. 50 or in default to suffer forty-five days' rigorous imprisonment. On appeal, the District Magistrate altered the sentence to one of fifty lashes in lieu of the term of imprisonment which the accused had yet to undergo in default of payment of the fine. *Held* that it was competent to the Magistrate of the District to so alter the sentence notwithstanding that the appellant had, as a matter of fact, been some days in confinement; but in making the alteration, the sentence of whipping should have been substituted for that passed by the second class Magistrate and not for the remaining term of imprisonment. QUEEN-EMPRESS v. THAREKHAN, **Rat. Un. Cr. C. 131=Cr. Rg: 6-9-1877.**

Sentence—continued.

——19.—**Powers of Appellate Court**—*contd.*

————(*b*)—ALTERATION—*concluded.*

(8)—*Crim. Pro. Code* (1882), s. 369—*Enhancement of sentence after pronouncing judgment.*—A Magistrate convicted a person, sentenced him to a month's imprisonment, signed and pronounced his judgment in open Court, and, shortly afterwards, on the same day, enhanced such sentence by one day, at the request of such person, in order to make his order appealable. *Held* that the alteration of the sentence was illegal although the Magistrate acted from the best of motives. QURBAN ALI v. AZIZUDDIN, **A.W.N. 1883, 16.**

See CRIM. PRO. CODE, 1898, ss. 367, 369, 23 W.R. Cr. 49.

————(*c*)—ENHANCEMENT.

(1)—*Appeal — Enhancement of sentence.*—Where the lower appellate Court enhanced the fine imposed upon the accused, a poor man, by the trying Magistrate, the High Court set aside the appellate Court's order and restored the original Court's order. EMPRESS v. MADA, **A.W.N. 1887, 100.** [*R.*, 23 A. 497.]

(2)—*When sentence will be enhanced.*—Only where the punishment appears to be so grossly and entirely inadequate as to involve a failure of justice that the High Court will enhance the sentence, and not in any and every case where the accused is punished too leniently. EMPRESS v. PHAGYA TELI, **9 C.P.L.R. Cr. 4.**

(3)—*Crim. Pro. Code* (1898), s. 439—*Revision—Enhancement of sentence.*—An enhancement of sentence should take place only when the sentence is manifestly inadequate. EMPEROR v. AHMAD SHAH, **142 P.L.R. 1902.** (7 P.R. 1889, Cr., 20 W.R. 22, Cr., *F.*)

(4)—*Crim. Pro. Code* (1872), s. 280—*Appellate Court—Power to enhance sentence.*—S. 280 of the Code of Criminal Procedure authorises an appellate Court, subject to the proviso in the final sentence, to enhance any punishment that has been awarded. Punishment does not here mean the sort of evil or inconvenience inflicted, but the dose of punishment." That dose is enhanced or heightened equally whether another pain legally impossible is added, or the one already imposed is increased in degree. An appellate Court has power to pass any sentence which the subordinate Magistrate might have passed. HIGH COURT PROCEEDINGS, 22ND FEB. 1876, **1 M. 54.**

(5)—*Crim. Pro. Code* (1872), s. 209—*Enhancement of sentence by appellate Court, when no appeal has been preferred.*—Where only few of

Sentence—continued.

— 1 .—Powers of Appellate Court—*contd.*

————(c)—ENHANCEMENT—*continued.*

the persons convicted of mischief prefer an appeal against the conviction, the appellate Court has no power to enhance the sentence passed on the prisoners who do not appear and who disclaim all intention of appealing. HIGH COURT PROCEEDINGS, 4TH MARCH 1875, **8 M.H.C. App. 8.**

(6)—*Exercise of power—Crim. Pro. Code* (1872), s. 280.—Circumstances which would induce the High Court, on a convict's appeal, to enhance the punishment under s. 280, Crim. Pro Code, 1872, pointed out. QUEEN v. SUFFIRUDDI PALWAR, **13 B.L.R. Ap. 23=22 W.R. Cr. 5.**

(7)—*Crim. Pro. Code*, s. 423—*Enhancement of sentence—Alteration of sentence on appeal.*—It is impossible to lay down any general rule to determine what is or is not an enhancement of sentence, when only a portion of the sentence is altered to a punishment of lesser degree of severity. In each case, it would be for the Court of Revision, which is called upon to determine, whether there has been an enhancement of sentence, to consider what is the effect of the alteration. Where, on appeal, a sentence of three months' imprisonment was altered to one month's imprisonment, with a fine of Rs 20, or in default of payment to fifteen days rigorous imprisonment, *held*, that the substitution of the sentence of fine of Rs. 20 for two months' rigorous imprisonment could not be regarded as an enhancement of sentence, and, therefore, was not contrary to the terms of s. 423 of the Code. RAKKAL RAJA v. KHIROD PERSHAD DUTT, **27 C. 175.** (23 B. 439, *Diss.*) [*R.*, 23 A. 497=A.W.N. 1901, 176, 30 M. 103 =5 Cr.L J. 36=16 M.L J. 560=1 M.L.T. 375, 3 N.L.R. 90, 36 A. 485=12 A.L J. 827=15 Cr. L.J. 519=24 Ind. Cas. 607.]

(8)—*Crim. Pro. Code* (1898), s. 423—*Enhancement of sentence, by appellate Court, what does not amount to.*—An alteration, by the appellate Court, of a sentence of nine months' rigorous imprisonment to a sentence of six months and a fine of Rs. 1,000, in default of payment, three months' further rigorous imprisonment, is not an enhancement of sentence, as a sentence of fine is always considered lighter than a sentence of imprisonment. QUEEN-EMPRESS v. CHAGAN JAGANNATH, **23 B. 439.** [*Diss.*, 27 C. 175, 21 A.W.N. 176=23 A. 497, 3 N.L.R. 90=6 Cr L J. 100; *R.*, 23 A. 497, 1 M.L.T. 375=5 Cr. L.J. 236=16 M.L. J. 560=30 M. 103.]

(9)—One C was sentenced to nine months' rigorous imprisonment. On appeal, it was altered to one of rigorous imprisonment for six months and a fine of Rs. 1,000, in default of payment, three months' further rigorous imprisonment. *Held* that this did not amount to an enhancement of the original sentence unless the case was treated as one of fact only, in

Sentence—continued.

— 19.—Powers of Appellate Court—*contd.*

————(c)—ENHANCEMENT—*continued.*

which case the objection of the applicant might alone be sufficient to show that the altered sentence was more severe than the original one. As a general rule, a sentence ought not to be so altered except when the Court expressly purported to mitigate it in this manner, which would almost always be at the instance of the accused person himself. *In re* CHHAGAN JAGANNATH, **Cr. Rg. 31 of 1898.**

(10)—*Crim. Pro. Code, s.* 423—*Enhancement of sentence, by appellate Court, what amounts to —Penal Code, s.* 70—A substitution by the appellate Court of a sentence of four months' rigorous imprisonment, and a fine of one hundred rupees, or in default, two months' rigorous imprisonment, for the original sentence of six months' imprisonment, amounts to an enhancement of sentence, as the accused, even after he has undergone the two months' imprisonment, in default of payment of fine, will be liable to pay the amount of fine. KING EMPEROR v. SAGWA, **23 A. 497=A.W.N. 1901 1761,** (3 W.R. Cr. 61, 27 C. 175, A.W.N. 1887, 100, 23 B. 439, *Diss.*) [*R.*, 3 N.L.R 90=6 Cr. L J. 100.]

(11)—*Crim. Pro. Code, ss.* 434 *and* 439—*One of two convictions set aside on appeal—Original sentence maintained—Enhancement of sentence.*—Where an accused is convicted of two distinct offences and a sentence of one month's rigorous imprisonment and a fine of Rs 50 is awarded for each of such offences, and where, on appeal, the conviction in respect of one of such offences is set aside but the sentence as originally awarded is upheld, the sentence of the appellate Court amounts to an enhancement of sentence and is contrary to law. The sentence ought, therefore, to be reduced. *In re* SOMASUNDARAM PILLAI, **3 M.L.T. 312=7 Cr. L J. 361.**

(12)—*Enhancement of, by appellate Court.*—Where the Sessions Judge, on appeal, altered the sentence for an offence under s. 251, I P. C., to that for a different offence, but maintained the conviction for another offence passed by the Magistrate, and allowed both the sentences passed by a District Magistrate to stand, as an aggregate sentence, *held* that the sentence amounted to an enhancement of sentence in contravention of s. 423, Crim. Pro. Code, 1882. AZIM KHAN v. EMPRESS, **45 P.R. 1887, Cr.**

(13)—*Penal Code, ss.* 147 *and* 379—*Single sentence for both the offences—Acquittal by appellate Court of one of the offences—Maintenance of sentence in its entirety—Enhancement of sentence.*—Where a Second Class Magistrate convicted an accused person under ss. 147 and 379, Penal Code, but passed only a single sentence for both the offences, and the appellate Court acquitted him of the offence under s. 379, but maintained the sentence in its entirety, this amounts to an enhancement of the sentence passed on the offence, the conviction for which

Sentence—continued.

——19.—**Powers of Appellate Court**—*contd.*

—— —— (c)—ENHANCEMENT—*continued.*

alone is maintained. In such cases, some reduction of sentence by the appellate Court must be made, unless the Court thinks that the sentence ought not to be reduced, in which case, it should refer the matter to the High Court for enhancement of sentence. PARAMASIVA PILLAI v. EMPEROR, **30 M. 48=1 M.L.T. 403 =5 Cr. L J. 88.**

(14)—*Crim. Pro. Code* (1872), s. 280—*Enhancement without notice.*—An order of enhancement of a sentence made by a District Magistrate, under s. 280, Crim. Pro. Code, 1872, on an appeal before him, was set aside as illegal on the ground that no notice had been served on the appellant. QUEEN v. HEKMUT ALI, **24 W.R. Cr. 72.**

(15)—*Appeal— Enhancement of sentence—Notice to accused.*—When the proceedings are called for on appeal, solely with a view to enhance the sentence, notice to that effect should be given to the appellant and to the District Magistrate. QUEEN-EMPRESS v. NATHA, **Rat. Un. Cr. C. 179.**

(16)—*Crim. Pro. Code* (1882), s. 423—*Enhancement of sentence by appellate Court.*—Where an appellate Court reduces a sentence of four months' rigorous imprisonment into one of three months but adds a sentence of fine or in default six weeks' rigorous imprisonment, such sentence is in excess of the powers of an appellate Court. QUEEN-EMPRESS v. ISHRI, **17 A. 67=A.W.N. 1894, 202.** (16 C. 779, A. W.N. 1890, 201, *R.*) [*R.*, 27 C. 175, 30 M. 103 =5 Cr.L.J. 36=16 M.L.J. 560=1 M.L.T. 375, 12 Cr. L.J. 547=12 Ind. Cas. 523=10 M.L.T. 383=1911 2 M.W.N. 413 ; *D.*, 23 B. 439.]

(17)—*Crim. Pro. Code*, s. 423—*Practice—Enhancement of sentence—Conviction treated as conclusive.*—It has been the invariable practice of the Bombay High Court, in cases that come up before it for enhancement of sentence, to accept the conviction as conclusive and to consider the question of enhancement of sentence on that basis. EMPEROR v. CHINTO BHAIRAVA, **10 Bom. L.R. 93=32 B. 163=7 Cr. L. J. 119.**

(18)—*Penal Code*, s. 75—*Enhancement of sentence.*—It is not the intention of the Legislature that a previous conviction for receipt of property acquired by dacoity should so enormously enhance the heinousness of a petty offence, like the theft of articles of trifling value, as to involve a sentence of transportation for life. *In re* SHAMJEE NASHYO, **1 C.L.R. 481.**

(19)—*Appeal to the High Court—Enhancement of sentence.*—In an appeal against a conviction by a prisoner, the High Court dismissed the appeal, but enhanced the sentence as a Court of revision. MEHTER ALI v. QUEEN-EMPRESS, **11 C. 530.**

Sentence—continued.

——19.—**Powers of Appellate Court**—*contd.*

—— ——(c)—ENHANCEMENT—*continued.*

(20)—*Crim. Pro. Code* (1872), s. 280.—Case where the High Court finding no circumstances of mitigation and no sufficient reason for the Judge awarding a punishment which in ordinary cases would be quite inadequate enhanced the punishment under s. 280, Crim. Pro. Code, 1872. QUEEN v. GOOJREE PANDAY, **11 B.L. R. Ap. 3=20 W.R.Cr. 21.**

(21)—*Power of High Court as to sentence—Acquittal by Sessions Judge and assessors.*—*Held* that a Court of appeal could not enhance the punishment awarded in a case where a Sessions Judge and assessors acquit the prisoner on a charge of murder but find him guilty of a minor charge. *In the matter of* TOYAB SHAIKH, **1 Ind. Jur. N.S. 58.**

(22)—*Penal Code*, s. 213—*Enhancement of sentence—Screening an offender from punishment.*—One Nota made a report of the theft of his she-buffalo to the Police Previous to report, he traced the track and found out the thief but could not come to terms. He secured promise of restitution, a few days after the investigation, got back the buffalo, hushed up the offence and then reported to the Police as "not traced." However, on matters coming to light, the thief was convicted and Nota was prosecuted and sentenced to six months' rigorous imprisonment, including one month's solitary confinement. The sentence was, on appeal, reduced by the Sessions Judge to the term already undergone, *viz.*, one month and a few days. The District Magistrate moved the Chief Court, in revision, recommending that the sentence was inadequate. The Chief Court declined to interfere, on the ground that the punishment was not inadequate. CROWN v. NOTA, **53 P.L R. 1905=2 Cr.L J. 232.**

(23)—*Enhancement of sentence — Duty of prosecution.*—It is the duty of the prosecution to prove their case against the accused, for he is not bound to give proof of innocence. The Court declined to enhance the sentence passed on the accused, when it did not believe the truth of the story for the prosecution. CROWN v. MURADA, **P.L.R. 1900, Cr., 74.**

(24)—*Penal Code*, s. 75—*Enhanced punishment.*—Where it was proved that the appellant had, a few days before the trial of an offence of theft, been convicted, but it was not shown, that he had been convicted of one of the offences mentioned in s. 75, nor, that he had been convicted of any offence, before the commission of the offence for which he had received the enhanced sentence, *held* that the enhanced sentence was not proper in the circumstances of the case. EMPRESS OF INDIA v. MEGHA, **1 A. 637.** [*F.*, L.B.R. 1893—1900, 479.]

(25)—*Power to enhance—Crim. Pro. Code* (1861), s 419—*Sessions Judge—Held* that it was not competent to a Sessions Judge, under s. 419

Sentence—continued.

——19.—**Powers of Appellate Court**—*contd.*

————(*c*)—ENHANCEMENT—*concluded.*

Crim. Pro. Code, 1861, to enhance a sentence on appeal. QUEEN v. BULORAM DASS, **4 W. R. Cr. 20.**

(26)—*Crim. Pro. Code* (*Act* X *of* 1872), *s.* 278 —*Sessions Judge — Appeal —Enhancement of sentence.*—A Sessions Judge, in rejecting an appeal under s. 278 of the Crim. Pro. Code, has no power to enhance the sentence. REG. v. MATHUR LALDAS, **Rat. Un. Cr. C. 74=Cr. Rg. 5-6-1873.**

(27)—*By Sessions Judge.*—A Sessions Judge is incompetent to enhance the sentence in a case referred to him under s. 36, Crim. Pro. Code. POLICE v. PERNNI, **Colm. Dig. Cr. 90 of 1877.**

(28)—A Sessions Judge cannot enhance a sentence submitted to him for confirmation under s. 380 of Crim. Pro. Code. EMPRESS v. NARSINGH, **9 C.P.L.R. Cr. 29.** (4 B. 239, *R.*)

(29)—*Enhancement of punishment by Sessions Judge.*—A Sessions Judge cannot enhance a sentence referred to him under s. 36 of Act X of 1872. To "modify" in that section, means to "reduce." HARRIA v. CROWN, **15 P.R. 1874, Cr.**

(30)—*Crim.Pro. Code* (*Act* X *of* 1882), *s.* 423 —*Appeal—Enhancement of sentence.*—It is not competent to a District Magistrate in appeal to enhance a sentence. QUEEEN-EMPRESS v. NATHA, **Rat. Un. Cr. C. 618=Cr. Rg. 41 of 1892.**

(31)—*Case sent up for enhanced punishment —Appeal.*—A Court, to whom a case is referred to for the purpose of awarding the accused an enhanced punishment, is limited to its ordinary powers and an appeal lies from that sentence to the Court of Sessions. CROWN v. RAHIM, **2 P.R. 1873, Cr.**

(32)—*Procedure — Jurisdiction.* — A Magistrate of a district has no jurisdiction to supplement the sentence of a Subordinate Magistrate, on his so requesting him, with solitary confinement. Order of District Magistrate annulled. HIMTA v. SOHILA SING, **38 P.R. 1866, Cr.**

(33)—*Illegal sentence— Revision — Enhancement.*—Where an illegal sentence of fourteen years' imprisonment was passed on a prisoner convicted of murder, the Chief Court as a Court of Revision annulled it and passed a sentence of transportation for life. CROWN v. MUSSUMAT SAHIB NOOR, **9 P.R. 1867, Cr.**

Power of appellate Court rejecting appeal to enhance sentence—*See* ACT XI OF 1874, s. 26, 24 W.R. Cr. 29.

See APPELLATE COURT, 22 B. 760.

See CRIM. PRO. CODE, 1898, ss. 435, 439, 7 M.L.T. 81.

Enhancement of sentence by appellate Court—*See* PENAL CODE, s. 289, 3 N.L.R. 90 =6 Cr. L.J. 100.

Sentence—continued.

——19.—**Powers of Appellate Court**—*contd.*

————(*d*)—MITIGATION.

(1)—*Crim. Pro. Code* (1861), *ss.* 405 *and* 428 —*High Court's powers of revision— Sentenee confirmed on appeal.*—Read in s. 405 with s. 428, the High Court has the power of mitigating a sentence passed by a Magistrate and confirmed on appeal. HIGH COURT PROCEEDINGS, 30TH APRIL 1869, **4 M.H C. App. 36.**

(2)—*Power to mitigate sentence—Crim. Pro. Code* (1861), *ss.* 405 *and* 428.—*Held* that where a sentence was excessive, the High Court could, under ss. 405 and 428, Crim. Pro. Code, mitigate a sentence passed by a Magistrate and confirmed or altered on appeal by the Sessions Judge. *In the matter of the petition of* BISSUMBHUR SHAHA, **B.L R. Sup. Vol. 484 =6 W. R. Cr. 7.** *See also in re* RAMDHONE MUNDUL, **4 W. R. Cr. 15.**

(3)—*Maximum sentence, when should not be passed.*—Where, in the absence of clear evidence of the amount of damage done, the Magistrate passed a maximum sentence, the High Court reduced the sentence passed upon the accused. QUEEN-EMPRESS v. SAVLYARAM, **2 Bom. L. R. 335.**

(4)—*Conviction on several charges—Conviction on one charge set aside—Reduction of sentence, necessary.*—Where the conviction on one of the several charges is set aside the sentence must also be reduced. *In re* PROLA NARASIMHAM, **10 M.L.T. 115=1911, 2 M.W.N. 97=12 Cr. L.J. 454=11 Ind. Cas. 798.** (30 M. 48, *F.*)

(5)—*Convicting and sentencing Court taking into consideration statement made by accused in another case admitting several thefts and burglaries—Admissibility of such statement.*—The accused was convicted of an offence under s. 457, I.P.C., and sentenced to transportation for life. He appealed. The Sessions Judge, in awarding the punishment, took into consideration a previous deposition given by the accused as informer in a case, admitting the commission of a long series of thefts and burglaries. The Chief Court, without actually deciding the point whether the previous statement could be taken into consideration in awarding the punishment, said that, at least, the accused should be given the benefit of the doubt on the question, and reduced the sentence to one of seven years' transportation. IMAM DIN v. CROWN, **17 P.L R. 1905=2 Cr. L.J. 206.**

(6)—*Measure of punishment—Murder—Severity of sentence, Mitigation of.*—A prisoner convicted of murder against the opinion of the assessors was punished with transportation for life, but the High Court reduced the sentence to ten years' rigorous imprisonment, remarking on the severity of the Penal Code and on the necessity of applying it so as to make it suit to the various gradations and degrees of crime in this country. QUEEN v. HOSSAIN ALI, **7 W.R. Cr. 47.**

Sentence—continued.

——**19.—Powers of Appellate Court**—*contd.*

—— ——(*d*)—MITIGATION—*continued*

(7)—*Ground for mitigation of sentence—False evidence.*—General principles as to the extent of punishment to be passed on persons who, in a case of criminal trespass brought by an indigo planter, falsely deposed that cotton, and not indigo, had been raised on the land in dispute during the past year. Punishment reduced. *Seton-Karr, J.* would reduce the punishment still further. QUEEN v. DHURRANI DUTT RAI, **8 W.R. Cr. 7.**

(8)—*Penal Code, ss.* 71, 380, 457—*Sentence—Single offence.*—Where a person charged with house-breaking under s. 457, I.P.C. and with theft committed on the same occasion under s. 380, was sentenced on the first count to two years' rigorous imprisonment and on the second to one year's further imprisonment, the High Court reduced the imprisonment to two years upon both counts of the charge together, conformably to s. 71, I.P.C., inasmuch as the Magistrate had power to inflict no more than two years' imprisonment for a single offence. REG v. ARJUN, **1 B.H.C. 87.**

(9)—*Exercise of powers—Case submitted for consideration of Government—Held* that a Judge was at liberty to record any circumstances which render expedient or advisable a mitigation of the sentence prescribed for murder and submit them for the consideration of the Government and the Government might, under s. 54, Crim. Pro. Code, 1861, act as to them may seem proper. QUEEN v. DABEE, **W.R. 1864, Cr. 27.**

(10)—*Crim. Pro. Code* (1861), *s.* 405—*Interference with verdict of jury.*—Interference with the verdict of a jury could not, under s. 445, Crim. Pro. Code, 1861, be made by the High Court no more than by the Sessions Judge. QUEEN v. BISSONATH MITTER, **6 W.R. Cr. 6.**

(11)—*Penal Code, ss.* 379, 429—*Conviction under—Appeal—Setting aside conviction in one but confirming the sentences in both—Effect—Enhancement of sentence—Where reduction of sentence essential.*—The appellate Court should reduce the sentence when setting aside the conviction for one of the offences in respect of which the sentence was imposed by the lower Court Otherwise the upholding of the sentence would amount to an enhancement of the sentence, which is illegal. EMPEROR v. VARDAN, **8 M.L.T. 117=7 Ind. Cas. 415=11 Cr. L. J. 483.**

(12)—*Wounds inflicted with a* dah—*Sentence—Are an application for compromise and the complainant's treatment as an out-door patient considerations for reduction of sentence.*—Where, in the course of a trivial quarrel, the accused inflicted a *dah* wound on the complainant's right buttock and was sentenced to four months' rigorous imprisonment, and on appeal the senior Magistrate reduced the sentence to one month's imprisonment merely on the grounds: (1) that a petition to compound the offence was filed by the complainant, and (2) that the complainant was treated as an out-door patient:—*Held*, that the original sentence was appropriate and the senior Magistrate was ill-advised in reducing the sentence. EMPEROR v. MYA DIN, **12 Cr. L.J. 243=10 Ind. Cas. 773.**

(13)—In this case the Judicial Commissioner considering the sentence imposed by the Sessions Judge quite out of proportion to the offence, reduced it to six months' rigorous imprisonment. RULLA v. CROWN, **11 P.R. 1866, Cr.**

(14)—Charge of adultery—Promulgation of the rules regarding the same not well-known—Slight punishment held sufficient—Sentence passed by lower Court reduced by Chief Court on appeal. MUSSUMMAT BUKHTAWAR v. CROWN, **15 P.R. 1872, Cr.**

See CULPABLE HOMICIDE NOT AMOUNTING TO MURDER, 9 Cr. L J. 245=1 S.L.R. 1, Cr.

Intoxication not a ground for mitigation—*See* INTOXICATION, 5 W.R. Cr 58.

Offence of murder—Baluch custom sanctioning killing for unchastity—No ground for mitigating the sentence—*See* PENAL CODE, s 300, exception 1, 7 S.L.R. 118=15 Cr. L.J. 501=24 Ind. Cas. 589.

Sentence—continued.

——**19.—Powers of Appellate Court**—*contd.*

—— ——(*d*)—MITIGATION—*concluded.*

————(*e*)—REVERSAL.

(1)—*Power of High Court to set aside conviction and order new trial for error or defect in summing up—"Reverse," meaning of—Crim. Pro. Code* (*Act* XXV *of* 1861), *ss.* 419, 426.—The word "reverse" in ss. 419 and 426, Code of Criminal Procedure (Act XXV of 1861), ss. 280 and 283 of Act X of 1872, meant to make void, to set aside, or annul, and not merely to change or turn into the contrary. The High Court will exercise the power it has of setting aside convictions and ordering new trials for any error or defect in the summing up only if it is satisfied that the accused has been prejudiced or that a failure of justice has taken place by the error or defect. QUEEN v. ELAHI BUX, **B.L.R. Sup. Vol. 459=5 W.R. Cr. 80.**

(2)—*High Court cancelling appellate Court's order and restoring Magistrate's order.*—Where the lower appellate Court enhanced the fine imposed upon the accused, a poor man, by the trying Magistrate, the High Court set aside the appellate Court's order and restored the original Court's order. EMPRESS v. MADA, **A.W.N. 1887, 100.** [*R.*, 23 A. 497.]

(3)—*Crim. Pro. Code* (1898), *s.* 423—*Splitting up of one offence into two—Passing two sentences or one combined sentence—Joining up of the erroneous split by the appellate Court and maintaining original sentence Whether enhancement of sentence.*—Where the offences are distinct and require separate charges and separate sentences, then, no doubt, the reversal.

Sentence—continued.

——19.—**Powers of Appellate Court**—*contd.*

————(*e*)—REVERSAL—*continued.*

of one of the two or more convictions must carry with it the sentence appended to it, or, in case of an erroneous combined sentence, might necessitate a fresh trial. But where only one offence has been committed, and a Magistrate erroneously splits it into two and passes either two sentences or a combined sentence, the joining up of the erroneous split—whether in conviction or in sentence—and the maintaining of the original sentence cannot be regarded as beyond the powers of the appellate Court under s. 423 of the Code. BALBHADRI BANI v. TRIBHUVAN NATH, **3 N.L.R. 67 = 6 Cr. L.J. 43.**

(4)—*Combination of illegal sentences—Revisional practice.*—Where a sentence of imprisonment and whipping has been illegally passed and whipping, which can be legally inflicted, has been executed, the practice in revision is to correct the illegality as far as possible and to cancel the sentence of imprisonment. CROWN v. PO MAUNG, **1 L.B.R. 362.** (L.B.R. 1872—1892, 336, *F.*; 1 L.B.R. 55, *R.*) [*R.*, 7 Cr. L J. 422 = 4 L.B.R. 143.]

(5)—*Power of High Court as to sentences—Power to reverse sentence—Crim. Pro. Code* (*Act* XXV *of* 1861), s. 426.—A was charged with the offence of voluntarily causing hurt to C, and B was charged with the same offence, and also with the offence of abetting A. The Magistrate found A guilty of the offence, and sentenced him to three months' rigorous imprisonment. The Magistrate also found B guilty of abetment of the offence of voluntarily causing hurt to C, and sentenced him to one month's rigorous imprisonment and a fine. On appeal, the Sessions Judge held that there was no evidence to convict A, and he accordingly released the prisoner. The appeal of B, however, was rejected, on the ground that the evidence, though it did not prove him guilty of abetment, proved him guilty of voluntarily causing hurt; and therefore, under s. 426 of Code of Criminal Procedure, the sentence could not be reversed. No error or defect either in the charge or in the proceedings on trial was alleged. *Held* (*by Mitter, J.*) that s. 426 of the Code of Criminal Procedure did not apply. QUEEN v MAHENDRANATH CHATTERJEE, **5 B.L.R. Ap. 39 = 13 W.R. Cr. 78.**

(6)—*Reversal of conviction to be followed by reversal of sentence—Appellate Court quashing conviction on one charge but acquitting on the other—Crim. Pro. Code* (1898), *s.* 435.—An appellate Court has no power to maintain the entire sentence passed by the original Court, when it reverses the conviction on only one of the charges; such a maintenance being an enhancement of the sentence. QUEEN-EMPRESS v. HANMA, **22 B. 760.** [*F.*, 1 M.L.T. 403 = 5 Cr. L.J. 88 = 30 M. 48 ; *R.*, 3 N.L.R. 67 = 6 Cr. L.J. 43.]

Sentence—concluded.

——19.—**Powers of Appellate Court**—*concld.*

————(*e*)—REVERSAL—*concluded.*

(7)—*Crim. Pro. Code* (1882), s. 423—*Appeal—Conviction affirmed, but sentence reversed—Legality.*—A Magistrate in appeal cannot affirm the conviction and reverse the sentence absolutely. Every conviction should be followed by a sentence. QUEEN-EMPRESS v. LAKHSHMIBAI, **Rat. Un. Cr. C. 545 = Cr. Rg. 19 of 1891.**

(8)—In this case the portions of the sentences relating to stripes were annulled by the appellate Court in revision. BUDHU v. BAHU, **5 P. R. 1866, Cr.**

(9)—In this case the proceeding of the Deputy Commissioner in convicting and passing sentence on the investigation of the Assistant Commissioner was held to be illegal. CROWN v. TOPUN MULL, **65 P.R. 1866, Cr.**

Separate Charges.

See JOINDER OF CHARGES.

Separate Conviction.

See CONVICTION.
See SENTENCE.
See STOLEN PROPERTY, 15 A. 317.

Separate Offences.

See JOINDER OF CHARGES.
See SENTENCE.

(1)—*Penal Code, ss.* 71, 97—*Distinct offences. Held,* (i) that a guard in charge of a railway train, who had stolen different articles from different bags, belonging to different persons, had in reality committed only one offence and could not be convicted for more than one distinct offence and punished separately for each of those offences. (ii) Similarly, a burglar breaking into a house and stealing different articles from different rooms or by breaking open several boxes, is not guilty of distinct offences in respect of each article, but the whole series of thefts constitutes one offence. HAR DAYAL v. KING-EMPEROR, **58 P R. 1905, Cr. = 144 P. L.R. 1905 = 2 Cr. L J. 708.**

Kidnapping two girls — Sentence — *See* PENAL CODE, s. 366, 1 O.C. 4.

Separate Trial.

See JOINDER OF CHARGES.
See JOINT TRIAL.
See TRIAL.

(1)—*Separate trials—Crim. Pro. Code* (*Act* X *of* 1872), *ss.* 445, 446.—Where the prisoner is committed for trial on forty-five charges (and with other persons), the Judge should exercise the powers conferred on him by ss. 445 and 446 of the Crim. Pro. Code and proceed to hold separate trials. *In the matter of* SREENATH KUR ; EMPRESS v. SREENATH KUR, **8 C. 450 = 10 C.L.R. 421.**

Separate Trial –*concluded.*

(2)—*Separate trials, when necessary.*—Accused persons should be tried separately, where there is no connection between their alleged offences. QUEEN-EMPRESS v. NYO KE, **L.B. R. 1872—1892, 332.**

See CRIM. PRO. CODE, 1898, s. 35, A.W.N. 1881, 23.

See FALSE EVIDENCE, A.W.N. 1881, 83.

See PENAL CODE, s. 147, L.B.R. 1872—1892, 275.

See PENAL CODE, s. 193, L.B.R. 1872—1892, 129.

Serishtadar.

Sanction to prosecute given to—No application for sanction—Effect of sanction—Application of s. 537, Crim. Pro. Code—Defect in procedure—Sanction granted in respect of one offence—Framing charge in respect of another offence disclosed by facts—*See* CRIM. PRO. CODE, 1898, ss. 195, 215, 476, 537, 10 Ind. Cas. 616 = 12 Cr. L.J. 320.

Servant.

See MASTER AND SERVANT.

See MUNICIPAL SERVANT.

See OBSTRUCTING PUBLIC SERVANT.

See PUBLIC SERVANT.

See ACT XI OF 1878, ss. 13 and 14, A.W.N. 1881, 7.

Carrying arms belonging to his master—*See* ACT XI OF 1878, s. 19, 3 C W.N. 394.

See ACT XI OF 1878, s. 19 (*f*), 13 C.W.N. 124 = 4 Ind. Cas. 333.

See BEN. ACT VII OF 1878, s. 53, 29 C. 496.

See BEN. ACT VII OF 1878, ss. 53, 59 and 61, 12 C.W.N. 461 = 7 C.L.J. 377 = 7 Cr. L.J. 344.

See BEN. ACT VII OF 1878, s. 59, 29 C. 606 = 6 C.W.N. 674, F.B.

Cooly employed by—*See* BEN. ACT VII OF 1878, s. 61, 9 C. 847 = 12 C.L.R. 451.

Whether license-holder's servant liable for breach of conditions of license—*See* BOM. ACT V OF 1878, ss. 43 to 46 and 53, 15 B. 45.

See CRIMINAL BREACH OF TRUST, 29 C. 489.

Persons acting as servants, whether liable to be bound down to keep the peace—*See* CRIM. PRO. CODE, 1898, ss. 107 and 117 (4), 9 C.W. N. 898 = 1 C.L.J. 616 = 2 Cr. L.J. 554.

Service of summons on—Of juror—*See* CRIM. PRO. CODE, 1898, s. 332, A.W.N. 1899, 13.

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 6 C.L.R. 193.

Service of Summons.

See CRIM. PRO. CODE, 1898, ss. 69 to 74.

See SUMMONS, DISOBEDIENCE OF.

Whether proved by Police officer's report—*See* CRIM. PRO. CODE, 1898, ss. 87, 88, 90, 3 L.B.R. 116.

Service Roll.

Substitution of one page for another in the—*See* FORGERY, 21 A. 113 = A.W.N. 1898, 197.

Sessions Case.

See COMMITMENT TO SESSIONS COURT.

See CRIM. PRO. CODE, 1898, ss. 268, 307.

See SESSIONS JUDGE, JURISDICTION OF.

See TRANSFER OF SESSIONS CASES.

(1)—*Trial of—Duty of Sessions Judge.*—Sessions cases ought not to be tried piecemeal. It is the duty of a Sessions Judge, before commencing a trial, to satisfy himself that all the necessary evidence is forthcoming; and, if it is not, he may adjourn the trial; but once the trial is commenced, he should proceed *de die in dium* till the trial is finished, unless prevented by some very strong reasons. *Per Wells, A J.C.* KING-EMPEROR v. ALI MOHAMMAD, **8 O.C. 55 = 2 Cr. L.J. 191.**

(2)—*Difference of opinion between assessors and Sessions Judge—Duty of Sessions Judge as to recording assessors' view of facts.*—When the assessors in a case tried with the aid of assessors would acquit an accused person on the ground that the act or acts in respect of which the charge is made was or were done in the exercise of any right of private defence, the Judge should be careful to ascertain and record whether the assessors' view of the facts proved is such as would sustain a plea that the acts done were done in the exercise of the right of private defence. NGA SHAN v. QUEEN-EMPRESS, **L.B R. 1893—1900, 126.**

(3)—*Absence of Public Prosecutor— Crim. Pro. Code,* (1882), *ss.* 270, 537.—The absence of a Public Prosecutor in a sessions case is, at most, an irregularity, capable of being cured under s 537, Crim. Pro. Code. A defect in the new appointment of a Public Prosecutor is also capable of being cured under the same section. ISMAIL v. EMPRESS, **35 P.R. 1887, Cr.**

(4)—*Offence of cheating, whether a sessions case—Crim. Pro. Code* (1872), *ss.* 4, 296.—*Held* that the offence of cheating was not a Sessions case within the meaning of s. 296, read with s. 4, first portion, and that the definition must be understood as if the word "only" followed the words "triable by a Court of Session." JOY KURN SINGH v. MAN PATUCK, **21 W.R. Cr. 41.** (19 W.R. Cr. 30, *R.*).

(5)—*Crim. Pro. Code* (1872), *ss.* 4, 296—*Sessions case, meaning of.*—In order that a case may be a Sessions case, it is not necessary that it should be triable exclusively by a Court of Session. REG. v. GULABDAS KUBERDAS, **11 B.H.C. 98.**

(6)—*Case exclusively triable by Sessions—Prima facie case for committal—Duty of Committing Magistrate—Power to go into defence evidence.*—A Magistrate should not treat a grave offence beyond his jurisdiction, as a less grave offence, in order to bring it within his jurisdiction, nor should he ordinarily go into the defence evidence in a case triable exclusively by the Court of Session and in which a *prima*

Sessions Case—*concluded.*

facie case for committal has been made out by the prosecution, since to do so is to take upon himself the function of a superior Court. JAMAL MAHOMED ROWTHER v. MOIDEEN SA ROWTHER, 9 **M.L.T. 71** = 8 **Ind. Cas. 1103** = **12 Cr. L.J. 20** = **1910 M.W.N. 852.**

Accused sentenced by Magistrate for offence exclusively triable by Court of Sessions—Effect —*See* CONFESSION—GENERAL, 15 Cr. L.J. 502 = 24 Ind. Cas. 590.

Sessions—Commitment to Court of—Magistrate competent to try an offence—Reasons for commitment—Necessity to record—*See* CRIM. PRO. CODE, 1898, ss. 207, 254, 8 S.L.R. 23 = 15 Cr. L.J. 664 = 25 Ind. Cas. 992.

See CRIM. PRO. CODE, 1898, s. 208, 20 A. 264 = A.W.N. 1898, 52.

Inquiry into cases triable by Court of Session —Cross-examination of prosecution witnesses after charge—Order of discharge and acquittal thereafter if proper—'Witnesses for the defence,' meaning of—*See* CRIM. PRO. CODE, 1898, s. 213, sub-s. 2, 16 C.W.N. 1155 = 39 C. 885 = 17 Ind. Cas. 406 = 13 Cr. L.J. 774.

See CRIM. PRO. CODE, 1898, s. 253, 21 A. 265 = A.W.N. 1899, 61.

Meaning of—*See* CRIM. PRO. CODE, 1898, ss. 436, 438, 3 C.L.R. 263.

Records of the case in committing Magistrate's Court—High Court's power to look into them—*See* EVIDENCE—GENERAL, 10 M.L.T. 82 = 12 Ind. Cas. 223 = 12 Cr. L.J. 503.

Opportunity to cross-examine a prosecution witness in sessions trial—*See* EVIDENCE ACT, 1872, s. 33, 17 C.W.N. 230 = 18 Ind. Cas. 406 = 14 Cr. L.J. 70.

See MAGISTRATE, JURISDICTION OF—COMMITMENT TO SESSIONS COURT, L.B.R. 1872—1892, 158.

Robbery not proved—Conviction for grievous hurt—Legality—*See* PENAL CODE, ss. 397, 326, 13 Cr. L.J. 739 = 17 Ind. Cas. 51.

Summing up of Sessions Judge to be read as a whole—*See* PENAL CODE, ss. 420, 71, 6 Bur. L.T. 201.

Power of High Court to consider the evidence in the case—*See* REVISION—MATTERS PERTAINING TO EVIDENCE, 15 C. 269.

Sessions Court, Jurisdiction of.

See COMMITMENT TO SESSIONS COURT.
See SESSIONS JUDGE, JURISDICTION OF.

Sessions Division.

(1)—*Duty of Sessions Judge to inform High Court of place where he will hold Sessions.*—Sessions Judge must inform the High Court of the places, other than the Head-quarters of the Magistrate of the District, where he wishes to hold Sessions, stating in each case the circumstances which make such places desirable or convenient localities for holding such trials. CRL. CIR., No. 2 OF 18TH JANUARY 1870, **13 W.R. Cr. Cir. 1**.

Sessions Judges and Joint Zilla, Act.

See ACT XXIX OF 1845.

Sessions Judge, Jurisdiction of.

See ADDITIONAL SESSIONS JUDGE.
See ASSISTANT SESSIONS JUDGE.
See CHARGE TO JURY.
See COMMITMENT TO SESSIONS COURT.
See JUDGE AND JURY.
See JURY.
See MAGISTRATE, JURISDICTION OF.
See SESSIONS CASE.
See SESSIONS TRIAL.
See TRANSFER OF SESSIONS CASES.
See VERDICT OF JURY.

(1)—*Crim. Pro. Code, s. 360—Duty of Sessions Judge.*—It is the duty of the Sessions Judge not merely to receive and adjudicate on the evidence submitted to him by the parties, but also to inquire into the truth of the matter before him. REG. v. TUKARAM BHAWANI, **Rat. Un. Cr. C. 53** [*R.*, Rat. Un. Cr. C. 229, 242, 254, 581.]

(2)—*Responsibility of, in cases where first class Magistrate incompetent to pass adequate sentence, tries case.*—The responsibility of a Sessions Court in cases where a first class Magistrate has tried a case which he ought to have either committed for trial or reported to the District Magistrate when it became disclosed, by the evidence for the prosecution, that he could not inflict adequate punishment, does not become discharged by taking steps only to correct a miscarriage of justice in that particular case. The Sessions Court should direct the first class Magistrate to submit an explanation, and should forward a copy of any animadversion on the Magistrate's procedure to the District Magistrate. QUEEN-EMPRESS v. NGA PO LIN, **L.B.R. 1893—1900, 242.**

(3)—*Crim. Pro. Code* (1872), *s. 280—Court of Session, powers of, as an appellate Court.*—By s. 280 of Act X of 1872, as amended by s. 28 of Act XI of 1874, the appellate Court is empowered to alter or reverse the finding and sentence or order, or enhance the punishment, and also to order the appellant to be retried; but that section does not give the appellate Court power to annul the conviction and direct an enquiry into an offence cognizable by the Court of Session preliminary to committal. EMPRESS v. RATAN SAHAI, **A.W.N. 1881, 62.**

(4)—*Crim. Pro. Code* (1882), *s. 423 (b)—Power of Sessions Court as appellate Court.*—The Sessions Judge is competent, under s. 423 (*b*) of the Crim. Pro. Code, to order the re-trial of an appellant. EMPRESS v. BHAGWAN, **A.W.N. 1883, 99.**

(5)—*Crim. Pro. Code (Act XXV of 1861), s. 359—Informal commitment—Procedure in Sessions Court.*—The Sessions Court has no power to treat as a nullity a commitment made by a Full Power Magistrate, on the ground that the case was referred to the later

Sessions Judge, Jurisdiction of—*continued.*

by the District Magistrate and that he could not try it without complaint. The charge is properly before the Sessions Court, and it has to continue the case. REG v. RANCHODDAS NATHUBHAI, **4 B H.C. Cr. 35.** [*R.*, 5 B.H.C. Cr. 29, 13 W.R. Cr. 17.]

(6)—*Crim. Pro. Code* (*Act* XXV *of* 1861), *Sch.—Registration Act*, XX *of* 1866, *ss.* 94, 95 —*False personation before Registrar—Jurisdiction.*—The offence of abetment of false personation before a registering officer, punishable under s. 94 of Act XX of 1866, is triable exclusively by a Court of Session. REG. v. SUPDU, **Rat. Un. Cr. C. 51.**

(7)—*Power of Sessions Court to alter Magistrate's finding.*—In the absence of any error or any defect which does not occasion a failure of justice by affecting the proper conduct of the prosecution, a Sessions Court has no jurisdiction to alter the finding of a Magistrate. POLICE v. MURAD SINGH, **Colm. Dig. Cr. 29 of 1876.**

(8)—*Misdirection to jury—Powers of High Court—Crim. Pro. Code* (1872), *s.* 263.—In a case submitted to the High Court under s. 263, Crim. Pro. Code, 1872, a large discretionary power is vested in it, and in such a case, it can exercise its power as a Court of revision. It can, for sufficient reasons, direct a re-trial. EMPRESS v. JOSEF CASORATI, **36 P.R. 1879, Cr.**

(9)—*Crim. Pro. Code* (1898), *ss.* 110 *and* 123 —*Order of confirmation of imprisonment for inability to furnish necessary security – Grounds for such order—Duty of Sessions Judge.*—A Sessions Judge, in confirming the order of a Magistrate in regard to the imprisonment of a person in consequence of his being unable to furnish the necessary security, is bound to find a special ground, on which the order is passed, having special reference to s. 110. It is not sufficient, if he merely finds, in general terms, that it is for the interests of the community at large that the defendant should be bound over to be of good behaviour. NAKHI LAL JHA v. QUEEN-EMPRESS, **27 C. 656.**

(10)—*Comment on a previous trial.*—A Sessions Judge, holding a second trial, should not comment on the conduct of a previous trial. *In re* JAMSHEER SIRDAR, **1 C L.R. 62.**

(11)—*Procedure of—In recording the opinions of assessors and verdicts of juries—Crim. Pro. Code* (1861), *ss.* 323, 324, 342 *and* 343.—Under s. 324 of the Crim. Pro. Code, the opinion of each assessor shall be given orally and shall be recorded in writing by the Court. This record should appear at the commencement of the judgment of the Sessions Judge. The record should contain not only the result arrived at by each assessor, but also the reasons by which such result is arrived at. The Sessions Judge should, before commencing the proceedings of the trial, record in English the names of all the jurymen in attendance at the Sessions; and, after the selection by lot under s. 342 of the persons who are to constitute the jury, should mark the names of those selected. These papers should form part of the record of the case. If, in accordance with s. 243, any objection is raised to any juror, the name of the objector, the nature of the objection and the decision of the Court should also be recorded. The verdict of the jury should also be stated on the same paper. CRIMINAL CIRCULAR, NO. 4, 23RD JUNE, 1865, **3 W.R. Cr. Cir. 1.**

(12)—*Form of Sessions statement—Form of.* —The Sessions Judges ought not to use for Sessions statements any form other than that prescribed by the High Court. CRIMINAL CIRCULAR, NO. 5 OF 12TH JULY 1867, **8 W.R. Cr. Cir. 1.**

(13)—*Suspension of sentence.*—A Sessions Judge has no authority to suspend his own sentence. HIGH COURT PROCEEDINGS, 17TH JAN. 1868, **4 M.H.C. App. 1.**

(14)—*Duty of.*—It is the duty of the Sessions Judge to notice all important variations and discrepancies in the deposition of the witness as given before him and as given before the committing Magistrate, and, during the examination of each witness, he should bring such discrepancies or variations to the notice of the witness and call upon him to reconcile or explain them. EMPRESS v. BHADDOO AHIR, **10 C.P.L.R. Cr. 15.**

(15)—*Crim. Pro. Code* (*Act* X *of* 1872), *s.* 296 —*Power of Sessions Judge under.*— Under s. 296 of the Crim. Pro. Code (as amended by Act XI of 1874), a Sessions Judge has power only to direct a subordinate Court to enquire into any offences for which he considers a commitment should be ordered. *In the matter of the petition of* KHAMIR; EMPRESS v. KHAMIR, **7 C. 662 = 10 C L R 8.**

(16)—*To re-open and cancel an order passed by it—Crim. Pro. Code* (1882), *s.* 520.—The Crim. Pro. Code does not confer any power on a Sessions Court to re-open and cancel an order passed by it, under s. 520 of the Code, after the Sessions Court has pronounced and delivered a judgment, refusing to interfere with the order passed under s. 517 by a Court subordinate to it. When a Sessions Judge changes his mind after recording and pronouncing his order, he must either report the case to the High Court, with such recommendation as may appear to him proper, or must refer the parties to the High Court. The power conferred under s. 520 is more of the nature of revisional than appellate jurisdiction. SIT NYUN v. QUEEN-EMPRESS, **L.B.R. 1893—1900, 282.**

(17)—*Crim. Pro Code* (1872), *s.* 328—*Applicability of the section to Sessions Judges.*—It is only in view of the necessarily frequent changes in the office of Magistrate, the Crim. Pro. Code provides specially that a Magistrate may pronounce judgment on evidence partly recorded by his predecessor and partly by himself, but there is no such provision in the case of Sessions Judges. TARADA BALADU v. QUEEN, **3 M. 112 = 2 Weir 430.** [*F.*, 7 C.P.L.R. 1.]

Sessions Judge, Jurisdiction of—*continued.*

(18)—*In confirmation proceedings — Crim. Pro. Code* (1881), *ss.* 34 *and* 380.—A Sessions Judge, who has wider powers under s. 380 of the Crim. Pro Code to order or make further inquiry, or to order a new trial upon an amended charge when a case has been submitted to him for confirmation of sentence by a District Magistrate acting under s. 34, should exercise those powers if, after giving full consideration to the requirements of justice (as well as to the procedure of the District Magistrate), he finds reason to hold that the omission to state in the charge the fact, date, and place of a previous conviction, has misled the accused in his defence. NGA PAN E v. QUEEN-EMPRESS, **L.B.R. 1893—1900, 258.**

(19,20)—*Crim. Pro. Code* (*Act* XXV *of* 1861). *s.* 434—*Sessions Judge—Practice.*—Where a Sessions Judge learns that an error of law has been committed by a subordinate Magistrate which has not been corrected in appeal by the District Magistrate, the proper procedure is to refer the matter to the High Court under s. 404 of the Crim. Pro. Code. The Sessions Court ought not to call for a report from the District Magistrate except in cases where it is competent to call for and examine the record and proceedings. It has such a power in trials held by the District Magistrate or a Full Power Magistrate. REG. v. GIRDHAR DHARAM DAS, **6 B. H.C. Cr. 33.**

(21)—*Annual reports.*—Sessions Judges need not submit their annual reports till the receipt of new forms of statement. CRIMINAL CIRCULAR No. 1, DATED 22ND JANUARY, 1869, **11 W.R. Cr. Cir 1.**

(22)—*Crim. Pro. Code* (1882), *ss.* 226, 236, 237, 537—*Power of Sessions Judge to add charge and try it.*—Three persons were jointly committed for trial before the Sessions Judge, two of them charged with culpable homicide not amounting to murder, and the third with abetment of the same. At the trial, the Sessions Judge added a charge against all the accused of causing hurt to another person either at the same time as, or immediately after, the attack which resulted in the death, and convicted them on all the charges, *held*, that the Judge had no power to add to the charge, and the case did not come within the term of ss. 226, 236, 237; but as the accused was not prejudiced by such procedure, inasmuch as the Judge was addressed by the pleader who appeared for the accused, and as he heard all the objections raised, and as witnesses might have been called for the defence upon the added charge, the provisions of s. 537 were applicable. QUEEN-EMPRESS v. KHARGA, **8 A. 665 = A.W N. 1886, 254.** [*Diss.*, 11 Cr. L J. 131 = 4 Ind. Cas. 993 = 20 P.W.R. 1909, Cr]

(23)—*Crim. Pro. Code* (1882), *s.* 555—*Power of appellate Court to grant permission under the section.*—Where a Magistrate who was a member of a club asked the Sessions Judge, who was also a member, permission for proceeding with the trial of an offence under s. 409, I.P.C., against the servant of the club, *held*, that there was nothing in s. 555, Crim Pro. Code, to suggest that the Sessions Judge had not jurisdiction to grant permission to try the case or to commit it for trial. QUEEN-EMPRESS v. FATEH BAHADUR, **20 A. 181 = A.W.N. 1898, 11.**

(24)—*Plea of not guilty—Conviction on confession made before a Magistrate.*—Where an accused person does not plead guilty to charge, the Sessions Judge will not be justified in convicting the accused solely on a confession made before the committing Magistrate. QUEEN v. HURSOOKH, **2 N.W P. 479.**

(25)—*Discharge of accused after enquiry—Further enquiry—Commitment — Crim Pro. Code* (1861), *s* 435.—When an enquiry into a complaint has been made and the accused discharged, the Court of Sessions may order the commitment of the accused, but it has no power to direct further enquiry. If the complaint is dismissed without enquiry, the Judge may direct further enquiry. QUEEN v. GHASEERAM, **3 N.W P. 90.** [*R.*, 4 N.W.P. 50.]

(26)—*Crim. Pro Code* (1861), *s* 404—*Power of Sessions Judge to quash commitment.*—A Sessions Judge is not competent to quash a commitment on the ground of illegality. If he is of opinion that the order of commitment should be annulled as illegal, he should move the High Court to annul it under s. 404 of the Code. QUEEN v. MATA DYAL, **4 N.W.P. 6.**

(27)—*Order by Sessions Judge directing commitment—Valid order—Crim. Pro. Code. s.* 435.—Where in an order for commitment of a case to the Sessions, the Judge directed the Magistrate to take the accused's defence, *held* that the Magistrate was not competent to take evidence or ask the accused to make a defence. Although the Judge's order was wrong so far, his order for commitment was legal. QUEEN v. GHASEE, **4 N.W.P. 50.**

(28)—*Crim. Pro Code* (1872), *ss.* 295, 296—*Powers of Sessions Judge.*—Under s. 295, Crim. Pro. Code, 1872, the Sessions Judge is at liberty to call for and examine the record of any Court subordinate to him, for the purpose of satisfying himself as to the legality of any sentence or order passed, and as to the regularity of the proceedings of such subordinate Court. If he is of opinion that any judgment or order was contrary to law, or that the punishment was too severe or inadequate, he may report the proceedings for the orders of the High Court under s. 296, or, if they applied, act under the second and third paragraphs of that section. But he has no authority to hear the case as one judicially before him and to send to the High Court his "findings" on the pleas. EMPRESS v. MURLIDHAR, **A.W.N. 1881, 76.**

(29)—*Transfer of District and Sessions Judge—Appointment to Sessions Judgeship—Powers.*—Where the District and Sessions Judge of District A, was transferred to District B, and

Sessions Judge, Jurisdiction of—*continued.*

subsequently given the powers of Sessions Judge over District A, he could not try civil appeals from the latter District. SADHO RAM v. AJUDHIA PRASAD, **A.W.N. 1882, 104.**

(30)—*Criminal trial—Conviction—Powers of Sessions Judge.*—It is altogether beyond the scope and power of a Sessions Judge, when holding a criminal trial, while rejecting the story as told by the witnesses for the prosecution, or, in other words, while disbelieving their evidence in its main details, to build up a theory of his own as to what the transaction really was. A decision in a criminal case must be based on evidence and not merely on speculations or theories as to probabilities. EMPRESS v. MAHESHU, **A.W.N. 1886, 20.**

(31)—*Crim. Pro. Code (Act X of* 1882), *ss.* 195, 477—*Appellate Court—Court granting sanction —Jurisdiction.*—The jurisdiction of a Sessions Judge to hear an appeal from a conviction is not ousted by the fact that the same Court granted the sanction for the prosecution for the offence of which the appellant was convicted. EMPRESS v. UDE RAM, **A.W.N. 1895, 225.** (14 A. 354, *R.*).

(32)—*Crim. Pro. Code* (1882), *s.* 438—*Jurisdiction of District Magistrates and Sessions Judges.*—S. 438, Crim. Pro. Code, contains nothing to limit or qualify the power which it confers on a Court of Sessions or a District Magistrate, or to suggest that the High Court should not consider a case reported for its orders under s 438, Crim. Pro. Code. QUEEN-EMPRESS v. BABU, **A.W.N. 1898, 12.**

(33)—*Crim. Pro. Code* (1898), *s.* 438 (2)—*Powers of Additional Sessions Judge* — An Additional Sessions Judge has jurisdiction to exercise the powers of a Sessions Judge under Ch. XXXIII, Crim. Pro. Code, only in respect of cases transferred to him by the Sessions Judge. EMPEROR v. RAM CHANDRA, **A.W. N. 1903, 28.**

(34)—*Crim. Pro Code, s.* 17 *and Ch.* XXXII —*Powers of Joint Sessions Judge.*—The Joint Sessions Judge cannot exercise the powers of the Sessions Judge under Ch. XXXII, Crim. Pro. Code. His order directing a committal to Sessions in a case discharged by a Magistrate was set aside by the High Court, leaving it to the Sessions Judge, if a proper case be made out, to order a committal or to give such other direction disposing of the application as he shall think just and expedient. *In re* MUSA ASMAL, **9 B. 164.** [*R.*, 1 L.B.R. 119.]

(35)—*Joint Sessions Judge— Jurisdiction to try applications under Ch.* XXXI, *Crim. Pro. Code—Crim. Pro. Code, s.* 193 (2).—S. 193 (2) refers only to cases which are to be made over to the Joint Sessions Judge for trial. Applications under Chap. XXXII of the Code cannot be referred to a Joint Sessions Judge. REFERENCE BY THE SESSIONS JUDGE OF SURAT, **9 B. 352.** [*R.*, Rat. Un. Cr. C. 830.]

(36)—*Crim. Pro. Code, s.* 423 (*b*)—*Power of appellate Court to enhance sentence.*—A Sessions Judge has no power, in an appeal, to enhance the sentence of the lower Court, by altering a sentence of fine into one of imprisonment. QUEEN-EMPRESS v. DANSANG DADA, **18 B. 751.** [*F.*, L.B.R. 1893—1900, 423; *R.*, 18 A. 301.]

(37)—*Crim. Pro. Code, s.* 412—*Appeal from conviction by Magistrate not being Presidency Magistrate—Plea of guilty—Power of appellate Court.*—S 412, Crim. Pro. Code, provides for convictions by Courts of Sessions or Presidency Magistrates only, and the exception is not only as to the extent, but as to the legality of the sentence. The accused pleaded guilty to a charge of kidnapping and was convicted on his own plea and sentenced to rigorous imprisonment for four months and to pay a fine of Rs. 20. The accused then appealed to the Sessions Judge, and in appeal denied that he had committed the offence. The Sessions Judge was of opinion that the conviction was illegal; but as the accused had pleaded guilty at the trial, he held that he had no power to deal with the appeal except as regards the amount of the punishment awarded. On a reference to the High Court under s. 438, Crim. Pro. Code, the appeal was returned to the Sessions Judge to be disposed of according to law, and not merely as regards the amount of punishment. QUEEN-EMPRESS v. KALU DOSAN, **22 B. 759.**

(38)—*Crim. Pro. Code, ss.* 195, 369—*Refusal by Sessions Judge to revoke sanction—His power to review his order.*—An application to a Sessions Judge to set aside a sanction granted under s. 195, is a criminal proceeding in revision, and not by way of appeal. His order thereon being final, he has no power to review or revise it. A Sessions Judge, having refused to revoke a sanction, has no jurisdiction to review his order and revoke it. QUEEN-EMPRESS v. GANESH RAMKRISHNA, **23 B 50.**

(39)—*Crim. Pro. Code* (1861), *s.* 22—*Conviction by Assistant Sessions Judge—Power of Sessions Judge to alter charge.*—Where a conviction for dacoity by an Assistant Sessions Judge was submitted to the Sessions Judge for confirmation, *held* that he was not empowered under s. 22, Crim. Pro. Code, 1861, to alter the conviction to one of "robbery." That power is given to the High Court as a Court of revision. If the Sessions Judge thought that the parties had been improperly convicted of dacoity, he should have declined to confirm the sentence, and have left them to be charged with, and tried for robbery. REG. v. JOAO THOMESIT, **5 B.H.C. Cr. 22.**

(40)—*Appeal by one of several accused—Power of appellate Court to interfere with conviction of accused who had not appealed.*—In an appeal from a conviction by one of several accused, the Sessions Judge has no power to mitigate a sentence passed on a prisoner who has not appealed to him. REG. v. MULIYA NANA, **5 B.H.C. Cr. 24.**

Sessions Judge, Jurisdiction of—*continued.*

(41)—*Crim Pro. Code* (1861), *s.* 495—*Powers of appellate Court.*—Where an appellate Court (Sessions Court) reversed a conviction under s. 182, I.P.C., and directed the Magistrate to institute proceedings under s. 211, I.P.C., *held* that the Sessions Judge had no jurisdiction to pass such order and that the case was not one falling within s. 435, Crim. Pro Code, 1861. REG v. GOPAL LAKSHUMAN, **5 B.H.C. Cr. 25.**

(42)—*Crim. Pro. Code* (1861), *ss.* 404, 434—*Jurisdiction of Sessions Court.*—The Sessions Judge has no concurrent jurisdiction with the District Magistrate under s. 434 of the Crim. Pro. Code. The course to be adopted by the Sessions Court when it thinks that an illegal order has been passed by a Magistrate is to refer the matter to the High Court. REG v. SHIVBASAPPA, **7 B.H.C. Cr. 73.**

(43)—*Crim. Pro. Code* (1861), *ss.* 255, 435—*Acquittal after trial—Competency of Sessions Judge to direct committal.*—Where an accused person has been acquitted after trial under s. 255, Crim. Pro. Code, 1861, it is not competent to the Sessions Judge to interfere under s. 435, Crim. Pro. Code, and to direct the committal of the accused to the Sessions. REG. v. VENKU NARSA, **9 B.H.C. 170.**

(44)—*Assistant Sessions Judge—Jurisdiction.*—Where false evidence is given before a Sessions Judge in contempt of his authority, *held* that the Assistant Sessions Judge of the same District can try the case. The two Courts are separate for the purposes of s. 473 of the Crim. Pro. Code. REG. v. GULABDAS KUBERDAS, **11 B.H.C. 98.** [*R.*, 12 B.H.C. 1.]

(45)—*Crim. Pro. Code* (1872), s. 18—*Assistant Sessions Judge — Transportation.*—Having regard to s. 18 of the Crim. Pro. Code, an Assistant Sessions Judge has no power to pass a sentence of transportation or to commute a sentence of imprisonment to one of transportation. QUEEN-EMPRESS v. BALKRISHNA, **Rat. Un. Cr. C. 144 = Cr. Rg. 1—10—1879.**

(46)—*Crim. Pro. Code* (1882), *Ch.* XXXII, *s.* 193 (2)—*Revisional jurisdiction of Sessions Judge cannot be delegated to Joint Sessions Judge.*—An application under Ch. XXXII, for the exercise of the Sessions Judge's revisional jurisdiction, cannot be made over by the Sessions Judge to a Joint Sessions Judge for disposal. S. 193 (2) refers only to cases which are to be made over to the Joint Sessions Judge for trial. SURAT SESSIONS JUDGE'S LETTER NO. 187, **Rat. Un. Cr. C. 210.**

(47)—*Crim. Pro. Code* (1882), *s.* 380—*Sentence by Assistant Sessions Judge—Confirmation.*—When an Assistant Sessions Judge passes a sentence of more than four years' rigorous imprisonment, the whole sentence is subject to confirmation by the Sessions Judge. QUEEN-EMPRESS v. MANSUKH, **Rat. Un. Cr. C. 314 = Cr. Rg 69 of 1886.**

(48)—*Crim. Pro. Code* (1882), *s.* 188—*Native Indian subject of Her Majesty in Siam—Jurisdiction of British Courts.*—There being no Political Agent in Siam within the meaning of ss. 188 to 190 of the Code, a Sessions Court in British India otherwise competent has jurisdiction to try a Native Indian subject of Her Majesty, for an offence committed within that territory, without a certificate under the proviso to s. 188. QUEEN-EMPRESS v. ABDUL HUSEN, **Rat. Un. Cr. C. 773 = Cr. Rg. 37 of 1895.**

(49)—*Crim. Pro. Code* (*Act* X *of* 1882), *ss.* 209, 436, 437—*Jurisdiction of Sessions Judge.*—Where the District Magistrate re-arrests an accused person discharged by a First Class Magistrate under s. 209 of the Crim. Pro. Code, and discharges him again, the Sessions Judge, if he thinks that the evidence warrants a commitment, has concurrent jurisdiction under ss. 436 and 437 which he can exercise. QUEEN-EMPRESS v. KALU SANDU, **Rat. Un. Cr. C. 837 = Cr. Rg. 2 of 1896** (14 B. 342, *F.*)

(50)—*Crim. Pro. Code* (*Act* X *of* 1882), *s.* 215—*Sessions Judge without jurisdiction—Procedure.*—Where a Magistrate commits to the Sessions Judge a case where the offence was committed beyond the jurisdiction of that Judge, the latter has to inquire and ascertain whether he has jurisdiction, and if he thinks he has none, he has to discharge the accused or report the case to the High Court for disposal under s. 215 of the Crim. Pro. Code. QUEEN-EMPRESS v. LAGMA *bin* LAXAMANA, **Rat. Un. Cr. C. 922 = Cr. Rg. 27 of 1897.**

(51)—*Document.*—Where an accused, during the course of a trial of himself and another before a Court of Session, tendered in evidence the plaint which he had filed in a Civil Court in order to prove that a conveyance to him (charged at the trial as fraudulent) was really the record of a genuine transaction, and the Sessions Judge, during the course of that trial, framed a charge against him, under s. 199, I.P.C., in respect of the document thus tendered in evidence, and convicted and sentenced him; *held*, reversing the conviction and sentence, that s. 193, Crim. Pro. Code, prohibits in general terms the Court of Session from sitting as a Court of original jurisdiction and that though, under s. 477, Crim. Pro. Code, the Court of Session may commit, or admit to bail, and try persons committing certain offences before it, among which those under s. 199, I.P.C., are included, the words of s. 477 are not meant to empower a Judge there and then, during the course of a Sessions trial, to say of some document filed as evidence that an offence under s. 199, I.P.C., has been committed, as such procedure would prejudice the trial of the case before him, and grievously prejudice the case in which the document is produced. In such a case, there ought to be a separate proceeding at the end of the trial already begun. *In re* DEWJI, **Cr. Rg. 16 of 1894.**

(52)—*Perusing records not in his judicial capacity and expressing opinion—Charge of, perjury subsequently brought—Incompetency of, to try.*—Where a Sessions Judge, on a perusal of certain records not in his judicial capacity,

Sessions Judge, Jurisdiction of—*continued.*

expressed an opinion that a certain witness might be tried on a charge of perjury and the said witness was subsequently committed on that charge; *held* that the accused should not be tried by that very Sessions Judge. *In re* PURUSHOTTAM LALL KHETTRI, 2 J.G. 38.

(53)—*Court of Sessions—Committal to itself—Crim. Pro. Code* (1872), ss. 231, 471, 472.—A Court of Session cannot commit for trial to itself a case which is not exclusively triable by itself. In such a case, the Judge must end the case for enquiry to any Magistrate having power to try or commit for trial the accused person under s. 471. The words "commit the case itself" occurring in s. 471 do not mean that the Court of Sessions may commit the case to itself. Otherwise it would be opposed to the distinct provisions of s. 231. EMPRESS v. FUTTEH JYAB KHAN, 4 C. 570 = 3 C.L.R. 599.

(54)—*Crim. Pro. Code* (1882), ss. 195, 423, 435, 436 *and* 439—*Sanction to prosecute given by Magistrate—Power of Sessions Judge, in revision, to direct further enquiry.*—In a complaint of a Sessions offence, the Magistrate, finding that no such Sessions offence had been committed, tried the accused of a non-sessions offence and acquitted him. He also gave him sanction, under s. 195 of the Crim Pro. Code, to prosecute the complainant under s. 211 of the Penal Code On revision, the Sessions Judge revoked the sanction and directed further enquiry. *Held*, that the Sessions Judge had exercised a jurisdiction which was not vested in him by law. In exercising his powers of revision, he was competent to send for the record for any of the purposes mentioned in s. 435, Crim. Pro. Code. But he was not competent to order a fresh enquiry, inasmuch as the accused had not been improperly discharged of an offence triable exclusively by a Court of Sessions, but had been acquitted of an offence within the Magistrate's jurisdiction. The Sessions Judge, as a matter of fact, had exercised jurisdiction vested in him as an appellate Court under s. 423, as if an appeal had been presented to him from the order of acquittal passed by a Magistrate. Such powers, as were exercised by the Sessions Judge in this case, are, in revision, conferred, under s. 439, only on the High Court. BAIJANATH PANDEY v. GAURI KANTA MANDAL, 20 C. 633. [*Diss.*, 24 M. 156 = 2 Weir 544; *F.*, 23 M. 225; *R.*, P.L.R. 1900, p. 68; *D.*, 13 Cr. L.J. 742 = 17 Ind. Cas. 54 = 7 P.R. 1912, Cr. = 39 P.W.R. 1912, Cr. = 243 P.L.R. 1912.]

(55)—*Sessions Judge trying a case with assessors—Reference in judgment to opinion of committing Magistrate—Validity.*—The Sessions Judge, in a case tried with the aid of assessors, is bound to form his own opinion on it added by assessors, but quite independent of any expression of opinion on the part of the committing Magistrate. DEWAN SINGH v. QUEEN-EMPRESS, 22 C. 805.

(56)—*Crim. Pro. Code* (1882), s. 123—*Power of Sessions Judge to remand for taking further*

Sessions Judge, Jurisdiction of—*continued.*

evidence.—Under s. 123, a Sessions Judge is not competent to remand a case to an inferior Court to take further evidence. JHOJHA SINGH v. QUEEN-EMPRESS, 24 C 155. [*R.*, 2 L.B.R. 76, 6 O.C. 199 5 Cr. L.J. 148 = 14 P. L.R. 1907 = 5 P.W.R. 1907, Cr. = 18 P R. 1906, Cr., 10 Cr. L.J. 225 = 2 S.L.R. 11.]

(57)—*Crim. Pro. Code*, ss. 215, 403, 423, 433 *and* 530—*Sessions Judge discharging accused, but making no order for retrial—Power to institute further proceedings—Conviction by Magistrate in a case exclusively triable by Magistrate—Discharge of accused on appeal by Sessions Judge.*—Where a Sessions Judge who, on appeal, is empowered to make an order for re-trial by a Court of competent jurisdiction, does not do so, but merely passes an order of discharge, the omission to order a re-trial will not be a bar to a Magistrate's taking further proceedings against the accused. Where, on appeal, the Sessions Judge set aside the conviction and discharge of an accused person, on the ground, that the case was triable exclusively by a Court of Sessions and that the Magistrate had no jurisdiction to hold the trial, and further proceedings in respect of the same offence were then commenced against the same person by another Magistrate who committed him for trial to the Court of Sessions, *held*, that the commitment was properly made, and the absence of an order for re-trial by the Sessions Judge would not defeat the jurisdiction of the Magistrate to order commitment on fresh proceedings. *Held* also, that the Sessions Judge could not order re-trial inasmuch as there was no trial at all, the original trial being by a Magistrate who had no power to hold it. ABDUL GHANI v. EMPEROR, 29 C. 412.

(58)—*Crim. Pro. Code* (1898), ss. 226 *and* 227—*Sessions Judge—Power of, to amend or add to, charge—Direction by High Court—Discretion of Sessions Judge.*—The Sessions Court is not a Court of original jurisdiction, and, though vested with large powers for amending, or adding to charges, it can only do so with reference to the immediate subject of the prosecution and committal, and not with regard to matter not covered by the indictment. The accused was put upon his trial before the Sessions Court on charges under ss. 471 and 417/511, Penal Code. The High Court was then moved, and held that he could not be tried under s. 471, as that offence was covered by a previous acquittal, but that he could be tried only under s. 417/511. When the case came before the Sessions Judge, the Judge altered the charge from s. 417/511 to s. 420/511. *Held*, that the Sessions Judge had full power to alter the charge as he did, and the High Court did not intend to fetter his discretion. BIRENDRA DAL BHADURI v EMPEROR, 32 C. 22 = 8 C.W.N. 784 = 1 Cr. L.J. 794. [*F.*, 11 Cr. L.J. 131 = 4 Ind. Cas. 993 = 20 P. W.R 1909, Cr.]

(59)—*Withdrawal of a case from the jury, power of—Crim. Pro. Code* (1898), s. 215.—Under the Crim. Pro. Code, a Court of Sessions

Sessions Judge, Jurisdiction of—*continued.*

has not the power to withdraw a case from the jury on any ground whatsoever. The power of quashing the commitment, in other words, withdrawing a case from the jury, is specially, given to the High Court and it has to consider whether there is a ground of law. Where the case is such that the Sessions Judge would, if he had the power, withdraw it from the jury, the High Court would quash the commitment. JOGESHWAR GHOSE v. KING-EMPEROR, **5 C. W.N. 411.**

(60)—*Crim. Pro. Code* (1898), *s.* 477—*Security to appear, when called upon, to answer charges not yet framed.*—*Held*, that a Sessions Judge's order directing a witness alleged to have given false evidence in judicial proceedings before him, to give security to appear, when called upon, to answer charges not yet framed under s. 193, I.P.C., was not warranted by law. KRISTA CHANDRA BHADRA v. KING-EMPEROR, **5 C W.N. 630.**

(61)—*Crim. Pro. Code*, *ss.* 476, 487 *and* 556 —*Order for prosecution by a District Judge—Competency of the District Judge to hear the appeal from conviction.*—A Sessions Judge is not debarred from trying a person or hearing an appeal when the case has been tried by the lower Court, when he has, as District Judge, given sanction to the prosecution of the accused; nor does it make him personally interested in the case within the meaning of s. 556. EMPEROR v. BANKA BEHARI BANIK, **7 C.W.N. 708.** (16 C. 766, *F.*)

(62)—*Crim. Pro. Code* (1872), *ss.* 455, 472 *and* 474—*Power of Sessions Judge to take cognisance of offence without commitment—Reasons for restriction of such power.*—Except in the case of certain offences committed before it or under its own cognisance, (Crim. Pro. Code, ss. 435, 472 and 474), a Court of Sessions cannot take cognisance of any offence unless the accused person has been committed by a Magistrate. The object of this restriction is to secure, in the case of a person charged with grave offence, a preliminary enquiry which would afford him the opportunity of becoming acquainted with the circumstances of the offences imputed to him and enable him to make his defence. A Court of Sessions has power to amend or alter a charge on which an accused person has been committed at any time before the verdict of the jury is delivered or the opinion of the assessors expressed. It has also power, when the accused has been committed without a charge at all, or upon a charge, which the Court, upon a reference to the proceedings before the committing Magistrate, considers improper to draw up a charge for any offence, which it considers, proved by the evidence taken before the committing Magistrate. MUTIRAKKAL KOVILAGATHA RAMA VARMA RAJA v QUEEN, **3 M 351 = 6 Ind Jur. 28 = 2 Weir 269.**

(63)—*Crim. Pro Code* (1882), *s.* 437—*Power of District Magistrate or Sessions Judge to direct further inquiry.*—Under s. 437, it is competent to a District Magistrate or Sessions Court to order further inquiry or a re-trial to be held in a case where no additional evidence is forthcoming. QUEEN-EMPRESS v. BALASINNATHAMBI, **14 M. 334 = 1 M L J. 343 = 2 Weir 557, F B. = 2 Weir 324.** [*F.*, 32 M. 214 = 5 M. L.T. 356 = 3 Ind. Cas. 488 = 10 Cr. L J. 299, 1 Ind. Cas. 228; *R.*, 30 M. 224 = 5 Cr. L.J 100 = 16 M.L.J. 529, 31 M. 133 = 7 Cr. L.J. 267 = 18 M.L.J. 57 = 3 M L T. 230, 9 Cr. L.J. 192 = 19 M.L.J. 157 = 5 M.L.T. 233 = 32 M. 220, 14 C. P.L.R 161, 1 L.B R 311.]

(64)—*Crim. Pro. Code*, *s.* 436—*Power of Sessions Judge to interfere — Discharge — Acquittal.*—Under s. 436, Crim. Pro. Code, it is only if the accused person is discharged that a Sessions Judge has jurisdiction to interfere. But, if the Magistrate acquits the accused, the Sessions Judge has no such power. A Deputy Magistrate took up a charge laid before him as being one under ss. 304 and 147, Penal Code. He examined witnesses but took leave before completing the inquiry. His successor, after considering the evidence, held that a charge under s. 304, Penal Code, could not stand. He, accordingly, proceeded to try the case under ss. 147 and 325, Penal Code, and acquitted them under those sections. He, however, did not either formally or otherwise discharge them under s. 209, Crim. Pro. Code, with reference to the complaint made against them of having committed an offence under s. 304, Penal Code. *Held* that, under such circumstances, the Sessions Judge was not competent to order a fresh inquiry under s. 436, Crim. Pro Code. QUEEN-EMPRESS v. HANUMANTHA REDDI, **23 M. 225 = 2 Weir 543.** [*Diss.*, 24 M. 136 = 2 Weir 544.]

(65)—*Crim. Pro. Code*, (1898), *ss.* 195 *and* 476 —*Order under s.* 476—*Complaint by a Magistrate under s.* 195, *cl.* (1) (*b*)—*Power of Sessions Judge to interfere.*—A Sessions Judge has no power to interfere with an order under s. 476, nor with a complaint under s. 195 (1) (*b*) made by a Deputy Magistrate. The power of revoking, given under s. 195 (1) (*b*), is only in respect of sanctions and not in respect of complaints. QUEEN EMPRESS v. ANKANNA, **23 M. 205 = 2 Weir 161 = 2 Weir 601.** [*F.*, 7 Bom. L.R. 84 = 2 Cr. L.J. 54; *R.*, 13 Cr. L.J. 209 = 14 Ind. Cas. 305 = 22 M.L J. 419 = 11 M.L.T. 367 = 1912 M.W.N. 499.]

(66)—*Legal Practitioners Act* XVIII *of* 1879, *s.* 36—*Order by District Judge declaring certain persons to be touts—Scope of the order—Civ. Pro. Code, ss.* 194, 195 *and* 647—*Crim. Pro. Code, s.* 17.—It is open to a District Judge, under ss. 194, 195 and 647, Civ. Pro. Code, to act upon affidavits filed in support of the application and to declare that certain persons are law touts, though in a matter of this kind it would be more regular and satisfactory to examine the deponents as witnesses. Such an order is limited to Judge's own Court, and Courts subordinate to it, and cannot be extended to

Sessions Judge, Jurisdiction of—*continued.*

Criminal Courts in the District. (See Crim. Pro. Code, s. 17, cls. 1 and 5). BAVA SAHIB v. DISTRICT JUDGE OF MADURA, 26 M. 596 =13 M.L.J. 272. [*R.*, 11 Cr. L.J. 320=6 Ind. Cas. 327.]

(67)—*Crim. Pro. Code* (1861), s. 428—*Appeal confirming conviction—Appeal—Permission to prisoner to execute* vakalatnama.—A Sessions Judge, on confirming the conviction of a prisoner, is bound to allow him to execute a *vakalatnama* to appeal. The question whether an appeal lies from his decision is not for him to decide. QUEEN v. VAIYAPURI GOUNDAN, 1 M.H.C. 4.

(68)—*Crim. Pro. Code* (1898), *ss.* 435 *and* 437—*Application to District Magistrate under s.* 435—*Entertainability of further application by Sessions Judge.*—After an application had been made to the District Magistrate, under s. 435, the section expressly forbids any further application to be entertained by the Sessions Judge, although the Sessions Judge was not applied to, to revise the order passed by the District Magistrate in revision, but only to call for the record and refer the District Magistrate's order to the High Court. *In the matter of* KARPURA SUNDARAM PILLAY, 17 M.L J. 153 =2 M.L.T. 24=5 Cr.L J. 132. [*R.*, 14 Cr. L. J. 134=18 Ind. Cas. 886=10 P.R. 1912, Cr.= 117 P.L.R. 1913.]

(69)—*Crim. Pro. Code* (1872), *ss.* 37, 40, 41, 295 (=*ss.* 17, 13, 435 *of the Code of* 1898)—*Subordination of Magistracy to Sessions Judge.*—The Magistracy are subordinate to the Sessions Court only for the purpose of reference to the High Court in cases in which revision is required. The duty of criticising the proceedings of the subordinate Magistracy is a duty devolving on the superior Magistracy and not on the Sessions Court. HIGH COURT PROCEEDINGS, 18TH AUGUST 1873, NO. 1517, 2 Weir 537=7 M.H C. App. 27.

(70)—*Oudh Criminal Digest Rules*, 69—*Judge's refusal to examine witnesses chosen by the prosecutor—Procedure at trial of Sessions cases—Adjournment of Sessions cases.*—It is competent to a Sessions Judge to suggest to the prosecutor that it would be convenient if a particular witness were called at an earlier or later stage of the trial, but it is not within his province to refuse to allow the prosecutor to call his witnesses in the order chosen by him. *Wells, A.J.C.*:—Judges should realise that Sessions cases must not be tried piecemeal. Before commencing a trial, a Judge should satisfy himself that all necessary evidence is available. If it is not, he may postpone the case but once having commenced, he should, except for some very pressing reason, proceed *de die in diem*, till the trial is finished. KING-EMPEROR v. ALI MOHAMMAD, 8 O.C. 55=2 Cr. L J. 191.

(71)—*Acquitting accused whose sentence need not be confirmed by Sessions Judge.*—The order of a Sessions Judge acquitting an accused, whose sentence is not subject to his confirmation, is void as not being an order of a Court of competent jurisdiction. QUEEN-EMPRESS v. NGA PO THAING, L.B.R. 1893—1900, 188.

(72)—*Crim. Pro Code* (1898), *ss.* 529, 530—*Revision—Appeal—Acquittal or discharge by Court having no jurisdiction—Interference by High Court.*—Where a Sessions Judge deals with a petition for revision as if it were an appeal and reverses without jurisdiction, a conviction of the petitioner by a first class Magistrate, the order of reversal, though void for want of jurisdiction, is not to be treated as a nullity. A comparison of the language of s. 530 with that of s. 529 of Crim. Pro. Code leads us to infer that the legislature did not intend that a proceeding of a duly constituted Criminal Court, which is void for want of jurisdiction, should be treated as a nullity and disregarded, unless and until it is set aside by a Court of competent jurisdiction. When an accused person is acquitted or discharged in appeal or revision, by a Court which had no jurisdiction to make such an order, it is not imperative on the High Court to interfere in every case. EMPEROR v. YENA, 4 L.B.R. 49 =6 Cr. L.J. 287. [*R.*, 7 Cr. L.J. 422=4 L.B. R. 143, 9 Cr. L.J. 15=4 L.B.R. 315.]

(73)—*Crim. Pro. Code* (1898), *s.* 437—*Penal Code (Act* XLV *of* 1860), *ss.* 342, 357, 467—*Accused discharged of offences under ss.* 342 *and* 357—*Sessions Judge directing enquiry into an offence of forgery under s.* 467—*Illegal order— Jurisdiction.*—Certain persons were charged with offences under ss. 342 and 357, Penal Code. These offences were not proved and the Magistrate discharged the accused. The Sessions Judge being of opinion that the real charge, as disclosed by the evidence on the record, against the accused, was of forgery and not of wrongful confinement under ss. 342 and 357, set aside the order of discharge and, purporting to act substantially under s. 437, Crim. Pro. Code, directed enquiry into an offence of forgery under s 467, Penal Code: *Held*, that the Sessions Judge had no such jurisdiction under s. 437, and his order was illegal. GULAB KHAN v. EMPEROR, 4 Ind. Cas 312=10 Cr. L J 554.

(74)—*Offence under Registration Act* (XX *of* 1866), *s.* 95—*Abetment of false personation of witness before Registrar.*—*Held* that the Sessions Judge had jurisdiction to try a case of abetment by false personation of a witness before a Registrar of Assurances under s. 95 of the Registration Act (XX of 1866). The word "instituted" should be construed to mean commenced. QUEEN v. SHEOGOLAM DAS, 6 B L.R F.B., 692=15 W.R. Cr. 58.

(75)—*Order of Magistrate attaching land—Crim. Pro. Code* (1861), *s.* 319.—*Held* that a Sessions Judge could not interfere with the decision of a Deputy Magistrate attaching disputed land under s. 319 of the Code of Criminal Procedure, 1861. HURRONATH CHOWDHRY v RAJENDUR CHUNDER ROY, 15 W.R. Cr. 1.

Sessions Judge, Jurisdiction of—*continued.*

(76)—*Crim. Pro. Code* (1861), s. 319—*Appeal from Magistrate.*—*Held* that the Sessions Judge had no jurisdiction to hear an appeal from the order of a Magistrate, under s. 319, Ch. XXII of the Crim Pro. Code, 1861, and that the object of the chapter was to prevent breaches of the peace likely to be occasioned and not the adjudication of title *In the matter of the petition of* RAM DUTT MISR, **1 Agra Cr. 29.**

(77)—*Offence under Penal Code, s.* 409 *and under s.* 29, *Act* V *of* 1861—*Power of Sessions Judge after acquittal on former charge.*—An accused, charged before the Sessions Judge under both s. 409, Penal Code, and under the Special Law, s. 29, Act V of 1861, was acquitted of the charge under the former. *Held* that the Sessions Judge was incompetent to convict under the Special Law, and that a Magistrate alone had jurisdiction to do so. *In re* BHOOBUN SINGH, **9 W.R. Cr. 36.**

(78)—*Power in regular appeal—Insufficient evidence—Acquittal.*—*Held* that, if the evidence which came before a Sessions Judge in a regular appeal from a Magistrate's order, whatever its shape, was not sufficient, even with the aid of the Magistrate's finding of fact, to reasonably satisfy him that the prisoners had been rightly convicted, he ought to acquit them. QUEEN v. KHERAJ MULLAH, **11 B.L.R. 33=20 W.R. Cr. 13.**

(79)—*Trial without committal by Magistrate—Witness sent up with conditional pardon—Crim. Pro. Code* (1861), *ss.* 359, 439.—Where a person, who had been granted a conditional pardon and had been sent up to the Sessions Court as a witness for the Crown, was, on his failure to conform to the conditions of the pardon tendered to him, then and there tried, convicted and sentenced, by the Sessions Judge, such a course was held to be a material irregularity, and the Sessions Judge was ordered to require the Magistrate to commit the accused to the Sessions Court for a fresh trial after hearing what he had to say in his defence and examining his witnesses, if any. QUEEN v. BIPRO DOSS, **19 W.R. Cr. 43.**

(80)—*Power to pass sentence of death—Affray with murder—Offence before Penal Code came into force.*—Where an affray attended with murder, was committed before the Penal Code came into force, *held* that a Sessions Judge, under s. 4, Act XVII of 1862, had power himself to pass a sentence of death and that he had no option of referring the matter to the High Court for confirmation. QUEEN v. BUSTI SINGH, **14 W.R. Cr. 76.**

(81)—*Power to refer to High Court—Unnecessary reference to High Court.*—*Held* that a Sessions Judge was bound to deal with a case himself, without referring it to the High Court, where the prisoner had appealed to him from the Magistrate's order, which the Sessions Judge considered illegal. QUEEN v. NUSSOORUDDEEN, **11 W.R. Cr. 24.**

Sessions Judge, Jurisdiction of—*continued.*

(82)—*Objection to irregularity of proceedings.*—*Held* that the fact of a commitment by a Joint Magistrate, an officer exercising the powers of a Magistrate, was sufficient under s. 359 of the Crim. Pro. Code, 1861, to enable the Sessions Judge to proceed with the trial; and that it lay with the party impugning the correctness of the proceedings to show that there was no jurisdiction. QUEEN v. KOMUROODDEE SIKHDAR, **13 W.R. Cr. 17.**

(83)—*Offence beyond jurisdiction of subordinate Court.*—*Held* that it was only when a Court subordinate to a Court of Sessions convicted a person of an offence, not triable by such Court, that it was competent to the appellate Court to annul the conviction and sentence, and that, where the offence of which the evidence showed the prisoner guilty was beyond the jurisdiction of the subordinate Court, the Court of Session should refer the case to the High Court . QUEEN v. ICHABUR DOBEY, **4 W.R. Cr. 11.**

(84)—*Power to quash illegal conviction—Giving false evidence in judicial proceeding.*—*Held* that an Assistant Magistrate had no jurisdiction to take cognisance of the offence of giving false evidence in a stage of judicial proceeding. QUEEN v. HEERAMUN SINGH, **8 W.R. Cr. 30.**

(85)—*Power to annul conviction and order commitment.*—*Offences triable by Magistrates—Crim. Pro. Code* (*Act* VIII *of* 1869), *s.* 435.—The Sessions Judge had no jurisdiction to annul a conviction and order a commitment for an offence triable by a Magistrate. S. 435, Act VIII of 1869, related to offences triable by the Sessions Judge. *In the case of* WAZIR SINGH, **3 B.L.R.A. Cr. 65=12 W.R. Cr. 46.**

(86)—*Power to reverse order of Magistrate as to stolen property.*—*Held* that a Sessions Judge had, on appeal, no jurisdiction to make an order directing money, found in the accused's house along with stolen property, to be delivered to the prosecutor, where the Magistrate had restored such money to the accused, the prosecutor having failed to prove that the money was his. *In re* SIB CHUNDER RAI, **9 W.R. Cr. 57.**

(87)—*False evidence.*—The Sessions Judge has no power to commit a man for having given false evidence before the Magistrate, but he can commit him for having given false evidence in his own Court. QUEEN v. HARDYAL, **3 B. L.R. A. Cr. 35.**

(88) *Crim. Pro. Code* (1861), *ss.* 435 *and* 359.—*Held* that, under s. 435, Crim. Pro. Code, 1861, a Sessions Judge had jurisdiction to order a person accused of giving false evidence to be committed, after such person had been discharged, s. 359, notwithstanding. QUEEN v. BHOHISAN MAHATOON, **W.R. 1864, Cr. 3.**

(89)—*Person discharged by Magistrate.*—*Held* that the commitment of an accused person discharged by the Magistrate could be ordered at

Sessions Judge, Jurisdiction of—*continued.*

his discretion by a Sessions Judge, and that the non-exercise of such discretion was no matter for the High Court's interference. QUEEN v. SHEETARAM CHOWDHRY, **2 W.R. Cr. 44.**

(90)—"*Acquittal and release*" *of accused by Magistrate*—*Crim. Pro. Code* (1861), *s.* 435—*Held* that the Court of Session had jurisdiction, under s. 435, Crim. Pro. Code, 1861, to order the commitment of an accused person, where a Magistrate, who only intended to discharge such person, used the words acquittal and release. QUEEN v. NEETIE DULAL, **8 W.R. Cr. 41.**

(91)—*Discharge by Magistrate— Crim. Pro. Code* (1861), *s.* 435.—It is competent to a Sessions Judge, under s. 435, Crim. Pro. Code, 1861, if he thinks fit, to overrule the Magistrate in the exercise of his discretion in having discharged an accused person and to order that such accused person shall be committed to the Sessions Court. *In re* SYUD MUSMUD ALI CHOWDHRY *alias* MOOCHEE MEAN, **7 W.R. Cr. 38.**

(92)—*Conviction under Penal Code, ss.* 323, 352.—*Held* that it was not competent to a Sessions Judge to interfere and direct a committal with a conviction for assault under s. 352 or hurt under s. 323, I.P.C., as they are both offences triable by the subordinate Court. QUEEN v. RAMTOHUL SING, **5 W.R. Cr. 12.**

(93)—*Sessions Judge referring to documents not on the record of Magistrate's proceedings—Jurisdiction—Crim. Pro. Code* (*Act* V *of* 1898), *s.* 437.—The Sessions Judge should not in an appeal refer to documents and evidence which did not form part of the record of the proceedings before the Magistrate. *In re* MUTHU GOWNDEN, **6 Ind. Cas. 12 = 8 M.L.T. 81 = 11 Cr. L.J. 221.**

See ACQUITTAL, 1 A.L.J. 415.

See ACT XVIII OF 1854, s. 26, 6 M.H.C. App. 41.

Power of appellate Court rejecting appeal to enhance sentence—*See* ACT XI OF 1874, s. 26, 24 W.R. Cr. 29.

Re-trial, order for—*See* ACT XI OF 1874, s. 28, 2 C.L.R. 511.

Whether Magistrate bound to commit it to Sessions a charge under Registration Act—*See* ACT III OF 1877, s. 83, 10 W.R. Cr. 21 = 6 B. L.R. 693, note.

Jurisdiction of Sessions Judge to try offences under Registration Act—*See* ACT III OF 1877, s. 83, 15 W.R. Cr. 58 = 6 B.L.R. F B. 692.

See ACT XIV OF 1908, s. 14 (1), 14 C.W.N. 516 = 37 C. 439.

See ASSESSORS, 4 M.H.C. App. 39.

See COMPENSATION— GENERAL, 7 Bom. L R. 998 = 3 Cr. L.J. 88.

See COMPLAINT — DISMISSAL OF COMPLAINT, 7 M.H.C. App. 16.

See CONVICTION, 5 B.H.C. Cr. 3.

Sessions Judge, Jurisdiction of—*continued.*

See CRIM. PRO. CODE, 1898, s. 123, 2 L.B. R. 16.

Sessions Judge's power of revision or reference to High Court in proceedings under Ch. XII, s. 145, Crim. Pro. Code—*See* CRIM. PRO. CODE, 1898, ss. 145 and 435 (3), 28 C. 416.

See CRIM. PRO. CODE, 1898, ss. 156, 190, 11 P.R. 1910, Cr.

See CRIM. PRO. CODE, 1898, ss. 193, 287, 288, 339 and 349, 15 M. 352 = 2 Weir 394.

See CRIM. PRO. CODE, 1898, ss. 193, 288, 337, 22 C. 50.

See CRIM. PRO. CODE, 1898, ss. 195, 476, 487, 14 A. 354 = A.W.N. 1882, 32.

In proceedings under s. 477, Crim. Pro. Code—*See* CRIM. PRO. CODE, 1898, ss. 195, 477, 28 C. 434 = 5 C.W.N. 609.

See CRIM. PRO. CODE, 1898, ss. 203, 204, 437, 27 C. 658.

See CRIM. PRO. CODE, 1898, s. 215, 16 M. L.J. 525 = 5 Cr. L J. 99.

See CRIM. PRO. CODE, 1898, ss. 263, 414, 415, 416, 2 C.L.R. 511.

To transfer deposition before Magistrate to his record—*See* CRIM PRO.CODE, 1898, s. 288, 9 C.P.L.R. Cr. 24.

See CRIM. PRO. CODE, 1898, s. 289, 16 B. 414.

Duty of Sessions Judge towards jury—*See* CRIM. PRO. CODE, 1898, ss. 297, 298, 29 C. 379 = 6 C.W.N. 292.

See CRIM. PRO. CODE, 1898, s. 307, 27 C. 295 = 4 C W.N. 129, 22 M. 15 = 2 Weir 705, 7 C.W. N. 345.

See CRIM. PRO. CODE, 1898, s. 350, 7 C.P. L.R Cr. 1.

See CRIM. PRO.CODE, 1898, ss. 421, 423, 426, Rat. Un. Cr. C. 22 = Cr. Rg. 14—9—1869.

See CRIM. PRO. CODE, 1898, ss. 423, excep. (*d*), 367, 537, 3 M. 48 = 2 Weir 756.

See CRIM. PRO. CODE, 1898, ss. 426, 439, 440, 477, 2 A. 398.

See CRIM. PRO. CODE, 1898, ss. 428, 437, 439, 6 C.L.J. 251 = 6 Cr. L.J. 357.

See CRIM. PRO. CODE, 1898, ss. 435, 438, 2 Weir 538.

Duty of—in submitting inferior Court's record to High Court—*See* CRIM. PRO. CODE, 1898, s. 435 (1) to (3), 8 C. 644.

Discharge of accused charged with an offence exclusively triable by Court of Session—Further enquiry—Powers of District Magistrate and Sessions Judge—*See* CRIM. PRO. CODE, 1898, ss. 435, 436, 437, 532, 28 C. 397 = 5 C.W N. 574.

Power to order commitment—*See* CRIM. PRO. CODE, 1898, s. 436, 26 A. 564 = A.W.N. 1904, 125 = 1 A.L.J. 292.

See CRIM. PRO. CODE, 1898, ss. 436, 476, 2 Weir 549.

Sessions Judge, Jurisdiction of—*continued.*

See CRIM. PRO. CODE, 1898, s. 437, 12 A. 434=A.W.N. 1890, 99, 12 C. 522, 5 C.P.L.R. Cr. 20, 9 A. 52=A.W.N. 1886, 281, F.B.

Reference to High Court against order of Magistrate issuing warrant for attendance of absent party in proceedings under s. 145, Crim. Pro. Code—*See* CRIM. PRO. CODE, 1898, s. 438, 5 C.W.N. 71.

See CRIM. PRO. CODE, 1898, ss. 438, 439, 9 A. 362=A.W.N. 1887, 64.

See CRIM. PRO. CODE, 1898, s. 477, S.C. 172, Oudh.

See CRIM. PRO. CODE, 1898, ss. 477, 487, 2 Weir 609.

See CRIM. PRO. CODE, 1898, s. 487, 2 Weir 608, 2 Weir 609.

See CRIM. PRO. CODE, 1898, ss. 487, 195, 16 C. 766, F.B.

See CRIM. PRO. CODE, 1898, s. 531, 17 A. 36 =A.W.N. 1894, 195.

See CRIM. PRO. CODE, 1898, s. 532, 3 A. 258.

See CRIMINAL PROCEEDINGS, 20 M. 445= 2 Weir 384.

See DISCHARGE OF ACCUSED, 3 P.R. 1874, Cr.

See DISTRICT JUDGE, JURISDICTION OF, 16 C. 766. F.B.

See DISTRICT MAGISTRATE, 28 A. 91=2 A.L.J. 589=A.W.N. 1905, 198=2 Cr. L.J. 515, 1 A.L.J. 395.

See EVIDENCE—GENERAL, 9 C. 875=12 C. L.R. 506.

See FALSE EVIDENCE, 6 A. 103.

See FURTHER ENQUIRY, 5 M.L.T. 356=32 M. 214=3 Ind. Cas. 488.

See HIGH COURT, JURISDICTION OF—AS A COURT OF REFERENCE, 6 C.L.R. 245.

See HIGH COURT, SUPERINTENDENCE AND POWERS OF, 5 M.L.T. 233, F.B =9 Cr. L.J. 192=19 M.L.J. 157=32 M. 220=1 Ind. Cas. 228.

See JOINT TRIAL, 6 C. 96=6 C.L.R. 521.

See JUDGMENT, Rat. Un. Cr. C. 854=Cr. Rg. 20 of 1896, 7 C.W.N. 30.

See JURISDICTION OF CRIMINAL COURTS—GENERAL, 30 M. 136=1 M.L.T. 402=16 M.L. J. 444=4 Cr. L.J. 443.

See MISCHIEF, 12 M. 54=2 Weir 22=1 Weir 552.

See PARDON, 10 C. 936.

Arrest and commitment to jail before charge is framed, validity of—*See* PRELIMINARY ENQUIRY, 28 C. 434=5 C.W.N. 609.

See RAPE, Rat. Un.Cr. C. 953=Cr. Rg. 4 of 1898.

Sessions Judge, Jurisdiction of—*concluded.*

See REFERENCE TO HIGH COURT, 2 A. 771, 10 A. 146=A.W.N. 1888, 5, 1 L.B.R. 311, 13 M. 343=2 Weir 389, 8 C. 875, 23 C. 249, 7 N.W.P. 211.

See REVISION—GENERAL PRINCIPLES, 34 C. 42=11 C.W.N. 125=4 Cr. L.J. 460.

See REVISION—ACQUITTALS, 157 P.L.R. 1908=22 P.W R. 1908.

See SANCTION TO PROSECUTE—AUTHORITIES COMPETENT TO, GRANT SANCTION, ETC., A.W.N. 1889, 206, 24 P.W.R. 1908, Cr., 2 A. 205, F.B., 2 Weir 160, 30 A. 109=4 A.L.J. 805 =A W.N. 1908, 28=3 M.L.T. 115=6 Cr. L.J. 454.

See SANCTION TO PROSECUTE—GRANT OF FRESH SANCTION, 1 A.L.J. 395.

See SANCTION TO PROSECUTE—REVOCATION OF SANCTION, 24 P.W.R. 1908, Cr.

See SECURITY FOR GOOD BEHAVIOUR, 23 C. 493, 12 C.W.N. 463=7 Cr. L.J. 323, 1 L.B. R. 75.

See SECURITY PROCEEDINGS, 4 L.B.R. 135=7 Cr. L.J. 412.

See SENTENCE—GENERAL, 4 N.W.P. 8.

See SENTENCE—CONFIRMATION OF SENTENCE, 6 C. 624.

Duty of Sessions Judge to intimate levy of fine to Port Blair authorities—*See* SENTENCE —FINE, 5 M.H.C. App. 44.

See SENTENCE—POWERS OF APPELLATE COURT—ENHANCEMENT, 9 C.P.L.R. Cr. 29, Rat. Un. Cr. C. 74=Cr. Rg. 5—6—1873, Colm. Dig. Cr. 90 of 1877.

See TRANSFER OF CRIMINAL CASES—TRANSFER BY OTHER COURTS, 8 C.L.J. 241.

See VERDICT OF JURY, 19 B. 735.

Discretion of Sessions Judge to reject some of the witnesses sent up by Magistrate—*See* WITNESS—MISCELLANEOUS CASES, 15 A. 6= A.W N. 1892, 114.

Sessions Statement.

(1)—*Sessions statements, numbers for.*—The numbers given in the first column of Sessions Statement III may be those which the cases bear in Statement IV respectively, *viz.*, in the order of trial in the Court of Session. CIRCULAR MEMO. NO. 2 OF 1868, **10 W.R. Cr. Cir. 6.**

(2)—*Return of "other applications."*—Applications for unauthenticated copies of document, not being applications under s. 440, Crim. Pro. Code, are to be included in the column of "other application." CRIMINAL CIRCULAR, NO. 12 OF 4TH AUGUST, 1870, **14 W.R. Cr. Cir. 3.**

(3)—*Submission of, to be discontinued.*—The submission of Sessions statements should be discontinued and the cases which have been referred to the High Court should be excluded from the statement of convictions. CRIMINAL CIRCULAR, NO. 6, DATED 9TH SEPTEMBER 1868, **10 W.R. Cr. Cir. 4.**

Sessions Trial.

(1)—*Examination of defence witnesses.*—As it is a frequent ground of appeal that the Court of Sessions has refused or omitted to examine witnesses for the defence, it would be admissible for Sessions Judges to state specifically in their record whether or not the accused had witnesses present, and whether or not the accused refused to call witnesses or elected to call some, and whether the witnesses, whom he elected to call, were examined. QUEEN-EMPRESS v. PIRBHU, **17 A. 524 = A.W.N. 1895, 111.**

(2)—*Refusal of Sessions Judge to take evidence for the prosecution.*—A Sessions Judge commits a material irregularity in procedure in refusing to take the evidence of the persons called as witnesses. Further, even if justified in so refusing, he should leave upon record clear and distinct reasons for adopting so unusual a procedure as declining to hear a large body of evidence on behalf of the prosecution. EMPRESS v. NATHUA, **A.W.N. 1886, 68.**

(3)—*Sessions trial — Defence witnesses not attending—Adjournment—Discharge of jury.*—Where, in a Sessions trial, a witness summoned for the defence does not attend and a postponement is consequently asked for by the defence, the Sessions Judge is not authorized on that account to discharge the jury in the middle of the trial and to traverse the case to be tried by a fresh jury at the following Sessions. *In the matter of* PUTASWAMY, **4 Bom. L.R. 939.**

(4)—*Crim. Pro. Code, s. 272—Sessions trial by jury—Accused not pleading guilty.*—Where in a case tried by a Sessions Judge with a jury, the plea of the accused does not amount to a plea of guilty, the trial must proceed in the usual way, and the verdict of the jury should be taken upon the evidence actually adduced at the trial, and not upon the Judge's view of the strength of the evidence. EMPEROR v. MAHMAD ISMAIL, **6 Bom. L.R. 671 = 1 Cr. L. J. 772.**

(5)—*Crim. Pro. Code* (1882), *s.* 303—*Sessions trial—Questioning the jury.*—In cases tried by jury, it is inexpedient to put a series of questions to the jury, unless, when called on for their verdict on the different heads of charges, they find themselves in difficulties which have to be resolved in that way. QUEEN-EMPRESS v. SIDA; QUEEN-EMPRESS v. JUGDELLA, **Rat. Un. Cr. C. 289 = Cr. Rg. 29 of 1886.**

(6)—*Sessions trial—Plea of guilty—Defence of being subject to epileptic fits.*—Where a prisoner charged with murder pleaded guilty, and added that he committed the homicide because he was subject to epileptic fits, *held* that the prisoner could not be held to have pleaded guilty and could not, therefore, be convicted on the plea. QUEEN-EMPRESS v. MHATARYA, **Rat. Un. Cr. C. 698 = Cr. Rg. 27 of 1894.**

(7)—*Crim. Pro. Code* (1898), *s.* 288—*Deposition before committing Magistrate, whether can be referred to for contradicting statements made by them in Sessions trial.*—The counsel for the prisoner, in a Sessions trial, is not entitled to refer to the depositions given before the committing Magistrate, for the purposes of contradicting the witnesses in the Sessions trial, without having drawn their attention to the alleged contradiction in their depositions before the committing Magistrate, and without giving them an opportunity for explaining. EMPEROR v. ZAWAR RAHMAN, **31 C. 142, F.B. = 1 Cr. L.J. 86** (6 C.L.R. 390, *Overruled.*)

(8)—*Sessions trial—Recording of opinion of assessors—Sessions trial with aid of assessors—Irregularity in procedure.*—It is of importance that the opinions of assessors, whether good, bad or indifferent, wise or foolish, should be recorded as they are expressed, without any influence from the Judge, except such as may be reasonably exercised in the course of his summing up. Where the Sessions Judge allowed the Inspector of Police to depose that "the defendant first confessed before me" and after once summing up the case to the assessors and after taking their opinion, re-opened the matter and pressed upon their attention a part of the accused's confession which appeared damaging, in order to induce them to alter their opinions, *held* that the procedure was illegal. EMPRESS v. TIKA RAM, **A.W.N. 1886, 22.**

(9)—*Change of Judge—Evidence recorded by one Judge and orders passed by another—Validity—Difference of Judge and Assessors—Retrial—Real question not validly tried—Transfer of case—Trial with aid of assessors and trial by jury—Balance of convenience.*—*Per Curiam*:—A Sessions Judge cannot act on evidence recorded by his predecessor in office. On a change of Judge, a Sessions trial must commence *de novo.* The judgment passed by a Sessions Judge on evidence partly recorded by his predecessor in office is illegal and must be set aside. *Per Maclean, C.J. and Geidt, J.*—Where a trial has been invalidated on legal grounds and the real question in the case has not been legally tried, a retrial ought to be held, unless it appears from the record that there is no evidence against the prisoner or that there is very little chance of a conviction. Mere disagreement between Judge and assessors is no sufficient reason for refusing a retrial. *Per Woodroffe, J.* (*contra*).—The fact that the law gives operation to the finding of the Judge and not to that of the assessors does not detract from the value of the opinion expressed by them. Where, therefore, the Judge and assessors have disagreed as to the facts, which were peculiar and as to which different conclusions have been arrived at by different minds, there ought to be no retrial ordered. *Per Woodroffe and Coxe, JJ.*—In transferring a case, no consideration should be had to the fact that by a transfer to a particular district, the accused will have the benefit of a trial by jury, where previously he had none. The real question is that of convenience of parties. DURGA CHARAN SANYAL v. EMPEROR, **8 C.L.J. 59 = 4 M.L.T. 148 = 8 Cr. L.J. 121.**

Sessions Trial—*continued.*

(10)—*When concluded—Evidence.*—A Sessions trial is concluded as soon as the assessors have given their opinion and no further evidence can then be taken. SOOJAWUL v. CROWN, **14 P.R. 1870, Cr.**

(11)—*Joint opinion of assessors—Mere irregularity.*—Allowing assessors to give their opinion in one joint statement is only such an irregularity as is cured by s. 537, Crim. Pro. Code. HASSAN KHAN v. EMPRESS, **41 P.R. 1887, Cr.**

(12)—*Sessions trial to be with the aid of assessors unless notified otherwise.*—Under s. 268, Crim. Pro. Code, in the absence of any notification under s. 269, a trial in a Court of Session must be with the aid of assessors. As there has been no such notification in the Punjab, the Sessions trial must be with the aid of assessors only. SKILLING v. EMPRESS, **18 P.R. 1888, Cr.**

(13)—*Power of Sessions Judge to direct calling additional witnesses after commitment—Opinion of assessors—Fresh evidence taken after that—Validity.*—Where a case has been committed to the Sessions, the Judge is not competent to direct the committing Magistrate or any other person to call additional witnesses and to hold an enquiry. He can summon the witnesses before himself or examine the witnesses on commission. Where once the assessors have given their opinion, the Sessions trial is at an end and the Sessions Judge is not competent after that to recall witnesses and cause fresh evidence to be summoned and take the opinion of the assessors once again. HASAN v. EMPRESS, **29 P.R. 1888, Cr.**

(14)—*Prosecution tendering witness not examined before committing Magistrate.*—A Sessions Judge is not competent to refuse to take the evidence of a relevant witness tendered for the prosecution, merely because he has not been examined before the committing Magistrate. KHAN MAHAMMAD v. EMPRESS, **1 P.R. 1889.**

(15)—*Practice—Criminal case—Evidence recorded by Assistant Sessions Judge—Judgment by Sessions Judge—Jurisdiction—Penal Code, ss. 476, 471—Alternative charge.*—Where an Assistant Sessions Judge heard the evidence but did not pronounce judgment, but the Sessions Judge pronounced judgment on the evidence so recorded, *held* that the Sessions Judge had no jurisdiction to do so. *Held*, further, that an accused can be convicted at the same trial of forging a document and using that document as forged and the charges under ss. 476 and 471, Penal Code, may be regarded as alternative. *Held*, further, that the intention of the Crim. Pro. Code is that a trial before the Court of Sessions should proceed and be dealt with continuously from its inception to its finish, and that it is inexpedient for a Sessions trial to be adjourned except only on the strongest possible ground and for the shortest possible period. BADRI PRASAD v. KING-EMPEROR, **10 A.L.J. 473 = 13 Cr. L.J. 861 = 17 Ind. Cas. 797 = 35 A. 63.**

Sessions Trial—*concluded.*

See CONFESSION—MISCELLANEOUS, 4 N. W.P. 16.

Alternative plea—*See* CRIM. PRO. CODE, 1898, s. 271 (2), Rat. Un. Cr. C. 327 = Cr. 15 of 1887.

See CRIM. PRO. CODE, 1898, ss. 286 and 289, 2 Weir 360.

See CRIM. PRO. CODE, 1898, s. 288, 2 Weir 374.

Duty of Judge to summon a necessary witness, not sent up by committing Magistrate —*See* CRIM. PRO. CODE, 1898, s. 289, 2 Weir 382.

Application for summons of witnesses before conclusion of Sessions trial—Duty of the Judge—*See* CRIM. PRO. CODE, 1898, s. 291, 2 Weir 383.

See CRIM. PRO. CODE, 1898, ss. 337, 339, 7 M.L.T. 121.

Procedure in—*See* CRIM. PRO. CODE, 1898, s. 540, 14 A. 242 = A.W.N. 1892, 83.

Admissibility of evidence given at preliminary enquiry—*See* EVIDENCE ACT, 1872, s. 33, 2 A. 646.

See LEGAL PRACTITIONERS—PLEADER, S.C. 31, Oudh.

Examination of defence witnesses before those of the prosecution — Irregularity—*See* WITNESS—EXAMINATION OF WITNESSES, 4 C.L.R. 338.

See WITNESS—EXAMINATION OF WITNESSES, 7 A. 904 = A.W.N. 1885, 284, 14 C. 245.

Settlement.

See BEN. REG. VIII OF 1822.

(1)—*Instrument of gift or settlement.*—*Hludanza* or gift for religious purposes—definition of gift; what is an instrument? Execution—meaning of term; may be effected without signing. Burmese method of executing instruments without signature must be recognized. QUEEN-EMPRESS v. MI NAN THA, **U.B.R. 1892—1896, Vol. I, 303.**

Settlement and Survey Act.

See BOM. ACT I OF 1865.

Settlement Amendment Act, and City Surveys Act.

See BOM. ACT IV OF 1868.

Sewage Water.

Allowing—to run into street, if an offence—*See* MAD. ACT IV OF 1884, s. 222, 15 M. 91 = 1 Weir 747.

Sex.

Sentence of death—of accused—*See* SENTENCE—CAPITAL SENTENCE, L.B.R. 1893 —1900, 564.

Sexual Intercourse.

Hindu having—in enclosure surrounding Mahomedan Fakir's tomb—*See* PENAL CODE, ss. 295, 297, 10 M. 126=1 Weir 256.

With minor girl—*See* PENAL CODE, ss. 363, 366, U.B.R. 1897—1901, Vol. I, 328.

Soliciting girl for—*See* PENAL CODE, s. 373, 7 N.W.P. 295.

Solicitation for—*See* PUBLIC NUISANCE, Rat. Un. Cr. C. 765=Cr. Rg. 28 of 1895.

Shah Jehan's Coin.

See COIN, A.W.N. 1906, 308=4 A.L.J. 43=4 Cr. L.J. 453=29 A. 141.

Share Warrants.

Omission to duly stamp—*See* ACT VI OF 1882, s. 35, 20 C. 676.

Shebait.

Bustee land—Debutter property—Shebait not in possession if an "owner"—*See* BEN. ACT III OF 1899, ss. 3 (32), 408, 574, 575, 17 C.W.N. 1034=21 Ind. Cas. 169=14 Cr. L.J. 569.

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 10 C.W.N. 1088=4 Cr. L.J. 215.

Sheep.

Killing a stolen sheep — *See* MISCHIEF, 1 Weir 497.

Shipping Fees, Out-ports Landing, Act.

See MAD. ACT III OF 1885.

Shipping, Merchant Act.

See ACT I OF 1859.

Ships.

See OFFENCES ON BOARD BRITISH SHIPS ON HIGH SEAS.

Running into a boat at anchor—*Prima facie* evidence of negligence—*See* PENAL CODE, s. 280, 12 Cr. L J. 582=12 Ind. Cas. 846=4 Bur. L.T. 140.

Ships Registration of Act.

See ACT X OF 1841.

Ships, Native Passenger Act.

See ACT XII OF 1870.

Shooting.

See PENAL CODE, ss. 80, 301-A, 3 Bom. L. R. 678.

Siam.

Native Indian subject of Her Majesty in—Jurisdiction of British Courts—*See* SESSIONS JUDGE, JURISDICTION OF, Rat. Un. Cr. C. 773=Cr. Rg. 37 of 1895.

Signature.

(1)—*Signature of Magistrate—Lithographed stamp of signature.—Held* that a Magistrate could not use a lithographed stamp of his signature, but must use his own handwriting for the purpose. QUEEN v. DEDAR NUSHYO, **14 W.R. Cr. 81.**

Signature—*concluded.*

(2)—*Probative value of unproved signature.*—A document does not prove itself, nor is an unproved signature proof of its having been written by the person whose signature it purports to bear. BARINDRA KUMAR GHOSE v. EMPEROR, **37 C. 467=14 C W.N. 1114=7 Ind. Cas. 359=11 Cr.L.J. 453.**

See ACCUSED PERSON, Rat. Un. Cr. C. 687 =Cr. Rg. 8 of 1894.

Of accused in confession — *See* CONFESSION — CONFESSIONS TO MAGISTRATES — ADMISSIBILITY—RECORD OF CONFESSIONS, 11 B.H.C. 44.

When thumb impression is a—*See* CRIM. PRO. CODE, 1898, s. 164, 32 C. 550=2 Cr. L.J. 405.

Of accused, how to be made — *See* CRIM. PRO. CODE, 1898, s. 364, Rat. Un. Cr. C. 687 =Cr. Rg. 8 of 1894.

See CRIM. PRO. CODE, 1898, s. 367, S.C. 192, Oudh.

Of Magistrate — *See* CRIM. PRO. CODE, 1898, s. 384, 6 M. 396=2 Weir 328.

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 12 C.W.N. 771=8 Cr. L.J. 27.

Testimony of single witness—Comparison of —One kind of corroboration — *See* FALSE EVIDENCE, 5 W.R. Cr. 98.

See FALSE EVIDENCE, 7 C.L.R. 536.

See JUDGMENT, Rat. Un. Cr. C. 429.

See POLICE INVESTIGATION, Rat. Un. Cr. C. 488=Cr. Rg. 57 of 1889.

Signs.

Dying declaration made by signs—Procedure —*See* EVIDENCE—DYING DECLARATION, 2 P.R. 1886, Cr.

Sind Criminal Circulars.

Ch. VI, r. 26 of the—Commitment to Sessions—Duty of Magistrate—*See* CRIM. PRO. CODE, 1898, ss. 207, 254, 8 S.L.R. 23=15 Cr. L.J. 664=25 Ind. Cas. 992.

Single Judge of High Court.

See ACT XVIII OF 1879, s. 36, A.W.N. 1908, 279=6 A.L.J. 22=31 A. 59=9 Cr. L.J. 59=1 Ind. Cas 143.

See LETTERS PATENT—LETTERS PATENT, 1865—MADRAS, s. 15, 30 M. 311=2 M.L.T. 84=17 M.L.J. 123=5 Cr. L.J. 288.

See REVISION — MISCELLANEOUS CASES, 4 P.R. 1909, Cr.=41 P.L.R. 1909=9 Cr. L.J. 378=10 P.W.R. 1909, Cr.=1 Ind. Cas. 747.

Single Transaction.

Misjoinder of charges — Whether all the accused should have acted together to make their acts form part of single transaction—*See* JOINDER OF CHARGES — MISJOINDER OF CHARGES, 10 M.L.T. 23=10 Ind. Cas. 349.

Sirdar.

Cooly sirdar, or recruiter, whether an artificer, workman or labourer—*See* ACT XIII OF 1859, s. 2, 6 C.L.J. 180 = 6 Cr. L.J. 191.

Slaughter-house.

See BEN. ACT VII OF 1865, s. 1, 16 W.R. Cr. 4.

See BEN. ACT VII OF 1865, s. 7, 14 W.R. Cr. 67 = 6 B.L.R. Ap. 28.

See NUISANCE UNDER CRIM. PRO. CODE, 7 B.L.R. 516, 25 W.R. Cr. 72.

Slaughter-houses and Meat Markets Act.

See BEN. ACT VII OF 1865.

Slavery.

See PENAL CODE, s. 370.

(1)—*Penal Code*, s. 370—*Slavery.*—S. 370 is only directed against attempts to place persons in the position of slaves, or to treat them in a way that is inconsistent with the idea of the person so treated being free as to his property, service, or conduct in any respect. Per *Spankie, J.*—Where the accused obtained possession of a married girl of eleven years of age by false pretence and disposed of her to a third person for value, with a view to marriage, and the girl was received also with the same intention, *held* by the Full Bench that the accused was not guilty of an offence under s. 370, I.P.C. EMPRESS OF INDIA v. RAM KUAR, **2 A. 723.** [*R.*, 7 M. 277 = 1 Weir 356.]

(2)—*Slavery, what constitutes—Penal Code*, s. 370.—A person is treated as a slave if another asserts an absolute right to restrain his personal liberty, and to dispose of his labour against his will, unless the right is conferred by law, as in the case of a parent, or guardian, or jailor. QUEEN v. MIRZA SIKUNDER BUKHUT, **3 N.W.P. 146.** [*Com. on*, 2 A. 723, F.B.; *D.*, 7 M. 277].

(3)—*Penal Code*, s. 370.—Where the accused bought a girl, aged nine, and gave her in marriage to his brother, *held*, that he was not guilty of the offence of disposing a girl as a slave. CROWN v. RODA, **19 P.R. 1867, Cr.**

(4)—*Penal Code*, ss. 370 *and* 371.—A person buying young girls in one district and disposing of them in marriage in another district is not guilty of an offence under s. 370 or s. 371. GANPAT v. EMPRESS, **20 P.R. 1884, Cr.**

(5)—*Purchase of girl in foreign territory.*—The purchase of a girl in a foreign territory, knowing her to be a slave, is not in itself an offence punishable under the Penal Code, and to make the importing of her into British territory an offence, it is necessary that it should appear that the accused imported her as a slave. EMPRESS v. NANDA, **26 P.R. 1882, Cr.**

(6)—*Sale of girl as "vellati."*—Where a person transferred to another his rights over a girl of thirteen years for Rs. 25, whom he described as his *vellati*, *held*, that both were guilty of an offence under s. 370, as the use of the word

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vellati, as understood by the *Mapillahs* of North Malabar, clearly showed that the girl was sold as a slave. AMINA v. QUEEN-EMPRESS, **7 M. 277 = 1 Weir 354.**

(7)—*Commitment to Sessions — Wrongful restraint—Slavery.*—*Held* that a Sessions Judge was bound to try an accused person, committed to the Sessions Court by a Deputy Magistrate on the charge of an offence punishable under s. 370, Penal Code, of keeping a woman against her will as a slave, and that the commitment was proper. QUEEN v. FIRMAN ALI, **16 W.R. Cr. 73.**

See KIDNAPPING, 3 N.W.P. 146.

Small Cause Court.

Small Cause Court directing prosecution under s. 476, Crim. Pro. Code—Revision—Powers of High Court—*See* CRIM. PRO. CODE, 1898, ss. 476, 435, 17 O.C. 25 = 15 Cr. L.J. 217 = 22 Ind. Cas. 1001.

Offence committed on the Small Cause side of Sadar Amin's Court — *See* SANCTION TO PROSECUTE—AUTHORITIES COMPETENT TO GRANT SANCTION, ETC., 6 M.H.C. 191.

Suit in Court of Small Causes referred to an arbitrator—Fabrication of evidence, forgery and using forged document before such arbitrator—Sanction of the Court of Small Causes —*See* SANCTION TO PROSECUTE—CONDITIONS REQUISITE FOR GRANT OF SANCTION, ETC., 17 M.L.J. 420 = 6 Cr. L.J. 331 = 2 M.L.T. 496.

Small Cause Court, Jurisdiction of.

See CONTEMPT OF COURT, 2 B.L.R. A.C. 188 = 11 W. R. 62.

See SANCTION TO PROSECUTE—AUTHORITIES COMPETENT TO GRANT SANCTION, ETC., 3 B.L.R.A. Cr. 9.

Small Causes Court, Mofussil.

(1)—*Temporary absence from imprisonment —Residence.*—*Held* that temporary imprisonment beyond the jurisdiction of a Small Cause Court was no bar to the jurisdiction of that Court with regard to defendants who formerly resided within such jurisdiction and whose families continued to reside within it, the inference from the latter fact being that the defendants had an intention of returning to their former place of abode after the close of their imprisonment. GOPAL CHUNDER SIRCAR v. KURNODHAR MOOCHEE, **7 W.R. 349.**

(2)—*Prisoners' Testimony Act* (XV *of* 1869)—*Mofussil Small Cause Court, Judge of—Defendant in custody.*—A Judge of a Small Cause Court in the mofussil could direct the jailor to bring up before the Court, at the hearing of the suit, a defendant committed to custody, under s. 78 of Act VIII of 1859, without having recourse to the procedure under Act XV of 1869. KILARAM MAJI v. NARAYAN DAS, **5 B.L.R. 215 = 13 W.R. 278.**

Small Cause Court, Presidency Towns.

Enquiry by Registrar of the, as to proper service of summons if judicial proceedings—Sanction to prosecute for false personation in service of summons—*See* CRIM. PRO. CODE, 1898, s. 195, 18 C.W.N. 1323.

Sanction for prosecution granted by—Appeal whether lies to the original or the appellate side of the High Court—*See* CRIM. PRO. CODE, 1898, s. 195, 36 M. 138 = 10 M.L.T. 278 = 1911 2 M.W.N. 529 = 12 Ind. Cas. 521.

Small Causes Courts (Presidency) Act.

See ACT XV OF 1882.

Small-pox.

Refusal to remove a person suffering from, to hospital—*See* PENAL CODE, ss. 268, 269, 24 C. 494 = 1 C.W.N. 274.

Smuggling.

(1)—*Isolated instance of opium smuggling—Assumption of general corruption of moral character—Whipping.*—In the case of a person who is probably a willing tool in the hands of others, an isolated instance of opium smuggling on a large scale is not sufficient to justify the assumption of a general corruption of moral character. Whipping can only be inflicted in convictions under the Penal Code. One month's simple imprisonment would suffice. And a second conviction for the same offence might justify his detention in a Reformatory. NGA KYI SEIN v. QUEEN-EMPRESS, **L.B.R. 1893–1900, 567.**

See STOLEN PROPERTY, 19 W.R. Cr. 37.

Snake-charmers.

Death caused by—Culpable homicide—*See* MURDER, 3 B.L.R. A. Cr. 25 = 12 W.R. Cr. 7.

Soldiers.

The term "Soldiers" includes reservists—*See* ACT XI OF 1878, ss. 13, 16, 19, 1 P.R. 1902, Cr.

Solemn Affirmation.

See OATH.

"Oath" means a solemn affirmation under Act V of 1840, taken instead of an oath. **1 W. R. Cr. Letters, 13.**

Solicitor.

See LEGAL PRACTITIONERS.

Defamatory statements made to accused's—*See* DEFAMATION, 5 Bom. L.R. 122.

Solitary Confinement.

See SENTENCE—SOLITARY CONFINEMENT.

(1)—*Act* XIV *of* 1866, *s.*48.—Solitary confinement cannot be awarded as part of a sentence passed under s. 48 of the Post Office Act. EMPRESS v. MUKH RAM, **24 P.R. 1879, Cr.**

Sorcery.

Abetment of murder by impossible means.—*See* ABETMENT, 10 B.H.C. 75.

See LETTERS PATENT—LETTERS PATENT 1865, BOMBAY, 10 B.H.C. 75.

Spears.

See ACT XI OF 1878, s. 19 (*e*), (*f*), 1 Weir 660.

Special Act.

Offence under a—*See* SENTENCE—FINE, 7 W.R. Cr. 29.

Sentence under—Instead of under Penal Code.—*See* REVISION—SENTENCES, 17 W.R. Cr. 50.

Special Bench of High Court.

See APPROVER, 37 C. 845, S.B.

Special Constables.

See CONSTABLES.

See POLICE.

Object of appointing—Refusal to serve—Penal Code, s. 173—*See* ACT V OF 1861, s. 17, 10 C.W.N. 82 = 2 C.L.J. 555 = 3 Cr. L.J. 169.

See ACT V OF 1861, ss. 17 and 19, 12 C.W.N. 727 = 8 C.L.J. 66 = 7 Cr. L.J. 507, 12 C.W.N. 366 = 7 Cr. L.J. 186 = 35 C. 454.

See ACT V OF 1861, ss. 18, 19, 29, 10 C.W.N. 322.

See SECURITY TO KEEP THE PEACE—FINAL ORDER—ORDER LIMITED BY REQUISITION, 4 Cr. L.J. 456 = 11 C.W.N. 121.

Special Diary.

See POLICE.

Right of accused person or his agent to see or have copies of—*See* ACCUSED PERSON, 19 A. 390, F.B.

See CRIM. PRO. CODE, 1898, s. 161, 19 A. 390, F.B. = A.W.N. 1897, 114.

See CRIM. PRO. CODE, 1898, ss. 161, 172, 20 C. 642.

See CRIM. PRO. CODE, 1898, ss. 162, 172, 10 C.W.N 890 = 4 Cr. L.J. 79 = 33 C. 1023.

See EVIDENCE ACT, 1872, s. 105, 8 Ind. Cas. 259 = 11 Cr. L.J. 612.

False entry by police officer in a—Fabricating false evidence—*See* FALSE EVIDENCE, 21 A. 159 = A.W.N. 1899, 5.

Special Laws.

(1)—*Applicability of ordinary criminal law.*—Unless there is a provision in a special Act excluding the operation of the general criminal law, an intention on the part of the Legislature cannot be inferred. EMPRESS v. IMAM BAKHSH, **10 P.R. 1885, Cr.**

See ACT XIV OF 1866, 7 W.R. Cr. 54.

See BEN. ACT III OF 1863, 10 W.R. Cr. 30.

See U.P. ACT I OF 1895, 2 A.L.J. 411 = 2 Cr. L.J. 352.

Separate convictions under special law and Penal Code—*See* CONVICTION, 5 N.W.P. 49.

Alternative charges and charges in the alternative, difference between—Alternative charges for offences under the Penal Code and special Laws not permissible—Nature of offences for which alternative charges are permissible—*See* CRIM. PRO. CODE, 1898, s. 236, 10 Ind. Cas. 168 = 12 Cr. L.J. 224 = 5 S.L.R. 16.

See NUISANCE UNDER PENAL CODE, 9 W. R. Cr. 70.

Special Magistrate.

Powers of—Conferred upon Sub-Registrar—Whether the power continues on transfer of Sub-Registrar to another place—*See* MAD. ACT XXIV OF 1859, s. 48, 15 M. 132 = 2 Weir 36.

Special or Local Law.

See ACT VI OF 1864, s. 5, Rat. Un. Cr. C. 190 = Cr. Rg. 16-8-1883.

See COMPENSATION—GENERAL, 14 W.R. Cr. 36.

See MAGISTRATE, JURISDICTION OF—MISCELLANEOUS CASES, 14 W.R. Cr. 36, 41.

See PENAL CODE, s. 5, 1 Weir 26.

See PENAL CODE, ss. 40, 114, 29 C. 496.

See SESSIONS JUDGE, JURISDICTION OF, 9 W.R. Cr. 36.

Special or Second Appeal.

Orders, subject or not to appeal—Order imposing fine for avoiding of summons to attend as witness—Civ. Pro. Code (1859), s. 365—*Witness absconding—Right of appeal.*—By the words of s. 365 of Act VIII of 1859, the Legislature must have intended to give the person, aggrieved by any order of a Civil Court, imposing a fine on him as a punishment for keeping out of the way, in order to avoid service of summons to attend as a witness, the right of appeal to the High Court, whether the order was strictly referable to s. 160 of that Act or not. *In re* GAJADHAR PRASAD NARAYAN SINGH, **1 B.L.R.A. Cr. 186 = 10 W.R. 233.**

Specific Relief Act.

See ACT I OF 1877.

(1)—*S. 45—Jurisdiction of High Court to direct copy of Presidency Magistrate's notes of deposition to be furnished to a party to a criminal case.*—A party to a criminal proceeding is entitled to copies of the Presidency Magistrate's notes of deposition. Where the Magistrate had refused to furnish such copies to a party, the High Court under s. 45 of the Specific Relief Act ordered the records of the case to be brought up to High Court and kept with the Registrar, and allowed liberty to the party to take copies. EMPEROR v. SAILENDRA NATH MUKERJEE, **15 C.W.N. 770.**

Sphere of Influence.

See JURISDICTION OF CRIMINAL COURT—GENERAL, 22 B. 54.

Spirit.

Beating a person to drive away evil spirits—Death—*See* PENAL CODE, ss. 84, 304, Rat. Un. Cr. C. 603.

Beating child thinking it to be a—*See* RASH AND NEGLIGENT ACT, CAUSING DEATH BY, 11 P.R. 1888, Cr.

Spirits, Duty on Opium and.

See BOM. REG. XXI OF 1827.

Spiritual Superior.

Penal Code, s. 503—Criminal intimidation, what constitutes—Conventional punishment by—, whether amounts to injury—*See* CRIMINAL INTIMIDATION, 6 M. 381 = 1 Weir 595 = 1 Weir 624.

Spirituous Liquors Act.

See BOM. ACT III OF 1852.

Spleen.

Rupture of—*See* PENAL CODE, ss. 304-A, 321, Rat. Un. Cr. C. 63 = Cr. Rg. 23-2-1872.

Splitting Offence.

See CRIMINAL PROCEEDINGS, 4 C. 18 = 3 C.L.R. 44.

Splitting up of Charges.

For purposes of jurisdiction — *See* MAGISTRATE, JURISDICTION OF—TRANSFER OF CASES—REFERENCE TO OTHER MAGISTRATES, ETC., 11 C. 256.

Spontaneous Salt.

See THEFT—THINGS WHICH MAY BE THE SUBJECT OF THEFT, 4 M. 228 = 1 Weir 412.

Springed Vehicles.

See TRAILER CARS, 18 M.L.J. 149.

Spy.

(1)—*Spy suggesting and initiating criminal offence—Detective—Spy and accomplice distinguished.*—The action of the spy and informer in suggesting and initiating a criminal offence is a criminal offence, the act not being excused or justified by any exception in the Indian Penal Code, or by the doctrine which distinguishes the spy from the accomplice. But the action of a detective in supplying marked money for the detection of a crime cannot make him an accomplice in the offence. An accomplice confesses himself a criminal and may have a motive for giving information, as it may purchase immunity for his offence. A spy, on the other hand, may be an honest man; he may think that the course he pursues is absolutely essential for the protection of his own interests and those of society; and if he does so, if he believes that there is no other method of counteracting the dangerous designs of wicked men, there is no impropriety in his taking upon himself the character of an informer. They are entirely distinguishable, in fact and in principle, from accomplices, and although their evidence is entirely for the jury to judge of, they are not such persons as it is the practice to say require corroboration. QUEEN-EMPRESS v. JAVECHARAM, **19 B. 363.**

Or detective—Difference between—Evidence of—Corroboration—*See* ACCOMPLICE—ACCOMPLICE EVIDENCE — NECESSITY FOR CORROBORATION, 8 Ind. Cas. 119 = 11 Cr. L.J. 560 = 15 C.W.N. 171.

Testimony of, if should be corroborated and when—*See* CONSPIRACY, 16 C.W.N. 1105 = 16 Ind. Cas. 257.

Spy—*concluded.*

Accomplice and — Distinction—*See* PENAL CODE, ss. 121-A, 123, 15 C.L.J. 517=16 Ind. Cas. 257=13 Cr. L.J. 609.

Sradh Ceremony at Gaya.

Immoveable property, dispute relating to—Fees paid by pilgrims for performing, are not profits of immoveable property—*See* DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 3 C.L.J. 137=3 Cr. L J. 214.

Stabbing.

(1)—*Severe sentence in cases of stabbing—Prosecution before competent Courts.*—The reckless resort to the use of deadly weapons in sudden quarrels, which so often leads to fatal results, is likely to be encouraged if the offender is allowed to be begged off, or the inquiry as to the true stages and incidents of the encounter is allowed to be perfunctory, when grievous hurt is not actually caused. Criminal Courts should take all necessary pains to ascertain whether the accused was the first to resort to the threat and use of a deadly weapon in a quarrel, recklessly or without lawful excuse and if so, a properly severe sentence should be passed. *Obiter*:—District Magistrates should give attention to the necessity for arranging that stabbing cases should be prosecuted by the police before competent Courts. QUEEN-EMPRESS v. MAUNG PRU THAN, L.B.R. 1893—1900, 261.

Punishment—*See* PENAL CODE, s. 326, L.B. R. 1872—1892, 182.

Stage Carriages Act.

See ACT XVI OF 1861.

Stake-holder.

Misappropriating stakes — *See* CRIMINAL BREACH OF TRUST, 2 L B.R. 216.

Stall.

See MARKET, 11 C.W.N 1128=6 Cr. L.J. 321.

Stamp.

See ACCEPTING INSTRUMENT NOT DULY STAMPED.

See COUNTERFEITING GOVERNMENT STAMP.

(1)—*Sale of Court fee stamp without authority, if offence.*—Sale of stamps by persons without authority was made an offence for the first time by s. 68 of Act I of 1879 with reference to sale of stamps under that Act. S. 34 of the Court Fees Act of 1870 did not create such an offence with reference to Court fee stamps. EMPRESS v. JALLU, A W N. 1882, 23=4 A. 216, F B.

(2)—*Value of stamp fees realised on papers in Courts* —Information as to the value of stamp fees realised on papers in Court during 1859 should be supplied by Sessions Judge and Magistrates of Districts. CRIMINAL CIRCULAR NO.4 OF 23RD MARCH 1866, 5 W.R. Cr. Cir 2.

(3)—*Insufficiently stamped pro-note, accepting of.*—The mere receiving of a promissory note not duly stamped, and suing upon it would

Stamp—*concluded.*

not constitute an offence under s. 61, Stamp Act. "Accepting" does not mean mere receiving, but acceptance in writing. PIARI LAL v. EMPRESS, 11 P.R. 1891, Cr. (7 M. 71, *F.*)

(4)—*Informer of improperly stamped document.*—A reader or other ministerial officer of a Court bringing to its notice an improperly stamped document, cannot be considered to be an informer, within the meaning of the Stamp Act. CROWN v. HAMEER CHAND, 13 P.R. 1875, Cr.

Abetment of making an unstamped receipt—*See* ABETMENT, 8 A. 18=A.W.N. 1885, 317.

Acceptance of unstamped receipt, if abetment—*See* ABETMENT, 7 C.P.L R. 21, Cr.

See ACT III OF 1857, s. 14, 8 B H.C. Cr. 22.

Copies of records of criminal trial—*See* ACT X OF 1862, s. 14, 4 M.H.C. App. 57.

Omission to duly, share warrants—*See* ACT VI OF 1882, s. 35, 20 C. 676.

Appeal by accused in jail and by those not in jail—Stamp—*See* APPEAL—GENERAL, 2 Weir 467.

See CRIM. PRO. CODE, 1861, s. 440, 4 M H. C. App 57.

Purchasing stamp in false name — *See* CHEATING—FALSE PERSONATION, A.W N. 1884, 87.

Penalty for document not properly stamped—Inclusion of penalty in costs—*See* CRIM. PRO. CODE, 1898, s. 148, cl.(3), 13 M.L.T. 224=19 Ind. Cas. 505=14 Cr. L.J. 210.

Writing a document on a paper bearing a, of later date—*See* FORGERY, 1 Weir 540.

See MAINTENANCE, Rat. Un. Cr. C. 488=Cr. Rg. 56 of 1889.

Affixing used postal—to letter—*See* PENAL CODE, s. 262, Rat. Un. Cr. C. 145.

See SANCTION TO PROSECUTE—CONDITIONS REQUISITE FOR GRANT OF SANCTION, ETC., 7 C.W.N 795.

Signature of Magistrate—Lithographed—Of signature—*See* SIGNATURE, 14 W.R. Cr. 81.

Stamp Act.

See ACT XXXVI OF 1860.

See ACT XVIII OF 1869.

See ACT I OF 1879.

See ACT II OF 1899.

Stamp-duties.

See ACT X OF 1862.

Stamp-duty.

Order for refund of stamp duty and process-fees—*See* ACT XIII OF 1859, s. 2, 1 Weir 697.

"Mortgage," definition of, for purposes of—*See* ACT I OF 1879, s. 3, sub-s. 13, 27 C. 587=4 C.W.N. 524.

Evading payment of—*See* ACT I OF 1879, ss. 37, 40, 8 C. 259=10 C.L.R. 365.

Stamp-paper.

See COURT-FEES, 6 M.H.C. App. 12.

Purchase of—Under false name—*See* PENAL CODE, s. 177, Rat. Un. Cr. C. 210=Cr. Rg. 19-2-1885.

Stamp Vendor.

See PENAL CODE, ss. 21 (9), 161, Rat. Un. Cr. C. 36=Cr. Rg. 28-7-1870.

Standing Crops.

See MAD. ACT II OF 1864, s. 8, 16 M. 364=1 Weir 422=3 M.L.J. 178.

Under attachment under s. 274 of the Civ. Pro. Code (1882)—Their removal, whether amounts to theft or criminal misappropriation—*See* CRIMINAL MISAPPROPRIATION, 22 M. 151=1 Weir 424=8 M.L.J. 259=1 Weir 486.

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 15 A. 394=A.W.N. 1893, 145.

Theft—Tenant's right to cut—Ejectment—Tenant not paid price of crop—*See* PENAL CODE, s. 379, 13 Cr. L.J. 298=14 Ind. Cas. 762=11 A.L.J. 270.

Starvation.

See ACT XI OF 1890, s. 3, cl. (*a*), (*c*), 2 C.L.J. 624=3 Cr. L.J. 116.

Statements.

See CONTRADICTORY STATEMENTS.

See CRIMINAL STATEMENT.

See FALSE STATEMENT.

See SESSIONS STATEMENT.

See INSPECTION OF DOCUMENTS, S.C. 189, Oudh.

State Offences Act.

See ACT XI OF 1857.

State Prisoners.

See ACT XXXIV OF 1850.

See BEN. REG. III OF 1818.

Station House Officer.

Prosecution under s. 211, I.P.C., sanctioned by Assistant Superintendent of Police—Station House Officer presenting charge-sheet through a constable—Illegality—*See* CRIM. PRO. CODE, 1898, s. 250, 10 M.L.T. 191=21 M.L.J. 844=12 Cr. L.J. 482.

Station Master.

See ACT IX OF 1890, s. 101, 4 L.B.R. 350=9 Cr. L.J. 352, 4 L.B.R. 353=9 Cr. L.J. 348.

Order issued by Police Sub-Inspector to a, to detain certain logs lying on trucks suspected to be stolen property, legality of—*See* PENAL CODE, s. 188, 16 O.C. 371.

Statutes.

St. 29 Car. II, C. 7.

See LORD'S DAY ACT, 1 B.L.R. A. Cr. 17=10 W.R. 350.

St. 5 & 6 Edw. VI, C. 16.

(1)—*Applicability to India.*—The St. 5 and 6 Edw. VI, C. 16, an Act against buying and selling offices, has been extended to offices held under the Government of this country. Its scope is fully discussed in this case in relation to corrupt *Mamlatdars*, who confessed to having purchased offices of civil and criminal jurisdiction; such persons are disabled from holding office during life, and although the Queen may pardon the *misdemeanour*, it is not lawful for the Queen to replace them in office. *In re* GANESH NARAYAN SATHE, 13 B. 600. [*R.*, 14 B. 331, Rat. Un. Cr. C. 844.]

St. 7 Will. III, C. 3.

S. 5—*See* WAGING WAR AGAINST THE QUEEN, 7 B.L.R. 63=15 W.R. Cr. 25.

St. 13 Geo. III, C. 63 (The East India Company Act, 1772).

[SHORT TITLE GIVEN, 59 AND 60 VICT., C. 14. PREAMBLE AND SS. 1 TO 6 REP. (U.K.), 50 AND 51 VICT., C. 59 (S.L.R.); *obsolete and in applicable to India.* S. 7 APPARENTLY SUPERSEDED, 3 AND 4 WILL. 4, C. 85. S. 9 MOD., 33 GEO. III, C. 52. S. 43 REP. IN PT., 55 AND 56 VICT, C. 19 (S.L.R.). S. 10 REP. IN PT., 55 AND 56 VICT., C. 19 (S.L.R.); *the concluding paragraph is apparently spent.* S. 11 REP. (U.K.), 50 AND 51 VICT., C. 59 (S.L.R.); *spent.* S. 12 REP., 55 AND 56 VICT., C. 19 (S.L.R.). S. 16 REP., 55 AND 56 VICT., C. 19 (S.L.R.); REP. ALSO (B.I.) ACT XIV OF 1870. S. 18 REP., 55 AND 56 VICT., C. 19 (S.L.R.); REP. ALSO (B.I.) ACT VI OF 1874. S. 19 REP., 55 AND 56 VICT., C. 19 (S.L.R.); REP. ALSO (B.I.), ACT XIV OF 1870. S. 20 REP. (U.K.), 50 AND 51 VICT., C. 59 (S.L.R.); REP. ALSO (B.I.), ACT XIV OF 1870. SS. 21, 22 REP. (U.K.), 50 AND 51 VICT., C. 59 (S.L.R.); SUPERSEDED BY 3 AND 4 WILL. IV C. 85 S. 76, AND 24 AND 25 VICT., C. 67, S. 4, AND C. 104, S. 6; *obsolete.* S. 26 REP., 24 GEO. III, S. 2, C. 25, S. 47, AND 33 GEO. III, C. 52, S. 146 SS. 27 TO 29 REP., 24 GEO. III, S. 2, C. 25, S. 47, AND 33 GEO. III, C. 52, S. 146; REP. ALSO (B.I.), ACT XIV OF 1870. S. 30 REP. (U.K.), 50 AND 51 VICT., C. 59 (S.L.R.); REP. ALSO (B.I.), ACT XXVIII OF 1855. S. 31 REP. (U.K.). 50 AND 51 VICT., C. 59 (S.L.R.); REP. ALSO (B.I.), ACT XIV OF 1870. S. 32 REP., 33 GEO. III, C. 52, S. 146. S. 33 REP. (B.I.). ACT XIV OF 1870. S. 34 REP. (U.K.), 50 AND 51 VICT., C. 59 (S.L.R.); REP. ALSO (B.I.), ACT X OF 1875. S. 35 REP. (U.K.), 50 AND 51 VICT., C. 59 (S.L.R.); *inapplicable to India.* S. 36 REP., 55 AND 56 VICT., C. 19 (S.L.R.); REP. ALSO (B.I.), ACT XIV OF 1870. S. 37 APPARENTLY SUPERSEDED BY 24 AND 25 VICT., C. 67, S. 21. S. 38 REP., 55 AND 56 VICT., C. 19 (S.L.R.); REP. ALSO (B.I.), ACT X OF 1882. SS. 40 TO 45 EXT., 22 AND 23 VICT., C. 21, S. 16. S. 46 REP., 55 AND 56 VICT., C. 19 (S.L.R.). S. 47 REP. (U.K.), 50 AND 51 VICT., C. 59 (S.L.R.).]

S. 36—*See* BEN. REG. III OF 1818, 6 B.L.R. 392.

St. 37. Geo. III, C. 142 (The East India Act, 1797).

[SHORT TITLE GIVEN, 59 AND 60 VICT., C. 14. PREAMBLE REP. IN PT., 55 AND 56 VICT., C. 19 (S.L.R.). S. 1 REP., 55 AND 56 VICT., C. 19 (S.L.R.). S. 2 REP. IN PT., 55 AND 56 VICT. C. 19 (S.L.R.). S. 3 REP., 55 AND 56 VICT., C. 19 (S.L.R.). SS. 4 TO 8 REP., 55 AND 56 VICT., C. 19 (S.L.R.); REP. ALSO (B.I.), ACT XIV OF 1870. SS. 9, 10 REP., 55 AND 56 VICT., C. 19 (S.L.R.). S. 15 REP., 55 AND 56 VICT., C. 19 (S.L.R.): REP. ALSO (B.I.), ACT XIV OF 1870. S. 16 REP. 55 AND 56 VICT., C. 19 (S.L.R.); REP. ALSO (B.I.), ACT VI OF 1874. SS. 17 TO 26, 30 REP., 55 AND 56 VICT., C. 19 (S.L.R.); REP. ALSO (B.I.), ACT XIV OF 1870.]

S. 28—*See* BEN. REG. III OF 1818, 6 B.L. R. 392.

St. 39 & 40, Geo. III, C. 79 (The Government of India Act, 1800).

[SHORT TITLE GIVEN, 59 AND 60 VICT., C. 14. S. 4 REP., 55 AND 56 VICT., C. 19 (S.L.R.); REP. ALSO (B.I.), ACT XIV OF 1870. S. 5 REP. IN PT., 55 AND 56 VICT., C. 19 (S.L.R.). S. 6 REP., 55 AND 56 VICT., C. 19 (S.L R.); REP. ALSO (B.I.), ACT XIV OF 1870. S. 7 REP. IN PT., 53 GEO. III, C. 155, S. 89. S. 8 REP. IN PT., 4 GEO IV, C. 71. S. 14, AND 55 AND 56 VICT., C. 19 (S.L.R.); REP. ALSO (B I.) ACT XIV OF 1870. SS. 10, 11 REP., 55 AND 56 VICT., C. 19 (S.L.R.); REP. ALSO (B.I.) ACT XIV OF 1870. S. 12 REP. IN PT., 55 AND 56 VICT. C. 19 (S.L R.). SS. 13 TO 16 REP, 9 GEO. IV, C. 74, S. 126. SS. 17 TO 19 REP., 55 AND 56 VICT., C. 19 (S.L.R); REP. ALSO (B.I.), ACT XV OF 1870. S. 20 REP. IN PT., 55 AND 56 VICT., C. 19 (S.L.R.) SS. 21 TO 24 REP., 55 AND 56 VICT., C. 19 (S.L R.); REP. ALSO (B.I.) ACT XIV OF 1870. S. 25 REP., 57 AND 58 VICT., C. 39, S. 5.]

(1)—*Power of Madras High Court to entertain complaint against Governor of Madras, 39 and 40, Geo. III, c. 79—Act* XXI *Geo. III, c.* 79, *s.* 3—4 *Geo. IV, c.* 71.—S. 3 of 39 and 40 Geo. III, c. 79 providing that the Governor-General and Council, and the Governor and Council of Madras shall enjoy the same exemption and no other from the authority of the Supreme Court of Madras as is enjoyed by the Governor-General and Council from the jurisdiction of the Supreme Court at Calcutta cannot be qualified by the provisions of s. 5 of Act XXI Geo. III, c. 70, which applies in terms to the Governor-General in Council and to the Supreme Court at Fort William (Calcutta) only. The powers given by 4 Geo. IV, c. 71, would not, therefore, authorize the Madras High Court to entertain a complaint against the Governor of Madras under 21 Geo. III, C. 70, though they would authorize the exercise of them as regards the Governor-General and Council. *In the matter of* JOHN WALLACE, 8 **M. 24.**

St. 53, Geo. III, C. 155 (The East India Company Act, 1813).

[SHORT TITLE GIVEN, 59 AND 60 VICT., C. 14. SS. 1 TO 32 REP., 36 AND 37 VICT., C. 91

St. 53. Geo. III. C. 155 (The East India Company Act, 1813)—*concluded.*

(S.L.R.). SS. 33 TO 39 REP., 37 AND 38 VICT., C. 35 (S.L.R.). SS. 40, 41, 44 TO 48 REP., 36 AND 37 VICT., C. 91 (S.L.R.). S. 51 AM., 15 AND 16 VICT., C. 52, S. 1. SS. 54 TO 78 REP., 36 AND 37 VICT. C. 91 (S.L.R.). S. 79 MOD. (B.I), ACT II OF 1834. SS. 80, 81, 83, 87, 88 REP., 36 AND 37 VICT., C. 91 (S L.R.). S 89 REP. IN PT., 41 AND 42 VICT., C. 79 (S L.R.); AND 43 VICT. C 3. SS. 90 TO 92, 95 REP., 36 AND 37 VICT., C 91 (S.L R.). S. 97 REP., 53 AND 54 VICT., C. 33 (S.L.R); REP. ALSO (B.I.). ACT XII OF 1873. SS. 98, 99, REP., 53 AND 54 VICT., C. 33 (S.L.R); REP. ALSO (B.I.), ACT XIV OF 1870. SS. 100 TO 103 REP., 53 AND 54 VICT., C 33 (S.L.R.); REP. ALSO (B. I.), ACT X OF 1895. S. 104 REP., 53 AND 54 VICT., C. 33 (S.L.R.); REP. ALSO (B.I.), ACT XIV OF 1870. S. 105 REP., 53 AND 54 VICT., C. 33 (S.L.R.); REP. ALSO (B.I.), ACT X OF 1882. S. 106 REP., 53 AND 54 VICT., C. 33 (S.L.R). S. 107 REP., 53 AND 54 VICT., C. 33 (S.L.R.); REP. ALSO (B I.), ACT XI OF 1836. SS. 108, 109 REP., 53 AND 54 VICT., C. 33 (S.L.R.); REP. ALSO (B.I.), ACT XIV OF 1870 S. 110, REP, 53 AND 54 VICT., C. 33 (S.L.R.) S. 112 REP., 36 AND 37 VICT., C. 91 (S.L.R); REP. ALSO (B.I.), ACT II OF 1869. S. 113 REP., 36 AND 37 VICT., C 91 (S.L.R.); REP. ALSO (B.I.), ACT XIV OF 1870. SS. 114 TO 120 REP., 36 AND 37 VICT., C. 91 (S.L.R.). S. 121 REP., 36 AND 37 VICT., C. 91 (S L.R); REP. ALSO (B.I.), ACT XII OF 1873. S. 122 REP., 36 AND 37 VICT., C. 91 (S.L.R.); REP. ALSO (B.I.), ACT XIV OF 1870. S. 123 REP., 37 AND 38 VICT., C. 35 (S.L.R.); REP. ALSO (B.I.), ACT XII OF 1873. S. 124 REP., 53 AND 54 VICT., C. 33 (S.L.R.); REP. ALSO (B.I.), ACT IX OF 1871. S. 125 REP. 36 AND 37 VICT., C 91 (S.L.R.).]

(1)—S. 105—*See* ACT VII OF 1853, 6 B.H. C. Cr. 14.

(2)—S. 105—*See* BOM. ACT VII OF 1867, 7 B.H.C. Cr. 6.

(3)—S. 105—*See* JUSTICE OF THE PEACE, 6 B.H.C. Cr. 14.

St. 9, Geo. IV, C. 74 (The Criminal Law, India Act, 1828).

[SHORT TITLE GIVEN, 59 AND 60 VICT., C. 14. THE WHOLE ACT, EXCEPT SS. 1, 7, 8, 9, 25, 26, 56 AND 110, REP., 53 AND 54 VICT, C. 33 (S.L.R.); THE WHOLE ACT, EXCEPT SS. 1, 7, 8, 9, 25, 26 AND 56 REP. ALSO (B.I.), ACT X OF 1875. S. 110 REP., EXCEPT SO FAR AS IN FORCE IN THE STRAITS SETTLEMENTS, 53 AND 54 VICT., C. 33 (S.L R).]

S. 56—*See* JURISDICTION OF CRIMINAL COURTS—GENERAL, 4 W.R, P.C 109 = 7 M.I. A. 72 = Boul 189.

St. 5 & 6 Vict., C. 45 (The Copyright Act, 1842).

[SHORT TITLE GIVEN. 59 AND 60 VICT., C. 14. EXT (B.I.), ACT XX OF 1847. S. 1 REP. (U.K.), 37 AND 38 VICT., C. 96 (S.L.R.); *spent and inapplicable to India.* S. 14 REP. IN PT. (U.K.), 56 VICT., C. 14 (S.L.R.). S. 26 REP.

St. 5 & 6 Vict., C. 45 (The Copyright Act, 1842)—*concluded.*

(U.K.), 56 AND 57 VICT., C. 61, S. 2. S. 30 REP (U.K.), 37 AND 38 VICT., C. 96 (S.L.R.); *spent.*]

(1)—The English Copyright Act (St. 5 and 6 Vict., c. 45) extends to all parts of India. Having regard to s. 15 of that Act, it is clear that a person who infringes copyright must be sued, if he offends in India, not only within the limits of that country, but also in that part of India in which the offence has been committed. See, also, s. 13 of the Indian Act XX of 1847. MACMILLAN v. KHAN BAHADUR SHAMSUL ULAMA M. ZAKA, **19 B. 557.**

St. 6 & 7 Vict., C. 90 (Lord Campbell's Act).

See PENAL CODE, s. 124-A, 5 M L.T. 415=32 M. 338=9 Cr. L.J. 506=2 Ind. Cas. 193.

St. 6 & 7 Vict., C. 94.

(1)—*St. 28 and 29 Vict., c. 116—St. 29 and 30 Vict., c. 87—Order in Council of 9th August, 1866 — Person accused of having committed murder at Zanzibar—Case sent for trial to Bombay—Jurisdiction of Bombay High Court.*—The High Court of Bombay can try a prisoner charged with having committed a murder at Zanzibar, and sent by the British Consul there, to Bombay. EMPRESS v. DOSSAJI GULAM HUSEIN, **3 B. 334.**

St. 11 & 12 Vict., C. 21 (The Indian Insolvency Act, 1848).

[SHORT TITLE GIVEN, 59 AND 60 VICT., C. 14. EXT. (B.I.), ACT VI OF 1900, S. 8. S. 1 REP. (U.K.), 38 AND 39 VICT., C. 66 (S.L R.); REP. ALSO (B.I.), ACT XIV OF 1870. S 7 REP. IN PT., 38 AND 39 VICT., C. 66 (S.L.R.). S. 15 AM. (B.I.), ACT X OF 1898, S 2. S. 16 REP. IN PT., 38 AND 39 VICT., C. 66 (S.L.R.). S. 42 REP., 38 AND 39 VICT., C. 66 S.L.R.); REP. ALSO (B.I.), ACT IX OF 1872. SS. 65 TO 67 REP., 38 AND 39 VICT., C. 66 (S L R.); REP. ALSO (B.I.), ACT XIV OF 1870. S. 68 REP. IN PT., 38 AND 39 VICT., C. 66 (S.L.R.). S. 76 AM. (B.I.), ACT X OF 1898, S. 2. SS. 88 TO 90 REP., 41 AND 42 VICT., C. 79 (S.L.R.). S. 93 REP., 38 AND 39 VICT, C. 66 (S.L.R.). REP. ACT III OF 1909 (FROM 1ST JAN. 1910).]

(1)—*Fraudulent practice in trade—Power of Court to punish criminally.*—Certificate refused where insolvent had been guilty of fraudulent practices in trade. Certificate suspended in the case of a partner at home who, though innocent of the fraudulent practices, omitted to give notice to the parties intended to be defrauded. The Insolvency Court has no power to punish criminally fraudulent practices in trade. This is left to the action of creditors through the channel of the criminal law. *In re* JANSSEN v. REUSS, **Cor. 13.**

(2)—S. 13—*See* MAINTENANCE, 5 C. 536=5 C.L.R. 458.

(3)—S. 50—*See* BUR. ACT XI OF 1889, ss. 50, 69, 19 C. 605.

(4)—S. 50—*See* CRIMINAL CASES, 5 Bom. L.R. 343.

St. 11 & 12 Vict., C. 78.

See LETTERS PATENT—LETTERS PATENT, 1865, BOMBAY, ss. 25, 26, 10 B H.C. 75.

St. 12 & 13 Vict., C. 96 [Admiralty Offences (Colonial) Act, 1849].

See JURISDICTION OF CRIMINAL COURTS—GENERAL, 5 M. 23=1 Weir 1.

St. 16 & 17 Vict., C 93 (The Government of India Act, 1853).

[SHORT TITLE GIVEN, 59 AND 60 VICT., C. 14. AM, 55 AND 56 VICT., C. 14, S. 3. S. 1 REP., 55 AND 56 VICT, C. 19 (S.L.R.). SS. 2 TO 14 REP., 41 AND 42 VICT., C. 79 (S.L.R.). S. 16 REP. IN PT., 55 AND 56 VICT., C. 19 (S. L.R.). S. 18 REP., 28 AND 29 VICT., C. 17, S. 3. SS. 20, 21 REP., 41 AND 42 VICT., C. 79 (S.L. R.). SS. 22 TO 24 REP., 24 AND 25 VICT., C. 67, S. 2. S. 25 REP., 41 AND 42 VICT., C. 79 (S. L.R.). S. 26 REP., 24 AND 25 VICT., C. 67, S. 2. S. 28 REP., 55 AND 56 VICT., C. 19 (S.L.R.). SS. 29. TO 31, 33, 34 REP., 41 AND 42 VICT., C. 79 (S.L.R.). S. 35 REP IN PT., 41 AND 42 VICT., C. 79 (S.L.R.). SS. 36 TO 43 REP., 41 AND 42 VICT., C. 79 (S.L.R.).]

See ACT I OF 1859, s. 83 (5), 1 Weir 898=8 M.H.C, 85.

See APPEAL—ACTS, 2 B.H.C. 106.

St 17 & 18 Vict., C. 104 (Merchant Shipping Act).

(1)—*S. 21—Merchant Shipping Acts—Trial of British seaman for offences committed on High seas—Procedure.*—Under 12 and 13 Vict., c. 96, 23 and 24, c. 88, offences committed within the jurisdiction of the Admiralty are to be tried by the Indian Courts according to the course of their own procedure. S. 267, Merchant Shipping Act, 1854 (17 and 18 Vict., c. 104), s. 21, Merchant Shipping Act, 1867 (30 and 31 Vict., c. 12) are not intended to interfere with the course of procedure laid down in the General Act, 23 and 24 Vict., c. 88, but to secure that, in cases analogous to those offences committed within the jurisdiction of the Admiralty, though not strictly, within it, the same rules of procedure shall apply. Therefore, the trial for an offence of a British seaman on board a British ship on the high seas must be tried by the Indian Courts, according to their own procedure, and not by such a course of procedure as would have been followed by the Courts which ordinarily exercise criminal jurisdiction in England in cases within the jurisdiction of the Admiralty. QUEEN-EMPRESS v. BARTON, **16 C 238.** [*R.*, 5 L.B.R. 221=4 Bur. L.T. 58=10 Ind. Cas. 705=12 Cr. L.J. 198.]

(2)—*Ss. 24 and 26—Scope—Rules of measurement—Act XIX of 1838—Act X of 1841—"Strake" defined—Temporary addition to open vessels.*—The Merchant Shipping Act applies, as regards the rules of measurement, to the whole of Her Majesty's dominions, and is law in India so far as it is not superseded by local legislation. Acts XIX of 1838 and X of 1841 do not conflict with it. The definition of

St. 17 & 18 Vict., C. 104 (Merchant Shipping Act)—*concluded.*

"strake" as a ship-building term, is "a continuous line of planking or plates on a vessel's side reaching from stem to stern." The strakes are in fact a structural portion of the vessel. A temporary addition to the bulwark does not come within the definition. The accused, the owner of a vessel registered under Act XIX of 1838 as being 163 60/100 tons, added a temporary superstructure to her sides by fixing planks, etc., all round above the upper railing, for the purpose of protecting the cargo from the sea. On account of this addition, the ship's tonnage rose to 190 60/100 tons, for this change in the burden, the accused was prosecuted, under s. 13 of Act XIX of 1838, for neglecting to re-register the vessel and obtain a certificate under s. 4 of the Act. The accused pleaded that the superstructure was of a temporary character to be removed at the end of the voyage, that there was no change in the burden of the vessel, and that, therefore, it was not necessary to obtain a fresh certificate. The prosecution relied on certain rules of measurement passed by the Marine Department with the sanction of the Government in 1873 which provided that, in ascertaining the tonnage of open vessels the depth was to be measured from the upper strake, temporary or otherwise. *Held* that as there were no express provisions applicable to temporary additions to open vessels, either in the Indian Acts of 1838 or 1841, or in the Merchant Shipping Act, the rules of 1873 were *ultra vires* so far as they insisted on the measurement being taken from the top of a temporary addition to the upper strake, and that the additional structure put by the accused did not come within the meaning of "strake." QUEEN-EMPRESS v. JAMUDIN *valad* MAHOMED, **14 B 170**.

(3)—S. 26—*See* No. 2, *supra*.

(4)—S. 267—*See* HIGH SEAS, OFFENCES COMMITTED IN, 21 C. 782.

St. 18 & 19 Vict., C. 91 (Merchant Shipping Act, 1855).

S 21—*See* HIGH SEAS, OFFENCES COMMITTED IN, 21 C. 782.

St. 21 & 22 Vict., C. 106 (The Government of India Act. 1858).

[SHORT TITLE GIVEN, 59 & 60 VICT., C. 14. AM., 22 & 23 VICT., C. 41. S. 4 AM., 27 & 28 VICT., C. 34. SS. 5, 8 REP., 41 & 42 VICT., C. 79 (S.L.R.). S 7 AM, 7 EDW. 7 C. 35, S. 1. S. 9 REP., 55 & 56 VICT, C. 19 (S.L.R). SS. 10, 13 AM, 7 EDW. 7, C. 35, SS. 2, 3. S. 14 REP., 32 & 33 VICT, C. 97, S 5. S. 16 REP. IN. PT., 55 & 56 VICT., C. 19 (S.L.R.) S. 17 REP., 41 & 42 VICT, C 79 (S.L.R) S. 29 REP. IN PT, 41 & 42 VICT., C. 79 (S.L.R.) S. 31 REP., 41 & 42 VICT., C. 79 (S.L.R.) S. 42 REP. IN PT., 41 & 42 VICT., C. 79 (S.L.R.). SS. 44, 46 REP., 41 & 42 VICT., C. 79 (S.L.R.) S. 50 REP., 55 & 56 VICT., C. 19 (S.L.R.) S. 51 REP IN PT., 41 & 42 VICT., C. 79 (S.L R.) SS 60 TO 62 REP., 55 & 56 VICT., C. 19 (S.L.R.). SS. 66, 69, 70, REP., 41 & 42

St. 21 & 22 Vict., C. 106 (The Government of India Act, 1858)—*concluded.*

VICT., C. 79 (S.L.R.). S. 71 REP. IN PT., 41 & 42 VICT., C. 79 (S L.R.) SS. 72, 73 REP., 41 & 42 VICT., C. 79 (S.L.R). S. 74 REP., 55 & 56 VICT., C. 19 (S.L.R.). S. 75 REP., 41 & 42 VICT., C. 79 (S L.R.)]

(1)—*See* APPEAL—ACTS, 2 B.H.C. 106.

(2)—*See* PENAL CODE, ss. 1, 2. 75, 1 Weir 40.

(3)—*See* THEFT—MISCELLANEOUS, 10 B. 186.

St. 23 & 24, Vict., C 88 [Admiralty Jurisdiction (India) Act, 1860].

[SHORT TITLE GIVEN, ST. 59 & 60, VICT. C. 14.]

See JURISDICTION OF CRIMINAL COURTS, —GENERAL, 5 M. 23 = 1 Weir 1.

See ST. 17 & 18 VICT., C. 104, s.21, 16 C. 238.

St. 24 & 25 Vict., C. 67 (The Indian Councils Act, 1861).

[AM., 9 EDW. 7, C. 4 (WHEN AND WHERE NOTIFIED). S. 2 REP. IN PT., 55 & 56 VICT., C. 19 (S L.R.). S.3 REP, IN PT. 41 & 42 VICT., C. 79 (S.L.R.). AM., 37 & 38 VICT., C. 91, S. 1. S. 9 AM., 33 & 34 VICT., C. 3, S. 3. S. 10 AM., 55 & 56 VICT., C. 14, S. 1 REP. IN PT., 9 EDW. 7, C. 4 (WHEN AND WHERE NOTIFIED S 11 REP. IN PT., 9 EDW. 7, C. 4 (WHEN AND WHERE NOTIFIED). S. 13 REP, 55 & 56 VICT., C. 14, S. 4. S. 15 REP. IN PT., 9 EDW. 7, C. 4 (WHEN AND WHERE NOTIFIED). S.16 REP., 55 & 56 VICT., C. 19 (S L.R.). S. 17 REP. IN PT., 55 & 56 VICT., C. 19 (S.L.R.). SS.18, 19 AM, 55 & 56 VICT., C. 14, S. 2, S. 22 AM., 55 & 56 VICT., C. 14, S. 3, AND 32 & 33 VICT., C 98, S. 3; EXT., 28 & 29 VICT., C.17, S. 1, AND 32 & 33 VICT., C. 98, S. 1. S. 25 *is spent*. S. 29 AM, 55 & 56 VICT., C. 14, S. 1; REP. IN PT., 9 EDW 7, C. 4 (WHEN AND WHERE NOTIFIED). S. 30 REP. IN PT., 9 EDW. 7. C.4 (WHEN AND WHERE NOTIFIED). S. 32 REP., 55 & 56 VICT., C. 14, S 4. S. 34 REP. IN PT., 9 EDW. 7, C. 4 (WHEN AND WHERE NOTIFIED). S. 35 REP., 55 & 56 VICT., C. 19 (S.L.R). S. 36 REP. IN PT., 55 & 56 VICT., C 19 (S.L.R.). SS. 37, 38 AM., 55 & 56 VICT., C. 14, S. 2. S. 42 EXT., 34 & 35 VICT., C. 34, S. 1; AND 55 & 56 VICT., C 14, S. 5. S. 43 EXT., 55 & 56 VICT., C 14, S 5 S 44 PARTLY SUPERSEDED. 55 & 56 VICT., C. 14, S. 1. S. 45 AM., 55 & 56 VICT., C 14. S. 1; REP. IN PT., 9 EDW. 7, C. 4 (WHEN AND WHERE NOTIFIED). S. 54 REP., 41 & 42 VICT., C. 79 (S.L.R.).]

(1)—S. 22.—The right to trial by jury can be taken away by the Code of Criminal Procedure. Such a provision cannot be said to be *ultra vires*, as contravening the terms of the proviso to s. 22, St. 24 and 25 Vic., C. 67 (Indian Councils Act), 1861. BARINDRA KUMAR GHOSE v. EMPEROR, **37 C. 467 = 14 C W. N. 1114 = 7 Ind. Cas. 359 = 11 Cr. L.J. 453.**

(2)—S. 22 —*See* LEGISLATURE, POWERS OF, 3 C 63, F.B. = 1 C L.R. 161, 4 C. 172 = 3 C.L.R. 197, P.C.

St. 24 & 25 Vict., C. 67 (The Indian Councils Act, 1861)—*concluded.*

(3)—*Ss.* 22, 24, 40, 43—*Indian and Colonial Legislature—Power of Viceregal Council and the Provincial Council to make laws affecting the prerogative of the Crown.*—An Indian or Colonial Legislature is not a delegate of the Imperial Legislature. Though restricted in the area of its powers, it is, within that area unrestricted. Since the passing of the Indian Councils Act, not only the Viceregal Council but also the Provincial Councils can, without obtaining the previous sanction of the Crown, make laws affecting the prerogatives of the Crown, when such prerogatives have no relation to any of the matters exempted from their respective legislative jurisdiction. Even if the imposition of a duty or tax upon Crown property be regarded as affecting the prerogative of the Crown, it is competent for the Provincial Legislature to impose such a duty or tax, which will be payable out of the current public revenue for purposes that make for the peace and good Government of the Presidency. BELL v. MUNICIPAL COMMISSIONERS FOR THE CITY OF MADRAS, **25 M. 457=12 M.L.J. 208=1 Weir 800.** [*R.*, 27 B. 424.]

(4)—Ss. 22, 42—*See* JURISDICTION OF CRIMINAL COURTS—GENERAL, 14 B.L.R. 106=22 W.R. Cr. 54.

(5)—S. 24—*See* No. 3, *supra.*

(6)—S. 40—*See* No. 3, *supra.*

(7)—S. 42—*See* No. 4, *supra.*

(8)—S. 43—*See* No. 3, *supra.*

St. 24 & 25 Vict., C. 100.

S. 47—*See* SENTENCE — WHIPPING, Rat. Un. Cr. C. 971=Cr. Rg. 971.

St. 24 & 25 Vict., C. 104 (The Indian High Courts Act. 1861).

[SHORT TITLE GIVEN, 59 & 60, VICT., C. 14, S. 1 REP., 55 & 56 VICT., C. 19 (S.L.R.). S. 3 REP., 41 & 42, VICT., C. 79 (S.L.R.). SS. 5, 6 REP. IN PT., 41 & 42, VICT., C. 79 (S.L R.), S. 8 REP. IN PT., 55 & 56. VICT., C. 19 (S L R.). S. 10 REP., 28 & 29 VICT., C. 15, S. 1, S. 17 REP. (U.K.), 56 & 57 VICT., C. 14 (S.L.R.); *spent.* S. 18 REP., 28 & 29 VICT., C. 15, S. 2.]

(1)—*Charter Act—Reference to Full Bench upon a point raised before prisoner is called upon to plead.*—The Judge presiding at the Sessions has no power, under the Charter Act, to refer to a Full Bench a point of law raised before the accused was called upon to plead. QUEEN-EMPRESS v. DOLEGOBIND DASS, **28 C. 211=5 C.W.N. 169.**

(2)—*See* APPEAL—ACTS, 2 B.H.C. 106.

(3)—*See* CERTIORARI, WRIT OF, 1912 M.W.N. 1012=23 M.L.J. 393=16 Ind. Cas. 755=13 Cr. L J. 723.

(4)—*See* COMPLAINT—WITHDRAWAL AND REVIVAL OF COMPLAINTS, 1 C.W.N. 49.

St. 24 & 25 Vict., C. 104 (The Indian High Courts Act, 1861)—*continued.*

(5)—S. 9—*See* LEGISLATURE, POWERS OF, 3 C. 63=1 C.L.R. 161, F.B.

(6)—S. 9—*See* No. 5, *supra.*

(7)—S. 13—*See* No. 5, *supra.*

(8)—Ss. 1, 9, 13, 14—*See* ACT XIV OF 1908, 13 C.W.N. 605.

(9)—*Ss.* 7, 16—*Power of Governor-General in Council or Governor in Council or Lieutenant-Governor to appoint an acting Judge of the High Court.*—The words "upon the happening of a vacancy in the office of any other Judge" in s. 7 of 24 and 25 Vict., c. 104, show clearly that the Judge there referred to must be a Judge appointed to his office by Her Majesty, and not a person appointed under the section to act as a Judge. A person appointed under s. 7 to act as a Judge does not hold the office of a Judge, nor does he hold the office of a Judge during Her Majesty's pleasure. If the power conferred by the section is to be exercised, it can only be exercised "upon," that is, within a reasonable time, which would mean a practicable time after the happening of the vacancy, and could not be held in suspense for several years and then be legally exercised; the power having once been exercised upon the happening of a vacancy in the office of a Judge, it could not again be exercised in relation to that particular vacancy. The exercise of the power after the lapse of two years from the happening of the vacancy is not an exercise of the power within a reasonable or practicable time. Where the appointment of an acting Judge of the High Court was held to be *ultra vires* under s. 7, because it was not made within a reasonable time, *held*, that, under the circumstances of the case, and owing to the fact that he had been exercising the powers of a Judge for more than one year it should be presumed that he was duly appointed to act as Judge of the High Court. QUEEN-EMPRESS v. GANGA RAM, **16 A. 36=A W.N. 1894, 39.** [*R.*, 15 C.L.J. 517=16 C.W.N. 1105=16 Ind. Cas. 257.]

(10)—S. 9—*See* ACT XX OF 1847, Ss. 3, 6, 9 C.W.N. 591=1 C.L.J. 278.

(11)—S. 14—*See* CHIEF JUSTICE, POWERS OF, 8 C. 63.

(12)—S. 14—*See* No. 5, *supra.*

(12-*a*)—Ss. 14, 15—Order passed by Revenue or Civil Court under s. 476, Crim. Pro. Code—Revision—Powers of High Court—*See* CRIM. PRO. CODE, 1898, ss. 476, 439, 17 C.L.J. 245=17 C.W.N. 647=9 Ind. Cas. 197=14 Cr. L.J. 197=40 C. 477, F.B.

(13)—*S.* 15—*Error of law—Mis-statement—High Court's powers of interference.*—The High Court will not, generally, interfere with orders of a lower Court under s. 15 of the Charter Act, upon the bare ground of an error of law. But where the lower Court is misled into committing an error by the mis-statement of one of the parties, the High Court will interfere. ROGHONUNDUN LALL v. MOHESH LALL, **3 C.L R. 137.**

St. 24 & 25 Vict., C. 104 (The Indian High Courts, Act, 1861)—*continued.*

(14)—*S. 15—Interference with order of sanction to prosecute, conditions for—Practice.*—Where, owing to the Courts below not having acted illegally or with material irregularity in the exercise of their jurisdiction within the meaning of s. 622, Crim. Pro. Code, in granting and upholding a sanction to prosecute for an offence under s. 199, Penal Code, the High Court might not have interfered, yet, if the matter to which the sanction relates had come before it on its merits in connection with another application in which the High Court should hold that the case was one in which a sanction for a criminal prosecution ought not to be granted, it might think fit to exercise its extraordinary power of superintendence conferred on it by s. 15, Charter Act. PALANIAPPA CHETTI v. ANNAMALAI CHETTI, **27 M. 223 = 2 Weir 208 = 14 M.L.J. 74 = 2 Weir 577.** [*R.*, 148 Cr. L.J. 529 = 2 M.L.T. 200 = 21 Ind. Cas. 129 = 1913 M.W.N. 728.]

(15)—*S. 15—Conviction by a Village Magistrate—Power of High Court.*—The High Court has powers, under s. 15 of the Charter Act, to set aside the conviction and sentence of a Village Magistrate. PALLI VENKADU v. LOCK SUPERINTENDENT OF PARAVALAI, **1 Weir 786 = 1 Weir 824.**

(16)—S. 15—*See* ACT IV OF 1877, s. 168, 7 C. 447.

(17)—S. 15—Refusal by Presidency Magistrate to grant such copies—Interference of High Court—*See* ACT IV OF 1877, s. 170, 8 C. 166 = 10 C.L.R. 190.

(18)—S. 15—*See* ACT XVIII OF 1879, s. 36, 21 A. 181 = A.W.N. 1899, 15 A.W.N. 1908, 279 = 6 A L J. 22 = 31 A. 59 = 9 Cr. L.J. 59 = 1 Ind. Cas. 143.

(19)—S. 15—*See* ACT XV OF 1903, ss. 3, 4, 15 C.W.N. 737 = 38 C. 547 = 10 Ind. Cas. 618 = 12 Cr. L.J. 322.

(20)—S. 15—Application to Presidency Magistrate by counter-petitioner to declare that the inclusion of the petitioner as a candidate for the Municipal election by the President of the Madras Corporation was illegal—Order of Presidency Magistrate allowing the application—Revision whether lies—*See* MAD. ACT III OF 1904, s. 413, 16 M.L.T. 128 = 27 M.L.J. 227 = 15 Cr. L J. 593 = 25 Ind. Cas. 345.

(21)—S. 15—*See* CRIM. PRO. CODE, 1898, s. 144, 2 Weir 94.

(22)—S. 15—Arbitrary and successive renewals of order under s. 144, Crim. Pro. Code—Powers of revision—*See* CRIM. PRO. CODE, 1898, s. 144, 25 M L.J. 370 = 14 Cr L.J. 589 = 21 Ind. Cas. 381.

(23)—S. 15—*See* CRIM. PRO. CODE, 1898, s. 144, 16 C. 80.

(24)—S. 15—Crim. Pro. Code, ss 145, 144—Possession given to a person with consent of parties—Nature of—Order under s. 145, Crim. Pro. Code—High Court's power to interfere—

St. 24 & 25 Vict. C 104 (The Indian High Courts Act, 1861)—*concluded.*

See CRIM. PRO. CODE, 1898, ss. 144, 145, 26 M.L.J. 208 = 1914 M.W.N. 352 = 15 Cr. L.J. 509 = 24 Ind. Cas. 597.

(25)—S. 15—*See* CRIM. PRO. CODE, 1898, ss. 144, 426, 439, 440, 8 C. 580 = 11 C.L.R. 414.

(26)—S. 15—*See* CRIM. PRO. CODE, 1898, s. 145, 28 C. 416, 30 C 155 = 6 C.W.N. 737, 33 C. 33 = 10 C.W.N. 257 = 2 C.L.J. 271 = 2 Cr. L.J. 270, F.B., 32 C. 1093 = 2 C.L.J. 280 = 2 Cr. L. J. 679, 33 C. 68 = 9 C.W.N. 1046 = 2 C.L.J. 241 = 2 Cr. L.J. 618, 6 C.W.N. 737 = 30 C. 155, F. B., 33 C. 24 = 11 Cr. L.J. 530 = 7 Ind. Cas. 798.

(27)—S. 15—*See* CRIM. PRO. CODE, 1898, ss. 145, 355, 356, 30 C. 508 = 7 C.W.N. 404.

(28)—S. 15—*See* CRIM. PRO. CODE, 1898, ss. 145, 435, 26 A. 144 = A.W.N. 1903, 212.

(29)—S. 15—*See* CRIM. PRO. CODE, 1898, ss. 145, 526, 435, 439, 28 C. 709 = 5 C.W.N. 749.

(30)—S. 15—*See* CRIM. PRO. CODE, 1898, ss. 202, 203, 437, 439, 33 C. 1282 = 5 Cr.L J. 83.

(31)—S. 15—Dismissal of complaint, grounds for—High Court—Power to interfere—*See* CRIM. PRO. CODE, 1898, s. 203, 25 M.L.J. 510.

(32)—S. 15—*See* CRIM. PRO. CODE, 1898, ss. 423, 427, 435, 439, 27 C. 126 = 3 C.W.N 601.

(33)—S. 15—Power to transfer cases from file of Presy. Magistrate—*See* CRIM. PRO. CODE, 1898, s. 526, 1911 2 M W.N. 50 = 11 Ind. Cas. 795 = 12 Cr. L.J. 451 = 10 M.L.T. 518.

(34)—S. 15—*See* DISCHARGE OF ACCUSED, 6 C.L.J. 705 = 6 Cr. L.J. 400.

(35)—S. 15—*See* DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 6 A.L.J. 113 = 31 A. 150 = 9 Cr. L.J. 382 = 1 Ind. Cas. 762, 2 C.L J. 241 = 2 Cr L.J. 618 = 33 C. 68 = 9 C.W.N. 1046, F.B.

(36)—S. 15—*See* HIGH COURT, JURISDICTION OF—GENERAL, 26 C 188 = 3 C.W.N. 49.

(37)—S. 15—*See* HIGH COURT, JURISDICTION OF—REVISIONAL POWERS OF HIGH COURT, 2 C. 293, F.B. = 3 C. 573 = 1 C L.R. 352, 4 M.L T. 186, 12 C.W.N. 678 = 7 Cr.L.J 499.

(38)—S. 15—*See* HIGH COURT, SUPERINTENDENCE AND POWERS OF, 19 C. 127.

(39)—S. 15—*See* NUISANCE UNDER CRIM. PRO. CODE, 3 M. 354 = 2 Weir 90.

(40)—S. 15—*See* SUPERINTENDENCE OF HIGH COURT, 7 W.R 430, 13 W R. 393, 24 W.R. Cr. 30, 26 C. 852 = 3 C.W N. 539.

(41)—S. 15—*See* No. 12-*a*, *supra*.

(42)—S. 16—*See* No. 6, *supra*.

(43)—S. 28—*See* CRIM PRO. CODE (1898), s. 307, 29 C. 286 = 6 C.W.N. 254.

St. 27 & 28, Vic., C. 47.

See SENTENCE—WHIPPING, Rat. Un. Cr. C. 971.

St. 28 & 29, Vict., C. 15 (High Courts Act, 1865).

[SHORT TITLE GIVEN, ST. 59 & 60 VICT. C. 14. S. 1, REP., ST. 56 & 57 VICT., C. 14 (S.L.R.) SS. 2, 5 REP., ST. 41 & 42 VICT., C. 79 (S.L.R.).]

(1)—*European British subject—Jurisdiction of High Court.*—Under ss. 28 and 29 Vict. c. 15 and Notification 178-J of 23rd September 1874, the High Court of Bombay has jurisdiction to decide whether an accused, a European British subject, residing at the Residency Bazaars, Hyderabad, is a European British subject, and also to decide whether the accused has waived his privilege to be dealt with as such, and what is the legal effect of such waiver if any. *In re* GANNON, **5 Bom. L.R. 869.**

St. 28 and 29, Vic., C., 18.

See PENAL CODE, s. 124-A, 16 C.W.N. 812 = 39 C. 606 = 13 Cr. L.J. 289 = 14 Ind. Cas. 753.

St. 28 and 29 Vic., C. 116.

See HIGH COURT, JURISDICTION OF—GENERAL, 3 B. 334.

St. 29 and 30 Vic., C. 87.

See HIGH COURT, JURISDICTION OF—GENERAL, 3 B. 334.

St. 30 and 31 Vic., C. 124.

S. 11—*See* ACT IV OF 1880, 14 B. 207.

St. 33, Vict., C 14 (Naturalisation Act, 1870).

See JURISDICTION OF CRIMINAL COURTS —GENERAL, 9 P.R. 1893, Cr.

St. 33 and 34, Vict., C. 52 (The Extradition Act, 1870).

[AM., 36 AND 37 VICT., C. 60, AND 58 AND 59 VICT., C. 33, S. 97 REP. IN PT., 46 AND 47 VICT., C. 39 (S.L.R.). FIRST SCH. EXT., 36 AND 37 VICT., C. 60. S. 8, 36 AND 37 VICT., C. 88, S. 27, AND 6 EDW. 7, C. 15, S. 1. THIRD SCH. REP. IN PT., (U.K.), 56 AND 57 VICT., C. 54 (S.L.R.). AS TO CONSTRUCTION OF REFERENCES IN S. 3, SEE ACT 15 OF 1903, S. 6.]

How far applicable to India—*See* HABEAS CORPUS, WRIT OF, 15 C.W.N. 1053 = 14 C.L.J. 275 = 10 Cr. L.J. 505.

St. 37 and 38, Vic., C. 27 (Colonial Courts Jurisdiction Act, 1874).

(1)—*See* ACT IV OF 1880, 14 B. 227.

(2)—*See* HIGH SEAS, OFFENCES COMMITTED IN, 21 C. 782.

(3)—S. 3—*See* PENAL CODE, s. 4, 16 C.W.N. 471 = 39 C. 487 = 14 Ind. Cas. 598 = 13 Cr. L. J. 246.

St. 41, Vic., C. 10 (Mutiny).

(1)—*S. 101—Offence by British soldier—Jurisdiction of Civil Courts*—S. 101 of the Mutiny Act does not deprive the Civil (as distinguished from Military) Courts of jurisdiction over British soldiers committing offences within the limits of those Courts, nor does it render the exercise of their jurisdiction dependent upon the Commander-in-Chief's sanction. The sanction is merely permissive of a military trial being held. EMPRESS v. MAGUIRE, **5 C. 124 = 4 C.L.R. 432.**

St. 43 and 44, Vic., C. 16.

See ACT I OF 1859, s. 83, cls. 1, 2, 12 C. 438.

St. 44 and 45, Vict. C. 49 (Fugitive Offenders Act).

(1)—*S.* 13—s. 19 (*c*), *Act* XV *of* 1903—*Powers of Magistrates.*—It is only a first-class Magistrate or any Magistrate empowered by the Local Government in that behalf, who has been authorised by s. 19, cl. (*c*) of Act XV of 1903 to enforce the provisions of the Fugitive Offenders Act. So where a warrant was issued under s. 13 of the Fugitive Offenders Act and a Sub-Magistrate enforced the warrant without making any endorsement thereon, *held* that the arrest and the subsequent proceedings were not in accordance with law. SYED KADIR HUSSAIN v. EMPEROR, **8 M.L.T. 352 = 8 Ind. Cas. 301 = 11 Cr. L.J. 622 = 1910 M.W.N. 568.**

St. 44 and 45 Vict., C. 58 (The Army Act).

[REP. IN PT., AND AM., BY THE ANNUAL ARMY ACTS. Ss. 54, 57, 60, 65, 67, 73 REP. IN PT., 56 AND 57 VICT., C. 62, S. 2, S. 113 (2) (*a*) AM. 45 AND 46 VICT., C. 50, 242 (3). S. 115 AM., 51 AND 52 VICT., C. 31, S. 5. S. 130 (5) REP. IN PT., 47 AND 48 VICT., C. 64, S. 17. S. 163 (*f*) REP. 45 AND 46 VICT., C. 48, S. 29. SS. 172, 179 183; REP. IN PT., 56 AND 57 VICT. C. 62, S. 2. S. 174 REP. (*e*). 2 EDW. 7 C. 28. S. 190 (9) EXPLD. 45 AND 46 VICT., C. 48, S 28. S. 190 (10) (11) REP. 45 AND 46 VICT. C. 48. S. 29. SS. 191 TO 193 REP. (U.K) 56 AND 57 VICT. C. 54 (S.L.R.) *spent*, SCH V. REP. (U.K.) 56 AND 57 VICT., C. 54 (S.L.R.) *spent*. APPLIED, WITH AMENDMENTS, 7 EDW. 7. C. 9. RATE OF EXCHANGE DECLARED ACT 19 OF 1899, S. 2, AS AM. BY ACT 7 OF 1900, S. 1. SS. 40, 41 AND SCH. REP. (U.K.) 57 AND 58 VICT., C. 56 (S. L.R.); *spent*. AS TO APPLICATION TO B. I. SEE ACT 15 OF 1903, S. 19.]

(1)—*S. 145—Applicability of the section to Indian forces.*—S. 145 of the Army Act does not apply to soldiers of Her Majesty's Indian forces, inasmuch as there are expressions in the third clause of the section, which are inconsistent with the prescribed interpretation of the term "regular force," under s. 190 of the Act, although, there is nothing in cls. 1 and 2 which prohibits the application of the section to soldiers of Her Majesty's Indian forces. NATHUD BI v. JAFFER HUSAIN, **8 M. 365 = 1 Weir. 667.** [*R.*, 10 M. 108 = 1 Weir 667.]

(2)—*S. 156—Taking pawn of a medal from a sepoy.*—S. 156 of the Army Act which makes a person taking a pawn of a medal from a soldier liable to punishment applies also to the case of any person taking in pawn a military decoration from a sepoy. QUEEN EMPRESS v. NARAYANASWAMI, **10 M. 108 = 1 Weir. 668.**

St. 53 and 54 Vict., C. 37 (Foreign Jurisdiction Act, 1890).

[SS. 18, 19, SCH. I REP. IN PT., SCH. III REP. (U. K.) ST. 8 EDW. 7, C. 49 (S.L.R.)].

St. 53 & 54 Vict., C. 37 (Foreign Jurisdiction Act, 1890)—*continued.*

St. 53 & 54 Vict., C. 37 (Foreign Jurisdiction Act, 1890)—*continued.*

(1)--*China and Corea Order in-Council*, 1904--*Arts.* III, V, *cls.* (1), (3), (4), XXXV (2), *Order-in-Council — Ex-territorial jurisdiction over foreigners—"British protected person," jurisdiction over—Jurisdiction of Supreme Court of China and Corea to try Afghan soldier enlisted in Indian army for murder committed at Canton — Consent of Ameer to exercise of jurisdiction, if to be implied from public recruitment of Afghans to the Indian army—Proof of exercise of ex-territorial jurisdiction in China by oral evidence—Admissibility—English rules of evidence how far binding on Supreme Court at Hong-Kong—Statement by accused in answer to question by Commanding Officer when in custody, if admissible—Substance and not mere formalities of law, to be complied with—Misdirection to jury on matter of comparatively small importance, if a ground for reversal Privy Council when will interfere with order in criminal case—Violation of natural justice.*—The specified conditions under which only, according to cl. (3) to Art. V of the China and Corea Order-in-Council, 1904, the Supreme Court of China and Corea has civil and criminal jurisdiction over a "foreigner "as such, have no application to "British protected persons" who, even when in fact natural born foreigners, are "British subjects" as defined by Art. III and so subject to the jurisdiction of that Court under cl. (1) to Art. V. The accused, a natural-born subject of the Ameer of Afghanistan, was duly enlisted and enrolled in a British Indian regiment, took the oath of allegiance to His Majesty and made a solemn declaration undertaking among other things to go wherever ordered by land or sea, and whilst serving with the detachment of that regiment which was encamped on Shameen Island at Canton as a guard of the concession, was alleged to have murdered a Subadar of that regiment. The Acting Consul at Canton, who also served as Judge under Art. XIX of the Order-in-Council, gave evidence (which was uncontradicted) "that the place of murder was within his jurisdiction and that the jurisdiction exercised at Canton on Shameen was the same ex territorial jurisdiction as was exercised throughout China by the Supreme Court, that Indian soldiers enjoy His Majesty's protection in Shameen, Canton, and the Courts exercise jurisdiction over them, and that consular protection extends to trying persons and protecting them if they are improperly arrested." *Held*—that S. 4 (1) of the Foreign Jurisdiction Act, 1890, did not make this evidence inadmissible to prove that, by "usage, sufferance or other lawful means," His Majesty has jurisdiction at Canton. That the accused being, during his service in the Indian Army, subject to Military Law was entitled to His Majesty's protection and was a "British protected person" within Art. III. When the Crown lawfully enlists in its forces aliens along with British subjects and requires of them the same service, loyalty and allegiance as are the duties of British enlisted subjects, it extends to them the same protection in a foreign country where all are serving together in the armed forces of His Majesty. Protection enjoyed by virtue of the Foreign Jurisdiction Act, 1890, "or otherwise," as mentioned in Art. III, includes that derived from other statutes, Imperial or Indian applicable to the person in question. *Quære.*—Whether the Court could take judicial notice of the political change in China in considering the question of jurisdiction. *Quære.*—Whether it may not be reasonably inferred from the practice (which is a matter of public knowledge) of enlisting native Afghans in the Indian army whereby they are *de facto* brought under the authority of His Majesty, that the Ameer does in fact consent in such enlistment with its consequences, so as to bring such enlisted Afghans within the terms of cl. (4), Art. V, *i.e.*, "foreigners with respect to whom any State, King, Chief of Government whose subjects they are, consents to the exercise of power or authority by His Majesty." The Officer commanding the detachment, who spoke to the accused shortly after the occurrence, deposed to having asked the accused why he had done such a senseless act—not thereby meaning to convey a threat or inducement and to the accused having replied that he was being abused by the deceased three or four days and that without a doubt he had killed him. The Judicial Committee found that the words of the officer though formally a question were really an exclamation of dismay: *Held*—That the prosecution having by the evidence of this officer proved to the satisfaction of the trial Judge that the statement of the accused was voluntary in the sense that it had not been obtained from him either by fear of prejudice or hope of advantage exercised or held out by a person in authority, its admission in evidence was not in breach of the long established rule of English Criminal law which makes statements obtained from the accused by pressure of authority and fear of consequences inadmissible in evidence and which casts on the prosecution the *onus* of proving that the statement relied on was voluntary. On the question whether the statement should not have been excluded from evidence on the ground of its having been made by a person in custody in answer to a question put by a person having authority over him and having custody of him through his subordinates. *Held, on a review of English authorities,* that the English law on the point was still unsettled, some Judges being of opinion that such a statement is admissible in evidence without exception, whilst others treat its exclusion from evidence as a matter for the Judge's discretion depending largely on his view of the impropriety of the questioner's conduct and the general circumstances of the case. That the trial Judge in admitting this evidence decided in accordance with what at any rate was a "probable opinion" of the present law if it was not actually the better opinion, and his so doing was not a violation of "the principles of natural justice" calling for His Majesty's

St. 53 & 54 Vict., C. 37 (Foreign Jurisdiction Act, 1890)—*continued.*

interference. That even if the evidence was admissible in the exercise of the trial Judge's discretion, that discretion in the present case was not shown to have been exercised improperly. With reference to Art. XXXV (2) of the China and Corea Order-in-Council which provides that, subject to the provision of that order, criminal jurisdiction under the Order shall, as far as circumstances admit, be exercised on the principle of and in conformity with English law for the time being. *Held*—that, in the absence of any provision in the Order on the point modifying or excluding the principles and practice of the English law, the question of the admissibility of the statement of the accused might justly be treated as if English criminal law and practice applied to the criminal jurisdiction of the Supreme Court at Hong-Kong, subject, however, to the following reservations: (1) That such law and practice are not to be considered as in all respects and particulars binding on that Court. (2) That regard must be had to the necessary distinction that must be drawn between the criminal procedure of a European country whose jurisprudence has a defined history extending over many centuries and that applicable to a British possession in the Far East, where a mixed and fluctuating population is subject to the administration of Law by European Judges whose duty it is to have regard alike to the principle of British justice and to the necessities of local order; (3) That the words "so far as circumstances admit" may well (i) refer to absence of facilities at Hong-Kong for formal proof of Statutes passed and administrative orders made in various parts of His Majesty's dominions, and (ii) be intended to cover some necessary departures from the formalities only as distinguished from the essentials of English justice, when as in the present case a force detailed for the protection of European residents beyond His Majesty's dominions in the midst of a population often turbulent and at the particular time disturbed, was itself disturbed by such a crime as the murder of a Subadar by a Native Private in the ranks. That, in view of the position which the Privy Council held in regard to criminal proceedings, the Judicial Committee did not in this case decide with the rule of English law should be with regard to the admissibility in evidence of statements made by an accused person in answer to a question put by a person in authority in whose custody he is; that should be left to a Court which exercises the revising functions of a general Court of criminal appeal (40 I.A. 241. *R.*) The Privy Council cannot in a criminal matter allow an appeal on grounds that would not have sufficed for granting leave to appeal. Misdirection as such or irregularity as such will not suffice. There must be something which in the particular case deprives the accused of the substance of fair trial and the protection of the law, or which, in general tends to divert the due and orderly administration of law into a new course which may be drawn into an evil precedent in future ((1893) A.C. 346, 16 L.J. N.S. 742, *F.*; 10 A.C. 675, (1885) 12 A.C. 459 (1897), *R.*)—The jurisdiction of the Privy Council in appeals in criminal matters involves a general consideration of the evidence and of the circumstances of the case in order to place the irregularities complained of, if substantiated, in their proper relation to the whole matter. *Held*, upon a review of the evidence, that the preponderance of unquestioned over the questioned evidence (the accused's statement to the commanding officer) was so great, that it was impossible, at any rate highly improbable, that the jury was substantially influenced by that evidence. Therefore, the fact that the Judge left the objectionable evidence for the consideration of the jury without any warning to disregard it did not justify the conclusion that there was any miscarriage of justice, substantial, grave or otherwise. *Semble*:—Whether it is highly improbable that evidence improperly admitted can have had any influence on the verdict of the jury, the appellate Court will be justified in refusing to interfere. **Ibrahim v. King, 18 C.W.N. 705 = 15 Cr. L.J. 326 = 23 Ind. Cas. 678, P.C.** (1894, A.C. 57, *Cons.*)

St. 53 & 54 Vict., C. 37 (Foreign Jurisdiction Act, 1890)—*concluded.*

St. 57 & 58 Vict. C. 60 (The Merchant Shipping Act, 1894.)

[SUPPLEMENTED, 6 EDW. 7, C. 48. S. 21 (1) AM., 6 EDW. 7, C. 48, S. 52 (1). S. 48 (2) REP. AND REPLACED, 6 EDW. 7, C. 48, SS. 85, 53. S. 78 AM., 7 EDW. 7, C. 52, S. 1. S. 79 AM., 6 EDW. 7, C. 48, S. 54 (1). S. 84 (1) AM., 6 EDW. 7, C. 48, S. 55. PT. II (SS. 92 TO 96) EXT. AND SUPPLEMENTED, 6 EDW. 7, C. 48, SS. 29, 49. S. 92 (1) (*b*) REP. AND REPLACED, 6 EDW. 7, C. 48, SS.85, 56. S. 126 AM., 6 EDW. 7, C. 48, S. 58 (1). SS. 132, 133 EXT. 6 EDW. 7, C. 48, S. 59 (2). S. 136 RESTRICTED, 6 EDW. 7, C. 48. S. 60. S. 141 SUPPLEMENTED, 6 EDW. 7, C. 48. S. 61, SS. 144 AND 186 TO 193 REP., 6 EDW. 7. C. 48, S. 85 AND SCH. 2. S. 174 (2), (3) APPLIED, 6 EDW. 7, C. 58, S. 7 (g). SS. 186 TO 193, REP., 6 EDW. 7, C. 48, S. 85. S. 194 REP., 61 & 62 VICT., C. 44. S. 199 EXT. AND SUPPLEMENTED, 6 EDW. 7, C. 48, S. 25 (2), (3). SS. 207, 208 REP., 6 EDW. 7, C.48, S. 85. S. 210 (1) AM., 6 EDW. 7, C. 48, S.64 (1). S. 235 REP., 6 EDW. 7, C. 48, S. 85. S. 244 (1) AM., 6 EDW. 7, C. 48, S. 74 (2). S 246 (2) (3), REP. IN PT., 6 EDW. 7, C. 48, S. 85., S. 267 EXT. AND REP. IN PT., 6 EDW. 7, C. 48, SS. 13 AND 85. S. 268 (3) REP. AND REPLACED, 6 EDW. 7, C. 48, SS. 85, 14. S 272 AM., 6 EDW. 7, C. 48, S. 75(3). S. 283 EXT., 6, 7. C. 48, S. 22. SS. 291, 299 REP., 6 EDW 7, C. 48. S. 85. SS. 309, 310 EXT., 7, C. 48, S, 20 (2). S. 310 (3) EXT., 6 EDW. 7, C. 48. S. 20 (3). S. 328 (1) REP. AND REPLACED, 6 EDW. 7, C. S. 48, SS 85, 19. S. 353 REP. AND REPLACED, 6 EDW. 7, C. 48. SS. 85, 24. SS. 369 TO 417 ARE INAPPLICABLE TO B.I. SS. 427 TO 431 EXT., 6 EDW., 7, C. 48, S. 4. SS. 437, 438 RESTRICTED, 6 EDW. 7. C. 48, S. 7. SS. 437 TO 443 EXT., 6 EDW, 7, C. 48, S. 1. S. 440 AM., 6 EDW. 7, C. 48, S. 8. S. 443 (2) EXT., 3 EDW, 7, C. 48, S. 8. (4)

St. 57 & 58 Vict., C. 60 (The Merchant Shipping Act, 1894)—*concluded.*

S. 451 REP., 6 EDW. 7, C. 48, S. 85, SS. 452, 454, 455 EXT., 6 EDW. 7, C. 48. S. 3, S. 459 AM., 60 & 61 VICT., C. 59; SUPPLEMENTED, 62 & 63 VICT., C. 23, S. 4. S 462 AM., 60 & 61 VICT., C. 59; EXT. AND REP. IN PT, 6 EDW. 7, C. 48, SS. 2, 85, S. 483 (2) AM., 6 EDW. 7, C. 48, S. 68 (2). SS. 502 TO 509 EXT., AND S. 508 REP. IN PT., 61 & 62 VICT. C. 14, SS. 1, 2, SS 502 TO 509 EXT., 6 EDW. 7 C. 48, S. 71. S. 503 EXT. AND S. 504 APPLIED, 63 & 64 VICT., C. 32, SS. 1, 2. S. 503 APPLIED, 6 EDW. 7, C. 58, S. 7 (*f*). S. 525 (2) (*a*) AM., AND REP., IN PT., 6 EDW. 7, C. 48, SS. 69, 85. S. 518 EXT., 6 EDW. 7, C. 48, S. 72, S. 525 (2) (*c*) REP. IN PT, (U.K.), 8 EDW 7, C. 49 (S.L.R.). S. 531 AM., 61 & 62 VICT., C. 44. SS. 572 TO 669 ARE INAPPLICABLE TO B.I. S. 673 REP., 61 & 62 VICT., C. 44. S. 676 AM., 61 & 62 VICT., C. 44. S. 676 (1) (*g*) REP. (U.K.), 8 EDW. 7, C. 49 (S L.R.) S. 677 AM., 61 & 62 VICT., C. 44. S. 678 REP. 61 & 62 VICT., C. 44. S. 679 AM, 61 & 62 VICT., C. 44. SS. 691, 692, 695 APPLIED, 6 EDW. 7, C. 58, SS. 7 (*c*), 11 (3). SS. 702 TO 710 ARE INAPPLICABLE TO B.I. S. 724 EXT., 6 EDW. 7, C. 48, S. 75 (1), (4), S. 745 (1) REP. IN PT. S 748 REP. (U.K.) 8 EDW. 7. C. 49 (S.L.R.). SCHS. X TO XIV REP. PROSPECTIVELY, 6 EDW. 7, C. 48, S. 85 AND SEE S. 17. SCH. XXI IS INAPPLICABLE TO B I SCH. XXII REP. (U.K.) 8 EDW. 7, C. 49 (S.L.R.).]

S. 684 — Applicability—*See* PENAL CODE, s. 4, 16 C.W.N. 471 = 39 C. 487 = 14 Ind. Cas. 598 = 13 Cr. L.J. 246.

St. 59 & 60 Vict., C. 16 (Agricultural Rates).

See MAD. ACT IV OF 1884, s. 63 (3), 25 M. 627 = 1 Weir 727 = 12 M L.J. 393.

Statutes, Construction of.

(1)—*Language of statute to be plainly construed.*—In interpreting a statute, the Court is bound to give the language of it, its plain and obvious meaning, without any assumption as to its having probably been the intention to leave unaltered the law as it existed before. *In the matter of* TULSI BEWA, **1 C.W.N. 642** (23 C. 563, P.C., *R.*)

(2)—*Language of Statute plain—Court cannot read into statute language according with its view.*—Where the language of a Statute is plain and unambiguous, a Court cannot look at extraneous matters and read other language into the Statute, so as to give it a meaning which the Court believes the Legislature intended to give. KING-EMPEROR v. IBRAHIM KHAN, **7 A.L J. 897 = 33 A. 36 = 11 Cr. L.J. 442 = 7 Ind. Cas. 186.** [*R.*, 16 C.W.N. 600 = 13 Cr. L.J. 506 = 15 Ind. Cas. 650]

(3)—*Meaning of the words occurring more than once in the same Act.*—It is an ordinary canon of construction that a word, which occurs, more than once in the same Act, must be given the same meaning throughout the Act, unless some definition in the Act or the context shows that the Legislature used the word in different senses. EMPEROR v. MUKUNDA, **4 N.L.R. 78 = 8 Cr. L.J. 18.**

Statutes, Construction of—*continued.*

(4)—*Judge not to go beyond letter of Act.*—The essence of a Code is to be exhaustive on the matters, in respect of which it declares the law, and it is not in the province of a Judge to disregard or go outside the letter of the enactment according to its true construction. THOMAS v. EMPEROR, **29 M. 558 = 5 Cr. L.J. 133.**

(5)—The duty of a Court is not to make the Law reasonable, but to expound it as it stands, according to the real sense of the words. RUSTAM v. KING-EMPEROR, **7 A.L.J. 468 = 6 Ind. Cas. 101 = 11 Cr. L J. 235.**

(6)—*Meaning of words.*— In construing a Statute, the Court must give to every word used in a clause its proper meaning, and should not treat any word as superfluous, unless there is something in the subject-matter which would make it absurd or unreasonable to follow that course. BIJOYENDRA LALL MITTER v. EMPEROR, **7 C.W.N. 883.**

(7)—*Meaning of words in an Act.*—It is a primary rule of interpretation that a word having a popular meaning ought to be construed in that sense. There is one exception to this rule, *viz.*, unless there is something to the contrary in the context, words of known legal import are to be considered as having been used in their technical sense, when the law has attached that sense to them. EMPEROR v. RAMACHANDRA BHASKAR MANTRI, **12 Bom. L R. 669 = 34 B. 593 = 7 Ind. Cas. 935 = 11 Cr. L.J. 544.**

(8)—*Meaning of words in an Act.*—In the case of a statute, where its ordinary meaning and grammatical construction leads to a manifest contradiction of the apparent purpose of the enactment, a construction may be put upon it which modifies the meaning of the words. MAHOMED JEWA MOTELLA v. H. S. WILSON, **12 Cr. L J. 246 = 10 Ind. Cas. 787.**

(9)— *Construction of words.*—The Indian Companies Act cannot be properly resorted to for determining the meaning of words in the Municipal Act, as the two Acts are not in *pari materia.* MYLAPORE HINDU PERMANENT FUND v. CORPORATION OF MADRAS, **3 M.L.T. 400 = 18 M.L.J. 349 = 31 M. 408.**

(10)—*Definition—Means — Includes.*—When a definition is intended to be exhaustive, the Legislature, as a rule, uses the word " means," and not the word " includes." QUEEN-EMPRESS v. NARPAT SINGH, **A.W.N. 1901, 10.**

(11)—*Positive direction includes its negative.*—When a statute directs anything to be done in a particular way, that includes in itself a negative that it shall not be done otherwise. *In the matter of the petition of* MAHA DAJI SADASIV TILAK, **11 B. 373 = Rat. Un. Cr. C. 320.**

(12)—*Bill in Legislative Council, debate on, if guide in construction of statutes.*—It is not regular for a Magistrate to allow his decision

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to be guided by anything that appears in some proposed Bill, that has not become law. RAUNAK HUSAIN v. HARBANE SINGH, **3 A. 283.**

(13)—*Construction of Act—Proceedings of the Legislative Council.*—In construing a section of an Act, reference may be made to the proceedings of the Legislative Council in passing the Act. QUEEN EMPRESS v. KARTICK CHUNDER DAS, **14 C. 721.** [*Diss.*, 14 A. 145; *F.*, 17 C. 852. 19 C. 544, F.B., 21 C. 732, 9 C.P.L.R 65]

(14)—*Reference to proceedings of Legislature*—It is not competent to refer to the proceedings of the Legislature as legitimate aids to the construction of a law. *Per Piggot, J.* (*Prinsep and Macpherson, JJ., concurring*). QUEEN-EMPRESS v. SRI CHURN CHUNGO, **22 C. 1017, F.B.** (22 C 788=22 I.A. 107, P.C., *F.*)

(15)—*Acts, construction of—Reference to proceedings of Legislature.*—It is inadmissible to take as aids in the construing of an Act, the proceedings in the Legislative Council which resulted in the passing of that Act. QUEEN-EMPRESS v. BAL GANGADHAR TILAK, **22 B. 112.**

(16)—*Construction of Penal Code—Reference to report of Indian Law Commissioners.*—In construing the Penal Code and ascertaining the intention of the Legislature, reference may be made to the notes to the Penal Code prepared by the Indian Law Commissioners. ROMESH CHUNDER SANNYAL v. HIRU MONDAL, **17 C. 852.** (14 C. 721, *F.*) [*Diss.*, 14 A. 145; *R.*, 9 C.P.L R. 65]

(17)—*Interpretation of statute—Reference to previous history of the law not proper.*—In dealing with the interpretation of an Act intended to codify a particular branch of the law, the proper course is, in the first instance, to examine the language of the statute and ask what is its natural meaning uninfluenced by any considerations derived from the previous state of the law, and not to start with an inquiry about how the law previously stood. SARAT CHANDRA SHAH CHOWDHRY v. EMPEROR, **7 C.W.N. 301.** (L.R. Cr. C. 107 (1891), *F.*)

(18)—*Intention of Legislature.*—The will or intention of the Legislature must be gathered from the grammatical meaning of the words used, and this rule especially prevails in the construction of penal statutes; but it is always qualified by the presumption that exists against the Legislature having intended injustice or absurdity. QUEEN-EMPRESS v. MAHADA, **Rat. Un. Cr. C.** 658=Cr. Rg. 23 of 1893.

(19)—*Clue to intention of Legislature.*—In order to find out the intention of the legislature in enacting a particular provision in a statute, it is a canon of interpretation that the Court must have regard to the language of the whole section and not confine itself to its words detached from the whole of the context. It is a rule of construction that in interpreting a section which is ambiguous, the Court may look to the state of the law as it has existed before the statute containing the section was passed. BHIKAJI MANECKJI v. MANECKJI MANCHERJI, **9 Bom. L.R. 359=5 Cr. L.J. 334.** [*R.*, 14 Cr. L.J. 303=19 Ind. Cas. 959=6 S.L.R. 208.]

(20)—*Rules of construction of statute—Intention of the legislature.*—It is an elementary rule of construction that a thing, which is within the letter of a statute, is not within the statute, unless it be also within the meaning of the Legislature. To ascertain such meaning is sometimes a task of difficulty. The primary canon of construction is, that the Legislature must be intended to mean what it has plainly expressed, and that when the words admit of but one meaning, a Court is not at liberty to speculate on the intention or to construe an Act according to its own notions of what ought to have been enacted. But there are many cases in which, in order to avoid injustice or absurdity, words of general import have been restricted to particular meanings. QUEEN-EMPRESS v. BALAKRISHNA VITHAL, **17 B. 573.**

(21)—*Marginal note to section.*—Marginal note to a section is not part of the section. SVAYAMBU AIYAR v. MUNICIPAL COUNCIL OF NEGAPATAM, **1 M.L J. 37.**

(22)—*Marginal note.*—It is extremely unsafe to trust to a marginal note as giving the full purport of the section to which it relates. EMPRESS v. SHEOLALSING, **6 C P.L.R. 31, Cr.**

(23)—*Marginal notes to sections.*—Marginal notes to sections are not part of the enactment. DUKHI MULLAH v. HALVAY, **23 C. 55.** [*Diss.*, 3 O.C. 120; *F.*, 28 B 129, 25 C. 858, *R.*, 7 C. W.N. 883, 16 C.P.L R. 145.]

(24)—*Marginal note.*—The marginal note to a rule which is unambiguously expressed cannot be allowed to vary the clear grammatical meaning of the rule QUEEN-EMPRESS v. MAHOMED AYOOB, **2 Bom. L.R. 918.**

(25)—*Marginal notes.*—Marginal notes to sections do not form part of an enactment, and cannot be referred to for the purpose of construing the section. PUNARDEO NARAIN SINGH v. RAM SARUP ROY, **25 C. 858=2 C.W N. 577.** (23 C. 55, *F.*) [*R.*, 28 B. 129.]

(26)—*Marginal notes, utility of.*—The marginal note to a section should not influence the decision of a Court, as it is no part of the Act. BIJOYENDRA LALL MITTER v. EMPEROR, **7 C W.N 883**

(27)—*Proviso to section — Function.*—The office of a proviso is either to except something from the enacting clause, or to qualify or restrain its generality or to exclude some possible ground of mis-interpretation of its extent. REG v. VYANKATSWAMI, **2 B H.C. 106.**

(28)—*Preamble—Scope of preamble.*—Where the language of the enacting sections of a statute

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is clear, the terms of a preamble cannot be called in aid to restrict their operation or to cut them down. The purpose for which a preamble to a statute is framed is to indicate what in general terms was the object of the Legislature in passing the Act, but it may well happen that these general terms will not indicate or cover all the mischief which in the enacting portion of the Act itself is found to be provided for. QUEEN-EMPRESS v. INDRAJIT, **11 A. 262 = A.W.N. 1889, 85.** [*R.*, 26 B. 757, 16 C.P.L.R. 99.]

(29)—*Saving clause, scope of.*—A saving clause cannot properly be looked at for the purpose of extending an enactment, nor can it give a new or different effect to the previous sections of the enactment. QUEEN-EMPRESS v. SITHARAM VITHAL, **11 B. 657.**

(30) — *Interpretation of statutes.* —Words importing a doubtful or ambiguous meaning must be construed strictly and in favour of the subject, that is to say, that unless the meaning of the Legislature is perfectly clear, no penalties are to be imposed upon the subjects of the Crown nor are their liberties to be restricted. The operation of words of a general significance is restrained when they follow closely upon words of a limited meaning, upon words which refer to a particular class of things or persons, or which necessarily exclude such matters as are of a higher dignity. In all these cases general words are confined to things and persons *ejusdem generis* with those enumerated or of inferior quality. When words importing a popular meaning are employed in a statute, they ought to be construed in such a sense, unless the Legislature has defined such words in any other sense.—*Per Mahmood, J.* QUEEN-EMPRESS v. IMAM ALI, **10 A. 150, F.B. = A.W.N. 1888, 17.**

(31)—*Punitive enactments to be strictly construed.*—Punitive enactments must be construed strictly. EMPEROR v. PATAN DIN, **A.W.N. 1905, 19 = 2 A.L.J. 26 = 2 Cr. L.J. 19.**

(32)—*Penal law, how construed—Act* III *of* 1867.—The Gambling Act is a penal law, and one of a very stringent character, and so its provisions are to be very closely interpreted; and are not to be extended so as to meet cases which do not strictly fall within them. QUEEN-EMPRESS v. NGA SO GYI, **L.B.R. 1872—1892, 83.** QUEEN-EMPRESS v. NGA TU, **L.B.R. 1872—1892, 86.**

(33)—*Penal statute, construction of.*—A penal statute, when its language is ambiguous, should be construed in the manner most favourable to the liberties of the subject, and this is more especially so, when the enactment is of an exceptional character. REG v. BHISTA *bin* MADANNA, **1 B. 308, F.B.** [*R.*, 16 B. 689.]

(34)—*Penal statute, construction.*—A penal statute must be construed strictly, and Magistrates ought to be very careful before they proceed to inflict imprisonment in a summary manner. They must avoid all appearance of oppression. *In re* GANESH NARAYAN SATHE, **13 B. 600.** [*R.*, 20 B. 617.]

(35)—*Construction of—Bombay Act* IV *of* 1887.—Bombay Act IV of 1887 is of a penal character, and must be construed strictly. No cases can be held to fall within it, that do not fall within the reasonable meaning of its terms, even though they may fall within the mischief intended to be prevented. QUEEN-EMPRESS v. NAROTTAMDAS MOTIRAM, **13 B. 681** [*R.*, 28 B. 129, 39 C. 968 = 16 C.L.J. 250 = 16 C.W.N. 858 = 13 Cr. L.J. 603 = 16 Ind. Cas. 171.]

(36)—*Construction of penal statutes.*—A penal statute must be construed strictly, that is, nothing is to be regarded as within the meaning of the statute which is not within the letter—which is not clearly and intelligibly described in the very words of the statute itself. EMPRESS v. KOLA LALANG, **8 C. 214 = 10 C.L.R. 155.** [*F.*, 16 B. 689; *R.*, 8 A. 475 = 6 A.W.N. 233.]

(37)—*Penal provisions, construction of.*—*Per Ameer Ali, J.*—Penal provisions have to be strictly construed, nor can the liability to punishment for the neglect of a statutory obligation be extended by inferential reasoning. KAZI ZEAMAUDDIN AHMED v. QUEEN-EMPRESS, **28 C. 504 = 5 C.W.N. 771.**

(38)—*Statute affecting the liberty of the subject, construction of.*—In construing a statute which affects the liberty of the subject, the Court should not only adopt the natural and ordinary construction, but should construe strictly expressions occurring therein. BISSUMBHUR SINGH v. QUEEN-EMPRESS, **5 C.W.N. 108.**

(39)—*Statutes of penal character, interpretation of.*—In interpreting statutes of a penal character, it is important to see that the powers conferred upon the Magistrates are duly exercised with reference to the rendering unlawful acts that would, otherwise, be lawful. QUEEN-EMPRESS v. SHEODIN, **10 A. 115 = A.W.N. 1888, 25.**

(40)—*Penal statutes, construction of.*—Penal statutes must have strict interpretation by which is meant that no cases shall be deemed to fall within them which do not fall within the resonable meaning of their terms and within their spirit and scope. The same rules of interpretation apply to notifications issued under penal statutes. LAKHMI CHAND v. THE EMPEROR OF INDIA, **96 P.L.R. 1901 = 24 P.R. 1901, Cr.**

(41)—*Construction of penal statutes.*—Penal statutes are to be strictly construed, and if the Legislature has not used words sufficiently comprehensive to include within its prohibition all the cases which fall within the mischief intended to be prevented, it is not competent to a Court to extend them. QUEEN-EMPRESS v. KYA BAN, **L.B.R. 1893—1900, 121.**

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(42)—Penal statutes must be construed strictly. QUEEN-EMPRESS v. NGA KYAW KHI, **L.B.R. 1872—1892, 279.**

(43)—*Construction of penal statutes.*—A penal enactment must be construed strictly according to its terms, but its terms cannot be arbitrarily restricted before they are interpreted. QUEEN-EMPRESS v. NGA SHWE TON, **L B R. 1893—1900, 284.**

(44)—*Construction of penal statute.*—The law should be construed liberally in favour of the accused where he has acted in good faith for the protection of his person and property, though he might have acted in excess of his legal rights. A WE v. QUEEN-EMPRESS, **U. B.R. 1897—1901, Vol. I, 291.** (5 W.R. Cr. 73, *R.*)

(45)—*Construction of penal statute.*—The Workmen's Breach of Contract Act should be strictly construed. EMPEROR v. NAGA TIMA, **14 Bom. L.R. 954 = 1 Bom. Cr. C. 200 = 13 Cr. L.J. 853 = 17 Ind. Cas. 789.**

(46)—*Statute of a penal character, or relating to revenue—Construction.*—If, notwithstanding words creating some difficulty in the interpretation of an Act, its general intent be clear, the Court is bound to give effect to that intent, although the Act be of a penal nature or relating to the revenue, and is not at liberty either to extend or to narrow the plain scope of the Act. But if the Court, after a careful consideration, not only of the language of the passage under interpretation, but also of the context and subject-matter of the Act, find the meaning of the Legislature doubtful, then if the enactment be of a penal character, or relating to the revenue, it should be construed strictly as regards the Crown, and liberally towards the subject. REG. v. SHAWDAR GHENAR, **7 B.H. C. Cr. 39, F.B.** [*R.*, 8 B.H. C.A.C. 213.]

(47)—*Taxing provisions of Statute—Right of Government to claim exemption when not named in the Statute.*—In England, owing to historical causes, the Legislature has proceeded on the view that the Crown is not bound by a statute unless named in it and it is therefore that the Crown is in many statutes expressly stated to be bound; but it is impossible to say broadly that in India the Crown is not bound by a statute, unless expressly named in it. Such express inclusion is altogether exceptional here. It would be more correct to say that, as a general rule, the Indian Legislature have proceeded on the assumption that the Government will be bound by the taxing provisions of a statute unless expressly or by necessary implication excluded from its operation. *Per Benson, J.* English Law as to the exemption of Crown and Crown property from payment of toll, poor rates and other taxes, local or imperial, imposed by statutes, rests, partly upon historical reasons, and principally upon judicial decisions which do not proceed upon a course of reasoning or principle which will be binding on Indian Courts. Exemption from payment of tolls, rates and taxes is not in reality a prerogative of the Crown but depends solely upon the right construction to put upon the Crown grant or the Statute in question. According to the uniform course of the Indian Legislation, statutes imposing duties or taxes bind Government as much as its subjects, unless the very nature of the duty or tax is such as to be inapplicable to Government, and whenever it is the intention of the legislature to exempt Government from any duty, the Government is specially exempted. *Per Bhashyam Aiyangar, J.* BELL v. MUNICIPAL COMMISSIONERS FOR THE CITY OF MADRAS, **25 M. 457 = 12 M.L.J. 208 = 1 Weir 800.** [*R.*, 8 Bom. L.R. 904 = 2 M L.T. 13 F.B.]

(48)—*Penal Law, effect of, on private law—Rules of penal law, effect of, on religious precept.*—A rule of penal law is a rule of public law and necessarily overrides every precept of private law and cannot be affected by any argument derived from that law. The fact of a transaction being in violation of public law may prevent the arising of rights which would otherwise have the sanction of private law; but the fact that rights would, according to private law, spring from an act transgressing a precept of penal law can never prevent that act from being an offence. Although the precepts of a particular religion enjoin acts which transgress the rule of penal law, the acts will, even then, be offences. Where the Legislature intended that acts which would otherwise be offences should not be so because connected with religious observances, they have expressed that intention. (Penal Code, s. 292, Exception). *In re* PADMAVATI, **1 Weir 356 = 5 M.H.C. 415.**

(49)—*Fiscal enactments, construction of.*—Although, in construing fiscal enactments, the Court should ordinarily insist upon the subject taxed being clearly within the words of the law and decline to extend its scope when there is an ambiguity, the Court, in cases of manifest inaccuracy disclosed by the context, should eliminate the inaccuracy and execute the true intention of the legislature. JENNINGS v. PRESIDENT, MUNICIPAL COMMISSION, MADRAS, **11 M. 253 = 11 Ind. Jur. 369.**

(50)—*Construction of fiscal laws.*—In construing enactments creating fiscal obligations, care must be taken to distinguish between provisions declaring the liability to the tax, and provisions providing for its imposition. It may, in some cases, happen that the performance of certain acts by the taxing authority are pre-requisite to the obligation, and those acts may constitute a portion of the machinery, for the assessment of the tax; but the machinery for the imposition of the tax may be, in whole or in part, independent of the obligation of the tax-payer. VICE-PRESIDENT OF THE MUNICIPAL COMMISSION, CUDDALORE, v. J. H. NELSON, **3 M. 129.**

(51)—*Acts concerning public good, construction of.*—Acts concerning the public good, *e.g.*, Town Improvements Acts, must receive a

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liberal construction so as to attain, as far as possible, the end proposed, and to repress the mischief intended to be remedied. The Judge should put such construction upon the statute as may repress the mischief, guard against subtle inventions and evasions for the continuance of the mischief "*pro privato commodo*" and give life and strength to the remedy "*pro bono publico*" according to the true intent and meaning of the law. Again, such construction ought to be put upon a statute as may best answer the intention which the makers had in view for "*qui haeret in litera haeret in cortice.*" A thing which is within the intention of the makers of the statute is as much within the statute as if it were within the letter. When the words of a statute are obscure or doubtful, the intention of the Legislature is to be resorted to in order to find the meaning of the words. CRIMINAL REVISION CASE NO. 470 OF 1882, **1 Weir 732 (a).**

(52)—*Acts conferring powers, construction of.*—In construing an act conferring powers, the Court is bound to assume that the terms conferring the powers have been used in their ordinary sense, unless he finds in the context something which warrants the inference that the terms were not used in that sense and that an artificial construction was intended. SRINIVASA IYENGAR v. QUEEN, **4 M. 393 = 1 Weir 76 = 1 Weir 891.**

(53)—*Criminal law—Culpability of individuals complaining of breach—Effect.*—Criminal laws form generally a part of the public law not variable in any of the parts by the volition of private individuals, and they are not necessarily deprived of their effect merely by the possible culpability of the individuals who may be the sufferers by the breach. QUEEN-EMPRESS v. BHAIJI, **Rat. Un. Cr. C. 301 = Cr. Rg. 49 of 1886.**

(54)—*Laws of procedure, whether can have retrospective effect.*—The general rule as to new laws of procedure is that they take effect from their coming into operation; so that the procedure from that date would be governed by such laws. But they are not retro-active, *i.e.*, they have no operation upon what has occurred prior to the date of their coming into force. It is also a general rule, as to even retro-active laws, that they are not to affect vested rights, though by positive law they are sometime made to do so, as in the case of a Limitation law which curtails the period within which a mortgagor has a right to redeem. *A fortiori*, it should seem that laws not retro-active could have no power to affect vested rights. SRINIVASACHARI v. QUEEN, **6 M. 336 = 7 Ind. Jur. 301.**

(55)—*Construction of statutes—Exemption from jurisdiction of Courts.*—A provision of a statute declaring that certain persons shall enjoy the same exemption from jurisdiction and no others as are enjoyed by certain other persons, cannot be construed as exposing the persons exempted to the exercise of an extraordinary jurisdiction to which such other person may be subjected. *In the matter of the petition of* JOHN WALLACE, **8 M. 24.**

(56)—*Repeal of Act—Effect.*—In the absence of a contrary intention in a new Act, the repeal of an old Act cannot be deemed to affect any proceedings commenced before the new Act came into force. MUKUND RAMACHANDRA KARKUN v. LADU GOVIND PEDNEKAR, **3 Bom. L.R. 584.**

(57)—*Repeal of a repealing enactment, effect of.*—The mere repeal of a Repealing Act, or the repealing portion of a Repealing Act does not, by itself, revive the original Act or the repealed portion thereof. HIGH COURT PROCEEDINGS, 30TH JULY 1872, NO. 1368, **1 Weir 781 = 7 M.H.C. App. 8.**

(58)—*General provisions cannot repeal particular matters.—Generi per speciem derogatur* is peculiarly true of the construction of statutes. A law dealing with a specific matter and giving jurisdiction over that matter cannot be repealed by a general provision. HIGH COURT PROCEEDINGS, 4TH JUNE 1872, **7 M.H.C. App. 6.**

(59)—*Repeal of statutes by implication.*—Statutes are not to be considered as repealed by implication, unless the repugnancy between the new provision and a former Statute be plain and unavoidable. SITAPTHI NAYUDU v. QUEEN, **6 M. 32.**

(60)—*Repeal of statute by implication.*—One statute may be impliedly repealed by a subsequent statute necessarily inconsistent with it; but the inconsistency must be so great that they cannot both be to their full extent obeyed. EMPEROR v. MULSHANKAR HARINAND BHAT, **12 Bom. L.R. 750 = 7 Ind. Cas. 963 = 11 Cr. L.J. 548.**

See ACT XIII OF 1859, s. 1, 36 C. 917, 9 P.R. 1910, Cr.

See ACT VII OF 1878, s. 32, 55 P.L.R. 1901.

Statute—Interpretation—Meaning clear and unambiguous—Duty of Court—*See* ACT XI OF 1878, s. 19 (*e*), 4 S.L.R. 214 = 9 Ind. Cas. 720 = 12 Cr. L.J. 122.

See ACT XI OF 1878, s. 25, 15 A. 129 = A.W.N. 1893, 48.

See ACT XXI OF 1883, ss. 6, 107, 111, 9 Bom. L.R. 967 = 6 Cr. L.J. 240.

See ACT IX OF 1890, ss. 63, 112, 11 C.W.N. 100 = 4 Cr. L.J. 439 = 5 C.L.J. 47.

See ACT II OF 1899, s. 62, 7 A.L.J. 180 = 32 A. 198 = 11 Cr. L.J. 52 = 5 Ind. Cas. 180.

Construction of Whipping Act—Meaning of "Special Laws"—*See* ACT IV OF 1909, ss. 3, 4, 5, 7 L.B.R. 63.

See BOM. ACT VI OF 1863, ss. 22 and 25, 2 S.L.R. 20, Cr. = 10 Cr. L.J. 233.

See BOM. ACT VI OF 1873, s. 73, 14 B. 180.

See BOM. ACT III OF 1888, s. 349 B, 9 Bom. L.R. 303 = 5 Cr. L.J. 338.

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See BOM. ACT I OF 1890, s. 12, 16 B. 283, F.B.

See BOM. ACT II OF 1891, s. 29 (1) (*b*), 4 N. L.R. 95=8 Cr. L.J. 31.

Term interpreted in a statute as "including," etc.—Construction—*See* BOM. ACT III OF 1901, ss. 96, 3 (7), 13 Bom. L.R. 494=11 Ind Cas. 610=12 Cr. L.J. 426=35 B 412.

See BOM. ACT IV OF 1902, ss. 12, 16, 9 Bom. L.R. 681=6 Cr. L.J. 47=32 B. 480.

Proceedings of the Legislative Council, whether useful in construction of Acts—*See* BUR. ACT I OF 1899, s. 10, 1 L.B R. 231.

See MAD. ACT IV OF 1884, s. 179, 2 M.L.T. 499=7 Cr. L.J. 219.

Acts containing penal provisions—Construction—Retrospective effect—*See* PUN. ACT V OF 1912, s. 33, 26 P.R. 1913, Cr.

Enactment encroaching upon rights of subject—Construction—*See* U. P. ACT I OF 1900, s. 128 (*b*) (1), 13 Cr. L.J. 685=16 Ind. Cas. 333=10 A.L.J. 426=35 A. 24.

Penal Acts—Strict construction—*See* CANTONMENT CODE, 1899, ss. 89, 104, 12 Cr. L. J. 371=11 Ind. Cas. 139=206 P.L.R. 1911.

See CRIM. PRO. CODE, 1898, ss. 87 and 88, 19 P.W.R. 1908, F.B., Cr.=15 P R. 1908, Cr.= 8 Cr. L.J. 89.

See CRIM. PRO. CODE, 1898, ss. 96, 105, 165, 13 C.W.N. 458=9 C.L.J. 298=36 C. 433 =5 M.L.T. 367.

See CRIM. PRO. CODE, 1898, ss. 110, 117 A.W.N. 1904, 140.

See CRIM. PRO. CODE, 1898, ss. 195, 477, 28 C. 434=5 C.W.N. 609.

Assumption of jurisdiction in Criminal Cases—*See* CRIM. PRO. CODE, 1898, s. 304, 13 Cr.L.J. 815=17 Ind. Cas. 559=9 P.W.R. 1913, Cr.=6 P.R. 1913, Cr.=175 P.L.R. 1913, F.B.

Act to be construed so as to avoid inconsistency between its different parts—*See* CRIM. PRO. CODE, 1898, ss. 403, 423 (*b*), 439 (4), 37 M. 119=22 Ind Cas. 756=15 Cr. L.J. 180.

See CRIM. PRO. CODE, 1898, ss. 408, 413, 4 L.B.R. 354=9 Cr. L J. 356.

Words of a statute—Extended meaning when to be given—*See* CRIM. PRO. CODE, 1898, s. 562, 12 A.L.J. 465=15 Cr. L.J. 375=23 Ind. Cas. 743.

See CRIM. PRO. CODE, 1898, s. 562, 4 N.L. R. 18=7 Cr. L.J. 319.

See FORGERY, 36 C. 955.

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See PENAL CODE, s. 174, 13 O.C. 55=5 Ind. Cas. 805.

Use of illustrations—*See* PENAL CODE, s. 201, 6 S.L.R 76=16 Ind. Cas. 753=13 Cr. L. J. 721.

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See PENAL CODE, s. 318, 13 C.P.L.R. Cr. 188.

Prosecution time-barred—Interpretation of statutes—*See* PENAL CODE, s. 482, 12 Cr. L J. 246=10 Ind. Cas. 787.

Penal Acts—Ambiguous language—Meaning of words 'he' and 'whoever'—*See* PENAL CODE, ss. 482, 486, 15 Cr. L.J. 337=23 Ind. Cas. 689=7 Bur. L.T. 116.

Indian Law based on English Law—Mode of construction—*See* PENAL CODE, s. 499, 1912 M.W.N. 476=14 Ind. Cas. 659=13 Cr. L.J. 275=23 M.L J. 39.

See REVISION—GENERAL PRINCIPLES, 3 S.L.R. 66.

See SECURITY TO KEEP THE PEACE—LIKELIHOOD OF BREACH OF THE PEACE, 1 S.L.R. 50, Cr.=8 Cr. L.J. 170.

See SENTENCE—FINE, 7 B. 280.

See SURETY, 2 S.L.R. 11, Cr.=10 Cr. L.J. 225.

Stay of Criminal Proceedings.

(1)—*Criminal trial—Stay of, during pendency of civil suit.*—The trial of a criminal charge of forgery should be adjourned pending the determination of a civil suit regarding the same document. The Sessions Judge trying the charge of forgery has no authority or right to order the suspension of the hearing of the civil suit by the District Munsif, pending the trial of the criminal charge in his Court, or for any other reason whatever, the Munsif not being subordinate to the jurisdiction of the Sessions Judge. EMPRESS v. UNKAR DAS, **A.W.N 1887, 102.**

(2)—*Criminal proceedings, stay of, during pendency of civil suit.*—The High Court will not order stay of criminal proceedings in a complaint respecting the offences of perjury, making and using a false document, and making a false complaint to a Magistrate, pending the disposal of the civil appeal out of which the criminal proceedings arose. *In re* BAL GANGADHAR TILAK, **26 B. 785=4 Bom. L.R. 618.**

(3)—*Criminal proceedings—Stay of, during pendency of civil suit.*—The accused applied to the District Judge for probate of a will of a deceased person. The case was contested, and in the result, the District Judge pronounced the will to be a forgery and directed the accused and four other persons, witnesses to the will, to be prosecuted for forgery and for giving false evidence. The accused, subsequently, filed an appeal in the High Court against the orders of the District Judge refusing probate and applied for an order directing that the proceedings pending in the Criminal Court should be stayed pending the disposal of the appeal in the probate case. *Held*, that the High Court should not interfere with the Magistrate's discretion, except upon good cause shown. *Held*, also,

Stay of Criminal Proceedings—*continued.*

that, as the prosecution was not a private prosecution, but one directed by the District Judge, and as the witnesses were related to the accused, it was desirable that their evidence should be recorded without undue delay. The Magistrate should, therefore, proceed forthwith to make the preliminary enquiry before commitment. DWARKA NATH RAI CHOWDHRY v. EMPEROR, **31 C. 858 = 1 Cr. L.J. 852.** [*R.*, 7 Bur. L.T. 73 = 15 Cr. L.J. 488 = 24 Ind. Cas. 576.]

(4)—*Prosecution, stay of— Pendency of civil proceedings.*—Case in which the High Court directed the stay of a prosecution on the charge of forgery during the pendency of a civil suit in which the genuineness of the document would be a materal issue. SASIBHUSAL SEAL v. MANIK LAL NUNDY, **12 C.L J. 270 = 38 C. 106 = 7 Ind. Cas. 317 = 11 Cr. L J. 448.**

(5)—*Pendency of civil suit— General rule.*—The general rule is that, where a civil suit is brought subsequently to criminal proceedings, there should not be any stay of the latter. HARI PADA PAL v. JOTISH CHANDRA CHATTERJEE, **6 Ind. Cas. 181 = 11 Cr.L.J. 291.**

(6)—*Stay of criminal proceedings—Civil suit instituted in respect of the same matter – Practice.*—*Held*, that, where a person, against whom criminal proceedings are started in respect of a matter, has instituted a civil suit without waste of time in connection with that matter, the decision of which is likely to throw considerable further light on the criminal case, the criminal prosecution should be stayed pending the decision of the civil suit. BHOJA RAM v. CROWN, **21 P W R 1912, Cr. = 13 Cr. L.J. 175 = 115 P.L.R. 1912 = 13 Ind. Cas. 927.** (5 C L. J. 233 = 5 Cr. L.J. 199, *F.*; 5 C.W.N. 44, *R.*)

(7)—*Stay of Criminal suit during pendency of a civil suit involving the same issues—Distinction between private prosecutions and those ordered or sanctioned by Government or Court officers—Magistrate's discretion.*—Where an application for stay was made by the accused in a criminal case on the ground that the same issues were being tried in a civil suit before District Judge, *held*, that the Magistrate would exercise his discretion properly if he would adjourn the criminal proceedings until the decision of the civil suit. KALIMA BIBI v. MACBUL AHMED, **7 Bur. L.T. 73 = 15 Cr. L.J. 488 = 24 Ind. Cas. 576.**

(8)—*Stay of criminal trial—Charge answer to civil suit—Proceedings may be stayed for reasonable time.*—Where the charge in a criminal case is a defence to a civil suit, criminal proceedings should be stayed only if there is a likelihood of civil proceedings ending soon. CHAPALAMADUGU PEDDAH BALLIAH v. MUTHIYALU VENKATASAMI, **15 Cr. L.J. 568 = 24 Ind. Cas. 976.**

(9)—*Criminal proceedings—Prosecution under s. 193, I.P.C.—Statementsmade in a civil suit—Appeal—Stay pending disposal of civil appeal—Refusal—Not open to revision—Proper course.*—Where a Magistrate refused to stay proceedings against the applicant taken under s. 193, I.P.C., pending the disposal of an appeal preferred against the decision in a civil suit during the trial of which the applicant was alleged to have made certain false statements. *Held*, that the order of the Magistrate could not be set aside in revision. (26 B. 785, *F.*) The Judicial Commissioners were, however, of opinion that in this particular case it would be desirable that the criminal proceedings should be adjourned until the appeal has been disposed of, unless it be found that, for special reasons, such as the probability of a witness not being available at a latter date, it is desirable to hasten the hearing. MATHRADAS DHARAMDAS v. CROWN, **8 S.L R. 20 = 15 Cr. L.J. 661 = 25 Ind. Cas. 989.**

(10)—*Criminal Proceedings, stay of, pending disposal of Civil Proceedings.*—Where a document presented for registration was impugned as a forgery, and on the refusal of the Registration Officer to register it, one party appealed to the District Registrar and filed a suit to compel registration, while the other party rushed into a Criminal Court with a charge of forgery against the attesting witnesses and the obligee: *Held*, that this was a fit case in which criminal proceedings ought to be stayed until the disposal of the civil suit. In all such cases, the test is whether the accused would be prejudiced if the criminal proceedings are not stayed until the disposal of the civil suit, and in this respect there is no distinction between proceedings instituted in pursuance of sanction granted by a Court and those instituted by a party himself where no such sanction is necessary. MAHOMED IBRAHIM RAVUTHAR v. KATTAYAN, **16 Cr. L J. 637 = 30 Ind. Cas. 461.** (30 M. 226 = 6 Cr. L.J. 131, *F.*).

(11)—Staying of Criminal proceedings pending final order of Chief Court—*See* CROWN v. HURRICK CHUND, **42 P.R. 1867, Cr.**

See ACT III OF 1877, s. 82, 5 C.W.N. 44.

See COMPENSATION—GENERAL, L.B.R. 1893—1900, 565.

In a Criminal Court to enable accused to bring civil action—Powers of High Court—*See* CRIM. PRO. CODE, 1898, s. 185, 17 C.W.N. 761 = 20 Ind.Cas. 222 = 14 Cr. L J. 398.

Civil and Criminal proceedings together—Stay of criminal proceedings—*See* CRIM. PRO. CODE, 1898, ss. 205, 435, 439, 44 P.W R. 1911, Cr. = 12 Cr. L.J. 615 = 12 Ind. Cas. 991.

Pendency of a civil suit—*See* CRIM. PRO. CODE, 1898, s. 344, 2 Weir 415.

See CRIM. PRO.CODE, 1898, ss. 439 (1 to 5), 476, 23 C. 610.

Pending rule issued by the High Court—Refusal of Magistrate to act on reliable information thereof—Bias—*See* CRIM. PRO. CODE, 1898, s. 526, 16 C.W.N. 1031 = 17 Ind. Cas. 78 = 13 Cr. L.J. 766.

See CRIMINAL PROCEEDINGS, 18 B. 581.

Stay of Criminal Proceedings—*concluded.*

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 2 Ind. Cas. 266.

See FALSE CHARGE, 3 C.W N. 758.

See HIGH COURT, JURISDICTION OF—GENERAL, 30 M. 226=6 Cr. L.J. 131.

See HIGH COURT, JURISDICTION OF—REVISIONAL POWERS OF HIGH COURT, 4 M.L.T. 186.

See MAGISTRATE, DUTY OF, 5 C.W.N. 110

See MAGISTRATE, JURISDICTION OF—TRANSFER OF CASES—REFERENCE TO OTHER MAGISTRATES, ETC., 3 B.H.C. Cr. 29.

Order for—Effect—*See* PENAL CODE, ss. 323 147, 13 C.L.J. 329=38 C. 293=9 Ind. Cas. 965=12 Cr. L.J. 169.

See PENAL CODE, ss. 471 and 474, 5 C.L J. 233=5 Cr. L.J. 199.

See SANCTION TO PROSECUTE—WHO MAY APPLY FOR SANCTION, 13 C.W N. 398=11 Cr. L.J. 4=4 Ind. Cas. 485.

See SANCTION TO PROSECUTE—MISCELLANEOUS, Rat. Un. Cr. C 587.

See TRANSFER OF CRIMINAL CASES—GROUNDS FOR TRANSFER—NOTICE, 2 C.W. N. 498.

Stay of Proceedings.

See STAY OF CRIMINAL PROCEEDINGS.

Stealing Coffee, Prevention of Act

See MAD. ACT VIII OF 1878.

Steel.

Iron includes steel. GANGA NARAIN PAL v. CORPORATION OF CALCUTTA, **10 C L.J. 486=4 Ind. Cas. 438=11 Cr. L J. 277.**

Possession of flint, or steel—*See* ACT VII OF 1878, s. 25 (*c*), 4 Bom. L.R. 935.

Step-grandmother.

See MAINTENANCE, 20 P.R. 1868, Cr.

Stifling Prosecution.

(1)—*Unlawful agreement—Void consideration—Suppression of criminal proceedings.*—A person suing for possession of property would not be disentitled to a decree, on the ground of the sale to him having been made to raise money for suppressing a criminal prosecution, in the absence of evidence to show the plaintiff's knowledge of such unlawful purpose or of any money having been paid in pursuance thereof. RAJ KRISTO MOITRO v. KOYLASH CHUNDER BHUTTACHARJEE, **8 C. 24.**

See ACT IX OF 1872, s. 23, 6 Bom. L.R. 73.

See PROMISSORY NOTE, A.W.N. 1906, 212=28 A. 718=3 A.L.J. 506.

Stocks.

See MAD REG. XI OF 1816, s. 10, 6 M. 247=1 Weir 927.

Confinement in stocks—Legality — Escape from custody—Whether punishable—*See* MAD. REG. XI OF 1816, s. 10, 18 M.L.T. 310.

Stolen Property.

See PENAL CODE, ss. 410—414.

See THEFT.

(1)—*Crim. Pro. Code* (1872), *s.* 297—*Separate offences—Offences of fabricating false evidence and voluntarily assisting in disposing of stolen property—Penal Code, ss.* 192, 193, 414.—Where the accused voluntarily assisted in concealing, or disposing of, or making away with stolen property, and was also found to have concealed it in the field of an enemy of his, with a view that it might be found there and that he might be apprehended and charged with theft, *held*, that the Magistrate acted properly in convicting and punishing the prisoner for the two separate offences of fabricating false evidence, under s. 192, I.P.C., and of voluntarily assisting in disposing of stolen property, under s. 414, I.P.C. EMPRESS OF INDIA v. RAMESHUR RAI, **1 A. 379.**

(2)—*Crim. Pro. Code, s.* 418—*Discharge of person accused of—Receiving stolen property—Disposal of such property.*—A Magistrate discharging a person accused of receiving stolen property, on the ground that the evidence was not sufficient, can make such order as he thinks proper for the disposal of the property produced before him, if he believes, that the property was stolen. EMPRESS OF INDIA v. NILAMBAR BABU, **2 A. 276.**

(3)—*Penal Code, s.* 411—*Receiving stolen property—Intention—Evidence Act, s.* 144.—The fact that a person is in possession of stolen property and does not account for it is, although suspicious, not sufficient to convict him of an offence under s. 411. The prosecution is not relieved from the obligation of proving beyond reasonable doubt that the property was stolen and that he received it dishonestly. The presumption under s. 114, Evidence Act, would not arise by the fact that the stolen property was found in the possession of the accused more than a month after the date of the theft. QUEEN-EMPRESS v. BURKE, **6 A. 224=A.W.N. 1884, 55.** [*F.*, 29 A. 138=3 A.L J. 808=A.W.N. 1906, 314=1 M L.T. 449=4 Cr. L.J. 436, 11 Cr. L.J. 571=8 Ind. Cas. 145.]

(4)—*Penal Code, ss.* 410, 411—*Bull set at large upon death of relative—"Property."*—A Hindu letting loose a bull upon the death of a relative surrenders, and abandons, by so doing, all proprietary rights therein. There is no property in it capable of being made the subject of dishonest receipt or possession within the meaning of s. 411, I.P.C. QUEEN-EMPRESS v. NIHAL, **9 A. 348=A W.N. 1887, 73.** (8 A. 51, A.W.N. 1884, 57, *R.*) [*R.*, 17 B. 852, 18 B. 212.]

(5)—*Penal Code, s.* 411—*Retention of stolen property belonging to different persons—Separate convictions.*—The mere fact that property stolen on two different occasions from different persons is found at one and the same time in the possession of an accused person is not of itself sufficient to prove that he has committed two different offences, under s. 411, as it is quite

Stolen Property—*continued.*

possible that the property, though stolen on two different occasions, may have been received from the same thief at one time. QUEEN-EMPRESS v. MAKHAN, **15 A. 317=A.W.N. 1893, 101.** (15 C. 511, *Appr.*) [*F.*, 28 A. 313 =A.W.N. 1906, 22=3 Cr. L.J. 207, 1 L.B.R. 39.]

(6)—*Penal Code, s. 411—Accused pointing out stolen property concealed in another's field, whether liable to be convicted under the section.*—The mere fact that a person points out a place where stolen property is concealed, if that place is not in his own house or in his own field, but is in the field of another man, is not sufficient to entitle the Court to find that the person who pointed out the stolen article had received it, or retained it, knowing it to be stolen. QUEEN-EMPRESS v. GOBINDA, **17 A. 576=A.W.N. 1895, 226.** [*F.*, 13 Cr. L.J. 127 =16 C.W.N. 238=13 Ind. Cas. 783, 14 Cr. L.J. 602=21 Ind. Cas. 474=32 P.W.R. 1913, Cr., 315 P.L.R. 1913, 155 P L.R. 1908, Cr.=21 P.W.R. 1908, Cr., 92 P.L.R. 1902; *Appl.*, 2 Cr. L.J. 230=51 P.L.R. 1905; *R.*, 13 Cr. L.J. 28 =13 Ind. Cas. 220=46 P.L.R. 1912=29 P.W.R. 1912, Cr., 15 Cr. L.J. 404=23 Ind. Cas. 1004.]

(7)—*Penal Code, s. 412—Finding of stolen property in joint family house.*—The bare discovery of stolen property and arms in a joint family house is not such evidence of possession on the part of each of its members as would form a sufficient basis for conviction. QUEEN-EMPRESS v. NIRMAL DAS, **22 A. 445=A W.N. 1900, 169.** (15 B. 66, *R.*)

(8)—*Property, in stolen property.*—Ordinarily the property in stolen goods remains in the person from whom they are stolen, in accordance with the maxim that no one can transfer a better title to another than he himself possesses. To this rule, however, there are some exceptions. In England, where stolen property is sold in market overt, it cannot be recovered by the original owner unless he prosecutes the thief to conviction, and recovers it from the person in possession of it at the time of the conviction. Another exception to the general rule is that the property in stolen cash, or bills, or notes payable to bearer, which circulate as cash, is inseparable from possession. CRIMINAL REFERENCE NO. 138, DATED 3RD MAY 1869, **1 N.W.P. 298.**

(9)—*Receiving stolen property—Evidence—Penal Code, s. 411.*—Where the only evidence of receipt of stolen property by a wife is that the property was found in the house in which she lived with her husband, *held* that this constituted the possession of the husband rather than of the wife. QUEEN v DE SILVA, **5 N.W P. 120.**

(10)—*Penal Code, s. 411—Receipt of stolen property.*—The essence of the offence contemplated by s. 411 is guilty knowledge, as in the case of uttering counterfeit coin or forged or fabricated instruments, and the bare fact of possession, except under very peculiar circumstances, is not enough. EMPEROR v. RAMJAS, **A.W.N. 1883, 17.**

(11)—*Penal Code, s. 414—Receiving stolen property—Identification of property.*—If there is proof that an accused person has voluntarily assisted in concealing or disposing of, or making away with, property which he knows, or has reason to believe, to be stolen property, he is punishable under s. 414, I.P.C., even if there has been no identification of the property. EMPRESS v. HARJAS, **A W.N. 1887, 96.**

(12)—*Penal Code, s. 411—Dishonestly receiving stolen property—Evidence Act, s. 114-A.*—The mere fact that a calf, which had been missing for no less than a year and a half, was found in the possession of the accused, would not be sufficient to convict him of an offence under s. 411, I.P.C. EMPRESS v. DALLUA, **A.W.N. 1887, 281.**

(13)—*Penal Code, s. 411—Possession of stolen property.*—The accused was charged with and convicted of an offence under s. 411, I.P.C., on the ground that certain stolen property was found in his *gothaula* (a place for storing cow-dung cakes), which was not separate from his house and was not such an unprotected place that any person might put anything into it. When a constable went into the *gothaula* to search, none of the witnesses went with him and one of the witnesses spoke to there having been, at the time of the search, a rent in the tatti-wall sufficient to admit a man passing through. *Held* that the conviction was bad and must be set aside as it was possible that the stolen property might have been placed there without the accused's knowledge. EMPRESS v. SITA RAM, **A.W.N 1881, 83.**

(14)—*Possession of stolen Currency Notes—Guilty knowledge—Presumption.*—Possession of Currency Notes of not large value, a year and half after their theft, is not by itself evidence of any guilty knowledge on the part of the possessor, so as to support a conviction for dishonest retention of stolen property. In such a case, the fact that the accused gave a false explanation of his possession is not sufficient to warrant his conviction. VELLAI OCHA THEVAN v. EMPEROR, **(1912) M.W.N. 362=11 M L T. 186=15 Ind. Cas. 315=13 Cr. L.J. 475.**

(15)—*Penal Code, s. 411—Proof of intention—Evidence Act, I of 1872, s. 11.*—Where the only facts proved are, that certain stolen property was given to the accused by a third person to raise a loan on, that the accused raised a loan and that the accused had similar dealings which such third person, *held* that the last matter was irrelevant and that the evidence was insufficient to prove dishonest intention. EMPRESS v. SITAL, **A W.N. 1885, 27.**

(16)—*Penal Code, s. 411—Offence, when not sufficiently proved*—Where the only fact used to convict a person, being tried for dishonestly receiving stolen property was that he showed the police certain hiding places in grass and in

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water-courses where such property was concealed, *held* that this fact was insufficient by itself to connect the accused with the dishonest receipt or retention of stolen property. EMPRESS v. KINHAR, **A.W.N. 1881, 94.**

(17)—*Penal Code, s. 411 — Charge under section.*—Where a charge under s. 411 simply alleged that the appellant was caught at a certain place with a stolen she-buffalo belonging to the complainant and averred that the appellant committed the offence of retaining stolen property, but without averring that the appellant dishonestly received or retained stolen property knowing or having reason to believe that the same had been stolen, *held*, that the charge was not one properly framed under the section, or under any other section of the Penal Code and that, therefore, the accused should be acquitted. EMPRESS v. GADLU, **A.W.N. 1898, 70.**

(18)—*Crim. Pro. Code* (1872), *Ch.* XXX—*Restoration of property.*—S 415 and the two succeeding sections, of the Code of 1872, contemplate proceedings preliminary to, and independent of an enquiry. Upon general principles, where there has been an enquiry or trial, and the accused person is discharged or acquitted by any Criminal Court, that Court, is bound to restore the property, the subject-matter of the investigation, into the possession of the person from whom it was taken, unless, as provided for in s. 418, such Court is of opinion that "any offence appears to have been committed" regarding it, when such order as appears right for the disposal of the property may be made. Where property has been delivered to the wrong person by an illegal order of the District Magistrate, the High Court has no jurisdiction to direct the restoration of the property. *In re* ANAPURNABAI, **1 B. 630.** [*F.*, 14 C. 834, 30 C. 690, A.W.N. 1906, 58, L.B.R. 1893—1900, 20, 9 M. 448 = 2 Weir 672, A.WN. 1908, 40, 5 Bom. L R. 25, 14 C.P.L. R. 60; *R. & Expl.*, 25 C. 630; *D.*, 8 B. 338.]

(19)—*Penal Code, s.* 414—*Scope—Proof.*—The word "believe" in s. 414, I.P.C., is a very much stronger word than "suspect," and it involves the necessity of showing that the circumstances were such that a reasonable man must have felt convinced in this mind that the property with which he was dealing must be stolen property. It is not sufficient to show that the accused was careless or that he had reason to suspect that the property was stolen, or that he did not make sufficient enquiry to ascertain whether it had been honestly acquired. EMPRESS v. RANGO TIMAJI, **6 B. 402 = 6 Ind. Jur. 538** [*F.*, 29 B. 449 = 7 Bom. L.R. 527, 5 Bom. L.R. 877, Rat. Un. Cr. C. 254, Rat Un. Cr. C 594; *R.*, 1 Bom. Cr. C. 55 = 13 Bom. L.R. 635 = 12 Cr. L.J. 457 = 11 Ind. Cr. 993, 14 Cr. L J. 591 = 21 Ind. Cas. 383 = 1913 M.W.N. 696, Rat. Un. Cr. C. 778.]

(20)—*Penal Code, s.* 411—*Possession of stolen goods, effect of.*—Where there was no evidence against the accused charged with an offence under s 411, I.P.C., except the circumstance that the stolen property was found concealed in a loft in his house, *held* that that would only be sufficient to raise a presumption that he knew the property to be stolen property, but not to support a finding that he knew that it had been acquired by dacoity, and that the attention of the jury should be directed to the necessity of their being satisfied that the possession of the stolen property was clearly traced to the accused, and that it could not have been placed where it was found, by any other members of the accused's household. EMPRESS v. MULHARI, **6 B. 731.** [*Rel.*, 15 C.L.J. 517 = 16 C W.N. 1105 = 13 Cr. L.J. 609 = 16 Ind. Cas. 257; *R.*, 12 Cr. L.J. 48 = 9 Ind. Cas. 288 = 9 M.L.T. 291; *Cons.*, 6 Bom. L.R. 887.]

(21)—*Crim. Pro. Code* (1882), *ss.* 517, 520, 523—*Restoration of property—Powers of District Magistrate.*—A District Magistrate cannot treat property already restored or which ought to have been restored by a subordinate Magistrate as subject to an order under s. 523. Where property had been restored to the accused on their acquittal, the District Magistrate would have no powers to order its restoration. He could, if he desired to review the Magistrate's proceedings, make an order staying execution of that order pending the disposal of the review or any reference thereon. QUEEN-EMPRESS v. ABHRAM UMAR, **8 B. 575 = 9 Ind. Jur. 198.**

(22)—*Penal Code, s.* 4—*Gist of offence of receiving stolen property.—Per Russell, J.*—It is not sufficient to show that the accused person was careless or had reason to suspect that the property was stolen or that he did not make sufficient enquiry to ascertain whether it had been honestly acquired. EMPEROR v. JETHALAL, **29 B. 449 = 7 Bom. L.R. 527 = 2 Cr.L J. 480.**

(23)—*Penal Code, s* 414—*Gist of offence—Assisting in disposing of stolen property and receipt of the same.—Per Batty, J.*—The offence punishable under s. 414 is that of voluntarily assisting in disposing of stolen property, and therefore must necessarily form part of the same transaction as the receipt by the person to whom it is disposed of. It necessarily involves manifest criminality in both persons at one and the same time when both offences are committed. EMPEROR v. JETHALAL, **29 B. 449 = 7 Bom. L.R. 527 = 2 Cr. L.J. 480.**

(24)—*Crim Pro. Code, s.* 562—*Release on furnishing security—Penal Code, ss.* 411, 414.—The offence of receiving or retaining stolen property is not one of those offences mentioned in s. 562 of the Crim. Pro. Code, as it is punishable under s. 411, or s. 414, I.P.C., with more than two years' imprisonment. QUEEN-EMPRESS v. ATMARAM JAGANNATH, **2 Bom. L. R. 343.**

(25)—*Crim. Pro. Code, s.* 545—*Innocent purchaser of stolen property—Compensation from fine imposed.*—The accused stole a pony

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and sold it to a third person. He was convicted of the offence, sentenced to a term of imprisonment and fined in the sum of Rs. 20. It was further ordered that out of the fine when recovered, Rs. 9-12-0 should be paid to the purchaser and then the pony should be returned to the complainant. *Held* that no condition could be imposed on the return of the pony to the complainant and that the order awarding a portion of the fine to the purchaser should be reversed. KING-EMPEROR v. ABDUL KHADIR, **3 Bom.L.R. 449.**

(26)—*Crim. Pro. Code, ss.* 519, 545—*Innocent purchaser of stolen property — Compensation from fine imposed on thief* —It is not competent to a Court to award compensation to innocent purchasers to whom the property stolen had passed, out of the fine imposed; but under s. 519, compensation to them can be given from moneys found in the possession of the accused. KING-EMPEROR v. DHONDU, **3 Bom.L.R. 764.**

(27)—*Penal Code, s.* 411—*Receiving stolen property — Presumption.* —The accused purchased a shop-keeper's weight from a beggar-boy without making any enquiry of the boy. *Held* that these circumstances did not justify the inference that the accused either knew or had reason to believe that it was stolen property. EMPEROR v. MAHOMEDALLY, **5 Bom. L.R. 877.**

(28)—*Penal Code, ss.* 411, 412—*Possession of stolen property.*—In the trial by jury of a person charged with dishonest receipt of stolen property, the attention of the jury should be drawn to the necessity of satisfying themselves that the possession of the stolen property is clearly traced to the accused, and that it could not have been placed in the accused's house where it was found, by any other members of his family. The fact of stolen property being found concealed in a man's house would ordinarily be sufficient to raise a presumption that he knew the property to be stolen property, but not to prove that he knew that it had been acquired by dacoity. QUEEN-EMPRESS v. MULHARI; QUEEN-EMPRESS v. SHIVA, **Rat. Un. Cr. C. 184 = Cr. Rg. 11-10-1882.**

(29)—*Penal Code, ss.* 410, 411—*Receiving property erroneously believed to be stolen.*—A person receiving property which is not stolen, but erroneously believing it to be stolen, is not guilty of an offence under s. 411. QUEEN-EMPRESS v. ISSUP, **Rat. Un. Cr C. 389 = Cr. Rg. 41 of 1888.**

(30)—*Penal Code, ss* 411, 414—*Separate sentences—Distinction.*—S. 414 of the Penal Code properly applies only where there is no evidence of actual receipt of stolen property. Where there is such evidence, s. 411 applies. [*F.*, 29 B 449 = 7 Bom. L.R. 527.] Where the accused was convicted under both the above sections in respect of the same property, and separate sentences were passed, *held* that the order was illegal. QUEEN-EMPRESS v. ALU KALA, **Rat. Un. Cr. C. 553 = Cr. Rg. 28 of 1891.**

(31)—*Penal Code, s.* 411—*Receiving stolen property.*—The mere fact of possession of stolen articles, not of an unusual character and such as easily pass from hand to hand, does not justify a conviction under s. 411 of the Penal Code. QUEEN-EMPRESS v. RAVAJI, **Rat. Un. Cr. C. 594 = Cr. Rg. 13 of 1892.** (6 B. 402, 11 C. 160, *F.*)

(32)—*Crim. Pro. Code* (1882), *ss.* 253, 517, 523.—K was charged with theft of some property but was discharged under s. 253, Crim. Pro. Code. The trying Magistrate directed part of the property to be given to K on a security of Rs. 100 being furnished and kept the rest in the custody of the police. *Held* that neither s. 517 nor s. 523 was applicable and the Magistrate's order was wrong and the property should be restored to K. *In re* KUSHA, **Cr. Rg. 24 4-1884.**

(33)—*Restoration of stolen property—Crim. Pro. Code, s.* 517.—An order under s. 517, Crim. Pro. Code, disposing of stolen property cannot be passed before the trial of the accused, from whose possession the property is found, is concluded, and it shall not be carried out at once in cases which are appealable. HAJI KARIM v. JOOSUB, **Cr. Rg. 10 of 1898.**

(34)—*Penal Code, s.* 411—*Presumption arising out of recent possession of stolen property.*—The possession of stolen property, immediately after it has been stolen, affords a strong presumption, that the person in whose possession it is, is either the actual thief, or a receiver with a guilty knowledge; and the presumption is strengthened, if the person, in whose possession the stolen property is, fails to give a satisfactory account of the manner in which he acquired such possession, or gives a false account, or gives accounts which are contradictory, or if the property is secreted. But where such possession is not a recent possession, the presumption against him is so slight that, taken by itself, he ought not to be called upon to explain how his possession was acquired. The question of what is or is not recent possession of stolen property is to be considered with reference to the nature of the articles stolen. A stolen brass drinking cup was found in the possession of the accused eleven months after the theft. *Held*, that the presumption arising out of such possession so slight that the accused ought not to be called upon to explain how the possession was acquired. INA SHEIKH v. QUEEN-EMPRESS, **11 C. 160.** [*F*, Rat. Un. Cr. C. 594, 6 O.P.L.R. 29, Cr, 12 C P L R. 5, Cr.; *R*, 2 Weir 440, 4 Cr. L J. 436 = 1 M L.T. 449 = 3 A.L.J. 808 = A.W.N. 1906, 314 = 29 A. 138, 11 Cr. L.J. 571 = 8 Ind. Cas. 145.]

(35)—*Penal Code, s* 411—*Receiving stolen property—Goods stolen from different persons—Separate sentence—Legality.*—The mere fact that goods stolen from two different persons are found in the possession of a person, accused under s. 411 of the Code, will not be sufficient to try the accused on two separate charges and to sentence him for each of the charges, unless

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there is proof that he received them at different times or from different persons. [*F.*, 1. L.B.R. 39; *Appr.*, 15 A. 317 = 13 A.W.N. 101.] To constitute the offence of receiving, there must be some proof that some person other than the prisoner had possession of the goods before the prisoner got possession of the same; otherwise possession of them is only proof of stealing. ISHAN MUCHI v. QUEEN-EMPRESS, **15 C. 511.**

(36)—*Penal Code, s. 413—Habitually receiving stolen property.*—The essence of the offence under s. 413 is the habitual, that is to say, constant, receipt of or dealing in goods which the prisoner knew or had reason to believe were stolen. A man cannot be said to be habitually receiving stolen goods who may receive the proceeds of a number of different robberies from a number of different thieves on the same day; but in addition to the receipt from different persons there must be a receipt on different occasions and on different days. QUEEN-EMPRESS v. BABURAM KANSARI, **19 C. 190.**

(37)—*Penal Code, s. 411—Stolen property—Dishonest retaining.*—Where the disappearance of a document from records of an office and substitution of a forged one in its place were proved and the genuine document was found in the possession of the accused, the servant of the person to further whose civil suit the substitution was made, *held*, that it would raise a presumption that the accused was retaining stolen property with a dishonest intention. ISHAN CHANDRA CHANDRA v. QUEEN-EMPRESS, **21 C. 328.**

(38)—*Penal Code, ss. 83 and 411—Receiving stolen property from child thief—Discharge of the child on the offence of theft—Validity of the conviction of receiver of stolen property.*—Where a child of nine years of age, accused of theft, was discharged under s. 215, Crim. Pro. Code, on the ground of want of understanding under s. 83, Penal Code, *held*, that the conviction of a person charged with receiving that property was not bad on the ground that the act of the child in selling the property for a low sum to the accused, immediately after taking it, showed that, although the child was over seven years and under twelve, yet that he attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion within the meaning of s. 83, Penal Code. QUEEN v. BEGARAYI KRISHNA SARANU, **6 M. 373 = 1 Weir 469 = 7 Ind. Jur. 304.**

(39)—*Penal Code, s 411—Possession of stolen property—Identification of the property—Presumption—S. 114, Evidence Act.*—Where the accused was found to be in possession of stolen jewellery three weeks after it was stolen, and the property was identified by its owner and his wife and daughter, who were in the habit of seeing and wearing them, *held*, that the identification was sufficient and that the natural inference to be drawn from these circumstances, under s. 114 of the Evidence Act, would be that the accused dishonestly received the property knowing or having reason to believe that it was stolen, unless the accused could show how he obtained possession of the same. SEN RAYA GOVINDAN v. PUBLIC PROSECUTOR, **3 M.L.T. 30 = 7 Cr. L. J. 30.**

(40)—*Penal Code, s. 411—Dishonest receiving and retaining, distinction between.*—In the case of dishonest receiving, the offence is completed, when the stolen property is received, the receiver knowing or having reason to believe at the time that the property was stolen property; whereas, in the case of dishonest retaining, the offence is committed, not when the property is received, but when, after knowing or having reason to believe it is stolen, it is dishonestly retained. RAM SARUP BENIA v. EMPEROR, **9 C.W.N. 1027 = 2 Cr. L.J. 847.**

(41)—*Penal Code, s. 411—Receiver of stolen property—Property found in a house not in the exclusive occupation of accused—Presumption.*—When a property is found in a house in the possession of more than one person, mere discovery of stolen property in that house is not in itself sufficient to prove that the possession was of any one of those persons. Where A asks B to receive properties to be brought by C, there is no presumption that the properties would be stolen. *In re* MUHAMAD ALI SHET, **4 M.L.T. 415 = 9 Cr. L.J. 52 = 19 M.L.J. 301.]**

(42)—*Penal Code, ss. 411 and 414—Dishonestly receiving stolen property—Assisting in concealment of stolen property—Crim. Pro. Code, s. 46 (s. 35 of the Code of* 1888).—If there is evidence of the receipt of stolen property, the conviction should be under s. 411; s. 414 only applies when there has been no actual receipt of the stolen property. The act of concealing or assisting in concealing stolen property does not aggravate the offence of receiving it. The offences specified in ss. 411 and 414, Penal Code, are not distinct offences so as to allow the procedure of s. 46 (s. 35 of the Crim. Pro. Code) being adopted. HIGH COURT PROCEEDINGS, 12TH AUG 1868, No. 1097, **1 Weir 469 = 2 Weir 35 = 4 M.H.C. App. 13.** [*R.*, 29 B. 449 = 7 Bom. L.R. 527.]

(43)—*Penal Code, s. 411—Guilty knowledge.*—In order to sustain a charge of "dishonest receipt of stolen property," guilty knowledge at the time of the receipt is necessary. The offence of "dishonest retention of stolen property" may be complete without any guilty knowledge at the time of receipt. HIGH COURT PROCEEDINGS. 6TH APRIL 1869, No. 670, **1 Weir 469 = 4 M.H.C. App. 42**

(44)—*Penal Code, s. 411—Unexplained possession of stolen property two months after theft.*—Where the accused, being found in possession of stolen property two months after the theft, gave no account of its possession, but denied that he was in possession of the property when he was arrested, *held*, that the prisoner should be convicted under s. 411, but not under s. 379. *In re* MADAPPA TEVAN, **1 Weir 471.**

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(45)—*Crim. Pro. Code* (1872), *s.* 418 (*s.* 517 *of the Code of* 1898)—*Possession of currency note lost by theft.*—The rule of law that possession by the taker in good faith is no defence against the owner of a chattel whose possession was lost through theft, is inapplicable to the case of money or a currency note. Property in these passes by mere delivery, and, in the interests of commerce and the security of human dealings, nothing short of fraud will prevent the passing of the property by mere delivery. *In re* COLLECTOR OF SALEM, 2 Weir 664 = 7 M H.C. 233. [*D.*, 3 Bom L R. 392 = 25 B. 702.]

(46)—*Evidence Act, s.* 114—*Presumption.*—The presumption which arises under s. 114 of the Evidence Act from the possession of stolen property, arises only when the possession is "soon after the theft." (See illus. (*a*) of the section and 11 C. 160.) The possession of stolen cattle a year and nine months after the theft cannot be taken as affording sufficient ground for presuming that the person in whose possession they were proved to have been seen, after the lapse of so long a time had committed the theft. EMPRESS v. KANA NAT, 6 C P.L.R. 29, Cr.

(47)—*Presumption from possession of stolen property—Evidence Act, s* 114.—A presumption could arise from the possession of stolen property by an accused, only when such possession is recent; what shall be deemed recent possession must be determined by the nature of the articles stolen, *viz.*, whether they are of a nature likely to pass rapidly from hand to hand or of which the accused would be likely, from his situation in life or vocation, to become possessed innocently. EMPRESS v. BISNATH SONAR, 12 C. P.L R. Cr. 5. (11 C. 160, *F*)

(48)—*Penal Code, ss.* 411 *and* 414—*Disposal of stolen property by the thief.*—A person, who abets a theft and receives the proceeds thereof, may be convicted of both abetment and guilty receiving. But neither s. 411 nor s. 414 can be applied to the original thief of the property concerned. No person can receive from himself; nor does a person assist himself in concealing. Therefore no disposal of stolen property by the person who stole it can be the subject of a charge against him in addition to the charge of theft, though of course it may be used as an alternative, failing proof that he is the thief. EMPEROR v. BALWANT SINGH, 4 N L.R. 71 = 8 Cr. L J. 11. [*R.*, 14 Cr. L J. 230 = 19 Ind. Cas. 326 = 9 N L.R 42.]

(49)—*Penal Code* (*Act* XLV *of* 1860), s. 411—*Retaining stolen property — Evidence—Production of stolen property.*—*Held*, that a conviction for an offence under s. 411, Indian Penal Code, is illegal, when the sole evidence against the accused persons is that they pointed out and produced stolen property from the bank of a stream. Evidence of production of stolen property by more than one accused person ought to be specific as to each of them. ALAH BAKSH v. EMPEROR, 92 P.L.R 1902. [*R.*, 29 P.W.R. 1912, Cr = 46 P.L.R. 1912 = 13 Ind. Cas. 220 = 13 Cr. L.J. 28.]

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(50)—*Restoration of— Contract Act—Thief, innocent purchaser and real owner.*—The principle stated in ill (*a*) to s. 108, Contract Act, applies to orders of Criminal as well as Civil Courts. Where a Criminal Court is satisfied that the property produced before it has been stolen from C, it must, under s. 41, Contract Act, restore the property to C, because he is the real owner. It cannot return it to an innocent purchaser, because, as the thief could confer no title, the purchaser has no right against the real owner. QUEEN-EMPRESS v. NGA PAN HLA, L B.R. 1872—1892, 84.

(51)—*Identification of.*—The identity of property alleged to be stolen, but recovered and produced and not distinguishable from the property stolen, may be generally established from the surrounding circumstances proved to have existed rather than by the evidence of persons able to speak with personal knowledge on the matter. NGA PAW v. QUEEN EMPRESS, L. B R. 1893—1900, 199. (Cr. Cir. No. 24 of 1883, *D.*)

(52)—*Recent possession of—Evidence of theft—Receiving— Presumption of law — Evidence Act, s.* 114, *ill.* (*a*)—*Separate convictions in respect of property stolen on different occasions.*—The mere fact of recent possession of stolen property is, in general, evidence of thefts, not of receipts of stolen property with guilty knowledge. In order to constitute the offence of receiving stolen property, it is not necessary to prove that some person, other than the prisoner, had possession of the stolen goods, before the prisoner got possession of them. In view of the plain terms of ill. (*a*) to s. 114, Evidence Act, by which Courts in this country must be guided, the possession of stolen property, sufficiently soon after theft, permits of one of the presumptions set out therein being drawn and the question, which of the two presumptions indicated in that illustration should be drawn, must depend on the facts in each particular case irrespective of any rule of English law. (15 C. 511, *Diss.*) In the absence of proof that the accused received stolen properties on different occasions, it is not permissible to charge, try and convict the accused in respect of each stolen property. NGA KYWET v. QUEEN-EMPRESS, 1 L.B.R. 39. (15 A. 317, *R.*)

(53)—*Possession of—Penal Code, s.* 411.—In order to convict a person of an offence under s. 411, I.P.C., on the presumption of guilt arising from the possession of stolen property, the possession must be exclusive as well as recent. Where the facts of the case indicate a possession by any one of several persons including the accused, *held*, that the accused cannot be presumed, from such possession, to have stolen it. AMIR v. EMPRESS, 25 P.R. 1883, Cr.

(54)—*Penal Code, s.* 411—*Stolen property—Joint possession of house—Presumptions arising from nature of property.*—Where stolen property, consisting of three bags of grain, was found in a room in the possession of two persons

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and was of such a nature that it could not have been overlooked, and both the accused must have known that the grain was in their room, *held* that the presumption arose that they were both accomplices and in possession. IMPERATOR v. JUMO *alias* MURAD, **1 S L.R. 66, Cr. = 8 Cr. L.J. 184.**

(55)—*Retention of property criminally misappropriated — Distinguished from dishonest retention of stolen property.*—Retention of property criminally misappropriated is not dishonest retaining of stolen property. Where a person takes possession of property not in the possession of another person, he does not, by that act alone, commit an offence. He commits it when he misappropriates it or converts it to his own use; as soon as he does that, and not before, the property becomes stolen property. In the interval, he could not be said to have retained stolen property. He is only guilty of criminal misappropriation. MUHAMMAD v. EMPEROR, **15 P.R. 1889, Cr.**

(56)—Bona fide *purchaser, rights of.*—A *bona fide* purchaser of stolen property acquires no title to it, if he does not purchase it in market overt. CROWN v. GURDIT SINGH, **7 P.R. 1872, Cr.**; CROWN v. HUSSU, **8 P.R. 1872, Cr.**

(57)—*Possession of stolen property.*—The law as to possession of stolen property discussed and explained by *Plowden, J.* EMPRESS v. SUBHA CHAND, **39 P.R 1881, Cr.**

(58)—*Dishonest retention and receipt of stolen property.*—Possession of stolen property, though evidence of an offence, is not an offence in itself. Neither the thief nor the receiver of stolen property commits the offence of retaining such property dishonestly merely by continuing to keep possession of it; to constitute dishonest retention, there must have been a change in the mental element of possession (possession always subsisting *animo et facto*) from an honest to a dishonest condition of the mind in relation to the thing possessed. NAJIBULLA KHAN v. EMPRESS, **18 P.R. 1884, Cr.** [*R.*, 46 P.R. 1887, 15 P.R. 1891, Cr.]

(59)—*Being in possession of.*—Being in possession of stolen property with the knowledge that it is stolen is not an offence under s. 411, I.P.C., though it may be evidence of such an offence or of theft. JOWAYA v. EMPRESS, **46 P R 1887.** (31 P.R. 1879, Cr.; 18 P.R 1884. Cr., *Cited.*) [*R.*, 15 P.R. 1891, Cr.]

(60)—*Penal Code, s.* 411—"*Reason to believe*" *property to be stolen.*—What amounts to a "reason to believe" that certain property is stolen property explained. GULBAD SHAH v. EMPRESS, **37 P.R. 1888, Cr.**

(61)—*Stolen property in possession of several persons.*—Where stolen property is found at a place in possession of several persons, other than the accused, the information given to the police to the effect that it might be found there, if proved, would not be conclusive proof of the guilt of the informant, as it is consistent with the theory that he is neither the chief nor the guilty receiver of it. HAKIMDU v. KING-EMPEROR, **20 P.R 1908, Cr. = 51 P.L.R. 1908 = 2 Cr. L.J. 230.** (17 A. 567, *F.*) [*F.*, 14 Cr. L.J. 602 = 32 P.W.R. 1913 = 21 Ind. Cas. 474 = 315 P L.R. 1913, 21 P.W.R. 1908, Cr. = 155 P. L R. 1908, Cr.]

(62)—*Pawnee in possession of stolen property —Rights of owner.*—A pawnee, in possession of stolen property, was ordered to restore the property to the owner thereof, notwithstanding that he received without guilty knowledge. BHARA MULL v. CROWN, **37 P.R. 1870, Cr.**

(63)—*Conviction for theft set aside by appellate Court—Order for restoration of property to the accused.*—Where a conviction for theft is set aside by the appellate Court, that Court is competent to order the restoration of the property to the accused, when the accused had been ordered by the lower Court to give the property to the complainant. PREM SUKH v. JOAHIR, **2 P.R. 1872, Cr.**

(64)—*Receiving or possession of.*—To support a conviction for receiving or possessing stolen property, the property should be "stolen" property and the accused must be shown to have been in possession with guilty knowledge. CROWN v. ESHUR SINGH, **8 P.R. 1867, Cr.** *and* CROWN v. EESHUR SINGH, **13 P R. 1867, Cr.**

(65)—*Dishonest retention.*—To support a conviction of dishonestly retaining stolen property, it ought to be shown that the accused, being in innocent possession of it, acquired the knowledge that it was stolen and thereafter retained it dishonestly. KHONA v. EMPRESS, **31 P R. 1879, Cr.** [*R.*, 46 P.R. 1887, 15 P.R. 1891.]

(66)—*What does not amount to—Penal Code, s.* 414—*Assistance in disposing of stolen property.*—Property into or for which stolen property has been converted or exchanged is not stolen property. S. 414, I.P.C., applies only to a person who, not having such possession of the property as would sustain a charge of himself concealing, disposing or making away with it, voluntarily renders assistance in such dealing with it. Assistance on the part of the accused person must be alleged and proved. Where there is no assistance on his part, but where he has sold possession in the character of owner, and the act of disposal is done in such character and not otherwise, the section does not apply. EMPRESS v. SUBHA CHAND, **39 P.R. 1881, Cr.**

(67)—*Evidence—Possession of stolen property.* —Where stolen property was found in the camp of a party of refugees, it was held that it was not proved in whose possession it was to justify the conviction of any one of them for theft. NGA SHWE YEIK v. QUEEN-EMPRESS, **L.B.R. 1872—1892, 397.**

(68)—*Penal Code, s.* 411—*Different stolen properties received on same occasion—Separate*

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offences.—The accused were convicted under s. 411, I.P.C., of two separate offences of receiving stolen property, and were sentenced to undergo separate terms of imprisonment for each of the offences. *Held* that the accused were wrongly convicted of two separate offences, as there was no evidence to show that they received the stolen property on two distinct occasions. KING-EMPEROR v. IRAPA, **3 Bom. L.R. 187.**

(69)—*Concealment of stolen property—Penal Code*, ss. 411, 414.—*Held* that the prisoner, who, having received stolen property, concealed it in his house, could not be charged and convicted for two offences, *viz.*, of having dishonestly received stolen property under s. 411, Penal Code, and of assisting in the concealment of stolen property under s. 414, which applies to persons whose dealing with the stolen property is not of such a kind as to make them guilty of dishonestly receiving or retaining it. GOVERNMENT v. NOWBIA, **1 Agra Cr. 9.**

(70)—*Money obtained on forged money orders—Penal Code*, s. 410.—Money obtained upon forged money orders is not "stolen property" within the definition thereof given in the Penal Code, s. 410. QUEEN v. MONMOHUN ROY, **24 W.R. Cr. 33.**

(71)—*Receiving stolen property—Proof of guilty knowledge.*—In a case in which the accused is charged with receiving stolen property, it must be clearly proved that he retained the property with guilty knowledge. *Held* that proof that an accused person retained a certain property, alleged to be stolen, with guilty knowledge must be clearly given where the accused is charged with receiving stolen property. *In re* MEER YAR ALI, **13 W.R. Cr. 70.**

(72)—*Property stolen at dacoity—Penal Code*, s. 412—*Proof of commission of dacoity.*—*Held* that a conviction for receiving property stolen at a dacoity could be upheld only by proof that the prisoner knew, or had reason to believe, that dacoity had been committed, or that the persons from whom he acquired the property were dacoits. QUEEN v. JOGESHUR BAGDEE, **7 W.R. Cr. 109**; QUEEN v. BISHOO MANJEE, **9 W.R. Cr. 16.**

(73)—*Penal Code*, s. 411—*Rescuing property from police custody—Stolen property.*—Where the accused rescued from police custody property alleged to have been stolen, *held* that they could not be convicted of an offence under s. 411 without strict proof that the property was stolen property. REG. v. SHIVRAM, **Rat. Un. Cr. C 98=Cr. Rg. 25 11-1875.**

(74)—*Penal Code*, s. 411—*Proof of theft.*—Before a conviction is made under s. 411 of the Penal Code, it must be clearly proved that the property was stolen from its last owner. The circumstance that the accused knew that the property was not his own and yet claimed it in a former deposition is not sufficient proof. QUEEN-EMPRESS v. MUTAYA, **Rat. Un. Cr. C. 416.**

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(75)—*Crim. Pro. Code*, ss. 180, 188—*Dacoity committed in British India—Stolen property found in Native State—Native Indian British subject—Trial in a British Court—Certificate of Political Agent, necessary for.*—Where a dacoity was committed in British territory and a Native Indian British subject was found in possession of stolen property, alleged to have been stolen at the dacoity in a Native State, and a charge under s. 412, Penal Code, was preferred against him: *Held* that, though under s. 180, Crim. Pro. Code, the offence could be tried at the place where the property was retained or where the theft or dacoity took place, yet under s. 188 of the Code, a certificate of the Political Agent was necessary if the charge was to be tried in British India. A commitment without such certificate should be quashed. SESSIONS JUDGE OF TANJORE v. SUNDARA SINGH, **6 Ind. Cas. 308=1910 M.W.N. 143=8 M.L.T. 54=11 Cr.L.J. 306.**

(76)—*Penal Code*, ss. 414, 380—*Property stolen by son—Restoration by father to owner—Denial of knowledge of restoration when required to explain—Conviction of father under* ss. 414, 380, *Legality—The words* 'disposing of' *in* s. 414—*Meaning and interpretation of—Dealing with property after theft—Whether amounts to theft or abetment thereof.*—Where the accused restored to the owners property stolen by his son, and, subsequently, with a view to save his son from punishment, denied all knowledge of the restoration when required to explain it, and where the accused was, on these facts, convicted under s. 414, I.P.C. *Held*, that the accused committed no offence, and the conviction was set aside. The words 'disposing of' in s. 414, I.P.C., must be interpreted by the light of the words they are associated with, *viz.*, 'concealing,' and "making away with," and they cannot be taken to include 'restoring to the owners.' Dealing with the property after the theft was committed would not amount either to theft or to abetment of theft and s. 380 could not apply. NGA YAN E v. KING-EMPEROR, **U.B.R. 1910, 1st. Qr. 8=7 Ind Cas. 465=11 Cr. L. J. 493.**

(77)—*Evidence of dishonest receipt of property.*—*Held* that it is a fair presumption to make that, where stolen property is found with a person who admits having received it, the receipt of such property was dishonest, unless a satisfactory explanation of the receiver's conduct is given. *In the matter of the petition of* RAMJOY KURMOKAR, **25 W.R. Cr. 10.**

(78)—*Rubber smuggling — Receiving stolen property—Penal Code*, s. 411.—A conviction for receiving stolen property under s. 411, I.P.C. (rubber produced in the Government forests at Cachar), was held to be bad on the ground that it was not proved that the rubber came from the Government forests, or that it was stolen property or that the prisoner knew that the property was stolen; there could be no conviction for smuggling, smuggling of India-

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rubber not being an offence under the Indian Penal Code. QUEEN v. BAJO HURI, **19 W.R. Cr. 37**; QUEEN v. DASSORUT DASS, **18 W.R. Cr. 63** *and see* QUEEN v. GOUREE CHURN DOSS, **19 W.R. Cr. 38, Note.**

(79)—*Theft—Stolen property—Presumption of guilt.*—Possession of stolen property cannot safely be treated as evidence even of theft except when the date of the theft is so recent as to make it reasonable to presume in the absence of explanation that the person in whose possession the property is found must have obtained the possession by stealing. If any considerable interval of time has elapsed between the date of the theft and the date when the property is found in the possession of the person accused, then no presumption of guilt ought to be founded on that possession alone. QUEEN v. POROMISHER AHEER, **23 W.R. Cr. 16.**

(80)—Where the person in whose possession the property of another is found is not able to account for his possession, the jury may fairly infer that the possession was acquired with a guilty intent. QUEEN v. SHURUFFOODDEEN, **13 W.R. Cr. 26.**

(81)—In order to support a conviction under s. 411 (receiving stolen property), it is necessary that there must be evidence of guilty knowledge. QUEEN v. DOYAL SHILYDAR, **6 W.R. Cr. 87.**

(82)—*Order of Court as to disposal of stolen property—Restoration of property by Criminal Court—Remedy by suit in Civil Court.*—If personal property, of which a person has been unlawfully deprived, come into the hands of a Magistrate, he may direct its restoration to the owner; otherwise the owner must sue for its value in the civil Court. RAMJEEBUN DOOBEY v. LUCHMONEE DEBEA, **W.R. 1864, Cr. 5.**

(83)—An order as to disposal of any property in a Criminal Court can be made, under Crim. Pro. Code (1861), s. 132-A, only where the property is produced before the Court and at the time of passing judgment. RASH MOHUN GOSHAMY v. KALINATH RAHA, **19 W.R. Cr. 3.**

See BOM. ACT XIII OF 1856, s. 35 (1), 20 B. 348.

See ARREST, 8 W.R. Cr. 28.

See CHARGE TO JURY—MISDIRECTION, 15 B. 369.

Compensation to innocent purchaser of—, not legal—*See* COMPENSATION—GENERAL, 6 M. 286=2 Weir 716.

See COMMITMENT TO SESSIONS COURT, A.W.N. 1884, 14.

See CONFESSION - CONFESSIONS BY CO-ACCUSED—ADMISSIBILITY, 5 B. 63.

Production of—Other evidence doubtful—Effect—*See* CONVICTION, 31 P.W.R. 1913, Cr. =314 P.L.R. 1913=21 Ind. Cas. 473=14 Cr. L.J. 601.

See CRIMINAL MISAPPROPRIATION, 1 Weir 470, 11 M. 145=1 Weir 498.

See CRIM. PRO. CODE, 1898, s. 103, 21 M. 83=2 Weir 503.

Bond for good behaviour—Conviction for receiving—in Native State—Forfeiture—Nature of offence under section—Proof of commission necessary—*See* CRIM. PRO. CODE, 1898, s. 110, 28 P.R. 1910, Cr.=45 P.W.R. 1910=8 Ind. Cas. 383=11 Cr. L.J. 635=199 P.L.R. 1910.

See CRIM. PRO. CODE, 1898, ss. 383, 439 and 562, 9 P.W.R. 1907, Cr.=5 Cr. L J. 217.

See CRIM. PRO. CODE, 1898, ss. 517, 520, 1 C.L.R. 339=3 C. 379.

Compensation for pledgee of stolen property—*See* CRIM. PRO. CODE, 1898, ss. 519, and 545, 2 Weir 672.

See CRIM. PRO. CODE, 1898, s. 523, 8 B. 338.

See ESCAPE FROM LAWFUL CUSTODY, 23 A. 266=A.W.N. 1901, 77.

See EVIDENCE—GENERAL, 8 W.R. Cr. 16.

Production of—Effect—*See* EVIDENCE ACT, 1872, s. 27, 5 S.L R. 257=15 Ind. Cas. 801=13 Cr. L.J. 529.

See EVIDENCE ACT, 1872, s. 114, 29 A. 138 =3 A L.J. 808=A.W.N. 1906, 314=1 M.L.T. 449=4 Cr. L.J. 436, 2 Weir 489.

Presumption—, found in possession of the accused next morning—Thief and receiver of—Legality of joint trial—*See* EVIDENCE ACT, 1872, s. 114, 11 A.L.J. 94=18 Ind. Cas. 684 =14 Cr. L.J. 124.

Theft or receipt of stolen property—*See* EVIDENCE ACT, 1872, s. 114, 1912 M.W.N. 97=13 Ind. Cas. 828=13 Cr. L J. 140.

Possession of — Presumption — *See* EVIDENCE ACT, 1872, s. 114 (*a*), 15 P.R. 1891, Cr.

Dacoity and receiving—Distinct offences—*See* JOINDER OF CHARGES—GENERAL, 13 W.R Cr. 42.

See JOINDER OF CHARGES - GENERAL, A. W.N. 1883, 39.

See JOINDER OF CHARGES—WHEN LEGAL, 2 L.B.R. 19, 1 C.W.N. 35, 6 C.L.R. 245.

See JOINT TRIAL, 6 Bom. L.R. 361.

See JURISDICTION OF CRIMINAL COURTS —GENERAL, 9 A. 523=A.W.N. 1887, 131, A. W.N. 1884, 85.

Murder combined with robbery—Recent and unexplained possession of—is presumptive evidence against the prisoner on the charge of murder as well as that of robbery—*See* PENAL CODE, s. 302, 1911, 2 M.W.N. 478=21 M.L.J. 1071=12 Cr. L.J. 564.

See PENAL CODE, ss. 379, 380, A.W.N. 1882, 143.

See PENAL CODE, ss. 379 and 411, 9 Bom. L.R. 27=5 Cr. L.J. 63.

Stolen Property—*concluded.*

Robbery committed outside British India —Stolen property brought into British territory —*See* PENAL CODE, ss. 392, 411, A.W.N. 1906, 52=3 A.L.J. 146=3 Cr. L.J. 247=28 A. 372.

See PENAL CODE, ss. 403, 410, 411, 8 A. 51 =A.W.N. 1885, 326.

Murder—Possession of—belonging to deceased—*See* PRESUMPTION, A.W.N. 1887, 130.

See RESTORATION OF PROPERTY, 22 B. 844, 10 M. 25=2 Weir 670, 23 B. 494.

Theft and attempt to conceal—Penal Code, ss. 414, 511—*See* SENTENCE—CUMULATIVE AND SEPARATE SENTENCES, 15 P.R. 1896, Cr.

Theft and receiving — *See* SENTENCE—CUMULATIVE AND SEPARATE SENTENCES, 1 W.R. Cr. 27.

See SESSIONS JUDGE, JURISDICTION OF, 9 W.R. Cr. 57.

Stolen Sheep.

Killing a stolen sheep—*See* MISCHIEF, 1 Weir 497=2 Weir 458.

Storing Jute.

(1)—*Act* II (*B.C.*) *of* 1872, *ss.* 4 *and* 34—*Procedure storing Jute—License—Crim. Pro. Code*, 1861, *Ch.* XV.—S. 34, Act II (B. C.) of 1872, requires that offences punishable under this Act should be dealt with under the provisions of Ch. XV, Crim. Pro. Code, 1861. Before a conviction for storing jute in a warehouse without a license can be had under s. 4, proceedings should be taken under the provisions of Ch. XV, Crim. Pro. Code, 1861. *In re* BHUGWAN CHUNDER KOONDOO, 19 W.R. Cr. 4.

Strangulation.

Death by—*See* PENAL CODE, ss. 302, 304, 6 P.W.R. 1912, Cr.=68 P.L R. 1912=15 Ind. Cas. 318=13 Cr. L J. 478.

Street.

See PUBLIC STREET.

(1)—*Term* " *street* " *explained.*— A blind alley used by the accused and his neighbours, and over which no one else has the right of way, cannot be considered a "street" under Bombay Act II of 1884. *In re* GULABDAS BHAIDAS, 20 B. 83. [*D.*, 30 B. 558=8 Bom. L.R. 457=4 Cr. L J. 23.]

See U. P. ACT I OF 1900, s. 3 (4), A.W.N. 1908, 15=5 A.L J. 45.

See U.P. ACT I OF 1900, s. 88, A.W.N. 1907, 2=4 A.L J. 8.

Stridhanam Property.

Theft of stridhanam property by wife—*See* THEFT—THINGS IN RESPECT OF WHICH THE OFFENCE OF THEFT CANNOT BE COMMITTED, Rat. Un. Cr. C. 44, 8 B.H.C. Cr. 11.

Striking off.

Order saying that the case was struck off—Legality of order—*See* CRIM. PRO. CODE, 1898, s. 259, 17 O. C. 18=23 Ind. Cas. 182=15 Cr. L.J. 230.

Sub-Contractor.

See ACT XIII OF 1859, s. 2, 10 B. 96.

Sub-Divisional Magistrate.

See ADDITIONAL DISTRICT MAGISTRATE, 25 P.R. 1908, Cr.=9 Cr. L.J. 104.

Sub-Inspector of Police.

See ACT XI OF 1878, U.B.R. 1907, 4th Qr., Arms, 1.

Subordinate Court.

See SANCTION TO PROSECUTE—AUTHORITIES COMPETENT TO GRANT SANCTION, ETC., 22 C. 487.

Subordinate Judge, Jurisdiction of.

See SANCTION TO PROSECUTE—AUTHORITIES COMPETENT TO GRANT SANCTION, ETC., 2 B. 481.

See SANCTION TO PROSECUTE—REVOCATION OF SANCTION, 7 M. 314=2 Weir 196.

Subordinate Magistrates, Second Class, Act.

See MAD. ACT I OF 1863.

Subordination of Magistrates.

See ADDITIONAL DISTRICT MAGISTRATE, 25 P.R. 1908, Cr.=9 Cr. L J. 104.

See SANCTION TO PROSECUTE—AUTHORITIES COMPETENT TO GRANT SANCTION, ETC., 2 A. 205, F.B.

See SESSIONS JUDGE, JURISDICTION OF, 2 Weir 537=7 M.H.C. App. 27.

Sub-Overseer.

Prosecution of—P.W.D.—Sanction not necessary—*See* CRIM. PRO. CODE, 1898, s. 197, 12 M.L.T. 351=17 Ind. Cas. 402=13 Cr. L.J. 770.

Sub-Registrar.

Whether a "Court"—*See* ACT III OF 1877, s. 34, 11 M. 3.

Presentation of forged document for registration—Sanction of Sub-Registrar whether necessary—*See* ACT III OF 1877, ss. 34, 35, 41, 12 M. 201.

Powers of Special Magistrate conferred upon—whether the power continues on transfer of—to another place—*See* MAD. ACT XXIV OF 1859, s. 48, 15 M. 132=2 Weir 36.

See EVIDENCE ACT, 1872, s. 45, 2 Weir 760.

See FORGERY, 12 B. 36.

See SANCTION TO PROSECUTE—CONDITIONS REQUISITE FOR GRANT OF SANCTION, ETC., 4 M.L.J. 189.

Subsistence Allowance and Travelling Expenses.

See ACT VII OF 1870, s. 31, U.B.R. 1892—1896, Vol. I, 7.

Subsistence Money.

(1)—*Illegal commitment—Duty of jailor.*—Unless subsistence-money is paid before the commitment, the commitment is illegal. The jailor is bound by the words of the Act. It is for him, and not for the prisoner, to see that the money is paid. *In the matter of* THOMSON, **Bourke O.C. 421.**

(2)—*Fixing subsistence money—Detention in jail on decree of defendant arrested prior to decree—Right to discharge* —Where a defendant is arrested prior to decree under Act VIII of 1859, s. 78, and a decree is afterwards obtained against him in the suit, the plaintiff, if he wishes to detain the defendant in prison, must have him brought before the Court, and his subsistence-money fixed, in the same way as in the case of an arrest in execution of a decree; and if he fails to do so, the defendant is entitled to his discharge from prison. RAMPERSAUD ROY v. CALLA CHAND DASS, **Bourke O.C. 423.** *In the matter of* CALLA CHAND DASS, **1 Ind. Jur. N.S. 327.**

(3)—*Non-payment of subsistence-money in advance—Act* VIII *of* 1859, *ss.* 276, 278.—A prisoner was arrested on August 4th and committed to prison on the evening of the same day. Before his committal, the execution-creditor paid into the hands of the jailor a sum sufficient for his subsistence-money for twenty-seven days, at the established rate of four annas per day. On the 5th August, a writ of *habeas corpus* was applied for to bring the prisoner up, and on the 6th a further sum of annas four was paid to the jailor to cover any deficiency in the former payment. *Held* that the requirements of s. 276, Act VIII of 1859, had not been fulfilled, and that the prisoner was entitled to his discharge under s. 278. DUTT v. CORNELIUS, **5 B.L.R. Ap. 79.**

Substituted Service.

On accused— *See* NOTICE, A.W.N. 1882, 170.

Succession, Collection of Debts on, Act.

See ACT XXVII OF 1860.

Sudden Death.

(1)— *Cases of unnatural and sudden death—Duty of Village Police.*—In cases of unnatural or sudden death, and particularly where murder is suspected, it is the duty of the Village Police, under the ancient system recognized in Bom. Act VIII of 1867, to forward the corpse at once for medical examination. QUEEN-EMPRESS v. SAHU, **Rat. Un. Cr. C. 792 = Cr. Rg. 50 of 1895.**

Omission to report—in a house—*See* CRIM. PRO. CODE, 1898, s. 45, 12 M. 92 = 1 Weir 102.

Sudden Fight.

Undue advantage taken in— *See* PENAL CODE, ss. 300, 302, U.B.R. 1897—1901, Vol. I, 288.

Sudden Provocation.

See CULPABLE HOMICIDE.

See MURDER.

See PENAL CODE, ss. 299, 300, 302, 304.

(1)—*Penal Code, s.* 335-*Sudden provocation.*—Where a person, suspecting his wife of infidelity, hid himself so as to see her in intimacy with her paramour, and seeing her do an improper act with him, caused grievous hurt to her, *held* that though there was grave provocation, there was no sudden provocation. EMPRESS v. RAMZANI, **A.W.N. 1889, 9.**

Suicide.

See ABETMENT, 3 N.W.P. 316, 1 Agra 21, Cr.

See ATTEMPT, 22 P R. 1878, Cr.

Abetment of—Facts constituting—*See* PENAL CODE, ss. 107, 306, 11 A.L.J. 997.

See PENAL CODE, s. 309, Rat. Un. Cr. C. 188, 8 M. 5 = 1 Weir 330.

Suit.

See RIGHT OF SUIT.

Sulphate of Copper.

Murder—Retracted confession, corroboration—Poisoning by— *See* PENAL CODE, s. 302, 43 P.W.R. 1910, Cr.

Summary Dismissal of Appeal.

See CRIM. PRO. CODE, 1898, s. 421.

See CRIM. PRO. CODE, 1898, ss. 367, 421, 25 M. 534 = 2 Weir 473.

See CRIM. PRO. CODE, 1898, ss. 423, 424, 367, 1 Bom. L.R. 225.

Summary Jurisdiction.

See CRIM. PRO. CODE, 1898, s. 529, 1 C.L. R. 434.

Summary Power.

Of flogging—*See* ACT XXIX OF 1861, art. 85, 11 P.R. 1868, Cr.

Summary Proceedings.

See CRIM. PRO. CODE, 1898, ss. 243, 262, 263 and 556, 15 M. 83 = 2 Weir 326.

See CRIM. PRO. CODE, 1893, s. 530 (*q*), U.B.R. 1892—1896, Vol. I, 76.

Summary Rejection of Appeal.

See CRIM. PRO. CODE, 1898, s. 421.

See JUDGMENT, 17 A. 241, F.B. = A.W.N. 1895, 68.

See REVISION—DELAY, 8 A. 514.

Summary Trial.

See CRIM. PRO. CODE, 1898, ss. 260—264.

(1)—*Crim. Pro Code* (1882), *s.* 260—*Charge of offences not triable summarily along with offences so triable—Summary jurisdiction of Magistrates.*—The mere circumstance of a complaint charging an accused person of offences not triable summarily along with offences triable summarily, would not oust the summary jurisdiction of a Magistrate under s. 260. Whether a complaint does or does not afford

Summary Trial—*continued.*

sufficient grounds for a summary trial, or requires a trial under the ordinary procedure, is a question which must be left in a great measure to the discretion of the Magistrate, which discretion must be exercised with due care and caution according to judicial methods, with reference to the circumstances of each case. QUEEN-EMPRESS v. JAGJIWAN, **10 A. 55 = A W.N. 1887, 280.**

(2)—*Crim. Pro. Code*, s. 263—*Summary trial —Record, contents of.*—Where a Magistrate, so empowered, tries a case summarily, it is desirable that he should set out under the column reserved for the purpose, so much of the reasons that have influenced him as to satisfy the accused that the Magistrate has considered each of the ingredients necessary in law for the conviction to which the Magistrate has proceeded, and that, while this should be recorded with brevity, the brevity should not be such as to tend to obscurity. QUEEN-EMPRESS v. MUKUNDI LAL, **21 A. 183 = A.W.N 1899, 34.** [*F.*, 2 Cr. L.J. 375 = 3 L.B.R. 3; *R.*, 10 Cr. L. J. 216 = 2 S.L.R. 3, Cr., 14 Cr. L.J. 594 = 21 Ind. Cas. 466 = 16 O.C. 357.]

(3)—*Complaint including offences not triable summarily, but such offences not seriously prosecuted—Summary trial.*—The mere circumstance that the complainant writes down a charge in his petition of complaint, which may not be triable summarily, but which is not seriously prosecuted, would not necessarily preclude the Magistrate from trying the case in summary jurisdiction upon a charge or charges triable by the summary mode of procedure. EMPRESS v. LACHMI NARAIN, **A.W N. 1887, 103.**

(4)—*Crim. Pro. Code* (*Act V of* 1898), s. 263 —*Summary trial—Judgment.*—A Magistrate, in a summary trial, must state in his judgment the reasons for his finding in such a manner as to enable the High Court on revision to judge whether there were sufficient materials for his finding. EMPRESS v. MUHAMMAD HANIFF, **A.W.N. 1899, 81.**

(5)—*Crim. Pro Code* (*Act V of* 1898), *s.* 263—*Summary trial—Nature of record required in non-appealable cases.*—In a case under ss. 426 and 447 of the Penal Code tried summarily, in which a non-appealable sentence was passed, *held* that the Magistrate was not bound, under s. 263 of the Crim. Pro. Code, to record sufficient evidence to justify his order, especially where the order shows that all the evidence has been considered. EMPEROR v. SHOMESHAR DAS, **A.W.N. 1905, 143 = 2 Cr. L.J. 336.** (27 C. 450, *D.*)

(6)—*Crim. Pro. Code* (*Act X of* 1882), *Ch.* XXII—*Summary trial—Protracted trial.*—A case of theft of property of the value of over Rs. 50 which involves some months in its trial and in which local inspection has also to be made is not one which is intended by the Legislature to be summarily tried under Ch. XXII of the Crim. Pro. Code. *In the matter of* SHEO SAHAI BHAGAT, **A.W N 1891, 183.** [*Diss.*, A.W.N. 1892, 30.]

Summary Trial—*continued.*

(7)—*Crim. Pro. Code* (*Act X of* 1882), *Ch.* XXII—*Summary trial—Protracted trial*—Where a Magistrate is empowered by law to try a case summarily, the fact that the trial is protracted does not affect his jurisdiction to try it summarily. *In the matter of the petition of* MANSA, **A.W.N, 1892, 30.**

(8)—*Crim. Pro. Code* (*Act X of* 1872), *s.* 227 —*Record in non-appealable cases.*—In summary trials, where there is no appeal, the record required by s. 227 of the Crim. Pro. Code should be complete in all particulars. It should state clearly and distinctly the offence with which the accused is charged. EMPRESS v. MADHO, **A.W.N. 1882, 59** [*F.*, A.W.N. 1885, 213, A.W.N. 1886, 181.]

(9)—*Crim. Pro. Code* (*Act X of* 1872), *s.* 227 (*h*)—*Summary trial.*—Where a Magistrate in a summary trial convicted the accused merely stating that "there was a quarrel about a well between parties who were much incensed against one another," *held* that the procedure was irregular, since the order did not state what offence was committed and the reasons for considering the offence proved. EMPRESS v. CHOTEY LAL, **A.W.N. 1882, 242.** [*R.*, 21 A 189.]

(10)—*Crim. Pro. Code* (1882), *ss.* 262, 263—*Summary trial—Judgment.*—Where the judgment of a Magistrate in a summary trial did not set out with clearness either the facts of the case or the nature of the evidence supporting it, and the Magistrate was also doubtful whether the order directing the convicted persons to suffer six months' imprisonment for failure to give security to keep the peace was not in contravention of the terms of s. 262, Crim. Pro. Code, *held* that the judgment did not sufficiently comply with the provisions of s. 263, Crim. Pro. Code, 1882, and that the conviction should, therefore, be set aside and the case re-tried. EMPRESS v. LACHMAN, **A W.N. 1886, 181.** [*Diss.*, 21 A. 189.]

(11)—*Crim. Pro. Code* (*Act X of* 1882), *s.* 263 —*Summary trial—Record.*—The record in a summary trial of a non-appealable case should describe the ingredients constituting the offence charged and afford sufficient materials to support the conviction. EMPRESS v. MOHAN, **A.W.N. 1885, 213.** [*F.*, A.W.N. 1886, 181; *R.*, 21 A. 189.]

(12)—*Conviction—Reasons for—Revision.*—The record of the reasons for a conviction in a summary trial should contain materials to enable the Chief Court on revision to judge whether there are sufficient grounds to support it. MEHTAB v. EMPRESS, **7 P.R. 1887, Cr.**

(13)—*Crim. Pro. Code* (1872), *ss.* 141, 222—*Jurisdiction of Magistrate Summary trial.*—A Magistrate, otherwise competent, has a discretion to inquire into and try a person on any charge, which he may consider covered by the facts reported, without reference to the particular charge that may have been preferred, and without reference to the procedure which, when

Summary Trial—*continued.*

he has determined the offence with which he will charge the accused, it will be competent to him to adopt. Such discretionary powers should be exercised with great caution, and a Magistrate ought not, in order to proceed summarily, to charge an accused with a less offence than the facts alleged, if proved, would show him to have committed. *In the matter of* MEWA, 6 N.W.P. 254.

(14)—*To be determined by the offence complained of.*—Whether a case is triable summarily or not must be determined by the offence complained of and not by the offence proved. RAM GOTI SHAHA v. JOMA GAZI, 3 J G. 17.

(15)—*Enhancement of sentence in summary trials by High Court.*—When an accused has been summarily tried, the High Court, as a Court of revision, can enhance the sentence up to two years, *i.e.*, the limit to which a first-class Magistrate can pass sentence. *In re* SHEIKH HOSSEIN MAHAMMED, Cr. Rg. 30th July, 1883.

(16)—*Crim. Pro. Code* (1872), *s.* 34—*Magistrate not empowered to split up offences to try summarily—Proceedings void.*—A Magistrate should not split up an offence for the purpose of giving himself summary jurisdiction. If he does so and the offence is not triable summarily, the proceedings are void under s. 34, Crim. Pro. Code. *In re* ABDOOL KADIR, 2 J.G. 8; CHUNDER SEEKHUR v. DHURRUM NAUTH, 1 J.G. 45.

(17)—*Crim. Pro. Code, ss.* 242, 262, 264—*Summary trial—Judgment of lower Court.*—In summary trial, the procedure for summons cases and warrant cases provided by s. 262, Crim. Pro. Code, should be followed, and, in a case in which an appeal lies, a judgment should be recorded, containing what s. 264 requires. QUEEN-EMPRESS v. HUSEIN, Rat. Un. Cr. C. 725 = Cr. Rg. 50 of 1894.

(18)—*Crim. Pro. Code* (1882), *ss.* 256, 262—*Warrant cases tried summarily—Procedure.*—To a warrant case tried summarily, the rules about warrant cases apply, under s. 262. In such case, though a formal charge need not be framed, the accused person cannot be called dilatory if he delays to name his witnesses until he has heard the evidence for the prosecution and found that the Magistrate considers the evidence a substantial basis for charging him. QUEEN-EMPRESS v. KERU, Rat. Un. Cr. C. 768 = Cr. Rg. 31 of 1895.

(19)—*Crim. Pro. Code* (1882), *ss.* 260, 263, 264—*Summary trial when improper—Record of such trial.*—Where a case is complicated, and a conviction may entail further serious consequences, as for instance, where the charge is under s. 202, I.P.C., against a person who is a vatandar kulkarni, a summary trial is not the procedure which a Magistrate in his discretion should use. The record of a summary trial should not be so meagre as to deprive the High Court of the power of judging whether the finding is correct, legal or proper, when the case comes before it in revision. QUEEN-EMPRESS v. HARI GOPAL, Rat. Un. Cr. C. 778 = Cr. Rg. 42 of 1895.

(20)—*Crim. Pro. Code* (1882), *s.* 260—*Kulkarni charged under s.* 176, *I.P.C.*—Where a village kulkarni is charged with an offence under s. 176, I.P.C., the Magistrate would use a right discretion in not trying the case by summary procedure. QUEEN-EMPRESS v. WAMAN DHONDDEV, Rat. Un. Cr. C. 784 = Cr. Rg. 45 of 1895.

(21)—*Conviction in summary trials—Practice of High Courts.*—In summary trials, the High Courts in India have always set aside convictions where there are in the judgments no sufficient materials to support them. QUEEN EMPRESS v. NAWAJBAI, Rat. Un. Cr. C 934 = Cr. Rg. 43 of 1897.

(22)—*Crim. Pro. Code* (1898), *Ch.* XXII.—Where the offence charged in the complaint was one under s. 325, I.P.C., and all the facts alleged therein and the evidence went to show that grievous hurt was actually caused, *held* that the Magistrate should not have tried the case summarily for an offence under s. 323 without giving any reasons or recording a statement that he discredited any of the allegations. QUEEN-EMPRESS v. HUSEIN SHEB, Rat. Un. Cr. C. 988 = Cr. Rg. 47 of 1898.

(23)—*Jurisdiction of Magistrate to try summarily for criminal trespass and mischief.*—In the absence of a *bona fide* claim of right depriving the Magistrate of jurisdiction, a person may be tried summarily for criminal trespass and mischief. GAMIRULLAH SARKAR v. ABDUL SHEIKH, 10 C. 408. (21 W.R. Cr. 38, *Disappr.*)

(24)—*Crim Pro. Code* (1882), *s.* 260—*Power of Magistrate to try a case summarily.*—When a Magistrate ascertains that the facts which are alleged to have taken place disclose only an offence triable summarily, he can dispose of such case summarily, and the mere fact that the complainant enumerates sections of the Penal Code relating to offences not triable summarily does not affect the jurisdiction of the Magistrate, unless the facts of which he really complains disclose such offences. GOLAP PANDEY v. BODDAM, 16 C. 715 [*Appl.*, 1 Bom. L.R. 683; *R.*, 21 M.L J. 781 = 10 M.L.T. 118 = 11 Ind. Cas. 797 = 2 M.W.N. 1911, 71 = 12 Cr. L.J. 453.]

(25)—*Summary procedure—Duty of Magistrate to put on record sufficient evidence.*—Although it may be admitted that the object of a summary procedure is to shorten the course of the trial, it is, nevertheless, incumbent upon the Magistrate to put on record sufficient evidence to justify his order. AIUNDDI SHEIKH v. QUEEN-EMPRESS, 27 C. 450. [*D.*, A W N. 1905, 143.].

(26)—*Crim. Pro. Code* (1872), *s.* 222—*Summary trial, test of.*—It is the nature of the complaint made which should determine whether

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the case should or should not be tried summarily. BEPULOOLLA v. NAZIM SHEIKH, 2 C.L.R. 374. [*R.*, 10 A. 55.]

(27)—*Crim. Pro. Code* (1898), *ss.* 260 *and* 261 —*Summary trial—Jurisdiction of the Court to hold—How to be determined.*—In determining whether a case is triable summarily, under the provisions of the Crim. Pro. Code, the facts stated in the petition of complaint as well as the sworn statements of the complainant must be taken into consideration. FANINDRA NATH CHATTERJEE v. EMPEROR, 36 C. 67 = 12 C. W. N. 1041 = 8 Cr. L J. 227 = 1 Ind. Cas. 519. (29 C. 409, *R.*)

(28)—*Crim. Pro. Code* (1872), *Ch.* XVIII—*Record and judgment to be written by Magistrates.*—When the law permits a Magistrate to try a case summarily, it was provided, as a safeguard for the accused, that in non-appealable cases, the record, and in appealable cases the judgments, should be written by the presiding officer. It contains no provision enabling him to depute that duty to a clerk. SUBRAMANYA IYER v. THE QUEEN, 6 M. 396 = 2 Weir 328 = 8 Ind. Jur. 35.

(29)—*Summary trial of serious offence, propriety of.*—Where a police officer, of many years' standing, was charged with intimidation and was tried summarily and convicted, *held*, that the Magistrate did not exercise a sound discretion in trying the case summarily and depriving the accused of the privilege of an appeal. SUBRAMANYA IYER v. QUEEN, 6 M. 396 = 2 Weir 328 = 8 Ind. Jur. 35. [*F.*, Rat. Un. Cr. C. 784; *R.*, Rat. Un. Cr. C. 778.]

(30)—*Penal Code, ss.* 453, 454, *whether offences under, summarily triable.*—Offences under ss. 453, 454, Penal Code, are not, under s. 260, Crim. Pro. Code, triable in a summary manner. EMPEROR v. RATAN SINGH RAJPUT, 14 C.P.L R. Cr. 158. (But now Act I of 1903 has made them also summarily triable.)

(31)—*Crim. Pro. Code* (1898), *s.* 260—*Summary trial—Offence charged not triable summarily—Jurisdiction of Magistrate—Penal Code, ss.* 392, 393.—The complainant filed a complaint under s. 392, I.P.C., alleging robbery with violence and he stated on solemn affirmation that the offence of robbery with violence had been committed. The Magistrate tried the accused summarily under s. 323, I.P.C., and convicted them. The conviction was set aside and the case directed to be retried as a warrant case, on the ground that the Magistrate was not competent to try the case summarily. BARKAT KHAN v. CROWN, 21 P L R. 1907 = P.W.R. 1906, p 41 = 5 Cr. L J. 21.

(32)—*Examination of accused in a—Crim. Pro. Code* (1898), *s.* 342.—In a summary trial, it is not compulsory to examine the accused. NGA PO WA v. QUEEN EMPRESS, L B.R. 1893—1900, 638.

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(33)—*Formal charge not framed—Application of s.* 258, *Crim Pro. Code,* 1898, *not affected—Use of the word* "*discharge,*" *instead of* "*acquit*" —*Order of discharge, how treated in such cases —Procedure in case of improper discharge —* "*Further inquiry*"—*Crim. Pro. Code* (1898), *s.* 437.—The fact that a formal charge is not framed in a summary trial does not affect the application of s. 258, Crim. Pro. Code, so far as it is possible to apply it. Having charged the accused and recorded his plea, the Magistrate must record an order either of acquittal or conviction. The use by the Magistrate of the word "*discharge,*" instead of "*acquit,*" does not affect the legal nature of his order and any order of discharge in such a case must be treated as one of acquittal. An order by a District Magistrate, directing a regular trial, made under s. 437, Crim. Pro. Code, is not a correct order. "Further inquiry" is what can be directed, and a further inquiry does not include "*trial.*" In the case of an improper discharge, where the evidence already taken is sufficient in itself to justify the accused being put on his trial, the proper course is to refer the case to the High Court. QUEEN-EMPRESS v. NGA PO LUN, 1 L.B.R. 9. (15 C. 608, *F.*)

(34)—*Magistrate's duty to record a brief statement of reasons for conviction in a.*—When a case is tried summarily, the convicting Magistrate is bound to record a brief statement of the reasons for his conviction and where the offence is not one which is defined in the way in which, for example, theft is defined in the Penal Code, these reasons must include a statement of facts sufficient *prima facie*, to constitute the offence of which the Magistrate is about to convict. QUEEN-EMPRESS v. BASHIN, 1 L B.R. 45.

(35)—*Jurisdiction of Bench Magistrates to try summarily an offence under s.* 354, *Penal Code—Crim. Pro. Code* (1898), *ss.* 260, 261—*Defect not cured by consent or waiver.*—An offence under s. 354, Penal Code, which is punishable with two years' rigorous imprisonment, is not specified in either s. 260 or s. 261, Crim. Pro. Code, as an offence triable summarily by a Bench. Jurisdiction to try such an offence summarily will not be acquired by any consent or waiver of the accused. SOOBA REDDY v. CROWN, 1 L.B.R. 63. (2 C. 23, *F.*)

(36)—*Recording of reasons for conviction in a summary trial.*—A Magistrate, in recording his reasons for the conviction in a summary trial, should state them, so that the High Court on revision may judge whether there were sufficient materials before him to support the conviction VADIVALOO SWAMY v. CROWN, 1 L.B.R. 95. (6 C. 579, 18 B. 97, *F.*)

(37)—*Reasons for conviction to be stated—Offence when not defined in Penal Code—Penal Code, s.* 289—*Crim. Pro. Code* (1898), *s* 263.—The record of a summary trial, even though there be no appeal, should show in case of conviction, that there were facts proved sufficient to constitute an offence. Where the

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offence is one described in s. 289, Penal Code, it should be clear on the record that the ingredients of the offence, which is not a defined one like theft, existed. Care should be taken to show that the offence has really been committed and to record sufficient evidence to enable a revising Court to form an opinion on the point. ME DA LI v. CROWN, **1 L.B.R. 208.** (6 C. 579, 18 B. 97, *F.*)

(38)—*Crim. Pro. Code*, s. 349—*Case tried summarily — Power of Bench of Magistrates to refer case for higher punishment.*—The procedure prescribed in s. 349 is unsuited to cases tried summarily, and that section does not authorize any Bench of Magistrates to refer a case for a higher punishment. KING-EMPEROR v. JALAL KHAN, **4 L.B.R. 277 = 8 Cr.L.J. 475.**

(39)—*Crim. Pro. Code* (1898), *ss.* 262, 263 *and* 264 — *Summary trial—Illegal sentence — Appealable sentences—Substance of evidence to be recorded so as to enable appellate Court to judge of validity of conviction—When cases should be tried summarily—"Substance of evidence," meaning of.*—Case where a sentence of six months' rigorous imprisonment in a summary trial was held to be illegal, as no sentence exceeding three months may be passed in such trial, under s. 262 (2), Crim. Pro. Code. Where, in such a case, a sentence is appealable, it is essential that the substance of the evidence should be recorded in such a way that the Court of appeal will be able to form an opinion whether the evidence is sufficient to support a conviction. The substance of the evidence is a matter quite distinct from the facts which may be considered as proved by the evidence. When the record is not such as to enable the appellate Court to form its own opinion on the evidence, a conviction cannot be properly upheld on appeal. When an adequate sentence cannot be passed in summary trial, the case ought not to be tried summarily. PO KA v. KING-EMPEROR, **4 L.B.R 338 = 9 Cr. L.J. 23.**

(40)—*Crim. Pro. Code* (1898), *ss.* 257, 262—*Summary trial—Warrant case—Procedure—Adjournment for summoning defence witnesses, granting of.*—In a warrant case tried summarily, the Magistrate must, under s. 262 (1), Crim. Pro. Code, follow the procedure prescribed for warrant cases, and ought to grant an adjournment, if desired by the accused, to enable him to summon the witnesses for the defence under s. 257, Crim Pro. Code, unless the application is made for purposes of vexation, or delay, or for defeating the ends of justice. AMEER BATCHA v. KING EMPEROR, **5 L.B.R. 20 = 9 Cr.L J. 583 = 2 Ind Cas. 365.**

(41)—*Recording objection to award of compensation—Magistrate, jurisdiction of—Crim. Pro. Code* (1898), *s.* 537—*Irregularity—S.* 15 *of Sch. to Crl. Justice Regulation.*—The provisions relating to summary trials do not justify a Magistrate in omitting to record the complainant's objection to the Magistrate's order directing payment of compensation under s. 250, and the omission to comply with the proviso to that section is more than a mere irregularity, which would be covered by s. 537 of the Code or by s. 15 of the Schedule to the Criminal Justice Regulation. KING-EMPEROR v. NGA PWE, **U.B R. 1906, Crim. Pro. Code, 51 = 5 Cr. L J. 298.** (1 M. 142, 25 A. 315, 5 C W.N. 214, U.B.R. 1892—1896, I, 35, *R.*) [*R.*, 11 Ind. Cas. 249 = U.B.R. 1910, 73.]

(42)—*Crim. Pro. Code* (1898), *s.* 263—*Judgment in summary trial—Recording of reasons imperative.*—The reasons in the judgment of a Magistrate in a summary trial should be sufficient to show that he considered each of the ingredients necessary for a conviction, and also sufficient to enable a Court of revision to judge whether there are sufficient materials to justify the conviction and sentence. IMPERATOR v. DINO, **2 S.L R. 3, Cr. = 10 Cr. L.J. 216.**

(43)—*Substance of evidence.*—In a summary trial, the Magistrate should embody in his judgment the substance of the evidence. Where this was not done, the High Court quashed the conviction. BAKKHU v. CROWN, **2 P.R. 1874, Cr.**

(44)—*Record of conviction.*—The record of conviction in a summary trial should contain both the finding of the Magistrate and a statement, however brief, of the reasons for finding that the accused person is guilty of the particular offence of which he is convicted. If the record is defective in these respects, the conviction is liable to be set aside. JAGGAT RAM v. EMPRESS, **6 P.R. 1879, Cr.**

(45)—*Reasons for conviction.*—A Magistrate in recording his reasons for a conviction in a summary trial should state them, so that the Chief Court, on revision, may judge whether there were sufficient materials before him to support the conviction. SHER SINGH v. EMPRESS, **5 P.R. 1889, Cr.** (7 P.R. 1886, Cr., *R.*)

(46)—*Test of summary trial—Crim. Pro. Code* (1872), *s.* 222—*Care in recording proceedings and in decision.*—*Held* that a trial must be considered to be summary if the procedure is summary, notwithstanding that the record is made at great length and the decision is come to with great care. QUEEN v. DOMA RAM, **24 W.R. Cr. 66.**

(47)—*Requisites for legal conviction—Crim. Pro. Code* (1872), *ss.* 222, 230—*Procedure.*—*Held*, that the formalities prescribed in Ch. XVIII, ss. 222, 230, Crim. Pro. Code, 1872, should be most rigorously observed for convictions for summary trials under that chapter. QUEEN v. JOHRIE SINGH, **22 W.R Cr. 28,** [*R.*, 21 A. 189.]

(48)—*Crim. Pro. Code* (1872), *s.* 222—*Criterion for testing.*—*Held* that the complaint, and not the estimate formed by the Magistrate after the taking of the evidence (as, for instance, the value of the property that the prisoner is charged with having stolen), must

Summary Trial—*continued.*

be the basis on which it must be determined whether a trial should be summary or not; a form of trial originally illegal cannot be retrospectively justified. RAM CHUNDER CHATTERJEE v. KANYE LAHA, 25 W.R. Cr. 19.

(49)—*Crim. Pro. Code*, 1872, *s.* 222—*Theft of property valued at more than Rs.* 50—*Summary trial.*—When the accused is charged with theft of a box containing Rs. 50, the Magistrate will not be justified in striking out the value of the box and trying the case summarily. QUEEN v. BUZLEH ALI, 22 W.R. Cr. 65.

(50)—*Summary procedure—Mischief—Guilty knowledge or intent.*—An accused person had been charged, at the instance of a Magistrate, who had met him in a morning walk, for mischief, tried summarily and punished with two months' rigorous imprisonment, on the ground that the accused, in the course of extending a garden and laying the foundation of a house, encroached upon the inner slope of a river embankment to the peril of the place. The High Court *held* that, in order to justify a conviction for mischief, the accused must be shown to have done a particular act with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, and that, in this case, as the very garden and house in question would be first exposed to the fury of the waters, the guilty knowledge or intent could not be reasonably inferred; further, that the Magistrate ought not to have acted under the summary procedure in such a case, where the Government had been made prosecutor, but where the Magistrate acted spontaneously without any complaint, and erred in punishing the accused. *In the matter of* PRAN NATH SHAHA; *In the matter of* RAMANATH BANERJEE, 25 W.R. Cr. 69.

(51)—*Mischief combined with theft — Crim. Pro. Code* (1872), s. 222.—*Held* that trial by summary procedure could be applied to a charge of mischief, even if combined with one of theft, under s. 222, Crim. Pro. Code, 1872. QUEEN v. RAMAOTAR PAURE, 25 W.R Cr. 5.

(52)—*Act* XXI *of* 1856, s. 53—*Crim. Pro. Code*, 1872, ss. 148, 222—*Opium—Confiscation—Summary trial.*—The accused had been convicted, under s. 53, Act XXI of 1856, of having in his possession opium not supplied to him from the Government stores, and sentenced to pay a fine of Rs. 100, or in default to suffer four months' imprisonment. The opium also was confiscated. The Magistrate tried the case summarily under s. 222, Crim. Pro. Code. *Held* that the case could not be tried summarily, the additional sentence of confiscation not coming under s. 148, Crim. Pro. Code. QUEEN v. JODOONATH SHAHA, 23 W R. Cr. 33. *See also In re* KHETTER MOHUN CHOWRUNGHEE, 22 W.R. Cr. 43.

(53)—*Rioting—Summary procedure—High Court, powers of.*—When a man was charged with rioting and the Magistrate tried the case summarily as one of mischief and unlawful assembly the High Court declined to interfere at the instance of the accused. QUEEN v. ABOO SHEIKH, 23 W.R. Cr. 19.

(54)—*Penal Code*, ss. 341, 342, 352, 353—*Summary trial—Procedure.*—Where the accused were convicted by the Magistrate summarily of offences under ss. 352 and 341, Penal Code, although it was contended on their behalf that, if guilty, they ought to have been convicted under s. 353, and the Sessions Judge, on the Magistrate's own judgment, recommended that the convictions should be set aside. *Held*, that the accused ought to have been tried under s. 352; the Magistrate's summary proceedings were accordingly set aside, and a fresh trial directed. QUEEN v. BANEE MADHUB DOSS, 23 W.R. Cr. 3.

(55)—*Appeal from summary trial—Insufficiency of evidence—Crim. Pro. Code* (1872), ss. 222 to 230.—If on appeal from a summary trial under Ch. XVIII of the Crim. Pro. Code, 1872, the evidence before the Judge is not sufficient to reasonably satisfy him that the conviction of the prisoner is right, he ought to acquit him. QUEEN v. KHERAJ MULLAH, 11 B.L R. 33.

(56)—*Summary trial—Theft—Act* X *of* 1872, s. 225.—In a case tried under the summary procedure authorised by s. 222 of the Code of Criminal Procedure, it must clearly appear on the fact of the conviction that the case was dealt with as one of those which come under the purview of that section. If the case be one of theft, it should appear what the value of the property alleged to have been stolen really was. QUEEN v. ABHEEN PARRIDA, 20 W.R. Cr. 17.

(57)—Alteration of charge of dacoity to one of unlawful assembly—Jurisdiction of Magistrate—Procedure. DWARKA NATH MAZOOMDAR v. NALU DAS, 21 W.R. Cr. 89.

(58)—*Alteration of charge to make it triable summarily—Crim Pro. Code*, 1872, ss 222-230 —*Power of Magistrate.*—The powers conferred upon Magistrates under the 18th Chapter of the Crim. Pro. Code, 1872, were not intended to give them the power of altering a charge brought against an accused person so as to bring his case within the provisions of that chapter; but when a charge of a serious offence —one which the Magistrate is not competent to inquire into summarily—is preferred, it is the plain duty of the Magistrate to apply the procedure prescribed for such cases, and either to convict or acquit, or commit for trial, the person implicated. The procedure under Ch. XVIII is to be followed when a charge is plainly and directly one of those specified in s. 222. CHUNDER SHEKHUR THAKOOR v. NITALOO, 22 W.R. Cr. 29; HARAN SHEIKH v. RAMDHUN BISWAS, 24 W.R. Cr. 21; EMARAL SHEIKH v. MOHAMMADI SHEIK, 24 W. R. Cr 48; *See* EMPRESS v. ABDOOL KARIM, 4 C. 18.

Summary Trial—*continued.*

See ACT XIII OF 1859, 10 Bom. L.R. 1126=33 B 25=1 Ind. Cas. 387=8 Cr. L.J. 409.

See ACT XIII OF 1859, ss. 1, 2, 2 L.B.R. 163.

Not allowed under Act XIII of 1859—*See* ACT XIII OF 1859, ss. 2, 3, 13 Cr. L.J. 194=5 P.R. 1912, Cr., 14 Ind. Cas. 194.

Summary procedure not to be employed in case of public servants—*See* ACT V OF 1861, s. 29, 9 Ind. Cas. 831=12 Cr. L.J. 143=15 P. W.R. 1911=184 P.L.R. 1911.

See ACT XXV OF 1867, ss. 4, 5, 13, 9 P.R. 1889, Cr.

See ACT I OF 1871, ss. 20 to 23, 23 C. 248.

Offences punishable with one year's rigorous imprisonment—Subsequent regular trial without summary trial being quashed—*Ultra vires*—*See* ACT I OF 1878, s. 9, 13 C.L.J. 58=13 Ind. Cas. 394=4 Bur. L.T. 271.

See ACT XI OF 1878, s. 19, 1 Weir 654.

See BUR. ACT I OF 1899, s. 12, 1 L.B.R. 92.

Record in, must show ingredients of offence charged—*See* BUR. ACT IV OF 1899, s. 30, cl. (*c*), 12 Cr. L.J. 280=10 Ind. Cas. 921.

Exercise of powers under ss. 30 and 34 Crim. Pro. Code, 1898, in,—*See* CRIM. PRO. CODE, 1898, ss. 30 and 34, Colm. Dig. Cr. 42 of 1876.

See CRIM. PRO. CODE, 1898, ss. 190, 191, 260 and 537, 31 P.L.R. 1905=2 Cr. L.J. 187.

Award of compensation—Failure to record complainant's objections—Effect—Revision—*See* CRIM. PRO. CODE, 1898, ss. 250, 263 (*g*), 8 S.L.R. 25=15 Cr. L.J. 666=25 Ind. Cas. 994.

Magistrate if may refuse to take evidence at a—Order of acquittal if may be set aside on revision—*See* CRIM. PRO. CODE, 1898, ss. 263, 417, 16 C.W.N. 984=39 C. 931=17 Ind. Cas. 71=13 Cr. L.J. 759.

See CRIM. PRO. CODE, 1898, ss. 264, 537, 1 A. 680.

See CRIM. PRO. CODE, 1898, s. 340, 8 Bom. L.R. 849=4 Cr. L.J 444.

Case involving question of title and production of documentary evidence—Summary procedure—Not proper—*See* CRIM. PRO. CODE, 1898, s. 439, 6 S.L.R 120=17 Ind. Cas. 403.

Whether formal charge need be framed in—*See* PENAL CODE, ss. 456, 457, 16 C.W.N. 696=13 Cr. L.J. 224=14 Ind. Cas. 320

See CRIM. PRO. CODE, 1898, s. 530, Colm. Dig. Cr. 43 of 1876.

See CRIMINAL PROCEEDINGS, 4 C. 18=3 C.L.R. 44.

See EVIDENCE—GENERAL, L.B.R. 1893—1900, 626.

Oral evidence admissible to prove depositions of witnesses—*See* EVIDENCE ACT, 1872, s. 91, Rat. Un. Cr. C. 334=Cr. Rg. 24 of 1887.

See JUDGMENT, 6 C.L.R. 273, 18 B. 97, 3 C.W.N. 281.

See MAGISTRATE, JURISDICTION OF—TRANSFER OF CASES, ETC., 11 C. 236.

Summary Trial—*concluded.*

Legality of passing combined sentence o imprisonment and whipping in—*See* PENAL CODE, ss. 75 and 379, 12 C.P.L.R. Cr. 7.

Order forbidding Pandas to enter Railway premises except for travelling—Legality—Summary trial—No evidence recorded—Conviction—High Court's interference—*See* PENAL CODE, s. 198, 11 A.L.J. 92=18 Ind. Cas. 682=14 Cr. L.J. 122=35 A. 136.

When to be adopted—*See* PENAL CODE, ss. 211 and 182, 7 C.P.L.R. Cr. 6.

See REVISION—ACQUITTALS, 15 M.L.J. 225.

See SENTENCE—IMPRISONMENT—IMPRISONMENT IN DEFAULT OF PAYMENT OF FINE, ETC., 6 A. 61.

See SENTENCE—SOLITARY CONFINEMENT, 6 A. 83=A.W.N. 1883, 224.

See THEFT — MISCELLANEOUS, L.B.R. 1893-1900, 198.

See TOLLS, 22 W.R. Cr. 76.

Summing up.

See CHARGE TO JURY.

See EVIDENCE.

See JUDGE AND JURY.

See ASSESSORS, 4 M.H.C. App. 39.

In, Judge to avoid all unnecessary discussion and argument - Judge to point out weakness of case—*See* FALSE CHARGE, 8 W.R. Cr. 87.

Summoning.

See SECURITY TO KEEP THE PEACE—SUMMONING WITNESSES.

Summons.

See PENAL CODE, ss. 173, 174.

See WITNESS—SUMMONS TO WITNESSES.

See ACCUSED PERSON, Rat. Un. Cr C. 8.

See BOM. ACT V OF 1862, Rat. Un. Cr. C. 70=Cr. Rg. 17-4-1873.

See COMPLAINT — DISMISSAL OF COMPLAINT, 14 W.R. Cr. 36.

See COMPLAINT — INSTITUTION OF COMPLAINT—PRELIMINARIES, 11 W.R Cr. 1.

Cognizance—Jurisdiction of Magistrate to summon persons not named in complaint on the evidence for prosecution—*See* CRIM. PRO. CODE, 1898, ss. (4) (1) (*h*), 190, cls. (*a*) (*c*), 18 C.W. N. 921=15 Cr. L.J. 546=24 Ind. Cas. 954=41 C. 1013.

Enquiry by Registrar of the Presidency Small Cause Court as to proper service of summons if judicial proceedings—Sanction to prosecute for false personation in service of summons—*See* CRIM. PRO. CODE, 1898, s. 195, 18 C.W.N. 1323.

Power to substitute summons for warrant *See* CRIM. PRO. CODE, 1898, ss. 204, 205, 7 L.R. 40=21 Ind. Cas. 476=14 Cr. L.J. 604.

Summons—*concluded.*

Service of, on servant of Juror—*See* CRIM. PRO. CODE, 1898, s. 332, A.W.N. 1899, 13.

Making false return of service of — *See* FALSE EVIDENCE, 8 W.R. Cr. 27.

Summons Cases.

See CRIM. PRO. CODE, 1898, ss. 242 to 248.

(1)—*Magistrate to state charge and explain it to accused—Record to contain charge—Inspecting officers to see to proper compliance with ss. 242 and 243, Crim. Pro. Code*—All Magistrates trying cases under Ch. XX, Crim. Pro. Code, must be careful not only to state the charge to the accused, but to explain it to him. The record must show that this has been done, and must give the answer as nearly as possible in the words used. Inspecting officers should see whether the provisions of ss. 242 and 243 have been properly complied with, and should submit for revision all cases of conviction, on pleas which do not appear to have been intended to admit all the essential particulars of the offence. QUEEN-EMPRESS v. SEIN KAING, **L.B.R. 1872—1892, 594.**

(2)—*Crim. Pro. Code, ss. 245, 253, 437—Summons case tried as warrant case—Discharge of accused, effect of—Acquittal*—If a Magistrate trying a summons case, whatever procedure he adopts, finds no case made out against the accused, and lets him go unconditionally, he acquits him, though he styles his order an order of discharge and tacks on to it the number of some section of the Code which deals with discharges. The accused is, none the less, in law acquitted, for the Code contemplates no other order in summons cases. Under such circumstances, the Sessions Judge has no power to take action under s. 437, Crim. Pro. Code, on the Magistrate's order. SESSIONS JUDGE OF TINNEVELLY v. VENKATARAMAIYER, **6 Ind. Cas. 385 = 8 M.L.T. 78 = 11 Cr. L.J. 350.**

(3)—*Evidence—Duty of Court*—In summons cases, the parties are bound to produce their evidence. But, before convicting the accused, the Magistrate should ascertain whether he has evidence to produce his evidence, and should consider whether he should not be allowed another opportunity to produce his witnesses or summoning them through the Court, if he says that his witnesses are not present in Court. EMPRESS v. JEWUN SINGH, **7 P.R. 1884, Cr.**

See ACT VII OF 1870, s. 19 (17), U.B.R. 1892—1896, Vol. I, 9.

See ACT VII OF 1878, s. 25, P.L.R. 1900, p. 50, Cr. = 19 P.R. 1900, Cr.

Complaint of offence triable as warrant case—Validity of trying the case as summons case—Discharge of accused—Award of compensation—*See* COMPENSATION—GENERAL, 6 M. 316.

Applicability of s. 250 to summons cases—*See* COMPENSATION — GENERAL, 11 M. 142 = 2 Weir 314.

Summons Cases—*concluded.*

Whether proceedings under Ch. XII, Crim. Pro. Code, are—*See* CRIM. PRO. CODE, 1898, s. 145, 30 C. 508 = 7 C.W.N. 404.

Applicability of procedure prescribed for summons cases to proceedings under s. 145, Crim. Pro. Code—*See* CRIM. PRO. CODE, 1898, s. 145, 32 C. 1093 = 2 C.L.J. 280 = 2 Cr. L.J. 679.

Non-attendance on service of summons—Appearance by pleader—*See* CRIM. PRO. CODE, 1898, s. 205, 27 C. 985 = 5 C.W.N. 131.

Joint trial of several accused in—*See* CRIM. PRO. CODE, 1898, ss. 233, 242, 3 L.B.R. 52, F.B.

See CRIM. PRO. CODE, 1898, ss. 355, 356, 19 M. 269 = 2 Weir 433 = 6 M.L.J. 134.

See CRIM. PRO. CODE, 1898, s. 437, 19 P.R. 1900, Cr. = P.L.R. 1900, Cr. 50.

Duty of Magistrate to hear defence witnesses not produced—*See* CRIM. PRO. CODE, 1898, ss. 540 and 244, 2 Weir, 304 = 4 M.H.C. App. 29.

Joinder of charges under summons and warrant cases—*See* JOINDER OF CHARGES—GENERAL, 11 C. 91, 3 L.B.R. 113 = 3 Cr. L.J. 350.

Summons, Disobedience of.

See CONTEMPT OF COURT.

See PENAL CODE, ss. 124, 173, 174.

(1)—*Crim. Pro. Code (1872), s. 491—Legal summons under the section.*—A summons, which merely sets out that the person summoned is charged with an offence under s. 491, Crim. Pro. Code, and requires his personal attendance in Court, but which does not state any of the matters which the law requires to be set out in a summons under that section, is not a valid summons. *In the matter of* CHAROO CHUNDRA MULLICK, **10 C.L.R. 430.**

(2)—*Against accused—Issue of, when the complainant has no personal knowledge of the matters stated in the complaint—Duty of the Court before issuing summons.*—When the allegations in a petition of complaint appear to be made on information and not on the personal knowledge of the complainant, it is reasonable that a Court, before issuing summons against the accused, should satisfy itself on proper materials that a case has been made out for issuing summons. THAKUR PRASAD SINGH v. EMPEROR, **10 C.W.N. 1090 = 4 Cr. L.J. 217.**

(3)—*To medical witnesses to be served through Magistrate.*—All summons on Medical subordinates should be served through the Magistrate or other executive head of the district to enable him, in communication with the Civil Surgeon, to make arrangements for the conduct of their Medical duties during their absence. CRIMINAL CIRCULAR NO. 1 OF 10TH JANUARY, 1868, **9 W.R. Cr. Cir. 3.**

Summons, Disobedience of—*concluded.*

(4)—*Summons from one Court to another.*—As a matter of official courtesy, it is desirable that a summons for records, when issued by one Court to another Court, should be accompanied by a letter intimating, in all cases in which it may not be necessary to examine the Judge or presiding officer himself, that the attendance of a ministerial officer to produce the records is all that is required. HIGH COURT PROCEEDINGS, 24TH OCTOBER 1879, NO. 1857, 2 **Weir 781.**

See ACT XXI OF 1883, ss. 6, 107, 111, 9 Bom. L.R. 967=6 Cr. L.J. 440.

Departmental enquiry into conduct of Tahsildar— Power to issue, to witnesses —*See* MAD. ACT III OF 1869, 4 M. 393=1 Weir 76.

Powers of Tahsildar to issue summons to Karnam —Disobedience to such—*See* MAD. ACT III OF 1869, 5 M. 377=1 Weir 91.

See MAD. ACT III OF 1869, ss. 2 and 3, 11 M. 137=1 Weir 100.

Refusal to accept service of—*See* MAD. ACT III OF 1869, s 3, 11 M.L.T. 405=14 Ind. Cas. 597=13 Cr. L.J. 245=1912 M.W N. 528.

See BOM. ACT V OF 1879, s. 189, Rat. Un. Cr. C. 488=Cr. Rg. 52 of 1889.

See COMPLAINANT, 26 B. 552=4 Bom. L. R. 276.

See CRIM. PRO. CODE, 1898, ss. 87, 88, 90, 5 N.L.R. 125.

Service of summons, whether proved by Police Officer's report—*See* CRIM. PRO. CODE, 1898, ss. 87, 88, 90, 3 L.B.R. 116.

For attendance of witnesses in disputes about land—*See* CRIM. PRO CODE, 1898, s. 145, 32 C 1093=2 C.L.J. 280=2 Cr. L J. 679.

Non-obedience to — Joint trial of several persons—*See* JOINT TRIAL, A.W.N. 1833, 25.

See MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION, 2 Weir 38=7 M.H. C. App. 43.

See PARDANASHIN WOMAN, 21 C. 588, 20 P.W.R. 1908, Cr.

Refusal to sign receipt of summons—*See* PENAL CODE, s. 172, A W.N. 1883, 222.

Absconding in order to avoid being served with, notice or order—Running away to avoid an arrest under a warrant—*See* PENAL CODE, s. 172, 2 C.L J. 625=3 Cr. L J 117.

Neglect to attend revenue—*See* PENAL CODE, s. 188, 32 P.R. 1867, Cr.

Disobedience to—*See* SANCTION TO PROSECUTE—MISCELLANEOUS CASES, 13 C.L.R. 117.

See SECURITY TO KEEP THE PEACE—ON CREDIBLE INFORMATION, 3 N.W.P. 96.

Sunday.

See HOLIDAY.

(1)—*Village Magistrate.*—It is not illegal for a Village Magistrate to hold an enquiry on a Sunday. *In re* MOOPPEN, **1 Weir 921**

(2) - *Criminal proceedings taken on Sunday.*—A Magistrate is not debarred in this country from taking criminal proceedings on Sundays. *In the matter of the petition of* E. D. SINCLAIR, **6 N.W.P. 177.**

(3)—*Arrest on Sunday.*—Arrest under Civil process of a mofussil Court on Sunday is legal in this country—*See* HIGH COURT PROCEEDINGS, 30TH JULY 1869, **4 M.H C. App 62**; D. ABRAHAM v. QUEEN, **1 B.L R. A. Cr. 17**; GRASEMANN AND CO., v. GARDNER, BROOKE AND CO., **3 W R. Rec. Ref. 2**; PARA SHOOK DOSS v. RASHEE OOD DOWLAH BAHADOOR, **7 M H C 285.**

Summons made returnable on—*See* PENAL CODE, s 174, 1 Weir 86.

Superintendence of High Court.

See HIGH COURT, JURISDICTION OF.

See HIGH COURT, SUPERINTENDENCE AND POWERS OF.

(1)—*Crim. Pro. Code* (1898), ss. 195, 197, 439—*Sanction under s.* 197—*High Court's power of revision—Charter Act* (24 *and* 25 *Vic., Cap.* 104), *s.* 15.—S. 439 gives the High Court, as a Revisional Court, authority to exercise any of the powers conferred on a Court of appeal by s. 195 among other sections of the Code. The powers in this respect, Appellate and Revisional, are clearly co-extensive, and s. 195 does not confer on an appellate Court any authority in respect of an order made by a subordinate Court under s. 197. So far, therefore, as concerns the revisional powers of the High Court, it has no authority in respect of s. 197. But the High Court has sufficient authority for that purpose under s. 15 of the Charter Act (24 and 25 Vic., Cap. 104). NANDO LAL BASAK v. N.N MITTER, **26 C. 852=3 C W N. 539.** (7 B.H C. Cr. 61, 2 B. 481, *Appr.*; 9 M. 439, *Diss.*) [*F*, 30 C. 927=7 C W.N 750, 25 M. 15=2 Weir 223, 2 Bom. L.R. 1078, 32 M. 255=4 M.L.T. 473=9 Cr. L J. 89=3 Ind Cas. 387; ***R.***, 13 C.P.L.R 126; *Commented*, 29 P.R. 1904, Cr.=9 P.L.R. 1905; *D*, 23 P R. 1903, Cr.=130 P.L.R. 1903]

(2)—*Act* V *of* 1861, *s.*17—*Order of executive nature.*—The High Court, while considering that an order by a Magistrate professing to act under s. 17 of Act V of 1861 was illegal, refused to interfere, on the ground that the order was one of an executive nature. *In the matter of the petition of* ROHOMA SIRKAR, **10 B.L.R Ap. 4=18 W.R. Cr. 67.**

(3)—*Charter Act* (24 *and* 25 *Vic., C.* 104), *s.* 15—*Orders under Crim. Pro. Code* (1872), *s.* 518—*Nuisance.*—Revising of orders passed under the Code of Criminal Procedure (1872), s. 518, is included in the extraordinary powers conferred on the High Court by s. 15, Charter Act. GOSHAIN LUCHMUN PERSHAD POOREE v. POHOOP NARAIN POOREE, **24 W.R. Cr. 30.**

Superintendence of High Court—*continued.*

(4)—*Charter Act, s.*15—*Crim. Pro. Code*, 1872, s. 297—*Judicial proceeding* —The fact that an order of the Magistrate is not a judicial proceeding, and therefore not one which the High Court can revise under s. 297 of the Code of Criminal Procedure, does not have the effect of removing the Magistrate from the general superintendence of that Court under s. 15 of its Charter Act. CHUNDER COOMAR ROY, **22 W.R. Cr. 78**; *See also* BANEE MADHUB GHOSE v. WOOMA NATH ROY CHOWDHRY, **21 W.R. Cr. 26.**

(5)—*Crim. Pro. Code*, 1872, *s.* 518—*Obstruction*—*Jurisdiction.*—Where a mango tree is cut and thrown across a small *mulla*, and there is no likelihood of any danger to life, etc., the Magistrate acts *ultra vires* in ordering under s. 518, Crim. Pro. Code, 1872, the removal of the obstruction. SREE NATH DUTT v. UNNODA CHURN DUTT, **23 W.R. Cr. 34.**

(6)—*Order of Magistrate under s.* 518, *Crim. Pro Code* (1872)—*Practice.*—In this case although the matter had already been brought to its notice on a reference by the Sessions Judge, the High Court, in the exercise of the jurisdiction given to it by s. 15 of the Charter Act, issued a rule *nisi* at the instance of the party aggrieved, calling upon the opposite party to show cause why an order made by a Magistrate, which was complained of, should not be set aside for want of jurisdiction. KALI NARAIN ROY CHOWDRY v. ABDOOL GUFFOOR KHAN, **22 W.R. Cr. 24.**

(7)—*Order of remand*—*Crim. Pro. Code* (*Act* XXV *of* 1861), s 224.—Where a Magistrate had adjourned an inquiry for a cause not contemplated by s. 224 of the Crim. Pro. Code, the High Court, in the exercise of the power of superintendence conferred by s. 15 of 24 and 25 Vic., C. 104, set aside the order of remand. *In the matter of petition of* MATHURANATH CHUCKERBUTTY, **9 B L R. 354 = 17 W R. Cr. 55.**

(8)—*Order by Judge of High Court in its original criminal jurisdiction.*—A Judge of the High Court, making an order in the original criminal jurisdiction of the Court, is not a Court subject to the control of the High Court under s. 15, 24 and 25 Vic., C. 104. *In the matter of* GOVERNMENT OF BENGAL, **7 B.L R. 250, Note = 15 W.R. Cr. 60.**

(9)—*Order by Judge of High Court in its original criminal jurisdiction.*—Where an application was made to a Judge, sitting on the original side of the High Court, to transfer a case from Patna in the exercise of the extraordinary jurisdiction of the High Court, and the application was adjourned, and an order made calling on the Government to show cause why it should not be removed, the High Court, on the appellate side, on a petition setting forth that the order was without jurisdiction, as the rules of the High Court had appointed a particular Bench to hear cases from Patna, refused to interfere. *In the matter of the petition of* GOVERNMENT OF BENGAL, **7 B.L R. 244, Note.**

Superintendence of High Court—*concluded.*

(10)—*Order by Magistrate for warrant without jurisdiction.*—The High Court has power, under its general powers of superintendence, to quash an order made by a Magistrate without jurisdiction issuing a warrant. *In the matter of* BANKA BIHARI GHOSE, **2 B L.R.A. Cr. 17 = 11 W.R. Cr. 26.**

(11)—*Letters Patent, cl.* 16—*Release of person imprisoned in execution of decree.*—Interference by the High Court under the general powers vested in it by s. 15, High Courts Act, or cl. 16 of Letters Patent. GOPAL SINGH v. THE COURT OF WARDS ON BEHALF OF THE MAHARAJAH OF DURBHANGAH, **7 W. R. 430.**

(12)—Charter Act (24 and 25 Vic., C. 104), s. 15—Illegal arrest in Court of Magistrate—Exercise by High Court of its extraordinary powers under s.15 of High Courts Act—Practice. *In the matter of* GUZEREE LALL, **13 W.R. 393.**

(13)—Dismissal of ministerial officer—Extraordinary powers of Superintendence of High Court, general rule as to exercise of—*See In re* AKBAR ALI, **19 W.R. 148.**

See, also, In the matter of FAKEER CHAND LALL, **20 W.R. 470.**

See CRIM. PRO. CODE, 1898, s. 145, 30 C. 155 = 6 C.W.N. 737, F.B.

See JURY, 13 O.C. 295 = 8 Ind. Cas. 373 = 11 Cr.L.J. 630.

Supplementary Evidence.

Recording evidence — *See* SANCTION TO PROSECUTE—CONDITIONS REQUISITE FOR GRANT OF SANCTION, ETC., Rat. Un. Cr. C. 629 = Cr. Rg. 54 of 1892.

Supplementary Trial.

(1)—*Supplementary trial*—*Competency of Magistrate to try a second batch of accused.*—What are usually known as supplementary trials are very common and it would cause much public inconvenience, if Magistrates and Judges, who had tried one batch of accused, should be thereby debarred from trying a subsequent batch on the same facts. JOHARUDDIN SARKAR v. EMPEROR, **31 C. 715 = 8 C.W N. 910 = 1 Cr. L. J. 408.**

Supreme Court, Bombay.

(1)—*Charter of Supreme Court*—*Construction of Statute*—*Statute limiting prerogative of the Crown*—*Power to grant leave to appeal in Criminal case.*—Under the Bombay Charter of the Supreme Court, 8th December, 1823, that Court was invested with full and absolute powers to allow or deny an appeal in criminal cases, and no power was reserved to the Crown by such Charter to grant leave to appeal in such cases, such power being only reserved as to Civil cases. QUEEN v. STEPHENSON, **3 M. I.A 488 = 5 Moo. P.C. 296 = 1 Sar. 310 = Per. Or. Ca. 551.**

Supreme Court, Calcutta.

(1)—*Jurisdiction of Criminal Court — Party privy to misdemeanour committed within jurisdiction.*—Under the general jurisdiction of the Supreme Court at Calcutta, a person, though resident at Benares, was liable to its jurisdiction, if privy to, and co-operating in, a misdemeanour committed within it. Where, therefore, a party resident at Benares was indicted with others before the Supreme Court for a conspiracy in procuring the prosecutor to be arrested in a fictitious action at law, and the instructions for the arrest were proved to the satisfaction of the jury to have originated with the appellant, it was held by the Judicial Committee that the offence, having been completed within the jurisdiction of the Supreme Court at Calcutta, that Court had rightly assumed jurisdiction over the parties privy to it, though, from the slight nature of the evidence, they directed a new trial. JANNOKEE DAS v. KING, **1 M.I.A. 67 = 1 Sar. 94.**

Supreme Courts, Criminal Procedure.

See ACT XVIII OF 1862.

Surety.

See BAIL.

See BAIL-BOND.

See CRIM. PRO. CODE, 1898, ss. 106 to 122, 514.

See SECURITY FOR GOOD BEHAVIOUR.

See SECURITY PROCEEDINGS.

See SECURITY TO KEAP THE PEACE.

(1)—*Crim. Pro. Code (Act X of 1882), s. 110 —Qualification of surety—Powers of District Magistrate.*—It is advisable that an order for sureties should define the class and part of the country the surety should belong to. One object in obliging men to produce sureties is that the latter should have some interest in and influence over the persons so ordered. [*Diss.*, 35 C. 400 = 12 C.W.N. 601 = 7 Cr. L.J. 439.] A District Magistrate cannot pass an order as to the fitness of a surety in a case before another Magistrate without transferring the case to his own file. EMPRESS v. TONI, **A.W.N. 1895, 143.**

(2)—*Crim. Pro. Code* (1898), *s.* 502—*Surety—Bail bond—Cancellation of bail-bonds.*—Where a surety applies for a cancellation of his bond, under s. 502 of the Crim. Pro. Code, there is no such thing as hearing the application on the merits. The presentation of the application itself imposes upon the Magistrate the duty of issuing a warrant for the arrest of the accused. Hence, where a surety, after once presenting an application for cancellation of his bail-bond, fails to appear in person or by pleader, such failure cannot deprive him of his right to treat the bond as cancelled. When once the application is presented and received, there is no option left to the Magistrate but to act under s. 502 of Crim. Pro. Code. *In re* ANANT SHIVAJI, **9 Bom. L R. 1285 = 6 Cr. L.J. 385.**

Surety—*continued.*

(3)—*Omission to proceed against principal—Discharge of surety.*—The mere fact of the principal party not being proceeded against is no ground for holding that the surety is discharged. QUEEN-EMPRESS v. HAR CHANDRA CHOWDHRY, **25 C. 440.**

(4)—*Fitness of—Inability to supervise person bound down.*—On the question of the fitness of surety, the test is, not whether the surety can supervise the person, for whom he stands surety, but whether he is a person of sufficient substance, to warrant his being accepted. ADAM SHEIKH v. EMPEROR, **35 C. 400 = 7 Cr. L.J. 439.** (4 C.W.N 797, 6 C.W.N. 593, *F.*; A W. N. 1895, 143, 20 A. 206, *Diss.*) [*F.*, 37 C 446 = 14 C.W.N 666 = 11 Cr. L.J. 392 = 6 Ind. Cas. 668; *R.*, 41 C. 764 = 15 Cr. L J. 169 = 22 Ind. Cas. 745.]

(5)—*Crim. Pro. Code, s.* 122—*Security for good behaviour—" Unfit "—Discretion of Magistrate.*—The 'unfitness' of a surety under s. 122, Crim. Pro. Code, is not limited to pecuniary unfitness. The question as to whether a particular person is 'fit' or not is for the Magistrate to decide. The matter is left to his discretion, which is not fettered in any way. *In re* JALIL, **8 C L J 243 = 13 C.W.N. 80 = 4 Ind. Cas 560 = 8 Cr L J 388.** (4 C W.N. 797, 6 C.W.N. 593, *D.*) [*R.*, 37 C. 446 = 14 C.W.N. 666 = 11 Cr. L. J. 392 = 6 Ind. Cas. 668, 41 C. 764 = 15 Cr. L. J. 169 = 22 Ind. Cas. 745.]

(6)—*Crim. Pro. Code* (1861), *s.* 294—*Imprisonment of sureties.*—S. 294 makes no provision for the sureties being imprisoned. HIGH COURT PROCEEDINGS, 20TH AUGUST, 1869, **4 M.H C. App. 68.**

(7)—*Crim. Pro. Code, ss.* 112 *and* 118—*Order absolute at variance with the conditional order, legality of—Inquiry about sureties—Police report, procedure on.*—*Held,* that a Magistrate cannot vary the conditional order made under s. 112 of the Code of Criminal Procedure by enforcing further conditions in the order absolute. *Held* further, that a Magistrate ought not to reject sureties merely on the report of the Police without making any inquiry himself. RAMANAND SINGH v. KING-EMPEROR, **11 O.C. 267 = 8 Cr.L.J. 344.** (A.W.N. 1906, 876, *F.*; 7 O.C. 113, *R.*) [*Appr.*, 13 Cr. L.J. 760 = 17 Ind Cas. 72 = 15 O.C. 263.]

(8)—*Penalty—Recovery of, from surety.*—A Magistrate has a discretion to realize or not to realize the penalty from a surety the bond with whom has been forfeited. But the Magistrate is not competent to recover a less penalty than that specified in the bond. EMPRESS v. UMRA, **2 P.R 1883, Cr.**

(9)—*Crim. Pro. Code, ss.* 110, 118.—A Magistrate, who has passed an order under s 118, cannot delegate to another the duty of enquiring into the sufficiency of the security rendered, and such enquiry must be made by the Magistrate, who cannot send the security-bond to a Tahsildar for report. The party called in to furnish security should appear in Court with

Surety—*continued.*

evidence of the adequacy of the security tendered, and evidence to the contrary should be tendered at the same time, or as soon afterwards as possible, the adequacy is contested. The Tahsildar, if his evidence is necessary, should be examined, and the Magistrate should call for a report in those cases only, in which extracts from Revenue records, etc., will supply the necessary information. The practice of calling in a Police officer for a report on the character of the surety, his relationship to the principal, etc., is illegal and the Police officer should, if his evidence is necessary, be examined as a witness. A Magistrate has no power to order that security be given by any particular person or class of persons, or to prohibit the acceptance of security from *lambardars*, *inamdars* and *chaukidars*. The exclusion of immoveable property from the security to be furnished is illegal. The practice of sending a person to jail against whom an order under ss. 110, 118 has been passed, pending the receipt of the report from the Revenue and Police officers, is illegal. Imprisonment should follow failure to furnish adequate security, and should not precede a finding that the security is inadequate. KING-EMPEROR v. KAIM KHAN, **18 P R 1906, Cr. = 14 P.L.R. 1907 = 5 Cr.L.J. 148 = 5 P.W.R. 1907, Cr.** (A.W.N. 1898, 154, 25 A. 272, 27 A. 293, 24 C. 155, 49 P.R. 1867, Cr.; *F.*, 28 P.R. 1901. *R.*) [*R.*, 142 P.L.R. 1914 = 6 P.R. 1914, Cr.]

(10)—*Extent of liability of—Bond for good behaviour.*—Sureties should merely join as such in executing the bond binding the principal, and their liability should be to the extent of the bond executed by the principal. QUEEN-EMPRESS v. PYIN NYA, **L B.R. 1893—1900, 187.**

(11)—*Crim. Pro. Code* (1898), *ss.* 112 *and* 122 —*Surety—Ability to influence the bad character —Mere solvency not sufficient.*—A surety executing a bond in terms of Form XI, Sch. V, Crim. Pro. Code, undertakes thereby to guarantee the good conduct of his principal, and his fitness to stand as surety must be judged chiefly by his ability to perform his contract of guarantee and to enforce the good behaviour of his principal. This is also the intention of the provisions in s. 112, Crim. Pro. Code, empowering the Magistrate to specify the "character and class" of the sureties required. Mere solvency of the surety is, therefore, not the only test of his fitness. The Magistrate has also to consider the question of the ability of the surety to influence the conduct of the bad character, as relevant to his fitness. But it is important that, in so doing, the Magistrate should not exercise his power arbitrarily or impose impossible restrictions, as the provisions of Ch. VIII are merely preventive and not penal. IMPERATOR v. MAHOMMED PAHOR, **8 Cr. L.J. 166 = 1 S L R 46, Cr.**

(12)—*Crim. Pro. Code* (1898), *s.* 122—*Refusing sureties—Discretion improperly exercised.* —Sureties offered under s. 122, Crim. Pro. Code, should not be refused on the ground that they are related to the accused. Proper judicial discretion should be exercised in arriving at any decision about their fitness or otherwise. EMPEROR v. MIRO, **9 Cr. L.J. 247 = 1 S.L.R. 3, Cr.**

(13)—*Crim. Pro. Code* (1898), *s.* 122—*Sureties, fitness of.*—Sureties cannot be rejected on the ground that they will not be able to influence the bad character by example and precept. The most that a Magistrate can reasonably demand is that they should be respectable men, neighbours of the bad character and solvent up to the amount of the security, required. CROWN v. AHMED *walad* DATOO, **9 Cr. L J. 256 = 1 S.L.R. 14, Cr.**

(14)—*Sureties—Fitness of—Magistrate calling Police report—Admissibility in evidence.*— A person who was called upon to furnish security tendered certain persons as sureties. The Magistrate directed the Tahsildar and the Police Sub-Inspector to report whether these persons were fit and proper persons to act as sureties. The Tahsildar reported in the affirmative but the Sub-Inspector in the negative. The Magistrate acting upon the Police report rejected the sureties. *Held*, the Police report was not admissible as evidence and the Magistrate was bound to record the evidence of the fitness or unfitness of the sureties himself. ZORAWAR v. EMPEROR, **13 A.L.J. 469 = 16 Cr. L.J. 445 = 29 Ind. Cas. 77.**

(15)—*Crim. Pro. Code* (1898), *s.* 514—*Standing bail for accused—Liability of person undertaking to produce accused, or in default to forfeit property.*—A person, who undertakes to produce an accused person before Court when called upon, and, in default, to forfeit a sum of money to Government, is not discharged by the fact that the accused has paid the amount of his own bail bond. KULUR ANNAPPA NAICK v. EMPEROR, **10 Cr. L.J. 294 = 3 Ind. Cas. 470.**

(16)—*Crim. Pro. Code* (1898), *s.* 122—*Refusing sureties on Police report—Order illegal—Discretion how exercisable.*—S. 122, Crim. Pro. Code, confers upon the Magistrate the power to refuse a surety and the discretion to exercise that power. This discretion is not absolute or arbitrary, inasmuch as the section requires the Magistrate to state reasons. When a power is coupled with a discretion as to its exercise, the rule is that the discretion is not that of exercising the power or not at pleasure, but only of determining whether the occasion for its exercise has arisen in the particular case. This determination can only be made on legal evidence, and the proceeding in which the Magistrate comes to his determination is a judicial proceeding. When a Magistrate bases his order on a Police report, he abrogates the functions imposed on him by law, and allows the decision of the case to rest with the Police. In all cases, under s. 122, Crim. Pro. Code, it is the duty of the Magistrate to examine the sureties offered as to their fitness and to take

Surety—*concluded.*

such other evidence as the accused may call on the same point. If he asks the Police to report, it should be with a view merely of enabling them to collect and call evidence. But in every such case, his order must proceed on a consideration of the evidence, and not of the Police report. IMPERATOR v. MAHRO, **2 S L.R. 11, Cr. = 10 Cr. L.J. 225.** [*F.*, 10 Cr. L J. 230 = 2 S.L.R. 15, 11 Cr. L.J. 497 = 7 Ind. Cas. 592 = 4 S L R. 18; *R.*, 5 S.L.R. 87 = 12 Cr. L J. 410 = 11 Ind. Cas. 594, 15 Cr. L J. 378 = 23 Ind. Cas. 746 = 7 S.L.R 94.]

(17)—*Crim. Pro. Code* (1898), s. 122—*Illegality of order based on Police report.*—Where the Magistrate omitted to examine the sureties himself, but acted merely on the report of a Police Inspector, the order rejecting the surety is without legal foundation. CROWN v. KAMAL *wd.* KHAMISO, **2 S.L R 15 Cr. = 10 Cr. L J. 230.** (2 S.L.R. Cr. 11, *F.*) [*F.*, 11 Cr. L.J. 497 = 7 Ind. Cas. 592 = 4 S.L.R. 18; *R.*, 15 Cr. L.J. 378 = 23 Ind. Cas. 746 = 7 S.L.R. 94.]

(18)—S. 220, Crim. Pro. Code—Notice to surety to pay—Effect of absence of notice to show cause. CROWN v. NUGEENA, **3 P.R. 1871, Cr.**

See ACT XIII OF 1859, s. 2, 1 Bom. L.R. 523.

See BUR. ACT I OF 1899, s. 17, 1 L.B.R. 145.

Surety for appearance of accused before the Police—Liability of—*See* CRIM. PRO. CODE, 1898, ss. 497, 499, 22 P. R. 1913, Cr.

See EVIDENCE ACT, 1872, s. 43, 25 C. 440.

Surety Bond.

See SURETY.

(1)—*Court-fees Act*, VII *of* 1870, s. 19—*Sch.* II, *art.* 6—*Security bonds executed by person concerned—Surety bonds—Stamp duty—Crim. Pro. Code* (1872), ss. 489, 490, 500 *and* 504.—Having regard to ss. 489, 490, 500 and 504 of the Crim. Pro. Code, when taken in combination with forms E and G of Sch. II of the same Code, bonds given by the person under s. 509 of the Code whose keeping of the peace or whose good conduct is stipulated for, are exempted from any Court-fee by s. 19, art. 15 of Act VII of 1870, which mentions "recognizances for personal appearance or *otherwise* " as not chargeable with any fee. But the bonds given by the sureties for the person whose keeping of the peace or good conduct is guaranteed by them, are not either bail bonds or recognizances and are not so exempted, but are chargeable with an eight-anna fee under Sch. II, art. 6 of the same Act, as they fall within the words "other instrument of obligation not otherwise provided for by this Act when given by the direction of any Court or executive authority." AHMEDABAD MAGISTRATE'S ENDORSEMENT, NO. 763, **Rat. Un. Cr. C. 126.**

Surgical Operation.

See CULPABLE HOMICIDE, 14 C. 566.

Survey.

(1)—*Bom. Act* I *of* 1865, s. 11—*Power of surveyer to enter private houses.*—Whether s. 11 of Bombay Act I of 1865 justifies surveyors in entering private houses for the purpose of measuring them. REG v. BHAGTIDAS BHAGWAN DAS, **5 B H C. Cr. 51.**

(2)—*Crim. Pro. Code, Ch.* XII—*Competent Court—Survey authorities—Bengal Survey Act* V *of* 1875 (*B.C.*), s. 41—An order by the Survey authorities under s. 41 of the Bengal Survey Act has the force of a Civil Court decree, and is therefore tantamount to an order passed by a competent Court as provided for in Ch. XII of the Crim. Pro. Code. On such an order being passed with respect to any lands attached under s. 146, Crim. Pro. Code, they should be released from attachment. AMBLER v. SAMI AHMED, **37 C. 331 = 11 C L.J. 417 = 6 Ind. Cas. 545 = 11 Cr. L J. 372.**

Survey Act.

See BEN. ACT V OF 1875.

Survey and Settlement Act.

See BOM. ACT I OF 1865.

Survey and Settlement Amendment Act.

See BOM. ACT IV OF 1868.

Survey Map.

See EVIDENCE—GENERAL, 9 C.L.R. 305.

Evidentiary value of Kabuliyats, chittas, accounts receipts, and—*See* EVIDENCE—GENERAL, 29 C. 187 = 29 I.A. 24 = 6 C.W.N. 386, P.C.

Surveyor.

Sanction to alteration of buildings—Sanction to alteration of plan—Power of District—Initiation of proceedings by Secretary, validity of—Irregularity—*See* BEN. ACT III OF 1899, ss. 102, (1) (*c*), 391, 6 Ind. Cas. 172 = 11 Cr. L. J. 255 = 12 Cr. L.J. 24 = 37 C. 585.

Suspected Persons.

See ACCOMPLICE EVIDENCE—NECESSITY FOR CORROBORATION, 4 P.R. 1903, Cr.

Suspicion.

Cognizance of an offence on—*See* CRIM. PRO. CODE, 1898, s. 190, 14 C. 707, F.B.

Statement to Police of mere—*See* FALSE CHARGE, 8 C.L.R. 233.

See SANCTION TO PROSECUTE—NATURE AND FORM OF SANCTION, 6 A.L.J. 337 = 2 Ind. Cas. 467.

Suttee.

See ABETMENT, 3 N.W.P. 316.

Swaraj.

See ACT XI OF 1878, s. 19 (*f*), 1 Weir 666.

See COMPLAINT—PROCEDURE ON RECEIPT OF COMPLAINTS, 5 M L.T. 1 = 32 M. 3 = 9 Cr. L.J. 108 = 1 Ind. Cas. 22.

Sweets.

(1)—*Identification of sweets.*—It is generally impossible to identify sweets. LAL v. CROWN, **35 P.W.R. 1912, Cr. = 194 P.L.R. 1912 = 16 Ind. Cas. 528 = 13 Cr. L.J. 720.**

Sword.

See ACT XI OF 1878, ss. 14, 15, 19 (*f*), 1 Weir 666.

Possession of, without license—*See* ACT XI OF 1878, s. 19 (*f*), 1 Weir 666.

Sword-stick.

If sword—*See* ACT XI OF 1878, s. 4, 11 C. W.N. 971 = 34 C. 749 = 6 Cr. L.J. 227.

Symbolical Possession.

In execution of a foreclosure decree, not effective against a lessee who was not a party to the mortgage suit—Actual possession, to be considered in s. 145, Crim. Pro. Code—*See* DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 4 C.L.J. 562 = 4 Cr. L.J. 503.

Sympathy.

With an unlawful assembly if abetment—*See* ABETMENT, 4 C.W.N. 500.

Syphilis.

Communicating syphilis by sexual intercourse—*See* CHEATING—GENERAL, 11 B. 59.

Tahsildar.

Departmental enquiry into conduct of—Power to issue summons to witnesses—*See* MAD. ACT III OF 1869, 4 M. 393 = 1 Weir 76 = 1 Weir 891.

Power of, to issue summons to Karnam—Disobedience to such summons—*See* MAD. ACT III OF 1869, 5 M. 377 = 1 Weir 91.

Collector inferior to—*See* CRIM. PRO. CODE, 1898, s. 195 (6), 12 Cr. L.J. 109 = 9 Ind. Cas. 635.

Whether a Police officer—*See* CRIM. PRO. CODE, 1898, ss. 288, 364, 533, 11 A.L.J. 286 = 14 Cr. L.J. 211 = 19 Ind. Cas. 307 = 35 A. 260.

Power of, to issue summons for purposes not contemplated by Act III of 1869 (Madras)—*See* PENAL CODE, ss. 173, 174, 1 Weir 96.

Inquiry by, regarding vaccinator's work—*See* PENAL CODE, s. 174, 1 Weir 96.

Power of, to issue summons—*See* PENAL CODE, s. 174, 1 Weir 93, 95.

See PENAL CODE, s. 174, 4 P.R. 1907, Cr. = 6 Cr. L.J. 107 = 37 P.L.R. 1907 = 25 P.W.R. 1907, Cr., 1 Weir 94, 1 Weir 97.

See PENAL CODE, ss. 352, 353, 29 A. 272 = A.W.N. 1907, 42 = 5 Cr. L.J. 110.

Taluk Office.

Payment of maintenance in Taluk Office—*See* MAINTENANCE, 2 Weir 627.

Tangible Immoveable Property.

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 15 A. 394 = A.W.N. 1893, 145, 11 C. 413, 12 C. 539, 13 C. 179, 15 C. 527.

Tariff Act.

See ACT XI OF 1882.

Tax.

(1)—*Ss.* 13, 17, *Act* IX *of* 1868 (*Certificate Act*).—A complaint under Act IX of 1868, s. 17, was held to have been rightly dismissed, when there was no evidence that the names of the accused were included in the list mentioned in s. 13 of that Act. The procedure laid down in Ch. XV of Crim. Pro. Code, 1861, should be observed in trials under this Act and proof of all the facts necessary to constitute the offence must be required. QUEEN v. KHETTER NATH GHOSE, **11 W.R. 56, Cr.**

(2)—*Certificate tax—Neglect to take out certificate—Fine.*—The fine imposed under s. 17, Act IX of 1868, for neglect to take out a certificate must not be less than twice the amount for which such certificate should be taken out. QUEEN v. RAMGOBIND CHUCKERBUTTY, **2 B.L.R. Ap. 40 = 11 W.R. Cr. 13.**

See ACT IX OF 1868, s. 17, 4 M.H.C. App. 61.

See BEN. ACT II OF 1885, s. 87, 22 C. 581.

See BOM. ACT VI OF 1873, s. 84, 17 B. 731, 18 B. 400, 23 B. 446.

Benefit society, whether liable to be taxed—*See* MAD. ACT I OF 1884, s. 103, Sch. A (1) (A. & B), 11 M. 253 = 11 Ind. Jur. 369.

Government whether exempted from paying, under Mad. Act I of 1884—*See* MAD. ACT I OF 1884, ss. 338 and 341, 25 M. 457 = 12 M.L. J. 208 = 1 Weir 800.

Liability of mattam to be taxed—*See* MAD. ACT V OF 1878, s. 119, 6 M. 287.

On "income"—*See* MAD. ACT IV OF 1884, ss. 53 and 262, 27 M. 547 = 14 M.L.J. 410.

See MAD. ACT III OF 1904, Sch. V, 3 M.L. T. 400 = 18 M.L.J. 349 = 31 M. 408 = 9 Cr. L.J. 68.

Recovery of arrears of, by distress and sale of moveable property belonging to defaulter—Duty of Magistrate—*See* U.P. ACT XV OF 1883, s. 46, 22 A. 111 = A.W.N. 1899, 202.

Order for payment of Municipal, out of fine—Power of Deputy Magistrate to question legality of attachment by Civil Court—*See* SENTENCE—FINE, 8 W.R. Cr. 17.

Tax (Income-tax) Act.

See ACT IX OF 1869.

See ACT XXIII OF 1869.

See ACT II OF 1886.

Taxing Professions and Trades.

See ACT IX OF 1868.

Taxing Provisions.

Of Statute—Right of Government to claim exemption when not named in the Statute.—*See* STATUTES, CONSTRUCTION OF, 25 M. 457 = 12 M.L.J. 208 = 1 Weir 800.

Tax—Professional Tax.

See MAD. ACT III OF 1871, ss. 58, 62, 3 M. 129.

Tazi Mandi Chittis.

(1)—*Principal and agent—Gambling Act* (XXI *of* 1848).—Where the plaintiff had expended money at the request of the defendant in the purchase or settlement of *tazi mandi chittis*, *held*, he was entitled to recover, notwithstanding Act XXI of 1848. KANAYALAL v. CHAGMAL BATTIA, **8 B L.R. 412**; *see, also*, BHAIRABNATH KHETTRI v. JUMANRAM DHANDARIA, **8 B L R. 415, Note.**

Technical Offences.

Sentence for—*See* ACT XI OF 1878, ss. 4, 19, 23 P.W.R 1910, Cr. = 16 P.R. 1910 = 6 Ind. Cas. 952 = 11 Cr. L.J. 421 = 191 P.L R. 1910.

Telegrams.

(1)—*Evidence Act* (I *of* 1872), *s.* 88—*Telegrams—Proof—Presumption.*—Before s. 88 of the Evidence Act can be utilised, there must be legal proof that the message had been forwarded from the Telegraph Office to the person to whom such message purports to have been addressed. In the absence of such evidence, the telegram cannot be held to have been proved. THACKUR SINGH v. EMPEROR, **4 Ind. Cas. 240 = 10 Cr. L J. 520.**

Penal Code, ss. 71, 420, 465, 511—Attempt to cheat by means of forged—Separate punishments—*See* ACT XIII OF 1885, s. 29 A.W.N. 1903, 26.

Sent—No complaint —No prosecution can be ordered—*See* PENAL CODE, s. 211, 7 A.L.J. 618 = 11 Cr. L.J 351 = 6 Ind. Cas. 390.

Telegraph Act.

See ACT XIII OF 1885.

Temple.

See CRIM. PRO. CODE, 1898, s. 145, 2 Weir 99.

See CRIM. PRO. CODE, 1898, ss. 145, 146, 2 Weir 112.

Dispute regarding trusteeship of a temple—Removal by accused of the idol and other article before execution of decree for possession by Civil Court—*See* PENAL CODE, ss. 295, 379, 1 Weir 430 = 2 Weir 577.

Temple resorted to by pilgrims on festive occasions—Duty of person in charge to ensure safety of pilgrims attending by license and invitation—*See* PENAL CODE, s. 336, 18 C. W.N. 1176.

Dedication of minor girl to, offence—*See* PENAL CODE, s. 372, 6 B.H.C. Cr. 60.

Temple Property.

Trustee of temple whether liable to be punished for theft of—*See* PENAL CODE, ss. 380, 381, 457, 6 M.L.J. 14 = 26 M. 243 (Note).

Temple Servants.

See ACT XIII OF 1859, s. 2, 1 Weir 689.

Tenancy Act.

See BEN. ACT VIII OF 1885.

See U.P. ACT II OF 1901.

Tenant.

See LANDLORD AND TENANT.

Whether comes within the definition of licensee—*See* MAD. ACT I OF 1900, s. 3, 7 M. L.T. 121 = 5 Ind. Cas. 834 = 11 Cr. L.J. 258.

Removal by, of zamindar's tree—*See* THEFT —THINGS WHICH MAY BE THE SUBJECT OF THEFT, A W.N. 1881, 73.

Tenant (and Landlord) Procedure Act.

See BEN. ACT VIII OF 1869.

Tenants' Improvements, Malabar Compensation for, Act.

See MAD. ACT I OF 1900.

Ten-house Gaung.

See EVIDENCE ACT, 1872, s. 25, 3 L.B.R. 283 = 5 Cr. L.J. 421.

Tenures (Bhagdari and Narwadaree) Act.

See BOM. ACT V OF 1862.

Testimony (Prisoner's) Act.

See ACT XV OF 1869.

Tetanus, Death caused by.

See CULPABLE HOMICIDE, 1 M. 224 = 1 Weir 325.

Thalayari.

See ESCAPE FROM LAWFUL CUSTODY, 5 M. 22 = 1 Weir 200.

Theft.

1.—GENERAL — WHAT CONSTITUTES THEFT.
2.—THINGS WHICH MAY BE THE SUBJECT OF THEFT.
3.—THINGS IN RESPECT OF WHICH THEFT CANNOT BE COMMITTED.
4.—MISCELLANEOUS.

See BOAT THEFT.
See CATTLE THEFT.
See DACOITY.
See EXTORTION.
See PENAL CODE, ss. 378 to 382.
See ROBBERY.
See STOLEN PROPERTY.
See THEFT IN A BUILDING.

—— 1.—General—What constitutes theft.

(1)—*Theft, what constitutes—Penal Code.*—The intention is the gist of the offence of theft. There must be an intention to take dishonestly. QUEEN v. MADAREE CHOWKEEDAR, **3 W.R. Cr. 2.**

(2)—*Penal Code, s.* 378—*Theft, what constitutes—Bona fide claim of right.*—Where property s removed from the possession of a person against his wish, although he has only a colour of right to such property, the offence of theft has been committed. QUEEN-EMPRESS v. GANGARAM SANTRAM, **9 B. 135 = 9 Ind. Jur. 313.** (L.R. 9 Q.B. 269, *R.*) [*R.*, 27 C. 501, U.B.R. 1892—1896, Vol. I, 232.]

Theft—continued.

——1.—General — What constitutes theft —*continued.*

(3)—*Intention— Mistake of fact—Ignorance of law.*—A charge of theft will lie even where there is no intention to assume the entire dominion over the property taken or to retain it permanently. Where a person removes another property under a mistake of fact and in ignorance of the law, believing that he has a right to take such property, he is not guilty of theft, as his intention is innocent and not criminal. Though he causes wrongful loss within the meaning of the Penal Code, he has not, as a matter of fact, intended to cause wrongful loss. The accused, the brother of a contractor or farmer of a public ferry on the Tadri river, seized a boat belonging to the complainant which conveyed passengers across the creek which flows into the river at a distance of about three miles from the ferry. His intention was evidently to force persons who had to cross the creek to use the public ferry in the absence of the complainant's boat, and thereby increase his brother's income derived from the fees to be paid by the passengers. The taking was illegal and was known by the accused to be illegal. *Held* that the accused was guilty of theft. QUEEN-EMPRESS v. NAGAPPA, **15 B. 344.** [*R*, 22 C. 1017, F.B., 4 Bom. L. R. 936, 1 L B.R. 334, Rat. Un. Cr. C. 908, U.B.R. 1897—1901, Vol. I, 339, 15 Cr L.J. 436=24 Ind. Cas. 172 ; *Cons.*, 22 C. 669]

(4)—*What constitutes theft — Intention.* — Where property is removed in the assertion of a claim of right, however ill-founded the claim may be, no offence of theft is committed. REG. v. BHICAJEE, **Rat. Un. Cr. C. 22=Cr. Rg. 16-9-1869.**

(5)—*Intention*—Bona fide *claim of right.*—Where the removal of a thing by the accused is under a *bona fide* belief that it is his own property, though his title was doubtful and disputed, no offence of theft is committed. QUEEN-EMPRESS v. HARI BAPUJI, **Rat. Un. Cr. C. 920=Cr. Rg. 24 of 1897.**

(6)—*Intention*—Bona fide *claim of right.*—Where ryots of a zemindari, acting upon a *bona fide* claim of right, took wood from the zemindari forests, *held*, that the accused were not guilty of theft, as the element of dishonesty was wanting. HIGH COURT PROCEEDINGS, 13TH SEPTEMBER 1881, NO. 1886, **1 Weir 411.**

(7)—*Taking property to which the taker has title does not amount to—Penal Code, s. 379.*—Though the taking by one person of property, to which the taker has, under a decree of a Civil Court, title, out of the possession of another without the other's consent is irregular and improper, yet such taking does not amount to theft. CROWN v. MAUNG PO, **1 L. B.R. 334.** (18 A. 88, 22 C. 1017, 15 B. 344, 1 U.B.R. 1897—1901, 330, *D.*)

(8)—*Penal Code, ss. 24 and 379—Theft what constitutes—Claim of right and title to property on which crops were grown—Forcible removal of crops—Question of* bona fides—*Crim. Pro. Code* (1898), *ss.*429 *and* 439.—Where the accused was charged with forcible removal of crops, and the defence was long possession as tenant and sowing and reaping as of right, and the trying Magistrate found, on the evidence, that the case of the complainant, which was that he was in possession as tenant and the crop was cultivated by his *bargadars*, was true, *held*, that the findings of the Court below amounted to a finding that the accused had acted *mala fide*, and that the mere fact that the accused brought witnesses to speak to his long possession of the land and the cultivation of the crop by him is not enough to shew that a *bona fide* dispute as to title existed between the complainant and the accused. The conviction of the accused for theft is therefore right—*Per Prinsep and Stevens, JJ.* Where the evidence establishes that there is a *bona fide* dispute as to the title to the land upon which the crop was grown the criminal charge of theft fails, and the mere fact that the crop was grown by the complainant would not give him the property in the crop if it was grown in the land of the accused.—*Per Stanley, J., contra.* In order to constitute theft, it is sufficient if property is removed against his wish, from the custody of a person who has an apparent title, or even a colour of right to such property. PANDITA *alias* RAHMATULLA PRAMANIK v. RAHIMULLA AKUNDO, **27 C. 501=4 C.W N. 480.** (9 B. 135, *R.*)

(9)—*Penal Code, ss. 24, 378—Belief in one's right, but absence of good faith—Theft.*—Where a person removes a tree under an honest belief that it belongs to him, but in doing so he betrays want of due care and attention, that is, good faith, in ascertaining the ownership of the same, he can be convicted of the offence of theft. *Per Aston, J.*—Where a dishonest intention as defined in s. 24 is established, it makes no difference in the prisoner's guilt of the offence of theft, that his act was not intended to procure any personal benefit to himself. There is a manifest difference between a mere assertion of a claim of property or right and a *bona fide* belief in such a claim. The mere assertion of a claim of right is not in itself a sufficient plea. EMPEROR v. SABALSANG, **4 Bom. L.R. 936.**

(10)—*Penal Code, s. 379—Proof of dishonest intention necessary to constitute offence of theft.*—Where a person carried off paddy in the *bona fide* belief that it belonged to his uncle, having been sown by him, *held*, that the accused had not committed theft because he had not taken the paddy with a dishonest intention, *viz.*, with the knowledge that it belonged to the complainant. ABDOOL BISWAS v KHATER MONDAL, **3 C.W.N. 332.** [*D.*, 4 C.W.N. 190.]

(11)—*Proof of dishonest intention.*—Where a charge to which a person accused of theft pleaded guilty did not allege the essential ingredient,

Theft—continued.

——1.—General — What constitutes theft —*continued.*

viz., the taking out of the possession of some person dishonestly, and where there was no evidence of such taking, the High Court quashed a conviction of theft. HIGH COURT PROCEEDINGS, 28TH OCT. 1870, **5 M.H C. App 37.**

(12)—*Proof of dishonest in'ention* -The accused, after obtaining sanction to quarry 8,000 maunds of *kunkar*, applied to the Deputy Commissioner of the District to take the usual fee on the *kunkar* ; or for orders to be issued that the *kunkar* should not be removed until the fee had been paid. The accused, having removed about 10,000 maunds of it to the side of the Railway, was convicted of the theft under s. 379 of the Penal Code, and the *kunkar* was ordered to be confiscated. *Held*, that the conviction and the order of confiscation were wrong, since it did not appear that the accused had removed the *kunkar* secretly, or with the intention of avoiding payment of the royalty on it NATHU v EMPEROR, **63 P.L.R. 1903.**

(13)—*Penal Code*, s. 379—*Debtor giving property owing to misconception.*—An essential ingredient of theft is the taking of the property out of the owner's possession and without the owner's consent. Where a debtor gave certain property to the creditor upon the understanding that a debt was due from him to the accused, but subsequently he found out that the debt was a "time-barred" debt, *held*, that the subsequent knowledge could not change the fact, that at the time when the consent was given, it was a full and unqualified consent, and that the accused should not, therefore, have been convicted of theft. MUSSAMMAT PIARI DULAIYA v. KING-EMPEROR, **1 A.L.J. 508.**

(14)—*Penal Code s.* 379—*Theft —Growing grass —Moving effected by the very act of severance* —In the case of growing grass, a moving by the same act which effects its severance from the earth may amount to a theft ; but in order that it may be so, there must have been an intention to take dishonestly the grass, when cut, out of the possession of the complainant without his consent. It is sufficient answer to the charge of theft, that the accused in good faith believed the grass to be his QUEEN-EMPRESS v. SAMSUDDIN, **2 Bom. L R. 752.**

(15)—*Penal Code*, ss. 379, 403—*No proof of "taking"—What offence committed.*—Where there is no proof of taking of the property found in the possession of the accused, he must be convicted not of theft but of criminal misappropriation. QUEEN-EMPRESS v. SHIVBASHIA, **Rat. Un. Cr. C. 143.**

(16)—*Penal Code*, ss. 379 *and* 380—*Stealing one's own property in possession of constable.*—The accused was charged with having stolen his own property in the custody of a Police constable ; he admitted the taking but pleaded not guilty on the ground that the property was his own. *Held* that the Police constable, being

Theft—continued.

——1.—General — What constitutes theft —*continued*

entrusted with the bundle, for which he was accountable, had special property in it, and, therefore, the accused was guilty of theft. QUEEN EMPRESS v. SHEKH HUSAN, **Rat. Un. Cr. C. 343 = Cr. Rg. 36 of 1887.**

(17)—*Penal Code*, s 379—*Removal—Offence of insignificant character.*—Removal of property dishonestly, that is, with the intention of wrongfully depriving the owner of the possession thereof for however short a period, is theft. In this case, the accused, a creditor of the complainant, took some pots of his so as to induce him to pay his debt, and restored them at once *Tyabji, J*, *held* that even if these facts were proved, there was no dishonest intention, and that the complaint should have been dismissed under s. 95 of the Penal Code. QUEEN-EMPRESS v. SHOMA CHATUR, **Rat. Un. Cr. C. 908 = Cr. Rg 19 of 1897.**

(18)—*Seizure of property under legal process.*—Seizure and removal under legal process, albeit in an irregular manner, of property already attached under a prior legal process, does not amount to theft. *In re* MAGNIRAM VACHRAJ, **Cr. Rg. 15 10-1873.**

(19)—*Removal of property with criminal intent, but with owner's knowledge—Penal Code*, s. 378 (*Expl* 5).—Where a servant, with the knowledge and consent of his master, renders a person the assistance sought by him, in order to procure him punishment, the removal of the property by such person, with such assistance, would not constitute the offence of theft under the Penal Code, inasmuch as the owner has knowledge of the removal. EMPRESS v. TROYLUKHO NATH CHOWDHRY, **4 C. 366 = 3 C L R. 525.** [*R.*, Rat. Un. Cr. C. 908.]

(20)—*Taking boat of owner and abandoning it after proceeding some distance in it.*—When a person, accused of murder, was charged with the theft of a boat alleged to have been taken by him from where it had been secured by its owner and abandoned after proceeding some distance in it, *held* the charge of theft was not sustainable, as it was not evidently his intention to convert it to his own use and make it his property permanently and as it was used only for escaping. ADU SHIKDAR v. QUEEN-EMPRESS, **11 C. 635.** [*R.*, 15 B. 344.]

(21)—*Penal Code*, ss. 378, 442—*Theft of boat.*—A boat may be the subject of theft, and it does not cease to be moveable property under s. 378, I.P.C., because under s. 442, it is, for certain purposes, classed with houses. QUEEN v. MEHAR DOWALIA, **16 W.R. Cr. 63.**

(22)—*Penal Code*, ss. 381, 380—*Theft by a hired boatman.*—A hired boatman is not a "clerk" or "servant," under s. 381, I.P.C. A theft by him is punishable only under s. 380, Penal Code. QUEEN v. BAWOOL MANJEE, **8 W.R. Cr. 32.**

Theft—continued.

——1.—General — What constitutes theft —*continued.*

(23)—*Penal Code*, s. 379—*Theft of bamboos—Ownership of land and bamboos claimed by accused—Necessity for considering questions of ownership and* bona fides *of accused.*—An accused person was convicted of theft of certain bamboos. The accused, however, claimed a right to the bamboos, alleging that his grandfather planted them as a hedge and that he had long been enjoying them. The Revenue authorities did not admit the claim, but, being of opinion that the bamboos were within the limits of the Government poramboke, took possession of the land and informed the accused that they had done so. The accused, however, subsequently, cut and removed some of the bamboos, alleging that they belonged to him. The Magistrate, on appeal, confirmed the conviction without deciding the question of right. *Held* that the Magistrate was wrong and the conviction should be set aside. The questions to be determined in this case were :—(1) Whether the bamboos did, in fact, belong to accused or Government ; (2) whether, if they did not belong to the accused, he *bona fide* believed that they did. ALGARASWAMI TEVAN v. EMPEROR, **28 M. 304=2 Cr. L.J. 764.**

(24)—*Penal Code, s.* 378, *expl.* 2—*Scope—Severance of tree from earth — Moving.*—The moving of a tree by the same act which effects its severance may constitute a theft. HIGH COURT PROCEEDINGS, 22ND OCTOBER 1870, **1 Weir 383=5 M.H.C. App. 36.** [*D.*, 1 Weir 413=10 M. 255.]

(25)—*Penal Code*, ss. 23 *and* 378—*Concealment of property to cause trouble or anxiety.*—To constitute the offence of theft it is not necessary that the taking should be permanent or with an intention to appropriate the thing taken, or that there should be a wrongful gain to some one in addition to the wrongful loss to the owner, but there must be an intention to take the thing dishonestly. Where the owner is kept out of possession temporarily without any intention of depriving him of the benefit arising from the possession even temporarily, but only with the object of causing him trouble in the sense of mere mental anxiety, and with the ultimate intention of restoring the thing to the owner without expecting or exacting any recompense from the owner, it is difficult to say that the detention amounts to causing wrongful loss in any sense. NABI BAKSH *alias* ALI BAKSH v. QUEEN-EMPRESS, **25 C. 416=2 C.W N. 347.**

(26)—*Penal Code*, s. 379—*Wrongful loss, whether should be permanent, to constitute theft.*—There is nothing in the definition of the offence of theft to support the view that the loss intended must be a permanent one. Herein the law of India differs from the law of England. Where the accused took away the cloths, belonging to the complainant, in order to put pressure on the complainant to give an award in his favour in an arbitration, to which the accused was a party and wherein the complainant was an arbitrator, *held*, that the accused was guilty of the offence of theft. *In re* TIRUVENGADACHARI, **1 Weir 407.**

(27)—*Penal Code*, ss. 378 *and* 379—*Temporary dispossession.*—It is enough, to constitute the offence of theft, if the taking was a wrongful act and known to be such, though the loss arising from the change of possession may have been temporary. *In re* KRISHNA AIYAN, **1 Weir 407.**

(28) — *Penal Code*, s. 379 — *Sale of unsevered trees.*—A person selling trees belonging to others, but not cut down at the time of the sale, is not guilty of the offence of theft. *In re* BALOS *alias* HUSSAIN SAHIB, **1 Weir 419.**

(29)—*Penal Code*, ss. 379 *and* 392—*Removing property attached by public officer.*—If, in order to defeat the claim of a person, at whose instance cattle has been duly attached, the accused person, by force, took such cattle from the possession of a person, in whose care the cattle were placed by the public officer, who made the attachment, he may be guilty of theft or robbery according to the degree of violence exerted. But the accused would not be guilty under ss. 183, 186, 206 and 424, inasmuch as the person resisted was not the public servant himself. HIGH COURT PROCEEDINGS, 24TH FEB. 1880, NO. 364, **1 Weir 419.**

(30)—*Offence of theft, when completed.*—The offence of theft is completed when there is a dishonest removing of property, although the property is not detached from that to which it is secured. QUEEN-EMPRESS v. NGA PO HLE, **L.B.R. 1872–1892, 399.**

(31)—*Seizure of debtor's property by a creditor—Theft.*—The seizure of his debtor's property by a creditor in order to expedite payment of the debt amounts to theft. LOCAL GOVERNMENT v. SITARAM MAHAR, **13 C.P.L.R. Cr. 165.**

Abetment of criminal trespass and theft—Penal Code, ss. 107 and 108—Execution of document giving lease over property not belonging to the lessor—Lessor's liability as abettor for criminal trespass and theft of crops by lessee—*See* ABETMENT, 1 Weir 48.

See ABETMENT, 2 W.R. Cr. 40 and 18 W.R. Cr. 8.

House-breaking in order to commit—Separate sentences—*See* ACT VI OF 1864, s. 2, 5 B.H.C. Cr. 83.

In a dwelling house and simple theft —*See* ACT VI OF 1864, s. 3, 7 B.H.C. Cr. 68.

See ACT I OF 1871, s. 22, 22 C. 139.

Of timber or forest produce — Conviction for—Order of confiscation—*See* ACT VII OF 1878, ss. 32, 54, 55, 1 P.R. 1912, Cr. =37 P.L. R. 1912=18 Cr. L.J. 172=13 Ind. Cas. 924.

Theft—continued.

——1.—General — What constitutes theft —*continued.*

See BEN. ACT VI OF 1870, s. 39, cl. (2), 12 C.W.N. 367=7 Cr. L.J. 188=35 C. 361.

Removal of salt naturally formed, if theft —*See* BOM. ACT XXVII OF 1837, s. 7, 10 B. H.C. A.C.J. 74.

See MAD. ACT II OF 1864, s. 8, 16 M. 364=1 Weir 422=3 M.L.J. 178.

See ADULTERY, 5 M.H.C. App. 22.

See CHARGE—GENERAL, 17 B. 369.

See CHARGE—ALTERATION OF CHARGE, 27 C. 990=5 C.W.N. 31, 27 C. 660.

See CHARGE—FORM OF CHARGE, 4 C.W.N. 190.

See CHARGE TO JURY—MISDIRECTION, 25 C. 416=2 C.W.N. 347.

See CHEATING—GENERAL, 1 W.R. Cr. Letters, 12.

Compensation in false cases of—*See* COMPENSATION—GENERAL, 3 W.R. Cr. 70.

See COMPENSATION—GENERAL, 6 M. 286=2 Weir 716.

Complaint of petty theft to Magistrate — Jurisdiction to refer complainant to heads of village—*See* COMPLAINT, PROCEDURE ON RECEIPT OF COMPLAINTS, 2 Weir 22=2 Weir 237=7 M.H.C. App. 31.

See CONFISCATION, 9 C.W.N. 597=2 Cr. L. J. 273.

See CRIMINAL MISAPPROPRIATION, 22 M. 151=1 Weir 424.

See CRIM. PRO. CODE, 1898, ss. 179, 222, 235 to 239, 531, 537, 18 P.W.R. 1903, Cr.=8 Cr.L.J. 75.

See CRIM. PRO. CODE, 1898, ss. 190, 191, 68 P.L.R. 1904=32 P.R. 1904, Cr.

Actual thief—Restoration of property—Gratification--Charge—*See* CRIM. PRO. CODE, 1898, s. 233, 12 Cr.L.J. 72=9 Ind. Cas. 421.

See CRIM. PRO. CODE, 1898, s. 517, 2 Weir 673.

See CRIM. PRO. CODE, 1898, ss. 517, 520, 5 S.L.R. 153=13 Cr. L.J. 21=13 Ind. Cas. 213.

See CRIM. PRO. CODE, 1898, s. 562, 4 N.L. R. 18=7 Cr. L.J. 319, 3 L.B.R. 95=3 Cr.L.J. 21, F.B.

See CRIMINAL TRESPASS, Rat. Un. Cr. C. 4.

Discovery of stolen property—Theft or receipt of stolen property—Presumption—*See* EVIDENCE ACT, 1872, s. 114, 1912 M.W.N. 97=13 Ind. Cas. 828=13 Cr. L J. 140.

False charge of, to Village Magistrate—*See* FALSE CHARGE, 1 Weir 122=1 Weir 194.

See GRIEVOUS HURT, Rat. Un. Cr. C. 65=Cr. Rg. 27 6 1872.

Of cattle from a cattle fold or pen—*See* HOUSE TRESPASS, 57 P.R. 1887, Cr.

Theft—continued.

——1.—General — What constitutes theft —*continued.*

Robbery—Causing hurt to effect escape—*See* HURT, 4 L.B R. 147=7 Cr. L.J. 446.

See JOINDER OF CHARGES—MISJOINDER OF CHARGES, 3 L.B.R. 221=4 Cr. L.J. 389.

Person charged with theft, and with receiving stolen property—*See* JOINDER OF CHARGES—WHEN LEGAL, 6 C.L.R. 245.

See JOINDER OF CHARGES—WHEN LEGAL, 1 C W.N. 35, 2 L B.R. 19.

Bull liberated according to Hindu custom—*See* MISCHIEF, 34 P.R. 1888, Cr.

See MISCHIEF, 15 C. 388, 37 P.R. 1866, Cr.

See PARTNERSHIP PROPERTY, 6 B.L.R. 133=13 B L.R. 310, Note=15 W.R. Cr. 51.

See PENAL CODE, ss. 22, 378 and 379, 10 M. 255=1 Weir 413.

See PENAL CODE, ss. 24, 378, 4 Bom. L.R. 936.

Of property worth three pies—*See* PENAL CODE, s. 95, Rat. Un. Cr. C. 400=Cr. Rg. 61 of 1888.

See PENAL CODE, ss. 105, 141, 143 and 447, 3 N.L.R. 177=7 Cr. L.J. 49.

Accused not convicted of theft—whether can be convicted for abetment of theft—*See* PENAL CODE, ss. 107, 379, 13 Cr. L.J. 223=14 Ind. Cas. 319.

See PENAL CODE, s. 108, expl. (3), illus. (*d*) and s. 379, A.W.N. 1898, 147.

Conviction for modification of conviction by appellate Court into one of abetment—Illegality —*See* PENAL CODE, ss. 109, 379, 13 Cr. L.J. 203=14 Ind. Cas. 203.

See PENAL CODE, ss. 143, 378, 379, 4 C.W. N. 190.

Lambardar—Omission to give information of —*See* PENAL CODE, s. 202, A.W.N. 1883, 9.

See PENAL CODE, ss. 225, 353 and 379, 35 C. 361.

See PENAL CODE, s. 356, Rat. Un. Cr. C. 3.

British subject associating with foreign subjects in foreign state for the purpose of habitually committing—*See* PENAL CODE, s. 401, 33 P.R. 1886, Cr.

See PENAL CODE, s. 424, 26 M. 481=1 Weir 425=13 M L J. 123.

Person convicted of—*See* SECURITY FOR GOOD BEHAVIOUR, 34 P.R. 1867, Cr.

See SECURITY FOR GOOD BEHAVIOUR, 7 W.R. Cr. 57.

Attempt to commit—*See* SECURITY PROCEEDINGS, Rat. Un. Cr. C. 622=Cr. Rg. 45 of 1892.

See SECURITY TO KEEP THE PEACE—ON CONVICTION, 1 C.W.N. 186.

See SENTENCE—GENERAL, 7 M.H.C. 375.

Theft—continued.

——1.—General — What constitutes theft —*concluded.*

And attempt to conceal stolen property—Penal Code, ss. 414, 511—*See* SENTENCE—CUMULATIVE AND SEPARATE SENTENCES, 15 P.R. 1896, Cr.

And mischief—*See* SENTENCE—CUMULATIVE AND SEPARATE SENTENCES, 6 W.R. Cr. 5, Rat. Un. Cr. C. 430=Cr. Rg. 1 of 1889.

From two persons in same room —*See* SENTENCE—CUMULATIVE AND SEPARATE SENTENCES, 11 W.R. Cr. 38.

House-breaking by night and—*See* SENTENCE—CUMULATIVE AND SEPARATE SENTENCES, W.R. 1864, Cr. 31, 2 W.R. Cr. 63, 5 W.R. Cr. 49.

House-breaking for committing theft—and theft, charges of—Sentence of imprisonment and whipping—*See* SENTENCE—CUMULATIVE AND SEPARATE SENTENCES, 5 B H.C. Cr. 83.

Receiving stolen property—*See* SENTENCE—CUMULATIVE AND SEPARATE SENTENCES, 1 W.R. Cr. 27.

Separate sentences for house-breaking for committing theft and — *See* SENTENCE—CUMULATIVE AND SEPARATE SENTENCES, 9 B.H.C. 172.

See SENTENCE—CUMULATIVE AND SEPARATE SENTENCES, 3 W.R. Cr. 19, 8 W.R. Cr. 31, 84, 66 P.R. 1866, Cr., 23 B. 706=1 Bom. L R. 142.

See SENTENCE—SENTENCE AFTER PREVIOUS CONVICTION, 27 P.L.R. 1904.

Mischief combined with— *See* SUMMARY TRIAL, 25 W.R Cr. 5.

See VERDICT OF JURY, 1 W.R. Cr. Letters, 13.

Robbery and, whether same offence—*See* WHIPPING, 1 L.B.R. 55.

See WRONGFUL RESTRAINT, 10 W.R. Cr. 35.

——2.—Things which may be the subject of theft.

(1)—*Penal Code, s. 379—Removal of property without consent to satisfy one's own claim—Theft.*—The taking away by a creditor from the debtor's house, in his absence, and without his consent, property belonging to the latter, in order to compel the liquidation of the debt, amounts to theft. QUEEN-EMPRESS v. AGHA MUHAMMAD YUSUF, 18 A. 83 = A.W N. 1895, 233. (A.W.N. 1888, 97, *R.*; 22 C. 669, *Diss.*) [*R.*, 31 A. 89=8 A.L J. 1237=12 Cr. L.J. 590=12 Ind.Cas. 844, L.B.R. 1897—1901, 334, Rat. Un. Cr. C. 908.]

(2)—*Removal by creditor of debtor's property.*—The removal by a creditor, against the will of his debtor, of property belonging to the latter with a view to compel payment of the debt, amounts to an offence of theft. QUEEN-EMPRESS v. AGHA MUHAMMAD YUSUF, A.W.N. 1895, 233. (A.W.N. 1888, 97, *R.*; 22 C. 669, *Diss.*)

Theft—continued.

——2.—Things which may be the subject of theft—*continued.*

(3)—*Penal Code, ss. 23, 24 and 378—Creditor removing debtor's property to enforce payment of debt.*—A creditor, by taking any moveable property of his debtor from his possession without his consent, and with the intention of coercing him to pay his debt, commits the offence of theft as defined in s. 378 of the Code. Per *Petheram, C. J.*, when s. 378 is read with s. 23, it is evident that it was the intention of the Legislature that it should be theft under the Code to take goods in order to keep the person entitled to the possession of them out of the possession of them for a time although the taker did not intend to himself appropriate them, or to entirely deprive the owner of them. Per *Pigot, J.* (*Prinsep* and *Macpherson, JJ.*, concurring). It is not necessary to constitute the offence of theft that there should be shown on the part of the accused an intention "to gain the thing moved for the use of the gainer;" but it is enough to show an intention to gain possession of it for a time. An intention on the part of the accused to use the possession of the property when taken for the purpose of obtaining satisfaction of a debt due to him, and only for that purpose, has no bearing on the question of dishonest intention under the Penal Code. Per *Banerjee, J.* Ill. (1) of s. 378 clearly shows that taking a thing with the intention of keeping it only for a time is taking within the meaning of the section. A creditor taking the moveable property of his debtor without his consent with the intention of coercing him to pay his debt intends to cause both wrongful gain to himself and wrongful loss to the debtor within the meaning of s. 23; for he retains, by unlawful means, property to which he is not legally entitled, and he unlawfully keeps his debtor, who is legally entitled to property, out of possession and enjoyment of the same. QUEEN EMPRESS v. SRI CHARAN CHANGO, 22 C. 1017. (22 C. 669, *Overruled.*) [*Diss.*, Rat. Un. Cr. C. 908, 13 C.P.L R. 155; *R.*, 1 L.B.R. 334, U.B.R. 1897-1901, Vol. I, 339; *D.*, 25 C. 416, 14 C.W.N. 936=11 Cr. L.J. 444=7 Ind. Cas. 257.]

(4)—*Removal by creditor of debtor's cattle.*—Where the accused, a creditor of the complainant, drove away sundry heads of cattle, during the latter's absence, in order to put pressure on him and get his debt paid, *held*, that the accused was guilty of the offence of theft, and that it was immaterial that he took them for a temporary purpose to induce the owner to satisfy his claim, unless he believed in good faith that he was entitled to take the cattle, for instance, he had believed he had a lien on the cattle. HIGH COURT PROCEEDINGS, 28TH FEBRUARY, 1880, NO. 394, 1 Weir 405.

(5)—*Penal Code, ss. 24, 378—Theft—Removal of cattle by creditor—Bona fide claim—"Dishonestly."*—Where the servants of a Raja, n compelling a lessee to pay his rent, removed

Theft—continued.

——2.—**Things which may be the subject of theft**—*continued.*

cattle from his house in spite of his remonstrances, *held* that they committed theft, that they could not have supposed they were justified in carrying off cattle on account of a debt and that the removal was dishonest within the meaning of s. 24 of the Penal Code. EMPRESS v. SHEOMESHUR RAI, **A.W.N. 1888, 97**. [*F.*, 18 A. 88=A.W.N. 1895, 233.]

(6)—*Penal Code, ss.* 378, 425—*Removal by tenant of Zamindar's tree.*—The accused, a tenant, cut down a tree belonging to the Zamindar without his permission and carried it away for his own use. He asserted that the tree belonged to him. *Held* that the offence, if any, was theft and not mischief. EMPRESS v. MOHAN, **A.W.N. 1881, 73.**

(7)—*Joint property—Theft by joint owner.*—A joint owner can be legally charged with theft in respect of joint property. There appears to be no reason why joint beneficiaries or partners could not be held responsible under the Penal Code, in the same way as they are under 31 and 32 Vic., c. 116, s. 1; for, so long as the property of the partnership or joint beneficiary ownership remains joint, so long does the proprietary right remain in full force in respect of each and every item that belongs to the common fund. EMPRESS v. DEBI DAS, **A.W.N. 1881, 115**.

(8)—*Joint possession—Removal by joint possessor.*—Where the possession of the accused and the complainant over a property was joint and the accused removed the property dishonestly within the meaning of that term in the Penal Code, *held*, that the removal would constitute theft. VIRANKUTTI v. CHIYAMU, **7 M. 557=2 Weir 456.**

(9)—*Theft of joint family property by co-parcener.*—Theft of joint family property may be committed by one of the family, though a coparcener, if he takes it from joint possession and converts such possession into separate possession. QUEEN-EMPRESS v. PONNURANGAM, **10 M. 186=1 Weir 408.**

(10)—Joint property may be the subject of theft by one of the joint owners. KAKA v. EMPRESS, **12 P.R. 1889, Cr.**

(11)—*Penal Code, ss.* 379 *and* 403—*Conversion of joint possession into separate possession.*—Where the accused sold a bandy, the property of himself and his brother, and appropriated the sale-proceeds to his own use, *held*, that the accused was guilty of the offence of theft, as he dishonestly converted joint possession into exclusive possession. HIGH COURT PROCEEDINGS, 13TH DECEMBER, 1880, NO. 2554, **1 Weir 408.** [*F.*, 1 Weir 408=10 M. 186.]

(12)—*Penal Code, ss.* 378, 379—*Theft of tame peacock.*—A tame peacock may be the subject of theft, although it may not be kept in confinement. QUEEN-EMPRESS v. NANHE KHAN, **A.W.N. 1897, 41.**

Theft—continued.

——2.—**Things which may be the subject of theft**—*continued.*

(13)—*Penal Code, s.* 379—*Theft of fish in an enclosed tank.*—Fish in an enclosed tank belonging to a Municipality are "restrained of their natural liberty and liable to be taken at any time, according to the pleasure of the owner, and are, therefore, upon principle, and according to the better opinions, subjects of theft." QUEEN-EMPRESS v. SHAIK ADAIN *valad* SHAIK FARID, **10 B. 193=10 Ind. Jur. 338.** [*R.*, 27 M. 551=14 M.L.J. 248 =1 Weir 386, 13 Cr. L.J. 38=13 Ind. Cas. 278=22 M.L.J. 184=11 M.L.T. 23=1912 M.W.N. 42, 13 Ind. Cas. 214=5 S.L.R. 122.]

(14)—Attempting to catch fish in a fort moat, an enclosed body of water in which the fish must stop, subject to the control of the owner, is an attempt to commit theft. QUEEN-EMPRESS v. MASA, **U.B.R. 1892—1896, Vol. I, 234.** (15 C. 388, 402, *R.*)

(15)—*Penal Code, s.* 378—*Taking fish from a navigable river — Theft*—Julkur.—The taking of fish in that portion of a navigable river over which a right of *julker* exists does not fall within s. 378, I.P.C., as the fish could not be held to be in the possession of the proprietor of the *julker* right. HURIMOTI MODDOCK v. DENO NATH MALO, **19 W.R. Cr. 47.** *See also* BHUSUN PARUI v. DENONATH BANERJEE, **20 W.R. Cr. 15.**

(16)—*Julkur—Fishery rights—Theft.*—Want of proof of a prescriptive right to fish within certain limits free from payment of rent is quite distinct from want of right of any kind to fish therein rendering a person so fishing to be brought up for the theft of fish taken by him. KHETTER NATH DUTT v. INDRO KALIA, **16 W.R. Cr. 78.**

(17)—*Penal Code, ss.* 22, 378—*Earth severed from earth or land to which it is attached—Moveable property—Theft.*—Earth, that is soil, and all the component parts of the soil, inclusive of stones and minerals, when severed from the earth, are moveable property capable of being the subject of theft. Whoever, therefore, severs such earth from the earth with the dishonest intention specified in s. 378, Penal Code, can be said to commit theft. QUEEN-EMPRESS v. SHIVRAM, **15 B. 702.** [*Appl.*, 27 M. 531=14 M.L.J. 155=1 Weir 417.]

(18)—*Muhammadan wife — Conviction for theft of husband's property.*—There is not the same union of interest between a Muhammadan wife and her husband which exists between an English husband and wife, and she can be convicted of theft or abetment of theft of her husband's property. REG. v. KHATABAI, **6 B. H.C. Cr. 9.**

(19)—*Removal of legally appropriated salt formed naturally in a creek.*—Dishonest removal of salt naturally formed in a creek, under the supervision of an officer belonging to the

Theft—continued.

——2.—**Things which may be the subject of theft**—*continued.*

Government, is theft, as the salt has been legally appropriated. REG. v. MANSANG BHAVSANG, **10 B.H.C. 74.**

(20)—*Spontaneous salt formed in swamp placed under guard—Possession.*—Where the Government has placed guards round a swamp, it has taken such possession of the salt, including spontaneous salt, as would cause its removal from the swamp against the will of the Government and with the intention of obtaining an unlawful gain, theft. QUEEN v. TAMMA GHANTAYA, **4 M. 228=1 Weir 412** [*F.*, 15 B. 702, 27 M. 531=14 M.L.J. 155, F.B.=1 Weir 417; *D.*, 10 M. 255=1 Weir 414.]

(21)—*Penal Code, ss.* 379, 403—*Removal of animals from open lands for grazing.*—The removal of animals grazing on open lands where the owner has driven them amounts to theft and not to criminal misappropriation. EMPEROR v. KARSAN BAPU, **4 Bom. L.R. 626.**

(22)—*Penal Code, ss.* 22, 30, 378—*Valuable securities—Moveable property.*—Valuable securities are moveable properties and may be the subject of theft. REG. v. KASHIRAJ MARTAND, **Rat. Un. Cr. C. 43=Cr. Rg. 8-12-1870.** (3 B.H.C. Cr. 42, *R.*)

(23)—*Penal Code, ss.* 379, 430—*Stealing cattle let loose for drinking water.*—A person who steals cattle which are let loose by the owner with a view to their going to drink water at a river, commits the offence of theft and not of criminal misappropriation. QUEEN-EMPRESS v. LAKSHMYA, **Rat. Un. Cr. C. 136.**

(24)—*Penal Code, s.* 380—*Theft of luggage and cash from Railway carriage—"Theft in a building."*—The accused was convicted of the offence of theft, under s. 380, Indian Penal Code, in that he stole some luggage and cash from a Railway carriage when it was at a Railway station. *Held*, upholding the conviction, that though the Railway carriage was not a building, the Railway station was. QUEEN-EMPRESS v. SHEIK SAHEB, **Rat. Un. Cr. C. 293=Cr. Rg. 36 of 1886.**

(25)—*Penal Code, ss.* 379, 403—*Washed carpet left on a bank drying—Removal.*—The complainant washed a carpet at the village tank and hung it up there to dry; the accused having dishonestly taken it away, was convicted of the offence of criminal misappropriation of property under s. 403, I.P.C. *Held* that the carpet had never left the complainant's possession and the offence committed was that of theft. QUEEN-EMPRESS v. MATHI, **Rat. Un. Cr. C. 314=Cr. Rg 70 of 1886.**

(26)—*Penal Code, s.* 378—*Dishonest removal by wife of husband's property.*—There is no presumption of law that the wife and husband constitute one person in India for the purposes of criminal law. Theft is an offence against property, and where there is no community of property, each may commit theft in regard to the property of the other. The question is one of intention. If the wife, removing the husband's property from his house, does so with dishonest intention, she is guilty of theft. Her joint possession may in many cases give rise to a presumption that she had authority from her husband to give the property, but this is a presumption of fact, and it may be rebutted. The intent with which the husband's property is removed is a question of fact, and where a dishonest conversion is intended, it clearly amounts to theft. QUEEN-EMPRESS v. BUTCHI, **17 M. 401=1 Weir 409.**

(27)—*Penal Code, s.* 379—*Chanks in Palk's Bay and Gulf of Mannar, whether capable of being subject of theft.*—Palk's Bay, an arm of the sea, landlocked by His Majesty's Dominion and containing a great number of islands which form part of the districts to which they are adjacent in India and Ceylon sides, respectively, and also the Gulf of Mannar, have been effectively occupied for centuries by the inhabitants of the adjacent districts of Ceylon and India respectively. They are an integral part of His Majesty's Dominion, the portion adjacent to India being within the jurisdiction of the Indian authorities, and the portion adjacent to Ceylon being within the jurisdiction of the authorities of that place. The chanks found in Palk's Bay and in parts of the adjacent Gulf of Mannar have, in fact, been held by Government from time immemorial and have been leased out for the benefit of the public revenue, in accordance with the common law of the country, which recognises the power of Government to make settlements or grants, for purpose of revenue, of all unsettled and unappropriated lands, whether covered by water or not so covered, and, therefore, of the produce or portions of the produce of such land. The Crown has included the revenue derivable from the chanks in the permanent settlement of the Ramnad Zemindari, under Reg. XXV of 1802. A person taking chanks out of chank beds in the possession of the Raja of Ramnad will, therefore, be guilty of theft, under s. 379, Penal Code, inasmuch as chanks are not *ferae naturae*, but *domitae naturae*, and, as there is nothing in the nature of chanks, whether it be the dead shell or the living mollusc which prevents it from being the subject of property. ANNAKUMARU PILLAI v. MUTHUPAYAL, **27 M. 551=14 M.L.J. 248=1 Weir 386.**

(28)—*Penal Code, ss.* 378 *and* 379—*Removal of distrained property.*—Where a crop, raised by the accused, was duly and properly distrained for arrears of rent and was in possession of a person, in whose custody it had been placed, to secure the landlord's claim, and the accused removed it, in order to defeat the claim, *held*, that the accused was guilty of theft inasmuch as he dishonestly removed property over which a lien was created by operation of law. *In re* DADALA ATCHIGADU, **1 Weir 420.** [*D.*, 22 M. 151.]

Theft—continued.

——2 —Things which may be the subject of theft—*continued.*

(29)—*Penal Code, s.* 378—*Theft—Removing a buffalo without consent of owner—Religious motive.*—A person, who takes away a buffalo from its owner, without his consent, with the motive of preventing the animal from being slaughtered, commits theft, though he returns the price. PARICHAT v. EMPEROR, **5 N L.R 17=9 Cr.L J. 389=1 Ind. Cas. 800.**

(30)—*Penal Code, s.* 378—*Theft of property pledged by pawnor from pawnee.*—Even if a transaction be one of pledge between two parties, still, if the pawnor takes away the property pledged dishonestly without the knowledge of the pawnee, it is theft. QUEEN EMPRESS v. NGA CHIT U, **U.B R. 1892-1896, Vol. I, 232.** (9 B. 135, *R.*)

(31)—*Penal Code, ss.* 95 *and* 379—*Theft of pots after discharging earth-oil contained therein.*—In a case where three women wiped out certain pots, after discharging the earth-oil they had contained, the only offence committed, if at all an offence may be said to be committed, is theft. But even here a doubt arises whether the oil in that case could be regarded as moveable property and whether it should not be treated as refuse abandoned by the owners as of no account. *Held* that, in any case, s. 95, I.P.C., would apply in so trivial a matter. CRIMINAL REVISION CASE NO. 909 OF 1892, **U.B R. 1892—1896, Vol. I, 235.**

(32)—*Penal Code, s.* 379—*Theft—Taking ruby washed into a channel from a ruby mine.*—If a person picks up some rubies lying beside a channel, into which water pumped from a ruby mine or pit was poured to be carried away, the accused commits the offence of criminal misappropriation and not theft, as it is difficult to see how the rubies could be in any one's possession, since they could be carried away to the river or elsewhere, if they were accidentally cast away in water. But, if the person, instead of picking the rubies from a channel, picks them up from a Railway truck while being employed there as a coolly, he commits the offence of theft, the truck and the stones it contains being clearly in the possession of the Railway Company. Again, if the same person picks up a ruby near the mouth of the ruby mine, the exact place where it is found not being known, he commits either criminal misappropriation or theft. QUEEN EMPRESS v. NGA SAN YAW, **U.B.R. 1892-1896, Vol. 1, 236.**

(33)—*Penal Code, ss.* 379 *and* 403—*Taking of cattle let loose for grazing—Theft or criminal misappropriation.*—According to the well established custom of the country that cattle let loose to graze in the pastures of the country are ordinarily in the possession of the owners, the only reasonable inference, in the absence of any thing to the contrary, is that the taking

Theft—continued.

——2.—Things which may be the subject of theft—*concluded.*

of such cattle would amount to *theft* and not criminal misappropriation. QUEEN EMPRESS v. NGA THEIN O, **U B R. 1892—1896, Vol. I, 238.** (11 M. 145, *R.*)

(34)—*House uncared for—Materials taken away—If theft committed.*—If the materials of a house are taken away dishonestly, the act is theft, even though the house is left uncared for. Ownership and possession of immoveable property are not so easily separated, as ownership and possession of moveable property. KING-EMPEROR v NAWTARA SINGH, **U B R. 1904, 1st Qr., Penal Code, s. 7=10 Bur. L R. 356=1 Cr. L.J. 558.** (U B.R. 1897—1901, 137, 139. L.B.R. 1903, 65, *R.*)

(35)—*Theft of marking iron for the purpose of marking of trees cut without permit.*—The accused's brother felled certain trees without permit and the accused fearing detention marked the tree with the Government marking iron, having taken it from the *Rakhas* baggage, in order to make it appear that they had been marked with the Forest Officer's permission, and then replaced the marking iron in the *Rakhas* baggage. *Held* that the accused was guilty of the offence of theft of marking iron. EMPRESS v. BUDHU, **1 P.R. 1887.**

(36)—*Penal Code, ss.* 378, 114—*Forcibly carrying away crops—Want of consent of owner—Theft virtually committed.*—Where a Court finds that parties came with a number of armed men and carried off crops, the finding amounts to that of a forcible carrying off without the consent of the owner. Even if they took no part in the actual taking, they must, with reference to s. 114, I.P.C., be considered guilty of the substantive offence under s. 378. QUEEN v. SHIB CHUNDER MUNDLE, **8 W.R. Cr. 59.**

(37)—*Assertion of right by accused—Defence to charge of theft.*—A bare assertion by an accused, charged with committing theft, of a proprietary right in the alleged stolen property is no reason for a Magistrate refusing to entertain a charge of theft. QUEEN v. KALI CHARAN MISSER, **7 B.L.R. App. 55=16 W. R. Cr. 18**; KHETTER NATH DUTT v. INDRO JALIA, **16 W R. Cr. 78**; MAHOMED JAN v. KHADI SHEIKH, **16 W.R Cr. 75.**

(38)—*Penal Code, ss.* 381, 409—*Stealing money in accused's charge—Criminal breach of trust.*—Where the prisoners were accused of having stolen a sum of money shut up in a box and placed in the police treasury buildings over which they had been placed on guard, *held* that they should have been charged under s. 381 of the Penal Code (theft by servant in possession of property), and not under s. 409 (criminal breach of trust by public servant). QUEEN v. JUGGURNATH SINGH, **2 W.R. Cr. 65.**

Theft—continued.

——3.—Things in respect of which the offence of theft cannot be committed.

(1)—*Penal Code, s.* 378—*Theft—Human body*—A human body, whether living or dead, except human bodies, or portions of such, or mummies, preserved in museums or scientific institutions, cannot be the subject of theft as defined in the Penal Code. EMPEROR v. RAMADHIN, **25 A. 129 = A.W.N. 1902, 191.**

(2)—*Theft of* stridhan *property by wife—Theft of husband's property.*—The removal by a Hindu wife of her *stridhan* property from the possession of her husband does not amount to the offence of theft. *Quære*:—Whether the removal of her husband's property would constitute an offence? REG. v. NATHA KALYAN, **8 B.H.C. Cr. 11.**

(3)—A Hindu wife cannot be convicted of theft of her Stridhanam property from her husband, nor can any other person be convicted of abetment of such offence.—*Quære*:—Whether a Hindu wife can be convicted of theft of her husband's property? REG. v. NATHA KULLIAN, **Rat. Un. Cr. C. 44.**

(4)—*Theft—Dishonest removal of salt formed naturally in creek—Act* XXXI *of* 1850, *s.* 8 —*Act* XXVII *of* 1837, *s.* 7.—Removal for one's own use of salt from the bed of a creek not forming part of any salt work, constitutes no offence, either under the Penal Code, or under Act XXXI of 1850, or under Act XXVII of 1837, though under s. 7 of the latter Act made applicable by s. 8 of the former, the salt removed becomes liable to detention. REG. v. FAKIRA KHANDIA, **10 B.H.C. 74, Note.** [*R.*, 10 B.H.C. 74.]

(5)—*Penal Code, s.* 378—*Removal of salt from a swamp.*—Where the accused were charged with having removed salt from a swamp, but it was not proved that the swamp was so guarded by Government as to enable the accused to know that it was in the possession of the Government, *held* that the accused were not guilty of theft. *In re* GOVERNMENT PLEADER, **1 Weir 412.**

(6)—*Penal Code, s.* 379—*Theft—Pledgee taking possession of thing pledged from custody of pledger*—Bona fide *claim*—The complainant pledged some fishing nets with his creditor. The nets remained in possession of the debtor as security for the debt, and the creditor was at liberty to sell the goods if within three years the debt was not paid. The debt remained unsatisfied. On the expiry of three years, the accused, in order to assert this right, took away the nets from the complainant's possession. *Held* that, on the facts, the accused could not be convicted of theft, as it might fairly be contended that he *bona fide* supposed that he was justified in his act. KING-EMPEROR v. DHAKLU, **4 Bom. L.R. 56.**

(7)—*Penal Code, ss.* 378, 379—*Fish in a natural bheel.*—Fish in a bheel, which is not of the nature of a tank in which fish are caught and stored in any sense, but which is a natural reservoir of water which has come there without any human agency, being *feræ naturæ*, are not "property," unless they are reduced to possession by being caught and no property can be acquired in them by any one so that there may be an offence of theft regarding them. *In the matter of the petition of* MADHAB HARI, **15 C. 390, Note.** [*R.*, 15 C. 402.]

(8)—*Theft of fish.*—*Held*, that the conviction for theft of fish in a large bheel called the Chuckla khola bheel (the same bheel referred in 13 C. 390 note) could not be sanctioned because the fish had not been moved away. MADHOO MUNDLE v. UMESH PARNI, **15 C. 392.** [*Expl.*, 15 C. 402.]

(9)—*Penal Code, ss.* 379, 447—*Taking away fish from tank fed by a channel.*—Accused were charged with the offence of theft of fish in a tank belonging to the complainant, and also with the offence of criminal trespass. The tank was an artificial piece of water, and there was no assertion of customary right to fish in the tank. *Held*, that the accused had not committed the offence of theft, inasmuch as it was not shown that the fish had been, at the time of occurrence, in the possession of the owner of the tank. The tank was evidently not enclosed and shut up on all sides; the fish were not reared and preserved therein, but found their way there through the overflowing of the neighbouring channel which was connected with other flowing streams; and, on the date of occurrence, the inundation was high and the fish were at perfect liberty to leave the tank. This being the state of things, the fish were *feræ naturæ*, and were not in the power and dominion of the owner of the tank. *Held*, also, that he was not guilty of criminal misappropriation by taking the fish as there was, in the case, nothing to show that the accused entered upon the tank with the intent of committing any offence under the Code, or for the purpose of intimidating, annoying or insulting the owner of the tank. MAYA RAM SURMA v. NICHALA KATANI, 15 C. 402. [*R.*, 36 M. 472 = 13 Cr. L.J. 38 = 13 Ind. Cas. 278 = 1912 M.W.N. 42 = 22 M.L.J. 184 = 11 M.L.T. 23.]

(10)—*Penal Code, s.* 379—*Fish in ordinary open irrigation tanks.*—Fish living in ordinary open irrigation tanks in Southern India are not in the possession of any person so as to render their capture and removal a theft. HIGH COURT PROCEEDINGS, 23RD OCT. 1878, NO. 1759, **1 Weir 384.** [*F.*, 1 Weir 384, 5 M. 390 = 1 Weir 385, 24 M. 81 = 1 Weir 385; *R.*, U.B.R. 1897—1901, Vol. I, 339.]

(11)—*Penal Code, ss.* 378 *and* 379—*Wrongful taking of fish from creek.*—The wrongful taking of fish from a creek, the right to fish in which had been leased out by Government, is not

Theft—continued.

——3.—Things in respect of which the offence of theft cannot be committed —*continued.*

theft. QUEEN v. REVU POTHADU, **5 M. 390 =1 Weir 385.** [*F.*, 15 C. 402; *R.*, 15 C. 388, 24 M. 81=1 Weir 385, Rat. Un. Cr. C. 908; *D.*, 10 B. 193, 1 Weir 386=27 M. 551=14 M. L.J. 248.]

(12)—*Penal Code, s. 379—Removal of fish from ordinary open irrigation tank.*—Fish in an ordinary open irrigation tank are not in possession of any person, so as to be capable of being the subject of theft. The removal of such fish does not also constitute any other offence. SUBBA REDDI v. MUNSHOOR ALI SAHEB, **24 M. 81=1 Weir 385.** [*Expl.*, 36 M. 472=13 Cr. L.J. 38=13 Ind. Cas. 278=1912 M.W.N. 42=22 M.L.J. 184=11 M L.T. 23; *R.*, 27 M. 551=14 M.L.J. 248=1 Weir 386.]

(13)—*Penal Code, s. 379—Fish in a tank used for storage of water.*—Fish, which are not stored in a tank for consumption, but which have been spawned in a tank used for the storage of water for agricultural purposes, are not, until they have been captured, in the possession of the owner so as to constitute the taking of them without the owner's consent, theft. HIGH COURT PROCEEDINGS, 10TH APRIL 1880, NO. 663, **1 Weir 384.**

(14)—*Fish from ponds.*—Fish in a pond, a sheet of water five miles long by twenty feet broad, which has been leased to a contractor by the Government, is not in the possession of any person within the meaning of s. 378, I.P.C., and cannot, therefore, be the subject of theft. CROWN v. JAMAL, **11 P.R. 1878, Cr.**

(15)—*Penal Code, s. 379—Theft—Claim of title by the accused—Conviction for theft illegal, unless the Court finds the claim to be a pretence.*—In a case of alleged theft of fish from a tank which the accused claimed to have been in their possession and not in the complainant's, *held* that, if the accused asserts a claim to the thing alleged to have been stolen by him, he should not be convicted, unless the Court is in a position to say that the claim is a mere pretence. DHIRENDRA MOHAN GOSSAIN v EMPEROR, **14 C.W.N. 408=5 Ind. Cas. 794=11 Cr. L.J.248.**

(16)—*Penal Code, ss. 378, 23, 24—Creditor taking debtor's property to enforce his claim—Meaning of the words "intending to take dishonestly any moveable property."*—The illustrations to s. 378 of the Code indicate that it was the intention of the Legislature that, in order to have committed theft within the meaning of the section, the taker must have taken the thing with the intention of keeping it himself, or disposing of it for his own benefit, or in some way which would compel the owner to pay him money which he did not owe him in order to regain his property. When property is taken out of the possession of the owner, without his consent, with the intention of returning it to him and without the intention

Theft—continued.

——3.—Things in respect of which the offence of theft cannot be committed —*continued.*

of gaining anything by the temporary detention except something to which the taker is legally entitled, then the taker would not be guilty of the offence of theft. Where, with a view to coerce the complainant to pay a sum of Rs. 14 which he owed to the accused, cattle worth Rs. 60 were, under the order of the accused, removed from the complainant's homestead, *held*, that the accused was not guilty of theft. [*Diss.*, 18 A. 88, Rat. Un. Cr. C. 908, 13 C.P.L.R. 165; *R.*, U.B R. 1897—1901, Vol. I, 339, 12 Ind. Cas. 844=8 A.L.J. 1237=12 Cr. L J. 580=34 A. 89.] The words "intending to take dishonestly any moveable property out of the possession of another, moves that property" in s. 378 must be read with ss. 23 and 24 of the Code. If so read the section will read "whoever with the intention of gaining by unlawful means property to which he is not legally entitled, moves that property, is said to commit theft." Therefore the gaining possession of property for a time and for temporary purpose would not amount to theft PROSONNA KUMAR PATRA v. UDOY SANT, **22 C. 669.** [*Overruled*, 22 C. 1017, F.B.]

(17)—*Penal Code, ss. 143 and 379—Removal of crops regarding which an agreement for purchase has been entered into.*—Where certain tenants agreed, with an indigo planter, for the latter sowing rice on their land at his own expense and for taking the crop on payment of a price, *held* that the cultivators were not committing theft in carrying away the crop and that they were liable only for damages for breach of contract, inasmuch as under the agreement the crop remained the property of the cultivators which the planter merely agreed to purchase. Nor could they be convicted of being members of unlawful assembly, for, the common object, *viz.*, theft, was not committed. PARMESHWAR SINGH v. EMPRESS, **4 C.W.N. 345.**

(18)—*Penal Code, ss. 379 and 430—Theft of water running through an artificial channel—Mischief by causing a diminution of the supply of water for agricultural purposes*—Bona fide *claim of right, facts negativing.*—Water running freely from a river through a channel made and maintained by a person cannot be the subject of theft. Where the accused took water that was running freely from a river through a pyne made and maintained by another for irrigation purposes, and it was found that the accused were not acting under a *bona fide* claim of right, and their act caused a diminution of the supply of water for agricultural purposes. *Held*, that the accused committed an offence under s. 430, I.P.C., even though there was no evidence to prove that the accused knew at the time they took the water that any lands were being actually irrigated with the water of the pyne. *Held*, further, (*Woodroffe, J.* dubitante), that, under the circumstances of the

Theft—continued.

——3.—**Things in respect of which the offence of theft cannot be committed** —*continued.*

case, and having regard to the history of the pyne, the accused were not under a *bona fide* belief that they were entitled to take the water. EMPEROR v. SHEIKH ARIF, **35 C. 437 = 12 C. W.N. 534 = 7 Cr. L J. 367.** (11 Q.B.D. 21, *D.*) [*R.*, 13 Cr. L.J. 131 = 13 Ind. Cas. 819.]

(19)—*Penal Code*, s. 379—*Theft of the carcase of a buried bullock.*—Where the accused were charged with having committed theft, in having dug up the carcase of a bullock which the owner, suspecting it to have been poisoned, caused to be buried, *held*, that the accused were not guilty of theft, as the owner had obviously given up all property in, and possession of, the subject of the alleged theft. HIGH COURT PROCEEDINGS, 5TH FEB 1869, **1 Weir 384 = 4 M.H.C. Ap. 30.**

(20)—*Penal Code, s.* 379—*Cutting bark from trees in Government forest.*—Where the accused felled some konai bark which, under the forest rules, dated 8th March, 1867, was not subject to seigniorage, from a Government forest, which was neither defined nor notified, *held*, that the accused was not guilty of the offence of theft, inasmuch as it could not be said that he had a dishonest intention in taking the bark, the bark being *free*. *In re* MADAN, **1 Weir 411.**

(21)—*Penal Code*, ss. 378 *and* 379—*Removal of crops distrained for arrears of rent—Irregular distraint, effect of—Mad. Act* II *of* 1864.—Where the accused carried away dishonestly crops distrained for arrears of Government revenue, but where it was not proved that the requirements of the revenue law, as laid down in Mad. Act II of 1864, in regard to the distraint of property were properly complied with, *held* that the accused could not be convicted of theft. *In re* P. SUBBAIYA, **1 Weir 421.**

(22)—*Penal Code*, ss. 378, 379—*Removal by owner of property illegally distrained.*—An owner retaking property, which was illegally distrained, cannot be convicted of theft. *In re* YAGAMURTHI THEVAN, **1 Weir 422.**

(23)—*Penal Code*, s. 379—*Cutting of crops under attachment, by the owner to prevent their being damaged.*—Certain standing crops were attached for arrears of revenue due on certain patta lands; when the crops became ripe, the accused reaped a portion of them and placed them in the threshing-floor forming part of the same patta land. *Held*, that the accused could not be convicted of theft, if their object was to secure the crops from damage, and if they had no intention to carry them off and defeat the attachment. *In re* PERYANNAN, **1 Weir 423.** [*D.*, 22 M. 151.]

(24)—*Penal Code, s.* 379—*Cutting and removal of crops under attachment in order to save it from being washed away.*—Where the accused cut and removed certain crops under attachment in order to save them from being washed away, *held*, that the mere removal, without proof of dishonest intention on the part of the accused, would not be sufficient to constitute the offence of theft. *In re* PEDDA MADDULEGADU, **1 Weir 423.**

(25)—*Penal Code*, s. 379—*Trees growing on the holding in the tenant's possession—Theft.*—The rights to trees, as well as to other produce growing in the holding of a tenant, with permanent occupancy right, must generally depend in each case upon the terms agreed upon between the ryot and the landlord and embodied in the patta. In the absence of an express agreement in the patta or elsewhere between the landlord and tenant in regard to the trees, they must be taken to be the tenant's property and the tenant cannot be convicted of theft of such trees. *In re* THERUMAL REDDI, **1 Weir 426.**

(26)—*Collecting edible bird's nests, whether constitutes theft*—Edible bird's nests are not in the possession of anybody until they are collected. A person who collects them without a license, therefore, does not commit theft; but he may be convicted of the offence of collecting edible bird's nests without a license under Rule 113 of the Rules framed under the Lower Burma Land and Revenue Act. KING-EMPEROR v. AW SU, **4 L B.R 275 = 8 Cr. L. J. 473.**

(27)—*Dishonest taking of bricks from well, part of which was situated in accused's premises.*—Where a person committed theft of some bricks from an underground well, part of which was on his own premises, *held*, that there was no dishonest taking of the bricks, even if they were not the property of the accused. EMPRESS v. HARJAS RAI, **21 P.R. 1890, Cr.**

(28)—*Making away with property lawfully possessed.*—The making away with property lawfully possessed is not theft, but may be criminal breach of trust. *In re* BHARUT CHUNDER CHRISTIAN, **1 W R. Cr. 2.**

(29)—*Seizure and impounding of cattle.*—The illegal seizure and impounding of cattle is not theft, even if effected with whatsoever malicious intent. ARADHUN MUNDUL v. MYAN KHAN TAKADGEER, **24 W R. Cr. 7.**

(30)—*Ill-founded claim of right.*—A person acting under a claim of right cannot be guilty of theft. The fact that the claim is ill founded will not make any difference. QUEEN v. RAM CHURN SINGH, **7 W.R. Cr. 57.**

(31)—*Claim to be fair and good.*—The claim to the property must be proved by evidence to be fair and good and a mere assertion will not do. NASSIB CHOWDHRY v. NANNOO CHOWDHRY, **15 W R. Cr. 47.**

(32)—*Retaining possession of nets of poachers.*—Where the prisoner, acting *bona fide* in the

Theft—continued.

—— 3.—**Things in respect of which the offence of theft cannot be committed** —*concluded.*

interests of his employers and finding some fishermen poaching on his master's fisheries, took charge of the nets, and retained possession of them, pending the orders of his employers, *held* that the prisoner was not guilty of theft, the taking not being criminal when the possession was changed. QUEEN v. NOBIN CHUNDER HOLDAR, **6 W.R. Cr. 79.**

—— 4.—**Miscellaneous.**

(1)—*Penal Code, s. 379—Theft—Joint undivided Hindu family—Conviction for abetment of stealing and receiving stolen property—Legality.*—A member of a joint Hindu family separated himself and went to Demerara as a coolie. After thirty years' absence, he returned to India, lived in commensality with his brother, but treated the property he had earned in Demerara as his own property. *Held*, that such property is not joint property, but merely the sole property of that member, and his brother was liable to be punished under s. 380, I.P.C., for theft committed in regard to such property. It is irregular to convict and punish a person for abetment of stealing and also for receiving the same property. EMPRESS OF INDIA v. SITARAM RAI, **3 A. 181.**

(2)—*Penal Code, s. 380—Theft in a brake van—Evidence.*—Upon some articles being missed from a train, some person or persons proposed to search the appellants, Railway coolies, who were allowed to travel on the brake van. The articles for which the search was made were not found, but covered with cloths belonging to those coolies, were found certain *thans* of cloths, taken out from the brake-van. In the absence of any evidence to show that the accused, either some of them or all of them, were in possession of the cloths, they could not be convicted under s. 380. KING-EMPEROR v. ALI HUSAN, **23 A. 306=A.W.N. 1901, 103.**

(3)—*Abetment of theft—Evidence.*—A statement made to the police by an accused person, to the effect that if certain other persons were sent for, he would see that some property was traced out and restored, is not legal evidence to prove that the accused has been guilty of abetment of theft. BISHAN DAT v. KING-EMPEROR, **2 A.L.J. 53=2 Cr L.J. 22.**

(4)—*Penal Code, s. 379—Separate offences of theft—Stealing two bullocks belonging to two different persons at the same time.*—The stealing of two bullocks belonging to two different persons at the same time, from the same custody, is only a single offence and should be punished only once. EMPRESS v. RAGHU RAI, **A.W.N. 1881, 154.**

(5)—*Penal Code, s. 381—Larceny by servant—Punishment.*—It should always be borne in mind that, in the absence of extenuating circumstances properly established, larcenies by servants from their masters are an aggravated form of larceny by reason of the relation between the parties, and are intended by law to meet with more severe punishment than more ordinary thefts. EMPRESS v. HARDEWA, **A.W.N. 1887, 54.**

Theft—continued.

——**4.—Miscellaneous**—*continued.*

(6)—*Theft committed in Rajkot civil station—Retention of property in British Territory—Jurisdiction of British Courts—Statutes 21 and 22, Vic., Chap. 106—Penal Code, ss. 381, 410, 411.*—(1) Rajkot civil station is no part of British India within the meaning of Statute 21 and 22 Vic., Chap. 106; (2) Where a subject of a Native State committed theft at Rajkot civil station and was found in possession of the stolen property in British territory, *held* that the British Court had no jurisdiction to try him for the offence of theft, but the accused could be tried for an offence punishable under s. 411, I.P.C., as the definition of stolen property, under s. 410, includes property stolen outside British India. QUEEN-EMPRESS v. ABDUL LATIB *valad* ABDUL RAHIMAN, **10 B. 186=Rat. Un. Cr. C. 218.** [*Diss.*, 37 B. 152=1 Bom. Cr. C. 152=14 Bom. L.R. 876=13 Cr.L J. 790=17 Ind. Cas. 534; *F.*, 28 A. 372=3 A.L.J. 146=A.W.N. 1906, 52=3 Cr.L J. 247.]

(7)—*Penal Code, ss. 379, 425—Cutting and dishonest removal of trees — Conviction under both sections.*—Persons, who cleared a piece of Government land, cutting down and appropriating the trees thereon without permission, were convicted of theft under s. 379, I P.C., and of mischief under s. 425. *Held* that the conviction was not illegal as the mischief preceded the theft, which under s. 379, expl. I, could not have been committed until the tree had been detached from the ground. REG. v. NARAYAN KRISHNA, **2 B H.C. 392.** [*Appr.*, Rat. Un. Cr. C. 430; *D.*, 14 C.P.L.R. 159.]

(8)—*Penal Code, ss. 379, 425—Stealing and killing a fowl—Separate sentence.*—A person who steals a fowl and then kills it cannot be punished separately for the offence of theft and mischief. He can only be convicted of the offence of theft. EMPEROR v. RAMLA RATANJI, **5 Bom. L.R. 460.**

(9)—*Penal Code, ss. 379, 428— Stealing bullock and then killing it—Sentence.*—Where a person steals a bullock and then kills it, he can only be convicted of theft under s. 379 of the Indian Penal Code, and not of mischief also under s. 428 of the Code. QUEEN-EMPRESS v. GENYA, **Rat. Un. Cr. C. 129.**

(10)—*Penal Code, ss. 379, 471—Theft—Receipt of stolen property—Evidence.*—In order to sustain a conviction of theft or dishonest receipt of stolen property, it is not sufficient that the property found in the prisoner's possession was like that stolen. There must be a finding to the effect that the property was stolen. QUEEN-EMPRESS v. BAVA CHELA, **Rat. Un. Cr. C 227=Cr. Rg. 5 of 1886.**

(11)—*Theft and receiving stolen property—Separate offences.*—Where one prisoner stole

Theft—continued.

——**4.—Miscellaneous**—*continued.*

and the other received certain property, *held* that they committed different offences in the same transaction. *In the matter of* DAVID, 5 **C.L R. 574.** [*F.*, 33 C. 1256 = 3 C.L.J. 412 = 10 C.W.N. 912.]

(12)—*Penal Code, ss.* 379 *and* 380—*Repetition of offence of theft—Punishment.*—Every repetition of theft is a grave offence when it indicates a habit not cured by previous light punishment. QUEEN-EMPRESS v RAM NHANU, **Rat. Un. Cr. C** 296 = **Cr. Rg** 41 of 1886.

(13)—*Theft—Boy of fourteen—Practical joke—Annoyance—Penal Code, s.* 441.—Where a young boy of fourteen, who had never before been convicted, was convicted of theft in a dwelling house for having entered a blind old man's house and removed his cooking pots and cloths, which were produced, and sentenced to four years' simple imprisonment and confinement in the Reformatory, *held* that the sentence was too severe and that it must be considered in dealing with offences by young boys whether the accused really intended a criminal act or merely a practical joke. QUEEN-EMPRESS v. BALI, **Rat. Un. Cr. C. 564.**

(14)—*Penal Code, s.* 379—*Removal of several articles belonging to several persons by one and the same act.*—Removal by one single act of several articles constitutes one offence of theft only, though the articles may belong to different persons. Hence, where a person steals at the same time two bullocks which belong to two different owners and are tied together to the yoke of a cart, he may be sentenced for one offence only. QUEEN-EMPRESS v. KRISHNA SHAHAJI, **Rat. Un. Cr. C.** 927 = **Cr Rg. 33 of 1897.**

(15)—*Penal Code, ss.* 379, 409—*Forest Guard allowing cutting and removal of trees without Government permission.*—The first accused, a Forest Guard, having allowed the second accused, a timber merchant, to cut trees without the permission of Government in the Government forest of which the first accused was in charge, the first accused convicted of the offence of attempt to commit criminal breach of trust by a public servant and the second of abetment of that offence. *Held*, (1) that the first accused could not be convicted of an attempt to commit criminal breach of trust by a public servant, because he was not in any manner entrusted with the trees or with any dominion over them, and apparently he was not authorized to deal with the trees in any way for the benefit of Government, but was merely a watchman employed to guard the trees; and prevent injury being done to the Forest; (2) that the trees being immoveable property, the offence of criminal breach of trust could not be committed in respect of them; (3) but that both the accused were guilty of theft, the intention to steal being carried into effect when they cut the trees and removed the timber. QUEEN-EMPRESS v BHAGU, **Rat. Un. Cr. C 928 = Cr. Rg.** 36 **of 1897.** [*F.*, 36 C. 758 = 10 Cr. L.J. 253 = 3 Ind. Cas. 189.]

(16)—*Penal Code, ss.* 405, 379—*Cutting and carrying away crops on land entrusted to care of accused.*—Where the accused were entrusted with certain lands with the standing crops to be taken care of and they subsequently cut and disposed of the crops, they could be convicted under s. 379. I P.C., of theft, if not under s. 405. DURGA TEWARI v. EMPEROR, **36 C. 758 = 10 Cr L J. 253 = 3 Ind Cas. 189.** (23 C. 372, 6 B.H.C. 33, *D.*; Rat. Un. Cr. C. 928, *F.*)

(17)—*Penal Code, ss.* 390, 391—*Robbery—Dacoity—Violence used for the purpose of ousting a person from possession of land.*—Where violence is used by five or more persons for the purpose of dispossessing persons already in possession of some premises and it has no relation to the commission of theft, although theft also is committed, the using of violence will not make the offence committed "dacoity." OTARUDDI MANGHI v. KAFILUDDI MANGHI, **5 C.W.N. 372.**

(18)—*Penal Code, s.* 379—*Theft—Dishonest intention—Retaining passenger's umbrella to make him pay fare*—The accused, an employee under a Steamer Company, whose business it was to check the tickets of passengers, asked to see the complainant's ticket, but, the complainant not having got one, the accused took possession of his umbrella as security that he might be compelled to pay his fare. *Held* that there being no suggestion that the accused intended either to get any wrongful gain to himself by compelling payment of the fare, or to cause any wrongful loss to the complainant who was bound to pay his fare, a conviction for theft was wrong MATABBAR SHEIKH v. KING-EMPEROR, **14 C.W N. 936 = 7 Ind. Cas. 257 = 11 Cr. L J. 444.**

(19)—*Theft in a building—Evidence of intention—Conviction for theft as well as house-trespass or house-breaking by night or day—Validity.*—The actual theft committed is evidence of the intention with which the main offence, *viz.*, the house-trespass or house-breaking by day or night, was committed and such cases should be under ss. 451, 454 and 457, Penal Code, respectively as one offence only and the contrary practice of treating such a state of facts as constituting two separate offences under the Penal Code is erroneous. If a man breaks into a dwelling-house at night and steals property there, the crime is in its nature one single and entire offence and it is dealt with as such by the Penal Code. The Legislature probably considered that the offence of breaking into a house for the purpose of committing theft was so serious that it ought to be punished as severely as if the prisoner effected his object and carried off property. Whether the criminal reaped the fruits of his

Theft—continued.

——4.—**Miscellaneous**—*continued.*

crime or not is, for the purposes of criminal justice, wholly immaterial. **1 W.R. Cr. Letters, 2.**

(20)—*House-breaking by night and theft.*—A person convicted of house-breaking by night, immediately followed by actual theft, should be punished under s. 457, Penal Code, as guilty of a single offence, the theft being regarded as evidence of the prior intent to steal. Apart from the guilty intent, the mere taking of the property is a sufficient ground for a criminal charge. **1 W.R. Cr. Letters, 5.**

(21)—*Crim. Pro. Code* (1898), s. 35—*Separate convictions for house-breaking and theft.*—Separate sentences in a case of house-breaking with intent to commit theft and theft are illegal under s. 35, Crim. Pro. Code. 1898. *In re* SUBBADU, **2 Weir 34.**

(22)—*Penal Code, ss.* 380 *and* 204—*Secreting a document to prevent its production as evidence—Theft of valuable security in a dwelling house.*—The plaintiff in a suit on a bond referred to arbitration, by consent of parties, ran away with the bond placed on the floor besides the arbitrator, in order to prevent a witness from referring to the bond for the purpose of proving the payment of a certain sum to the plaintiff endorsed on the bond. *Held*, that the action of the accused amounted to an offence under s. 204, but not to the offence of theft of a valuable security under s. 380. SUBRAHMANYA GHANAPATHI v. QUEEN, **3 M. 261 = 1 Weir 409 = 1 Weir 181.**

(23)—*Penal Code, ss.* 380, 381, 409—*Trustee of temple, whether liable to be punished for theft of temple property.*—The Devastanam Committee appointed under Act XX of 1863 exercised the same powers of supervision that were formerly exercised by the Board of Revenue under Reg. VII of 1817, but the property of the temple is not vested in them, nor do they represent the property. The person who represents the property is the trustee or manager, who is indeed appointed, and may, no doubt, be removed by the Committee for sufficient cause. But the trustee or manager is not in the position of a clerk or servant removable at the pleasure of the Committee. He holds his office permanently though subject to removal for misconduct. The deity is regarded as the owner of the temple property, and the trustee or the manager appointed by the Committee is the agent of the deity subject to the Committee's control. The trustee or manager is, therefore, in possession of the temple and its jewels, and if he has made away with the property, his offence is criminal breach of trust by an agent punishable under s. 409, Penal Code, and not theft. *In re* MUTHUSAMI PILLAI *alias* KUNJU PILLAI, **26 M. 243,** note.

(24)—*Penal Code, s.* 379—*Theft of money—Coins lost found secreted and separated from other cash of accused--Probative force.*—Where an accused person, a sepoy, charged with stealing cash from a fellow-passenger, gave a false name and number when he was first charged and the actual coins were found upon him secreted and separated from his other cash, *held*, setting aside his acquittal, that under the circumstances there cannot be any reasonable doubt as to his guilt. PUBLIC PROSECUTOR v. SADDAYAN, **2 M.L.T. 498 = 7 Cr. L.J. 218.**

(25)—*Penal Code, s.* 379—*Question of title or right to possession of property stolen not determined—Legality of conviction.*—In this case, the accused was charged with having dishonestly carried away the produce of a tamarind tree, which was in the possession of the complainant, but which the accused contended was sold to him. The question whether the accused was or was not the owner of the produce was not decided, nor was it found whether the complainant had or had not a right to possession. *Held* that, in the absence of findings on either of those questions, the conviction was bad. CHINNA GARATA REDDI v. EMPEROR, **8 M.L.T. 119 = 7 Ind. Cas. 416 = 11 Cr. L.J. 484.**

(26)—*Penal Code, s.* 379—*Cultivation of lands contrary to a departmental rule—Removal of crops by a third person.*—The fact that a person has cultivated a certain land, contrary to a departmental rule of the Board of Revenue, could not justify a taking of the crops out of his possession by a party who had no right to it. PUBLIC PROSECUTOR v. BULLAVA GOWD, **1 Weir 426.**

(27)—*Penal Code, s.* 379—*Possession of matter not identifiable--Failure of accused to prove the manner in which his possession arose*—Where a matter, not identifiable, such as rice, is found in the possession of a man, who is not able to explain the possession, or gives an account of it, which he does not prove, he cannot be convicted of theft unless the whole evidence is such as to exclude a reasonable hypothesis of his innocence of the offence. HIGH COURT PROCEEDINGS, 18TH FEBRUARY 1873, **1 Weir 427 = 7 M.H.C. App. 19.** [*F.*, 1 Weir 429.]

(28)—*Penal Code, s.* 379—*Possession of paddy insufficiently explained—Theft, conviction for.*—Where a conviction was based upon the alleged unsatisfactory explanation of the accused as to the manner in which they became possessed of paddy alleged to have been stolen, *held*, that the conviction was not proper, as it was for the prosecution to prove that the paddy found there was the stolen paddy, and as the *onus probandi* was not on the accused. *In re* ROYAPPAN, **1 Weir 429.**

(29)—*Penal Code, s.* 379—*Possession of salt alleged to be stolen—Identity—Evidence.*—Salt is an article, the identification of which in bulk is difficult, if not impossible. Where a quantity of wet salt from a cart in the vicinity of the

Theft—continued.

——4.—**Miscellaneous**—*continued.*

house of the accused was lost, and the accused was found the next morning in the act of drying certain wet salt, *held*, that the accused could not be convicted of theft without sufficient evidence of the identity of the salt. *In re* SINI TEVAN, **1 Weir 429.**

(30)—*Penal Code, ss.* 379, 380 *and* 445—*Theft of cloth placed on top of a house by scaling the wall.*—Theft of a cloth, spread out on the top of a house by scaling the wall, is neither house breaking nor theft in a house, but is simple theft. HIGH COURT PROCEEDINGS, 17TH MARCH 1866, **1 Weir 435.**

(31)—*Penal Code, ss.* 379, 411—*Theft—Receipt of stolen property—Property in possession of several persons at a certain place.*—When stolen property is found at a place in the possession of several persons, other than the accused, the information given to the police by the accused to the effect that it might be found there, if proved, would not be conclusive proof of the guilt of the informant, as it is consistent with the theory that he is neither the thief nor the guilty receiver of it. HAKIMAN v. KING EMPEROR, **31 P.L.R. 1905 = 2 Cr. L.J. 230 = 20 P R. 1905, Cr.**

(32)—*Boat and cattle thefts—Punishment.*—Boat thefts and cattle thefts call ordinarily for a severe sentence, *e. g.*, of two years' rigorous imprisonment, and a summary trial is not suitable for them. QUEEN-EMPRESS v. NGA SAU, **L B.R. 1893—1900, 198.**

(33)—*Cattle theft.*—Cases of cattle theft must be treated with some severity. NGA PAN THIN v. QUEEN-EMPRESS, **L.B.R. 1872—1892, 291.**

(34)—*Restoration of lost cattle on payment of money, whether will give rise to presumption of theft—Two years' imprisonment, if excessive—Evidence Act, s.* 114.—A bullock was lost, and, though search was made, it could not be found. The accused then approached the owner and offered to restore the bullock on payment of money; money was paid and the bullock immediately returned to its home from the direction of the place at which the accused remained after the money was paid. When the accused was under trial, he denied the receipt of the money and any knowledge of the bullock. *Held* that it was a reasonable presumption under s. 114, Evidence Act, from the facts that the bullock was stolen and the accused was the thief. The case of *Po Saing*, L.B.R. 1893—1900, 364, should not be interpreted as laying down any hard and fast rule; where the thief is of mature age, even though he steals but one bullock or buffalo, a sentence of imprisonment for two years would not be excessive. NGA SHWE MYA v. QUEEN-EMPRESS, **L B.R. 1893—1900, 807.**

(35)—*Recent possession of stolen property—Possession exclusive — Tracing possession of stolen property to an accused not necessary to prove.*—When circumstances are highly suspicious, and the suspicion is not rebutted when rebuttal may be reasonably expected, if the suspicion is wrong, suspicion becomes confirmed and becomes much more than suspicion. When recent possession of stolen property and *mere* recent possession is relied upon to prove theft or dishonest possession, such *mere possession* must be exclusive. Moreover, it is not necessary to trace possession of stolen property to an accused person in order to prove theft against him. QUEEN-EMPRESS v. NGA THA DIVE, **L.B.R. 1893—1900, 279.**

(36)—*Penal Code, s.* 379—*Theft, conviction for, not sustainable, for reaping and removing paddy sown on accused's land.*—If a person trespasses on land in the possession of another and sows paddy on it, that does not entitle him to ownership to the paddy grown thereon and, consequently, if a person in possession of the land reaps and removes paddy resulting from such trespasser's showing, he does not thereby commit theft. NGA HMYIN v. KING-EMPEROR, **3 L.B.R. 199 = 4 Cr. L J. 464.**

(37)—*Penal Code, ss.* 379 *and* 429—*Punishment for theft and mischief—S.* 349, *Crim. Pro. Code—Procedure.*—A person who steals a bullock and has been sentenced for theft, cannot again be convicted of mischief for slaughtering it, since the common ingredient of both offences, *viz.*, "wrongful loss" has already taken place in the theft. A Magistrate should not pass a sentence under s. 349, Crim. Pro. Code, and then try the accused on another charge arising in the same case. If he wishes to do so, the proper course for him is to set aside the proceedings and direct a fresh trial before himself *ab initio*. QUEEN-EMPRESS v. NGA PAIK HMWE, **U B.R. 1892—1896, Vol. I, 241.** (6 W.R.Cr. 5, 8 W.R. Cr. 31, S.J.L.B. 440, 476, *R.*)

(38)—*Crim. Pro. Code* (1898), *s.* 239—*Same transaction—Theft and disposal of proceeds.*—Ordinarily theft and the disposal of the proceeds would be parts of the same transaction; and as proximity of time between two acts does not necessarily constitute them parts of the same transaction, an appreciable interval of time between two acts, otherwise connected, does not prevent them from continuing to be parts of the same series of connected events; and hence, it is not necessary to show that the theft and disposal occurred within a few hours or even a few days of each other. NGA NYO GYI v. KING-EMPEROR, **U.B R. 1907, Cr.P.C. 5 = 6 Cr. L J. 28.** (27 C. 839, 28 C. 7, 10, 25 M. 61, 1 C.W.N. 35, 2 L.B.R. 19, U B.R. 1904—1906 Cr P.C. 2, U.B.R. 1904—1906, Penal Code, 9, *R.*). [*F.*, 13 Cr L J. 59 = 13 Ind. Cas. 395 = 4 Bur. L.T. 263.]

(39)—*Obligation of the public to report.*—There is no obligation on the public generally to report a case of theft. CROWN v. ALLOO, **28 P.R. 1867, Cr.**

Theft—concluded.

—— 4.—Miscellaneous—*concluded.*

(40)—*Dwelling house—Theft from the person of an inmate.*—Theft from the person in a dwelling-house is simple theft under s. 379, I.P.C., s. 380 is intended to give greater security only to property deposited in a house, and not to property about the person of the party from whom it is stolen. TANDI RAM v. CROWN, **14 P.R. 1876, Cr.**

Theft in a Building.

See THEFT.

(1)—*Penal Code, s.* 380—*What constitutes*—In order to a conviction under s. 380, it need not be shown that the prisoner entered the building unlawfully. All that is necessary to constitute an offence of theft in a building is that the property should be under the protection of the building. QUEEN v. ISHREE PERSAUD, **24 W.R. Cr. 49.**

(2)—*Penal Code, s.* 380—*Theft in a building—Verandah.*—A theft from a verandah, which is outside the house, is not theft in a building. HIGH COURT PROCEEDINGS, 28TH OCTOBER 1870, No. 1881, **1 Weir 435.**

(3)—*Theft in verandah.*—Theft of property in a verandah may be theft within a building within the meaning of s. 380, I.P.C., when the verandah forms part of a building which is itself used as a human dwelling or for the custody of property. JABAR v. EMPRESS, **1 P. R. 1881, Cr.**

(4)—*Penal Code, s.* 380—*Theft in Railway carriage.*—A Railway carriage is not a building, tent or vessel, used as human building or for the custody of property. HIGH COURT PROCEEDINGS, 13TH AUG. 1880, NO. 1345, **1 Weir 436.**

(5)—*Penal Code, ss.* 380 *and* 381—*Theft of rice from a boat.*—Where rice was stolen, when it was being carried in a boat, *held* that the accused was guilty under s. 379, and probably also under s. 380. *In re* KURAMAN MUSALIYA, **1 Weir 436.**

(6)—*Penal Code, ss.* 380, 381, 454 *and* 461—*Theft from a brake-van.*—Theft from a brake-van by a cooly, in the employ of a Railway, is not an offence under s. 380, as the brake-van is neither a building nor a tent nor a vessel. If the brake-van is neither broken open nor unfastened by the prisoner, an offence under s. 461 is not committed. The act will be an offence under s. 381. HIGH COURT PROCEEDINGS, 8TH APRIL 1880, NO. 635, **1 Weir 436.**

(7)—*Theft by constables—Ss.* 380, 409, *I.P.C.*—Constables taking property from a house they were employed to guard would be liable to be punished under s. 380, Penal Code, and not s. 409, I.P.C. QUEEN v. BOIDONATH SINGH, **3 W.R. Cr.** 29.

Theft in dwelling house, etc.

See ACT VI OF 1864, s. 2, 2 W.R. Cr. 86.

Theft—Punishment by heads of villages of petty thefts—Police.

See MAD. REG. IV OF 1821.

Thief.

Non-liability of Manager of a shrine freely open to public where thieves resort—Previous convictions of gambling and of offences not relating to property—*See* CRIM. PRO. CODE, 1898, s. 110, (c), 37 P.W.R. 1910, Cr.=8 Ind. Cas. 249=11 Cr. L.J. 603.

Causing death by branding a—*See* CULPABLE HOMICIDE NOT AMOUNTING TO MURDER, 7 W.R. Cr. 54.

See MURDER, 5 W.R. Cr. 33.

Culpable homicide—Firing at person mistaken for—Fatal injury—Offence—*See* PENAL CODE, s. 300, except. 2, 13 Cr. L.J. 782=17 Ind. Cas. 414.

Thonbonpe.

See BUR. ACT I OF 1899, s. 4, 8 Ind. Cas. 451.

Thoroughfare.

See OBSTRUCTION TO PUBLIC THOROUGHFARE.

Obstruction, Removal of—*See* NUISANCE UNDER CRIM. PRO. CODE, 9 B.L.R. 417=18 W.R. Cr. 41.

Threat.

See CONFESSION—CONFESSIONS OBTAINED BY INDUCEMENT, THREAT, ETC.

See OFFENCE UNDER THREAT.

Of violence, if amount to breach of the peace—*See* CRIM. PRO. CODE, 1898, s. 107, 31 C. 350.

Witness, to—*See* WITNESS—MISCELLANEOUS CASES, 14 A. 242=A.W.N. 1892, 83.

Threatened Charge.

Terror of criminal charge, a fear of injury—Threatened charge true or false immaterial—*See* EXTORTION, 7 W.R. Cr. 28.

Thumb Impression.

See EVIDENCE—EXPERT EVIDENCE.

See EVIDENCE ACT, 1872, s. 45.

Duty of judge in charging a jury—Identity of—is a question for the jury—*See* CHARGE TO JURY—GENERAL, 1 C.L.J. 385=2 Cr. L.J. 311.

When thumb impression is a signature—*See* CRIM. PRO. CODE, 1898, s. 164, 32 C. 550=2 Cr. L.J. 405.

Comparison of—*See* EVIDENCE ACT, 1872, ss. 9, 11, cl. (2) and 45, 1 C.W.N. 33.

Taking of, by Court—Relevancy against the person making it—*See* EVIDENCE ACT, 1872, s. 132 proviso, 16 C.W.N. 503=15 C.L.J. 399=13 Ind. Cas. 925=13 Cr. L.J. 173=39 C. 348.

Ticket.

Season-ticket-holder travelling without—*See* ACT IV OF 1879, s. 31, 12 C. 192.

Ticket—*concluded.*

Travelling without—*See* ACT IX OF 1890, ss. 68, 112, 11 C.W.N. 100=4 Cr. L.J. 439=5 C.L.J. 47.

Travelling without—*See* ACT IX OF 1890, ss. 113, 132, 20 A. 95.

Entry in Exhibition building without ticket—*See* CRIMINAL TRESPASS, 6 B.H.C. Cr. 6.

Timber.

Logs of wood permanently fastened to building, whether—*See* MAD ACT V OF 1882, ss. 2 and 43, 9 M. 373=1 Weir 757.

Time-expired Warrant.

Obstruction to attachment under a—*See* PENAL CODE, ss. 183, 186, 1 Weir 134.

Title.

(1)—*Title to immoveable property.*—Questions relating to the title to immoveable property are for judicial tribunals to decide, and it is a great wrong if any officer, by the use of his executive authority, seeks to supersede those tribunals, and usurp their functions, and it is certainly his duty, in any steps he deems it necessary to take, to keep within the limits of the law. Disputes as to the title to immoveable property can be dealt with only by the Civil Court. Where, as in the present case, a Magistrate has repeatedly endeavoured to dispose, by unauthorized executive action, of matters, which the law reserves for judicial determination, and he has been betrayed into many illegal and irregular acts, and some of a highly oppressive character, he disqualifies himself for the discharge of any judicial function, great or small, in any matter connected therewith, and the case should be transferred from his file or from the file of any Magistrate of his selection. GOPINATH PARYAH v. EMPRESS, **2 C.L.J. 555 =10 C W.N. 82=3 Cr. L.J. 169.**

See CRIM. PRO. CODE, 1898, s. 133, 28 A. 98=A.W.N. 1905, 202=2 A.L.J. 599=2 Cr. L. J. 517.

Power of Magistrate to adjudicate upon questions of—*See* CRIM. PRO. CODE, 1898, s. 144, 2 Weir 93.

Questions of, if can be considered in cases under s. 145, Crim. Pro. Code—*See* CRIM. PRO. CODE, 1898, s. 145, 25 B. 179=2 Bom. L.R. 755.

Question of, not to be determined—*See* CRIM. PRO. CODE, 1898, ss. 145, 146, 15 Cr.L. J. 470=24 Ind. Cas. 350.

Enquiry as to possession—Conflicting claims based on different—Refusal of Magistrate to decide as to possession—Jurisdiction—*See* CRIM. PRO. CODE, 1898, s. 146, 8 Ind. Cas. 63.

Case involving question of title—Summary trial—Legality—*See* CRIM. PRO. CODE, 1898, s. 439, 6 S.L.R. 120=17 Ind. Cas. 403.

Inquiry as to—Unnecessary—What a Magistrate has to decide—*See* CRIM. PRO. CODE, s. 528 (2), 12 Cr. L.J. 103=9 Ind. Cas. 634.

Title—*concluded.*

Possession under an inferior—Ejectment by a person having superior—*See* CRIMINAL TRESPASS, 1 Weir 522.

Suit for declaration of—*See* DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 3 B.L.R.A.C. 57=11 W.R. Cr. 43.

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 14 C. 169, 7 C.L J. 369=7 Cr. L.J. 336.

False statement in recital of—to a property—*See* FALSE EVIDENCE, 2 C.L.J. 46=2 Cr. L. J. 383.

Removal of property under false assumption—Claim of—*See* FALSE EVIDENCE, 10 C.L.R. 187.

See JURISDICTION OF CRIMINAL COURTS—GENERAL, 2 N.W.P. 202.

See JURY UNDER NUISANCE SECTION OF CRIM. PRO. CODE, 22 A. 267.

Criminal trespass—Claim of—*See* PENAL CODE, s. 441, 13 C.L.R. 212.

House trespass — Trespass to establish—Intention to annoy or intimidate—Inference of intention from acts—*See* PENAL CODE, ss. 441, 457, 9 Ind. Cas. 152=21 M.L.J. 161=9 M.L.T. 283=12 Cr. L.J. 30.

Title-deeds.

Right of Municipality to require production of title-deeds—*See* BOM. ACT III OF 1901, s. 96, 6 Bom L.R. 581.

Toddy.

See BOM. ACT V OF 1878, ss. 3, 11, 43, 18 B. 428.

See MAD. ACT III OF 1864, s. 21, 5 M H.C. App. 36, 6 M.H.C. App. 11.

Sale of noxious—*See* PENAL CODE, s. 273 1 Weir 228.

Toddy-shop.

Gambling in licensed toddy-shop not a public place—*See* BUR. ACT I OF 1899, ss. 5 and 10, 2 L B.R. 195.

Toll-gates.

Absence of—*See* MAD. ACT V OF 1884, ss. 89, 92, 1 Weir 794.

Tolls.

(1)—*Lessee of tolls, whether a Manager—Act* VIII *of* 1851.—A lessee of tolls was held not to be a person employed in the management and collection of tolls within the meaning of Act VIII of 1851. *In the matter of* BANKE BIHARI GHOSE, **2 B.L.R.A. Cr. 17= 11 W.R 26.**

(2)—*Illegal collection of tolls*—*Act* VIII *of* 1851, *ss.* 2 *and* 6—*Public road.*—A conviction for illegally collecting tolls on a public road was held to be illegal where the road was clearly not a public road within the meaning of s. 2, Act VIII of 1851. *In re* NARENDRONARAIN SINGH, 6 W.R. Cr. 48.

(3)—*Illegal demand of toll—Act* VIII *of* 1851 *ss.* 2, 3 *and* 6—*Summary trial of offence—Extortionately.*—A charge of an illegal demand

Tolls—*concluded.*

of toll under s. 6 of Act VIII of 1851 ought not to be dealt with summarily. The origin of the right to collect tolls is admitted to be Act VIII of 1851 of the Acts of the Governor-General in Council. That Act, by s. 2, empowers the Governor of the Presidency of Fort William in Bengal to cause such rates of toll, not exceeding the rates mentioned in the schedule, as he thinks fit, to be levied upon any road or bridge which has been, or shall thereafter be, made or repaired at the expense of the Government; the powers contained in the Act are now vested in the Lieutenant Governor of Bengal. The establishment of a toll must be by some distinct resolution of the Government come to for that purpose, and in some way or other notified by the Government. Under this Act, the Lieutenant-Governor has no authority to direct tolls to be levied at any other place than at the toll-bar. The object of a toll-bar is to inform the public of the place at which the toll is to be demanded; and if persons can be authorized to stop a carriage at any spot in the road and demand toll there, then constant doubts and disputes would arise, and the toll-bars would become perfectly useless. The word "extortionately" in s. 6 of Act VIII of 1851 is not used in the same sense as it is used in the Penal Code; the meaning of the word "extortionately" in s. 6 of Act VIII of 1851 is an unlawful demand of toll accompanied by pressure, *e.g.*, the exercise of the powers indicated in s. 3 of this Act, by seizing the complainant's horses and carts, and detaining them until the toll was paid. UTTAM CHUNDER GANGOOLY v. ISSUR CHUNDER MOOKERJEE, **22 W.R. Cr. 76.**

Lessee of ferry— Servants exacting unauthorized—from passengers—Conviction of master illegal—*Mens rea*—*See* ACT XVII OF 1878, s. 22, 8 A.L J. 1324.

Warrant on non-appearance to summons—Lessee of tolls—Disobedience of summons to appear—Undertaking not to sue—*See* WARRANT OF ARREST, 2 B.L.R.A. Cr. 17=11 W. R. Cr. 26.

Tombs.

Disturbing graves for purposes of cultivation —Digging out tombs—*See* MISCHIEF, 1 Weir 496.

See PENAL CODE, s 297, 5 C.P.L.R. Cr. 32.

Tools.

Of artisan, attachment of—*See* MAD. ACT V OF 1884, s. 94, 21 M. 296=1 Weir 135=1 Weir 792.

Torts.

See DAMAGES.

See MALICIOUS PROSECUTION.

(1)—*Setting law in motion against another—Suit for damages.*—An action will not lie for setting the law in motion to the prejudice of another party, unless the plaintiff can show

Torts—*concluded.*

malice and the absence of reasonable and probable cause. APPALA NARASIMHULU v. MAHANT HARI NARAYANA DAS BAVAJI, **11 M.L.J. 122.**

Merger of tort in felony—*See* EVIDENCE —ADMISSIBILITY OF EVIDENCE, 13 C.W.N. 501.

Mischief—Blocking up a channel— Civil rights—*See* PENAL CODE, s. 425, 8 M.L.T. 385=8 Ind. Cas. 128.

False trade-mark—Offence or a wrong—*See* PENAL CODE, s. 480, 1912 M.W.N. 85=13 Ind. Cas. 927=13 Cr. L.J. 175.

See TRESPASS, 13 C.W.N. 485=9 C.L.J. 298.

Totti.

See ESCAPE FROM LAWFUL CUSTODY, 5 M. 12=1 Weir 200.

Tout.

See ACT XVIII OF 1879.

(1)—*Legal Practitioners Act* (XVIII *of* 1879), s. 36—*Tout—Court competent to declare—Punjab Courts Act* (XVIII *of* 1884), s. 23.—A District Judge in the Punjab is not competent to declare a person a law-tout under s. 36 of the Legal Practitioners Act, for, under the Punjab Courts Act, s. 23, the Local Government has notified the Divisional Judge to be the District Court for purposes of the Legal Practitioners Act. BAWA LACHHMAN DAS v. DISTRICT JUDGE, GURDASPUR, **108 P.L.R. 1904=22 P. R. 1904, Cr.=1 Cr. L J 941.**

(2)—*Tout — Evidence—Interference by the Chief Court—Ss.* 3 *and* 36 *of Act* XVIII *of* 1879, *as amended by Act* XI *of* 1896 *and s.* 13 *of the Punjab Courts Act,* XVIII *of* 1884.—*Held*, that a person cannot be declared a habitual tout, when evidence of his being so is vague and general, while there is the testimony of apparently respectable witnesses to the contrary. NIZAM DIN v. CROWN, **26 P.W.R. 1909, Cr.=4 Ind. Cas. 1021=11 Cr. L J. 147.**

(3)—*Tout—Evidence—Power of Chief Court to interfere—Ss.* 3 *and* 36 *of Act* XVIII *of* 1879, *as amended by Act* XI *of* 1896 *and s.* 13 *of the Punjab Courts Act,* XVIII *of* 1884.—*Held*, that, the evidence of an ordinary witness to the effect that a barrister pays a person some commission on any case brought to him while the barrister himself denies it, is not sufficient to declare that person a habitual tout. BAI SAKHI RAM v. CROWN, **27 P.W.R. 1909, Cr. =4 Ind. Cas. 1022=11 Cr. L J. 148.**

See REVISION—MISCELLANEOUS CASES, P.L.R. 1900, p. 17, Cr.

See SESSIONS JUDGE, JURISDICTION OF, 26 M. 596=13 M.L J. 272.

Towns Improvement Act.

See ACT XXVI OF 1850.

See MAD. ACT X OF 1865.

See MAD. ACT III OF 1871.

Towns Nuisances Act.

See MAD. ACT III OF 1889.

Track.

Tracks compared several days after the occurrence--Value of evidence—*See* EVIDENCE ACT, 1872, s. 29, 9 P.W.R. 1914, Cr. = 63 P.L.R. 1914 = 15 Cr. L.J. 499 = 24 Ind. Cas. 587.

Tracker.

Evidence of—*See* CONVICTION, 136 P.L.R. 1909.

Identification of accused—Evidence—Benefit of doubt—*See* PENAL CODE, s. 395, 71 P.L.R. 1910.

Tracker's Evidence.

See PENAL CODE, s. 307, 14 P.W.R. 1913, Cr. = 67 P.L.R. 1913 = 19 Ind. Cas. 196 = 14 Cr. L.J. 196.

Track Evidence.

See CRIM. PRO. CODE, 1898, s. 439, 28 P.W.R. 1912, Cr. = 16 Ind. Cas. 520 = 13 Cr. L.J. 712.

Track Law.

(1)—*Village liable where villagers do not assist police in discovering thieves traced to it.*—Where the tracks of thieves were carried as far as a certain village and no further, and the *lambardars* of that village withheld their aid and thwarted the police search, *held* they were liable for the value of the property stolen. CHIRAG ALI v. PEERA, **5 P.R. 1868, Cr.**

Trade.

See OFFENSIVE TRADE.

(1)—*Trade, meaning of the word — Money lending.*—The word " trade " taken in its ordinary acceptance, does not include lending money at interest. Therefore, a public servant who although he lent money to others for the purpose of buying wheat, had not really taken part in a wheat speculation nor set up a shop for purchase and sale of wheat, and was not within the reach of the Criminal law, however objectionable his conduct may have been to his superiors, or however much it may have interfered with the performance of his official duties. CROWN v. NAK MAHOMMAD, **22 P.R. 1903, Cr. = 147 P L.R. 1903.**

Injury to physical comfort—Circumstances to be considered—*See* CRIM PRO. CODE, 1898, ss. 133, 137, 20 P.W.R. 1911, Cr. = 117 P.L.R. 1911 = 12 Cr. L.J. 146 = 9 Ind. Cas. 891.

Right of trader to exhibit his wares—What amounts to public nuisance—*See* PENAL CODE, ss. 283, 114, 13 Bom. L.R. 209 = 10 Ind. Cas. 801 = 12 Cr. L.J. 258 = 35 B. 368.

Trade-mark.

See COUNTERFEITING TRADE-MARK.

See PENAL CODE, ss. 478 to 489

(1)—*Penal Code, ss. 482, 486—Using false trade-mark.*—The complainant company, the Holland Bombay Trading Company, had been importing from Holland white shirtings bearing the mark " H.B.T.C. 40,000," a label with a lion and a snake design and an oval stamp containing in it " sole importers to the Holland Bombay Trading Company, Limited," and a buff heading. The accused had in their possession for the purposes of sale some packages of white shirtings bearing the mark " H.P.F.C. 40,000" and a label with two lions and two snakes and an oval stamp containing written in it the words " sole importers, Holland Export Company," and a buff heading. The letters too were printed in types similar to those on the former and were precisely similar in size and colour. The complainant Company proved that the marks put upon the white shirtings, imported by the company, were not the manufacturer's marks but were the importer's marks. *Held*, that the accused were guilty of using a false trade-mark and were liable to be punished under ss. 482, 486. HOLLAND BOMBAY TRADING COMPANY v. BUKTEAR MULL, **8 C.W.N. 421 = 1 Cr. L.J. 300.**

Trade-mark—*continued.*

(2)—*"Get up" of packages not a trade-mark—Penal Code, s. 478.*—Although, in a civil suit, a trader who imitates the " get up" of the packages, in which another trader sells his goods may be restrained by injunction from so doing, " the get up" does not constitute a trade mark. The Indian Penal Code deals only with trade-mark proper, and not with cases of the description referred to in ch. VIII of Mr. Sebastian's work on Trade Marks under the heading " cases analogous to those of Trade marks." J. PETLEY AND SON v. S AH KYUN, **2 L.B.R. 159 = 1 Cr. L.J. 375.**

(3)—*Penal Code, ss. 480 and 482—False trade mark—Intent to defraud.*—The accused had a small refinery near Prome and refined an illuminant oil from crude petroleum. This refined oil, he put into tins, which had been issued by the Burma Oil Company filled with illuminant oil refined by it. The tins issued by it bore one or other of its trade-marks, and the name of the Company prominently embossed on them. A buyer buys the tin as well as the oil in it. All that the accused did before issuing oil refined by him in such tins was, to take off the handles and replace them with handles not bearing the Company's name, to change the caps and to affix a paper label with words denoting that it was oil manufactured at his refinery. *Held*, that the accused committed the offence falling under ss. 480 and 482 of the Penal Code. EMPEROR v. NGA PO SAING, **4 L.B.R. 192 = 13 Bur. L.R 381 = 7 Cr. L.J. 113.**

(4)—*Penal Code, ss. 478, 480—Trade-mark—False mark appearing on box containing goods.*—A person, who sells soap, not manufactured by Pears, in a box, upon which the name of Pears appeared as a maker of soap, uses, by so doing, a false trade-mark under s. 480; and the mark is none the less a false mark, because it appeared upon the box, in which the goods were sold, and not upon the goods themselves. MANAVALA CHETTY v. EMPEROR, **29 M. 569 = 1 M.L.T. 409 = 5 Cr. L.J. 94 = 17 M.L.J. 219.**

Trade-mark—*continued.*

(5)—*Counterfeit resemblance, intentional or accidental — Expert evidence, if admissible—Malice in law, not sufficient—Malice in fact to be proved—Sea Customs Act* (VIII *of* 1878)—*Merchandise Marks Act* (IV *of* 1889), *s.* 19 (*a*) —*Collector of Customs, power to make enquiry—Detention of goods by Collector—Documents, tendered* de bene esse—*Witness, refreshing memory by document, effect of.*—A counterfeit trade-mark may be defined as a trade-mark which is either designed and used with the intention of deceiving or which, by reason of its resemblance to another pre-existing and already established mark, is calculated to deceive, apart from any dishonest intention. It lies upon the plaintiff to establish affirmatively that the marks of resemblance were accidental and not designed. If the plaintiff, having the opportunity, deliberately abstains from showing that the resemblance adopted by him was accidental and innocent, it necessarily follows that it was the result and outcome of deliberate design and intention. If the Court, on the facts before it, must presume that the resemblance is not accidental, but intentional and designed, then the imitation must have been designed with the object of deceiving. If the object was to deceive, then the Court will presume as against the wrong-doer that the means employed to cause deception were calculated to effect that purpose. It is only if the fraudulent design is negatived, that it becomes material to enquire whether the resemblance between the two combinations of marks was calculated to deceive. Evidence of experts or men in the trade cannot be given to show whether or not a combination is such as is calculated to deceive the purchaser. It is a question entirely for the Judge. Evidence of facts, which may assist the Judge to come to a conclusion whether one mark is a colourable imitation of another, may be given. Malice in law is not sufficient, *i.e.*, it is not sufficient to show that the mark or combination of the plaintiff was falsely charged as a colourable imitation, without legal justification or excuse. Malice in fact must be proved. The provisions of the Sea Customs Act (VIII of 1878) as amended by the Merchandise Marks Act (IV of 1889), make it quite clear that the Collector had no power to deal with the question raised by the defendants, when once it became apparent that the plaintiff desired to contest the defendants' claim. It was his duty then to have held his hand and to have obtained the goods on being properly indemnified, until the question was properly disposed of in a competent Civil Court. The enquiry which the Collector of Sea Customs is to make under s. 19 of the Act must necessarily be of a most limited character, for the Act does not empower him to summon witnesses or to take evidence. Documents tendered in an examination *debe nesse* are not required to be tendered again during the hearing. Where a witness during cross-examination is asked to refresh his memory by referring to a privileged document, he may be told that the consequence of his so

Trade-mark—*continued.*

referring to the document, would be to allow the other side to have a look at the document. NEMICHAND v. WALLACE, **4 C.L J. 268 = 10 C.W.N. 107 = 4 Cr. L.J. 247.**

(6)—*Penal Code, ss.* 482 *and* 486—*Counterfeit trade-mark—Sale of goods with such trade-mark.*—The accused, a dealer in piece goods, purchased goods in the market bearing the trade-mark labels of the complainant attached thereto. He sold the same in the condition in which he brought them without removing those labels. *Held*, that no offence was committed either under s. 486 or under s. 482 of the Penal Code, by the accused. MATI LAL PREMSUK v. KANHAI LAL DASS, **32 C. 969 = 3 Cr. L J. 106.**

(7)—*Penal Code, ss.* 482, 483 *and* 486—*Using counterfeit trade-mark.*—Where a person uses a name, which is used by another, to his goods but to which the latter has no right of exclusive use and the labels on which the name is found are alleged to be counterfeit presentments of the complainant's, the Magistrate should consider the general effect of the labels and how the labels would be likely to strike the incautious or unwary purchasers and also the general effect of the labels. NALLAYA PILLAI v. RENGASAMI PILLAI, **1 Weir 556.**

(8)—*Penal Code, ss.* 482 *and* 486—*Merchandise Marks Act* (IV *of* 1889 *as amended by Act* IX *of* 1891), *ss.* 6 *and* 7—*Selling goods marked with false trade-mark and having false trade description.*—The law allows a person to appropriate to his own use a name which is suggested by his trade. The prosecutors were importing from Europe fish-hooks in packets labelled with the design of two fish crossed with their heads and tails pointing upwards. These fish-hooks had secured a large sale and reputation in the Calcutta Market and were known as "Mash marka." The defendants subsequently sold fish-hooks with a mark called "Mash marka," the design being one fish with head and tail turned upwards. *Held* that the fact that the respondent's mark was known as "Mash marka," could not be held to prevent other persons from applying the mark to fish-hooks, which may be generally known by the same term. The respondent's right to the exclusive use of a mark which might acquire such a designation was at least not plain enough for a Court to consider it proved as against a person charged with an offence. The essential feature of the design was too common and too apt for application to fish-hooks, for a name based on it to be reasonably calculated to mislead. The mark used by the defendant was, therefore, not a false trade-mark and the use of term "Mash marka" could not be considered as a false trade description. EMPEROR v. BAKAULLAH MALLIK, **31 C. 411 = 8 C.W.N. 307 = 1 Cr. L.J. 140.** [*R.*, 32 C. 431, 13 Cr. L.J. 175 = 13 Ind. Cas. 927 = 1912 M.W.N. 85.]

Trade-mark—*continued.*

(9)—*Penal Code, s.* 482—*Merchandise Marks Act, s.* 9—*Act* VIII *of* 1878 (*Sea Customs*), *s.* 18 —*Importation of goods bearing a fraudulent trade-mark.* — Where an English Company, acting under the orders of their Indian customer, exported goods bearing a certain trade-mark which had a fraudulent resemblance to the trade-mark of similar goods of another Company, and a portion of those goods being seized and confiscated by the customs authorities, the Magistrate directed, under s. 9 of the Merchandise Marks Act, that they should be forfeited to the Crown, *held*, that the order was legal and proper. *Held* also that the importation of goods bearing a fraudulent trade-mark being prohibited by s. 18, Act VIII of 1878, and these goods having been seized and confiscated by the Collector of Sea Customs, the property in the goods vested in the Crown. *In re* F.G. DE THIBALLIER MANDLEY, **1 Weir 557 = 1 Weir 821.**

(10)—*Possession of goods marked with a counterfeit trade-mark—Penal Code, s.* 486—*Merchandise Marks Act, s.* 7 (1889).—Where the accused, as commission agents and intermediaries between the importers and manufacturers, ordered out goods marked with a counterfeit trade-mark, which were seized on the way at the instance of the complainants themselves and never even reached the accused's place of business, much less passed into their possession, *held* that the accused was not guilty of an offence either under s. 486, I.P.C., or under s. 7, Merchandise Marks Act. HARGOBIND v. GREAVES, **32 P.R. 1902, Cr.**

(11)—*Trade-mark—Design or pattern covering the whole body of goods—Copying of—No offence — Not a trade-mark within s.* 478, *I.P.C.— Nor a trade description within ss.* 2 (2) *and* 4 *of Merchandise Marks Act,* 1889—*Nor ' a design ' within s.* 2 (5), *Inventions and Designs Act,* 1911—*No offence under s.* 486, *I.P.C., or s.* 7 *of Merchandise Marks Act.*—Where the design or pattern covers the whole body of the goods and appears to be part and parcel of the goods, *held* that it is not a trade-mark within the meaning of s. 478, I.P.C., nor a trade description within the terms of s. 2 (2) or s. 4 of the Merchandise Marks Act, nor a 'design' within the meaning of s. 2 (5) of the Inventions and Designs Act. *Held*, also that the copying of such design or pattern did not amount to an offence either under s. 486, I.P.C., or under s. 7 of the Merchandise Marks Act. NARUMAL KHEMCHAND v. BOMBAY COMPANY, LTD., **8 S.L R. 39 = 15 Cr. L J. 670 = 25 Ind. Cas. 998.**

(12)—*Counterfeit trade mark.*—Where it was established that the complainants had for many years been using the mark " K 68 " in connection with white *malmalls* sold by them, and that the public had, in course of time, come to recognize that mark as a mark which denoted that the white *malmalls*, to which it was affixed, were the *malmalls* of the complainant, *held*, that the mark had become the trade-mark of the complainant. A counterfeit trade-mark is one which, by means of its resemblance to a

Trade-mark—*concluded.*

genuine one, is intended to deceive and to lead a purchaser to imagine that the counterfeit is in reality the genuine article. HARGOBIND v. RALLI BROS., **35 P.R. 1902, Cr.** (8 M. 149, 3 C. 417, L.R. 7 H.C. App. Cas. 226, *R.*)

(13)—*Penal Code, s.* 486—*Trade-mark*—Bona fide *dispute as to the existence as to right to use a trade-mark—Institution of criminal proceeding.* —In a prosecution for counterfeiting a trade-mark, if the Magistrate is of opinion that there is a *bona fide* dispute as to whether the accused is or is not entitled to use the mark, he should not deal with the matter criminally, but leave the complainant to maintain, if he can, in a Civil Court, the right which he claims. If, after the decision of the Civil Court, it be found that the complainant has a trade-mark, and that the accused is fraudulently counterfeiting it, the case could then be properly brought in a Criminal Court under s. 486. DOWLAT RAM v. KING-EMPEROR, **32 C. 431 = 2 Cr. L.J. 326.** (31 C. 411, *R.*) [*Appr.*, 11 C.W.N. 887; *R.*, 13 Cr. L.J. 175 = 13 Ind. Cas. 927 = 1912 M.W.N. 85.]

(14)—*Penal Code, s.* 486—*Counterfeiting trade-mark—Defence.*—A person accused under s. 486, I.P.C., has two alternative defences allowed to him. He can show that, having taken all reasonable precautions, he had no reason to suspect the genuineness of the mark on the article in question, that is, that it was a genuine trade-mark and not a counterfeit trade-mark, and, in addition, that on demand he gave all the information in his power with respect to the person from whom he obtained the goods or things. All this pre-supposes that the person charged believed that the mark was a genuine mark. But then comes the alternative. A man may be unaware that a particular mark on goods that he is dealing in is, in any sense, a trade-mark of any firm or person. If under these circumstances, he deals in the article, he will come under the other alternative as a person who has acted innocently. QUEEN-EMPRESS v. ILAHI BAKSH, **A.W.N. 1897, 99.**

See ACT IV OF 1889, s. 15, 22 M. 488 = 1 Weir 821, 558.

See JURISDICTION OF CRIMINAL COURTS—GENERAL, 11 C.W.N. 887 = 6 Cr. L.J. 151.

Meaning of the term—*See* PENAL CODE, ss. 28, 478, 486, 19 C.W.N. 957.

Trades, Licensing Professions, Act.

See ACT XXI OF 1867.

Trades, Taxing Professions, Act.

See ACT IX OF 1868.

Trading.

Meaning of the word—*See* ORDINANCE VI OF 1914, s. 3, 19 C.W.N. 1239.

Trading Companies.

How taxed—*See* MAD. ACT III OF 1871, s. 62, 7 M. 74.

Trailer-cars.

(1)—*Whether springed vehicles.*—Trailer cars are vehicles with springs and are "propelled by electricity" within the meaning of the words in the City of Madras Municipality Act. MADRAS ELECTRIC TRAMWAYS COMPANY v. MADRAS CORPORATION, **18 M.L.J. 149.**

Tramways Act.

See BOM. ACT I OF 1874.

Transaction.

See JOINDER OF CHARGES.

See SAME TRANSACTION.

Meaning of—*See* CRIM. PRO. CODE, 1898, s. 239, 20 C. 537.

Several offences whether forming the same transaction—Test—*See* PENAL CODE, ss. 466, 468, 471, 17 O.C. 276 = 15 Cr. L.J. 643 = 25 Ind. Cas. 843.

Transfer.

Return ticket, transfer of— Attempt—*See* ACT XVIII OF 1854, s. 3, Rat. Un. Cr. C. 123.

Transfer of Complaint.

By District Magistrate to Deputy Magistrate for disposal—Issue of search-warrant by Deputy Magistrate—Omission to examine complainant on oath—*See* CRIM. PRO. CODE, 1898, s. 96, 7 Ind. Cas. 895 = 8 M.L.T. 416 = 1910 M.W.N. 818 = 11 Cr. L.J. 535.

Transfer of Criminal Cases.

1.—GENERAL.
2.—GROUNDS FOR TRANSFER—NOTICE.
3.—TRANSFER BY HIGH COURT.
4.—TRANSFER BY OTHER COURTS.
5.—MISCELLANEOUS CASES.

See ACT X OF 1875.

See CRIM. PRO. CODE, 1898, ss. 526, 528.

See MAGISTRATE, JURISDICTION OF.

——1.—General.

(1)—*Application for transfer how to be made.*—An application for transfer of a criminal case from one subordinate Court to another ought to be made to the High Court in its judicial capacity supported by affidavits, and not by a letter to the English Department of the High Court. QUEEN v. ZUHIRUDDIN, **1 C. 219 = 23 W.R. Cr. 27.** [*F.*, 14 A.W.N. 1894, 154; *D.*, 8 C. 63.]

(2)—*Crim. Pro. Code* (1898), s. 528—*Order for transfer, when can be made.*—Where a certain number of witnesses have been examined by a Magistrate, and the case is at a stage when all that remains to be done is to commit or discharge the accused, a transfer, at that stage, cannot be properly made. *In re* PAKIRIA PILLAI, **2 Weir 691.** [*F.*, 9 Cr. L J. 407 = 6 M.L.T. 14.]

(3)—*Crim. Pro. Code* (1898), s. 528, *cl.* 3—*Valid order of transfer.*—Where no order of transfer, as required by s. 528, has been made, but the only intimation of the transfer was a letter from the District Magistrate to the Superintendent of Police, *held*, that the transfer is not a legal transfer. *In re* LAKSHIMINARAYANA, **2 Weir 691** [*F.*, 9 Cr. L.J. 407 = 6 M. L.T. 14.]

Transfer of Criminal Cases—continued.

——**1.—General**—*continued.*

(4)—*Crim. Pro. Code* (1882), s. 526—*Transfer of case—Magistrate cited as witness in trial—Affidavit, contents of— Procedure.*—When a transfer is asked for, on the ground that the appellant wishes to call the Magistrate as a witness, the application must be supported by an affidavit showing that the evidence required from the Magistrate is relevant and material. *In the matter of* NIZAM AHMAD, **A.W.N. 1886, 257.**

(5)—*Application for transfer— Practice of High Court.*—The High Court will not hear an application for transfer of a criminal case from the file of a subordinate Court—which is not made by the Advocate-General—unless the application is supported by an affidavit with reference to all the allegations relied upon. AMRITA LAL v. LACHMAN DAS, **A.W.N. 1891, 37.**

(6)—*Practice as to.*—Wherever a transfer is considered expedient, the matter is one which should be dealt with in open Court, and upon proper evidence. Where a Sessions Judge wishes the High Court to transfer a case pending before him, his proper course is to move the Court by application supported by affidavit in the usual form. EMPRESS v. AHMED BAKSH, **A.W.N. 1894, 154.** (1 C. 219, *R.*)

(7)—*Crim. Pro. Code* (1882), s. 526—*Trial by Judge of a person, whose prosecutions he had ordered—Transfer.*—There is no provision in the Code prohibiting a Sessions Judge who has ordered a prosecution in consequence of matter that appeared before him at a trial, from trying the case himself. But in such cases, the Judge would be acting equitably, if he asks the High Court to transfer the case to some other Judge. The High Court should not order the transfer of a criminal case, thereby suggesting a *stigma* against a Judge or assessors, unless a very clear case is made out for its interference. EMPRESS v. GANGA DIN, **A W.N. 1887, 139.** [*R.*, A.W. N. 1892, 32.]

(8)—*Crim. Pro. Code* (*Act* X *of* 1882), *ss.* 350, 528—*Transfer of criminal case—No fresh evidence—Legality.*—Where a Magistrate to whom a case had been transferred under s. 528 of the Crim. Pro. Code, decided the case on the evidence already recorded before the transfer, without trying the case *de novo*, held that the procedure was illegal. EMPRESS v. ANGNU, **A. W.N. 1889, 130.** [*Not F.*, 35 C. 457 = 12 C.W. N. 416 = 7 Cr. L J. 220 = 7 C.L.J. 488; *R.*, 1 N.L.R. 187, 36 A. 315 = 12 A.L.J. 467 = 15 Cr. L.J. 354 = 23 Ind. Cas. 722.]

(9)—*Crim. Pro. Code, s.* 528, *cl.* (*c*)—*Omission to state reasons of transfer, mere irregularity—Notice of transfer not necessary—Magistrate's acting upon a private report not illegal.*

Transfer of Criminal Cases—continued.

——**1.—General**—*continued.*

—A complaint, originally filed in the Court of a Deputy Magistrate, was transferred to the Court of the District Magistrate. No notice was served on the complainant of the transfer, and no reasons stated for such transfer. The District Magistrate called for a private report from the accused, who was a Sub-Inspector of Police. *Held*, (1) that, by virtue of a Government order, the District Magistrate having been directed to withdraw all cases in which complaints had been made against a Police Officer, the omission to record reasons therefor was a mere irregularity and did not vitiate the subsequent proceedings; (2) that no notice to the complainant was necessary; (3) that, the Magistrate having placed the private report upon the record and acted thereupon, his action was not illegal. DUKHI KEWAT v. KING-EMPEROR, **3 A.L.J. 224 = A.W.N. 1906, 76 = 3 Cr. L.J. 327 = 28 A. 421.** (14 C. 141, *Diss.*) [*F.*, 12 Cr. L.J. 437 = 11 Ind. Cas. 621 = 7 N.L.R. 97.]

(10)—*Crim. Pro. Code*, *s.* 528—*Transfer—Penal Code*, *s.* 193—*False evidence—Affidavit of accused person in support of an application for transfer.*—*Held*, that, where an accused person applies for the transfer of the case pending against him to some other Court, supporting his application by an affidavit, he cannot, or at least ought not to be prosecuted under s. 193 of the Indian Penal Code in respect of statements made therein. EMPEROR v. BINDESHRI SINGH, **A.W.N. 1906, 42 = 3 A L J. 98 = 3 Cr. L J. 225 = 28 A. 331.** (19 A. 200, *F.*) [*R.*, 3 L.B.R. 265; *D.*, 10 Cr.L.J. 509 = 4 Ind. Cas. 160 = 12 O.C. 308.]

(11)—*Crim. Pro. Code*, *ss.* 447, 449—*Resident at Aden—Power to transfer case—Aden Courts Act* (*Bom. Act* II *of* 1864), *s.* 20.—The Resident at Aden, who has a case committed to this Court, under s. 447 of the Crim. Pro. Code, is not competent to transfer it to the High Court of Bombay under s. 449 of the Code, on the ground that the accused, being a European British subject, cannot be adequately punished by him. The powers of the Court of Session conferred upon the Resident by the Aden Courts Act, 1864, are not merely such as are defined in the Crim. Pro. Code but such as are provided expressly in the Act itself; and s. 449 of the Crim. Pro. Code, cannot affect those provisions. EMPEROR v. ROBERT COMLEY, **29 B. 575 = 7 Bom. L.R. 104 = 2 Cr. L.J. 75.**

(12)—*Crim. Pro. Code*, *ss.* 253, 528—*Order transferring case after discharging some accused and after framing charges against others — Effect.*—Where, after the discharge of some of the accused and after the framing of charges against the rest, a case is transferred by the District Magistrate from the file of the Magistrate who has tried the case to that of another Magistrate, the order of transfer cannot operate as cancelling the order of discharge passed by the first Magistrate after due enquiry. QUEEN-EMPRESS v. FAKIRA, **1 Bom. L.R. 782.**

Transfer of Criminal Cases—continued.

——**1.—General**—*continued.*

(13)—*Order of transfer* ex proprio motu—*Crim. Pro. Code* (1882), *s.* 497—*Notice.*—A Magistrate released an accused on bail. Thereupon, the District Magistrate transferred the case to another Magistrate on the ground that the reasons given in the Magistrate's order did not justify the release, and that the Magistrate's action showed a tendency to treat the accused with undue leniency. *Held* that the discretionary power vested in a Magistrate by s. 497, Crim. Pro. Code, was not revisable by the District Magistrate. If he considered the order wrong, he could have reported it to the High Court. He ought not to have made a transfer for the mode of giving effect to his opinion that the order was wrong. A transfer is not justified on the part of the Crown, because the Magistrate's action, in exercising a jurisdiction vested in him by law, shows a tendency to treat the accused with undue leniency. *In re* SADASHIV NARAYAN JOSHI, **Cr. Rg. 34 of 1896.**

(14)—*Crim. Pro Code* (1898), *s.* 191—*Objection to the trial of a case by a particular Magistrate*—A Magistrate, when a valid objection is taken under s. 191 of the Crim. Pro. Code, is not bound to transfer the case, but may elect to commit it to Sessions. *In re* BEYYA REDI, **2 Weir 150.**

(15)—*Crim. Pro. Code*, *s.* 528—*Transfer of cases under—Powers of District Magistrates—Their discretion.*—The powers conferred by s. 528 of the Code of Criminal Procedure, 1898, as regards a District Magistrate's authority to withdraw cases from subordinate Magistrates are very wide and undefined, the section merely requiring the Magistrate making an order of transfer to record his reasons; but it is not intended that the powers should be exercised without due discretion and really good reasons which, in the interest of the administration of justice, demand a transfer. The Chief Court, holding that the reasons given by the District Magistrate in this case were wholly vague and insufficient, set aside the order of transfer passed by him. GHANSHAM DAS v. WARYAM SINGH, **13 P R. 1899, Cr. = 2 P L.R. 1900, Cr.**

(16)—*Partly heard case—Successor in office to hear whole evidence.*—An officer, to whom a case is transferred for trial after it had been partly heard by one officer, should hear all the evidence in the case before deciding it. Where certain accused had not appealed against or raised any objection to the trial on this ground, the High Court declined to interfere KOPIL NATH SAHI v. KONEERAM, **14 W.R. Cr. 3**; QUEEN v. KULLIAN SINGH, **2 N.W.P. 468.**

(17)—*General cases—High Courts' Criminal Procedure Act*, 1875, *s.* 147—*Costs—Police Magistrates—Notes of evidence.*—In a case transferred to the High Court under s. 147, Act X of 1875, the Court had no power to give costs. *Semble.*—The case may be transferred after final determination by the Magistrate. Notes of the proceedings before them should be taken

Transfer of Criminal Cases—continued.

——**1.—General**—*continued.*

in all cases by the judicial officers of all Criminal Courts subject to the Act. *In the matter of* J. LOUIS, **15 B.L.R. Ap. 14.**

(18)—*District Magistrate—At what stage case can be transferred.*—The District Magistrate can transfer a case to his own file at any stage of the case. But, if a case so withdrawn is found by him not to come within the jurisdiction of the magistracy, he would not only be incompetent but is bound to refuse to proceed further with the case. VILAETEE KHANUM v. MEHER ALI, **24 W.R. Cr. 4.**

(19)—*General cases.*—*Held* that, although the Magistrate of a District is competent to order the removal of any particular case from the file of a Subordinate Court to his own, it is doubtful whether he can, by a general proceeding, direct the transfer of cases which have no existence, and which are not pending before any of his subordinates. GOVERNMENT v. GIRDHAREE LALL, **1 Agra 24, Cr.**

(20)—*Crim. Pro. Code* (1898), *s.* 528—*Transfer of case on application of party—Notice.*—Notice to the applicant is essential previous to transferring a case under s. 528, Crim. Pro. Code, 1898, on the application of a party. BAKHSHA v. THALU RAM, **28 P.R. 1902, Cr. = 10 P.L.R. 1903.** (3 A. 749, 8 C. 393, 23 B. 549, *F.*) [*R.*, 164 P.L.R. 1910 = 3 P.R. 1910 = 35 P.W.R. 1909 = 4 Ind. Cas. 1025 = 11 Cr.L.J. 150.]

(21)—*Transfer of criminal case to another District—Transfer opposed by accused—Ground of transfer.*—Before a criminal case can be transferred to another district against the wish of the accused, it must be proved by the very best evidence that a fair trial cannot be had in the district. Field, J., points out a few essential respects in which the system of criminal law in force in India differs from that in force in England. *In the matter of the petition of the* LEGAL REMEMBRANCER, EMPRESS v. NOBOGOPAL BOSE, **6 C. 491.** [*R.*, 36 A. 239 = 12 A.L.J. 399 = 15 Cr.L.J. 212 = 22 Ind. Cas. 996; *D.*, 25 C. 727.]

Magistrate retaining case on file after transfer to another local area—Legality—*See* CRIM. PRO.CODE, 1898, ss. 12, 531, 9 A.L J. 448 = 34 A. 203 = 14 Ind. Cas. 203 = 13 Cr.L.J. 203.

See CRIM. PRO. CODE, 1898, s. 191, 7 Bom. L.R. 637 = 2 Cr.L.J. 582.

Transfer to the Court of Sub-Divisional Magistrate—Latter's power of transfer— *See* CRIM. PRO. CODE, s. 192, 12 A.L.J. 225 = 36 A. 166 = 15 Cr.L.J. 406 = 23 Ind. Cas. 1006.

Applications for sanction to prosecute—Transfer to what Court to be made—*See* CRIM. PRO. CODE, 1898, ss. 195, 526, 8 M.L.T. 297 = 7 Ind. Cas. 861 = 20 M.L.J. 982 = 1910 M.W.N. 459 = 11 Cr.L.J. 534.

Transfer of Criminal Cases—continued.

——**1.—General**—*concluded.*

Refusal of bail—Disallowing certain questions in cross examination—Whether grounds for—*See* EVIDENCE ACT, 1872, ss. 121, 123, 124, 125, 126, 138, 12 Cr.L.J. 277 = 10 Ind. Cas. 917.

——**2.—Grounds for Transfer—Notice.**

(1)—*Crim. Pro. Code, s.* 526—*Transfer application for—What the Court has to consider.*—What the Court has to consider, in an application under s. 526, for the transfer of a criminal case, is not merely the question whether there has been any real bias in the mind of the Magistrate against the accused, but also the further question whether incidents may not have happened, which, though they may be susceptible of explanation and may have happened without there being any real bias in the mind of the Magistrate, are nevertheless such as are calculated to create in the mind of the accused a reasonable apprehension that he may not have a fair and impartial trial. FARZAND ALI v. HANUMAN PRASAD, **19 A. 64 = A.W.N. 1896, 177.** (23 C. 495, *F.*) [*F.*, 35 A. 5 = 10 A.L.J. 357 = 13 Cr. L.J. 823 = 17 Ind. Cas. 567 ; *R.*, 36 A. 239 = 12 A.L.J. 399 = 15 Cr. L.J. 212 = 22 Ind. Cas. 996, 33 C. 1183 = 3 C.L. J. 637 = 10 C.W.N. 793, 12 A. L. J. 33 = 14 Cr. L.J. 666 = 21 Ind. Cas. 906.]

(2)—*Crim. Pro. Code* (1882), *ss.* 528 *and* 537—*Transfer of case—Notice to accused—Grounds for transfer.*—An order transferring a case from the file of one Magistrate to that of another passed *ex proprio motu*, and without any notice being given to the accused, is illegal. [*F.*, 14 C.P.L.R. 190; *R.*, 10 P. L. R. 1903 = 28 P. R. 1902, Cr., 6 Bom. L.R. 856, U. B.R. 1904, 1st Qr., Crim. Pro. Code, p. 15, 6 M.L.T. 14 = 9 Cr. L.J. 407.] It is a ground of transfer that a fair and impartial trial cannot be had in a Court, but no authority exists to the effect that a transfer is justified on the part of the Crown, because the Magistrate's action in exercising a jurisdiction vested in him by law, *viz.*, releasing an accused person on bail, shows a tendency to treat the accused with undue leniency. IMPERATRIX v. SADASHIV NARAYAN JOSHI, **22 B. 549.**

(3)—*Grounds of transfer—Notice.*—To justify the transfer of a case from a Magistrate it must be established that the Magistrate has such a substantial interest in the result of the hearing as to make it likely that he has a real bias in the matter. The fact that a Magistrate has been served with notice of action because of his surrender of some goods seized in the case does not constitute a bias sufficient to warrant a transfer. QUEEN-EMPRESS v. HYDERALLY, **Rat. Un. Cr. C. 686 = Cr. Rg. 1 of 1894.**

(4)—*Grounds of transfer—Personal bias.*—Where the impressions recorded in a judgment by a Magistrate, are derived from evidence, however erroneous they may be, they cannot be classed with instances of personal bias, which

Transfer of Criminal Cases—continued.

——2.—**Grounds for Transfer—Notice**—*ctd.*

is regarded as disqualifying the Magistrate from trying the case. *In re* VADILAL, **6 Bom. L.R. 1092=1 Cr. L.J. 1108.** [*R.*, 8 Cr. L.J. 159=9 Cr.L.J. 275=1 S.L.R. 37.]

(5)—*Magistrate not likely to be prejudiced or influenced by improper motive.*—Unless some cause is shown for believing that a Magistrate is likely to be prejudiced or influenced by any improper motive in the decision of a case, the High Court will support such Magistrate. It is highly improper, by transfer of a case from his Court, to threw a gratuitous slight on the Magistrate. *In re* VISHNU, **Rat. Un. Cr. C. 323=Cr. Rg. 10 of 1887.**

(6)—*Evidence in two cases being similar.*—When the accused charged with sedition applied for the transfer of the case from the file of the Sessions Judge of Satara to the High Court on the ground that the evidence in the case was similar to that in another case, pending then before the High Court Sessions, and that the transfer would be for the benefit both of the prosecution and of the defence so far as legal help was concerned, the High Court ordered the transfer of the case to itself to be tried by a jury. QUEEN-EMPRESS v. KASHINATH VAMAN LELE, **Rat. Un. Cr. C. 927=Cr. Rg. 34 of 1897.**

(7)—*Necessity for notice.*—A District Magistrate cannot transfer a case from one Magistrate to another Magistrate, without giving a notice to the accused. *In re* SAKER NAIK PRABHU NAIK, **2 Bom. L.R. 342.**

(8)—*Necessity for notice.*—It is not competent to a District Magistrate to transfer a case from one Magistrate to another without giving notice to the parties. *In re* DAND HUSSAN, **Rat. Un. Cr. C. 460.**

(9)—*Notice to the opposite side.*—No case should be transferred from one Court to another on the application of a party without notice to the opposite side. *In re* KRISHNA ANANT PAI, **Rat. Un. Cr. C. 877=Cr. Rg. 61 of 1896.**

(10)—*Notice to accused.*— An order under s. 528 of the Crim. Pro. Code, transferring a case from one Magistrate to another, cannot be made on the application of the complainant without notice to the accused. QUEEN-EMPRESS v. MULLUBHAI, **Rat. Un. Cr. C. 655=Cr. Rg. 21 of 1893.**

(11)—*Notice to parties.*—An order under s. 528, Crim. Pro. Code, transferring a case for inquiry or trial from one Magistrate to another ought not be made without notice to the parties. BAKHSHA v. TAHLU RAM, **10 P.L.R. 1903=28 P.R. 1902, Cr.** (3 A. 749, 8 C. 393, 22 B. 549, *F.*)

(12)—*Order of transfer—Notice before making order.*—Although s. 528 does not expressly provide for the giving of notice to the opposite party, on general principle, when an application for transfer is made by one party, notice should be given to the other party concerned, before an order of transfer is made. AJEDHEYA LAL v. PARAYAG NARAIN, **7 C.W.N. 114.** (8 C. 393, *R.*) [*F.*, 6 M.L.T. 14=9 Cr.L.J. 407; *R.*, 1 Ind. Cas. 889.]

(13)—*Opportunity to Magistrate to answer allegations made against him—Notice to opposite side.*—A Sub-Divisional Magistrate, before transferring a case from one Magistrate to another, should give notice to the other side, and should give an opportunity to the trying Magistrate of answering the allegations made against him by the applicant. VEDU BAPU v. BHAGWANDAS, **5 Bom. L.R. 28.**

(14)—*Notice to the parties.*—A District Magistrate, before transferring a case under s. 528 of the Crim. Pro. Code should give notice to the parties. That the complainant is a man of importance in the place is not a sufficient reason for transferring the case therefrom to some other place. *In re* RATANJI PREMJI, **Rat. Un. Cr. C. 474=Cr. Rg. 32 of 1889.**

(15)—*Notice to parties.*—Before a District Magistrate can transfer a case from one subordinate Court to another, notice of such intended transfer should be served upon the parties so as to enable either of the parties to come forward and show cause why such transfer should not be made. RAO RAM SINGH v. HUSSAIN ALI, **14 C.P.L.R. 190** (8 C. 393, 22 B. 549, 3 A. 749, *R.*) [*Rel.*, 12 Cr.L.J. 437=11 Ind. Cas. 621=7 N.L.R. 97.]

(16)—*Transfer of case—Feelings of accused to be considered—Notice to accused.*—*Per Batty, J.*—The position of an accused person must always be one of great anxiety and suspense. It is not right that the painfulness of such a position should be enhanced by anything that could suggest to him that his guilt is a foregone conclusion in the mind of the Magistrate who has to try him. Any incident, moreover, giving rise to such a suggestion is, especially in this country, liable to react upon witnesses appearing in the case. Neither the accused nor his counsel should be put to the necessity of removing any impression from the Court, which is not based upon any evidence in the trial. *Per Aston, J.*—It is important that parties should have confidence in the Court before which they appear. It is also important that nothing should be done to encourage want of confidence when there is no sufficient foundation for that want of confidence. Ordinarily, before a transfer is granted, it is well that the High Court is satisfied, if want of confidence is alleged, that there is foundation for such want of confidence. An omission to issue a notice to an accused does not render illegal an order of a Chief Presidency Magistrate withdrawing a case from another Magistrate to his own file. Even if it be otherwise, s. 537 will cure the omission if the accused is not prejudiced thereby. *In the matter of* VIRJI, **6 Bom. L.R. 856=1 Cr. L.J. 934.**

Transfer of Criminal Cases—continued.

——2.—**Grounds for Transfer—Notice**—*ctd.*

(17)—*Crim Pro. Code* (1898), s. 528—*Transfer of case on the request of Magistrate—Notice to parties.*—The order for transfer of a case made at the request of the Magistrate trying the case, not on the application of a party, is an exception to a general rule that an order should not be made under s. 528, Crim. Pro. Code, without notice to the other side. QUEEN-EMPRESS v. KUPPUMUTHU PILLAI, **24 M. 317=2 Weir 691.** [*R.*, 11 Cr.L.J. 150=4 Ind. Cas. 1025=164 P.L.R. 1910=3 P.R. 1910=35 P.W.R. 1909.]

(18)—*Crim. Pro. Code*, s. 526—*Failure to give notice of transfer application—Order—Legality.*—Although, as a general rule, notice of the application for transfer of a criminal case should be given, the failure to give notice does not render an order of transfer illegal. *In re* MASHA SABJEE SAHIB, **8 M.L.T. 222=7 Ind. Cas. 856=11 Cr.L J. 533.**

(19)—*Notice before order of transfer.*—Although, as a general rule, notice should be given before making an order for transfer under s. 528, Crim. Pro. Code, the failure to give notice does not render an order for transfer illegal. *In re* MASHA SABJEE SAHIB, **2 Weir 692.** [*F.*, 9 Cr. L.J. 407=6 M.L.T. 14.]

(20)—*Crim. Pro. Code (Act X of* 1882, s. 528—*Transfer of case after prosecution closed—Grounds personal.*—It is highly inexpedient to transfer a case from one Magistrate to another after the prosecution has closed its case, and the defence is to be begun, without giving notice to the complainant or recording reasons. Where the grounds of an application for transfer are personal to the trying Magistrate, the District Magistrate should require strict proof of the allegation. *In re* MAHADHU, **Rat. Un. Cr. C. 590=Cr. Rg. 4 of 1892.**

(21)—*Writing against the Magistrate in newspapers a good ground for transfer.*—The accused, who had written against the trying Magistrate in newspapers and been dealt with both by the police and the Deputy Magistrate harshly applied to the High Court, on the above ground, for a transfer of the case from the file of the Magistrate to that of the District Magistrate. *Held* that it was a valid ground for a transfer. *In re* SHAMA CHARAN SANYEL, **3 J.G. 21.**

(22)—*Transfer of criminal case to another district—Transfer opposed by accused—Grounds of transfer.*—Before a criminal case can be transferred to another district against the wish of the accused, it must be proved by the very best evidence that a fair trial cannot be had in the district. Field, J., points out a few essential respects in which the system of criminal law in force in India differs from that in force in England. KALISHUNKUR DOSS v. GOPAL CHUNDER DUTT, **6 C. 49=6 C.L R. 543.**

Transfer of Criminal Cases—continued.

——2.—**Grounds for Transfer—Notice**—*ctd.*

(23)—*Crim. Pro. Code* (1882), s. 526—*Test—Reasonable apprehension in the mind of the accused.*—In dealing with applications for transfer, what the High Court has to consider is, not merely the question whether there has been any real bias in the mind of the Magistrate against the accused, but also the further question whether incidents may not have happened which, though they may be susceptible of explanation and may have happened without there being any real bias in the mind of the Magistrate, are nevertheless such as are calculated to create in the mind of the accused a reasonable apprehension that he may not have a fair and impartial trial. Where a Magistrate who was about to deliver the judgment asked the accused whether he admitted a letter purporting to have been written by him and being requested to show the letter, the Magistrate left the Court and came back with the complainant, with a letter in his hand and where the Magistrate, notwithstanding the release of the accused on bail during the trial of the case, still required him to report himself to authorities, and when the accused applied for leave to go to Chaibassa and to Calcutta, his prayer was granted only so far as his going to the former place was concerned, *held*, that these facts were calculated to create a reasonable apprehension in the mind of the accused that there was a bias against him and the case should therefore be transferred. DUPEYRON v. DRIVER, **23 C. 495.** [*F.*, 19 A. 64, 25 B. 179, 25 C. 727, 28 C. 709=5 C.W.N. 749, 15 C.P.L.R 192; *R.*, 36 A. 239=12 A.L.J. 399=15 Cr. L.J. 212=22 Ind. Cas. 996, 28 C. 297, 33 C. 1183=10 C.W.N. 793=3 C.L.J. 637, 10 C.W.N. 441, 10 O.C. 165, 88 P.R. 1903=17 P.L.R. 1904, 2 Weir 678]

(24)—*Crim. Pro. Code* (1882), s. 526—*Transfer of criminal offence—Partiality of the jury—Jury part of tribunal.*—When two such officers as the District Magistrate and the Sessions Judge thought that a fair and impartial jury could not be obtained, if the case was tried in the district, *held*, that the expression of such belief was sufficient to shake the confidence of the public and of the parties interested in the fairness and impartiality of the jury to try the case, and to create in their minds a reasonable apprehension that a fair and impartial trial could not be had if the case was tried there, and therefore an order for transfer was expedient for the ends of justice under s. 526, Crim. Pro. Code. The jury, in a case triable by jury, constitute an important part of the tribunal. It is not reasonable to hold, where doubt is entertained as to the fairness and impartiality of the jury, that the trial should go on before such a jury, because an erroneous verdict may, in the end, be set aright by the High Court. LEGAL REMEMBRANCER v. BAHIRAB CHANDRA CHUCKERBUTTY, **25 C. 727=2 C.W.N. 65.** [*Appl.*, 25 B. 179, 28 C. 709=5 C.W.N. 749, 88 P.R. 1903=17 P.L.R. 1904.]

***Transfer of Criminal Cases*—continued.**

——2.—Grounds for Transfer—Notice—*ctd.*

(25)—*Crim. Pro. Code* (1898), s. 526—*Transfer of criminal cases—Opinion in another but similar case on other evidence—Whether sufficient ground.*—The mere fact that, in another case, on other evidence, the Sessions Judge may have come to a particular conclusion, is not, in itself, a sufficient ground for transfer. Regard must be had to the circumstances of each case, in applying the doctrine, which must be accepted as sound, that a reasonable apprehension in the mind of the accused that he will not have a fair trial is a sufficient ground for transfer RAJANI KANTA DUTT v. EMPEROR, **36 C. 904 = 10 Cr. L.J. 244 = 3 Ind. Cas. 88.** (1 C.W.N. 426, *R.*) [*D.*, 13 Cr. L.J. 532 = 15 Ind. Cas. 804 = 5 S.L.R. 264.]

(26)—*Crim. Pro. Code, s.* 526—*Transfer—Prejudging a counter case—Sufficient ground.*—Where a Magistrate in a counter case has clearly formed an opinion strongly against a party, the High Court will, in the interests of justice, transfer the case to some other Court. ABDUL AZIZ SAHIB v. EMPEROR, **8 Ind. Cas. 721 = 9 M.L T. 162 = 1910 M.W.N. 735 = 11 Cr. L.J. 702.**

(27)—*Crim. Pro. Code* (1872), *s.* 64—*Transfer of appeal—Connection of prosecutor with the authorities competent to hear appeal.*—Where the only officers of a district competent to hear an appeal from a conviction for theft of property belonging to a Road Cess Committee were, in some way or other, connected with the committee, the High Court transferred the appeal to the Sessions Judge of another District to be dealt with as an appeal presented in his Court. *In re* DWARKA NATH BANERJEE, **6 C.L.R. 279.**

(28)—*Crim. Pro Code* (1882), *s* 556-*A*—*Bias on the part of Magistrate during investigation into the case and during subsequent inquiry in Court—Orders of High Court—Duty of subordinate Courts.*—Where a Magistrate, in the course of an investigation under Ch. XIV, Crim. Pro Code, and also in subsequent inquiry preliminary to commitment, acted in a manner indicating some bias against the accused, *held*, that the Magistrate should not proceed with the case and the case should be transferred from his file. It is of the most absolute importance, as regards the administration of justice, that Magistrates should act with every loyalty towards the orders of the High Court, and if they are told that an order has been made by it staying proceedings, they ought then and there to hold their hands, unless they have good grounds for believing that information given to them is false. BABU RATNESSARI PERSHAD NARAYAN SING v. EMPRESS, **2 C.W.N. 498.** [*F.*, 38 C. 293 = 13 C.L.J. 329 = 12 Cr. L J. 169 = 9 Ind. Cas. 965 ; *R.*, 5 C.W N. 110]

(29)—*Crim. Pro. Code, s.* 526—*Inference of bias on the part of the Magistrate.*—A criminal case was ordered to be transferred from the file of a certain Magistrate, on the grounds that, during the course of an inquiry preliminary to commitment, some entries in the order-sheet were not made by the Magistrate, as required by the rules of the High Court, daily, and certain orders were not recorded either on the particular day or possibly even on the following day, that a note had been subsequently interpolated in the order-sheet and that the Magistrate, after the receipt of the order of High Court staying all further proceedings in the case, placed on the record a certain letter received from a medical officer. ANANT RAM MARWARI v. MANSOOB ROY, **2 C W N. 639.**

(30)—*Crim. Pro. Code, s.* 526—*Applicability—Bias in the mind of Magistrate.*—S. 526 applies to a case where, a Magistrate being transferred during his trial of it, the District Magistrate takes it up and the prosecution applies to him for adjournment in order that it might move the High Court for a transfer, as well as to a case where an application for transfer is made at the very earliest time. [*R.*, 8 O.C. 418.] When it is impossible under the circumstances of a case to prevent persons from having an apprehension that there might be some bias in the mind of a Magistrate, inclining him to look with favour upon the interests of any party, the case should be transferred in order to prevent any possible misapprehension on this point. KISHORI GIR v. RAM NARAYAN GIR, **8 C.W.N. 77 = 1 Cr. L J. 46.** [*R.*, 33 C. 1183 = 10 C.W.N. 793 = 3 C.L.J. 637 = 3 Cr. L.J. 477.]

(31)—*Suspicion of bias—Transfer.*—Where there are grounds for suspecting bias, the accused is entitled to a transfer. But he is not entitled to a transfer where he attempts to procure it by making false charges against the Magistrate. If such a ground is allowed, the accused is only to go on making false charges against every Magistrate in the District to escape trial on the ground that they are all biassed against him. RAM LALL v. KING-EMPEROR, **2 L B.R 220 = 1 Cr. L J. 735.**

(32)—*Crim. Pro. Code* (1898), *s.* 526—*Transfer—Bias—Evidence judicially recorded in another case—Opinion formed therefrom.*—The accused applied for a transfer of his case, on the ground that, in another criminal case arising out of the same transaction, the Magistrate expressed decided opinions, not only on the facts, but as to the credibility of certain witnesses, and that he could not, therefore, try the present case with an unbiassed mind. *Held*, that interest or bias is not to be inferred from the opinions formed on evidence judicially recorded, and the Magistrate was not, therefore disqualified to try the case. CROWN v. KAMIL *walad* SABHARO, **9 Cr. L.J. 275 = 1 S.L.R 37, Cr.**

(33)—*Crim. Pro. Code* (1898), *s.* 526—*Expression of opinion by Magistrate, in a counter case, on evidence adduced—Transfer of the case.*—Where the complaint forming the subject of

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——2.—Grounds for Transfer—Notice—*ctd.*

a trial in a case before a Magistrate related to facts forming the substance of the defence in another case already tried by the same Magistrate, *held*, that the Magistrate having had to express his opinion on the evidence, which formed the evidence for the defence in that case, it was desirable to have the complaint tried by some other Magistrate. CHANDRAMANI SARMA v. KUNJA RENDI, **4 C.W.N. 824.**

(34)—*Crim. Pro. Code* (1898), s. 526—*Application by accused for stay of proceedings pending petition to High Court for transfer—Magistrate cancelling bail and committing accused to custody.*—It is desirable to transfer a case from the file of a Magistrate, who on an application made by the accused for stay of the proceedings pending an application to the High Court for transfer, immediately cancelled their bail and committed them to custody. *In the matter of* SURJYA NARAIN SINGH, **5 C.W.N. 110.**

(35)—*Crim. Pro. Code* (1898), *ss.* 190, 528—*Conviction of one of the accused charged with rioting—Refusal of the Magistrate to summon the other accused—Powers of the District Magistrate.*—Where several persons were charged with the offence of rioting, and only one of them was sent by the police for trial and was convicted, *held*, that, on the refusal of the Magistrate to summon the others on the application of the complainant, the District Magistrate had ample jurisdiction to transfer the case to his own file under s. 528. *Held*, further, that, even if the case was considered as not pending before the original Magistrate, the District Magistrate had jurisdiction to take cognizance of the case as against them under s. 190. AYEN MAHOMED AKAND v. KING-EMPEROR, **5 C.W.N. 488.**

(36)—*Crim. Pro. Code* (1898), *s.* 526—*Magistrate taking part in a search by police—Competency to try the case.*—Where a Magistrate became aware of some of the facts in connection with a case by his taking some part, or, at any rate by being present, at a search made by the police during investigation, *held*, that it was expedient that the case should be transferred to the file of some other Magistrate. GYA SINGH v. MOHAMED SOLIMAN, **5 C.W.N. 864.**

(37)—*Crim. Pro. Code*, s. 526—*Reasonable apprehension of the accused that he may not have fair trial.*—Where circumstances have so transpired as to lead an accused person to entertain a reasonable apprehension that he may not have a fair trial, in the ends of justice, it is expedient that his case should be transferred from one Court to another, with due regard for the convenience of the other side, as for instance, by making an order that the Crown should pay the expenses of the witnesses. KHETU PANDAY v. MOHIM NATH BISHI, **8 C.W.N. 75=1 Cr. L.J. 33.** [*F.*, 33 C. 1183=10 C.W.N. 793=3 C.L.J. 637=3 Cr. L.J. 477; *D.*, 10 C.W.N. 441.]

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——2.—Grounds for Transfer—Notice—*ctd.*

(38)—*Points to be considered in making order of transfer.*—Although each of the circumstances alleged may not be, by itself, sufficient to show that there was bias on the part of the Magistrate, a transfer would, nevertheless, be justified, where, having regard to all the circumstances taken together, the accused might not unreasonably apprehend that he would not have a fair trial. NITTYANUND KANARAR v. KING-EMPEROR, **9 C.W.N. 619=2 Cr. L.J. 339.** [*R.*, 3 C.L.J. 637=33 C. 1183=10 C.W.N. 793.]

(39)—*Crim. Pro. Code* (1898), s. 526.—In dealing with an application for transfer of a case, the High Court has only to determine whether good grounds for the transfer of the case have been made out to its satisfaction. It cannot, when making an order, taking into consideration the effect its order would have on the reputation and authority of the Magistrate concerned. When an application for transfer of a case, from a Criminal Court, is based on the ground that the applicant apprehends that he will not have a fair and impartial trial in the Court, the apprehension to justify the transfer must be shown to be reasonable under the circumstances of the case. If the High Court cannot regard the apprehension to be reasonable, and if there be not sufficient grounds for the apprehension, the High Court will not transfer the case merely in deference to the susceptibilities of the accused. NARAIN CHANDRA BANNERJEE v. HOWRAH MUNICIPALITY, **10 C.W.N. 441=3 Cr. L.J. 379.** (2 Q B.D. 558, 20 C. 857, 23 C. 495, 8 C.W.N. 75, *D.*) [*R.*, 13 Cr. L.J. 236=14 Ind. Cas. 428=8 N.L.R. 1.]

(40)—For a transfer of a case on the ground of bias on the part of the Magistrate, it is rarely possible for an accused person to prove actual bias; it is sufficient to show circumstances which may raise a reasonable apprehension in the mind of an accused person that he will not have a fair and impartial trial, although the circumstances may be susceptible of explanation and may have happened without any real bias in the mind of the Magistrate. *In re* KASTURI RANGIAH CHETTY, **2 Weir 678.**

(41)—*Held* that, in order to make out a good case for the High Court to take action under s. 526, Crim. Pro. Code, it is not sufficient for the accused to merely allege that he will not get a fair trial, but he must lay before the High Court the facts, which give rise to this belief in his mind, and if those facts are found such that they will reasonably give rise to this belief, a transfer ought to be made. SANT BAKHSH SINGH v. KING-EMPEROR, **10 O.C. 165=6 Cr. L.J 254.** (23 C. 495, *R.*)

(42)—The point to be considered in applications for transfer is not merely whether any real bias exists in the mind of the presiding Judge against the accused, but also whether events calculated to create in the mind of the accused a reasonable apprehension that he may

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——2.—Grounds for Transfer—Notice—*ctd.*

not have a fair and impartial trial may not have happened. PANDURANG v. EMPEROR, **15 C.P L.R. Cr. 192.** (23 C. 495, 19 A. 64, *Approved*; 1 C.W.N. 426, *D.*) [*Rel.*, 13 Cr. L.J. 236=14 Ind. Cas. 428=8 N.L.R. 1.]

(43)—*Crim. Pro. Code*, s. 520—*Transfer—Apprehension that fair and impartial trial cannot be had—Local inquiry, accompanied by a partisan of the complainant.*—Where, during the pendency of a case against the accused for the alleged cutting of a *bund*, the Magistrate went to the scene of occurrence accompanied by a partisan of the complainant and held a local inquiry into a matter, which, though not the subject of complaint against the accused, could nevertheless be imagined by the accused to be such, *held*, that though there were no reasons to suppose, on the materials before the Court, that the Magistrate would not bring to the trial of the case against the accused a fair and impartial mind, still, under the circumstances of the case, it was desirable that the trial should be held by some other Magistrate. KARBAN ULLAH v. AZMAT MAHI, **12 C.W.N. 748=7 Cr. L J. 510.**

(44)—*Crim. Pro. Code*, s. 526 (8)—*Transfer—Reasonable apprehension—Tests for determining—Magistrate's anxiety that the accused if guilty should not escape punishment—Adjournment, application for—Refusal—Effect on subsequent proceedings.*—Where the accused, in a case arising in connection with the agitation for the partition of Bengal, made an application to the trying Magistrate for the postponement of the trial, with a view to moving the High Court for transfer, under s. 526 of the Code, but the Magistrate refused the application for postponement, stating it as his opinion that he could go on with the trial until the accused were called on for their defence, though as a matter of fact he postponed the hearing shortly afterwards on the same day after the examination of three witnesses for the prosecution, and, further, in his explanation to the High Court, stated that his reason for examining the three witnesses, before allowing the application for postponement, was that he was apprehensive that the case might be settled amicably out of Court and the witnesses might not afterwards be available and, if available, might not speak the truth against the accused; *Held, per Mitra, J.* (*Holmwood, J., contra*)—That inasmuch as the order of the Magistrate on the petition for postponement and his explanation to the High Court displayed an anxiety on his part that the accused, if really guilty, should not escape punishment, they were calculated to raise, not unnaturally, in the minds of the accused, an apprehension that they might not have a fair and impartial trial before him; and as such apprehension was not, in the peculiar circumstances of the case, foolish or unfounded, the case should be transferred to some other Magistrate for trial. Although, under sub-s. 8 of s. 526 of the Code, the Magistrate has authority to proceed with the case for prosecution until the accused is called on for his defence, after an application for postponement has been made to him with a view to moving the High Court for transfer, yet, it is not desirable that the Magistrate should ordinarily exercise that authority, but he should, unless the case is exceptional in character, grant the prayer for postponement or adjournment at once. What is a reasonable apprehension must be decided in each case with reference to the incidents of the case and surrounding circumstances; and, in determining whether an apprehension is reasonable, it is the duty of the Court, by placing itself in the position of the accused, to consider the facts and circumstances attending his position. Abstract reasonableness ought not to be the standard. *Per Holmwood, J.*—The case should be transferred in view of the technical objection that may be taken to the validity of the Magistrate's final decision owing to his having refused postponement. KALI CHARAN GHOSE v. EMPEROR, **33 C. 1183=3 C L J. 637=10 C.W.N. 793=3 Cr. L.J. 477.** (15 C. 455, 29 C. 211, 8 C.W.N. 77, *F.*; 31 C. 715, 8 C.W.N. 910; *R*, 10 C.W.N. 441, *Expl. and Concurred.*) [*R.*, 1 P.R. 1913, Cr.=254 P.L.R. 1912=17 Ind. Cas. 58=13 Cr.L.J. 746=42 P.W.R. 1912, Cr.]

(45)—*Crim. Pro. Code* (1898), s. 526 (*a*)—*Transfer-Magistrate making a report containing aspersions against the accused, if sufficient cause for transfer.*—Where, in the course of the trial of the accused, the Magistrate made a report to the Sub-Divisional Magistrate, containing aspersions on the conduct of the accused and even suggesting that he might have committed the very theft, which he (the Magistrate) was supposed to be investigating: *Held*, that it was sufficient reason for a transfer, as it must have shaken the confidence of the accused in the impartiality of the tribunal before which he was being tried. IMPERATOR v. KAISAR KHAN, **2 S.L.R. 33, Cr.=10 Cr. L J. 199.**

(46)—*Crim. Pro. Code* (1898), s. 526—*Issuing warrants and exacting heavy bail from accused, whether a good ground for transfer of the case.*—The issuing of warrants for the apprehension of the accused and the exacting of very heavy bail from them in a case of petty theft, are calculated to justify an apprehension that they could not have a fair trial before the Magistrate. GIRISH CHANDRA GHOSH v. CHANDRA MONI DASI, **8 C.W.N. 589=1 Cr. L.J. 528.** [*F.*, 33 C. 1183=10 C.W.N. 793=3 C.L.J. 637.]

(47)—*Crim. Pro. Code* (1898), s. 526—*Previous formation of opinion on question of possession, whether a ground for transfer.*—Where a Magistrate, who was trying a riot case, had on two previous occasions, expressed a decisive opinion on the question of possession, which question was of importance in the case, *held*, that that was a good ground for the transfer of the case to another Magistrate. SITA NATH MONDAL v. EMPEROR, **8 C.W.N. 641=1 Cr. L.J. 630.**

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——**2.—Grounds for Transfer—Notice**—*ctd.*

(48)—*Crim. Pro. Code* (1898), s. 526—*Application by accused for time to move the High Court for transfer—Communication of High Court's order to Magistrate by Vakil—Examination of witnesses by Magistrate.*—Notwithstanding an application made by the accused for time to move the High Court for a transfer of the case, the Magistrate, without immediately passing any order, examined certain witnesses for the prosecution, and then allowed fourteen days time. Further, after the fact of the issue of a rule by the High Court, on the application for transfer, had been communicated to him by a vakil of the High Court, the Magistrate, instead of postponing the case, examined four witnesses and made an order afterwards for adjournment. *Held*, that these proceedings of the Magistrate were sufficient to justify the transfer of the case. WAHED MOLLA v. SHAIK BASARADDI, **11 C.W.N. 507 = 5 Cr.L.J. 291.**

(49)—Where the accused applied to the Magistrate to have the case adjourned for a reasonable time to allow him to apply to the High Court for a transfer, the Magistrate was held to be bound to adjourn the case, and to have acted wrongly in having proceeded with it. *In re* RAGHAVA CHARI, **2 Weir 685.**

(50)—*Crim. Pro. Code* (1898).—When, before the commencement of the trial, a party applies to the Magistrate to adjourn the proceeding, on the ground that he intends to apply to the High Court for a transfer, the Magistrate is bound to adjourn the case under s. 526, cl. 8, and if the Magistrate refuses to grant an adjournment, his proceedings, subsequent to such refusal, are illegal, and such a refusal is in itself sufficient ground for a transfer of the case. CROWN v. NAOO, **9 Cr.L J. 274 = 1 S.L.R. 35, Cr.**

(51)—*Crim. Pro. Code* (1898), s. 526—*Charges and counter-charges in two cases—Magistrate hearing prosecution evidence in both and discharging accused in one—Magistrate pronouncing guilt of accused in the other case, without hearing defence evidence in that case—Sufficient ground for transferring case.*—In two cases, in which charges and counter-charges have been made, a Magistrate heard the prosecution evidence in one case, and then, without hearing defence evidence in that case, interposed the other case, heard the prosecution evidence in that case, and, on that evidence, discharged the accused in that case. In his order of discharge, he expressed himself in decided terms, as to the guilt of the prosecuting party in the latter case, who are the accused in the former case. *Held*, that the course adopted by the Magistrate was likely to prejudice the accused in the former case. Although the evidence, which the accused in the former case adduced as prosecutors in the latter case, may be substantially the same as that, which would have been adduced on their behalf, if the former case had proceeded in the ordinary way, and the evidence for the defence in that case had been heard, it does not follow that evidence, which, when adduced on behalf of the prosecution, is insufficient to establish a charge will, if adduced on behalf of the defence, with reference to the same charge, be also insufficient. Such prejudging the accused's guilt is sufficient ground for transferring the case to some other Magistrate. RANGASAWMY GOUNDAN v. EMPEROR, **30 M. 233 = 2 M.L.T. 89 = 5 Cr.L J. 290.** [*R.*, 11 Cr. L.J 702 = 8 Ind. Cas. 721 = 9 M.L.T. 162 = 1 M.W.N. 735.]

(52)—*Crim. Pro. Code* (1898), s. 487—*Delay in disposal of cases—Transfer.*—An unnecessary delay in the disposal of a simple case is a good ground for transferring it to another Magistrate. *In re* MANGALAM ABDUL KARIM SAHIB, **2 Weir 679.**

(53)—*Crim. Pro. Code* (1882), s. 528—*Valid ground for the transfer of a case, what is.*—Where a District Magistrate, who transferred a case from the file of one Magistrate to that of another, gave out as the grounds, (1) that the Magistrate to whom the case was transferred had concurrent jurisdiction with the Magistrate from whose file the case was removed, and (2) that the application for transfer was accompanied by an affidavit in which it was stated that the latter Magistrate had asked the applicant to sell to him one of his carriages, which the latter had refused to do, and he believed that the Magistrate was on this account likely to be prejudiced against him, *held*, that the discretion vested in the District Magistrate was not exercised in a reasonable and proper manner, and that the first ground was no ground at all, and the second had no force, as there was no affidavit, but simply a statement to which the applicant had appended a sentence signed by him stating that the facts mentioned were true, and as there was no statement as to the time when the request was made. MAGADA MIRA SAHIB v. KACHI MAHOMED MARACAR, **2 Weir 686.**

(54)—*Crim. Pro. Code* (1898), s. 526, *cl.* 8—*Reasonable adjournment for allowing accused to move the High Court for transfer.*—An adjournment for six days is not a reasonable time to allow for making an application to the High Court and obtaining an order thereon within the meaning of s. 526, cl. 8. *In re* SYED AHMED, **2 Weir 686.**

(55)—*Crim. Pro. Code* (1898), s. 526—*Magistrate examining scene of occurrence before commencement of trial.*—When the trying Magistrate, just before he heard the case in Court, went to the scene of the occurrence in the company of the person conducting the prosecution of the accused and the facts of the case were related to him there, *held*, that the procedure of the trying Magistrate was very improper and was in itself a sufficient ground for transferring the case from his Court. When, upon an application for transfer, a copy of the application is sent to the District

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Magistrate for report after enquiry from the Magistrate trying the case with reference to allegations made in the application, neither the District Magistrate, nor the Magistrate trying the case, is competent to pass any strictures on the allegations made in the application. BHAI GOPAL SINGH v. EMPEROR, **165 P.L.R. 1901.**

(56)—*Magistrate refusing to grant time under s.* 526, *cl.* 8, *Crim. Pro. Code—Where application was made after commencement of proceedings—Convenience of parties and witnesses—Grounds of transfer.*—Refusal to grant postponement of case under s. 526, cl. 8, where the application had been delayed for nearly two months after the hearing had commenced, is no ground for a transfer of the case from the Magistrate. The accused cannot plead convenience of parties and witnesses as a valid ground of transfer of the proceedings, where the accused are themselves under custody and have not disclosed the names of their witnesses. IMPERATOR v. AZIZDIN AHMED, **4 S.L.R. 42 = 7 Ind. Cas. 603 = 11 Cr. L.J. 500.**

(57)—*Crim. Pro. Code, ss.* 526, 110—*Transfer of proceedings under s.* 110 *to another District—Jurisdiction of Court to which case is transferred.*—S. 526 enables the High Court to transfer criminal proceedings instituted under s. 110 of the Code, once they have been properly instituted, from one district to another to a Court of superior or equal jurisdiction, and the order of the High Court will give jurisdiction to the Court to which such proceedings are transferred. A District Magistrate admitted, in his reply to an application for transfer of a case, that he had taken a keen personal interest in the case and was satisfied of the applicant's guilt; *held* that this was sufficient to arouse in the minds of the applicant a reasonable apprehension that he would not have a fair and impartial trial in the district. WAHID ALI KHAN v. KING-EMPEROR, **7 A.L.J. 823 = 6 Ind. Cas. 874 = 11 Cr. L.J. 412 = 32 A. 642.**

(58)—*Cirm. Pro. Code* (1898), *s.* 526—*Transfer, grounds for—Executive Zeal of the Magistrate.*—One of the most important duties of a High Court is to create and maintain confidence in the administration of justice, and this can only be done by giving to every citizen an assurance that, so far as practicable, he will never be forced to undergo a trial by a Judge or Magistrate, whom he has reasonable grounds of suspecting to be prejudiced against him. Magistrates should not only preserve an outward appearance of impartiality, but should maintain the internal freedom from bias incumbent on judicial officers, and if they allow their executive zeal to appear to outrun their judicial discretion, a transfer of the case is desirable, not necessarily on the ground that the judicial officer is adjudged to be incapable of performing his duty, but simply to allay the reasonable apprehensions of an applicant for transfer. CROWN v. MAHOMEDSHAH, **9 Cr. L J. 251 = 1 S.L.R 8, Cr.**

(59)—*Crim. Pro. Code* (1898), *s.* 528—*Transfer of case—Omission to record reasons for transfer—Irregularity—Magistrate transferring to his own file.*—The omission of a Magistrate, transferring a case under s. 528, to record his reasons for doing so, is only an irregularity, and is not a sufficient ground for setting aside the order of transfer, unless it is shown to have prejudiced a party to the proceedings. A Magistrate authorized under s. 528 to transfer a case is competent to withdraw it to his own file. *In re* SUSAI LAZAR FERNANDEZ, **9 Cr. L J. 310 = 1 Ind. Cas. 553.**

See ACCUSED PERSON, 8 C.W.N. 838.

——3.—Transfer by High Court.

(1)—*Crim. Pro. Code, s* 526—*Transfer of cases by High Court—Practice.*—Ordinarily, the High Court does not transfer a case pending before a Magistrate unless the party applying for transfer has moved the District Magistrate before coming to the High Court. *In re* D. FONSECA, **6 Bom. L.R. 480 = 1 Cr L.J. 589.**

(2)—*High Court's power of transfer of criminal cases—Forgery or perjury.*—The High Court does not, as a general rule, exercise its powers of transfer in a case of forgery or perjury, solely on the ground that the Judge who is to try the case has already formed an opinion, sitting as a Judge on the civil side, that the document has been forged or the perjury committed. But when the transfer can be made without risk of any improper interference with the course of justice and without much inconvenience to the parties and witnesses, the transfer may be proper not only as a fair concession to the person charged, but as a means of relieving the Judge from a position which he would himself desire to avoid. *In re* ARUNACHELLA REDDI, **5 M.H C. 212.**

(3)—*Crim Pro. Code* (1882), *s.* 192—*Order of High Court transferring a case, construction of.*—In the case of a transfer of a criminal case by the High Court, from a Court subordinate to a District Magistrate to the District Magistrate's Court, that Magistrate should try the case himself, unless the High Court, in its order, has expressed that the District Magistrate shall have the power to transfer the case to a subordinate Court. But, when the transfer is from the Court of one District Magistrate to the Court of another District Magistrate, it will be understood, unless the contrary is directly expressed, the Magistrate of the Court to which the transfer is made has power and jurisdiction to apply s. 192, and to transfer the case to the Court of any Magistrate subordinate to him who may be competent to try it. QUEEN-EMPRESS v. MATA PRASAD, **19 A. 249 = A.W.N. 1897, 50.**

Transfer of Criminal Cases—continued.

——3.—Transfer by High Court—*concluded.*

(4)—*Crim. Pro. Code, s.* 526—*Transfer of case from Magistrate having no jurisdiction.*—The High Court cannot under s. 526, transfer a case taken up by a Magistrate who apparently has no jurisdiction. GIRDHARLAL v. MOTILAL, **3 Bom. L.R. 121.**

(5)—*Crim. Pro. Code* (1882), *s.* 526—*Transfer of appeals.*—The High Court can transfer actual appeals only; it cannot direct that appeals filed in future should, when filed, not be heard by the authority to which they are presented QUEEN-EMPRESS v. LAGMA, **Rat. Un. Cr. C. 973 = Cr. Rg. 27 of 1898.**

(6)—*High Court's power to transfer appeals before itself—Crim. Pro. Code* (1882), *s.* 526—*Letters Patent, s.* 29.—The High Court's power of transfer of appeals under s. 29, Letters Patent, is not restricted to transfer of appeals to Courts subordinate to itself. It extends also to their transfer for trial before itself. This power has not been taken away by s. 64, Crim. Pro. Code, 1872, and it is expressly provided by s. 526, Crim. Pro. Code. 1881. SITAPATHI NAYUDU v. QUEEN, **6 M. 32.**

(7)—*Crim. Pro. Code* (1882), *s.* 526—*District Magistrate and Civil and Sessions Judge of Bangalore—Power of High Court to transfer cases from their file.*—The High Court has jurisdiction to transfer cases from the file of District Magistrate and Civil and Sessions Judge of Bangalore, as those Courts are Courts subordinate to the High Court, within the meaning of s. 526, Crim. Pro. Code. SCOT v. RICKETTS, **9 M. 356 = 2 Weir 677.**

(8)—*Crim. Pro. Code* (1898), *ss.* 145 *and* 526, *Letters Patent, Cl.* 29—*Power of High Court to transfer a case under s.* 145.—A case under s. 145 of the Code of Criminal Procedure is a "criminal case," and the High Court has power to transfer the case under both s. 526, Crim. Pro. Code, and cl. 29 of the Letters Patent. *In re* ARUMUGA TEGUNDAN, **26 M. 188 = 12 M.L.J. 391 = 2 Weir 678.** [*F.*, 2 C.L.J. 614, 11 O.C. 61 = 7 Cr. L.J. 423; *R.*, 34 A. 533 = 10 A.L.J. 27 = 13 Cr. L.J. 452 = 15 Ind. Cas. 84, 10 C.W.N. 1095 = 4 Cr. L.J. 223, 154 P.L.R. 1914, 5 P.R. 1914, Cr.]

(9)—*Power of High Court—Transfer of a case from one Presidency Magistrate to another.*—*Quære.*—Whether the High Court can transfer a case from one Presidency Magistrate to another Presidency Magistrate presiding over the same Court. Even if the High Court had the power to transfer such cases, *held*, that the present case was not such a case as no proper grounds for transfer were made out. *In re* T. MURUGESA MUDALIAR, **13 M L.J. 69.** [*R.*, 35 M. 739 = 12 Cr. L.J. 451 = 11 Ind. Cas. 795 = 22 M.L.J. 114 = 10 M.L.T. 518 = 1911 M.W.N. 50.]

Transfer of Criminal Cases—continued.

——4.—Transfer by other Courts.

(1)—*Powers of District Magistrate.*—Although the powers of transfer under s. 528, Crim. Pro. Code, conferred upon a District Magistrate are very wide and undefined, those powers should be exercised with due discretion. There must be really good reasons, which, in the interests of justice demand a transfer. GHULAM NABI v. EMPRESS, **13 P.R. 1889, Cr.**

(2)—*Transfer of criminal cases—Power of District Magistrate—Crim. Pro. Code* (1861), *ss.* 36, 273.—A District Magistrate has no power to transfer to a subordinate Magistrate a case which a Munsif had duly sent to him for investigation. QUEEN v. SYUD ALI, **3 N.W.P. 126.**

(3)—*Power of District Magistrate to transfer enquiry—Crim. Pro. Code* (1898), *ss.* 117 *and* 145.—The order of the District Magistrate transferring the enquiry to the Sub-Divisional Magistrate is not illegal. The general power of a District Magistrate to transfer is not taken away or cut down by anything in s. 145. EBRAHIM v. KING-EMPEROR, **2 L.B.R. 80.** (22 C. 898, 29 C. 389, *R.*; 19 A. 291, 27 C. 662, *Diss.*)

(4)—*Crim. Pro. Code, ss.* 17 (1), 21 (2), *and* 528—*Power of Chief Presidency Magistrate to transfer case from one Presidency Magistrate to another—Notice to party concerned.*—The subordination of the Presidency Magistrate to the Chief Presidency Magistrate should be deemed to be of the same kind and extent as that of Magistrates and Benches to the District Magistrate under s. 17 (1) of the Crim. Pro. Code, 1898. The Chief Presidency Magistrate, therefore, has, under s. 528, Crim. Pro. Code, the power to withdraw any case from any of them and refer it for enquiry or trial to another such Magistrate. The Magistrate, however, is not competent to transfer a case from one Court to another without issuing notices to both the parties concerned. *In re* NAGESHWAR, **1 Bom. L.R. 347.** [*R.*, 6 Bom. L.R. 856.]

(5)—*Crim. Pro. Code, s.* 551—*Jurisdiction of District Magistrate to transfer complaint under s.* 551.—A District Magistrate alone has jurisdiction to entertain a complaint and make an order under s. 551, Crim. Pro. Code. He has no power to transfer such a case to a sub-Magistrate, and that Magistrate would have no jurisdiction therein. BAI DAHI v. JAGJIVAN VAMALCHAND, **Rat. Un. Cr. C. 963 = Cr. Rg. 18 of 1898.**

(6)—*Transfer of case by District Magistrate from one subordinate Court to another—Notice to parties—Crim. Pro. Code* (*Act* X *of* 1872), *s.* 48.—Notice should issue to the parties, before a District Magistrate can transfer a case from one subordinate Court to another. TEACOTTA SHEKDAR v. AMEER MAJEE, **8 C. 393 = 10 C.L.R. 239.** [*F.*, 14 C.P.L.R. 190, 28 P.R. 1902, Cr. = 10 P.L.R. 1903, 7 C.W.N. 114 = 30 C. 394; *R.*, 22 B. 549, U.B.R. 1904, 1st Qr., Cr. P.C. 15, 9 Cr. L.J. 407 = 6 M.L.T. 14 = 1 Ind. Cas. 1889, 10 M.L.T. 494 = 2 M.W.N. 1911, 168 = 21 M.L.J. 850 = 12 Ind. Cas. 128.]

Transfer of Criminal Cases—continued.

——4.—Transfer by other Courts—*continued.*

(7)—*Cattle Trespass Act (Act I of 1871), ss. 20 and 22—Transfer of case to a Subordinate Magistrate—Crim. Pro. Code, s. 192.*—Under s. 192, Crim. Pro. Code, a District Magistrate can transfer for trial to a Subordinate Magistrate only cases which are within the powers of that Magistrate under s. 28 of the Code, or under some special or local law. He cannot transfer cases under s. 20 of Act I of 1871, to any Magistrate, as such cases are triable only by the two classes of Magistrates specified in that section. RAGHU SINGH v. ABDUL WAHAB, **23 C. 442.** [*Overruled*, 34 C. 926; *R.*, 11 C.P.L.R. 10; *D.*, 31 C. 350.]

(8)—*Crim. Pro. Code. s. 528—Transfer of case by District Magistrate—Case remanded by Sessions Judge—Notice to accused person.*—The District Magistrate has no jurisdiction to transfer a case from the file of a subordinate Magistrate to whom it has been remanded by the Sessions Judge for further inquiry and less so, if he gives no notice to the other side. AKHIL DOME v. RAM CHANDRA MANDAL, 8 C.L.J. **241=8 Cr. L.J.** 386.

(9)—*Crim. Pro. Code* (1898), *Ch.* XXXI—*Revival of case after dismissal, validity of.*—Where a Presidency Magistrate revived a case, which had been dismissed, and transferred it for trial to a Bench of Honorary Magistrates, *held*, that the Magistrate had the power to revive the case and to make the transfer. WALTERS v. IBRAHIM, **7 C.W.N. 527.**

(10)—*Crim. Pro. Code* (1898), *s.* 528—*Jurisdiction of District and Sub-Divisional Magistrate to transfer criminal cases from the file of Village Magistrate—Madras Reg.* IV *of* 1821.—The jurisdiction, which a District of a Sub-Divisional Magistrate has, under s. 528, to transfer cases from the file of a Village Magistrate, is limited to the cases, namely, petty thefts which a Village Magistrate is empowered by Reg. IV of 1821 to try and punish, and does not extend to all criminal cases. SEVOKOLANDAI v. AMMAYAN, **26 M. 394=2 Weir 693.**

(11)—*Crim Pro. Code* (1898), *s.* 528—*Withdrawal of a case by the District Magistrate from one Magistrate, and transfer—Notice to accused, if necessary.*—Though s. 528 does not say that notice must be given to any of the parties interested, before withdrawal of a case, and therefore the absence of notice would not make an order of withdrawal illegal, yet, notice should, in the interests of justice and fairness, be given to the parties concerned. Where the transfer was made after all the witnesses for the prosecution had been examined, the order was set aside. *In re* SYED LALA MIAN SAHIB, **6 M.L.T. 14=9 Cr. L J. 407=1 Ind Cas. 889.**

(12)—*Crim. Pro. Code, s.* 528—*Reference to superior Magistrate for enhanced punishment—Power of District Magistrate to transfer the case from that Magistrate.*—Where the Taluk Magistrate convicted the accused and submitted the record to the Head Assistant Magistrate, in order that a heavier sentence might be imposed, *held*, that the District Magistrate was competent to transfer the case from the Head Assistant Magistrate to another Magistrate. *In re* CHANDRA SEKARAM PILLAI, **2 Weir 690.**

(13)—*Crim. Pro. Code* (1882), *s.* 528—*Withdrawal of a case by superior Magistrate to his own file—Procedure.*—Where a Joint Magistrate withdraws a case from the file of a Sub-Magistrate to his own file, he is not competent to dispose of the case upon the evidence recorded by the Sub-Magistrate. SUNDARA IYER v. THIRUVANGADA NAICKER, **2 Weir 690.**

(14)—*Power of Sub-Divisional Magistrate to transfer from one Township Magistrate to another—Crim. Pro. Code* (1898), *s.* 346 (2).—A Sub-Divisional Magistrate has power to transfer, to the Magistrate of a township in the sub-division, a case in which an offence is alleged to have been committed in another township of the same sub-division. CROWN v. LA PYU, **1 L.B.R. 308.**

(15)—*Case submitted to District Magistrate under s.* 46, *Crim. Pro. Code* (1872).—The District Magistrate is not competent to return a case submitted to him by a second or third class Magistrate under s. 46, Crim. Pro. Code, 1872, to the latter Magistrate. EMPRESS v. BHANA, **33 P.R. 1882, Cr.**

(16)—*Case submitted to Magistrate under s.* 46, *Crim. Pro. Code* (1872)—*Transfer of the case to* jirga *for trial.*—Where, in a case submitted to the District Magistrate, under s. 46, Crim. Pro. Code, 1872, he was of opinion that the proof was insufficient for a judicial conviction and sent the case to the *jirga* for trial, *held*, that the District Magistrate was competent to do so. MUSA v. BABRI, **44 P.R. 1882, Cr.**

(17)—*Procedure—Compounding offence—Permission to—Crim. Pro. Code* (1882), *s.* 345—*Penal Code, s.* 324.—A District Magistrate should not order the transfer of a case without having the record before him and without giving the complainant an opportunity of being heard. The only Court which has power under s. 345, Crim. Pro. Code, to grant permission to compound an offence under s. 324, Penal Code, is the Court before which a prosecution for such offence is pending. Permission is not to be granted under s. 345, Crim. Pro. Code, as a matter of course. The Court to which such an application is made has to exercise its judicial discretion whether to grant a permission or not, and with regard to an offence under s. 324, I.P.C., careful consideration is especially needful in Burma, where such offences are of frequent occurrence, especially where the accused is a police officer. TAYYA v. MAUNG BA HLAING, **L.B.R. 1893—1900, 392.**

(18)—*Crim. Pro. Code*, 1872, *ss.* 64, 69—*Criminal breach of trust—Offence committed partially*

Transfer of Criminal Cases—continued.

——4.—**Transfer by other Courts**—*concluded.*

within a certain area—Jurisdiction.—Where an offence of criminal breach of trust was alleged to have been committed, partly, if not wholly, in Calcutta, held it should be inquired into by the Magistrate of Calcutta. QUEEN v. O. J. MACDONALD, **22 W.R. Cr. 6.**

(19)— *Explanation — Transfer* — Want of temper and discretion in dealing with the petitioner's written statement and failure to give satisfactory explanation are not by themselves, sufficient grounds for granting an application of transfer. A Magistrate is bound to file with the record any explanation the petitioner wishes to make. It is only where there is reason to suppose that the prisoner will not have a fair trial, that the High Court will transfer a case from one Magisterial officer to another. QUEEN v. KISTO CHUNDER GHOSE, **2 W.R. Cr. 58.**

(20)—*Procedure— Transfer of case—S. 36, Code of Criminal Procedure.*—Although s. 36 of the Code of Criminal Procedure does not require a Magistrate to state his reasons for transferring a criminal case from a Court subordinate to him to his own or to any other subordinate Court, the High Court set aside an order of a Magistrate transferring a case after the subordinate Magistrate before whom it was had taken the evidence for the prosecution, and had expressed an opinion unfavourable to the prosecution. QUEEN v. NOBOCOOMAR BANERJEE, **14 W.R Cr. 12=5 B.L.R. App. 45.**

(21)—*Transfer of a case—Contents of summons or warrant—Procedure—Act* X *of* 1872, *ss.* 44 *and* 49.—Where the Magistrate of the District had procured the initiation of a number of prosecutions against the same person, and one of them which had resulted in conviction came up before him in appeal, the High Court, considering that it was not altogether seemly that he should hear the appeal, ordered its transfer to the Sessions Judge. RAMZAN ALI v. DURPO KOMILLA, **24 W.R. Cr. 58.**

——5.—**Miscellaneous Cases.**

(1)—*Crim. Pro. Code* (1882), *s.*192—*Transfer of case after evidence for prosecution recorded—Procedure.*—Where a case under s. 355, I.P.C., was transferred from the file of the Honorary Magistrates to the Court of the first class Magistrate, after all the witnesses for the prosecution had been examined, and a charge had been framed, *held*, that the Magistrate's procedure in acting upon their depositions as recorded before the Honorary Magistrates, without resummoning the prosecution witnesses, whether it amounted to an irregularity or an illegality or not, had prejudiced the accused, and that the conviction should be set aside. QUEEN-EMPRESS v. BASHIR KHAN, **14 A. 346 =A.W.N. 1892, 19.** [*F.*, 36 A. 315=12 A.L.J. 467; *R.*, 12 C.W.N. 140=6 Cr. L.J. 434, 15 C.P.L.R. 66; *D.*, 35 C. 457=7 C.L J. 488=12 C.W.N. 416=7 Cr. L.J. 220.]

Transfer of Criminal Cases—continued.

——5.—**Miscellaneous Cases**—*continued.*

(2)—*Copy of report by Magistrate—Transfer of case.*—A party is not entitled to a copy of the report submitted by the Magistrate in connection with an application for transfer, but the Court may grant one. *In re* CLIVE DURANT, **Rat. Un. Cr. C. 480.**

(3)—*Act* X *of* 1875 (*High Court's Criminal Procedure*), *s.* 147—*Ben. Act* IV *of* 1876, *ss.* 75 *and* 79.—The powers of interference possessed by the High Court under Act X of 1875 could be exercised only in cases of convictions or other orders affecting an accused and not in cases of acquittals. CORPORATION OF CALCUTTA v. BHEECUNRAM NAPIT, **2 C. 290.** [*R.*, 9 C. 397.]

(4)—*Transfer of criminal trial to a different district—Refusal by bench of High Court to hear affidavits—Legality of decision—Chief Justice, powers of—Finality of interlocutory order in criminal matters.*—Where a bench of the High Court refused to transfer a criminal case from the Sessions Court of one district to that of another and did not allow the affidavits filed in support of the application to be read, *held*, such refusal to hear the affidavits was, if at all, only an error of law in the course of dealing with a matter within their jurisdiction, so that the decision could not be a nullity nor could its legality be questioned by the Chief Justice. An interlocutory order in a criminal matter like the above is not final, and may be reviewed or reconsidered, or a similar application may be entertained, as often as the Court likes. *In the matter of* ABDOOL SOBHAN, **8 C. 63=4 Shome L.R. 57.**

(5)—*Crim. Pro. Code* (1898), *ss.* 145, 192, 528 *and* 529 (*b*)—*Transfer of a case under s.* 145.—A case under s. 145 is a criminal case, and a Magistrate has power to transfer it under ss. 192 and 528 of the Code. Even if there were any irregularity in the transfer, it is cured by s. 529 (*f*) of the Code. GURUDAS NAG v. GAGANENDRA NATH TAGORE, **2 C.L.J. 614=3 Cr. L J. 83.** (22 C. 898, 26 M. 188, 28 C. 709, *F.*; 31 C. 350, 28 C. 709, *R. & Expl.*; 25 B. 179, *Diss.*) [*Diss.*, 154 P.L.R. 1914=5 P.R. 1914, Cr.; *F*, 37 C. 91=14 C.W.N. 79=11 Cr. L.J. 23=5 Ind. Cas. 29; *R.*, 34 A. 533=10 A.L.J. 27=13 Cr. L.J. 452=15 Ind. Cas. 84, 10 C.W.N. 1095 =4 Cr. L J. 223; *Cons.*, 18 C.W.N. 393=15 Cr. L.J. 359=23 Ind. Cas. 727.]

(6)—*Crim. Pro. Code, s.* 526—*Vakil obtaining order from Magistrate staying proceedings on pretence of motion to High Court for transfer.*—The practice of vakils obtaining an order from the Magistrate staying proceedings on the ground of moving the High Court for transfer, which they otherwise can never obtain, and without any idea of applying for transfer, is highly condemnable. GUNAMONI SAPNI v. QUEEN-EMPRESS, **3 C.W.N. 758.**

(7)—*Crim. Pro. Code* (1898), *ss.* 145 *and* 529 —*Transfer order by a Magistrate not so empowered—Transfer when to be made.*—Although

Transfer of Criminal Cases—continued.

——5.—**Miscellaneous Cases**—*continued.*

a Magistrate of the first class, not being a District Magistrate or a Sub-Divisional Magistrate, has no power to transfer a case under s. 145 to another Magistrate, yet, when proceedings are taken upon such transfer, they are saved under the terms of s. 529 (*f*) of the Code. [*F.*, 35 C. 243 = 12 C.W.N. 299 = 7 C.L.J. 177 = 7 Cr.L.J. 146; *D.*, 150 P.L.R. 1903.] A Magistrate of the first class, even when duly empowered to transfer cases, can only transfer an enquiry or trial relating to an offence. AKBAR ALI KHAN v. DOMI LAL, **4 C.W.N. 821.** [*F.*, 36 C. 370 = 13 C.W.N. 580 = 9 Cr. L.J. 399 = 1 Ind. Cas. 817.]

(8)—*Crim. Pro. Code* (1898), s. 203—*Further proceedings in a case dismissed under s. 203—Jurisdiction of Magistrates.*—Where a Sessions Judge remands a case dismissed by a Deputy Magistrate under s. 203, Crim. Pro. Code, and directs that further proceedings should be held under the same section, the case cannot, after the remand, be transferred by the District Magistrate from the file of the Deputy Magistrate. BRIJ KISHORE GHOSE v. GOPAL RAI, **11 C.W.N. 316 = 5 Cr. L.J. 112.**

(9)—*Crim. Pro. Code* (1898), s. 350—*Transfer of case after examination of prosecution witnesses—Omission to examine afresh those witnesses.*—Where after the prosecution witnesses were examined before a Magistrate, the case against the accused was made over to another Magistrate, and a *de novo* trial was commenced before the latter in which the prosecution witnesses were not examined, but were only cross-examined by the defence, without any objection, *held* that the trial was not in due compliance with the provisions of s. 350, and ought to be set aside. SOBH NATH SINGH v. EMPEROR, **12 C.W.N. 138 = 6 Cr. L.J. 431.**

(10)—*Order of High Court transferring a case—Judgment delivered by the lower Court after the order but before its communication.*—Where, after a trial had begun in the lower Court, the High Court made an order transferring the case, and the lower Court delivered judgment before the order was actually communicated to it, *held*, that the lower Court was not wrong in refusing to adjourn the case on the strength of a telegram received by the accused's vakil to the effect that the High Court had passed an order to transfer the case. QUEEN-EMPRESS v. VIRASAWMI, **19 M. 375 = 2 Weir 680 = 6 M.L.J. 195.**

(11)—*Crim. Pro. Code* (1898), *s.* 529 (*i*)—*Transfer of case without jurisdiction—Good faith—Illegal proceedings.*—Where an Assistant Commissioner, left in general charge at the head-quarters of a district by the District Magistrate, transferred a criminal case from the file of one of the Magistrates attached to the district and tried it himself, notwithstanding that the fact that the transfer was illegal was brought to his notice.—*Held* that the order of transfer was illegal as passed without jurisdiction, and that the defect of continuing the trial could not be cured by s. 529 (*i*) of the Crim. Pro. Code. PUNNU v. EMPEROR, **150 P.L.R. 1903.**

(12)—*Power of a Magistrate to transfer a case already transferred to him, to be tried by another—Trial of accused by a Magistrate taking active part in the preliminary enquiry—Crim. Pro. Code* (1898), s. 192.—Where a District Magistrate referred a complaint to another Magistrate for disposal, that officer, though he may be empowered under s. 192 (2), Crim. Pro. Code cannot transfer it again to a third Magistrate. The trial of the accused by an officer, who has taken an active part in the preliminary enquiry, is against the interests of justice. CROWN v. NGA SO NAUNG, **1 L B.R. 86.** (2 C. 23, 8 B.L.R. 422, 23 C. 328, 7 M.H. C. App. 23, *F.*)

(13)—*Transfer of part-heard case to another Magistrate—Right of accused to have witnesses recalled and reheard—Crim. Pro. Code* (1898), s. 350—*Practice and procedure.*—S. 350 of the Crim. Pro. Code refers to cases in which a Magistrate ceases to exercise jurisdiction and is succeeded by another Magistrate. It relates to cases in which a Magistrate is succeeded in the same office by another Magistrate and not to cases of transfer from one Magistrate to another. In the latter case, the second Magistrate must begin the trial afresh. In any case, when acting under s. 350, Crim. Pro. Code, the second Magistrate should inform the accused of his option to have the witnesses re-heard, under proviso (*a*) of that section, and should record that he has done so. The law does not absolutely require this to be done. But, as a matter of practice, this procedure should be followed. CROWN v. CHIT TE, **1 L.B R. 287.**

(14)—*Trial begun by one Magistrate—Transfer to another—Recalling of witnesses already examined necessary—Crim. Pro Code* (1898), s. 192 (2).—Where a trial has been begun by one Magistrate and the case is transferred to another Magistrate under s. 192, sub-s. (2), of the Crim. Pro. Code, the second Magistrate cannot proceed with the trial, without recalling the witness already examined: he must begin the case *de novo*. CROWN v. TA LOK, **1 L.B.R. 301, F.B.** (1 L.B.R. 139, A.W N. 1889, 130, 12 A. 66, *R.*)

(15)—*Crim Pro. Code, ss* 195, 526—*Effect—Applications for sanction to prosecute—Transfer to what Court to be made.*—Assuming that s. 526 of the Crim. Pro. Code gives the High Court power to transfer the application for sanction as being a criminal case, the language of s. 195 indicates that any transfer so made would be ineffective and futile, unless the transfer was made to a Court to which the Court before which the application is pending is subordinate; for no Court could take cognizance of the case on a sanction granted

Transfer of Criminal Cases—continued.

——5.—**Miscellaneous Cases**—*continued.*

by any Court not mentioned in the section. EKAMBERASVARA AIYAR v. VEERABHADHRA DEVAN, **8 M.L.T. 297 = 7 Ind. Cas. 861 = 11 Cr. L.J. 534 = 20 M.L J. 982 = 1910 M.W N. 459.**

(16)—*Crim. Pro. Code* (1898), *s.* 526, *cl.* 8—*Refusal to give opportunity to the accused to apply for transfer—Legality of subsequent proceedings.*—The refusal by a Magistrate to grant a reasonable opportunity for the accused to apply for a transfer, before putting him on his defence, was illegal under Crim. Pro. Code, s. 526 (8), and the proceedings subsequently to such refusal were also illegal. CROWN v. SHEWA UKA, **3 S.L.R. 155 = 4 Ind. Cas 379 = 10 Cr. L.J. 570.**

(17)—*Cl.* 29, *Letters Patent, Calcutta—Power to transfer—"Competency" to investigate case.*—The construction of cl. 29 of the Letters Patent, 1865, is that the High Court has power, if, in its discretion, it thinks right to exercise it, to transfer the investigation or trial of any criminal offence committed in Calcutta to a mofussil Court, which is otherwise competent to try it, or to direct the trial by the High Court of an offence committed in the mofussil. The term "competent to investigate it" does not include competency as regards local jurisdiction, but only competency with regard to the offender, the nature of the offence, and the punishment. QUEEN v. NABADWIP CHANDRA GOSWAMI, **1 B.L R O.Cr. 15 = 15 W.R. Cr. 71, Note.**

(18)—*Illegal procedure by Magistrate—Magistrate antagonistic to accused—Power of High Court.*—Where the procedure in the case of a person charged with an offence was found to be irregular and illegal, and the Magistrate was prejudiced and antagonistic to the prisoner, the High Court made an order transferring the proceedings and directing the case to be tried by another officer appointed or deputed by the Government of Bengal to try the case. MOONSHEE SYUD ABDOOL KADIR KHAN v. MAGISTRATE OF PURNEAH, **11 B.L.R. Ap. 8 = 20 W. R. Cr. 23.** [4 B.L R. Ap. 1, *R.*]

(19)—*Power to transfer—Power of single Judge on original side of High Court.*—On an application made for the transfer of a case from the Sessions Court at Patna for trial by the High Court at Calcutta, on the grounds mainly that all but one of the charges against the prisoners were for offences committed in Calcutta; that the selection of Patna as the place of trial was calculated to prejudice the prisoners; that the police at Patna were getting up the case against the prisoners by improper and illegal means; that by these means was created such a feeling of dread and insecurity among the witnesses and others in Patna as would prevent a fair trial from taking place there; that some of the witnesses for the defence, although willing to give evidence in Calcutta, refused to go to Patna to give evidence, and that many difficult points of law were likely to arise at the trial; which allegations were, however, denied by the affidavits filed in opposition to the application: *held* (*Macpherson J.*, dubitante) that the High Court had power under cl. 29 of the Letters Patent to transfer the case for trial by itself. The Court, however, refused the application, on the ground that a sufficient case had not been made out for the exercise of the power of the Court. Per *Phear, J.*—A single Judge, sitting on the original side of the Court, has power to entertain an application for the removal of a criminal case from a Court in the mofussil to the High Court in the exercise of its extraordinary original criminal jurisdiction. QUEEN v. AMEER KHAN, **7 B.L.R. 240 = 15 W.R. Cr. 69.**

See ACT I OF 1871, ss. 20 to 23, 23 C. 300.

See ACT I OF 1871, ss. 20, 23, 26 P.R. 1879, Cr., F.B.

See ACT XIV OF 1874, ss. 3, 5, 6, 10 B. 274.

See ACT XXI OF 1879, s. 8, 9 B. 333.

See ACT XIII OF 1889, s. 7, Rat. Un. Cr. C. 849 = Cr. Rg. 16 OF 1896.

Powers of Local Government to transfer case—*See* BUR. ACT XVII OF 1875, 10 C. 643.

See ADJOURNMENT, 31 C. 715 = 8 C.W.N. 910.

See COGNISANCE OF OFFENCE, 14 Bur. L. R. 327 = 9 Cr. L J. 64.

See COMMITMENT TO SESSIONS COURT, 22 M. 148 = 2 Weir 150, 2 S.L.R. 9, Cr. = 10 Cr. L. J. 224.

See CRIM. PRO. CODE, 1898, ss. 4 (*k*), 145, 350, 13 C.W.N. 420 = 9 Cr. L.J. 278 = 1 Ind. Cas. 336.

Power to transfer security case against person residing outside district—*See* CRIM. PRO. CODE, 1898, s. 107, 24 A. 151 = A.W.N. 1901, 203.

See CRIM. PRO. CODE, 1898, s. 107, 31 C. 350.

On the ground of Magistrate acting on private information—*See* CRIM. PRO. CODE, 1898, ss. 110, 112, 190, 191, 27 A. 172 = 1 A. L.J. 685 = A W.N. 1904, 206.

See CRIM. PRO. CODE, 1898, s. 145, 28 C. 709 = 5 C.W.N. 749, 5 C.W.N. 696, 25 B. 179 = 2 Bom. L.R. 755, 26 M. 188 = 12 M.L.J. 391 = 2 Weir 678.

See CRIM. PRO. CODE, 1898, s. 190, 13 A. 345 = A.W.N. 1891, 102 = 3 P.R. 1910, Cr. = 35 P.W.R. 1909, Cr.

See CRIM. PRO. CODE, 1898, s. 191, 2 Weir 150.

See CRIM. PRO. CODE, 1898, s. 192, 12 A. 66 = A.W.N. 1890, 7, 1 L.B.R. 59.

See CRIM. RO. CODE, 1898, s. 192, 2 N.W. P. 21, 2 Weir 152.

See CRIM. PRO. CODE, 1898, ss. 200, 190 and 198, Colm. Dig. Cr. 57 of 1876.

Transfer of Criminal Cases—concluded.

—5.—**Miscellaneous Cases**—*concluded.*

See CRIM. PRO. CODE, 1898, s. 202, 21 C 920, 4 N.L.R. 81 = 8 Cr. L J. 20.

See CRIM. PRO. CODE, 1898, proviso to s. 341, 1 N.L.R. 187.

See CRIM PRO. CODE, 1898, ss. 342 and 362, 10 Bom. L.R. 201 = 7 Cr. L.J. 194.

See CRIM. PRO. CODE, 1898, s. 350, 13 C. W.N. 550, 12 C. W. N. 416 = 7 Cr. L.J. 220 = 7 C.L.J. 488 = 35 C. 457.

See CRIM PRO. CODE. 1898, s. 476, 1 A.L.J. 315.

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 22 C. 898, 2 C.L.J. 614 = 3 Cr. L.J. 83, 13 C.W.N. 530 = 36 C. 370 = 9 Cr. L.J. 399 = 1 Ind Cas. 817, 13 C.W.N. 125 = 4 Ind. Cas. 354, 11 O C. 61 = 7 Cr. L. J. 423.

See DISTRICT MAGISTRATE, POWERS OF, 27 C. 798.

See EVIDENCE—ADMISSIBILITY OF EVIDENCE, 1 C. 354.

See LETTERS PATENT—LETTERS PATENT, —BOMBAY, 1865, s. 29, Rat. Un. Cr. C. 110 = Cr. Rg. 5-10-1876.

See LETTERS PATENT—MADRAS, 1865, s. 29, 1 Weir 788-B.

See PENAL CODE, ss. 193, 199, 1 Weir 176.

See SECURITY FOR GOOD BEHAVIOUR, 16 A. 9 = A.W.N. 1893, 183, 19 A. 291 = A.W.N. 1897, 52, 27 A. 172 = 1 A.L.J. 685 = A.W.N. 1904, 206, A.W.N. 1907, 268 = 30 A. 47 = 7 Cr. L.J 214, 12 C W.N. 299 = 7 C.L J. 177 = 35 C. 243 = 7 Cr. L. J. 146, 9 Cr. L. J. 246 = 1 S L. R. 2, Cr., 1 S L.R. 93, Cr. = 8 Cr. L. J. 356.

See SECURITY TO KEEP THE PEACE—FINAL ORDER—ORDER LIMITED BY REQUISITION, 11 C.W.N. 121 = 4 Cr. L. J. 456.

See SECURITY TO KEEP THE PEACE—SUMMONING WITNESSES, 4 C. L.R. 452.

Transfer of Magistrates.

See MAGISTRATE, JURISDICTION OF—TRANSFER OF MAGISTRATES DURING TRIAL.

Conferring of appellate powers—Continuance of powers—*See* CRIM. PRO. CODE, 1898, s. 40, 2 Bom. L.R. 536.

Transfer of Property.

Fraudulent transfer of property, conviction for—*See* PENAL CODE, s. 421, L. B. R. 1893—1900, 593.

Transfer of Property Act.

See ACT IV OF 1882.

Transfer of Sessions Cases.

(1)—*Crim. Pro. Code, s.* 178.—When the Local Government, acting under s. 178, Crim. Pro. Code, 1882, transferred a case duly committed to the Sessions Court of the Recorder of Rangoon to be tried in the Sessions Division of Pegu, and the case was tried by the Sessions

Transfer of Sessions Cases—*concluded.*

Judge of Pegu, the Court refused to interfere, whether or not the Sessions Judge, had jurisdiction, there being nothing to show that, if any error had been committed, there had been a failure of justice. Per *Prinsep* and *O'Kineally JJ.*—The Local Government has no power, under s 178, Crim. Pro. Code, 1882, to transfer a case duly committed to the Sessions Court of the Recorder of Rangoon from the Court of the Recorder to that of the Commissioner and Sessions Judge of Pegu. NGA THA MAUNG v. QUEEN EMPRESS, L.B R. 1872-1892, 263.

Transfer of Territory.

Offence committed in British India—Subsequent transfer of territory to an independent Native State—Jurisdiction—*See* JURISDICTION-GENERAL, 8 A.L.J. 630 = 11 Ind. Cas. 585 = 33 A. 578 = 12 Cr. L.J. 401.

Order of appellate Court in British India directing re-trial—Passed after Benares State was formed—Whether valid—*See* JURISDICTION-GENERAL, 8 A.L.J. 705 = 11 Ind. Cas. 1006 = 12 Cr. L.J. 470.

Translation.

Copyright whether infringed by—*See* ACT XXV OF 1867, 14 B. 586.

Record of, to be accompanied by English—*See* CONFESSION—CONFESSIONS TO MAGISTRATES—ADMISSIBILITY—RECORD OF CONFESSIONS, 18 W.R. Cr. Cir. 9.

See CONFESSION—CONFESSIONS TO MAGISTRATES—ADMISSIBILITY—RECORD OF CONFESSIONS, 16 C.P.L.R. 122.

Deposition given in Hindustani taken down in English—Proper deposition—Endorsement by Magistrate, evidence of its truth and correctness of—*See* FALSE EVIDENCE, 22 W. R.Cr. 2.

See MAGISTRATE, DUTY OF, 1 B.H.C. 17, Cr.

Transport.

Duty of owners of animals to supply transport to Executive and Revenue officers—Refusal to supply transport—Effect—*See* PENAL CODE, ss. 99, 353, 38 P.W.R. 1913, Cr. = 325 P.L.R. 1913 = 14 Cr.L.J. 512 = 20 Ind. Cas. 992.

Transportation.

See SENTENCE—TRANSPORTATION.

(1)—*For periods less than life — Sessions Judges to exercise a sound discretion in passing such sentences.*—Sentences of transportation, when passed for periods less than life, cannot, in consequence of the Government resolution restricting transportation to Port Blair to the cases of life-convicts, be carried into effect as sentences of transportation beyond the sea, but will operate substantially as sentences of imprisonment. Sessions Judges should exercise a sound discretion in passing sentences of transportation and should keep in view that a

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sentence of imprisonment involves greater suffering than a sentence of transportation for an equal period. CRIMINAL CIR. NO. 1, DATED 17TH JANUARY 1870, **13 W.R. Cr. Cir. 1.**

See SESSIONS JUDGE, JURISDICTION OF, Rat. Un. Cr. C. 144 = Cr. Rg. 1-10-1879.

Transportation for Life.

(1)—*Crim. Pro. Code* 1882), *s.* 397.—S. 397, Crim. Pro. Code, is not applicable where an accused person has been previously sentenced to transportation for life. The law nowhere provides that, for other purposes than the calculation of fractions of terms of punishment, transportation for life, is to be treated as transportation for only twenty years, though, as a matter of fact, the Government treats such a sentence of transportation as one for a certain number of years, and therefore it might be possible for a person sentenced to transportation for life to undergo a further sentence of transportation. The sentencing Court must regard a sentence of transportation for life as a sentence of transportation for the whole of the remaining period of the convicted person's natural life. NGA THA BYIT v. QUEEN-EMPRESS, **L.B.R. 1893—1900, 13.**

Transport of Native Labourers Act.

See BEN. ACT III OF 1863.

See BEN. ACT VI OF 1865.

Travelling.

Season ticket holder, without ticket—*See* ACT IV OF 1879, s. 31, 12 C. 192.

In a train by a person suffering from Cholera—*See* PENAL CODE, s. 269, 7 M. 276 = 1 Weir 226.

Treason.

See WAGING WAR AGAINST THE QUEEN, 7 B.L.R. 63 = 15 W.R. Cr. 25.

Treasure Trove Act.

See ACT VI OF 1878.

Tree.

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 11 C.W.N. 198 = 5 Cr. L.J. 32.

Custom of bringing an idol once a year underneath a tree for worship—Removal of the tree, if an offence—*See* MISCHIEF, 1 Weir 496.

Sale of unsevered trees—*See* THEFT—GENERAL—WHAT CONSTITUTES THEFT, 1 Weir 419.

Severance of, from earth—*See* THEFT—GENERAL—WHAT CONSTITUTES THEFT, 1 Weir 383 = 5 M.H.C. App. 36.

Cutting bark from trees in Government forest—*See* THEFT—THINGS IN RESPECT OF WHICH THE OFFENCE OF THEFT CANNOT BE COMMITTED, 1 Weir 411.

Removal by tenant of zamindar's—*See* THEFT—THINGS WHICH MAY BE THE SUBJECT OF THEFT, A.W.N. 1881, 73.

Tree Patta.

Holder of a—, if an occupier of land—*See* MAD. ACT V OF 1882, s. 6, 12 M. 203 = 1 Weir 758, F.B.

See MAD. ACT V OF 1882, ss. 6, 10, 12 M. 226 = 1 Weir 761.

Trespass.

See CATTLE TRESPASS.

See CRIMINAL TRESPASS.

See HOUSE TRESPASS.

See PENAL CODE, ss. 441, 459, 460.

(1)—*Penal Code, ss.* 441, 447—*Trespass*—Bona fide *claim of joint ownership.*—There the accused, charged with criminal trespass under s. 447, I.P.C., for having interfered to prevent the complainant from erecting a wall on a certain land, pleaded that the land was the joint property of the complainant and the accused, *held* that, if the accused went on to the land, in good faith, believing it to be joint property, to assert their right, and not with the objects mentioned in the section, they were not guilty of the offence and that the fact that the accused sued and got a decree declaring the land to be joint, together with the fact that it formed part of a *Sahan* (court-yard) before the houses of the parties, would show clearly that the accused had good grounds for believing that the land was joint property. EMPRESS v. NANAK CHUND, **A.W.N. 1883, 188.**

(2)—*Penal Code, s.* 447—*Trespass upon land used as a pathway—Question of title.*—In a case brought against the accused for trespass upon land used by the complainant as a pathway, when a question of title to the land is raised, between the parties, the accused cannot be convicted under s. 447, merely on the finding that the complainant has been using the pathway for more than six months, the question of title being left undecided. RABI LOCHAN v. PURNA CHANDRA DEY, **11 C.W.N. 171 = 5 Cr. L.J. 14.**

(3)—*Tort—Trespass—Police officer—Trespass on person—Master and servant—Loss of service.*—If a police officer, in order to arrest suspected persons, enters into a building, his action would be *prima facie* justifiable. In order to maintain an action for trespass to the person of a servant, it must be shown that the plaintiff was, by reason of defendant's conduct, deprived of the benefit of the servant's service. BRAJENDRA KISSORE ROY CHOWDHARI v. M.A. LUFFEMAN, **13 C.W.N. 485 = 9 C.L.J. 298.**

(4)—*Penal Code, ss.* 79, 97, 99—*Wrongful distraint of crops—Distraint without notice—Resistance—Act* X *of* 1859, *s.* 116—*Bail.*—A Zamindar is justified in exercising his right of private distraint of crops, if he has previously served the defaulters with written notices under Act X of 1859, s. 116, and in such a case, ryots, who knowingly resist the distraint, are not protected by the Penal Code, s. 79. If notices or demands under s. 116 of Act X of 1859, were not served, then the ryot-owners of crops upon which the Zamindar's people were entering with the intention of distraining without

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notice would have been justified in considering the action of those people as a trespass. *Quære* —Would the ryots in the latter case be protected by the provisions of the Penal Code, ss. 97 and 99, in preventing the distraint and confining the men employed to make it. A Sessions Judge acting under s. 296, Crim. Pro. Code, 1872, cannot admit a convicted person to bail. QUEEN v. KANHAI SAHU, **23 W.R. Cr. 40.**

(5)—*House-trespass—S.* 452, *Penal Code.*—Where A goes with a forged warrant of arrest into a house, and takes away one of the inmates against his will under the authority of such warrant, he is guilty of house-trespass by putting such person in fear of wrongful restraint under s. 452 of the Penal Code. QUEEN v. NUND MOHUN SIRKAR, **12 W.R. Cr. 33.**

See CRIM. PRO. CODE, 1898, s. 145, 8 M.L.T. 289 = 8 Ind. Cas. 397 = 11 Cr. L. J. 644.

Distinction between civil and criminal—*See* CRIM. PRO. CODE, 1898, s. 307, 16 C.W.N. 668 = 15 Cr. L.J. 155 = 22 Ind. Cas. 731 = 41 C. 662.

Remoteness of damages—Suit for—Expenses of criminal proceedings—*See* DAMAGES, 4 M.H. C. 410.

By cattle—*See* NUISANCE UNDER CRIMINAL PROCEDURE CODE, 3 B.L.R. A. Cr. 45 = 12 W.R. Cr. 36.

Repelling—by force if any offence—*See* PENAL CODE, ss. 99, 147, 18 C.W.N. 275 = 15 Cr. L.J. 209 = 22 Ind. Cas. 993.

Land under attachment—upon that land—*See* PENAL CODE, ss. 188, 447, 8 M.L.J. 253.

On burial ground—Ploughing up burial ground—Joint owner—*See* PENAL CODE, s. 297, 8 A.L.J. 927 = 12 Ind. Cas. 300 = 12 Cr. L.J. 532.

Trespass on burial place—*See* PENAL CODE, s. 297, 18 A. 395 = A.W.N. 1896, 119.

Burial ground, if should be in use—Depository for the remains of the dead—on—Knowledge or intention requisite to constitute offence —*See* PENAL CODE, ss. 297, 441, 17 C.W.N. 534 = 18 Ind. Cas. 677 = 14 Cr. L.J. 117 = 40 C. 548.

Civil and criminal—Distinction—*See* PENAL CODE, s. 441, 16 C.W.N. 1007 = 13 Cr. L.J. 783 = 17 Ind. Cas. 415.

House-trespass—to establish title—Intention to annoy or intimidate—Inference of intention from acts—*See* PENAL CODE, ss. 441, 457, 9 Ind. Cas. 152 = 21 M.L.J. 161 = 9 M.L.T. 283 = 12 Cr. L.J. 30.

Criminal force not an essential element—*See* PENAL CODE, s. 447, 8 Ind. Cas. 219 = 11 Cr. L.J. 594.

See RESTORATION OF PROPERTY, 7 C.L.J. 175 = 12 C.W.N. 269.

Trespass (Cattle) Act.

See ACT III OF 1857.

See ACT I OF 1871.

Trespasser.

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 6 M.H.C. App. 13.

Jury trial—Misdirection—Citation of rulings in the charge to the jury—Right of private defence, when, have begun cutting crop—*See* MISDIRECTION, 16 C.W.N. 46.

Trial.

See AUTREFOIS ACQUIT, PLEA OF.

See AUTREFOIS CONVICT, PLEA OF.

See CROSS-COMPLAINTS.

See FRESH TRIAL.

See JOINT TRIAL.

See RE-TRIAL.

See SEPARATE TRIAL.

See SESSIONS TRIAL.

See SUMMARY TRIAL.

See SUPPLEMENTARY TRIAL.

See TRIAL BY JURY.

(1)—*Crim. Pro. Code, ss.* 403, 439—*Fabrication of several false documents—Trial for some of the offences—Subsequent trial, on acquittal, for others.*—Six documents were fabricated at one and the same time. The accused was at first charged with the fabrication of only three of them. On the acquittal of the accused by the High Court, he was subsequently charged with the fabrication of the other three. *Held*, that the accused was technically liable, to be tried a second time and could not plead in bar his former trial. *Held* further, that the fabrication of all the documents being one single transaction and having been treated at the former trial as such, no second trial should take place, notwithstanding that there was no legal bar. INAMULLA v. KING-EMPEROR, **2 A.L.J. 673 = A.W.N. 1905, 238 = 2 Cr. L J. 790.**

(2)—*Object of criminal trial—Admission by prisoner and his counsel—Conviction in a criminal trial.*—"The object of a trial is the administration of justice in a course as free from doubt or chance of miscarriage, as merely human administration of it can be—not the interest of either party." These observations of the Lords of the Privy Council in I.P.C., 534, apply to trials in India except so far as the Indian Codes allow statements to be made by prisoners and, under certain circumstances, solemn and precise admissions by their counsel. But, if a counsel says "admitting for the sake of argument that there was a dacoity, the prisoner is not proved to have been present," that is no admission at all. Even when there have been admissions, the Court ought to be scrupulous in fixing attention on the point of *corpus delicti* as is shown in the reported trials for witchcraft, where many innocent persons suffered. Every allegation of the commission of legal crimes involves the establishment of two distinct propositions, namely, that an act has been committed from which legal responsibility arises, and that the guilt of such act attaches to a particular individual, though the evidence is not always separable into distinct parts or applicable to

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each of those propositions. Such a complication of difficulties occasionally attends the proof of crime, and so many cases have occurred of conviction for alleged offences which have never existed, that it is a fundamental and inflexible rule of legal procedure of universal obligation, that no person shall be required to answer, or to be involved in the consequences of guilt, without satisfactory proof of the *corpus delicti* either by direct evidence or by cogent and irresistible grounds of presumption. QUEEN-EMPRESS v. KALLAPPA, **Rat. Un. Cr. C. 806.**

(3)—*Crim. Pro. Code (Act X of 1882), ss. 123, 193—Reference by Magistrate—Case committed for a trial—Meaning.*—A reference by a Magistrate under s. 123 of the Crim. Pro. Code is not a case "committed for trial," and the Sessions Court disposing of such reference does not "try a case" within the meaning of s. 195. QUEEN-EMPRESS v. DAYARAM RANCHOD, **Rat. Un. Cr. C. 830, F.B. =Cr. Rg. 73 of 1895.**

(4)—*Crim Pro. Code* (1872), *ss* 216, 220—*Failure to frame a charge*—Where the trial was in every way complete, except, that there was no written formal charge, *held* that the absence of a written formal charge had caused no failure of justice. *In the matter of* JOJA PASHAN, **3 C.L.R. 131.**

(5)—*Trial of murder cases.*—Sessions Judges should make arrangement for trying, at the commencement of the Sessions, all cases in which murder is one of the offences charged. CRIMINAL CIR. NO. 8, 4TH AUGUST 1865, **3 W.R. Cr. Cir. 4.**

(6)—*Postponement of trial.*—Criminal trials are not to be postponed. At each periodical sessions, all persons awaiting trial should be brought before the Judge in open Court and, if the Government prosecutor is not prepared to go to trial in any particular case, he should be required to show cause, properly supported, why the accused should not be acquitted and released, the accused himself being also heard in answer to such cause shown. Where any postponement is made, the ground of such postponement is to be shortly stated. CRIMINAL CIRCULAR NO. 4 OF 1868, **9 W.R. Cr. Cir. 5.**

(7)—*Rules regarding the conduct of—Crim. Pro. Code* (1861), *ss.* 66 *and* 180—*Object of the rules.*—(1) Complaints should be received at a fixed hour each day and should be immediately numbered in the order of their receipt. (2) The examination of the complainant is not to be a mere form, but must be an intelligent enquiry into the subject-matter of the complaint. (3) The examination of the complainant is to be upon oath or solemn affirmation. (4) If there is sufficient ground for proceeding, the Magistrate is to issue his summons or his warrant as the case may be, for the appearance of the accused before himself or any other Magistrate having jurisdiction. If there is no sufficient ground, he is to dismiss the complaint. (5) The provision of s. 180 should be resorted to in case of doubt in respect of the offences to which this section applies. The real object of the above rule is to ensure that no persons shall be compelled to appear before Magistrate to answer to a criminal charge, unless the Magistrate has first satisfied himself that there is reason for proceeding against such person. CRIMINAL CIRCULAR NO. 5-A OF 1868, **10 W.R. Cr. Cir 1.**

(8)—*Separate trials and convictions on the same collection of facts.*—There should not be two trials and two convictions before two separate tribunals on the same collection of facts, the requisite intention in the one case being the substantive delict in the other, as in the case of adultery and enticing away a married woman. HIGH COURT PROCEEDINGS, 10TH FEB. 1870, **5 M.H.C. App. 16.**

(9)—*Magistrate having personal interest.*—It is not proper that a Magistrate should try a case in which he has any personal interest. QUEEN-EMPRESS v. NYAN ON GAING, **L B R. 1872—1892, 153.**

(10)—"*Personally interested*"—*Meaning.*—It is essential not only that there should be no personal interest or prejudice on the part of the judicial officer, which would disqualify him from trying a particular case, but also that the mere appearance of prejudice should be avoided for the sake of protecting the administration of justice from the possibility of an imputation of partiality or unfairness. NGA THAW v. QUEEN EMPRESS, **U.B.R. 1897—1901, Vol. I, 123.**

(11)—*Magistrate — Discovery of crime and collection of evidence by himself — Trial by such Magistrate—Impropriety.*—As a general rule, it is undesirable that a Magistrate who, by local investigation while on tour, having himself discovered the existence of crime, and collected or ascertained evidence in support of it, thereafter directs, recommends or invites the institution of judicial proceedings against it, should try the supposed criminal. Wherever the circumstances are such as to indicate in a reasonable way that the Magistrate has formed even a *prima facie* opinion on questions of fact which he would have to try, the subsequent trial of such matters by him becomes a mere form and a pretence, or represents a mere revision of the prejudice of the Magistrate. BHOP SINGH v KERMOTI, **8 N.L.R. 1=14 Ind Cas. 428=13 Cr. L J. 236.** (22 W.R. Cr. 75, 23 C. 328, 20 W.R. Cr. 76, 15 C P.L R. 192, 10 C.W.N. 441, *R.*) [*R.*, 14 Cr.L.J. 385=20 Ind. Cas. 209=9 N.L.R. 81.]

(12)—*Criminal trial—Initiation of prosecution at Assistant Collector's instance—Examination of witnesses for prosecution—Recalling and re-examining them under Assistant Collector's orders—Illegality — Trial invalid—Want of jurisdiction.*—Where a Magistrate, who tried a tapedar for misappropriating monies paid to him for Government assessment, recalled and re-examined, under the directions of the Assistant Collector, two witnesses who had already

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given evidence for the prosecution. *Held* that, in so doing, the Magistrate virtually abdicated his magisterial function and became a mere delegate of the Assistant Collector who had initiated the prosecution, and that the trial was without jurisdiction, as a Magistrate cannot be both Judge and a delegate of the prosecutor. IMPERATOR v. NARIBUX *wd.* UMERKHAN, **7 S.L.R. 82**=**15 Cr.L.J. 376**=**23 Ind. Cas. 743.**

(13)—*Illegal arrest, if invalidates trial.*—An illegal arrest does not necessarily invalidate the trial. A.L. HIN v. QUEEN EMPRESS, **U.B.R. 1897—1901, Vol. I, 182.** (U.B.R. 1892—1896, Vol. I, 96, L B.R 1893—1900, 369, *F.*)

(14)—*Crim. Pro. Code—Trial with assessors—One of them found disqualified to act after the trial was begun—Procedure*—De novo *trial.*—Where it is discovered, after the trial has begun in a case tried with the aid of assessors, that one of them was interested or otherwise unfit to sit as an assessor, the Sessions Judge should get the High Court to set aside the order by which the incompetent assessor was appointed and all the subsequent proceedings in the trial. In such cases the Sessions Judge ought to choose another assessor and proceed with the trial *de novo.* SESSIONS JUDGE OF TANJORE v. THIAGARAJA THEVAN, **1912 M.W.N. 378**=**15 Ind. Cas. 313**=**13 Cr. L J. 473.**

(15)—*Trial by jury—Judge's summing up—Neither law nor facts lucidly stated—Trial irregular.*—Where, in a trial by jury, the charge of the Sessions Judge to the jury was by no means a lucid statement either of the law bearing on the charges against the prisoners, or of the evidence of the prosecution and the defence, or of the points which required consideration in determining the truth or otherwise of the charges: *Held*, that the trial was irregular. *In re* PALAVESA TEVAN, **9 M.L T. 345**=**9 Ind. Cas. 788**=**12 Cr. L.J. 140**=**1911, 1 M W.N. 190.**

Venue of trial material only where accused is prejudiced—Record in summary trials, contents of—*See* BUR. ACT IV OF 1899, s. 30, cl. (c), 12 Cr. L.J. 280=10 Ind. Cas. 921.

See ASSESSORS, 21 A. 106=A.W.N. 1898, 185, 5 N.W P. 110.

Bench of Magistrates—Absence of one of them during a portion of the trial—*See* BENCH OF MAGISTRATES, 13 C.L.R. 212.

Where to be conducted—If at the place where act is done or consequence ensued—*See* CRIM. PRO. CODE, 1898, s. 179, 4 O.C. 376.

See CRIM. PRO. CODE, 1898, ss. 285 and 537, 24 M. 523=2 Weir 340.

On evidence recorded partly by another Judge—*See* CRIM. PRO. CODE, 1898, s. 350, 26 B. 50=3 Bom. L.R. 558.

See CRIM. PRO. CODE, 1898, ss. 350, 357, 25 C. 863=2 C.W.N. 465.

Trial—*concluded.*

See CRIM. PRO. CODE, 1898, ss. 350, 437, 254, 253 (2), 16 M.L.J. 303=27 M.L.J. 589=1914 M.W.N. 546=15 Cr. L.J. 673=25 Ind. Cas. 1001.

Resumption of—after an order of acquittal has been passed—*See* CRIM. PRO. CODE, 1898, s.403, 2 C.P.L.R. 66.

Legality of trying accused twice on same facts *See* CRIM PRO. CODE, 1898, s. 403, 3 L. B.R. 253=5 Cr. L.J. 412.

See CRIM. PRO. CODE, 1898, s. 487, Colm. Dig. Cr. 41 of 1876.

Joint trial—What constitutes—Test— *See* EVIDENCE ACT, 1872, ss. 30, 114 (*b*), 133, 3 U.B.R. 1913, 2nd Qr. 170=18 Ind. Cas. 166=14 Cr. L.J. 566.

Purpose of criminal trial—*See* PENAL CODE, ss. 114, 302, 19 C.W.N. 28.

See PENAL CODE, s. 147, L.B.R. 1872—1892, 275.

Trial held without jurisdiction — False statement—*See* PENAL CODE, ss. 191, 193, 1 Weir 151.

Hasty trial improper—Reasonable adjournment to be granted to accused to substantiate his defence—*See* PENAL CODE, s. 411, 18 P.W.R. 1914, Cr. =113 P.L.R. 1914=15 Cr. L.J. 521=24 Ind. Cas. 833.

Preliminary enquiry whether a—*See* PRELIMINARY ENQUIRY, 4 C.L.R. 413.

See RIOTING, 8 C.W.N. 344.

Trial by Jury.

See CHARGE TO JURY.

See CRIM. PRO. CODE, 1898, ss. 297—307.

See JURY.

(1)—*Crim. Pro. Code* (1898), *ss.* 269 (3) *and* 307—*Sessions Judge—Trial by jury—Charges under ss.* 304 *and* 325 *of Penal Code—Verdict of jury on the minor charge—Disagreement between Judge and Jury—Reference to High Court.*—The accused were tried by the Judge with jury on charges under ss. 304 and 325 of the Penal Code. The jury found the accused guilty with respect to the charge under s. 325; with this verdict the Judge disagreed, and he referred the case to the High Court under s. 307 of the Crim. Pro. Code. *Held*, that the case should be sent back to the Judge who tried it, with a direction, that he should pass orders and dispose of it as in a case tried by him with the aid of assessors on the minor charges against the accused, under s. 325. EMPEROR v. VYANKATSING SAMBHUSING, **9 Bom. L.R. 1057**=**7 Cr. L J. 236.**

(2)—*Crim. Pro. Code* (1898), *s.* 269—*Trial by jury—Trial with assessors—Difference in the procedure—Practice—Accused's right to complain.*—The law makes no distinction as to the procedure at the trial, between a trial by a jury, and one with the aid of assessors, except as to the summing up in the case of the former—and the manner in which the verdict in the former and the opinion of the assessors in the

Trial by Jury—*continued.*

latter are respectively taken. It is at this latter point that there is a departure of ways, and if the accused who is tried does not intervene at that crucial point, and get the procedure applicable to trials with the aid of assessors enforced, he cannot be heard to complain. EMPEROR v. MAVSANG BECHAR, **11 Bom. L.R. 350 = 33 B. 423 = 2 Ind. Cas. 480.**

(3)—*Crim. Pro. Code* (1882), *s.* 303—*Sessions Judge, duty of, to call on jury to return verdict on each head of charge.*—Under s. 303, Crim. Pro. Code in a trial by a jury, the Sessions Judge ought to call on the jury to return a verdict on each one of the heads of a charge. If the trial is for murder of two persons, and the jury returns a verdict of guilty, the Sessions Judge should ascertain whether the verdict relates to the killing of one or the other or both. QUEEN-EMPRESS v. BERKIA MANKIA, **Rat. Un. Cr. C. 746 = Cr. Rg. 14 of 1895.**

(4)—*Crim. Pro. Code* (*Act* X *of* 1882), *s.* 298 —*Evidence Act* I *of* 1872, *s* 114—*Accomplice witness—Practice.*—In a trial by jury, the Judge ought to direct the jury that earlier statements of an accomplice are not such evidence as could corroborate his testimony (11 B.H.C.R. 196, 1 B. 475, *F.*) The corroboration must relate to the identity of each of several accused persons. QUEEN-EMPRESS v. GENU GOPAL, **Rat. Un. Cr. C. 840 = Cr. Rg. 10 of 1896.** (3 B.H.C. 57, *F.*)

(5)—*Accomplice evidence—Trial by jury—Practice.*—In a trial by jury, the Sessions Judge should state not only that the evidence of an accomplice requires corroboration, but also that the corroboration should relate to the identity of each of the accused. QUEEN-EMPRESS v. DHONDI *bin* RAOJI, **Rat. Un. Cr. C. 848 = Cr. Rg. 15 of 1896.**

(6)—*Duty of Sessions Judge.*—Where a trial by jury lasts over several days, the record should show that the Sessions Judge read over the important testimonies *in extenso* in his charge to the jury. QUEEN-EMPRESS v. FAKIRA *bin* VENKAPPA, **Rat. Un. Cr. C. 850.** (23 W.R. 32, 5 B.H.C. 93, *R.*)

(7)—*Right to, whether can be taken away by Crim. Pro. Code*—Ultra vires—*Indian Councils Act* 1861, s. 22.—The right to trial by jury can be taken away by the Code of Criminal Procedure. Such a provision cannot be said to be *ultra vires*, as contravening the terms of the proviso to s. 22, Indian Councils Act, 1861. BARINDRA KUMAR GHOSE v. EMPEROR, **37 C. 467 = 14 C.W.N. 1114 = 7 Ind. Cas. 359 = 11 Cr.L.J. 453.**

(8)—*Crim. Pro. Code* (1898), ss. 297, 418, 423—*Trial by jury—Appeal—*'*Misdirection,*' *meaning of—Defective summing up, when misdirection—Question of law—English and Indian Law.*—*Held* that, in a case tried by jury, an appeal will only lie to the High Court on a point of law (s. 418, Crim. Pro. Code). *Held*, also, that the expression "misdirection," as used in the Crim. Pro. Code, includes not only an error in laying down the law by which the jury are to be guided, but also an error in summing up the evidence; for, a defective summing up of the evidence is an infringement of s. 297, Crim. Pro. Code, and is, therefore, a mistake of law. It is open to a Judge to refer the jury to the arguments of pleaders, but he should not omit matters of prime importance. A non-direction is not a misdirection, unless it is on a matter of prime importance, and especially if it tells in favour of the accused. Difference between the English Law and the Indian Law on the subject of 'misdirection' discussed. IMPERATOR v. MUNHWASAYO, **3 S.L.R. 102 = 4 Ind. Cas. 597 = 11 Cr.L.J. 13.**

See IRREGULARITY, Rat. Un. Cr. C. 961 = Cr. Rg. XV of 1898.

Trial of Summons Cases.

See CRIM. PRO. CODE, 1898, ss. 241—249.

Trial of Warrant Cases.

See CRIM. PRO. CODE, 1898, ss. 251—259.
See WARRANT CASE.

Tributary Mehals.

See JURISDICTION OF CRIMINAL COURTS—GENERAL, 8 C. 985 = 11 C.L.R. 241. F.B., 7 C. 523 = 9 C.L.R. 93, 16 C. 667.

Trover.

(1) *Suit to recover notes gained by gambling—Act* XXI *of* 1848—*Illegal consideration*—Bona fide *holder for value—Trust for specific purpose.*—The plaintiff, the manager of the Oriental Bank, placed in the hands of D, a broker, thirteen Government Currency notes for Rs. 1,000, each on D's representation that there was some Company's paper at a certain place, which he could procure at a more reasonable rate than in the Calcutta market, if the money were given him to purchase it. If the Company's paper was not procurable, the notes were to be returned to the plaintiff. D did not go to the place stipulated to purchase the Company's paper, but, meeting the defendant and others, he went into a house hired for gambling, and lost at cards, and paid away to the defendant some of the notes he had received from the plaintiff. The plaintiff now sued the defendant to recover the notes so entrusted to D, on the allegation that they had been entrusted by him to D for a specific purpose, and that the defendant was not a *bona fide* holder for value. He (the plaintiff) stated in evidence that, if the paper had been bought, he would either have taken the papers at the most favourable market price for the Bank, or have sold them and given D the profit." *Held*, the plaintiff was entitled to recover. The defendant was not a *bona fide* holder for value, Per *Paul, J.*, in the Court below, and Per *Nrman J.*, on appeal—The notes were especially entrusted to D for the purchase of the Company's paper. Per *Phear J.*—Upon the case put forward by the plaintiff, the transaction was a short loan, and not a bailment, and

Trover—*concluded.*

did not bear the character of a trust. But, upon the evidence, the notes were the property of the bank, and remained so in D's hands, and, therefore, the plaintiff was entitled to recover on behalf of the bank. BULDEO NARAYAN v. SCRYMGEOUR, 6 B L.R. 581.

Trust.

See CRIMINAL BREACH OF TRUST.

Arising from duty of public servant—Penal Code, s. 409—*See* CRIMINAL MISAPPROPRIATION, 13 W.R.Cr. 77.

Advances to brokers for supply of paddy —Absence of pro-notes—Undertaking to apply advances to purchasing paddy for advancing firm—Transaction whether loan or trust—*See* PENAL CODE, s. 405, 14 Cr.L.J. 145=19 Ind. Cas. 145=7 L.B.R 16=6 Bur. L.T. 13, F.B.

Breach of trust—Advance to brokers on pro-notes—Loan or—Debtor and creditor —Trust—*See* PENAL CODE, s. 405, 6 L.B.R. 62=17 Ind. Cas. 824=5 Bur. L.T. 143=13 Cr. L.J. 888, F.B.

Money entrusted to broker—Broker to bear all loss—Broker whether liable for criminal breach of trust—*See* PENAL CODE, s. 405, 15 Cr. L.J. 452=24 Ind. Cas. 332=7 Bur. L. T. 209, F.B.

Advance for purchase of paddy—Balance of —Criminal breach of trust in respect thereof—Transaction only a loan—No—No offence—*See* PENAL CODE, s. 409, 6 L.B.R. 46=14 Ind. Cas. 653=13 Cr.L J. 269=5 Bur. L.T. 11.

Trustee.

See PENAL CODE, s. 379, L.B.R. 1872—1892. 410.

Of temple whether liable to be punished for theft of temple property—*See* PENAL CODE, ss. 380, 381, 457, 6 M.L.J. 14=26 M. 243, Note.

Uganda, Consular Court of.

See CONSULAR COURT, Rat. Un. Cr. C. 880=Cr. Rg 3 of 1897.

See EVIDENCE ACT, 1872, s. 57, 22 B. 54.

See JURISDICTION OF CRIMINAL COURTS, —GENERAL, 22 B. 54.

Ultra Vires.

See ACT XXVI OF 1850, ss. 7, 10, 12, 8 B.H. C. Cr. 39.

See ACT I OF 1878, ss. 5 and 9, 1 S.L.R. Cr. 70=8 Cr.L.J. 188.

See ACT I OF 1878, s. 9, 13 Cr L.J. 58=13 Ind. Cas. 394=4 Bur. L.T. 271.

See ACT I OF 1878, ss. 9, 13, 13 P.R. 1894, Cr.

See ACT III OF 1880, s. 22, Rat. Un. Cr. C. 413=Cr. Rg. 80 of 1888.

General Rules — Great Indian Peninsula Railway working time-table, O. VII—Rules not invalid—Guard's duty to see the pair of points to ensure the safety of his train—*See* ACT IX OF 1890, s. 47, 12 Bom. L.R. 930=8 Ind. Cas. 134.

Ultra Vires—*concluded.*

See ACT III OF 1897, s. 3, (1913) M.W.N. 928=14 M.L.T. 443.

See BEN. ACT V OF 1876, s. 313, 21 C. 837.

Bye-law No. 64 made under s. 350—Reasonable construction—*See* BEN. ACT III OF 1899, ss. 350 and 270, 10 C.W.N. 667=3 Cr. L.J. 450.

See BOM. ACT VI OF 1863, ss. 22 and 25, 2 S. L.R. 20, Cr.=10 Cr.L.J. 233.

See BOM. ACT VII OF 1867, 7 B.H C. Cr. 6.

See BOM. ACT III OF 1888, s. 249, 24 B. 75=1 Bom. L.R. 431.

See BOM. ACT IV OF 1890, ss. 42, 68 (*a*), 14 Bom. L R. 158=14 Ind. Cas. 974=1 Bom. Cr. C. 99=13 Cr. L.J. 430=36 B. 504.

See BUR. ACT III OF 1889, L B.R. 1872—1892, 535.

See BUR. CT III OF 1898, ss. 130, 147, 180, 4 L.B.R. 14 =14 Bur. L.R. 125=7 Cr.L.J. 441.

See PUN. ACT XX OF 1891, ss. 26, 122, 169, 92 P.L.R. 1905=26 P.R. 1905, Cr.=2 Cr.L.J. 371.

See U P. ACT I OF 1900, ss. 88, 147, 152, 9 O C. 29=3 Cr.L.J. 205.

Bench of Honorary Magistrates—Chairman's casting vote—Rule 6 of the Government rule whether—*See* CRIM. PRO. CODE, 1898, s. 16, cl. (*d*), 3 C.L.J. 492, F.B.=10 C.W.N. 642.

See CRIM. PRO. CODE, 1898, ss 16, 350, 20 C. 870.

See CRIM. PRO. CODE, 1898, ss. 145, 146, 8 M.L.T. 314=7 Ind. Cas. 895=11 Cr.L.J. 536 =(1910) M.W.N. 821, 2 Weir 106.

See CRIM. PRO. CODE, 1898, s. 188, 2 Weir 148.

Prosecution in confirmity with an order—*See* CRIM PRO. CODE, 1898, s. 190, 87 P.L R. 1910=8 Ind. Cas. 247=11 Cr.L.J. 602.

See CRIM. PRO. CODE, 1898, s. 192, 12 A L. J. 225=36 A. 166=15 Cr. L.J. 406=23 Ind. Cas. 1006.

See CRIM. PRO CODE, 1898, ss. 249, 403, 437, 13 Cr.L.J. 860=17 Ind. Cas. 796=8 P.W.R. 1913, Cr.=9 P.R. 1913, Cr.=163 P.L.R. 1913.

See DEFAMATION, 4 P.W.R. 1910, Cr.

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 9 Cr.L J. 265=1 S L.R. 25 Cr., 9 M.L.T. 91.

See HIGH COURT, SUPERINTENDENCE AND POWERS OF, 19 C. 127.

See NUISANCE UNDER CRIM. PRO. CODE, 21 W.R. Cr. 26.

See PENAL CODE, s. 188, 12 P.L.R. 1901, U.B.R. 1897—1901, Vol. I, 268.

See PENAL CODE, s. 332, 76 P.L.R. 1903.

Order by Deputy Magistrate making over minor to lawful guardian—*See* PENAL CODE, s. 361, 15 Cr. L J. 640=25 Ind. Cas. 840.

See SECURITY FOR GOOD BEHAVIOUR, 91 P.L.R. 1901.

Umbrella.

Causing hurt—Blow with—*See* HURT, 24 W.R. Cr. 67.

Unclaimed Property.

See CRIMINAL MISAPPROPRIATION, 11 P. R. 1908, Cr. = 27 P.W.R. 1908, Cr. = 8 Cr. L J. 250.

Uncorroborated Evidence.

Proof of charge of giving false evidence—of single witness insufficient—*See* FALSE EVIDENCE, 5 W.R. Cr. 77.

Undue Influence.

See BEN. ACT VI OF 1901, ss. 2 (*n*), 161, 164, 15 Cr. L.J. 195 = 22 Ind. Cas. 979 = 18 C. W.N. 1143.

Union Karnam.

See PUBLIC SERVANT, 1 Weir 28 = 1 Weir 128.

United Provinces Acts.

See ACTS—U.P. ACTS.

University.

Admission to University Examinations on false personation and signing answer papers in another's name—*See* CHEATING—GENERAL, 12 M. 151 = 1 Weir 480 = 1 Weir 541 = 13 Ind. Jur. 53.

See FORGERY, 28 M. 90, F.B. = 1 Weir 538-A.

See PENAL CODE, ss. 417, 468, 511, 25 M. 726 = 1 Weir 481 = 12 M.L.J. 68.

Unlawful Assembly.

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY.

See PENAL CODE, ss. 141 to 158.

See RIOTING.

(1)—*Penal Code*, s. 141—*Unlawful assembly—What constitutes.*—To constitute an unlawful assembly within the meaning of s. 141, I.P.C., it is not necessary that the persons composing the assembly should have assembled with a previously arranged common object. It is sufficient if from their actions a common object may be inferred, and such object falls within the purview of s. 141. EMPRESS v. SUMESHAR RAI, **A.W.N. 1893, 169.**

(2)—*Penal Code*, s. 141—*Unlawful assembly—Affray.*—There is no ground for the distinction between an unlawful assembly as a premediated act and an affray as a sudden one, for according to s. 141, of the Penal Code, an assembly which was not unlawful when it assembled may subsequently become an unlawful assembly. *In re* LOKENATH KAR, **18 W.R. Cr. 2.**

(3)—*Assembly subsequently becoming unlawful.*—An assembly not unlawful when it assembled, may subsequently become an unlawful assembly. QUEEN-EMPRESS v. SHETTYA, **2 Bom. L.R. 1129.** QUEEN v. KHEMEE SING, **1 W.R. 19, Cr.**

Unlawful Assembly—*continued.*

(4)—Although persons may, in the first instance, have associated themselves with a mob from motives perfectly innocent, if the assembly is or becomes unlawful and if they take part in its proceedings, they will be liable to the consequences. *In re* PERIAPIEN, **1 Weir 66.**

(5)—*Penal Code*, s. 141, *application of.*—Cl. 4 to s. 141, Penal Code, is meant to prevent the resort to force in vindication of supposed rights. It makes a distinction between an admitted claim or an ascertained right and a disputed claim. Magistrates in doing their duty should have regard to, and make themselves acquainted with, the character of the population amongst whom they have to administer justice. EMPEROR v. GULAM HOOSSEIN, **11 Bom. L R. 849 = 3 Ind. Cas. 958 = 10 Cr. L.J. 427.**

(6)—*Penal Code*, s 143—*Unlawful assembly.*—Where a dispute of considerable standing existed between two parties as to who was entitled to the land and who was in possession of it, and a number of persons of one party went to sow the land, together with a body of men armed with *latties*, being prepared to use force, if necessary, and the *lattials*, to keep off the opposite party, brandished their weapons while the land was sown, *held*, that the accused were members of an unlawful assembly. *In the matter of* PIYARI MOHUN SIRKAR, **13 C.L. R. 80.** (23 W.R. Cr. 25, *D.*)

(7)—*What amounts to being member of.*—Where it was proved that there was a long-standing dispute regarding the possession of land between the accused and other persons, neither party having been in undisturbed possession of the land, and that the accused sowed the land keeping off the opposite party by brandishing the weapons they had carried with them, *held*, the accused were rightly convicted of being members of an unlawful assembly. PEARY MOHUN SIRCAR v. EMPRESS, **9 C. 639 = 13 C. L.R. 80.** (23 W.R. Cr. 25, *D.*)

(8)—*Penal Code*, s. 148—*Unlawful assembly, what constitutes.*—Where it was found that certain ryots were justified in resisting an unlawful trespass by the Zemindar's party, they could not be convicted, merely because some of them had exceeded their right of private defence of property. They were not members of an unlawful assembly. When individual members of that assembly exceeded their right of private defence, it could become an unlawful assembly only on a finding that all or some of the ryots continued in it after becoming aware that the right of private defence was being exceeded by some of them. *In the matter of* KALEE MUNDLE, **10 C.L R. 278.** [*R.*, 36 C. 296 = 9 Cr L.J. 443 = 13 C.W.N. 677, 1 Ind. Cas. 973.]

(9)—*Penal Code*, s. 147—*Rioting—Common object of unlawful assembly.*—A person cannot be properly convicted of rioting, if the charge does not declare what was the common object of the assembly by which the riot was committed. TAFAZZUL AHMED CHOWDHRY v. QUEEN-EMPRESS, **26 C. 630.**

Unlawful Assembly—*continued.*

(10)—*Penal Code. ss.* 114, 144—*Subsequent joining of unlawful assembly by the instigator.*—Where a person instigates another to join an unlawful assembly armed with a deadly weapon, and afterwards joins it himself, he may be liable to be punished under s. 144, read with s. 114, even though he is not himself armed with a deadly weapon. SRI HARI SHOME v. LAL KHAN, **5 C.W.N. 250.**

(11)—*Penal Code, s.* 147—*Omission to set out the common object of an unlawful assembly.*—In all cases in which there is a charge under s. 147, the common object ought to be stated. But it does not follow that a conviction under the section is bad, if the common object is not stated. It is necessary to see whether or not the accused has been misled by the omission, and whether it has caused a failure of justice. Where in a case under s. 147, the facts were simple, and there were distinct findings by the lower Court as to the part which each of the accused took in the rioting, *held*, that the accused was not prejudiced by the omission to set out in the charge the common object of the assembly. BUDHU v. MUSSTT. LACHMINIA, **9 C W N. 599 = 2 Cr. L.J 275** [*F.*, 6 Cr.L.J. 446 = 38 P.W.R. 1907, Cr.; *R.*, 35 C. 718 = 8 Cr. L.J. 203.]

(12)—*Penal Code, ss.* 141, 144 *and* 352—*Unlawful assembly—Proof of common object.*—Where it was found that the accused together with others, to the number in all of 100 or 150, assembled together armed with bail hooks, and sticks and that they dispersed at once on seeing the police, *held*, that these facts were not sufficient to constitute an unlawful assembly. [*R.*, 12 C.W N. 334 = 7 C.L.J. 359.] The common object of an unlawful assembly is to be ascertained from the acts and language of the members composing it and from a consideration of all the surrounding circumstances. *Per Benson, J.* QUEEN-EMPRESS v. PEELIMUTHU TEVAN, **24 M. 124** = 1 Weir 53.

(13)—*Act done in furtherance of common object of all.*—Where three accused dealt blows on the deceased, one of which caused the deceased's death, and it was not known who dealt the fatal blow, *held*, that all the accused were alike guilty of the offence, whether culpable homicide or grievous hurt, which the series of acts constituted. RALYA v. ARJAN, **2 P. R. 1887, Cr.**

(14)—*Penal Code, ss.* 147, 149, 325—*No unlawful assembly*—*Liability of individuals.*—Where it is found that the accused did not belong to an unlawful assembly and that some one among them caused grievous hurt but it was not known who did so, *held* that s. 149 did not apply and that all must be acquitted. EMPRESS v. SHAMSHER KHAN, **A.W.N 1896, 170**

(15)—*Penal Code, s* 149—*Intention of individual member of unlawful assembly.*—A, with eight others, with the object of recovering property which was being carried in a cart, pursued it and removed the property from the cart. His men assaulted the men in the cart, and also committed robbery. *Held* that, in the absence of proof that A contemplated the assault and the robbery, he could not be convicted under s. 149 of the Penal Code but only of rioting. EMPRESS v. SHEO PARSHAN, **A. W.N. 1882, 179.**

(16)—*Penal Code, s.* 149—*Unlawful assembly*—*Liability of one member for offence committed by another.*—No general rule can be laid down as to the conditions under which one member of an unlawful assembly can be made guilty for an offence committed by any of his associates, under the provisions of s. 149 of the Penal Code. Every such case must be decided with reference to its own facts. In dealing with such cases, while, on the one hand, it is necessary for the protection of accused persons that they should not, merely by reason of their association with others as members of an unlawful assembly, be held criminally liable for offences committed by their associates, which they themselves never intended nor knew to be likely to be committed; on the other hand, it is equally necessary for the protection of peace that members of an unlawful assembly should not likely be let off from suffering the penalties for offences for which, though committed by others, the law has made them punishable by reason of their association with the actual offenders with one common object. It must also be noted that members of an unlawful assembly may have a community of object only up to a certain point, beyond which they may differ in their objects, and that the knowledge possessed by each member of what is likely to be committed in prosecution of their common object will vary, not only according to the information at his command, but also according to the extent to which he shares the community of object; and, at a consequence of this, the effect of s. 149 of the Code may be different on different members of the same unlawful assembly. JAHIRUDDIN v. QUEEN-EMPRESS, **22 C 306** (1 B. L.R. F.B. 347 = 20 W R.Cr. 5, *R.*) [*F.*, 8 C.L J. 561 = 9 Cr. L.J. 32.]

(17)—*Penal Code, ss,* 149, 302—*Unlawful assembly armed with weapons*—*Murder committed by one of the members*—*Liability of other members.*— Every member of an unlawful assembly, which went out armed with the object of taking possession of land and repelling by force any resistance that might be offered should, if murder was committed by one of the members, be held to be guilty of murder under s. 149 of the Code, as they should have known that murder was likely to be committed DEWAN SINGH v QUEEN-EMPRESS, **22 C. 805**

(18)—*A body of persons assembling for purpose of dispossessing another of his field*—*Shooting of gun resulting in death.*—*Held, per Maclean and Jackson, JJ.* (*Miller, J., dissenting*):—Where a body of men most of whom carried

Unlawful Assembly—*continued.*

lethal weapons, and one of them a gun, assembled for the purpose of dispossessing another of his fields, and one of them fired the gun resulting in the death of one of the other party, who was legally defending his property, *held*, that all the members of the unlawful assembly were guilty of murder. HARI SINGH v. EMPRESS OF INDIA, **3 C.L.R. 49.** (20 W.R. Cr. 5, *Cited.*) [*R.*, 22 C. 306.]

(19)—*Penal Code*, ss. 141, 147, 149—*Unlawful assembly—Rioting—Culpable homicide.*—Where the evidence disclosed no common unlawful object among the accused party, but only an intention to devise some means of settling the dispute as to a land of which the other party had forcibly taken possession, and the affray that followed was only a result of the aggressiveness of the other party, *held* that there could be no conviction for rioting. Where under the above circumstances death was caused by some member of the accused party—it was not known by whom—*held* that the accused could not be charged with the culpable homicide. EMPRESS v. SIGDAR AND EMPRESS v. GOKUL, **A.W.N. 1885, 96.**

(20)—*Penal Code*, ss. 143, 353—*Resistance to an illegal search warrant—Crim. Pro. Code* (1872), ss. 379, 382.—Where on the requisition of an officer in charge of a police station, an officer in charge of another police station deputed two officers subordinate to him to make a search within the limits of his station, without delivering to them the order in writing required by s. 379, Crim. Pro. Code, *held* that the persons resisting the search could not be lawfully convicted under ss. 143, 353, I.P.C. QUEEN v. NARAIN, **7 N.W.P. 209.**

(21)—*Penal Code*, s. 151—*Unlawful assembly of five or more persons, what amounts to—Refusal to disperse after being so ordered.*—Where the object of three persons was to draw a crowd and their action was calculated to draw a crowd of fifty or sixty persons, *held* that there was an assembly of five or more persons within the meaning of the term in the section, whether the assembly was stationary or moving. *Held* further that, if the assembly was likely to cause a breach of the peace, and if they refused to disperse, being lawfully commanded to do so, every member of the assembly was liable to be convicted under s. 151. EMPRESS v. TUCKER, **7 B. 42=7 Ind. Jur. 202.**

(22)—*Penal Code*, s. 150—*Hiring of persons to join an unlawful assembly, what constitutes—Proof of unlawful assembly.*—It is clear from the language of s. 150, that it refers to a particular unlawful assembly; in other words, when it is found that any person has hired or engaged another to join or become a member of a particular unlawful assembly, he is liable for any offence committed by any member of that assembly, in the same way, as if he had been a member of that unlawful assembly, or himself had committed such offence. RAM LOCHAN SARCAR v. QUEEN-EMPRESS, **29 C. 214=6 C. W.N. 143.**

Unlawful Assembly—*continued.*

(23)—*Charge containing several alternative common objects—Judgment of appellate Court—Duty of Court to find sustainability of charge and what common object was established.*—It is the duty of an appellate Court to determine, where several alternative common objects of an unlawful assembly are alleged in the charge, to determine whether the charge is sustainable, and, if so, which of the common objects is made out. MANARUDDI v. EMPEROR, **35 C. 718=8 Cr. L.J. 203.**

(24)—*Penal Code*, s. 147—*Rioting—Common object—No express finding—No question as to common object—Prejudice.*—Where the common object of an unlawful assembly is clearly set out in the charge and there is no question in the lower Courts as to the common object so set out, a conviction for rioting with the object set out is good, even though there might be no express finding as to the common object, if the accused has not been in any way prejudiced by the absence of such finding. DASARATHI MAHAPATRA v. RAGHU SAHU, **8 C.L.J. 69=12 C.W.N. 944=8 Cr. L.J. 129=36 C. 158=1 Ind. Cas. 794.** (22 C. 276, 33 C. 295, *D.*)

(25)—*Penal Code*, ss. 141 (4), 147—*Unlawful assembly—Common object, to maintain possession, if unlawful—Charge, common object stated in, not made out—Another object found—Effect.*—It cannot be laid down as a general proposition of law that a conviction under s. 147 of the Penal Code cannot be supported, whenever the common object of the assembly as stated in the charge is not precisely made out, the question in each case being whether the common object established agrees in essential particulars with the common object as stated in the charge. Where the common object as stated in the charge was to assault the complainant and his men who were cutting the paddy of their land and thereby to forcibly oust them from the land, but the common object found as established on the evidence was, maintenance by the accused of their possession of the land. *Held*, that the common object as stated in the charge was not substantially established. There is no unlawful assembly when the common object is to maintain undisturbed the actual enjoyment of a right, s. 141, sub-s. (4) of the Penal Code, not applying to such a case. SILAJIT MAHTO v. EMPEROR, **36 C. 865=13 C.W.N. 801=4 Ind. Cas. 19=10 Cr. L.J. 471.**

(26)—*Penal Code*, ss. 143, 147, 148, 326 *and* 149—*Unlawful assembly—Persons assembled to protect their master's property and using necessary force—No offence—Constructive guilt by operation of s.* 149—*Severe hurt caused by one member of the unlawful assembly.*—There being a dispute between the zemindars and their tenants as to whether the tenancy was *nagdi* or *bhaoli*, the zemindars placed watchmen on guard in the fields to prevent the tenants from taking away the crops to their houses. The tenants, nevertheless, in large numbers, armed with *lathies*, went to the field with the avowed intention of carrying away the crops, which had already been cut, to their houses, and

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while they were attempting to do so, a number of the zemindars' men came up, some armed with *lathis* and some with swords, to prevent the tenants from taking away the crops, and the result was that a fight took place in which persons on both sides were injured, some tenants receiving incised wounds probably from the swords of the zemindars' men, and one tenant being severely injured. On the prosecution of some of the zemindars' men on charges under ss. 147, 148 and 326-149, I.P.C., *held*, that, as the accused were justified in protecting their master's property and were entitled to use such force as was necessary to prevent the tenants from carrying away the crops, they could not be held guilty of the offences charged, in the absence of a finding by the Sessions Judge that the common intention of the accused was to use more force than was necessary; that the assembly of the accused was not an unlawful assembly; that the accused were not constructively guilty of the offence under s. 326 read with s.149, I.P.C., by reason of the fact that one member of their assembly, who was not on his trial, inflicted severe injury upon one of the tenants, as there was nothing to show that it was not an individual act on the part of that member, or that the assembly which, in its inception, was not unlawful, became an unlawful assembly subsequently. Each case of this kind must be decided on its particular facts. RAM KHELAWAN SINGH v. EMPEROR, **13 C W.N. 827=36 C. 827=3 Ind. Cas. 96=10 Cr. L.J. 245.** (36 C. 296, *D.*)

(27)—*Penal Code, ss.* 141, 142—*Unlawful assembly—Riot — Common object —Joinder of charges—Ss.* 235, 239, *Crim. Pro. Code—Evidence Act, s.* 157—*Admissibility of statement made three days after event—Evidence, credibility of witness not named in the Police charge-sheet — Character, evidence of, in Political offences, evidence, negative, probative value of, against positive evidence.*—In a riot consisting of several incidents, where the appellant and the other accused were charged in the first two charges with having been members of an unlawful assembly, with the common object of committing mischief by fire to public buildings and of having set fire to them, there was also another charge against another accused of having been a member of an unlawful assembly with the common object of closing by force, if necessary, a private college. All the charges against all the accused were tried together, which was contended as illegal. It was also contended that the appellant was not a member of the unlawful assembly at the beginning, and even resisted it at first, in connection with certain incidents that he could not be charged and tried with the other accused for acts done by the mob before he joined it, that he could not have the same common object, since part of the common object was to destroy the Municipal office, which had been carried out before he joined it, and that, as there was a change of common object, the acts of the accused from that time could not be regarded as part of the same transaction with their previous acts. *Held, per Benson, J., (Munro, J. concurring)*:—That, in the absence of evidence or reasons to the contrary, it is permissible to presume that the common object of a riotous mob is that indicated by their conduct and that they entertained from the beginning the common object indicated by their conduct throughout their proceeding; that the proceedings of the mob consisting of several minor transactions, from first to last, showed such a continuity of purpose and of action, and were united by such proximity in time, as to form "one transaction" within the meaning of ss. 235, 239, Crim. Pro. Code, so as to render all the rioters liable to be tried at the same trial for the acts done by each of them. *Per Sankaran Nair, J. (contra).* The essence of the offence defined by s. 141, I.P.C., is the common unlawful purpose, and an accused person cannot be convicted, if the common object proved is different from the common object in the charge or for which he has been tried. *Held*, also, that the closing of the college, and committing mischief by two unlawful assemblies with different common objects, do not form the same transaction. The conviction must therefore be quashed. Persons to be tried jointly must have been associated from the first in the series of acts which form the same transaction. *Per Benson, J.*—"In a great riot where the number of the offenders and of the witnesses is very large, it is not reasonable to expect that the Police should at once obtain all the evidence, nor is it reasonable to reject, as false, the evidence of every witness who did not at once come forward with information to the Police, and who is not mentioned as a witness in the charge sheet. The presumption arising from evidence of good character, and of the fact that an accused person is an educated man of good family connection, which would render it *prima facie* unlikely that he would be guilty of crimes of violence, cannot be pressed too far in the case of offences originating in extreme political feeling. The negative evidence of witnesses, who say that they did not see the accused doing anything, cannot outweigh the positive evidence of those who prove the facts done by him. *Quære—Per Benson* and *Munro, JJ.*—Whether a statement as to an event, made three days after its occurrence, is admissible under s. 157, Evidence Act, to corroborate the witness who made the statement? *In re* LOGANATHIYAR. **6 M.L.T. 17=11 Cr. L J 30=4 Ind. Cas. 700.**

(28)—*Penal Code, ss.* 141 *and* 147—*Sale of Zemindari—Ryots engaged in protecting their possession of grain, whether an unlawful assembly.*—Where the ryots of a portion of a Zemindari, which had been sold under a decree of the Civil Court, reaped and carried away their crops, despite the purchaser's people and refused to allow them to seal and mark the heaps, which had been reaped, *held*, that the acts of the ryots did not fall within either cls. 3, 4 or 5 of s. 141, because their common object was not to commit an offence, but to

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protect their own possession of grain and to prevent the purchaser from enforcing his supposed right. HIGH COURT PROCEEDINGS, 10TH AUG. 1869, **1 Weir 55 = 4 M.H C. App. 65** [*R.*, 1 Weir 59 = 14 M 124.]

(29)—*Penal Code, ss.* 141 *and* 147—*Prevention of a procession.*—Persons forcibly preventing a procession on the ground that they had a right to do so, because it was a nuisance or annoyance to them or to their community, constitute an unlawful assembly within the meaning of s. 141, cl. 4. HIGH COURT PROCEEDINGS, 16TH NOVEMBER 1869, **1 Weir 58 = 5 M. H.C. App 6.**

(30)—*Penal Code, s.* 142—*Unlawful assembly—Utterance of threats and abuses will render an assembly unlawful.*—The accused conducted a funeral procession along a public road, which they had a perfect right to go along, but some of the members of the party used threatening and abusive language. *Held*, that, if they had simply taken their procession along, whether with or without the object of vindicating their right of way, without uttering threats, they would not have constituted an unlawful assembly but that, as there was evidence in the case that the party or some of them uttered threats and abuses, they did constitute an unlawful assembly. NGA KYAW YAUNG v. KING-EMPEROR, **U.B.R. 1905, Penal Code, 21 = 12 Bur. L.R. 37 = 2 Cr. L J. 832.** (20 A. 459, 14 B. 441, 3 C. 573, 16 C. 206, *F.*; 21 C. 392, 24 C. 686, 26 C. 574, 14 M. 126, U.B.R. 1897—1901, I, 259, *R.*)

(31)—*Penal Code, ss.* 147 *and* 366—*Joining an unlawful assembly—Carrying off a wife.*—During the prosecution of A by B for carrying off his (B's) wife C, A alleged that he had been already married to C, and while the case was proceeding, B and others forcibly carried away C in a carriage whose driver was D. *Held* that D must have been aware of the object of the unlawful assembly, and that, when he drove C off in his carriage against her wish, he joined the unlawful assembly and assisted in carrying out the unlawful object for which it had assembled ; that, as C had already been married to A before she was forcibly carried away by the accused, the conviction of B and his associates for an offence under s. 366, Penal Code, could not stand, but that they were rightly convicted of an offence under s. 147, Indian Penal Code. IMPERATOR v. HAJI BAKA, **2 S.L R. 6. Cr. = 10 Cr. L.J. 208.**

(32)—*Suppression of unlawful assembly—Degree of force that may be used—Taking of life when justified—Constable firing under orders of superior officers—Penal Code, ss.* 302, 304, 324.—The degree of force which may be lawfully used in the suppression of an unlawful assembly depends on the nature of such assembly, for the force used must always be moderated and proportioned to the circumstances of the case and to the end to be obtained. The taking of life can only be justified by the necessity for protecting persons or property against various forms of violence or crime, or by the necessity or dispersing a riotous crowd which is dangerous unless dispersed. A dispute having risen between two co-widows about the enjoyment of a certain field, the Station House Officer went to the spot with armed Police officers and asked the party of the senior widow, who were reaping the crops, to desist. The party declining to obey the order, he directed one of the constables to fire in the air without attempting to arrest the leaders of the assembly and without warning them that, if they did not desist from reaping, they would be fired at. A constable fired accordingly and caused a mortal injury to one of the reapers. Neither the Station House Officer nor the constable believed that it was necessary for the public security to disperse such an assembly by firing on them, *held*, that the accused were not acting in good faith and the constable was not protected simply because he obeyed the orders of his superior officer inasmuch as the order was manifestly illegal. QUEEN-EMPRESS v. SUBBA NAIK, **21 M. 249 = 1 Weir 310.**

(33)—*Common object.*—Where a person was killed by a member of an unlawful assembly, in prosecution of the common object of that assembly, the common object being the abduction of that person's mother, *held* that all those who were members of the assembly at the time such person was killed were guilty of the offence of killing her. *In the matter of* GOLAM ARFIN, **4 B L R. Ap. 47 = 13 W R. Cr. 33.**

(34)—*Acts taking place after unlawful assembly is over.*—Acts taking place after the accomplishment of the object of an unlawful assembly is over are not to be deemed as acts done towards the furtherance of the common object of the assembly, or as acts which the rest knew would be likely to be committed in prosecution of that object. QUEEN v. BINAD KOKARAM, **24 W.R Cr. 66.**

(35)—*Penal Code, s.* 105, *cl.* 4—*Unlawful assembly—Mischief.*—On B's servants encroaching and committing mischief on land in possession of A, A's servants assembled and resisted the encroachments. The Magistrate convicted A's servants of unlawful assembly. The High Court declined to interfere as there was no error in law in the order of the Magistrate, who found as a fact that the right of private defence had ceased under cl. 4, s. 105, Penal Code. QUEEN v. RAJ KISTO DASS, **12 W.R Cr. 43.**

(36)—*Penal Code, ss.* 141. 154—*Owner of land, liability of, on which unlawful assembly is held—Joint trial of opposite factions committing riot.*—Where there is no finding that a riot was premeditated, the owner or occupier of land on which an unlawful assembly is held cannot be convicted under s. 154, I.P.C. Opposite factions committing a riot should not be treated as forming one unlawful assembly and tried together, as they do not have one common object within the meaning of s. 141, Penal Code. QUEEN v. SURROOP CHUNDER PAUL, **12 W.R. Cr. 75.**

Unlawful Assembly—*continued.*

(37)—*Person joining unlawful assembly to prevent mischief to his own property.*—A person going to the place where an unlawful assembly had gathered and staying there with the object of preventing mischief to his own property cannot be said to have intentionally joined an unlawful assembly or to have continued in it. BIRJOO SINGH v. KHUB LALL, **19 W.R. Cr. 66.**

(38)—*Penal Code, ss.* 149 *and* 300, *excep.* 2 —*Common object—Murder.*—One member of an unlawful assembly, whose common object was to eject certain persons from a piece of land, the title to which was disputed, fired at and killed one of such persons. *Held* by *Couch, C.J.*, and *Jackson, Phear, and Pontifex, JJ.*, (*Ainslie, J*, *dissenting*), that the act being sudden and unpremeditated, the other members of the assembly were not guilty of the offence of murder under s. 149 of the Penal Code, but of rioting armed with a deadly weapon under s. 148. QUEEN v. SABED ALI, **11 B.L.R.F.B. 347=20 W.R Cr. 5.**

(39)—A large body of men belonging to one faction way laid another body of men belonging to a second one and fight ensued, in the course of which a member of the first faction was wounded and retired to the side of the road, taking no further active part in the affray. After his retirement a member of the second faction was killed. *Held* (by *Norman, J.*, whose opinion prevailed) that the wounded man had ceased to be a member of an unlawful assembly when he retired wounded, and that he could not, under s. 149 of the Penal Code, be made liable for the subsequent murder. *Held* (by *Jackson, J.*) that he remained a member of the unlawful assembly. QUEEN v. KABIL CAZEE, **3 B L R A. Cr. 1.**

(40)—*Conviction for being members of unlawful assembly—Penal Code, s.* 141.—It must be proved for a valid conviction for being members of an unlawful assembly that the accused were inspired by a common object and that their acts fell under s. 141, I.P.C. QUEEN v. DINOBUNDO RAI, **9 W.R. Cr. 19.** *In re* KOYLASH CHUNDER DASS, **20 W.R Cr. 78.**

(41)—*Encouraging members of an unlawful assembly.*—Encouraging members of an unlawful assembly may, under certain circumstances, amount to the offence of being members of such assembly. QUEEN v. DUSHRUTH ROY, **7 W.R. Cr. 58.**

(42)—*Intention to maintain subsisting enjoyment of right.*—The intention of the parties was not to enforce a right or a supposed right; but they intended to maintain the actual subsisting enjoyment of a right then existing in an undisturbed condition; *held* that they could not be convicted for being members of an unlawful assembly. *In re* SHUNKER SINGH, **23 W.R. Cr. 25.**

(43)—*Riot in which a person is killed—Culpable homicide.*—Where, in a case of riot, a person is killed, all the members of the unlawful assembly, (*i e.*) those that were successful and those that were not, are guilty of culpable homicide not amounting to murder. QUEEN v. MANA SINGH, **7 W R. Cr. 103.**

Sympathy with an—if abetment — *See* ABETMENT, 4 C W.N. 500, 12 W R. Cr. 51.

See CHARGE—ALTERATION OF CHARGE, 27 C. 990=5 C.W.N. 31.

See CHARGE—FORM OF CHARGE, 21 C. 827, 4 C.W.N. 190.

See CHARGE TO JURY—GENERAL, 22 C. 276.

See CRIMINAL TRESPASS, 5 N.L.R. 59=9 Cr. L J. 561=2 Ind. Cas. 240.

See EVIDENCE—GENERAL, 24 W.R. Cr. 4.

See GAMBLING, 1 Weir 53.

See GRIEVOUS HURT, Rat. Un. Cr. C. 14.

See LOCAL INQUIRY, 14 C.W.N. 422=37 C. 340.

See PENAL CODE, ss. 71, 224 and 225, 1 Weir 34.

See PENAL CODE, ss. 97, 147, 149, 325, 24 C. 686=1 C.W.N. 423.

See PENAL CODE, ss. 105, 141, 143 and 447, 3 N.L R. 177=7 Cr. L.J. 49.

Instigation to join—*See* PENAL CODE, ss. 114, 144, 5 C.W.N. 250.

See PENAL CODE, ss. 149, 302, 436, 8 M.L.T. 326=8 Ind. Cas. 399=1910 M.W.N. 522.

Unlawful common object, exceeding the right of private defence, if is—*See* PRIVATE DEFENCE, RIGHT OF, 16 C.W.N. 1053=15 Ind. Cas. 481=13 Cr. L.J. 481=39 C. 896.

See PRIVATE DEFENCE, RIGHT OF, 36 C. 296, 8 C.L.J. 561=9 Cr. L.J. 32, 14 M. 126=1 Weir 59, 26 M. 249=1 Weir 63.

See SENTENCE—GENERAL, 12 W.R. Cr. 72.

Culpable homicide and being member of—*See* SENTENCE — CUMULATIVE AND SEPARATE SENTENCES, 7 W.R. Cr. 13.

See SENTENCE—CUMULATIVE AND SEPARATE SENTENCES, 6 A. 121, 9 A. 645=A.W.N. 1887, 149, 1 W.R Cr. 7, 9 W.R. Cr. 5.

"Unlawful" Meaning of.

(1)—*"Illegal" and "unlawful" distinguished.*—The word "illegal" is defined in the Penal Code, but the word "unlawful" is not defined, and there are various sections in the Code where the two words are indiscriminately used. An act however may be lawful, though it may be illegal S. CAHOON v. A. MATHEWS, **24 C. 494=1 C.W.N. 274.**

Unnatural Offence.

See PENAL CODE, s. 377.

(1)—*Penal Code, s.* 377—*Unnatural offence—Charge, nature of—Crim. Pro. Code* (1882), *s.* 222.—A charge under ss. 377, I.P.C., should allege, the time when, the place where and any

Unnatural Offence—*concluded.*

known or unknown person with whom, the particular act charged as an offence under s. 377 was committed. QUEEN-EMPRESS v. KHAIRATI, **6 A. 204.**

(2)—*Proper sentence.*—A sentence of whipping is far more suitable for a juvenile offender convicted of bestiality than a sentence of imprisonment. JIWAN v EMPRESS, **3 P.R. 1884, Cr.**

Unpremeditated Acts.

Premeditated and, difference between—*See* PENAL CODE, ss. 34, 302, 304, 323, 326, 16 O. C. 19 = 19 Ind. Cas. 497 = 14 Cr. L.J. 241.

Unprofessional Conduct.

See ACT XVIII OF 1879.

See LEGAL PRACTITIONERS.

Unsoundness of Mind.

See ACCUSED PERSON.

See CRIM. PRO. CODE, 1898, ss. 464 to 475.

See INSANITY.

See LUNACY.

See LUNATIC.

See PENAL CODE, ss. 84, 85.

(1)—*Crim. Pro. Code* (*Act* X *of* 1882), *ss.* 341, 464, 466—*Accused- Insane—Procedure.*—If, on examination, an accused person appears to be insane and unable to understand questions and to return intelligible replies, the Magistrate should act under ss 464 and 466 of the Crim. Pro. Code, and not under s. 341. QUEEN-EMPRESS v. KHASIMA, **Rat. Un. Cr. C. 832 = Cr. Rg. 74 of 1895.**

(2)—*Penal Code, ss.* 84 *and* 85—*Unsoundness of mind--Disease brought on by voluntary drunkenness, whether a ground for exemption from liability.*—Under s. 84 unsoundness of mind producing incapacity to know the nature of the act committed or that it is wrong or contrary to law is a defence to a criminal charge, but by s. 85 such incapacity is no defence if produced by voluntary drunkenness. If, however, voluntary drunkenness causes a disease or produces such incapacity, s. 84 applies though the disease may be of a temporary nature. EMPEROR v. BHELEKA AHAM, **29 C. 493 = 6 C.W.N. 506.** [*D.*, 13 Cr. L.J. 164 = 13 Ind. Cas. 916 = 7 N.L.R. 185.]

(3)—*Procedure of Magistrate in case of insanity of accused—Crim. Pro. Code* (1898), *ss.* 470 *and* 471.—Where a Magistrate considered that the accused was of unsound mind at the time he committed the act charged against him and his order in respect of the matter was intended to be under s. 470, Crim. Pro. Code, *held* that he should have acquitted the accused on the ground of insanity and submitted the proceedings to the Local Government with the report prescribed in s. 471, but that, if he considered unsoundness of mind not sufficient to justify an acquittal, he should have passed a sentence. QUEEN-EMPRESS v. NGA SAN WIN, **L.B.R. 1893—1900, 630.**

Unsoundness of Mind—*concluded.*

See CHARGE TO JURY—MISDIRECTION, 19 W.R. Cr. 26.

See CRIM. PRO. CODE, 1898, s. 401, 23 C. 604.

Unstamped Instrument.

Made in Australia, dated 26th May 1862, sought to be used in Madras—Penalty under Act I of 1879—*See* ACT XXXVI OF 1860, 14 M. 255.

Mere receipt of an—does not constitute abetment of an offence—*See* ACT II OF 1899, s. 62, 1 N.L.R. 163.

Upper Burma Acts.

See ACTS—BURMA ACTS.

Upper Burma Regulations.

See REGULATIONS--BURMA REGULATIONS.

See CUSTOM.

(1)—*Usage infringing law.*—Usage, however long, would not avail to sanction an infringement of the law. MUTHIALU CHETTI v. BAPUN SAIB, **2 M. 140 = 2 Weir 68.**

Using Forged Document.

See FORGERY.

Vaccination.

See PENAL CODE, ss. 186, 353.

Inquiry by tahsildar in reference to, of children—*See* PENAL CODE, s. 174, 1 Weir 95.

Vaccination Act.

See ACT XIII OF 1880.

Vaccination Law, Amendment Act.

See BUR. ACT II OF 1900.

Vaccinators.

(1)—*Whether public servants.*—Vaccinators are public servants. HIGH COURT PROCEEDINGS, 21ST DEC. 1871, **6 M H.C. App. 48.**

See ASSAULT, 3 C.W.N. 627.

See PENAL CODE, ss. 99, 353. A.W.N. 1906, 98 = 3 A.L.J. 327 = 3 Cr. L.J. 368 = 28 A. 481.

Inquiry by Tahsildar regarding vaccinator's work—*See* PENAL CODE, s. 174, 1 Weir 96.

Taking away a child from—*See* PENAL CODE, s. 186, 1 Weir 132.

See PENAL CODE, s. 186, 15 M. 93 = 1 Weir 131.

Obstructing, in discharge of their duty, what constitutes—*See* PENAL CODE, s. 186, 1 Weir 130.

Illegal acts of—Obstruction—*See* PENAL CODE, s. 186, 1 Weir 131.

Using criminal force to a—*See* PENAL CODE, s. 353, 1 Weir 345.

Non-fulfilment of promise to let—take lymph from child—*See* PENAL CODE, s. 406, Rat. Un. Cr. C. 557.

See PUBLIC SERVANT, 1 Weir 27 = 1 Weir 129.

Whether public servants—*See* PUBLIC SERVANT, 1 Weir 134 = 1 Weir 621.

Yakalatnamah.

See LEGAL PRACTITIONERS—PLEADER.

One, by several persons—One case—Fee of eight annas—*See* ACT VII OF 1870, sch. II, art. 10, L.B.R. 1893—1900, 385.

Pleader recklessly accepting vakalats — Misconduct—*See* ACT XVIII OF 1879, s. 13, 14 Cr. L.J. 44 = 18 Ind. Cas. 268, F.B.

Unauthorised use of name as agent—Giving—in name of decree-holders without their authority—*See* FORGERY, 6 W.R. Cr. 78.

See LEGAL PRACTITIONERS—ADVOCATE, 2 Weir 402 = 7 M.H.C. App. 40.

See LEGAL PRACTITIONERS—ATTORNEY, 2 Weir 402 = 7 M.H.C. App. 40.

See OFFENCE BEFORE PENAL CODE CAME INTO OPERATION, 5 W.R. Cr. 43.

Filing, with false attestation—*See* PENAL CODE, s. 192, 1 Weir 175 = 5 M.H.C. 373.

See PRACTICE AND PROCEDURE, 5 M.L.T. 290 = 9 Cr. L.J. 305 = 1 Ind. Cas. 546.

Prisoners—Execution of—*See* PRISONER, 1 B.H.C. 16.

See SESSIONS JUDGE, JURISDICTION OF, 1 M.H.C. 4.

Yakil.

See LEGAL PRACTITIONERS.

Yakil and Client.

See LEGAL PRACTITIONERS.

Yakil Gumasta.

Appeal petition, presentation of, by Vakils' gumasta—*See* APPEAL—GENERAL, 2 Weir 469.

Valuable Security.

See FORGERY, Rat. Un. Cr. C. 467 = Cr. Rg. 25 of 1889, A.W.N. 1883, 59.

Deed of divorce, a —*See* FORGERY, 11 W.R. Cr. 15.

See PENAL CODE, s. 30, 2 M.H.C. 247.

See THEFT—THINGS WHICH MAY BE THE SUBJECT OF THEFT, Rat. Un. Cr. C. 43 = Cr. Rg. 8-12-1870.

Vehicles (Motor) Act.

See BOM. ACT II OF 1904.

Verandah.

See ACT III OF 1867, s. 13, A.W.N. 1881, 17.

Verbal Order.

Of Magistrate under Act IV of 1840—*See* ACT XV OF 1877, art. 47, 2 Agra 87, Cr.

Of Village Magistrate—*See* CONTEMPT OF COURT, 1 Weir 88 = 7 M.H.C. App. 3.

For witness to attend—*See* PENAL CODE, s. 174, Rat. Un. Cr. C. 75 = Cr. Rg. 12-6-1873.

Accused person required by Magistrate verbally to appear on a certain date—*See* PENAL CODE, s. 174, 1 Weir 87 = 5 M.H.C. App. 15.

Verdict.

Of not guilty—Effect—*See* ACQUITTAL, 15 C.W.N. 646 = 11 Ind. Cas. 580 = 12 Cr. L.J. 396.

Verdict of Jury.

See ASSESSORS.

See CHARGE TO JURY.

See CRIM. PRO. CODE. 1898, ss. 297-30 .

See JURY.

See REFERENCE TO HIGH COURT.

See REVISION—MISDIRECTION AND VERDICT OF JURY.

(1)—*Crim. Pro. Code* (1872), s. 263—*Trial by jury—Setting aside verdict.*—Under s. 263, Crim. Pro. Code, the functions both of the Judge and of the jury are cast upon the High Court, and this differentiates its position very widely from that of the Courts of England. Notwithstanding this, the High Court will still be guided by the analogies of the English Law. It is a well recognized principle that the Courts in England will not set aside the verdict of a jury, unless it be perverse and patently wrong, or may have been induced by an error of the Judge. The High Court is bound to follow this principle, and the verdict of the jury will not be set aside unless a proper case is made out. REG. v KHANDERAV BAJI RAV, **1 B. 10**. [*Appl.*, 15 B. 452; *Appr.*, 1 C L.R. 275; *R.*, 9 C. 53, 15 C 269, Rat. Un. Cr. C. 344, 19 B. 749.]

(2)—*Crim. Pro. Code* (1882), ss. 298, 302—*Duty of Judge on jury recording a special verdict.*—In a Sessions trial for rape, the jury returned a verdict that the prisoner did the act with consent. The Judge, for some reason not apparent on the record, required the jury to say whether the accused was guilty or not. The jury again retired and brought in a verdict of guilty with a recommendation for mercy. *Held* that the first verdict was a special verdict and it was the option of jury to return a verdict in that form, and as there was no ambiguity about the verdict, the Judge was bound to record the verdict and apply the law thereto. *Held*, also, that the second verdict could not be sustained as the Judge did not require them to re-consider their verdict, nor gave them any fresh direction nor explained to them that a finding that the woman consented was tantamount to an acquittal. QUEEN-EMPRESS v. MADHAVRAO, **19 B. 735**. [*R.*, Rat. Un. Cr. C. 982, 6 Bom.L R. 361 = 28 B. 412.]

(3)—*Crim. Pro. Code*, s. 307—*Interference with verdict of jury—Trial by jury—Right of jury to find a special verdict.*—The verdict of the jury should not be interfered with, unless it is shown to be clearly or manifestly wrong. A verdict, whether correct or not, ought to be considered a proper and not a perverse verdict, if it is one which reasonable men might find. A cause ought not to come before the High Court under s. 307 unless the Judge disagrees so completely with the jury that he considers it necessary for the ends of justice to submit the case. The jury are not to find a simple verdict of guilty or not guilty. They may find a special verdict, a string of facts,

Verdict of Jury—*continued.*

to which the Judge applies the law. The option is theirs, not his. QUEEN-EMPRESS v. DEVJI GOVINDJI, **20 B. 215.** [*F.*, 10 Bom. L. R. 632; *R.*, Rat. Un. Cr. C. 982.]

(4)—*Crim. Pro. Code*, s. 302—*Verdict of acquittal—Questioning the jury.*—Questions put to the jury demanding their reasons for the verdict of acquittal which they had delivered unanimously and without any uncertain sound, exceed the limit of questioning which the law contemplates; as to the charge where the jury is not unanimous, it is open to the Judge to require them, under s. 302, Crim. Pro. Code, to retire for further consideration, giving them at the same time further directions on matters of law. EMPEROR v. BHARMIA, **6 Bom. L.R. 258 =1 Cr. L.J. 265.** [*F.*, 28 B. 412=6 Bom. L.R. 361.]

(5)—*Crim. Pro. Code* (1898), *ss.* 307 *and* 269(3)—*Sessions Judge—Trial by jury—Charges under ss.* 304 *and* 325 *of Penal Code— Verdict of jury on the minor charge—Disagreement between Judge and Jury—Reference to High Court.*—The accused were tried by the Judge with jury on charges under ss. 304 and 325 of the Penal Code. The jury found the accused guilty with respect to the charge under s. 325: with this verdict the Judge disagreed, and he referred the case to the High Court under s. 307 of the Crim. Pro. Code. *Held*, that the case should be sent back to the Judge who tried it, with a direction, that he should pass orders and dispose of it as in a case tried by him with the aid of assessors on the minor charges against the accused, under s. 325. EMPEROR v. VYANKATSING SAMBHUSING, **9 Bom. L.R. 1057 =7 Cr. L.J. 236.**

(6)—*Crim. Pro. Code*, s. 423—*Charge to jury—Misdirection in the charge—Heads of charge*—The High Court is not authorized, by s. 423 of the Crim. Pro. Code, to alter or reverse the verdict of the jury unless it is of opinion that that verdict is erroneous owing to a misdirection by the Judge. If it comes to that opinion, then it has the power to reverse the verdict; but that power ought not to be lightly exercised. It is manifestly the intention of the legislature that the power of interference conferred on the High Court should be exercised on occasions. The expression "heads of charge" in s. 367 of the Crim. Pro. Code must be construed reasonably, and must be held to include such statement on the part of the Sessions Judge as will enable the appellate Court to decide whether the evidence has been properly laid before the jury or whether there has been any misdirection in the charge. *In re* SHAMBULAL JIVANDAS, **10 Bom. L.R. 565=8 Cr. L.J. 35.** (23 W.R. 32, *R.*)

(7)—*Crim. Pro. Code* (1882), s. 418—*Verdict of jury.*—S. 418 gives finality to the verdict of a jury where there has been no error of law nor misdirection, and when the Judge has concurred with the majority of the jury. QUEEN-EMPRESS v. BALAPPA, **Rat. Un. Cr. C. 730= Cr. Rg. 58 of 1894.**

Verdict of Jury—*continued.*

(8)—*Crim. Pro. Code* (1898), *ss.* 302, 303, 304—*Verdict of guilty of culpable homicide not amounting to murder by majority of jury—Second verdict of guilty of murder—Procedure—Penal Code, ss.* 302, 304.—On the conclusion of a trial for murder, the jury by a majority of 4 to 1 returned a verdict of not guilty of murder, but guilty of culpable homicide not amounting to murder. The jury were then asked by the Judge to consider whether the accused intended to cause death, for the purposes of s. 304, I.P.C., and the jury after this came to the unanimous opinion that the accused was guilty of murder, and the Sessions Judge accepted this verdict and convicted the accused of murder and sentenced him to transportation for life. *Held* (1) that the second verdict could not stand, as all that the Judge had wished the jury to consider was, which of the two classes of offences under s. 304, I.P.C., the majority of the jury had found the accused guilty of, and they had, therefore, no power to re-consider the whole case and bring an unanimous verdict of guilty of murder, an erroneous verdict not having been delivered by accident or mistake such as would entitle them to amend under s. 304, Crim. Pro. Code, and the Judge not having asked them to re-consider the first verdict under s. 302 of the Code, (2) that the second verdict should, therefore, be treated merely as a reply to the point which the jury were asked to re-consider, a reply to the effect that they were of opinion that there was an intention of causing death and that the offence thus fell under the first clause of s. 304. QUEEN-EMPRESS v. CHUNILAL VITHAL, **Rat. Un. Cr. C. 982=Cr. Rg. 44 of 1898.**

(9)—*Reference by Sessions Judge to High Court on acquittal by jury—Acquittal by majority—Powers of High Court.*—When, disagreeing with a verdict of acquittal by the jury, a Sessions Judge refers the case to the High Court (under ss. 263 and 464, Crim. Pro. Code, 1872), it is his duty to state the offence which, in his opinion, has been committed. On a reference by a Sessions Judge, the High Court is competent to find the prisoner guilty, though the majority of the jury may have returned a verdict of acquittal in the Sessions Court. EMPRESS v. SAHAE RAE, **3 C. 623= 2 C.L.R. 304.** [*R.*, 13 Cr. L.J. 145=13 Ind. Cas. 833=1912 M.W.N. 136=11 M.L.T. 127= 22 M.L.J. 333.]

(10)—*Proved minor offence though not separately charged, verdict of jury upon—Sustainability—Retirement of jury for further consideration—Unanimous verdict by jury— Dissent of Judge from unanimous verdict—Procedure.*—In a trial of the accused upon a charge under s. 149, read alternately with s. 325 of the Penal Code (being members of an unlawful assembly and causing grievous hurt), a verdict of guilty by the jury of an offence under s. 325 alone, though it did not form the subject of a separate charge, was held legally sustainable under s. 457 of the Crim. Pro. Code of 1872. [*Appr.*, 22 C. 1006; *R.*, 8 B. 200.] A

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jury may be required to retire for further consideration only when their verdict is not unanimous. An unanimous verdict by the jury, unless it is contrary to law, must be received by the Judge. [*R.*, 19 B. 735, Rat. Un. Cr. C. 982.] A Judge dissenting from an unanimous verdict, which is not contrary to law, must proceed under cl. 5 of s. 263 of the Crim. Pro. Code of 1872. GOVERNMENT OF BENGAL v. MAHADDI, **5 C. 871.** [*R.*, 11 Cr. L.J. 630=8 Ind. Cas. 373=13 O.C. 295.]

(11)—*Improper selection of jury and admission of evidence—Effect on the verdict of the jury—Crim. Pro. Code* (1872), *ss.* 240 *and* 283—*Evidence Act, s.* 167.—The selection of jurors contrary to the provisions of s. 240 of the Crim. Pro. Code, and the improper admission of a medical witness's deposition, which irregularities were not shown to have prejudiced the prisoners, are not objections that would justify, with reference to s. 283 of the Crim. Pro. Code and s. 167 of the Evidence Act, an interference with the verdict of the jury. Per *Field, J.* EMPRESS v. JHUBBOO MAHTON; *In the matter of the petition of* JHUBBOO MAHTON, **8 C. 739=12 C L R. 233.** [*D.*, 7 C. W.N. 188.]

(12)—*Setting aside — Discretion of High Court—Crim. Pro. Code* (1872), *s.* 263—*Judge to record unambiguous, though erroneous verdict of jury.*—The High Court will not exercise the vast discretionary powers vested in it under s. 263 of the Crim. Pro. Code of 1872 in setting aside the verdict of a jury, unless it is perverse and patently wrong or may have been induced by the error of the Judge. [*R.*, 15 C. 269.] Where the verdict of a jury is sought to be set aside as being against the weight of evidence, the question is, not whether the Judge who tried the case was or was not dissatisfied with the verdict, or whether he would have come to the same conclusion as the jury, but whether the verdict was such as reasonable men ought to have come to. Though the Court is authorised, under s. 263 of the Crim. Pro. Code, to ask the jury such questions as are necessary to ascertain what their verdict is, the Judge must receive and record an unambiguous, though erroneous verdict, without asking any questions about it. *In the matter of* DHUNUM KAZEE EMPRESS v. DHUNUM KAZEE, **9 C. 53=11 C.L.R. 169.** [*F.*, 9 B. 735; *Cons.*, Rat. Un. Cr. C. 442.]

(13)—*Questioning jury as to verdict—Duty of Judge—Crim Pro. Code, ss.* 303 *and* 307.—The power given under s. 303 of the Crim. Pro. Code, to put questions to the jury for ascertaining their verdict, does not authorise the Judge, on learning that the jury are not unanimous, to make minute enquiries regarding the nature of the majority and its opinion, with a view to deciding whether he will accept it or not; whatever may be the opinion of the Judge, if he goes so far as to ask the jury what is the exact majority and what is its opinion, the verdict ought to be received without hesitation, and if the Judge differs from it, he should proceed as directed by s. 307. HURRY CHURN CHUCKERBUTTY v. EMPRESS, **10 C. 140=13 C.L.R. 358.** [*R.*, Rat. Un. Cr. C. 442.]

(14)—*Crim. Pro. Code* (*Act* X *of* 1882), *s.* 307—*Verdict in accordance with the charge, whether erroneous.*—The High Court will not interfere, unless the verdict of the jury be found to be manifestly erroneous. Where a Sessions Judge, in his charge to the jury, directed that, if they found the charges under ss. 302 and 304 of the Penal Code to be unsustainable, they might find the prisoner guilty under s. 325 of the Code, the High Court declined to interfere with the verdict of the jury acquitting the accused of the offences under ss. 302 and 304, and finding him guilty under s. 325 of the Code. QUEEN-EMPRESS v. JACQUIET, **11 C. 85.**

(15)—*Verdict of jury—Powers of High Court.*—The Crim. Pro. Code gives the High Court no power to interfere with a verdict of the jury in cases where there is evidence to go before them. JASPATH SINGH v. QUEEN-EMPRESS, **14 C. 164.** [*R.*, Rat. Un. Cr. C. 452.]

(16)—*Crim. Pro. Code, ss.* 303 *and* 307—*Question by Judge of jury after verdict, when can be put.*—Per *Henderson, J.*—It is only when it is necessary to ascertain what the verdict of the jury really is that s. 303 justifies the Judge in putting questions to the jury. Where the verdict of the jury is a simple verdict of "not guilty" the Court is bound to accept it. EMPEROR v. ABDUL HAMID, **32 C. 759=9 C.W.N. 520=2 Cr. L J. 259.**

(17)—*Crim. Pro. Code* (1872), *s.* 263—*Judge differing from verdict of jury—Discretionary powers of the High Court—Reasons for verdict of jury.*—The words of s. 263 leave the discretion of the Judges of the High Court, in dealing with the verdict of a jury, uncontrolled. It would be improper, if not impossible, to lay down any fixed rule by which that discretion should be controlled. Each case should depend on its own circumstances. [*R.*, 9 C. 53, 15 C. 269.] The law does not prevent a Sessions Judge from asking a jury regarding the grounds for their verdict, and such a course is desirable in the ends of justice. EMPRESS v. MUKHUN KUMAR, **1 C.L.R 275.** (25 W.R. 25. Cr., 21 W.R 1. Cr. *R.*) [*R.*, 11 M.L.T. 367=1912 M W.N. 499=22 M.L.J. 419=14 Ind. Cas. 305=13 Cr. L J. 209]

(18)—*Crim. Pro Code* (1872), *s.* 263—*Verdict of the majority of jury—Reference under the section to the High Court.*—In a case referred by the Sessions Judge to the High Court, under s. 263, Crim. Pro. Code, 1872, on his disagreeing with the verdict of the majority of the jurors acquitting the prisoner on a charge of attempt to commit rape, the High Court, agreeing with the Sessions Judge and one of the jury, sentenced the prisoner. *In the matter of* TILUCKDHAREE, **2 C.L.R 1.**

(19)—*Crim. Pro. Code* (1872), *s.* 263—*Verdict of jury—Interference.*—Where there are reasons

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for suspicion sufficient to warrant the jury in disbelieving the witnesses, and in giving the prisoner the benefit of the doubts raised by inconsistencies in their evidence, the High Court will not interfere, merely on the ground that another jury would have come to a different conclusion on the evidence. *In the matter of* HURREE NARAIN MOOKERJEA, **2 C.L R. 518.** (20 W.R. 73, *Cited.*)

(20)—*Trial by jury—Verdict of jury—Interference with verdict—Crim. Pro. Code* (1882), ss. 303, 307—*Duty of High Court on reference—When verdict can be set aside*—Per *Jardine, J.* —In England the jury may find either a general verdict on the whole matter in issue, or a special verdict on the particular facts. It is the privilege of the jury to find a general verdict. They may refuse to answer questions. The option is that of the jury, not of the Judge. If the jury chooses to return a special verdict, it must be on the naked facts; it must state positively the facts themselves and not merely the evidence adduced to prove them, and all the facts necessary to enable the Court to give the judgment must be found. By finding a special verdict, the jury protected themselves, leaving the questions of law to the separate determination of the Judge. Whether the findings of fact were sufficient and clear, was often a question raised afterwards. So, in general verdicts there might occasionally be ambiguity, or the jury might exceed their functions. It is the office of the Judge to instruct the jury on points of law, and of the jury to decide on matters of fact The present law in India is, like that of England, designed to secure a certain and complete finding on the matter in issue at the trial; and both Judge and jury have a duty as regards completeness and certainty. S. 303, Crim. Pro. Code, enacts the doctrine of the English law, which is thus stated by *Blackburn, J.*, in *Winser* v. *The Queen*, L. R. 1 Q. B. 289 (318). "It is the duty of the Judge to take care that the verdict of the jury is not imperfect, and if the jury have completely omitted to answer the questions left to them, he ought to point out the omission and have it corrected. When, however, the Judge receives an imperfect verdict, it is clear that the Judge has made a mistake; he ought not to have discharged the jury. But once a good verdict is given, the case is *res judicata.*" If the verdict of the jury is not imperfect, the Judge has no right to question the jury to find out the reason for the jury's verdict. The High Court, in a reference under s. 307, Crim. Pro. Code, should lean to disregarding the answers to questions propounded after delivery of the complete verdict. Per *Candy, J.*—It is more than doubtful whether the English authorities were present to the mind of the Indian Legislature, when enacting the provisions of the Crim. Pro. Code, specially adopted for India relating to the verdict of the jury and the duty of the Sessions Judge when completely disagreeing from it. Trial by jury is a recent institution in India, and the Judge may differ from the jury as to the facts. The questions referred to in s. 303 are only such as are necessary to ascertain what the verdict is. In the absence of any express provision of the law to the contrary, a clear and concise finding of the jury on the main facts should be allowed, even though a verdict of not guilty has been delivered. [*F.*, 19 B. 735, 20 B. 215, 6 Bom. L.R. 258, Rat. Un. Cr. C. 736, 13 Cr. L.J. 586=15 Ind. Cas. 1002, Rat. Un.Cr. C.710.] Per *Jardine, J.*—For the reasons already stated what the High Court has to deal with in a reference under s. 307, where a general verdict of guilty or not guilty has been validly given, is the evidence and the verdict itself, and not the reasons for the verdict derived from answers about particular facts. Per *Jardine, J.*—It has been the uniform practice of the High Court not to interfere with the verdict of the jury, except when it is shown to be clearly and manifestly wrong. In such reference, it is not proper for the High Court to exercise independent judgment over the facts. The effect of such treatment would be to make the judgment of the High Court, in fact, though not in name, to take the form of determining not whether the verdict is reasonable, but as in appeal whether it is right. Per *Candy, J.*—In a reference under s. 307, the High Court should exercise independent judgment on the facts. The whole case is opened up. Per *Sargent, C. J.*—The finality of the verdict of the jury is by s. 307, Crim. Pro. Code, made subject to the power of the Sessions Judge who presides at the trial (when he disagrees with the verdict of the jurors so completely that he considers it necessary for the ends of justice) to submit the case to the High Court, which, in dealing with the case, is to exercise any of the powers which it may exercise on appeal. This is a most important departure from English law and practice and the latter cannot be resorted to as affording a rule in the exercise of the powers conferred on the High Court under s. 307. However, it has been the uniform practice of the High Court not to interfere with the verdict of a jury except when it is shown to be clearly and manifestly wrong. QUEEN-EMPRESS v. DADA ANA, **15 B. 452.**

(21)—*Crim. Pro. Code* (1872), *ss.* 457, 263—*Charge under s.* 149 *coupled with s.* 325, *I.P. C.—Verdict of guilty on charge under s.* 325—*Validity—Jury's unanimous verdict of guilty.*—Under s. 457, it is competent to the jury to return a verdict of guilty only under s. 325, Penal Code, although it did not form the subject of a separate charge, but was entered in a charge, coupled with s. 149 of the Penal Code. If the jury are unanimous, their verdict must be received, unless it is contrary to law. If the Judge disagrees with such verdict, he should proceed as laid down in cl. 4 of the section. EMPRESS v. MAHUDDI, **6 C.L.R. 349.**

(22)—*Crim. Pro. Code* (1898), s. 303—*Ambiguous verdict by jury—Duty of the Sessions Judge.*—Where the jury returns an ambiguous verdict, it is the duty of the Sessions Judge to

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ask them such questions as are necessary to ascertain what the jury really means by such verdict. KING-EMPEROR v. CHIDGHAN GOSSAIN, **7 C.W.N. 135.** [*R.*, 36 C. 629=9 C.L.J. 638=13 C.W.N. 757=2 Ind. Cas. 497=10 Cr. L.J. 32; *D.*, 9 C.L.J. 432=10 Cr. L.J. 57=2 Ind. Cas. 593.]

(23)—*Charge of robbery—Verdict of—for theft.*—The verdict of the jury in finding the prisoner guilty of *theft* only, although he was charged with "robbery," is not contrary to law, unless they find that violence has been used. If they disbelieve the employment of any violence, there is nothing contrary to law in their finding the prisoner guilty of theft. **1 W.R. Cr. Letters 13.**

(24)—*Crim. Pro. Code* (1882), s. 269—*Judge treating jury as assessors and differing from their verdict, validity of.*—Four persons were charged before a jury with dacoity, conjointly committing a dacoity, in the course of which one or more of their number committed murder, and with murder. The jury returned a verdict that prisoners Nos. 1 and 4 were guilty on all the three heads of charge, but that Nos. 2 and 3 were not guilty. The Sessions Judge overlooked the provisions of s. 269, cl. 2, under which the first head of the charge being triable by jury, the other heads should also be so tried, and treated the jury as assessors in regard to the second and third counts and acquitted prisoners Nos. 1 and 4 on those counts and convicted them of dacoity. As regards prisoners Nos. 2 and 3, the Judge differed from the verdict which declared Nos. 2 and 3 not guilty of dacoity, and, therefore, referred the case to the High Court under s. 307. *Held*, that the unanimous opinion of the jury on the second and third heads of charge must be treated as a formal verdict, and the irregularity on the part of the Court could not deprive their opinion of its proper legal effect. QUEEN-EMPRESS v. LEKSHMANA, **9 M. 42=9 Ind. Jur. 387.**

(25)—*Crim. Pro. Code* (1882), *ss.* 307 *and* 418—*Perverse verdict of jury against the advice of Sessions Judge—Refusal by Sessions Judge to refer the case to the High Court—Appeal from conviction.*—Where a jury convicted the accused of dacoity against the opinion and advice of the Sessions Judge and the latter declined to refer the case to the High Court under s. 307 of the Code of Criminal Procedure, *held*, on appeal by the accused, that the High Court had no power to interfere, however absurd or wrong the verdict might have been, inasmuch as there was no misdirection by the Sessions Judge and as there was evidence against the accused if the jurymen chose to believe it. QUEEN-EMPRESS v. CHINNA TEVAN, **14 M. 36=2 Weir 390.** [*R.*, 9 Cr. L.J. 93=4 M.L.T. 483.]

(26)—*Crim. Pro. Code* (1898), s. 307—*Powers of Sessions Judge to question jury.*—Where the jury returns a verdict on the general issue of guilty or not guilty, and there is no ambiguity as to the precise offence of which the accused are convicted or acquitted, s. 307 of the Code does not authorise the Sessions Judge to question the jury, as the only questions he is entitled to put to the jury are "such questions as are necessary to ascertain what their verdict is." EMPEROR v. SIRANADU, **30 M. 469=17 M.L.J. 476=6 Cr.L J. 373.** [*App.*, 13 Cr. L.J. 586=15 Ind. Cas. 1002.]

(27)—*Crim. Pro. Code* (1898), *ss.* 307 *and* 418—*Refusal by Sessions Judge to refer to High Court—No misdirection—No failure of justice—Power of High Court to interfere.*—The High Court cannot interfere with the verdict of the jury, when the Sessions Judge has refused to refer the case under s. 307, Crim. Pro. Code, (*a*) and there has been no material misdirection in the case, and no failure of justice has been caused by misdirection. *In re* KAIYAN, **4 M. L T. 483=9 Cr.L.J. 93.**

(28)—*Special verdict—Question put by Judge to jury after special verdict—Penal Code, s.* 330.—The prisoners were tried under s. 330 of the Penal Code (for voluntarily causing hurt to a girl), and under s. 348 (for wrongfully confining her). Circumstances of aggravation were alleged, as lifting up and using a sword, of lowering the girl into a well, and of pricking her with thorns. The jury in their verdict stated that they disbelieved these allegations, and also the charge of illegal confinement, but that they believed that some slaps had been given. The Judge then asked the jury whether they convicted on either, and if so, which head of charge. They answered that they believed the prisoners had beaten the girl, and they convicted them under s. 330. *Held*, that the question put by the Judge to the Jury was a proper one, and not one of law. The conviction upheld. Such a case is not governed by the rules of English law as to special verdicts. QUEEN v. HARI PRASAD GANGOOLY, **8 B.L.R. 557=14 W.R. Cr. 59.**

(29)—*Power to interfere with verdicts—Exercise of powers of High Court—Crim. Pro. Code* (1872), s. 263.—The Court should exercise the powers vested in it by s. 263 of the Crim. Pro. Code (X of 1872), only, when it finds the verdict of the jury clearly and patently wrong, and only set such verdict aside, even if the Sessions Judge disagrees with it, when it is found unsustainable by the evidence. QUEEN v. SHAM BAGDI, **13 B.L.R. Ap 19=20 W.R. Cr. 73.** [*R.*, 41 C. 621=21 Ind. Cas. 900=14 Cr.L.J. 660.] *See, also,* QUEEN v. NOBIN CHUNDER BANERJEE, **13 B.L.R. Ap. 20=20 W.R.Cr. 70**; QUEEN v. MUSSAMUT ITWARYA, **14 B.L R. App. 1**; QUEEN v. HURRO MANJI, **14 B.L R. App. 2, note=21 W.R. Cr. 4.**

(30)—*Judge disagreeing with verdict—Crim. Pro. Code* (1872), *s.* 263—*Ground for setting aside verdict.*—On a trial by jury before a Sessions Judge, the jury returned a verdict of guilty. The Judge disagreed with their verdict, and submitted the case to the High Court. *Held*, that the High Court had power to set aside the verdict of the jury, and to direct an

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acquittal. S. 263 of the Crim. Pro. Code (Act X of 1872) explained. QUEEN v. KOONJO LETH, **11 B.L.R. 14 = 20 W.R. Cr. 1.**

(31)—*Questioning jury as to reasons for verdict.*—No member of the jury ought to be questioned by the Judge as to the reasons for returning the verdict he gives. QUEEN v. MEAJAN SHEIKH, **20 W.R. Cr. 50.**

(32)—*Crim. Pro. Code* (1872), *s.* 263—*Second verdict.*—A jury acquitted an accused, charged with murder and grievous hurt, of murder convicting him of the other charge only. The Sessions Judge recorded this verdict and under s. 263, Crim. Pro. Code, 1872, questioned the jury as to the reasons for their opinion, who then expressed themselves willing to convict for murder. The Sessions Judge differed from the verdict first given, but, as he had recorded that verdict, he was not sure whether he could accept the second verdict and referred the matter to the High Court, who *held* that s. 263 was inapplicable. A verdict is delivered and can be recorded only after the last of the questions put by the Judge to the jury has been answered; and in this case, the circumstances required the Judge to enter the verdict of the jury as one of guilty of murder. A Judge is, under s. 263, Crim. Pro. Code, 1872, justified in putting questions to the jury only when it is necessary for ascertaining what the verdict of a jury really is. QUEEN v. SUSTIRAM MANDAL, **21 W.R. Cr. 1.**

(33)—*Penal Code, ss.* 325, 335 — *Grievous hurt.*—On the jury, in the case of a prisoner charged under ss. 304, 325, 323, Penal Code, finding the prisoners guilty, under s. 335, *held* that he was not acquitted of grievous hurt, but found guilty of the offence described in s. 322, with the extenuating circumstances which would confine the punishment within the limits specified in s. 335. QUEEN v. LUKHINARAIN AGOORI, **23 W.R. Cr. 61.**

(34)—*Form of verdict—Culpable homicide—Illegal finding.*—Where the jury found that, although the accused killed the deceased, the crime was not murder because the accused had no motive in killing him, such finding was held to be not a legal finding, and not to amount to a conviction of culpable homicide not amounting to murder. QUEEN v. UCKOOR GHOSE, **1 W.R. Cr. 50.**

(35)—*Verdict based on voluntary confession.*—A verdict based on voluntary confessions is a verdict no less valid than one based on the testimony of credible witnesses. The jury, not the judge, should determine the credibility of witnesses. The verdict of a jury, wherever a jury trial is provided by the law, must be accepted, except where it is evidently and clearly wrong. QUEEN v. WUZIR MUNDAL, **25 W.R. Cr. 25.**

(36)—*Objection to the verdict of jury.*—It is on the party objecting to the verdict of a jury to show *prima facie*, that either the jury did not *apply* a judicial discretion to the case, or that

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they could not have arrived at that verdict by a proper exercise of their discretion on the materials before them. BINDABUN CHUNDER DUTT v. DWARKA NATH SEN, **23 W.R. Cr. 15.**

(37)—*Every juryman to exercise independent opinion.*—It is the duty of every juryman to exercise his own undertaking in the case before him and to arrive at an independent opinion. He is not to follow blindly the opinion of his fellows. If, in a jury of five, one, out of three jurymen, depends on the inspection and inquiries of the other two persons, it cannot be held that such a verdict, composed of these three, is one of a legal majority. PETAMBER JAGI v. NASARUDDY, **25 W.R. Cr. 4.**

(38)—*Wrong verdict by jury—High Court's interference.*—On a jury convicting a prisoner contrary to the charge of the Sessions Judge such charge being held by the High Court to have been a proper charge, the High Court refused to interfere, although it concurred with the Sessions Judge in thinking that the verdict of the jury was not correct. The case was one in which an application could be made to the Government, but as regards the Court, the petitions were rejected. QUEEN v. NIDHEERAM BAGDEE, **18 W.R. Cr. 45.**

(39)—*Verdict of jury unsupported by evidence and disapproved by Judge—High Court concurred with Judge.*—The accused was convicted of the offence of using as genuine a forged document. The charge of the Judge was one for acquittal. The verdict of the jury was unsupported by evidence, and disapproved by the Judge. The High Court concurred with the Judge, acquitted the accused and directed his immediate discharge. QUEEN v. SHIB CHUNDER MUNDLE, **18 W.R. Cr. 46, Note.**

(40)—*Absence of evidence for prosecution—Judge to point it out to Jury.*—An omission to point out to the jury that there was an absence of evidence material to the case for the prosecution is a misdirection. QUEEN v. GUNGA GOVIND PALIT, **23 W.R. Cr. 21.**

(41)—*Verdict of guilty—Eye-witness.*—Where a jury found an accused person guilty of murder, but refused to convict him because there had been no eye witness of his crime, and on a second charge from the Judge refused to find him guilty at all: *Held* by the High Court, to whom the case was referred, that the Judge ought to have explained to the jury that the testimony of eye-witnesses was not necessary to the establishment of a charge of murder, and that the jury, if they had no doubt of the guilt of the accused, were bound to give effect to the conclusion at which they had arrived. QUEEN v. GOKOOL KAHAR, **25 W.R. Cr. 36.**

(42)—*Acquittal by jury—Conviction by High Court.*—Case where notwithstanding the verdict of acquittal come to by the jury, the High Court, acting under s. 263, Crim. Pro. Code, 1872, convicted the accused on the facts. QUEEN v. SIDHAM SIRCAR, **20 W.R. Cr. 16.**

Verdict of Jury—*continued.*

(43)—*Case under s.* 263, *Crim. Pro. Code*, 1872.—On a reference to the High Court under s. 263, Crim. Pro. Code, owing to the dissent of the Sessions Judge from the verdict of the jury, *held* that the Government, which preferred the appeal, and prayed for a conviction was entitled to begin and satisfy the Court that there was a case demanding an answer from the accused. QUEEN v. RAM CHURN GHOSE, **20 W.R. Cr. 33.**

(44)—*Procedure — Jury — Sessions Judge differing from verdict—High Court—Act* X *of* 1872, *s.* 263.—The Sessions Judge, differing from a majority of the Jury, who acquitted the accused, referred the case to the High Court, under s. 263 of the new Code of Criminal Procedure, to be dealt with as an appeal. Before proceeding with the case, the High Court considered it fair to the accused to give him notice to bring forward any objections he may have to the Sessions Judge's recommendation. On a consideration of the evidence, the High Court convicted the accused of the offence with which he had been charged below. QUEEN v. OOTTUM DHOBA, **19 W.R. Cr. 38.**

(45)—*Crim. Pro. Code* (1872), *s.* 263.—Trial on different charges—Discharge on some charges on which jury and Sessions Judge agree—Reference of whole case to High Court. QUEEN v. SHAM BAGDEE, **20 W.R. Cr. 73 = 13 B.L.R. Ap. 19.**

(46)—*Charge of murder—Finding by jury that accused was of unsound mind when offence was committed.*—Case where the High Court, on a consideration of the medical evidence in the case, declined to interfere with the verdict of acquittal come to by the jury. QUEEN v. DOORJODHUN SHAMONTO, **19 W.R. Cr. 45.**

See ACQUITTAL, 11 W.R. Cr. Cir. 1.

Trial by District Magistrate of European British subject with a jury—Power of District Magistrate to refer case to High Court on dissenting from verdict of jury—*See* ACT III OF 1884, s. 8 (6), 9 A. 420 = A.W.N. 1887, 39.

See APPEAL—APPEAL FROM ACQUITTAL, 26 M. 1 = 2 Weir 521.

See CRIM. PRO. CODE, 1898, s 227, 8 B. 200.

See CRIM. PRO. CODE, 1898, ss. 307, 337, 13 C.W.N. 757 = 9 C.L.J. 638 = 36 C. 629 = 2 Ind. Cas. 497.

See CRIMINAL PROCEEDINGS, 20 M. 445 = 2 Weir 384.

See DACOITY, 5 M.L.T. 100 = 32 M. 179 = 9 Cr. L.J. 567 = 2 Ind. Cas. 307.

See EVIDENCE—GENERAL, 13 M. 426 = 1 Weir 290.

See EVIDENCE ACT, 1872, s. 167, 19 B. 749.

See GRIEVOUS HURT, 12 C.W.N. 530 = 7 Cr. L.J. 362.

See IRREGULARITY, Rat. Un. Cr. C. 961 = Cr. Rg. 15 of 1898.

See JURY UNDER NUISANCE SECTIONS OF RIM. PRO. CODE, 18 A. 158.

Verdict of Jury—*concluded.*

Repugnancy in, effect of, in Indian law—Opinion of Judge and Jury, weight to be attached to—*See* PENAL CODE, ss. 34, 107, 18 C.W.N. 580 = 15 Cr. L.J. 402 = 41 C. 754 = 23 Ind. Cas. 1002.

See PRACTICE AND PROCEDURE, 1 W R. Cr. Letters, 9.

See REFERENCE TO HIGH COURT, 2 B. 525, 13 M. 343 = 2 Weir 389, 29 C. 128 = 6 C. W.N. 253, 9 C.L.J. 432 = 2 Ind. Cas. 593.

See REVISION—MATTERS PERTAINING TO EVIDENCE, 15 C. 269.

Judge passing heavier sentence than the—*See* SENTENCE—GENERAL, 8 Ind. Cas. 455 = 3 Bur. L.T. 75.

Interference with—*See* SENTENCE—POWERS OF APPELLATE COURT—MITIGATION, 6 W. R. Cr. 6.

See SESSIONS TRIAL, 6 Bom. L.R. 671.

Verification.

(1)—*What is sufficient verification.*—A verification on oath of a complaint before a Magistrate is a sufficient compliance with the provision of s. 203. VELU NATTAN v. EMPEROR, **1911, 2 M. W. N. 356 = 10 M. L. T. 573 = 12 Cr. L.J. 550.**

(2)—*Penal Code—S.* 177—*Income-tax petition—False verification.*—A false verification in an objection petition to the assessment of income-tax is an offence punishable under s. 177, Penal Code. EMPEROR v. RUP SING, **44 P.R. 1905 = 187 P.L.R. 1905 = 3 Cr. L.J. 128.** (24 M. 121, *R.*; 27 C. 820, *D.*) [*R.*, 22 Ind. Cas. 146 = 15 Cr. L. J. 2.]

Making false statement in document not requiring—, not an offence under s. 193—Prosecution to point out exact words and exact offences—Document tendered in evidence in a Civil Court to be proved in a Criminal Court before admission—*See* FALSE EVIDENCE, 9 W.R. Cr. 58.

See FALSE EVIDENCE, 2 B.L.R.A.Cr. 1 = 10 W.R. Cr. 31.

Importance of—*See* LEGAL PRACTITIONERS—ATTORNEY, 14 Cr. L.J. 305 = 19 Ind. Cas. 993, S.B.

False verification—Statement made believed to be true—'Good faith'—Perjury—*See* PENAL CODE, ss. 52, 191, 193, 12 A.L.J. 550 = 36 A. 362 = 15 Cr. L.J. 579 = 25 Ind. Cas. 331.

Of confession, value and utility of—*See* PENAL CODE, s. 121-A, 15 C.W.N. 593 = 10 Ind. Cas. 582 = 12 Cr. L.J. 286 = 38 C. 569.

False—of plaint—*See* PENAL CODE, ss. 193, 209, Rat Un. Cr. C. 25 = Cr Rg. 23—9 1869.

Evidence of, best evidence of Magistrate—*See* PENAL CODE, s. 400, 16 C.W.N. 69.

See SANCTION TO PROSECUTE—AUTHORITIES COMPETENT TO GRANT SANCTION, ETC., A.W.N. 1884, 57.

Vessels (Coasting) Act.

See BOM. ACT XIX OF 1838.

Vexatious Complaint.

See FALSE CHARGE.

See MALICIOUS PROSECUTION.

Compensation, when can be awarded for—"False" and "Vexatious" and "Frivolous" complaint—*See* CRIM. PRO. CODE, 1898, s. 250, 28 C. 251.

Vice-Chairman.

Qualifications and disqualifications—Interest in case—Municipal cases—Magistrate also—of Municipality—*See* JUDGE, 3 W.R. Cr. 33.

Village.

See MAD. REG. IV OF 1816.

See BOM. REG. XII OF 1827, s. 37, 4 S.L.R. 269 = 12 Cr. L.J. 391 = 11 Ind. Cas. 255.

Village Accountant.

See CRIM. PRO. CODE, 1898, s. 43, 1 M. 266 = 1 Weir 196.

Village and Road Police Act.

See U.P. ACT XVI OF 1873.

Village Chowkidar.

See ABETMENT, 8 C. 728 = 11 C.L.R. 223.

See CRIM. PRO. CODE, 1898, s. 45, A.W.N. 1886, 65.

Confession made to chowkidar—Confession to a Magistrate subsequently retracted—Bengal Act I of 1892 (Village Chowkidars)—Whether a police officer—*See* EVIDENCE ACT, 1872, ss. 25 and 26, 2 C.W.N. 637.

See PENAL CODE, s. 221, 3 A. 60.

Village Chowkidari Act.

See BEN. ACT VI OF 1870.

Village Chowkidari Amendment Act.

See BEN. ACT I OF 1892.

Village Courts.

See U. P. ACT III OF 1892.

Village Fees, Cess in lieu of.

See MAD. ACT IV OF 1864.

Village Headman.

(1)—*Or rural policeman — Protection from prosecution of, for certain offences — Lower Burma Village Act, ss. 8, 9, 23.*—A village headman or rural policeman is protected from a prosecution under any Act for an offence for which he might be departmentally punished by the Deputy Commissioner, under s. 8 of the Lower Burma Village Act, unless the prosecution has been sanctioned by the Deputy Commissioner. QUEEN-EMPRESS v. NGA CHEIK TO, **L.B.R. 1893—1900, 397.**

Complaint of petty theft to Magistrates—Jurisdiction to refer the complainant to the heads of the villages—*See* COMPLAINT—PROCEDURE ON RECEIPT OF COMPLAINTS, 2 Weir 22 = 2 Weir 237 = 7 M.H.C. App. 31.

See CRIM. PRO. CODE, 1898, s. 1, 2 Weir 1.

See FALSE CHARGE, 5 M.L.T. 269, F.B. = 32 M. 258 = 9 Cr. L.J. 170.

Village Kavalgars.

See MAD. ACT XXIV OF 1859, ss. 8, 10, 11 and 44, 1 Weir 836 = 7 M.H.C. App. 4.

Village Magistrate.

(1)—*Jurisdiction of Village Magistrate.*—A Village Magistrate has no jurisdiction to try and convict a person of a theft committed in a village other than that over which his jurisdiction extends. *In re* PODILAI SUBBI PATTALI, **1 Weir 921.**

(2)—*Enquiry by a Village Magistrate on Sunday.*—It is not illegal for a Village Magistrate to hold an enquiry on a Sunday. *In re* MOOPPEN, **1 Weir 921.**

(3)—*Penal Code, s. 174 — Disobedience to verbal order of Village Magistrate.*—A disobedience to the verbal order of a Village Magistrate, directing the attendance of an accused person before him, is an offence under s. 174. HIGH COURT PROCEEDINGS 20TH FEB. 1872, NO. 309, **1 Weir 88 = 7 M.H.C. App. 3.**

(4)—*Civ. Pro. Code, s. 197 (a)—Village Magistrate, whether a Magistrate—General Clauses Act* (X of 1897).—*Quære.*—Whether a Village Magistrate in the Madras Presidency is or is not a Magistrate, within the meaning of s. 197 (*a*), Civ. Pro. Code, as that expression is defined in the General Clauses Act. PALANIAPPA CHETTI v. ANNAMALAI CHETTI, **27 M. 223 = 2 Weir 208 = 14 M.L.J. 74 = 2 Weir 577.**

(5)—*Village Magistrate— Refusal to grant adjournment to enable accused to move High Court for transfer—No good grounds for such refusal —Conviction — Illegality.*—Where a Village Magistrate refused to grant an adjournment to the applicant in order to move the High Court for transfer, but proceeded with the trial and convicted him, and where it does not appear there were good reasons for refusing the application for adjournment: *Held*, that the Village Magistrate acted illegally. THOTA NARAYADU v. EMPEROR, **21 M.L.J. 755 = 11 Ind. Cas. 591 = 12 Cr. L.J. 407.**

Verbal order of—*See* CONTEMPT OF COURT, 1 Weir 88 = 7 M.H.C. App. 3.

Complaint presented to a—and passed on to a Station House Officer—Penal Code, s. 182—Giving false information to—*See* CRIM. PRO. CODE, 1898, ss. 154, 162, 28 M. 565 = 3 Cr. L.J. 108.

Is not a 'Magistrate' within s. 250, Crim. Pro. Code—*See* CRIM. PRO. CODE, 1898, s. 250, 1911, 2 M.W.N. 588 = 10 M.L.T. 550.

Escape from the custody of a—*See* ESCAPE FROM LAWFUL CUSTODY, 17 M. 103 = 1 Weir 201, 1 Weir 205 = 1 Weir 923.

See FALSE CHARGE, 5 M.L.T. 269, F.B. = 32 M. 258 = 9 Cr. L.J. 170.

False charge of theft to—*See* FALSE CHARGE, 1 Weir 122 = 1 Weir 194.

See MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION, 5 M. 250 = 1 Weir 922, 4 M.H.C. App. 2.

Village Magistrate—*concluded.*

Disobedience to summons issued by Village Magistrate—*See* PENAL CODE, s. 174, 1 Weir 87.

Duty of a—*See* MAD. REG. XI OF 1816, ss. 8 and 9, 1 Weir 920=3 M.H.C. App. 30.

See MAD. REG. XI OF 1816, s. 10, 1 Weir 921, 924, 925, 7 M.L T. 305=5 Ind. Cas. 794=11 Cr. L J. 249.

Fabricating record of criminal case—*See* SANCTION TO PROSECUTE—CONDITIONS REQUISITE FOR GRANT OF SANCTION, ETC., 4 M.L.T.473=32 M. 255=9 Cr. L.J. 89=3 Ind. Cas. 387.

Sanction to prosecute a Village Magistrate—*See* SANCTION TO PROSECUTE—CONDITIONS REQUISITE FOR GRANT OF SANCTION, ETC., 2 Weir 221.

See SANCTION TO PROSECUTE—CONDITIONS REQUISITE FOR GRANT OF SANCTION, ETC., 23 M. 540=2 Weir 222, 6 M.L.T. 128.

See ST. 24 and 25 Vict., Ch. 104, s. 15, 1 Weir 786.

See SUNDAY, 1 Weir 921.

Power of Village Magistrate to arrest—*See* WRONGFUL CONFINEMENT, 1 Weir 338=5 M. H.C. App. 24.

Village Magistrate, Jurisdiction of.

See MAD. REG. XI OF 1816, s. 10, 5 M.H.C. App. 33.

Village Monigar.

See VILLAGE MAGISTRATE.

Village Karnam and Village Monigar furnishing false information regarding applications for vacant Government lands—*See* PENAL CODE, ss. 167, 177, 1 Weir 108.

Village Munsifs.

See MAD. REG. IV OF 1816.

See VILLAGE MAGISTRATE.

Insulting Village Munsiff sitting in a stage of judicial proceeding—*See* CONTEMPT OF COURT, 15 M. 131=2 Weir 605.

See CRIM. PRO. CODE, 1898, s. 528, 15 M. 94=2 Weir 692.

See FALSE CHARGE, 31 M. 506=18 M.L.J. 573=9 Cr. L. J. 77.

Power of—to distrain property outside his jurisdiction for arrears of revenue in respect of land within jurisdiction—*See* PENAL CODE, s. 183, 1 Weir 127.

Submitting a false calendar—*See* PENAL CODE, s. 218, 1 Weir 197.

See MAD. REG. XI OF 1816, s. 10, 1 Weir 922.

If Court—*See* SANCTION TO PROSECUTE—AUTHORITIES COMPETENT TO GRANT SANCTION, ETC., 11 M. 375=2 Weir 163, 4 M.L.T. 214.

See SANCTION TO PROSECUTE—CONDITIONS REQUISITE FOR GRANT OF SANCTION, ETC., 6 A.L.J. 796=6 M.L.T. 98.

Village Munsif's Report.

Silent as to the murderer—Jewels worn by deceased missing and not accounted for—Motive for murder very slight—Conviction bad—*See* MURDER, (1911) 2 M.W.N. 373=12 Ind. Cas. 577=12 Cr. L.J. 551.

Village Officers.

Duty of—to report the absence of a bad character from the village—*See* PUN. ACT IV OF 1872, s. 39-A Rule 18, 37 P.R. 1887, Cr.

Report made by—in executive capacity, whether a complaint—*See* COMPLAINT—WHAT IS, AND WHO SHOULD INSTITUTE, Rat. Un. Cr. C. 554= Cr. Rg. 29 of 1891.

Village Patel.

See CORONER, Rat. Un. Cr. C. 771=Cr. Rg. 35 of 1895.

Village Peons.

See CRIM. PRO. CODE, 1898, s. 43, 1 M. 266=1 Weir 196.

Village Police.

See BOM. ACT VIII OF 1867.

Village Police Officer.

See MAD. ACT III OF 1864, s. 26, 9 M. 97=1 Weir 630.

Village Servant.

See ESCAPE FROM LAWFUL CUSTODY, 5 M. 22=1 Weir 200.

Villages, heads of, punishment by, of petty thefts (Police).

See MAD. REG. IV OF 1821

Village Talayari.

Whether a police officer—*See* MAD. ACT XXIV OF 1859, ss. 1, 8, 11, 1 Weir 342=1 Weir 837.

Village Vetti.

Allowing a person in custody to escape—*See* PENAL CODE, s. 223, 1 Weir 197.

Village Watchman.

See ESCAPE FROM LAWFUL CUSTODY, 5 M. 22=1 Weir 200.

Volunteers.

Exemption of, from the possession of Arms Act, effect of—*See* ACT XI OF 1878, s. 19, 22 A. 323=A.W.N 1900, 92.

Voters.

List of,—Chairman's duty—*See* BEN. ACT II OF 1888, 22 C. 717.

Vulgar Language.

Use of—for emphasis—*See* PENAL CODE, s. 228, 1 Weir 216.

Wadhwan.

Civil station at—Not part of British India—*See* BOM. ACT V OF 1878, s. 43 (*a*), 14 Bom. L. R. 876 = 1 Bom. Cr. C. 172.

Wager.

(1)—"*Gaming*" *in Bom. Act, I of* 1890, *includes wagering.*—Gaming, under the provisions of Bom. Act I of 1890, includes wagering. QUEEN-EMPRESS v. KANJI BHIMJI, **17 B. 184.**

Distinction between gaming and—Cotton gambling if an offence—*See* BEN. ACT IV OF 1866, s. 44, 16 C.W.N. 858 = 16 C.L.J. 250 = 13 Cr. L.J. 603 = 16 Ind. Cas. 171 = 39 C. 968.

See PENAL CODE, s. 406, L.B.R. 1872—1892, 130.

Wages.

Payment of—by liquor whether amounts to sale—*See* MAD. ACT III OF 1864, s. 2, 9 M. 141 = 1 Weir 645.

Retaining by servant of money due as—*See* CRIMINAL MISAPPROPRIATION, 11 W.R. Cr. 51.

Waging war against the Queen.

See PENAL CODE, ss. 121, 124-A.

(1)—*Penal Code*, s. 121—*English law of treason.*—The law contained in s. 121, I.P.C., is not a re-production of the English law of treason in its entirety, that is to say, not only the statute law but also the interpretation placed upon it by the cases: nor did the framers of the section intend it to be so. The expression "wages war," which is used in s. 121, I.P.C., must be construed in its ordinary sense as a phrase in common use in the English language, and it is impossible to hold that any of the overt acts alleged in this case (*e.g.*, collection of ammunition, arms, etc.) amounts to an offence under the section. BARINDRA KUMAR GHOSE v. EMPEROR, **37 C. 467 = 14 C.W.N. 1114 = 7 Ind. Cas. 359 = 11 Cr. L.J. 453.**

(2)—*Conspiracy to wage war—Treason—Misprision of treason—Limitation of period for prosecution—Penal Code*, s. 121—7 *Will*, III, *c.* 3, *s.* 5.—The offence of engaging in a conspiracy to wage war, and that of abetting the waging of war, against the Queen, under s. 121 of the Penal Code, are offences under the Penal Code only, and are not treason or misprision of treason; and, therefore, the provisions of the St. 7 Will. III, c. 3, s. 5 as to placing a limitation on the period for prosecution are not applicable. QUEEN v. AMIRUDDIN, **7 B.L.R. 63 = 15 W.R. Cr. 25.**

(3)—*Rebellion—Dacoity—Attempt to wage war—Jurisdiction of Magistrate.*—The offence of attempting to wage war against the Queen should not be tried as a dacoity by a District Magistrate. QUEEN-EMPRESS v. NGA THAN BO, **L.B.R. 1872—1892, 158.**

Waging war with power in alliance with Queen—*See* SENTENCE—TRANSPORTATION, 3 W.R. Cr. 16.

Waiver.

(1)—*Waiver or consent.*—If criminal proceedings are substantially bad, they will not be cured by any waiver or consent of the prisoner. EMPEROR v. KASIM, **15 C.P.L.R. 66.** (2 C. 23, *R.*)

(2)—*Waiver by consent—Right to be tried as European British subject.*—A person can relinquish his right to be dealt with as a European British subject (see s. 454, Crim. Pro. Code): and where a Magistrate asked, under s. 454, Crim. Pro. Code, an accused person, who was a European British subject whether he claimed to be dealt with as such, explaining ss. 447 and 450, and where the accused did not claim the right, *held*, that he had relinquished his right. BARINDRA KUMAR GHOSE v. EMPEROR, **37 C. 467 = 14 C.W.N. 1114 = 7 Ind. Cas. 359 = 11 Cr. L.J. 453.**

(3)—*Effect of.*—Criminal proceedings, which are substantially bad, cannot be cured by any amount of waiver or consent on the part of the accused not personal to the latter. QUEEN v. BHOLANATH SEN. **2 C. 23.** [*F.*, 12 C.W. N. 140 = 6 Cr.L J. 434 ; *R.*, 6 C. 96, 4 Bom. L. R. 53, 7 Bom. L.R. 527, 15 C.P.L.R. 66 ; *D.*, 6 C. 83 = 6 C.L.R. 463.]

(4)—*Waiver of privilege—Conditions—Nature of waiver—Crim. Pro. Code*, 1872, s. 84.—Before a European British subject can be considered to have waived his privilege, it must appear that his rights have been distinctly made known to him and that he must have been enabled to exercise his choice and judgment whether he would or would not claim those rights. The waiver of privilege must be absolute giving up of all the rights with reference to Ch. VII of the Code of 1872, which a European British Subject has ; and the words "dealt with by the Magistrate" in s 84 mean everything contained in the chapter, *i.e.* the tribunal having cognizance of the case, the procedure and also the punishment to which the accused would be liable. *In the matter of the petition of* QUIROS, EMPRESS v. ALLEN, **6 C. 83 = 6 C.L.R. 463 = 3 Shome L.R. Cr. 35.** [*F.*, 37 C. 467 = 14 C.W.N. 1115 = 11 Cr. L.J. 453 = 7 Ind.Cas. 359; *R.*, 136 P.L.R. 1908 = 1 P.R. 1908, Cr. = 4 P.W.R. 1908, Cr. = 7 Cr. L.J 274 ; *Cons* . 12 B. 561, 12 Cr. L.J. 436 = 11 Ind. Cas. 620 = 7 N.L.R. 93.]

(5)—*Irregular procedure in criminal trials—Effect of waiver by the accused.*—Where criminal proceedings are substantially bad in themselves, the defect will not be cured by any waiver or consent of the accused or their pleaders. HOSSEIN BUKSH v. EMPRESS, **6 C. 96 = 6 C.L.R. 521.**

(6)—*Of irregularity by accused person.*—Except where the law expressly permits waiver, the rights of an accused person should not be held to be lost by his consent to a procedure, or to the admission of evidence which the law does not authorise. DEPUTY LEGAL REMEMBRANCER v. UPENDRA KUMAR GHOSE, **12 C.W.N. 140 = 6 Cr. L.J. 434.**

Waiver—*concluded.*

(7)—*Court not to draw an inference of waiver against an accused, where the Court omits to perform a duty imposed by legislature.*—In all criminal matters, the utmost strictness must be observed and forms must be closely complied with, where the liberty of the subject is at stake, when, from the statute prescribing those forms, it appears that they were prescribed by the Legislature in the interests of the accused. In a criminal trial, the Court is bound to draw no inference of waiver against an accused person, especially in the case of omission by the Court to perform a duty imposed on it, in express terms, by the Legislature in his interest, unless the accused waived it *expressly.* EMPEROR v. SAVALYA ATMA PASTYA, **9 Bom. L R. 356 = 5 Cr. L.J. 332.** [*F.*, 9 Bom. L.R. 730.]

(8)—*Waiver of benefit of legal provisions regulating trial—Misjoinder of charges.*—An accused person cannot in a criminal trial waive the benefit of the legal provisions regulating the trial. *Held*, also, that there has been a misjoinder of charges in this case and that the conviction must be set aside. *In re* RENGASWAMY CHETTY, **3 M.L.T. 407 = 18 M.L.J. 330 = 8 Cr.L.J. 152.**

See ACCUSED PERSON, 6 C. 96 = 6 C.L.R. 521.

See BEN. ACT III of 1899, ss. 449, 450, 452, 579, 11 C.W.N. 30 = 4 Cr. L. J. 408 = 34 C. 341.

See CRIM. PRO. CODE, 1898, s. 451 (1), 24 A. 511 = A.W.N. (1902), 142.

Of irregularity—*See* IRREGULARITY, **16 C.P.L.R. 9.**

See JURISDICTION OF CRIMINAL COURTS—JURISDICTION OVER EUROPEANS, 12 B. 561.

See MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION, 16 M. 308 = 2 Weir 579.

Wall.

Removal of a—and a privy—Owner or lessee—Requisition or notice to remove—Service on person who has built—Failure to comply with requisition—Liability.—*See* BEN. ACT III OF 1884, ss. 202, 218, 2 C.L J. 226 = 2 Cr. L.J. 613.

Nuisance—Building wall to prevent neighbour from acquiring easement, if nuisance—May be otherwise nuisance—Duty of Court in abating nuisance—*See* BEN. ACT III of 1899, s. 3, cl. 29, and s. 632, 8 Ind. Cas. 530 = 15 C.W.N. 316.

Wards (Guardians) Act.

See ACT VIII OF 1890.

Warehouse and Fire Brigade, Jute, Act.

See BEN. ACT II OF 1872.

Warrant.

See ARREST.

See SEARCH WARRANT.

See WARRANT OF ARREST.

See WARRANT OF ATTACHMENT.

Warrant—*continued.*

(1)—*Crim. Pro. Code* (1861), *ss.* 76, 84, 188, 191—*Warrant—Form—What it should contain—Arrest of witnesses.*—Both under the common law and under the provisions of the Crim. Pro. Code, a seal is essential to the validity of a warrant. The reason for requiring a seal is, that the attaching of a seal shows that the instrument, to which it is attached, has not been issued without due deliberation as well of course as to prove the authority of the instrument. A warrant authorising the committal of a person named without any description of the person whatever is not a good warrant and does not conform to the provisions of the Code. A warrant should also contain the official designation of the person signing it and the place where he signs. *In re* JAMES HASTINGS, **9 B.H.C. 154.** [*R.*, 18 B. 636.]

(2)—In every warrant, the special matter on which it proceeds should be stated as shortly as possible. A strict adherence to the form of warrants of arrest prescribed by the Crim. Pro. Code will tend to prevent their being granted irregularly, and without enquiry as to whether the circumstances justify their issue. Witnesses brought up under ss. 188 and 191, Crim. Pro. Code, 1861, should not be treated as criminals, and put in irons, but simply as persons arrested on civil process. CR. CIR. No. 21, 22ND NOV. 1864. **1 W.R. Cr. Cir. 7.**

(3)—*Crim. Pro. Code* (1898), *s* 79—*Warrant, with endorsement by initials, validity of—Penal Code*, *ss.* 224, 353.—Although one of the endorsements in a warrant is only by initials, it is legal, if the initials are identified by witnesses. ABDUL SIKDAR v. MATHU SINGH, **5 C.W.N. 447.**

(4)—*Search warrant, in what cases can be issued.*—The only information under which a Magistrate can issue a search warrant is set out in s. 191, Crim. Pro. Code, and is a complaint (*vide* ss. 4-A and 200), a police report (*vide* s. 173), information received from a person other than a police officer and the Magistrate's own knowledge or suspicion. HARI LAL JAGJIVAN, **Cr. Rg. 40 of 1897.**

(5)—*Crim. Pro. Code* (1898), *s.* 96—*Scope of the section—What warrants can be issued under the section.*—Under s. 96, warrants can only be issued for the production of documents or things. BISU HALDAR v. EMPEROR, **11 C.W.N. 836 = 6 C.L J. 127 = 6 Cr. L J. 38.**

(6)—*Warrant for attachment of judgment-debtor's property—Proper form.*—A warrant of attachment of whatever property the officer executing it might find in search as belonging to the judgment-debtor, without any specification of the area of the search, is not a valid warrant, if it is different from the form prescribed by Civ. Pro. Code, 1882, Ex. IV, No. 136. CHUNDER COOMAR SEN v. QUEEN-EMPRESS, **3 C.W.N. 605.**

(7)—*Apprehension of offence—Issue of warrant—Jurisdiction.*—A Magistrate has no jurisdiction to issue a warrant or order of arrest in

Warrant—*continued.*

anticipation of an offence being committed; the case is one for the interference of the police. *In re* FATEALI, **Rat. Un. Cr. C. 90.**

(8)—*Crim. Pro. Code* (1861), *ss.* 109, 248—*Arrest in cognizable case—Warrant issued upon report by Policeman.*—Where the accused was seen committing an offence (theft) for which the Police were authorized to arrest without a warrant, and the Policeman in whose sight the offence was committed arrested him, and having been unable to take or send the accused to the Magistrate in accordance with the provisions of s. 109, Crim. Pro. Code, sent a report on which the Magistrate issued a warrant, *held* that the accused was legally brought before the Magistrate. REG. v. MAHIPYA *valad* BOMYA MAHAR, **5 B.H.C.Cr 99.**

(9)—*Warrants of release and sentence—to whom to be addressed.*—All warrants of release and sentences should be addressed to the officer in charge of the jail, instead of to the Magistrate of the District. CRIMINAL CIRCULAR No. 10 of 20th November 1865, **4 W.R. Cr. Cir. 1.**

(10)—*Warrant for sentences to be on a paper of superior quality.*—All warrants for sentences exceeding two years should be on paper of a quality superior to that on which warrant forms are usually printed. CRIMINAL CIRCULAR No. 1, dated 3rd January, 1873, **19 W.R. Cr. Cir. 2.**

(11)—*Preparation and issue of warrants for the execution of sentences.—Crim. Pro. Code, ss.* 383, 384 *and* 386.—Ss. 383 and 384 provide for the issue, by the *Court of Session*, of warrants to Magistrates, or other officers in charge of jails, to cause the sentence to be carried into execution. But the Sessions Judge need not issue a separate warrant of this nature in the case of each prisoner sentenced; a single warrant should include all who are involved in one sentence. By s. 386, the Magistrate, or other officer in charge of the jail, is required to issue his warrant to the jailor, stating the offence of which the accused person has been convicted and the period during which he is to be imprisoned and the nature of the imprisonment. As regards warrants of this nature, a separate warrant should be issued to the jailor for each prisoner and it should accompany him to whatever jail he may be transferred. CRIMINAL CIRCULAR No. 3 OF 1867, **7 W.R. Cr. Cir. 2.**

(12)—*The date of commencement of sentence to be specified in.*—Sessions Judges and Magistrates when passing sentences, after their re-arrest on prisoners who have escaped, should carefully comply with the provisions of s. 316, Crim. Pro. Code, 1872, and specify in the warrant the date from which the sentence is to take effect, whether at once or after a lapse of a period equivalent to the portion of the prisoner's original sentence which remained unexpired at the time of his escape. CRIMINAL CIRCULAR ORDER, No. 9, dated 15th July 1873, **20 W.R. Cr. Cir. 5.**

Warrant—*continued.*

(13)—*Realization of fines from prisoners' in jail—Warrants, by whom and how issued.*—Warrants for the realisation of fines should be issued only by a Sessions Judge in duplicates fully filled up, one copy being forwarded to each of the two officers, *viz.*, the Magistrate and the officer in charge of the jail, whose duty it is to see the warrant carried into effect. CRIMINAL CIRCULAR No. 2, dated 18th January, 1871, **15 W.R. Cr. Cir. 1.**

(14)—*Languages of, sent for execution in another district where a different language is used.*—Where a warrant is sent for execution to the Magistrate of a district, where a different language is in ordinary use, the warrant should be accompanied by a translation, certified by the transmitting Magistrate to be correct, into such other language or into English. Further, the warrant should always be accompanied by a letter in English requesting its execution. CRIMINAL CIRCULAR No. 3 of 1871, **18 W.R. Cr. Cir. 9.**

(15)—*Warrants of imprisonment to be in English.*—Warrants of imprisonment directed to Superintendents of District Jails should be in the English language, and warrants directed to the keepers of sub-divisional lock ups should be in the vernacular, except where the sentence is for imprisonment of a longer term than fifteen days, in which case the warrants issued by Sub-Divisional authorities should, if possible, be in English. CRIMINAL CIRCULAR No. 10, dated 27th August, 1873, **20 W.R. Cr. Cir. 18.**

(16)—*Warrant for imprisonment—Rank of accused to be set forth if the accused is a soldier.*—Where the accused is a soldier or holding any rank in the army, the warrant for detention or imprisonment shall set forth accurately the rank of the prisoner and the Regiment or Military Department to which he belongs. CRIMINAL CIRCULAR ORDER No. 12, dated 28th November 1873, **20 W.R. Cr. Cir. 25.**

(17)—*Crim. Pro. Code* (1861), *ss.* 114, 115.—Requisites of a search warrant QUEEN v. SYUD HOSSAIN ALI CHOWDHRY, **8 W.R. Cr. 74.**

(18)—*Issuing of search warrants—Discretion.*—The first para of s. 96, Crim.Pro.Code, requires as a condition precedent to the issue of a search warrant that the Court must have reason to believe that the person against whom the warrant is issued is not likely to produce the document or thing in his possession as required by the summons or order under s. 94 or requisition under s. 95 (1) served upon him or that he is not likely to produce it should such summons or order or requisition be served. *In re* MANEKJI SORABJI CAPTAIN, **5 Bom. L.R. 1032.**

See ACT XIII OF 1859, 20 M. 235, 2 Weir 40 = 1 Weir 697, 20 A. 124 = A.W.N. 1897, 220.

See ACT III OF 1864, ss. 3, 4, 18 B. 636.

Warrant—*continued.*

See ACT XVIII OF 1879, s. 14, 3 M.L.T. 237 = 7 Cr.L.J. 333 = 18 M.L.J. 184.

Validity of, issued by Political Agent of Native State against British Indian subject—*See* ACT XXI OF 1879, ss. 1, 11, 12, 18, 5 O. C. 55.

Warrant of arrest to be in possession at time of arrest—*See* ACT XIV OF 1882, s. 651, 5 A. 318.

See ACT XV OF 1903, s. 7, 36 P.W.R. 1908, Cr. = 9 Cr.L J. 3 = 3 P.R. 1909, Cr.

See ACT XV OF 1903, ss. 7, 15, 7 Bom. L R. 463 = 2 Cr. L.J. 439.

Issued by Political Agent, endorsement in —Jurisdiction of Magistrate to release arrested person on bail, where no such endorsement —*See* ACT XV OF 1903, s. 8, 7 C.L.J. 171 = 7 Cr. L.J. 198 = 12 C.W.N. 602.

See BOM. ACT IV OF 1887, s. 6, 4 Bom. L.R. 946, 6 Bom. L.R. 52.

See BOM. ACT IV OF 1887, s. 7, 2 S.L.R. 40, Cr. = 10 Cr.L.J. 205, 1 S.L.R. 67, Cr. = 8 Cr.L. J. 185, 9 Cr L.J. 267 = 1 S.L.R. 27, Cr.

See COMPLAINT—INSTITUTION OF COMPLAINT—PRELIMINARIES, 3 N.W.P. 317.

See COMPLAINT-PROCEDURE ON RECEIPT OF COMPLAINTS, 8 B.H.C. Cr. 113.

See CRIM. PRO. CODE, 1898, ss. 5 and 83, 11 P.R. 1898, Cr.

Arrest without a,—Proceedings under s. 110, Crim. Pro. Code, 1898—*See* CRIM. PRO. CODE, 1898, ss 55, 110, Ch. VIII, 11 A.L.J. 596 = 35 A. 407.

See CRIM. PRO. CODE, 1898. ss. 75, 76, 13 C.W.N. 1091.

See CRIM. PRO. CODE, 1898, ss. 75 and 204, 1 S.L.R Cr. 69 = 8 Cr.L.J. 187.

See CRIM. PRO. CODE, 1898, ss. 87, 88, 90, 5 N.L.R. 125.

See CRIM. PRO CODE, 1898, ss. 90 and 487, S.C. 99 (Oudh).

See CRIM. PRO. CODE, 1898, s. 96, 13 M. 18 = 2 Weir 44.

Power to issue, in disputes under s. 145, Crim. Pro. Code—*See* CRIM. PRO. CODE, 1898, s. 145, 5 C.W.N. 71.

See CRIM. PRO. CODE, 1898, ss. 179, 181 (2) and 190 (c), 4 M.L.T. 481 = 9 Cr. L.J. 92.

Power to substitute summons for warrant—*See* CRIM PRO. CODE, 1898, ss. 204, 205, 7 S. L.R. 40 = 21 Ind. Cas. 476 = 14 Cr. L J. 604.

See CRIM. PRO. CODE, 1898, s. 523, 26 B. 552 = 4 Bom. L.R. 276.

See ESCAPE FROM LAWFUL CUSTODY, 1 B. H.C. Cr. 38.

For levy of maintenance, when can be issued —*See* MAINTENANCE, L. B. R. 1893—1900, 393.

See MAINTENANCE, 9 A. 240, L.B.R. 1893—1900, 316.

Warrant—*concluded.*

See PARDANASHIN WOMAN, 20 P.W.R. 1908, Cr.

See PENAL CODE, ss. 23, 186, 22 C. 759.

Re-calling of warrant after acquittal of co-accused — Jurisdiction of District Magistrate to issue first warrant on same materials—*See* PENAL CODE, ss. 34, 107, 18 C.W.N. 580 = 15 Cr. L.J. 402 = 41 C. 754 = 23 Ind. Cas. 1002.

See PENAL CODE, ss. 99 and 353, 8 A. 293 = A.W.N. 1886, 106.

Resisting a public servant while executing a—*See* PENAL CODE, ss. 114, 147, 353, 3 C.W.N. 605.

Defects in, when excusable—*See* PENAL CODE, ss. 147, 332, 16 C.W.N. 336 = 13 Ind. Cas. 1002 = 13 Cr. L.J. 186.

Of arrest addressed to Nazir—*See* PENAL CODE, s. 172, 4 N.W.P. 97.

Absconding in order to avoid being served with a summons, notice or order—Running away to avoid an arrest under a—*See* PENAL CODE, s. 172, 2 C.L.J. 625 = 3 Cr. L.J. 117.

Obstruction to attachment under a time-expired warrant—*See* PENAL CODE, ss. 183, 186, 1 Weir 134.

See PENAL CODE, ss. 183, 186, 27 A. 258 = 1 A.L.J. 595 = A.W.N. 1904, 229, 5 C.W.N. 391.

See PENAL CODE, s. 186, 23 C. 896, 14 C. W.N. 282.

Civil warrant not addressed to bailiff by name —Arrest—Legality—*See* PENAL CODE, s. 225, 15 Cr.L.J. 439 = 24 Ind. Cas. 175 = (1914) M.W. N. 498.

Issue of, for the arrest of a witness, when illegal—Omission to record reasons for the issue of the warrant—*See* PENAL CODE, s. 225-B, 15 C.W.N. 1001 = 11 Ind. Cas. 593 = 12 Cr. L.J. 409 = 38 C. 789

See PENAL CODE, s. 225-B, 6 C.W.N. 845.

Obstruction to execution of—Time expired—*See* PENAL CODE, ss. 353 and 149, 31 C. 424.

Arrest without a warrant—Right of private defence—*See* PRIVATE DEFENCE, RIGHT OF, 7 P.R. 1869, Cr.

See SECURITY PROCEEDINGS, Rat. Un. Cr. C. 432 = Cr. Rg. 3 of 1869.

See SENTENCE—FINE, Rat. Un. Cr. C. 35.

Issuing, and exacting heavy bail from accused, whether a good ground for transfer of the case, —*See* TRANSFER OF CRIMINAL CASES — GROUNDS FOR TRANSFER—NOTICE, 8 C.W. N. 589.

See WITNESS—SUMMONS TO WITNESSES, 7 W.R. Cr. 37.

See WITNESS—MISCELLANEOUS CASES, 24 C. 320 = 1 C.W.N. 154, 22 P.W.R. 1907, Cr. = 6 Cr. L.J. 275.

See WRONGFUL CONFINEMENT, 19 B. 72.

Warrant Case.

See CRIM. PRO. CODE, 1898, ss. 251—259.

(1)—*Crim. Pro. Code*, s. 248—*Warrant cases —Withdrawal of complaints.*—S. 248 does not apply to a warrant case. In such cases, the Magistrate should proceed with the case, in spite of the withdrawal of the complaint, if he finds the elements of an offence in the facts set forth in the complaint. Magistrates have to use diligence and rigour to repress crime. *In re* GANESH NARAYAN SATHE, **13 B. 600.** [*R.*, 19 B. 51, Rat. Un. Cr. C. 740.]

(2)—*Accused's witnesses, summoning of.*—In a warrant case, it is the duty of the Magistrate to summon the witnesses offered by the accused and he must use his discretion in adjourning the case, if necessary. EMPRESS v. RAJCOOMAR SINGH, **3 C. 573=1 C.L.R. 352.**

(3)—*Trial of warrant cases—Charge.*—A case begun as a warrant case should be continued as such and should the accused *prima facie* appear to have committed an offence, a charge should be framed and he should be given an opportunity of pleading and defending himself. CROWN v. LA PYU, **1 L.B.R. 308.**

See ACT IX OF 1890, s. 100, 5 M.L.T. 204.

See CHARGE—GENERAL, 29 C. 481=6 C.W.N. 599, 9 M. 284=2 Weir 266.

Complaint of offence triable as warrant case—Validity of trying the case as summons case—Discharge of accused—Award of compensation—*See* COMPENSATION—GENERAL, 6 M. 316.

See COMPLAINT—PROCEDURE ON RECEIPT OF COMPLAINTS, 8 B.H.C. Cr. 113.

See COURT FEES, Rat. Un. Cr. C. 364=Cr. Rg. 9 of 1888.

Opportunity to bring witnesses—*See* CRIM. PRO. CODE, 1898, ss. 110, 112, 113, 117, 15 Cr. L.J. 353=23 Ind. Cas. 721=41 C. 806.

Court-fees for summoning witnesses —*See* CRIM. PRO. CODE, 1898, ss. 245, 252, 2 Weir 323.

Trial of—as summons case—*See* CRIM. PRO. CODE, 1898, ss. 245, 253, 258, 403, 407, A.W.N. 1886, 260.

Summons case tried as—Discharge of accused, effect of—Acquittal—*See* CRIM. PRO. CODE, 1898, ss. 245, 253, 437, 6 Ind. Cas. 385=8 M.L.T. 78=11 Cr. L.J. 350.

See CRIM. PRO. CODE, 1898, s. 250, A.W.N. 1881, 99.

See CRIM. PRO. CODE, 1898, ss. 260, 262, 263, Rat. Un, Cr. C. 539=Cr. Rg. 12 of 1891.

Meaning of 'enquiry' and 'trial' in a warrant case.—*See* CRIM. PRO. CODE, 1898, 350, 437, 254, 253 (2), 16 M.L.T. 303=27 M.L.J. 589=1914 M.W.N. 646=15 Cr.L.J. 673=25 Ind. Cas. 1001.

See DISCHARGE OF ACCUSED, 7 N.W.P. 230, A.W.N. 1891, 116.

Warrant Case—*concluded.*

Joinder of charges under summons and warrant cases—*See* JOINDER OF CHARGES—GENERAL, 11 C. 91.

See JOINDER OF CHARGES—GENERAL, 3 L.B.R. 113=3 Cr.L J. 350.

See PARDANASHIN WOMAN, 21 C. 588.

See REPLY, RIGHT OF, Rat. Un. Cr. C. 938 =Cr. Rg. 48 of 1897.

See SUMMARY TRIAL, 5 L.B.R. 20=9 Cr. L.J. 583=2 Ind. Cas. 365, Rat. Un. Cr. C. 768 =Cr. Rg. 31 of 1895.

See WITNESS—EXAMINATION OF WITNESSES, 4 M. 130.

Procedure in summoning witnesses—*See* WITNESS—SUMMONS TO WITNESSES, 3 C. 573=1 C.L.R. 352.

Warrant of Arrest.

See ARREST.

See WARRANT.

(1)—*Crim. Pro. Code* (1872), s. 157—*Warrant of arrest for offence committed in Native State.*—Where a Magistrate of the first class in the Ahmedabad District and an Assistant to the Political Agent in Kattywar issued from a place in Kattywar, a warrant for the apprehension of a non-European British subject in respect of an offence committed in Kattywar, and addressed it to a police officer having jurisdiction in the place in the Ahmedabad District, where the accused was found, *held* that the issuing of the warrant from the Kattywar territory, without being present in the portion of Ahmedabad District in which he had jurisdiction, was not beyond his competency. REG. v. LOCHA KALA, **1 B. 340.** [*D.*, 11 Cr.L.J. 570=8 Ind. Cas. 137=85 P.L.R. 1910=23 P.R. 1910, Cr., 65 P.W.R. 1910.]

(2)—*Warrant on non-appearance to summons —Lessee of tolls—Disobedience of summons to appear—Undertaking not to sue.*—A, the lessee of a toll, was in arrears to Government in respect of the rent. The Magistrate issued a summons to him, whereby it was recited that a plaint had been preferred against him (A) for not paying the sum of Rs. 262 for arrears of rent, and A was summoned to appear before the Magistrate to answer the charge. A did not appear on the day appointed, but had an application presented for postponement of the demand for arrears of rent, on the grounds therein stated. On the following day, the Magistrate passed the following order: "Whereas the debtor, defendant, has not appeared in person, the summons has not been obeyed: therefore it is ordered that a warrant be issued for the arrest of the defendant." Proceedings were afterwards taken upon the warrant. *Held* that all the proceedings taken by the Magistrate were irregular and must be set aside, the defendant undertaking not to take legal proceedings for anything done under the order or warrant. *In the matter of* BANKA BIHARI GHOSE, **2 B.L.R.A. Cr. 17=11 W.R. Cr. 26.**

Warrant of Arrest—*continued.*

(3)—*Warrant not containing specification of offence.*—Case where a warrant, which did not specify a punishable offence, and which had been issued upon a statement not sufficient to make out any offence, was quashed. *In the matter of the petition of* SRIMATI BIDHUMUKHI DEBI, **6 B.L.R. Ap. 129 = 15 W.R.Cr. 4.**

(4)—*Procedure on warrant—Act* XII *of* 1867.—When a prisoner was arrested by the Sheriff under a writ of *ca, sa., held,* it was necessary to bring him before the Court without delay, under s. 14 of Act XII of 1867. *In re* RAM COOMAR DUTT, **2 Ind. Jur. N.S. 340.**

(5)—*Warrant issued to unofficial person—Crim. Pro. Code* (1872), *s.* 161—*Act* XXV *of* 1861, *s.* 77.—Under s. 77 of the Crim, Pro. Code, a Magistrate ought not to issue a warrant to an unofficial person, except when he is without the assistance of competent police officers, and unless the urgency is imminent. The force of a warrant of arrest is at an end when the prisoner is brought before the Magistrate, and the prisoner cannot lawfully be committed to prison or remanded without sufficient grounds; and in the absence of evidence there can be no grounds. QUEEN v. SURENDRA NATH ROY, **5 B.L.R. 274 = 13 W.R. Cr. 27.**

(6)—*Crim. Pro. Code* (*Act* XXV *of* 1861), *s.* 68—*Act* X *of* 1872, *ss.* 142, 150—*Detention of accused.*—A warrant issued under s. 68, which was a warrant of arrest as described under s. 76 (Form B.), is only for the purpose of bringing an accused person before the Magistrate. It was not a warrant for commitment, and did not authorize the detention of a person longer than is necessary for his production before the Magistrate. To detain him further, there must be a fresh warrant under s. 262, charging the prisoner with some offence, on evidence taken on oath or affirmation, and in the presence of the accused. *In the matter of* MAHESH CHANDRA BANERJEE, **4 B L.R. Ap. 1 = 13 W.R. Cr. 1**

(7)—*Form of endorsement on warrant.*—An endorsement on a warrant under s. 79 of the Code of Criminal Procedure should be regularly made by name to a certain person in order to authorise him to make the arrest. DURGA TEWARI v. RAHMAN BUKSH, **4 C.W.N. 85.**

(8)—*Crim. Pro. Code*, 1861, *s.* 68—*Warrant.* S. 68 of the Code of Criminal Procedure does give the Magistrate jurisdiction to issue, on proper evidence, a warrant for the arrest of persons in a pending case. *In re* SIDESHURY CHOWDHRAIN, **16 W.R. Cr. 50.**

(9)—*Warrant of arrest—Case pending before Subordinate Magistrate—Release on bail—When accused appears.*—On a complaint made before a Deputy Magistrate, only two witnesses were examined to prove a charge of robbery against the accused, in respect of certain *samans* belonging to a *mutt* of which he claims to be the head, and a nonbailable warrant was issued. *Held* that, in these circumstances, a bailable warrant should have been issued. MARULA SIDDA SIVAMULU v. EMPEROR, **1911 M.W.N. 482 = 11 Ind. Cas. 614 = 12 Cr.L.J. 430.**

Warrant of Arrest—*concluded.*

(10)—*Warrant of arrest when exhausted.*—On the prisoner being brought before the Magistrate, a warrant of arrest loses its force. MUTHOORA NATH CHUCKERBUTTY v. HEERA LOLL DOSS, **17 W.R. Cr. 55 = 9 B.L.R. 354.**

(11)—*Procedure on bringing person before Magistrate on warrant of arrest.*—The detention in custody of an accused person brought before a Magistrate on a warrant of arrest is illegal, unless a proper remand is ordered on evidence given on oath or solemn affirmation. *In re* ZUHURRUDDEEN HOSSEIN, **25 W.R.Cr. 8.**

Warrant of Attachment.

See WARRANT.

(1)—*Valid warrant.*—A warrant for attachment of whatever property the Nazir, the officer executing it might find on search as belonging to the judgment-debtor is not a valid warrant. TAFAZZUL AHMED CHOWDHRY v. QUEEN-EMPRESS, **26 C. 630.** CHUNDER COOMAR SEN v. QUEEN-EMPRESS, **3 C.W.N. 605.**

(2)—*Warrant for attachment of judgment-debtor's property—Proper form.*—Warrant of attachment of whatever property, the officer executing it might find in search as belonging to the judgment-debtor, without any specification of the area of the search is not a valid warrant, if it is different from the form prescribed by Civ. Pro. Code, 1882, Ex. IV, No. 136. CHUNDER COOMAR SEN v. QUEEN-EMPRESS, **3 C.W.N. 605.**

See PENAL CODE, ss. 141, 147, 325, 29 C. 244 = 6 C.W.N. 164.

Washerman.

Whether an artisan — *See* MAD. ACT III OF 1871, s. 62, 1 M. 174 = 1 Weir 726.

Waste Lands.

Cultivation of waste lands—*See* CRIMINAL TRESPASS, 1 Weir 513 = 5 M.H.C. App. 17.

Water.

Field over which surplus water flows from adjoining fields—Not a channel which may be lawfully used by the public—Flow of water obstructed—Whether action can be taken for removing obstruction—*See* CRIM. PRO. CODE, 1898, s. 133, 12 A.L J. 248 = 15 Cr. L.J. 229 = 23 Ind. Cas. 181 = 36 A. 209.

Dispute as to right of digging and clearing a water-course between two villages.—*See* CRIM. PRO. CODE, 1898, s. 133, 25 P.W.R. 1912, Cr., 16 Ind. Cas. 162 = 13 Cr. L.J. 594.

See CRIM PRO. CODE, 1898, ss. 144, 147, 2 Weir 65 = 3 M.H.C. App. 23.

See CRIM. PRO. CODE, 1898, s. 147, 2 Weir 65.

Disputes as to right of way, etc.—*See* DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 2 W.R. Cr. 64, 5 W.R. Cr. 57, 7 W.R. Cr. 45.

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 22 W.R. Cr. 48.

Water—*concluded.*

See NUISANCE UNDER CRIM. PRO. CODE, 13 W.R. Cr. 51.

Defiling—*See* PENAL CODE, s. 277, 2 Bom. L.R. 1078.

Fouling—*See* PENAL CODE, ss. 277, 290, 6 Bom. L.R. 52.

Fish in open and unenclosed water—Whether subject of theft—*See* PENAL CODE, s. 378, 5 S.L.R 122=13 Ind. Cas. 214=13 Cr. L.J. 22.

Running water—Water controlled effectively—Water in Government channels—Whether subject of theft—*See* PENAL CODE, s. 378, 1912 M.W.N. 119=13 Ind. Cas. 819=13 Cr. L.J. 131.

Illegal taking of, for agricultural purposes—*See* PENAL CODE, s. 430, 1 Weir 507.

See THEFT, THINGS IN RESPECT OF WHICH THE OFFENCE OF THEFT CANNOT BE COMMITTED, 12 C.W.N. 534=35 C. 437=7 Cr. L.J. 367.

Water Course.

See MISCHIEF, Rat. Un. Cr. C. 217.

Closing—Diminution of supply of water for agricultural purposes—Mischief—Wrongful loss—*See* PENAL CODE, ss. 23, 430, 4 L.B.R. 149=7 Cr. L.J. 448.

Watering Place.

River if a—*See* BOM. ACT VII OF 1867, s. 31 (2), Rat. Un. Cr. C. 55=Cr. Rg. 31-8-1871.

Water Supply.

See MISCHIEF, 1 M. 262, F.B.=1 Weir 502, 10 B. 183.

Mischief by causing diminution of—*See* PENAL CODE, s. 430, 1911 2 M.W.N. 349=12 Cr. L.J. 551.

Water Works Act.

See U.P. ACT I OF 1891.

Way.

Highway—District Board road—Right of user by public—Hanging verandah if invades right of user of public—*See* BEN. ACT III OF 1885, s. 139, 15 Cr L J. 187=22 Ind. Cas. 763=18 C.W.N. 1120.

Conditions necessary to create public right of way—*See* BEN. ACT III OF 1899, s. 3, 17 C. W.N. 1250=14 Cr. L.J. 511=20 Ind. Cas. 991.

Obstruction to public road—Removal of obstruction whether an offence—*See* PENAL CODE, ss. 426, 447, 15 Cr. L.J. 723=26 Ind. Cas. 171.

Way, Right of.

Disputes as to right of way, water, etc.—*See* DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 2 W.R. Cr. 64, 5 W.R. Cr. 57, 7 W.R. Cr. 45, 14 W.R. Cr. 28, 22 W.R. Cr. 48.

Obstruction to right of way — Erection of building on public way—*See* JURISDICTION OF CRIMINAL COURTS—GENERAL, 11 W.R. 445.

Weights and Measures.

See PENAL CODE, ss. 265, 266.

(1)—*Penal Code, s. 265—Fraudulent use of false measures.*—To ascertain whether a measure is false or not, the only proper test to apply, is that of measure, and the same article must be measured in each case, and proof should be adduced that this has been done. The weight of the grain that a measure is found to hold is no evidence of its capacity as compared with that of another measure, unless the very same grain is used. QUEEN-EMPRESS v. LAKSHMAN MARTAND, **Rat. Un. Cr. C. 989.**

(2)—*Penal Code, ss. 265, 266—False weights.—Held*, that a conviction under s. 265, I P.C., cannot be maintained where there is no complaint by a purchaser; and the fact that the search took place after dark without proper precautions, the absence of proper description of the weights seized, the small discrepancies alleged, the silence of the record as to what standard weights were used for purposes of comparison and the want of proof of knowledge or fraudulent intent on the accused's part, are all fatal defects in a prosecution under s. 266, I.P.C. SOBHA v. CROWN, **38 P.W.R. 1908, Cr.=9 Cr. L J. 4.** [*R.*, 22 Ind. Cas. 155=20 P.R. 1913.]

(3)—*Standard and customary weights— Dishonest use—Penal Code, Ch.* XIII.—The sections of the Penal Code relating to weights make no mention of standard weights. In every place there are well known customary weights, and, if any resident of the place or other person, knowing that a weight is less than the customary weight which it purports to be, uses the weight dishonestly, he commits a fraud and may be punished under Ch. XIII. QUEEN-EMPRESS v. MA EIN ME, **L.B R. 1893—1900, 354.**

(4)—*Penal Code, s. 266—False scales—Fraudulent intent—Proof.*—To support a conviction under s. 266 of the Penal Code, it is not enough to prove the mere possession of scales or their use, with a string not accurately tied at the centre of the beam, but which can be shifted at any time and may sometimes have been accurately tied. It is necessary to prove that the accused knew the scales to be false and intended to use them fraudulently. QUEEN-EMPRESS v. HAMIRMAL, **Rat. Un. Cr. C. 514=Cr. Rg. 36 of 1890.**

See CHEATING—GENERAL, Rat. Un. Cr. C. 386=Cr. Rg. 36 of 1888.

Weights and Measures Act.

See ACT XI OF 1870.

Well.

Pollution of—*See* PENAL CODE, s. 295, Rat. Un. Cr. C. 979=Cr. Rg. 40 of 1898.

Dishonest taking of bricks from, part of which was situated in accused's premises—*See* THEFT—THINGS IN RESPECT OF WHICH THE OFFENCE OF THEFT CANNOT BE COMMITTED, 21 P.R. 1890, Cr.

Whipping.

See ACT VI OF 1864.

See ACT V OF 1900.

See ACT IV OF 1909.

See CRIM. PRO. CODE, 1898, ss. 391, 392, 393, 395.

See SENTENCE.

(1)—*Sentence—Theft of property of small value.*—The accused, a young man of twenty-five, with no previous convictions against him, was convicted of stealing eight annas worth of green wheat and sentenced to one year's rigorous imprisonment. *Held*, that the sentence was severe, and that the case was obviously one for a whipping. SANGARA SINGH v. KING-EMPEROR, **141 P.L.R. 1906 = 4 Cr.L.J. 362 = P.W.R. 1906, 16.**

(2)—*Sentence of whipping in addition to imprisonment, legality of—Robbery and theft, whether same offence.*—The sentence of whipping in addition to imprisonment is illegal. Robbery, although it sometimes includes theft, must be considered a distinct offence from theft, and theft from robbery. An offence denotes a thing made punishable by law, and, as the punishments for theft and robbery are different, they cannot be treated as the same offence. QUEEN-EMPRESS v. HAMZA, **1 L.B. R. 55.**

(3)—*Previous conviction for theft—Subsequent conviction for house-breaking—Commission of theft—Defect of second charge—Whipping.*—*Held* that a person, who was previously convicted of theft and who was subsequently convicted for house-breaking by night, by which theft had been committed although no mention of a charge under s. 379 or s. 380 was made, the charge specifying only an offence under s. 457 could be lawfully sentenced to whipping in addition to imprisonment. EMPRESS v. RADHA, **41 P. R. 1880, Cr.**

(4)—*Power of Magistrate trying case under s. 277, Crim. Pro. Code (1861).*—A Magistrate, to whom a case is referred under s. 277, Crim. Pro. Code, 1861, is competent to pass a sentence of whipping, if he could have done so were he originally trying the case. *In re* GOVINDA, **Cr. Rg. 8-2-1870.**

(5)—*Conviction by District Magistrate with enhanced powers—Four years' rigorous imprisonment and whipping confirmed on appeal—Subsequent order by Magistrate in lieu of whipping, under s. 395, Crim. Pro. Code—Confirmation.*—When a sentence of four years rigorous imprisonment and whipping and fine by a District Magistrate specially empowered under s. 30, Crim. Pro. Code, was confirmed on appeal, and subsequently the Magistrate, finding that the accused was not in a fit state of health to receive the sentence of whipping, commuted it into a further imprisonment of six months more, *held*, that the revision of the sentence, aggregating to 4½ years' imprisonment in all, would not require the confirmation of the Sessions Judge under s. 34, Crim. Pro. Code, 1882, and that the confirmation of the sentence, on appeal, by the Sessions Judge would not deprive the District Magistrate of his jurisdiction, under s. 395, to award imprisonment, when it appeared that the sentence of whipping could not be carried out under the circumstances mentioned in s. 394, Crim. Pro. Code. EMPRESS v. CHETU, **10 P R. 1889, Cr.** [*R.*, 33 P.R. 1901, Cr.]

(6)—*Whipping—Concurrent sentences of—Illegality—Applicability of term concurrent.*—Concurrent sentences of whipping are illegal. (4 L B R. 147, *R.*) The word 'concurrent' applies only to sentence of imprisonment. KING-EMPEROR v. ENG. GYAUNG, **6 L B.R. 22 = 12 Cr. L.J. 466 = 11 Ind. Cas. 1001 = 4 Bur. L T. 174.**

(7)—*When legal—Previous conviction—Crim. Pro. Code* (1861), *s.* 46.—When a person, who has not been previously convicted, is convicted at one time of two or more offences, it is illegal to sentence him to whipping for one of these offences in addition to punishment or fine for the other or others; but it is not illegal to sentence him to one whipping in lieu of all other punishments. When a person who has been previously convicted is convicted at one time of two or more offences he may be punished with one, but only one, whipping in addition to any other punishment under s. 46, Crim. Pro. Code, to which he may be liable. CRIMINAL CIRCULAR NO. 2 OF 6TH APRIL 1868, **9 W.R. Cr. Cir. 3.**

(8)—*When whipping to be inflicted.*—A sentence of whipping must be inflicted at once. *In re* JAMAL *walad* NANUBHAIR, **Cr. Rg. 22-12-1870**; SHEIKH HUSEN, **Cr. Rg. 13-11-1872.**

(9)—*Sentence of whipping when allowable—Act VI of 1864, s. 4—Offence after previous conviction.*—The punishment of whipping under s. 4, Act VI of 1864, can only be inflicted on the second conviction of a person who, having served a sentence of imprisonment, again commits a crime. QUEEN v. UDAI PATNAIK KHETTRAGAITAL, **4 B L.R.A. Cr. 5 = 12 W.R. Cr. 68.** [*R.*, 7 Cr. L.J. 212 = U.B.R. 1907, Whipping 1.]

(10)—*Act VI of 1864—Power of Magistrate.*—When a Magistrate, in the exercise of the powers conferred by s. 46 of the Crim. Pro. Code, 1861, passed a cumulative sentence against a person convicted at one and the same time of two or more offences punishable under the Penal Code:—*Held*, per *Peacock, C.J.*, *Phear* and *Seton-Karr, J.*, that he could not, in addition to the penalties prescribed by the Penal Code, sentence the prisoner to whipping under Act VI of 1864, nor could he exceed twice the extent of his ordinary jurisdiction as defined by s. 22 of the Crim. Pro. Code, 1861. *Held*, further, per *Seton Karr, J.*, that, in the case of hardened offenders, a Magistrate can award whipping in addition to the maximum term of imprisonment which he is competent to

Whipping—*continued.*

award. *Held*, per *Macpherson and Jackson, JJ.*, that the Magistrate may, in such a case, in addition to awarding double the punishment which may be awarded for a single offence, award the punishment of whipping; but only one whipping can be awarded. NASSIR v. CHUNDER, **B.L.R. Sup. Vol. 951 = 9 W.R. Cr. 41.** *See, also*, RUTTUN BEWA v. BUHUR; JOWALA v. BUHUR, **14 W.R. Cr. 7.**

(11)—*Whipping Act* (VI *of* 1864)—*Power of Magistrate—Crim. Pro. Code*, 1861, *s.* 46.—When a person, who has been previously convicted, is a second time convicted at one time of two or more offences, he may be punished with one but only *one* whipping in *addition* to any other punishment to which, under s. 46 of the Code of Criminal Procedure (1861), he may be liable. RUTTON BEWA v. BUHUR; JHOWALA v. BUHUR, **14 W.R. Cr. 7.**

(12)—*Act* VI *of* 1864—*Penal Code, ss.* 325, 342, 378—*Crim. Pro. Code* (*Act* XXV *of* 1861), *s.* 46—*Cumulative sentences.*—Where the prisoner was convicted by the Magistrate of three distinct and separate offences, and was sentenced to a month's imprisonment for the offence of wrongful confinement under s. 342, six months' imprisonment for the offence of voluntarily causing grievous hurt under s. 325, and to whipping with 20 stripes for an offence under s. 378 of the Penal Code, *held* (*Kemp and Phear, JJ., dissenting*) that the sentence was legal. Where a person is convicted at the same time of two or more offences punishable under the Penal Code, *held* (*Kemp and Phear, JJ, dissenting*) that it was lawful for the Court, in addition to the penalties prescribed by the Penal Code, to sentence the prisoner to whipping. MANIRUDDEEN v. GAUR CHANDRA SHAMADAR, **7 B.L.R.F.B. 165 = 15 W.R. Cr. 89.**

(13)—*Conviction of theft—S.* 7, *Act* VI *of* 1864—*Penal Code, s.* 379.—Where a person has been convicted of theft under s. 379, Penal Code, no sentence of whipping can, with reference to Act VI of 1864, s. 7, be passed. QUEEN v. ESAN CHUNDER DEY, **21 W.R. Cr. 40.**

(14)—*Theft in a dwelling house—Penal Code, s.* 380—*Act* VI *of* 1864, *s.* 2.—The infliction of stripes under the provisions of s. 2, Act VI of 1864, in lieu of any other punishment, is legal for an offence defined by s. 380, Penal Code. QUEEN v. JUNGHOO KHAN, **3 W.R. Cr. 36.**

(15)—*Evidence of previous conviction necessary for awarding whipping.*—As a rule, before flogging is given as an additional punishment, there ought to be formal evidence upon the record of the previous convictions relied on. The conviction and the identity of the prisoner ought to be proved in the regular way. A mere kyfeut is no evidence whatever. QUEEN v. NUZEE NUSHYO, **15 W.R. Cr. 52.**

(16)—*Crim. Pro. Code*, 1872, *ss.* 305, 310—*Whipping.*—Where in passing a sentence of whipping in addition to six months' imprisonment, a Deputy Magistrate ordered that the prisoner should be brought before him at the termination of the imprisonment, and that the sentence of whipping should then be carried out. *Held* that the sentence of whipping should be cancelled as having become inoperative and incapable of being carried out. HURCHANDRA KULAL v. JAFERALI, **20 W.R. Cr. 72.**

See ACT XXIX OF 1861, art. 85, 11 P.R. 1868, Cr.

See ACT IX OF 1890, ss. 126 and 130, U.B.R. 1892—1896, Vol. I, 302.

See ACT VIII, OF 1897, s. 31, 3 L.B.R. 30.

See BOM. ACT III OF 1867, s. 21, Rat. Un. Cr. C. 682 = Cr. Rg. 49 of 1893.

See MAD. ACT XXIV OF 1859, s. 48, 1 Weir 845.

Sentence of imprisonment in lieu of whipping —*See* CRIM. PRO. CODE, 1898, ss. 32, 395, 2 Weir 449.

See CRIM. PRO. CODE, 1898, s. 106, 3 L.B.R. 30.

See CRIM PRO. CODE, 1898, s. 221, 2 Weir 265.

See CRIM. PRO. CODE, 1898, ss. 383, 439, 562, 9 P.W.R. 1907, Cr. = 5 Cr. L.J. 217.

See CRIM. PRO. CODE, 1898, s. 423, 2 Weir 487.

See MAGISTRATE, JURISDICTION OF — GENERAL JURISDICTION, 7 B. 303.

See PENAL CODE, s. 382, Rat. Un. Cr. C. 537 = Cr. Rg. 8 of 1891.

Whipping Act.

See ACT VI OF 1864.

See ACT V OF 1900.

See ACT IV OF 1909.

Wife.

See HUSBAND AND WIFE.

(1)—*Penal Code, s.* 400—*Wives and mistresses of dacoits—Liability.*—The mere fact that some women are the wives or mistresses of dacoits does not render them liable also as dacoits. QUEEN-EMPRESS v. YELLI *kom* YELLA, **Rat. Un. Cr. C. 863 = Cr. Reg. 26 of 1896.**

Wife-murder.

Murder—Deterrent sentence—Necessity for —*See* MURDER, 5 S.L.R. 256 = 15 Ind. Cas. 807 = 13 Cr. L J. 535.

Witchcraft.

Branding and beating for the purpose of freeing from bewitchment—*See* CULPABLE HOMICIDE, 4 Bom. L.R. 879.

See HURT, 13 W.R. Cr 23.

Withdrawal of Appeal.

See WITHDRAWAL OF COMPLAINT.

See APPEAL—APPEAL—PRACTICE AND PROCEDURE, 5 C.L.R. 372, 6 C.L.R. 427.

Withdrawal of Cases.

See MAGISTRATE, JURISDICTION OF — WITHDRAWAL OF CASES.

See WITHDRAWAL OF COMPLAINT.

Withdrawal of Cases—*concluded.*

(1)—*Duty of a District Magistrate in such cases—Crim. Pro. Code* (1898), s. 350—*Accused entitled to notice.*—When a District Magistrate withdraws a case to his own file at the instance of the complainant, he ought to give notice to the accused, and to ask him if he wishes the witnesses already examined to be recalled, as under s. 350, Crim. Pro. Code, the accused is entitled to demand this. U WARADAMA *alias* MAUNG NU v. CROWN, **1 L B.R. 139.**

(2)—*Agreement of compromise by an official—Liability of Government.*—*Held* that there was sufficient consideration for an agreement to pay a certain sum, arising out of a claim to certain property preferred in the Criminal Court, which led to the compromise and withdrawal of the criminal case, and that such an agreement by an officer of the Public Works Department of sufficient standing to conclude such a bargain, bound his official successor and the Government. SUJAN KHAN v. GOVERNMENT, **Old S.C. 43, Oudh.**

Withdrawal of Charge.

See CHARGE.

See WITHDRAWAL OF COMPLAINT.

(1)—*Charge of adultery—Withdrawal of the charge.*—A conviction and sentence of adultery recorded by the Sessions Judge was reversed by the High Court on the ground that the husband had desired to withdraw the charge at the trial before the Sessions Court, and had not been permitted to do so. It was competent to the husband to withdraw from the prosecution, there being nothing to show collusion. *In re* JAMNI, **5 B.H.C. Cr. 28, Note.** [*F.*, 5 B.H.C. Cr. 27.]

(2)—*Crim. Pro Code* (1882), s. 240—*Charges, withdrawal of— Penal Code, ss.* 323, 380.—Charges under ss. 380 and 323, I.P.C., could not be properly withdrawn after the accused has been found guilty of them. Concurrent sentences would have been proper in such a case. QUEEN-EMPRESS v. NADHARYA, **Rat. Un. Cr. C. 288 = Cr. Rg. 26 of 1886.**

(3)—*Crim. Pro. Code* (1898), ss. 494 (*a*), 537—*Withdrawal of prosecution—Formal order of discharge not passed—Accomplice—Evidence—Admissibility—Irregularity.*—The applicants and one Majida were prosecuted for an offence under s. 401, Penal Code. In the course of the trial, but before any charge was framed, the Public Prosecutor withdrew from the prosecution of Majida, and tendered him as a witness against the other accused. As a matter of fact, no formal order of discharge was passed in respect of Majida under s. 494 (*a*), Crim. Pro. Code :—*Held*, that, in view of the fact that there had been a valid and effective withdrawal of the prosecution as against Majida, and that his position as a witness could not be adversely affected even though the Court did not comply with the clear provisions of s. 494 (*a*), Crim. Pro. Code, his evidence as a witness was admissible as against the other accused. Where an

Withdrawal of Charge—*concluded.*

accused person is in fact discharged from custody by virtue of a withdrawal of his prosecution, and the Magistrate trying the case takes judicial notice of such withdrawal, the omission to use the formal words " I discharge this accused " would be at most an irregularity curable by the provisions of s. 537 of the Code. MUHAMMAD NUR v. EMPEROR, **5 Ind. Cas. 21 = 7 A.L.J. 86 = 11 Cr. L J. 21.**

Withdrawal of Complaint.

See COMPLAINT.

See CRIM. PRO. CODE, 1898, s. 248.

See MAGISTRATE, JURISDICTION OF — WITHDRAWAL OF CASES.

(1)—*Of complaint—Composition of an offence—Crim Pro. Code* (1861), *s.* 271.—Withdrawals of complaints and compromises can, under s. 271 of the Crim. Pro. Code, be permitted only in cases falling within the scope of Ch. XV of the Code. A party may compound an offence which consists only of an act irrespective of the intention of the offender, and for which the injured person may bring a Civil action, *e.g.*, assault, illegal confinement, adultery (exception, s. 214, Penal Code) and such like, but, if he once brings such an offence to the cognizance of the Criminal Courts, he cannot withdraw the charge. **1 W.R. Cr. Letters, 1.**

(2)—*Crim. Pro. Code* (*Act* X *of* 1872), *s.* 125—*Withdrawal of complaint—Police.*—S. 125 of the Crim. Pro. Code does not authorise the Police to entertain an application for withdrawal of a complaint. Permitting a complainant to withdraw is a judicial act, the exercise of which is vested in the Magistrate by ss. 188 and 210 of the Crim. Pro. Code, and the Police have no authority to interfere in such matters. SURAT DISTRICT MAGISTRATE'S LETTER NO. 306, **Rat. Un. Cr. C. 91 = Cr. Rg. 15—6—1875.**

See COMMITMENT TO SESSIONS COURT, 4 A. 150.

See COMPENSATION—GENERAL, Rat. Un. Cr. C. 462 = Cr. Rg. 21 of 1889.

Charge of adultery—Withdrawal of charge by husband—Revisional powers of High Court—*See* COMPOUNDING OFFENCE, 5 B.H.C. 27, Cr.

Under s. 323, Penal Code—*See* COMPOUNDING OFFENCE, 10 B.H.C. 68.

By petitioner—Award of costs—Order allowing withdrawal, whether a " decision "—*See* CRIM. PRO. CODE, 1898, ss. 145, 148, 9 Ind. Cas. 289 = 9 M.L.T. 324 = 12 Cr. L.J. 49.

See CRIM. PRO. CODE, 1898, s. 240, Rat. Un. Cr. C. 362 = Cr. Rg. 5 of 1888.

Warrant case—Non-compoundable offence—Private complainant's offer of withdrawal—Order of acquittal—Legality—*See* CRIM. PRO. CODE, 1898, ss. 258, 248, 345, 15 Bom. L.R. 61 = 2 Bom. Cr. C. 17 = 18 Ind. Cas. 413 = 14 Cr. L.J. 77 = 37 B. 369.

Withdrawal of Complaint—*concluded.*

See CRIM. PRO. CODE, 1898, ss. 297, 307, 2 Weir 388 = 2 Weir 391.

See CRIM. PRO. CODE, 1898, ss. 337, 494, 25 B. 422 = 2 Bom. L.R. 1095.

See CRIM. PRO. CODE, 1898, s. 407, 18 M. L.J. 89 = 31 M. 277 = 7 Cr. L.J. 329.

See CRIM. PRO. CODE, 1898, ss. 492, 494, 2 Weir 653.

See CRIM. PRO. CODE, 1898, s. 494, 2 Weir 655, 8 A. 291 = A.W.N. 1886, 94, 2 A.L.J. 30 = 2 Cr. L.J. 21.

Who can withdraw from prosecution—Powers of Police officers—Discretion of Magistrate in giving his consent to the withdrawal—Interference in revision—*See* CRIM. PRO. CODE, 1898, ss. 494, 495, 1914 M.W.N. 776 = 15 Cr. L.J. 614 = 25 Ind. Cas. 841.

See CRIM. PRO. CODE, 1898, ss. 494, 495, cls. 1 and 2, U.B.R. 1908, 4th Qr., Crim. Pro. Code, 15.

See CRIM. PRO. CODE, 1898, s. 528 (1 to 3), 3 A. 749.

Fresh trial to be commenced after—*See* CRIM. PRO. CODE, 1898, ss. 528, 537, 6 O.C. 192.

From the jury, power of—*See* SESSIONS JUDGE, JURISDICTION OF, 5 C.W.N. 411.

See TRANSFER OF CRIMINAL CASES—TRANSFER BY OTHER COURTS, 6 M.L.T. 14 = 9 Cr. L.J. 407 = 1 Ind. Cas. 889.

Withdrawal of Compromise.

Filing of petition of compromise—Duty of Magistrate—*See* COMPOUNDING OFFENCE, 3 C.W.N. 322.

Withdrawal of Pardon.

See APPROVER.

See PARDON.

Withdrawal of Proceedings.

See WITHDRAWAL OF COMPLAINT.

Withdrawal of Prosecution.

See WITHDRAWAL OF COMPLAINT.

(1)—*Crim. Pro. Code*, ss. 494, 495 (1)—*Officer entitled to withdraw from the prosecution of a case.*—The officer, who has the power of withdrawing from prosecution of a case, under s. 494 of the Crim. Pro. Code, is the officer referred to in s. 495, cl. (1). Where, in the course of an enquiry by a Magistrate, an Inspector of Police appeared and said that he withdrew the case against the accused, and the Magistrate thereon discharged the accused under s. 494, Crim. Pro. Code. *Held*, that the order of discharge was illegal and liable to be set aside. LAKSHMANA CHETTY v. KEELAN PERIA KARUPPAN. **8 Ind. Cas. 867 = 1911, 1 M.W.N. 106 = 9 M.L.T. 209 = 11 Cr. L.J. 722.**

(2)—*Crim. Pro. Code* (1882), ss. 309, 494—*Withdrawal of prosecution by Public Prosecutor—Opinion of assessors.*—The accused was charged with the offence of culpable homicide not amounting to murder, and on the Public

Withdrawal of Prosecution—*concluded.*

Prosecutor having, with the consent of the Court, withdrawn from the prosecution, was acquitted and discharged by the Sessions Court after taking the assessors' opinions on the evidence recorded in the case. *Held* that the Public Prosecutor having withdrawn from the prosecution with the consent of the Court, an acquittal should have been recorded without taking the opinion of the assessors. An acquittal was a matter of right to the accused, whatever the opinions of the assessors might be. QUEEN-EMPRESS v CHENBASAPA, **Rat. Un. Cr. C. 307 = Cr. Rg. 58 of 1886.**

(3)—*Penal Code, s.* 506—*Withdrawal of prosecution —Crim. Pro. Code* (1882), s. 345—Although an offence under the latter portion of s. 506 of the I.P.C., cannot be legally compounded under s. 345 of the Crim. Pro. Code, yet, a withdrawal from the prosecution may be allowed in a proper case, and in such a case *Reg* v. *Devama* (1 B. 64) would apply. QUEEN-EMPRESS v. VITHOBA, **Rat. Un. Cr. C. 330 = Cr. Rg. 20 of 1887.** [*R.*, 37 B. 369 = 2 Bom. Cr. Cas. 17 = 15 Bom. L.R. 61 = 14 Cr. L.J. 77 = 18 Ind. Cas. 413.]

Withdrawal of Suit.

Effect of—*See* CRIM. PRO. CODE, 1898, s. 195, 8 Ind. Cas. 995 = 11 Cr. L.J. 749.

Witness.

1.—GENERAL—WHO ARE COMPETENT TO BE WITNESSES.

2.—SUMMONS TO WITNESSES.

3.—EXAMINATION OF WITNESSES.

4.—MISCELLANEOUS CASES.

See ACCOMPLICE.

See APPROVER.

See COMMISSION.

See CRIM. PRO. CODE, 1898, ss. 288, 289.

See EVIDENCE.

See EVIDENCE ACT, 1872.

See EXAMINATION OF WITNESSES.

See SECURITY TO KEEP THE PEACE—SUMMONING WITNESSES.

——1.—General—Who are competent to be witnesses.

(1)—*Evidence Act, s.* 118—*Competency to be a witness—English law and Indian law.*—Under s. 118 of the Evidence Act, a child is competent to testify if it can understand the questions put to it, and give rational answers thereto. In England, a child to be a competent witness must believe in punishment in a future state for lying. QUEEN-EMPRESS v. SHAVA, **16 B. 359.** (14 B.L.R. 294 = 23 W.R. 1, *Appr.*; 10 A. 207, *Diss.*) [*F.*, 5 Bom. L.R. 551.]

(2)—*Evidence Act, s.* 118—*Witness, competency of—Child witness—Mode of examination—Competency to be tested before examination as to res gestæ.*—Before a child of tender years is asked any questions bearing on the *res gestæ*, the Court should test his capacity to understand and give rational answers and his capacity to

Witness—continued.

——1.—General—Who are competent to be witnesses—*continued.*

understand the difference between truth and falsehood. The Judge must form his opinion as to the competency of a witness, before his actual examination commences. SHEIKH FAKIR v. EMPEROR. **11 C.W.N. 51=4 Cr L J. 412.** [*Diss.*, 41 C. 406=14 Cr. L J. 485=18 C. L.J. 582=18 C.W.N. 147=20 Ind. Cas. 741.]

(3)—The proper test of the competency of a child to testify is not whether it understands the nature of an oath, but whether it is able to understand and give rational answers to question put to it. QUEEN-EMPRESS v. DAYA SINGH, **S.C. 221, Oudh.**

(4)—*Wife, a competent witness against husband—When evidence of wife necessary.*—If there is other evidence, there are obvious reasons for not requiring that the wife should be put into the witness-box to testify against her husband ; but, if there is no other direct evidence than hers, or if her evidence be necessary to corroborate that of others, there is no rule in the law of evidence or practice in this country which forbids that she should, in such circumstances, be made a witness against her husband. **1 W.R. Cr. Letters, 7.**

(5)—*Competency to testify—Informers—Evidence Act*, s. 118—*Crim. Pro. Code* (1882), s. 342.—Where objection was taken to the admissibility of the evidence of two informers, on the ground that a pardon had been tendered to them by the District Magistrate without lawful authority, *held* that, as neither in the enquiry before the Magistrate nor at the trial was an objection taken to either informer on the ground that he was an accused person, under s. 342, Crim. Pro. Code, an oath or affirmation could be administered to them, if they were not otherwise incompetent to testify. MAL SINGH v. EMPRESS, **38 P R. 1887, Cr.** [*R.*, 12 P R. 1902, Cr.; *D.*, 21 P.R. 1904, Cr.]

(6)—*Person not charged along with other accused—Competency to give evidence.*—A person apprehended by the Police and brought before the Magistrate for trial, is a competent witness, though undischarged, as he is not, at the time he is examined, charged with the accused and upon his trial, although he has been apprehended. REG. v. NARAYAN SUNDAR, **5 B.H. C. Cr. 1.** [*R.*, 25 B. 422.]

(7)—*Persons competent are not to be witnesses—Judge—Competent witness.*—A Judge is a competent witness and can give evidence in a case tried before himself, even though he laid the complaint, acting as a public officer, provided that he has no personal or pecuniary interest in the subject of the charge ; and he is not precluded thereby from dealing judicially with the evidence of which his own forms a part. QUEEN v. MUKHTA SINGH, **4 B.L R. A. Cr. 15=13 W.R. Cr. 60.** *See* ROUSSEU v. PINTO, **7 W.R. 190.**

Witness—continued.

——1.—General—Who are competent to be witnesses—*continued.*

(8)—*Co-defendants, examination of, as witnesses.*—*Held* that any one of a number of accused persons jointly charged is a competent witness either for or against his co defendants, if there is no community of interest between them. QUEEN v. ASHRUFF SHEIKH, **6 W.R. Cr. 91.**

(9)—*Evidence of woman in, charge of adultery.*—The woman, with whom the accused is charged with having had sexual intercourse, is a competent witness on behalf of the accused. A person is not, by reason of being an accomplice disqualified from giving evidence either for or against a prisoner. *In re* SHEIKH BECHOO, **6 W.R. Cr. 92.**

(10)—*Examination of Magistrate trying a case.*—*Held* that the High Court could allow a Deputy Magistrate, who investigated the case against an accused person, to be examined on such petitioner's behalf. QUEEN v. MUDHOO SOODUN ROY, **16 W.R. Cr. 49.**

(11)—*Persons competent or not to be witnesses—Judge trying case—Magistrate witness of facts.*—Should a Magistrate have taken an active part in the arrest of persons charged with an offence, it was his duty to state to the accused what were the facts he himself observed, and which he himself could prove; and the accused, in such a case was entitled, if he thought it necessary, to cross-examine the Judge, whose evidence should be recorded, and form part of the record of the case. But the proper course for the Magistrate would be to decline to try the case, and to ask it to be undertaken by some other Judge. *In re* HURRO CHUNDER PAUL, **20 W.R. Cr. 76.**

(12)—*Crim. Pro. Code* (1882), s. 289—*Duty of prosecution to produce at trial witnesses examined before a committing Magistrate.*—The Crown is not bound, as a matter of procedure, to produce at the trial, witnesses examined before the committing Magistrate, whose evidence, it has reason to believe, is not true. *In re* RAMASAMI GOUNDAN, **2 Weir 378.**

(13)—*Practice—Witness for prosecution—District Magistrate—Order to turn the witness into a co-accused in the trial.*—In a criminal trial, two persons were examined as witnesses for the prosecution. At the end of their examination, the accused applied to the Magistrate to turn those witnesses into co-accused with them. The Magistrate declined to do so, but the District Magistrate, on appeal, ordered that a complaint should be laid against the witnesses and they should be tried jointly with the accused. The witnesses having applied to the High Court :—*Held*, that the order passed by the District Magistrate should be set aside as it was not warranted by any provisions of the Crim. Pro. Code. A Magistrate trying a case should, unless there be something very unusual, be left, to try it in his own way, and should not be interfered with during the course of the trial. If it transpires in the course of the case that criminal

Witness—continued.

——1.—General—Who are competent to be witnesses—*continued.*

proceedings ought to be taken against any who have given evidence, those proceedings ought ordinarily to await the conclusion of the case: and they ought to be instituted ordinarily by the order of or on application to, the Magistrate who has tried the case and who is conversant with all the circumstances. EMPEROR v. UMED RAJA, **16 Bom. L.R. 259 = 2 Bom. Cr. C. 195 = 15 Cr. L J. 428 = 24 Ind. Cas. 164.**

Court importing its own knowledge into case —*See* ACCUSED PERSON, 6 O.C. 204.

See ACCUSED PERSON, 1 C.W.N. 313, 5 C.P.L.R. Cr 1.

Signing unstamped deed as—*See* ACT X OF 1862, s. 3 (*a*), 2 B.H.C.R. 129.

Prosecution for gambling — Some of the gamblers cited as witnesses for prosecution—Legality—*See* ACT III OF 1867, ss. 3, 4, 5, 6, 10, 9 N.L.R. 68 = 14 Cr. L.J. 293 = 19 Ind. Cas. 949.

See ACT VII OF 1870, s. 31, U.B.R. 1892—1896, Vol. I, 7.

Competency to be a, of old men and young children—*See* ACT X OF 1873, ss. 5, 6, 13, 11 A. 183 = A.W.N. 1889, 65.

See ACT X OF 1873, ss. 5, 6, 7, 11 C.P.L.R. Cr. 16.

Child witness—*See* ACT X OF 1873, s. 13, 5 Bom. L.R. 551.

Commission to examine—*See* ACT XIV OF 1882, s. 640, 3 C.W.N. 753.

Accused persons, if can be made witnesses —*See* BUR. ACT I OF 1899, s. 8, 1 L.B.R. 59.

See APPEAL—CASES WHERE APPEAL DOES NOT LIE, 19 W.R. Cr. 53.

See ARREST, 1 C. 78.

Arrest of, during the course of trial for giving false evidence—*See* CONFESSION — CONFESSION BY CO-ACCUSED, 12 Cr. L J. 465 = 11 Ind. Cas. 1001.

Deterring, from giving evidence—*See* CONTEMPT OF COURT, 14 Cr. L.J. 321 = 20 Ind. Cas. 81 = 17 C.W.N. 1253 = 18 C.L J. 452, S. B.

Comments reflecting on, and party under cross-examination, if contempt—*See* CONTEMPT OF COURT, 15 C.W.N. 771.

Not producing the document—*See* CONTEMPT OF COURT, 12 B. 63.

Retracted statements by—*See* CONVICTION, Rat. Un. Cr. C 762 = Cr. Rg. 23 of 1895.

Jurisdiction of Magistrate to summon persons not named in complaint on the evidence of prosecution—*See* CRIM. PRO. CODE, 1898, ss. 4 (1) (*h*), 190, 18 C.W.N. 921 = 15 Cr. L.J. 546 = 24 Ind. Cas. 954 = 41 C. 1013.

Accused's privilege of recalling prosecution witnesses—*See* CRIM. PRO. CODE, 1898, ss. 35, 256, 14 Cr. L.J. 388 = 20 Ind. Cas. 212 = 6 Bur. L.T. 67.

Witness—continued.

——1.—General—Who are competent to be witnesses—*continued.*

To search—*See* CRIM. PRO. CODE, 1898, s. 103, 15 Cr. L.J. 441 = 24 Ind. Cas. 321 = 7 Bur. L.T. 143, F.B.

Search of stolen property—To the search—*See* CRIM. PRO. CODE, 1898, s. 103, 21 M. 83 = 2 Weir 503.

See CRIM. PRO. CODE, 1898, s. 103, U.B. R. 1908, 2nd Qr., Gambling, 1.

Litigant summoning witnesses repeatedly on payment of fresh process-fee—Duty of Court—*See* CRIM. PRO. CODE, 1898, ss. 107, 145, 204, 3 P.W.R. 1912, Cr. 60 P.L.R. 1912 = 13 Cr. L.J. 176 = 13 Ind. Cas. 928.

Warrant case—Opportunity to bring—*See* CRIM. PRO. CODE, 1898, ss. 110, 112, 113, 117, 15 Cr. L.J. 353 = 23 Ind. Cas. 721 = 41 C. 806.

Magistrate's duty to call witnesses—Number of witnesses—Expenses of witnesses to be realised before issuing summons—*See* CRIM. PRO. CODE, ss. 110, 526, 12 A L.J. 262 = 15 Cr. L.J. 363 = 23 Ind. Cas. 731.

Processes to enforce attendance of, when may be refused—*See* CRIM. PRO. CODE, 1898, s. 145, 17 C.W.N. 144 = 18 Ind. Cas. 264 = 14 Cr. L.J. 40 = 17 C.L.J. 610.

Refusal of process against witness—Order under s. 145, Crim. Pro. Code—Legality—*See* CRIM. PRO. CODE, 1898, s. 145, 18 C.W.N 94.

Refusal to examine witnesses of a party to dispute about immoveable property—*See* CRIM. PRO. CODE, 1898, s. 145, 31 C. 685.

Whether witnesses refusing to answer questions put by Police punishable—*See* CRIM. PRO. CODE, 1898, ss. 161, 174, 27 P.R. 1908, Cr. = 9 Cr. L.J. 105.

See CRIM. PRO. CODE, 1898, s. 170, L.B.R. 1893—1900, 478.

Cognisance of an offence against a—*See* CRIM. PRO. CODE, 1898, ss. 190, 351, 1 C.W. N. 105.

Abetment of forgery—Sanction to prosecute whether necessary—*See* CRIM. PRO. CODE, 1898, s. 195, cl. (1) (*c*) and cl. (3), 12 Cr. L.J. 101 = 9 Ind. Cas. 577 = 15 C.W.N. 565.

See CRIM PRO. CODE, 1898, ss. 208, 252, 4 M. 329.

See CRIM. PRO. CODE, 1898, s. 212, 18 A. 280.

Refusal to summon—*See* CRIM. PRO. CODE, 1898, s. 216, 8 C.L.R. 70.

See CRIM. PRO. CODE, 1898, s. 216, 2 C.L. R. 62.

Perjury—Prosecution of a—*See* CRIM. PRO. CODE, 1898, ss. 236, ill. (*b*), and 476, 8 Ind. Cas. 947 = 11 Cr. L. J. 734.

Warrant case—Court-fees for summoning witnesses—*See* CRIM. PRO. CODE, 1898, ss. 245, 252, 2 Weir 323.

Witness—continued.

——1.—General—Who are competent to be witnesses—*continued*.

See CRIM. PRO. CODE, 1898, s. 252, 11 Bom. L.R. 1153.

See CRIM. PRO. CODE, 1898, s. 257, 26 B. 418=4 Bom. L.R. 38, 11 C.W.N. 789=6 Cr. L.J. 1.

See CRIM. PRO. CODE, 1898, ss. 257 and 537, 31 M. 131=7 Cr. L.J. 425.

See CRIM. PRO. CODE, 1898, ss. 264, 351, 12 C.L.R. 120.

See CRIM. PRO. CODE, 1898, ss. 286, 288, 537, 9 M. 83=2 Weir 356.

See CRIM. PRO. CODE, 1898, ss. 337, 494, 25 B. 422=2 Bom. L.R. 1095.

See CRIM. PRO. CODE, 1898, ss. 350, 357, 25 C. 863=2 C.W.N. 465.

Transfer of Magistrate pending trial — Expenses of prosecution witnesses recalled, whether to be paid by accused—*See* CRIM. PRO CODE, 1898, ss 350, 544, 15 Cr. L.J. 687 =26 Ind. Cas. 135.

See CRIM. PRO. CODE, 1898, s. 355, 2 Weir 433.

See CRIM. PRO. CODE, 1898, s. 360, 2 Weir 435.

Not understanding depositions read over to them—*See* CRIM. PRO. CODE, 1898, ss. 360, 361, 7 C.L.R. 393.

Handing over record of deposition to witness for being read by him if sufficient compliance with law—Such deposition if admissible and prosecution for perjury if can be made thereon—*See* CRIM. PRO. CODE, 1898, s. 360, sub s. (1), s. 476, 18 C.W.N. 1242=15 Cr. L.J. 483=24 Ind. Cas. 571.

See CRIM. PRO. CODE, 1898, s. 363, 2 Weir 435.

Child of tender years—Capacity to understand—Testing of capacity—Competency to testify—Credit to be given to the deposition—Province of Judge and Jury—*See* CRIM. PRO. CODE, 1898, s. 422, 14 Cr. L.J. 485=20 Ind. Cas. 741=18 C.L J. 582=18 C.W.N. 147.

Credibility of—Grounds for believing testimony of witness against some of the accused—Revision—*See* CRIM. PRO. CODE, 1898, ss. 439, 562, 21 P.L.R. 1914=12 P.W.R. 1914, Cr.

Prosecution against one of two accused withdrawn—Such accused if competent witness—*See* CRIM. PRO. CODE, 1898, s. 494, 18 C.W. N. 1213=15 Cr. L.J. 693=26 Ind. Cas. 141.

Expenses of witnesses cited by defence—*See* CRIM. PRO. CODE, 1898, s. 544, 9 Bom. L.R. 353=5 Cr. L.J. 329.

See CRIMINAL PROCEEDINGS, 20 M. 445=2 Weir 384.

Accused defended by Counsel making defamatory statements about a—*See* DEFAMATION, 15 M. 414=1 Weir 598=2 M.L J. 142.

Judicial proceeding—Defamatory statement by—*See* DEFAMATION, 14 P.R. 1893, Cr.

Witness—continued.

——1.—General—Who are competent to be witnesses—*continued*.

See DEFAMATION, 17 B. 127, 17 B. 573.

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 11 C. 762, 6 M.H.C. App. 4.

Witness not found—Absence not accounted for—Previous deposition of such witness—Admissibility—*See* EVIDENCE ACT, 1872, ss. 25, 33, 41 C. 601=15 Cr. L.J. 713=26 Ind. Cas. 161.

Sessions trial—Cross-examination of prosecution witnesses—Opportunity to cross-examine—*See* EVIDENCE ACT, 1872, s. 33, 17 C.W.N. 230=18 Ind. Cas. 406=14 Cr.L.J. 70.

Evidence before committing Magistrate—Death of witness—Admissibility in Sessions Court—*See* EVIDENCE ACT, 1872, s. 33, 25 B. 168=2 Bom. L.R 761.

See EVIDENCE ACT, 1872, ss. 33, 157, 8 A. 672.

Relevancy of deposition of medical witness—*See* EVIDENCE ACT, 1872, s. 114, ill. (*e*), 9 A. 720.

Discrepancies between the statements of, before the Police and Court—*See* EVIDENCE ACT, 1872, ss. 114, 133, 36 P.W.R. 1910, Cr.=8 Ind. Cas. 193=11 Cr. L.J. 580.

See EVIDENCE ACT, 1872, s. 121, 3 A. 573.

Counsel appearing as witness for his client—Evidence recorded—Duties of the counsel—Admissibility and relevancy of evidence of counsel—*See* EVIDENCE ACT, 1872, s. 126, 12 A.L.J. 285=15 Cr. L J. 429=24 Ind. Cas. 165.

Incriminating questions put to witness in cross-examination—*See* EVIDENCE ACT, 1872, s. 132, L.B.R. 1893—1900, 91.

See EVIDENCE ACT, 1872 s. 132, 23 B. 213.

See EVIDENCE ACT, 1872, s. 165, 10 B. 185.

See FALSE EVIDENCE, 23 M. 544=1 Weir 112.

See INSPECTION OF DOCUMENTS, S.C. 189, Oudh.

Incapacity of Judge to give evidence—*See* JUDGE, L.B.R 1893—1900, 72.

Credibility of — *See* LEGAL PRACTITIONERS—ADVOCATE, L.B.R. 1893—1900, 263.

See LEGAL PRACTITIONERS—ADVOCATE, 5 B.L.R. Ap. 28.

Examining prosecution witness after defence closed—Legality—*See* LOCAL INVESTIGATION, 9 Ind. Cas. 46=12 Cr. L.J. 7=15 C.W. N. 414.

Summoning of Police as—*See* MAGISTRATE, DUTY OF, 1 W.R. Cr. Letters 12.

See MAINTENANCE, 18 A. 107=A.W.N. 1895, 242.

Murder—Practice—Witness improving on his former statement not to be relied upon—*See* MURDER, 43 P.W.R. 1914, Cr.

Witness—continued.

——1.—**General—Who are competent to be witnesses**—*concluded*.

See PARDANASHIN WOMAN, 1 B L.R.S.N. 5.

See PARDON, 4 U.B.R. Crim. Pro Code, 7 =7 Cr. L.J. 245=14 Bur. L.R. 306.

Voluntary statement by accused—Statement of witness under compulsion—Distinction —*See* PENAL CODE, ss. 2, 499, 500, 17 C.W.N. 297=14 Cr. L J. 100=18 Ind. Cas. 660=40 C. 433.

Damaging remarks against—Chief Court's power to expunge them on revision —*See* PENAL CODE, ss. 142, 299, 12 P.W.R. 1911, Cr.=193 P.L.R. 1911=12 Cr.L.J. 393=11 Ind. Cas. 577.

See PENAL CODE, s. 174. 1 Weir 83=6 M. H.C. App. 29, 13 B. 600, 27 P.W.R. 1907, Cr.

Impropriety of taking proceedings against a witness while the case is still pending —*See* PENAL CODE, s. 193, 18 C.W.N. 1342.

Issue of warrant for the arrest of a, when illegal—*See* PENAL CODE, s. 225-B, 15 C.W. N. 1001=11 Ind. Cas. 593=12 Cr. L.J. 409=38 C. 789.

Statement of— Defamation—*See* PENAL CODE, s. 500, 31 P.W.R. 1912, Cr.=15 Ind. Cas. 494=13 Cr. L.J. 494 =244 P.L.R. 1912= 5 P.R. 1913, Cr.

See PERJURY, 16 P.W.R. 1908, Cr.=7 Cr. L.J. 460.

See PRACTICE AND PROCEDURE, 28 B. 479 =6 Bom. L.R. 324.

Prosecution, duty of, to call all witnesses —*See* PROSECUTION, 10 C.L.R. 151.

Trial of accused's witness as co-accused—*See* RE-TRIAL, L.B.R. 1893—1900, 111.

See SECURITY FOR GOOD BEHAVIOUR, 12 C.W.N. 299=7 C.L.J. 177=35 C. 243=7 Cr. L.J. 146, 2 N.W.P. 406, 3 M. 238=2 Weir 54.

See SECURITY TO KEEP THE PEACE—ON CREDIBLE INFORMATION, 11 W.R. Cr. 6.

See SPECIAL OR SECOND APPEAL, 1 B L.R A. Cr. 186=10 W.R. 233.

Convenience of parties and, grounds of transfer—*See* TRANSFER OF CRIMINAL CASES —GROUNDS FOR TRANSFER, 4 S.L.R. 42.

Arrest of—*See* WARRANT, 9 B.H.C. 154.

See WARRANT, 1 W.R. Cr. Cir. 7.

See WARRANT CASE, 3 C. 573=1 C.L.R. 352.

——2.—**Summons to Witnesses.**

(1)—*Crim. Pro. Code* (1861), *s.* 228—*Summons for defence witnesses to appear before Sessions.*—When an application for summons is made at the close of the preliminary enquiry and when the case is about to be committed to the Sessions, the trying Magistrate is competent to refuse to summon the witnesses required by the defence to appear before the Sessions Court, if the accused declines to satisfy the Magistrate that there are grounds for believing that they are material witnesses. But he should fix the amount, which he considers necessary, to defray the cost of the attendance of the persons summoned and intimate his readiness to issue summonses on that amount being deposited. *In re* SUBHARAYA MUDALY, **4 M.H.C. 81.**

(2)—*Duty of Magistrate to summon witnesses.*—It is imperative on the part of a Magistrate to summon the witnesses named by the prisoner. QUEEN v. MUDSOODEEN, **2 N.W.P. 148.**

(3)—*Crim. Pro. Code* (1861), *ss.* 253, 262, 283 —*Summoning witnesses for defence.*—In a case triable under Ch. XV, Crim. Pro. Code, 1861, the provisions of s. 253 do not apply. Ss. 262. 263 are applicable. QUEEN v. MOHUREE, **2 N.W.P. 393.**

(4)—*Warrant case—Accused's witnesses summoning of.*—In a warrant case, it is the duty of the Magistrate to summon the witnesses tendered by the accused and he must use his discretion in adjourning the case, if necessary. EMPRESS v. RAJCOOMAR SINGH, **3 C. 573=1 C L R. 352.**

(5)—*Crim. Pro. Code* (1882), *s.* 217 *Prosecution witnesses examined before committing Magistrate—Attendance in Sessions Court.*—There is no law which obliges the committing Magistrate to cause the attendance at the Sessions Court of every witness examined by him, irrespective of their evidence being material for the prosecution. It is for the Magistrate to judge as to the necessity for the attendance of the witnesses for the prosecution. EMPRESS v. NAIK LAL, **A. W.N. 1883, 37.**

(6)—*Crim. Pro. Code* (1872), *ss.* 283, 359 *and* 362—*Refusal to summon witnesses named by the accused—Reasons for refusal.*—A refusal on the part of the Magistrate, either to summon a witness named by the accused, or to take the necessary steps to obtain the issue of commission to examine such witness, and the omission to record his reason for so refusing, should be held to have prejudiced the accused, and his conviction should be set aside and the case be re-opened. The Magistrate should formally dispose of the accused's application for examination of the witness. *In the matter of the petition of* SAT NARAIN SINGH, 3 A 392. [*F*, Rat. Un. Cr. C. 723; *D*, Rat. Un. Cr. C. 930.]

(7)—*Crim Pro. Code, s.* 359—*Refusal by Magistrate to summon witnesses.*—A Magistrate is not at liberty to refuse to summon witnesses tendered by an accused, except on the grounds specified in s. 359 of the Crim. Pro. Code; and if he does refuse on those grounds, he ought to proceed under that section. The fact of an accused declining to examine witnesses at the close of the case, would be no reason for refusing to summon them, to meet fresh evidence given subsequent to the close of the defence. DEELAE MAHTON v. SHEO DYAL KOERI, **6 C 714=8 C.L.R. 70=4 Shome L.R. 138.**

Witness—continued.

——2.—Summons to Witnesses—*continued.*

(8)—*Crim. Pro. Code* (1882), *ss.* 216, 291, 540—*Refusal to summon witness by Magistrate—Power of Sessions Judge to summon him.*—Under s. 216, when a Magistrate refuses to summon a witness included in the list of the accused, he must record his reasons for such refusal, and it must appear that the evidence of such witness is not material. The fact that the Magistrate thought that the reasons assigned for summoning a particular witness were not sufficient, is not a sufficient reason for refusing to summon him. The Sessions Judge, upon the application of the accused, passed an order directing that the witness should be summoned. *Held*, that the Sessions Judge was competent to make the order; and that, even though he had no such power, the High Court would not be justified in interfering with the order in revision. Under s. 291, though the summoning of witnesses by an accused through the medium of the Sessions Court is not a matter of right, yet, the Judge has an inherent power if he thinks it proper to exercise it, to sanction the summoning of witnesses other than those named in the list delivered to the committing Magistrate. *In the matter of* RAJAH OF KANTIT, **8 A. 668 = A.W.N. 1886, 260.**

(9)—*Crim. Pro. Code, s.* 216—*Procedure—Examination of witnesses—Refusal to summon witnesses.*—It is not open to a Court to decide on the credit to be attached to the evidence of a witness before it has an opportunity of hearing it. Where a Sessions Judge refused to adjourn a case in order to obtain the evidence of two absent witnesses for the defence on the ground that they were persons of very ordinary status, whose evidence would in no case carry much weight, *held*, that the Sessions Judge exceeded the discretion given to him by s. 216, Crim. Pro. Code, and that the accused was prejudiced in his defence by the Sessions Judge's refusal. The High Court directed the Sessions Judge to take evidence of the two witnesses and to certify the same to the High Court. QUEEN-EMPRESS v. VIRASAWMI, **19 M. 375 = 2 Weir 680 = 6 M. L.J. 195.**

(10)—*Accused unwilling or unable to deposit cost of summoning of witnesses—Conviction not proper.*—Where the accused is unwilling or unable to deposit the money required for summoning witnesses, *held*, that it was improper to convict him without his witnesses being heard. QADU v. EMPRESS, **7 P.R. 1898, Cr.**

(11)—*Summoned defence witnesses, compelling the attendance of—Duty of Magistrate.*—Where summoned defence witnesses fail to appear at the trial, a Magistrate is bound to assist the accused in enforcing their attendance and a conviction, after refusal to adjourn the hearing or to issue fresh processes is bad. The fact that the witnesses are all friends of the accused and could have been produced even if they did not receive the summonses would be no

Witness—continued.

——2.—Summons to Witnesses—*continued.*

sufficient ground for such refusal. QUEEN-EMPRESS v. DHANANJOI CHOUDHURI, **10 C. 931.** [*F.*, Rat. Un. Cr. C. 594.]

(12)—*Duty of prosecution — Production of witnesses.*—In conducting a case for the prosecution, all the persons, who are alleged or are known to have knowledge of the facts ought to be brought before the Court and examined. Where a Sessions Judge refused to call certain witnesses for the prosecution, on the ground that these persons were examined by the committing Magistrate against the express wishes of the Sub-Inspector who was conducting the prosecution, *held*, that that was not a valid ground for the non-production of the witnesses in the Sessions Court, and the conviction of the accused under the circumstances would be illegal. A retrial was, consequently, ordered. QUEEN-EMPRESS v. RAM SAHAI LALL, **10 C. 1070.** [*R.*, 16 A. 84, F.B. = 14 A.W.N. 7.]

(13)—*Witnesses residing in a foreign country—Duty of Court.*—An accused person should not be discharged, merely because the prosecution witnesses are in a Native State and cannot therefore be summoned. The Magistrate is bound to use all reasonable efforts to procure their attendance. CROWN v. RUTTUN SINGH, **4 P.R. 1873, Cr.**

(14)—*Power of Court to summon material witness—Crim. Pro. Code* (1882), *s.* 540.—S. 540, Crim. Pro. Code, 1882, does not authorize a Sessions Judge to summon witnesses after the trial has been concluded, provided that no witnesses remain to be examined on either side, and the assessors have given their opinion. AWAL KHAN v. EMPRESS, **4 P.R. 1892, Cr.**

(15)—The powers conferred by the s. 540, Crim. Pro. Code, 1882, on a Court explained. CHETU v. DITTO, **11 P.R 1886, Cr.**

(16)—*Crim. Pro. Code*, 1861—*Chap.* XV—*Witness for defence—Discretion of Magistrate.*—It is the duty of the accused to produce his witnesses on the day of trial. If he requires processes for their attendance, he should apply beforehand so that the witnesses may be present on that day. The law leaves it to the discretion of a Magistrate to issue a process or not. *In re* CHEDEE KOONJRA, **14 W R. Cr. 76.**

(17)—*Crim. Pro. Code*, 1861, *ss.* 262, 266—*Defence witness—Discretion of Magistrate.*—Under s. 266, the Magistrate is bound to examine witnesses that are produced and he has no discretion in the matter. *In re* AMEER CHAND NOHATTA, **13 W.R. Cr. 63.**

(18)—*Crim. Pro. Code*, 1861, *ss.* 186, 263—S. 186 does not refer to cases under Ch. XV, which are triable by a Magistrate but only to cases under Ch. XII, which are triable by the Court of Session. BOIDDONATH DANIA v. BHEEDOO DASS, **9 W.R. Cr. 3.**

Witness—continued.

——2.—**Summons to Witnesses**—*continued.*

(19)—*Crim. Pro. Code*, 1861, s. 131—*Claim to property under seizure.*—When a person, acquitted on a charge of theft, preferred a claim to the property alleged to be stolen, he should be allowed to prove his case by summoning any witnesses he likes. The Magistrate is bound to examine the witnesses. SOOKHAN SAHOO v. GOVERNMENT, **18 W.R. Cr. 5.**

(20)—*Accused—Examination—Discretion of Magistrate—Crim. Pro. Code*, 1861, *Ch.* XV, *s.* 269.—In a trial, held under Ch. XV of the Crim. Pro. Code, it is not an irregularity to adjourn the trial under s. 269 for the purpose of allowing the accused to secure the attendance of his witnesses. As a general rule, the prisoner should have his witnesses present at the day of trial. *Revision of proceedings in the case of* DINOO ROY, **16 W.R. Cr. 21.**

(21)—*Crim. Pro. Code* (1861), *s.* 186.—*Held* that where the charge of an offence is triable by the Sessions Court only, it is incumbent on a Magistrate to summon the complainant's witnesses. QUEEN v. MEER ZAKIR ALLY, **8 W. R. Cr. 4.**

(22)—*Crim. Pro. Code*, 1861, *Ch.* XV—*Summoning witnesses— Procedure.*—In cases tried under Ch. XV, it is expected that the parties will produce their own witnesses. If a party requires the attendance of any one to give evidence on his behalf, he should apply to the Magistrate to cause his attendance on the day fixed for trial. BAGDEE MANJEE v. MOHINDRO NARAIN, **10 W.R. Cr. 16.**

(23)—*Crim. Pro. Code*, 1861, *Ch.* XIV—*Procedure.*—In a case tried under the provisions of Ch. XIV of the Crim Pro. Code (consequently under s. 253 of the said Code), the accused are entitled to have their witnesses for the defence summoned, and a Magistrate has no power to refuse to summon them. QUEEN v. DOORGAGUTTY, **11 W.R. Cr. 55.**

(24)—*Refusal to summon witness for accused—Participation in charge—Illegal conviction.*—A refusal to summon witnesses cited by an accused, on the ground of their being implicated in the charge, vitiates the trial and conviction. RAM SHAHAI CHOWDRY v. SANKAR BAHADUR, **6 B.L R. App. 65=15 W.R. Cr. 7.**

(25) *Avoiding service—Warrant for apprehension of witness—Committal of witness in default of appearance—Crim. Pro. Code* (1861), s. 188— S. 188 only empowers a Magistrate to issue a warrant for the apprehension of a witness when he has reason to believe that the witness will not attend to give evidence without being compelled to do so, and it does not empower a Magistrate to commit a witness. *In the matter of* MAHESH CHANDRA BANERJEE, **4 B.L.R. Ap. 1=13 W.R. Cr. 1.**

(26)—*Ground for postponement of case.*—A Magistrate was held to be right, under the circumstances of the case, in not postponing the case for the purpose of summoning the witnesses for one of the parties. *In the matter of the petition of* GOBINDA CHANDRA GHOSE, **9 B. L R. Ap. 39=18 W.R. Cr. 54.**

(27)—*Issue of summons—Crim. Pro. Code* (1861), *s.* 318.—Although there was no mention, in Ch. XXII of Act XXII of 1861 of any particular provisions under which witnesses might be summoned, yet it was the duty of the Court, if parties could not procure the attendance of their witnesses, to issue summons for their attendance. *In the matter of the petition of* SHAMASANKAR MAZUMDAR, **9 B.L.R. Ap. 45 =18 W.R. Cr. 64.**

(28)—*Summoning witnesses for accused—Crim. Pro. Code* (1861), *s* 253.—Per *Ainslie, J.*—In a trial under Ch. XIV of the Crim. Pro. Code, the Magistrate was not bound, under s. 253, to summon any witness whom the accused might require. It was only discretionary with him to do so, and, in the circumstances of the present case, he exercised his discretion rightly in refusing to summon the witnesses asked for. (Per *Paul, J.*, *differing*) :—The right of an accused to have witnesses for his defence summoned during the pendency of the trial is an ordinary and natural right, and this right was not taken away, but affirmed by s 253; the Magistrate was bound to summon the witnesses, though it was discretionary with him to adjourn the trial. In the present case, treating it as a matter of discretion only, the Magistrate was wrong in refusing to summon the witnesses required. QUEEN v. BHOLANATH MOOKERJEE, **7 B L.R. 564=16 W.R Cr. 28.**

(29)—*Credibility of witnesses.*—It is the Magistrate's duty to summon witnesses for the accused who can speak to the facts of the case, and he ought not to determine beforehand what credit he will give to their evidence. QUEEN v. MAHIMA CHANDRA CHUCKERBUTTY, **4 B. L.R. Ap 77=12 W.R.Cr. 77.**

(30)—*Crim. Pro. Code, (Act* XXV *of* 1861) *ss.* 188, 207, 227 *and* 228—*Arrest and detention of witnesses.*—S. 207 of the Crim. Pro. Code gave no power to the Magistrate to call up and examine witnesses for the defence whose names have been given in a list, under s. 227, when the prisoners reserve their defence for the Court of Session; but, under s 228, he was bound to summon them to give evidence before the Court of Session. *In the matter of* MAHESH CHANDRA BANERJEE, **4 B.L.R.Ap. 1=13 W.R. Cr. 1.**

(31)—*Crim. Pro. Code* (1861), s. 375—*Accused person, right of.*—An accused person is entitled to have examined, as a witness, any person named in his list of witnesses delivered to the Magistrate ; and the Magistrate should take measures to enforce the attendance of such person. QUEEN v. ISHAN DUTT, **6 B.L.R.Ap. 88=15 W.R.Cr. 34.**

(32)—*Defaulting witnesses—Fine for avoiding service of summons.*—S. 28 of Act XIX of 185,

Witness—continued.

—— 2.—Summons to Witnesses—*continued.*

having been repealed by Act X of 1861, a Judge had no jurisdiction, under Ac VIII of 1859, to inflict a fine for the purpcse of punishing a witness who absconded, or kept out of the way, to avoid service of summons. *In re* GAJADHAR PRASAD NARAYAN SING, **1 B L R.A.C. 186 = 10 W R. 233.**

(33)—*Summoning witnesses—Discharge of witness from attendance—Practice.*—A Court is bound, when it absolves a witness from the duty of attendance before the trial is ended, to ascertain from the accused whether he has, or will probably have, any need of his testimony, and if so, to take such steps for insuring the presence of the witness at the required time as may be necessary. KHURRUCKDHAREE SING v. PERSHADEE MUNDUL, **22 W.R Cr. 44.**

(34)—*Crim. Pro. Code*, 1861, *ss.* 186, 262.—*Held* that s. 186, Crim. Pro. Code, 1861, did not refer to cases under Ch. XV which were triable by a Magistrate but only to cases under Ch. XII, which were triable by the Court of Session and that s. 262 applied to the former. BOIDDONAUTH BANIA v. BHEEDOO DASS, **9 W.R.Cr 3.**

(35)—*Discretion of Magistrate—Crim. Pro. Code*, 1861, *ss.* 227, 228.—On an accused person giving, under s. 227, Crim. Pro. Code, 1861, a list of the witnesses he wished to summon, after his case had been committed, the Magistrate's duty was held to be to exercise his discretion on the matter and to record whether he would summon the witnesses or not, giving his reasons if he should elect not to do so; but if he should be of opinion that the witnesses were named in the list for the purpose of delay, his procedure was that laid down in s. 228 of that Code. QUEEN v. RAJCOOMAR MOOKERJEE, **16 W.R. Cr. 14.**

(36)—*Discharge of accused—Examination of prosecution witness—Crim. Prc. Code*, 1872, *ss.* 215—253 *of the present Code.*—A Magistrate is bound before discharging an accused person under s. 215 of the Crim. Pro. Code (X of 1872), to examine all the witnesses tendered by the prosecution. EMPRESS v. HEMATULLA, **3 C. 389.** [*F.*, 2 A. 447, 1 A.W.N. 145, 2 A.W.N. 179.]

(37)—*Crim. Pro. Code*, 1872, *s.* 215—*Discharge without examining all the prosecution witnesses.*—An accused person shall not be discharged unless the Magistrate has examined all the witnesses named for the prosecution. EMPRESS OF INDIA v. KASHI, **2 A. 447.** [*F.*, 2 A.W. N. 179.]

(38)—*Crim. Pro. Code*, 1872, *ss.* 215, 362.—*Held*, that a Magistrate was not bound to summon every person named in the complaint as a witness. Ss. 215, expl. 3 and 362, Crim. Pro. Code, 1872, must be read together, the

Witness—continued.

—— 2.—Summons to Witnesses—*concluded.*

latter section vesting in the Magistrate a discretion in such cases. JELDHARI SINGH v. SHUNKUR DOYAL, **23 W.R. Cr. 9**; QUEEN v. PURASURAMA NAIKAR, **4 M. 329**; ANONYMOUS, **8 M H.C. App. 5.**

(39)—*Crim. Pro. Code*, 1861, *Ch.* XIV.—*Held*, that it was the duty of a Magistrate to summon all the witnesses named by an accused person on a charge of an offence punishable with imprisonment for more than six months and therefore falling under Ch. XIV, Crim. Pro. Code, 1861. *In the matter of* BOOLAKEE, **14 W.R. Cr. 81.**

(40)—*Omission to take steps to summon witnesses.*—A complainant named several witnesses on his behalf and was asked to produce them on a certain date, but he was able to produce only two witnesses, who were examined; the complainant did not, however, apply to the Magistrate to issue summonses on the other witnesses, nor ask him to proceed under s. 262, Code of Criminal Procedure, 1861; *held*, that the Magistrate was not wrong in law in deciding the case on the evidence before him. *In the case of* NOTOBUR BERA, **15 W.R. Cr. 87.**

(41)—*Crim. Pro. Code*, 1861, *s.* 191—*Warrant to enforce attendance of witnesses.*—*Held*, that a Magistrate was not bound, under s. 191, Crim. Pro. Code, 1861, to enforce the attendance of witnesses by a warrant, unless the due service of summons be proved. ABDOOR RUHMAN, *Petitioners*, **7 W. R. Cr. 37**; QUEEN v. SUTHERLAND, *and* QUEEN v. NARAIN SINGH, **14 W.R. Cr. 20.**

(42)—*Proceedings under s.* 145, *Crim. Pro. Code — Summoning witnesses— Discretion of Magistrate* —In a proceeding under s. 145 of the Crim. Pro. Code, it is not obligatory on the Magistrate to enforce the attendance of any witness at the instance of the parties. HARENDRA KUMAR BOSE v. GIRISH CHANDRA MITRA, **7 Ind. Cas. 798 = 38 C. 24 = 11 Cr. L. J 530.**

(43)—Discretion of Court as to summoning witnesses—Crim. Pro. Code, 1872, s. 192—Discretion of Magistrate as to examining witnesses —*See* QUEEN v. KASSY SINGH, **21 W.R. Cr. 61.**

See ACT III OF 1857, s. 13, 10 W.R. Cr. 42.

Power to decline to summon witnesses—*See* CRIM. PRO CODE, 1898, s. 257, 14 Bom. L.R. 360 = 15 Ind. Cas. 795 = 13 Cr. L.J. 523 = 1 Bom. Cr. C. 123.

Right to summon further witnesses when once the power is exhausted—Power of Magistrate not seized of the case to summon witnesses—*See* CRIM. PRO. CODE, 1898, s. 540, 11 A.L.J. 986.

Witness—continued.

——3.—**Examination of Witnesses.**

See CRIM. PRO. CODE, 1898, ss. 256, 257.

(1)—*Examination of witnesses in criminal cases, how to be conducted.*—The witnesses in criminal cases should be examined in great detail, and facts should be elicited from them to show what was done by each of the accused persons, in order that the Court may be in a position to judge of the culpability of each individual, and to mete out appropriate punishment. KING-EMPEROR v. MATHURA THAKUR, **6 C.W.N. 72.**

(2)—*Order for examining witness—Power of Judge to regulate.*—It is competent to a Sessions Judge to suggest to the prosecutor that it would be convenient, if a particular witness were called at an earlier or later stage of the trial; but it is not within his province to refuse to allow the prosecutor to call his witness in the order he chooses Per *Chamier, A.J.C.* KING-EMPEROR v. ALI MOHAMMAD, **8 O C. 55=2 Cr.L J 891.**

(3)—*Examination of witnesses—Duty of deciding which witnesses should be examined—Magistrate not to interfere.*—Magistrates should always be chary of taking upon themselves the duties of deciding on behalf of the parties which witnesses should be examined. DUGGIRALA VENKATAPPYYA v. MULPURI VENKATRAMANAYYA, 28 **M.L.J. 134=16 Cr.L J. 156=27 Ind. Cas. 220.**

(4)—*Practice—Pleaders and advocates examining witnesses and recording their evidence in their chambers—Whether such practice is objectionable—Evidence Act, ss.* 145, 155(3)—*Whether such examination is intended to bind down witnesses to certain evidence.*—There is no objection to Advocates and Pleaders examining witnesses in their chambers or elsewhere if they think fit to do so and before such witnesses appear in Court. Such examination is not made with intent to fix witnesses down to certan evidence, but is made to ascertain what they know and to enable the case to be conducted properly. JORDAN v. EMPEROR, **13 Cr.L J. 299=14 Ind. Cas. 763=5 Bur. L T. 38.**

(5)—*Sessions trial—Non-production of material witnesses for the prosecution, effect of—Prosecutor's right to withhold witnesses examined before a committing Magistrate.*—It is the duty of the Public Prosecutor to call and examine all material witnesses sent up to the Sessions Court on behalf of the prosecution, and the Judge is bound to hear all the evidence on the charge. The Public Prosecutor is not, it is true, bound to examine persons who will not, in his opinion, speak the truth, or to support the points he desires to establish by their evidence, but he should explain to the Court that this is his reason for not calling these witnesses and he should offer to tender them for cross-examination by the accused at their discretion. In the absence of any such explanation or of other reasonable grounds apparent on the face of the proceedings, an inference unfavourable to the prosecution must be drawn from the non-production of its witnesses. QUEEN-EMPRESS v. TULLA, **7 A. 904=A.W.N. 1885, 284.** [*R.*, 16 A. 84, F.B.]

Witness—continued.

——3.—**Examination of Witnesses**—*contd.*

(6)—*Sessions trial—Duty of prosecution to tender witness for cross examination.*—The prosecution is not bound to put in a witness examined by the committing Magistrate, if such witness is, in the opinion of the prosecution, unreliable. The only duty of the prosecution is to have the witnesses, who were examined before the committing Magistrate, present at the trial, so as to give the counsel for the defence an opportunity of examining them. QUEEN-EMPRESS v. STANTON, **14 A. 521=A W.N. 1892, 110.** (8 C. 121, 14 C. 245, 5 C. 614, 15 W.R. 34, Cr., *Diss.*) [*R.*, 16 A. 84, F.B.=A.W.N. 1894, 7.]

(7)—*Duty of prosecution as to production of witnesses.*—In a Sessions trial, the prosecution is not bound to call any witness or to tender a witness called before the Magistrate, for cross-examination. The prosecution cannot be forced to put forward a witness on whose evidence no reliance can be placed. It would be sufficient if the prosecution makes such witnesses to be present in the Court, so that the defence can call them if they like. EMPRESS OF INDIA v. KALI PROSONNO DOSS, **14 C. 245.** [*Appr.*, 14 A. 521=12 A.W.N. 110; *R.*, 16 A. 84, F.B.]

(8)—*Duty of Public Prosecutor to tender witness examined before committing Magistrate for cross-examination by accused.*—It is open to the Public Prosecutor to decline to examine at the Sessions trial a witness, whom he had examined before the committing Magistrate, but whose cross-examination by the defence was reserved. It is, however, his duty to tender the witness for cross examination in the Court of Session; and if he declines, the Court ought to call the witness for cross-examination. EMPEROR v. MAVSANG, **11 Bom. L.R. 1162=4 Ind. Cas. 273=10 Cr L.J. 538.**

(9)—*Sessions trial—Tendering witness for cross-examination.*—In a trial in a Court of Sessions or in the High Court on its criminal side, the Public Prosecutor is not bound to call all the witnesses returned in the calendar as witnesses for the Crown, or to put such of those witnesses, as he does not examine, in the witness-box to be cross-examined by or on behalf of the accused, if he believes that the evidence of the witnesses is likely to be false or is unnecessary. QUEEN-EMPRESS v. DURGA, **16 A. 84, F.B.=A.W.N 1894, 7.**

(10)—*Examination of witness, practice as to.—Tendering witness for cross-examination—Witness called by the Court.*—The ordinary practice in properly constituted Courts is, that where a witness for the prosecution is not called on the part of the Crown, he is placed in the witness-box in order that the defence may have

Witness—continued.

——3.—Examination of Witnesses—*contd.*

an opportunity of cross-examining him. [*Diss.*, 14 A. 521 = 12 A W.N. 110; *R.*, 16 A. 84, F.B., 14 C. 245]—Where a Judge thinks it necessary to call a witness and examine him *suo motu*, he ought to allow the accused an opportunity to cross-examine the witness. EMPRESS v. GRISH CHUNDER TALUKDAR, **5 C. 614 = 5 C.L.R. 364.** [*Appl.*, 24 C. 288.]

(11)—*Witnesses for prosecution—Prima facie duty of prosecution—Failure—Accused.*—It is *prima facie* the duty of the prosecution to call all the witnesses that prove their connection with the transactions in question, and who must be able to give important information. [*F.*, 2 Weir 378, Rat Un. Cr. C. 581, Rat. Un. Cr. C. 686, Rat. Un. Cr. C. 772, 4 C.W.N. 576; *Appr.*, 14 A. 521 = 12 A.W.N. 1892, 110; *R.*, 21 C. 642, 16 A. 84 = 14 A.W.N. 7, F.B.] If such witnesses are not called, in the absence of reasonable belief that they would not speak the truth if called, an inference adverse to the prosecution may reasonably be drawn. [*R.*, U.B.R. 1892—1896, Vol. I, 221.] No such unfavourable inference will be drawn, under similar circumstances, against the accused. *In the matter of the petition of* DHUNNO KAZI, EMPRESS v. DHUNNO KAZI, **8 C. 121 = 10 C. L.R. 151.**

(12)—*Sessions trial—Examination of defence witnesses before those of the prosecution—Irregularity.*—A Sessions Judge commits an irregularity by commencing to examine the witnesses for the defence, before he had heard the evidence for the prosecution. If the accused is not prejudiced thereby, the conviction will not be set saide. *In the matter of* TURIBULLAH, **4 C.L.R. 338.**

(13)—*Examining prosecution witness after prisoner has made his defence, irregular.*—It is irregular to allow a witness to be examined on behalf of the prosecution, after the prisoner has made his defence, when the witness is not a witness to contradict any new case set up by the prisoner. QUEEN v. CHOTEY LAL, **3 N. W.P. 271.**

(14)—*Crim. Pro. Code, s. 257—Witnesses of the accused—Examination.*—Where the witnesses of the accused are present in Court and he desires to examine them, it is not open to the Magistrate to refuse to examine them. EMPEROR v. NAGAR PURSHOTAM, **4 Bom. L.R. 461.**

(15)—*Crim. Pro. Code* (1872), *ss.* 218, 351—*Right of accused person to cross examine the witnesses for prosecution.*—Where, after hearing the accused, his pleader, being given an opportunity to cross-examine the prosecution witnesses, refused to cross-examine them then, but said that he would apply to the Court after he had examined his witnesses, and the Magistrate discharged the witnesses for the prosecution and adjourned the trial for the production of the witnesses for the defence, *held*, that the accused was not entitled to have the prosecution witnesses summoned on the date fixed for the examination of the defence witnesses; *held*, also, that the Magistrate was competent to record the evidence for the prosecution, both oral and documentary, after the case for the defence had been closed. EMPRESS OF INDIA v. BALDEO SAHAI, **2 A. 253.**

(16)—*Examination of witnesses in the absence of accused—Duty of Magistrate.*—A Magistrate would be wrong in examining the witnesses on oath in the absence of the accused, or with a view to find out whether there was a case; but, having done so, he is not bound to take down their statements in writing. *In the matter of the petition of* ASGUR HOSSEIN, EMPRESS v. ASGUR HOSSEIN, **6 C. 774 = 8 C.L.R. 124.**

(17)—*Re-calling prosecution witnesses by accused, time for—Crim.Pro.Code (Act X of* 1872), *ss.* 217 *and* 218.—An accused person, desiring to re-call and cross-examine the prosecution witnesses, could do so only by expressing such desire at the time when the charge is read over to him and he is called upon to make his defence, and not by petitioning subsequently. FAIZ ALI v. KOROMDI, **7 C. 28 = 4 Shome, L. R. 142 = 8 C.L.R. 325.** [*Appl.*, Rat.Un. Cr. C. 930.]

(18)—*Crim. Pro. Code* (1882), *s.* 257—*Right of accused—Recalling witness for further cross-examination—Refusal to re-call—Burden of proving failure of justice.*—S. 257 of the Code does not confer on the accused an absolute right to re-call and crosss-examine the witnesses for the prosecution, no matter how completely and fully they have already been cross-examined. If a Magistrate, when it is sought to re-call witnesses, who have already been cross-examined, for further cross-examination, is of opinion that the application is made with the intention and for the purpose of vexation or delay or for defeating the ends of justice, he may refuse the application. Therefore, in a case where the witnesses for the prosecution had been fully cross-examined and a charge was framed against the accused, and, after an adjournment for ten days, the witnesses for defence were examined, and, on the day on which the judgment was to be delivered, an application was made to the Magistrate, on behalf of the accused, asking that process should issue for the witnesses for the prosecution to be recalled and further cross-examined, held that the Magistrate was justified in refusing the application inasmuch as he found that the intention of the accused in making the application was to cause delay and harass the prosecution. [*Appl.*, Rat. Un. Cr. C. 930; *R.*, 130 P L.R. 1901.] In cases mentioned above, it lies upon the party, who thinks himself aggrieved, to show that the ends of justice have been in some way frustrated, in consequence of the refusal to re-call the witnesses. It is necessary to be very careful that persons on their trial should not be prejudiced, but it is also necessary, on the other hand, to see that proceedings in the Criminal Courts are not

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hampered in a needlessly carping and litigious spirit, losing sight of the main purposes of these proceedings, and giving over attention to the matter of form. NILKANTA SINGH v. QUEEN-EMPRESS, **20 C. 469** [*R.*, 20 Ind. Cas. 212 = 14 Cr. L J. 388 = 6 Bur. L.T. 67, 11 P.R. 1914, Cr.]

(19)—*Recalling prosecution witnesses for further cross-examination.*— The right of re-calling prosecution witnesses for further cross-examination after the charge has been framed is not an absolute right on which the accused can insist except under certain contingencies. It very much depends upon circumstances such as the length of the previous cross-examination, and the delay in making the application. These are matters in respect of which the trying Magistrate has a discretion, and he may, in the exercise of this discretion, grant or refuse such an application. QUEEN EMPRESS v. GOVIND VINAYAK APTE, **Rat. Un. Cr. C. 930 = Cr. Rg. 41 of 1897.**

(20)—*Recalling prosecution witness for further cross-examination.*—The accused is entitled to have the witnesses for the prosecution re-called for cross-examination after a charge is framed, and before he is called upon to enter on his defence, and the fact that there has been already some cross-examination before the charge has been drawn up does not affect this privilege. It is also the duty of the Magistrate, after a charge has been drawn up to require the accused to state whether he wishes to cross-examine, and if so, which of the witnesses for the prosecution whose evidence has been taken. It is only after the accused has entered upon his defence that the Magistrate is given a discretion to refuse such an application under s. 256, Crim. Pro. Code, on the ground that it is made for the purpose of vexation or delay, or for defeating the ends of justice. ZAMUNIA v. RAM TAHAL, **27 C. 370 = 4 C.W.N. 469.** [*R.*, 11 P.R. 1914, Cr. ; *D.*, 14 C.P.L.R. 137.]

(21)—*Crim. Pro. Code* (1898), s. 257—*Application for process for re-summoning witnesses for the prosecution for further cross-examination—Delay in the application—Effect—Examination of other witnesses.*—The mere fact that the witnesses for the prosecution have already been cross-examined is in itself no sufficient reason for refusing to re summon them, unless the Magistrate expressly records his opinion that the application for the second cross-examination is, within the terms of s. 257, for the purpose of vexation or delay or for defeating the ends of justice. [*D.*, 14 C.P.L.R. 137] The delay of one day in making an application to allow the witnesses for the prosecution to be re-summoned, after the accused had entered on their defence is, in itself, no sufficient reason for refusing the application. Where the accused is given a further opportunity of cross-examining prosecution witnesses, he should also be given an opportunity, if he desires it, of obtaining process for the attendance of any other witnesses he may wish to be examined. SREENATH BARAI v. EMPRESS, **4 C.W.N. 241.**

(22)—*Crim. Pro. Code* (1872), *Ch.* XVII—*Warrant case—Right of accused person to re-call and cross-examine prosecution witness after the framing of charge.*—In the trial of warrant cases under Ch. XVII of the Code, the charge is not framed until the witnesses for the prosecution have been examined. In such cases, the accused may, after the charge is drawn up, not only produce his witnesses but shall be allowed to re-call and cross-examine the witnesses for the prosecution. TALLURI VENKAYYA v. QUEEN, **4 M. 130 = 2 Weir 324 = 6 Ind. Jur. 30.**

(23)—*Crim. Pro. Code* (1898), s. 256—*Re-calling witness for cross-examination after charge—Accused not depositing the necessary expenses.*—It is the duty of the Magistrate to re-call the prosecution witnesses for cross-examination, if the accused demands it after the charge is framed : This must be done presumably at the public expense. The accused is not bound to deposit the expenses. A conviction, based on the ground that the accused had not deposited the necessary expenses for re-calling the prosecution witness for cross-examination, after the framing of the charge, is illegal AMIN CHAND v. KING EMPEROR, **12 P.R. 1907, Cr. = 32 P. W.R. 1907, Cr. = 6 Cr. L J. 339 = 45 P.L.R. 1908.** [*F.*, 13 Cr. L.J. 554 = 15 Ind. Cas. 970 = 8 N.L.R. 65.]

(24)—*Crim. Pro. Code* (1872), s. 458—*Prisoners tried jointly—Evidence of one against the other.*—Where two prisoners are being tried together for different offences committed in the same transaction, it is improper and illegal to take one prisoner from the dock and examine him as a witness against the other prisoner. *In the matter of* A. DAVID, **8 C.L.R. 574.** [*R.*, 15 C.P.L.R. 112.]

(25)—*Examination of witness—Crim. Pro. Code* (1882), s. 353—*Reading his depositions recorded at some former trial and asking him if they were true.*—If the deposition of a witness record at some former trial is merely read to the witness and he is asked if it is true, this is not examination of the witness in the presence of the accused as to his knowledge of the facts forming the subject-matter of the accusation. A trial thus conducted is not a legal one. In every trial, though the case may have often been before the Court, the witnesses must be examined *de novo*. Otherwise, they will be held not to have been duly examined and any conviction based on their evidence will be rejected. QUEEN-EMPRESS v. RAGHUBAR, **S.C. 86, Oudh.**

(26)—*Discrediting adversary's witness.*—Former statements orally made by a witness, inconsistent with his present evidence, should not be allowed to be proved, when no foundation for such proof has been laid by a previous

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cross-examination of the witness as to the alleged statements. An accused, wishing to impeach the credit of the complainant and one of his witnesses, by calling on his own witnesses to prove former statements orally made by the complainant and his witnesses, inconsistent with parts of their evidence, must have them cross-examined as to the alleged statements. *In the matter of* BHAGWATI, **S.C. 251, Oudh.** (6 A. 220, *R.*)

(27)—*Cross-examination—Defence witness—Deferring cross-examination in the case of—Ordinary practice.*—A Magistrate allowed the cross-examination of certain witnesses for the defence to be deferred until the examination-in chief of other witnesses was over. *Held*, that the order of the Magistrate was wrong and must be set aside. The Code enables the cross-examination of witnesses for the prosecution to be deferred, but there is no similar provision with respect to witnesses for the defence and the ordinary practice of the Court in respect of the defence-witnesses ought not to be departed from, especially against the wishes of the accused and to his possible prejudice. PO WA v. KING-EMPEROR, **3 L.B.R. 109 = 3 Cr. L.J 23.**

(28)—*Evidence—Witness called by the defence—Cross-examination by defending counsel.*—Neither counsel for an accused person nor his client is entitled to cross-examine a witness called for the accused person, unless it appears that the witness is suppressing the truth or is lying or refusing to give information. Where the witness for the Crown examined before the Magistrate not being called in the Sessions Court, the counsel for the defence examined the witness, *held*, that the counsel was not entitled to ask the witness what he had said in the Magistrate's Court. QUEEN-EMPRESS v. ZAWAR HUSEN, **20 A. 155 = A.W.N. 1897, 229.**

(29)—*Crim. Pro. Code*, 1872, s. 218—*Right of accused to re-call and cross-examine prosecution witnesses—Magistrate not to discharge prosecution witnesses until accused waives his right to cross-examine them.*—Although the witnesses for the prosecution may have been cross-examined before the charge is framed, the accused is not by such cross-examination deprived of the right given him by s. 218 to re-call and cross examine the witnesses after the charge has been drawn up. The Magistrate should in all cases, before granting an adjournment, inquire of the accused if he desires to exercise his right of re-calling the witnesses for the prosecution, or consents to the discharge of any or all of them. If the accused consents to their discharge, and they are discharged accordingly, he is not entitled to have them re-summoned as a matter of right, but it would be in the discretion of the Magistrate to re-summon them. *Quære*:—If the Magistrate, before granting an adjournment, called upon the accused to exercise his right of re-calling the witnesses for the prosecution, and the accused refused to do so at that time, whether the Magistrate would thereupon be at liberty to discharge the witnesses for the prosecution? QUEEN v. LALL MAHOMED, **6 N.W.P. 284.** [*F.*, 4 M. 130; *Expl.*, 2 A 253.]

(30)—*S.* 218, *Crim. Pro. Code—Scope of—Cross-examination of prosecution witnesses.*—S. 218 does not lay down that the accused shall only be allowed to re-call and cross-examine the witnesses for the prosecution provided that he expresses his wish to do so at the time when he is called upon to enter on his defence, and provided that those witnesses be still in attendance in the Court and do not require to be re-summoned. If at the time of being called on for his defence, it did not occur to him that on some points the witnesses on the prosecution might be advantageously cross-examined, and on subsequent reflection, the necessity of such cross-examination became apparent to him, he surely ought not to forfeit his right because the importance of asserting and exercising it has not occurred to him, at once. He is allowed the right in question at any time while he is engaged in the defence and before the trial is concluded. QUEEN v. LALL SINGH, **6 N.W.P. 270.** [*R.*, 2 A. 253.]

(31)—*Evidence Act*, ss. 144, 155—*Witness—Cross-examination—Contradiction by previous depositions.*—As to a contradictory statement in writing, the old rule was that the cross-examining counsel must produce the document as his evidence and have it read, to found questions on it. But now, a witness may be cross-examined on evidence previously given by him, without the introduction of the previous deposition as evidence by the cross-examining counsel. But before contradicting the witness in this way, his attention is to be called to the part of the writing that is to be used for this purpose. The Judge may require the production of the document and then use it at his discretion. Cross examination is necessary in order to introduce the alleged contradictory writing. QUEEN-EMPRESS v. GOVARDHAN; QUEEN-EMPRESS v. DULLABHDAS; QUEEN-EMPRESS v. BHAGWAN, **Rat. Un. Cr. C. 343 = Cr. Rgs. 34 and 35 of 1887.**

(32)—*Cross-examination.*—It is the duty of a Judge to control the cross examination, so as to prevent any gross abuse and to protect a witness from being unfairly dealt with. The authority given by s. 152 of the Indian Evidence Act ought to be exercised whenever the occasion arises, nor ought a counsel or a pleader to be allowed to terrify or brow-beat a witness by vociferations or gratuitous suggestions of falsehood, calculated rather to crush a weak man or to enrage an irascible one, than to elicit the truth. A witness giving evidence is *prima facie* performing a public duty. The degree to which he may properly be pressed depends on circumstances, but it is subject to the general principle that the purpose in view is to get out

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the truth, not to force on the witness admissions that confuse or distort it. QUEEN-EMPRESS v. SAYAD SURFUDDIN, **Rat. Un. Cr. C. 344 = Cr. Rg. 37 of 1887.**

(33)—*Evidence Act, s.* 137—*Witnesses called by a co-accused—Right of the co accused to cross-examine.*—An accused person must be allowed to cross-examine witnesses called by another co-accused for his defence, if the case of the latter is adverse to that of the former. RAMCHAND CHATTERJEE v. HANIF SHEIKH, **21 C. 401.**

(34)—*Crim. Pro. Code*, 1882, *s.* 165—*Right to cross examine witness called by Court.*—There is nothing in s. 165 debarring or disqualifying a party to a proceeding from cross-examining any witness called by the Court. All that the section says is that a party to a proceeding should not be allowed to cross-examine a witness upon an answer given by him to a question put by the Court without the permission of such Court. GOPAL LALL SEAL v. MANICK LALL SEAL, **24 C. 288.**

(35)—*Witness summoned by accused—Refusal of application for countermanding presence of witness—Witness examined by Court—Right of accused to cross-examine him.*—An accused person had obtained a process for the attendance of a witness, but, before his appearance, asked Court to countermand the order for his attendance. On the Court refusing to do so, the accused declined to examine him, and the witness was examined by Court, *held*, that, under the circumstances, the witness could not be regarded as a witness for defence, and that accused was entitled to cross-examine him. MOHENDRO NATH DAS GUPTA v. EMPEROR, **29 C. 387 = 6 C.W.N. 550.**

(36)—*Crim. Pro. Code (Act X of 1872), ss.* 323, 327—*Evidence Act* (I *of* 1872), *s.* 33—*Medical witness—Examination—Murder case.*—A medical witness, except in cases provided for in s. 327 of the Crim. Pro. Code, should generally be examined in the presence of the accused by the committing Magistrate. Where, however, there is already *prima facie* evidence for commitment to the Sessions, and the medical witnesses' evidence is likely to be only of a formal character, and the witness is at a great distance from the Magistrate's station, he need not be examined by the Magistrate, but his attendance at the Sessions must be ensured. KAIRA DISTRICT MAGISTRATE'S LETTER, NO. 94, **Rat. Un. Cr. C. 81.**

(37)—*Medical witness—Examination of.*—The testimony of a medical witness, especially in a case of murder, ought, when he is present, to be taken fully, and not supplemented by reading over his testimony given elsewhere and recording an answer that the earlier testimony is true. QUEEN-EMPRESS v. SALU, **Rat. Un. Cr. C. 792 = Cr. Rg. 50 of 1895.**

Witness—continued.

—3.—**Examination of Witnesses**—*contd.*

(38)—*Investigating officer, examination of.*—In all important cases and especially in cases of murder and dacoity, the police officer making the investigation should be examined as a witness regarding the circumstances of the investigation. It is generally important to ascertain what the witnesses said, when they were first questioned by the police, and whether such statements agree with those subsequently made by the witnesses in Court. QUEEN-EMPRESS v. RAMPURI, **Rat. Un. Cr. C. 173.**

(39)—*Crim. Pro. Code, ss.* 503 *and* 506—*District Magistrate requiring subordinate trying Magistrate to examine witness at her house—Order illegal.*—Where a District Magistrate, purporting to act under s. 503, Crim. Pro. Code directs a Magistrate subordinate to him, before whom a case is pending to examine a particular witness in her own house, *held*, that s. 503, which applies to commissions, could not apply to the present case, as the trying Magistrate is required to record the evidence. Even if it were to be construed as an order for examination by a Commissioner, the District Magistrate had no jurisdiction to make such order except on a reference made to him under s. 506, Crim. Pro. Code, by the trying Magistrate. S. 503 applies only to cases pending before the Courts there in specified. IMPERATOR v. CHATO *wd.* PIRANO. 2 S.L.R. 8 Cr. = 10 Cr. L J. 211.

(40)—*Examination of prosecution witness after defence closed—Crim. Pro. Code* 1861, *s.* 439.—To allow a witness to be examined on behalf of the prosecution after the prisoner has made his defence, the witness not being a witness to contradict any new case set up by the prisoner is a grave irregularity which would, ordinarily, be a good ground for setting aside the trial. But, where the prisoner, had full notice of the evidence to be given by the witness, and made his defence in allusion to such evidence, the irregularity was held cured under s. 439 of the Code of 1861, as it could not have occasioned any failure of justice. QUEEN v. SHAM KISHORE HOLDAR, **13 W.R. Cr. 36.** *See also* QUEEN v. CHOTEY LAL, **3 N.W.P. 271.**

(41)—*Swearing or affirmation of witnesses—Oath or affirmation—Crim. Pro. Code* (1861), *s.* 199—*Memorandum of deposition.*—*Held* that a witness could not both be sworn and put on solemn affirmation at the same time; it would only be proper to examine him either on oath or on solemn affirmation. QUEEN v. HOSSEIN SIRDAR, **13 W.R. Cr. 17.**

(42)—*Power of interference of High Court—Crim. Pro. Code* (1861), *s.* 363.—The High Court declined, under s. 363, Crim. Pro. Code, 1861, to disturb the order of a Sessions Judge, in a case where it did not appear that any witnesses were about to be produced for examination other than those whom the Sessions Judge examined. QUEEN v. JUMDEM SINGH, **12 W.R. Cr. 73.**

Witness—continued.

——3.—**Examination of Witnesses**—*contd.*

(43)— *Irregularities concerning witnesses— Irregularity in taking evidence of witnesses— Crim. Pro. Code*, 1861, *s.* 372.—By s. 372 of the Code of Criminal Procedure, an accused should be called upon to enter upon the evidence, and to produce his evidence when the case for the prosecution has been brought to a close. Where a witness for the prosecution was examined after the completion of the defence and the prisoner had no opportunity of calling evidence, with reference to the evidence of that witness, the High Court quashed the conviction and ordered a new trial. QUEEN v. ASSANOOLLAH, **13 W.R. Cr. 15.**

(44)—*Crim. Pro. Code*, 1861, *s.* 372—*Defence witnesses.*—S. 372 of the Code of Criminal Procedure directs that, at the close of the case for the prosecution the accused shall be called upon to enter upon his defence, and to *produce his evidence*, and it is at that point the duty of the Court of Session to ascertain who the witnesses are whom the prisoner desires to examine. QUEEN v. MOOKUN, **12 W.R. Cr. 22.**

(45)—*Omission to examine witnesses for accused.*—Case where the High Court quashed a sentence passed upon an accused person, who had *not* been asked whether he had any witnesses to call, although he was tried together with others who had been so asked. BHUGWAN v. DOYAL GOPE, **10 W.R. Cr. 7.**

(46)—*Character—Evidence.*—Evidence as to the prisoner's previous conviction and bad character and of the bad character of his relations is not admissible. If a person is before the Court as a witness, his evidence must be recorded as the law directs, if he is not a witness, and is not examined as such, the judge has no right to allude to his having made any statement. QUEEN v. PHOOLCHAND, **8 W.R. Cr. 11.**

(47)—*Evidence to be taken in presence of accused.*— *Held* that in the presence of an accused person must the evidence of a witness for the prosecution be taken. QUEEN v. SYUD HOSSAIN ALI CHOWDHURY, **8 W.R. Cr. 74.**

(48)—*Evidence to be taken before the accused.*—Wherever practicable, the witnesses for the prosecution ought to be examined before the accused, though their statements might have been previously recorded behind his back. QUEEN v. BOCHA CHOWKEEDAR, **22 W.R. Cr. 33.**

(49)—*Evidence to be recorded in presence of accused.*—It matters not how often the same offence is the subject of a Sessions trial; every accused has a right to have the whole of the evidence given and recorded in his presence, just as if the witness had never before given his testimony on the charge. QUEEN v. AFFAZUDDEEN, **W.R. 1864, Cr. 13.**

Witness—continued.

——3.—**Examination of Witnesses**—*contd.*

(50)—Evidence taken in absence of accused —Warrant cases. QUEEN v. KASSY SINGH, **21 W.R. Cr. 61.**

(51)—*Evidence Act, s.* 33—*Depositions of an absent witness when admissible—Law laid down in Crim. Pro. Code*, 1872, *different from that laid down in Crim. Pro. Code*, 1861.—Under Crim. Pro. Code, 1861, as well as under the Evidence Act, s. 33, the depositions of an absent witness are only admissible when the prisoner has had the right and the opportunity to cross-examine him. But s. 327 of the Crim. Pro. Code, 1872, permits, the depositions of a witness to be taken in the absence of the accused who has absconded, and, even in such cases, it is necessary to establish that, when the former deposition was taken, the accused has absconded and, after due pursuit, could not be arrested. QUEEN v. ETWAREE DHAREE, **21 W.R. Cr. 12.**

(52)—*Reading deposition of witness— Witnesses to be examined* de novo *in Sessions Court.*—It is not an examination of the witness in the presence of the accused to read to him his deposition on a formal trial. Though the same case might have been before the Court several times, the witnesses must, in every Sessions trial, be examined *de novo*, in the same manner as if the case were quite new and as if the witnesses had not been examined before. QUEEN v. HALUNDAR DOSS, **2 N.W.P. 100.** *See, also,* QUEEN v. SHEIK KYAMUT, **W.R. 1864, Cr. 1**; QUEEN v. AFFAZUDDEEN, **W.R. 1864, Cr. 13**; QUEEN v. KANYE SHEIKH, **W.R. 1864, Cr. 38**; QUEEN v. MOHUN BANFOR, **22 W.R. Cr. 38.**

(53)—*Crim. Pro. Code*, 1861, *ss.* 426, 439—*Procedure —Irregularity.* — The High Court declined to interfere, where the irregularity of procedure did not prejudice the prisoners, as for example, where the testimony of witnesses given in a previous proceeding was read over and used, at the express request of the accused in a subsequent trial in lieu of a fresh examination of the witnesses. PURMESSUR SING v. SAROOP AUDHIKAREE, **13 W.R. Cr. 40.** [*N.F.*, 12 C.W.N. 140=6 Cr. L.J. 434; *R.*, 9 A. 609=A.W.N. 1887, 143, 35 C. 457=12 C.W.N. 416=7 C.L.J. 488=7 Cr. L J. 220.]

(54)— *Witness offering hearsay evidence—Duty of Court.*—It is unsafe to simply rely on a subsequent exhortation to the jury not to take into their consideration a piece of hearsay evidence tendered at the trial and to decide on legal evidence alone; but the Court should stop the witness the moment he commences giving inadmissible evidence, to wit, hearsay. QUEEN v. PITTAMBUR SIRDAR, **7 W.R. Cr. 25.**

(55)—*Treatment by Court of witnesses for defence.*—Supposing that a prisoner makes a distinct defence, and produces witnesses to prove it, a Judge should, instead of dismissing the witnesses immediately on their saying they knew nothing in the prisoner's favour, put a few detailed questions to them to find out if

Witness—continued.

——3.—**Examination of Witnesses**—*contd.*

there is any truth in the accused's statement or any part of it. QUEEN v. BHUGNER PUTWA, **11 W.R. Cr. 9.**

(56)—*Right of accused to cross-examine witnesses.*—The right of cross-examination which an accused has means only a right to cross-examine witnesses produced against him by the prosecution. Evidence that has been given or that can be given by a witness called for another of the parties accused can only be availed of by him when he calls such witness as his own. QUEEN v. SUROOP CHUNDER PAUL, **12 W.R. Cr. 75.**

(57)—*Evidence Act* (II *of* 1855), *s.* 34—*Cross-examination on previous statements reduced to writing.*—*Held* that the complainant's pleader might, in the Court of the Deputy Magistrate, cross-examine the defence witnesses on the points respecting which they had made statements before the Joint Magistrate, as also on previous statements reduced to writing, without showing the writing. TUKHEYA RAI v. TUPSEE KOER, **15 W.R. Cr. 23.**

(58)—*Evidence Act* (1855), *s.* 23—*Cross-examination on previous statements reduced to writing.*—In his examination-in-chief before the Court of Session, a witness should not have his attention drawn to his deposition before the Magistrate. He might be cross-examined on previous statements made by him in writing, when he might be confronted with the parts of his former writing which were to be used for the purpose of contradicting him. QUEEN v. RAM CHUNDER SIRCAR, **13 W.R. Cr. 18.**

(59)—*Right of witness on cross-examination — Right to qualify statements.*—A witness should be allowed in cross examination to qualify or correct any statements he has made in his examination-in-chief ; otherwise, if he is prevented from doing so on pain of being convicted of perjury out of his own mouth, the result will be that the object of cross-examination will be defeated. QUEEN v. TULSI DOSADH, **18 W.R. Cr. 57.**

(60)—*Crim. Pro. Code* (1872), *s.* 62—*Refusal to re-call witness for cross-examination.*—*Held* that there was a distinction between a right to call the witnesses for the prosecution and the accused's request to summon a witness under s. 52, Act X of 1872. BELILIOS v. QUEEN, **19 W.R. Cr. 53.**

(61)—*Crim. Pro. Code* (1861), *s.* 252.—After an accused person has been put upon his defence, he is entitled to re-call and cross-examine the witnesses whom he cross-examined before the framing of the charge against him and a Magistrate cannot prevent this. *In the matter of* THAKOOR DYAL SEN, **17 W.R. Cr. 51.** *In the matter of the petition of* NOBIN CHAND BANERJEE, **25 W.R. Cr. 32.**

(62)—*Re-call of witnesses for prosecution.*—A Magistrate is not competent to refuse to recall the witnesses for the prosecution to be cross-examined by the accused. *Held* that a Magistrate had no jurisdiction to decline to re-call the prosecution witnesses to undergo the accused's cross-examination. QUEEN v. AMEERUDDIN FAKEER, **21 W.R. Cr. 29.**

(63)—*Right of accused to cross-examine witnesses—Examination of accused—Discretion of Magistrate.*—An accused should be allowed, at preliminary enquiries before a Magistrate, to cross-examine the witnesses ; but whether the accused himself shall be examined upon the matter of the charge by the Magistrate, is left entirely to the discretion of the Magistrate, and such discretion should not be exercised when the Magistrate thinks that the evidence for the prosecution does not disclose any proper subject of criminal charge against the prisoner. QUEEN v. SHAMA SUNKER BISWAS, **10 W.R. Cr. 25.**

(64)—*Prosecutor's witnesses — Acquittal of prisoner.*—A Magistrate should not have decided the case of a prosecutor without examining his witnesses. The Magistrate, after he has tried the prosecutor's case properly, may, if he finds that the prosecutor has no right to bring a criminal charge at all, decide so, but in that case, the prisoner must be acquitted on that ground. QUEEN v. SREENATH MOOKOPADHIA, **7 W.R. Cr. 45.**

(65)—*Mode of examination—Examination in absence of accused.*—*Held* that it was illegal to examine the defence witnesses and to pass sentence on the accused in his absence. BIHOORAM v. ALLAHO KOLITA, **1 B.L.R. S. N. 8.**

(66)—*Medical witness.*— Cross-examination by accused of medical witness called in a professional capacity. QUEEN v. ISHAN DUTT, **6 B.L.R. App. 88 = 15 W.R. Cr. 34.**

(67)—*Theories of medical men and experts.*—In the face of facts positively proved in a case, it would be improper to try it relying on the bare theories of medical men or experts of any sort. QUEEN v. AHMED ALLY, **11 W.R. Cr. 25.**

(68)—*Cross-examination of prosecution witness.*—It is in the discretion of a Criminal Court to allow the accused to re-call and cross-examine the prosecution witnesses at any stage of the defence when it may think such a course right and proper. KHURRUCKDHAREE SING v. PERSHADI MUNDUL, **22 W.R. Cr. 44.**

(69)—*Re-call and examination of prosecution witnesses.*—Where a Magistrate took upon himself to discharge the prosecution witnesses and send them to their homes, without inquiries from the prisoners whether they would require the further attendance of those witnesses, the procedure was held to be wrong. QUEEN v. RAMKISHAN HALWAI, **25 W.R. Cr. 48.**

(70)—*Number of witnesses essential for proof.*—The Court may hold a fact proved even by the

Witness—continued.

——3.—**Examination of Witnesses**—*contd.*

evidence of one witness, if found reliable. ZALEM MISSER v. MUSSAMUT KUNDUN KOER, **11 W.R. 194**; RAJAH PROSUNNO NARAIN DEB v. ROMONEE DOSSEE, **10 W.R. 236**; RAJAH BALINDUR NARAIN BAHADUR v. KALLA MESSOO KOOS, **18 W.R. 341**.

(71)—*Evidence—Judge.*—A Judge, starting with an assumption of the general bad character of the prisoners, cannot properly weigh evidence. QUEEN v. KALU MAL, **7 W.R. Cr. 103**.

Examination of witnesses upon revival of criminal proceedings—*See* ACT IV OF 1877, s. 87, expl. 2, 5 C. 121 = 4 C.L.R. 305.

See CRIM. PRO. CODE, 1898, ss. 35, 256, 14 Cr. L.J. 388 = 20 Ind. Cas. 212 = 6 Bur. L.T. 67.

Order under s. 145, Crim. Pro. Code, based on decree without examination of witnesses—*See* CRIM. PRO. CODE, 1898, s. 145, 8 C.W.N. 719.

Cross-examination of prosecution and defence witness, whether can be reserved—*See* CRIM. PRO. CODE, 1898, ss. 155 (2), 190, 256, 529 (*b*), and sch. III, II (2), 6 M.L.T. 259.

See CRIM. PRO. CODE, 1898, ss. 162, 172, 10 C.W.N. 890 = 4 Cr. L.J. 79 = 33 C. 1023.

Duty of Magistrate to examine all witnesses, produced by accused in a case triable by Sessions before order in committal—*See* CRIM. PRO. CODE, 1898, s. 208, 26 A. 177 = A.W.N. 1903, 215.

See CRIM. PRO. CODE, 1898, ss. 208, 347, 12 C.W.N. 1014 = 8 Cr. L.J. 221 = 36 C. 48 = 1 Ind. Cas. 469.

Asking accused to cross-examine—Duty to summon his witnesses—*See* CRIM. PRO. CODE, 1898, ss. 256, 526, 1912 M.W.N. 1121 = 13 Cr. L.J. 828 = 17 Ind. Cas. 572.

See CRIM. PRO. CODE, 1898, s. 342, 3 Bom. L.R. 437.

See CRIM. PRO. CODE, 1898, s. 350, 13 C. W.N. 550.

Examination of witness on commission—*See* CRIM. PRO. CODE, 1898, s. 503, 15 C. 775.

Cross-examination by parties of Court witness—*See* CRIM. PRO. CODE, 1898, s. 540, S.C. 275, Oudh.

Statements made by witnesses to police officers in investigation by police—*See* DEFAMATION, 16 M. 235 = 1 Weir 587.

Defamatory statement by a witness—*See* DEFAMATION, 17 B. 127, 27 C. 262, 19 B. 340.

See DEFAMATION, 11 M. 477 = 1 Weir 586.

See DISCHARGE OF ACCUSED, 3 C. 389.

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 3 C.L.J. 478 = 3 Cr. L.J. 423.

Commission to examine witness — *See* PARDANASHIN WOMAN, 9 Cr. L.J. 219 = 1 S. L.R. Cr. 5.

Witness—continued.

—— 3.—**Examination of Witnesses**—*concld.*

Demeanour of witness—*See* PENAL CODE, s. 420, 9 Cr. L.J. 261 = 1 S.L.R. 20, Cr.

See SECURITY FOR GOOD BEHAVIOUR, 12 C.W.N. 299 = 7 C.L.J. 177 = 35 C. 243 = 7 Cr. L.J. 146.

See SECURITY TO KEEP THE PEACE—FORFEITURE OF SECURITY, 4 C. 865 = 4 C.L.R. 243.

See SESSIONS TRIAL, 17 A. 524 = A.W.N. 1895, 111.

—— 4.—**Miscellaneous Cases.**

(1)—*Crim. Pro. Code* (1882), *s.* 288—*Evidence before Magistrate—Its use in the Sessions trial.*—S. 288 is not to be used so as to enable a Court trying a case to take a witness's deposition bodily from the committing Magistrate's record, and to treat it as evidence before itself. The Judge is, at any rate, bound to put to the witnesses whom he proposes to contradict by their statements made before the committing Magistrate, the whole or such portions of their depositions, so as to afford them an opportunity of explaining their meaning or denying that they had made any such statements, and so forth. QUEEN-EMPRESS v. DAN SAHAI, **7 A. 862**. [*Appl.*, Rat. Un. Cr. C. 894; *R.*, 21 A. 111 = 18 A.W.N. 196, 4 C.W.N. 49, 3 P.R. 1904, Cr., 3 A.L.J. 852 = 28 A. 863 = A.W.N. 1906, 187 = 4 Cr. L.J. 61.]

(2)—*Crim. Pro. Code* (1882), *s.* 219—*Persons not examined by prosecution before committing Magistrate, whether could be tendered as witnesses in the Sessions trial.*—Where a witness is not examined by the Crown before the committing Magistrate, nor under the supplementary powers of s. 219, the Crown cannot demand as of right that such witness should be examined at the Sessions trial. QUEEN-EMPRESS v. HAYFIELD, **14 A. 212 = A.W.N. 1892, 63**. [*R.*, 9 Cr. L.J. 56 = 4 N.L.R. 163.]

(3)—*Witness, threat to.*—It is illegal of a Judge to threaten a witness with the penalties of the law, and no Judge could allow anything of the nature of a threat to be administered to a witness, unless and until he has shown by his evidence, that he is wilfully saying what is false or is persistently refusing to give evidence on facts which must be within his knowledge. QUEEN-EMPRESS v. HARGOBIND SINGH, **14 A. 242 = A.W.N. 1892, 83**.

(4)—*Witnesses sent up by Magistrate to Sessions—Discretion of Sessions Judge to reject some of them.*—Courts are not competent, when trying persons accused of criminal offences, to pick and choose among the witnesses sent up by the Committing Magistrate. It is their duty to examine all the witnesses, unless they have good and sufficient cause, on the representation of the Government Pleader or other person charged with the prosecution, to believe that a particular witness has come into the Court-house with the pre-determined intention of giving false evidence. QUEEN-EMPRESS v. BANKHANDI, **15 A. 6 = A.W.N. 1892, 114**.

Witness—continued.

——4.—**Miscellaneous Cases**—*continued.*

(5)—*Crim. Pro. Code*, 1882, *s.* 211—*Refusal by accused to give list of witnesses before Magistrate—His right in the Sessions trial.*—If an accused person, on being called upon under s. 211, to give orally or in writing a list of the persons whom he wishes to be summoned to give evidence on his trial, declines to give in such a list, he cannot compel the Magistrate, after committal, to issue any summons for witnesses on his behalf. He is of course entitled to call any witnesses in the Sessions Court whom he may have in Court, whether or not he has caused such witnesses to be summoned. The Sessions Judge may, in his discretion, cause any witness to be summoned for the accused, on an application made during the trial, and he is bound to procure the attendance of such witnesses, if he considers that their evidence may be material. QUEEN-EMPRESS v. SHAKIR ALI, **19 A. 502 = A.W.N. 1897, 134.** (14 A. 242, *R.*) [*R.*, 12 A.L.J. 15 = 14 Cr. L.J. 682 = 21 Ind. Cas. 1002.]

(6)—*Witnesses not examined in presence of accused.*—When witnesses were not examined in the presence of the accused, he could not be convicted on their evidence. QUEEN v. LALLA CHOWBEY, **2 N.W.P. 49.** *See, also,* QUEEN v. SREENATH MOOKOPADHIA, **7 W. R. Cr. 45**; PROCEEDINGS, 8TH APRIL 1867, **3 M.H.C. App. 34**; QUEEN v. RAJCOOMAR SING, **8 W.R. Cr. 17**; QUEEN v. MADHUB MAL, **1 W. R. Cr. 22**; QUEEN v. RUSSICK DASS, **24 W.R. Cr. 76**; ALI MEAH v. MAGISTRATE OF CHITTAGONG, **25 W.R. Cr. 14.**

(7)—*Attachment for absent witness—Vexatious application.*—The Court would not grant an attachment, on account of the absence of a witness who had been summoned, or allow its process to be used for purposes of needless vexation. REG. v. KASHINATH DENKAR, **8 B.H.C. Cr. 126.**

(8)—*Taking statements from witnesses out of Court—Absence of accused — Practice—Propriety.*—It is an improper procedure in a Magistrate, during the investigation of a criminal case by himself, to take the statements of witnesses on solemn affirmation out of Court and in the absence of the accused, with the avowed object of proceeding criminally against the witnesses in case they should deviate from such statements in open Court. REG v. JETHA GANESH, **Rat. Un. Cr. C. 66 = Cr. Rg. 11-9-1872.**

(9)—*Witness in trial called on to say why he should not be prosecuted for another offence—Practice—Crim. Pro. Code*, 1882, *s.* 436.—The consequence to public justice would be very serious if a witness, while giving evidence in a case, is suddenly asked during the examination why he should not be prosecuted for another offence. In this case, the Sessions Judge who was trying a case of false evidence, suddenly asked the complainant in the course of the examination to explain why he should not be again committed for trial for murder in respect of an act for which he had been previously tried and discharged. Where, on the answers given by a witness to the questions put to him, the Sessions Judge ordered his commitment for trial for murder, *held*, that the proceeding could not be regarded as one under s. 436 of the Crim. Pro. Code, and that the order was illegal since the accused had not been properly called on to show cause. QUEEN-EMPRESS v. GOVIND, **Rat. Un. Cr. C. 588 = Cr. Rg. 3 of 1892.**

(10)—Such a hasty proceeding as placing a witness on trial as an accused immediately after he has given his evidence, is unauthorised unless under exceptional circumstances, because the necessary result of such a step must be to intimidate the witnesses that follow. QUEEN-EMPRESS v. BHOGILAL, **Rat. Un. Cr. C. 477 = Cr. Rg. 39 of 1889.**

(11)—*Accomplice witness — Confirmation—Evidence.*—The confirmation usually required of an accomplice witness must be not merely as to the circumstance of the crime, but as to the identity of each person accused of taking part. QUEEN-EMPRESS v. DHOND *bin* RAOJI, **Rat. Un. Cr. C. 840.**

(12)—*Depositions of accused as witness in a counter case—Admissibility.*—The deposition of witnesses in a case of rioting may be used as evidence against them in their trial on a counter-charge of rioting. MOHER SHEIKH v. QUEEN-EMPRESS, **21 C. 392.** (3 M. 271, 12 B. 440, *F.*) [*F.*, 31 C. 715 = 8 C.W.N. 910.]

(13)—*Crim. Pro. Code*, 1882, *ss.* 76, 81, 90, 91 *and* 160—*Power of Magistrate to issue warrant for appearance of witness before a police-officer—Penal Code, ss.* 143, 174 *and* 186—*Resistance to the execution—Investigation by police—Attendance of witnesses.*—A Magistrate has no power to issue a warrant for arrest and production of a person in order that such person may give evidence before the Police during an investigation under ch. XIV, Crim. Pro. Code. *Held*, that resistance to the execution of such warrant would not amount to offences under ss. 143 and 186 of the Penal Code, even apart from the fact that the arrest was made of a wrong person. [*R.*, 9 C.W.N. 125.] In an investigation by police, under ch. XIV of the Crim. Pro. Code, the Police is empowered to require the attendance of witnesses by an order in writing. Persons failing to comply with the order are liable to be prosecuted for disobedience under s. 174 of the Penal Code. QUEEN-EMPRESS v. JOGENDRA NATH MUKERJEE. **24 C. 320 = 1 C.W.N. 154.** (9 B. 558, 13 B. 168, 22 C. 286, 1 C.W.N. 74, *R.*) [*R.*, 9 C.W.N. 125, 14 Cr. L.J. 512 = 38 P.W. R. 1913 = 20 Ind. Cas. 992 = 325 P.L.R. 1913.]

(14)—*Particulars to be recorded by Magistrate in depositions for the future identification of the parties examined —Crim. Pro. Code*, 1861, *s.* 443.—Under s. 443, Crim. Pro. Code, 1861,

Witness—continued.

——4.—**Miscellaneous Cases**—*continued*.

all Magisterial officers subordinate to the High Court, should, in the examination of prosecutors, witnesses and prisoners, continue to record in each deposition, statement, or defence the following particulars for the future identification of the parties examined; *viz.*, the name of the person examined; the name of his or her father, and, if a married woman, the name of her husband; the religion, caste, profession and age of the party or witness; and the village in which he or she resides. CRIMINAL CIRCULAR, No. 19, 17th SEPTEMBER 1864, **1 W.R. Cr. Cir. 4.**

(15)—*Trial of prisoner in High Court—Its duty.*—*Held*, that the High Court was not bound in appeal to try a prisoner *de novo* on the depositions on record; but only to form its conclusions as to the credibility of the witnesses by attaching great weight to the opinion of the Judge who heard them. QUEEN v. MADHUB CHUNDER GIRI MOHUNT, **21 W.R. Cr. 13.**

(16)—*False evidence by a witness before a Magistrate—Power of Magistrate to commit the person to Sessions without examination of witnesses.*—Where, in a criminal trial, certain witnesses have given false evidence, the Magistrate, if he elects to commit them, should take evidence and, in other respects, follow the procedure which is provided by the Crim. Pro. Code to justify a commitment to prison pending a trial by the Court of Sessions. Such preliminary inquiry is, if the Court determines to exercise this power, necessary. QUEEN v. CHINNA VEDAGIRI CHETTI, **4 M. 227=2 Weir 584**; *See also* QUEEN v. SREENATH MOOKHOPADHYA, **7 W.R. Cr. 45.**; DINONATH GOPE v. SARODA MOOKHOPADHYA, **7 W.R. Cr. 47.**

(17)—*Recognisance by witnesses and complainant.*—A subordinate Magistrate has no power to take a recognizance from the witnesses and the complainant to appear on a certain day before a Magistrate with co-ordinate jurisdiction. HIGH COURT PROCEEDINGS, 31ST OCTOBER, 1868, **4 M.H.C. App. 17.**

(18)—*Recognizance to appear before Magistrate.*—The proper course to enforce the attendance of witnesses at a trial is by summons, and, if that failed, by warrant. A Magistrate cannot take recognizances from witnesses to appear before himself. HIGH COURT PROCEEDINGS, 18TH MARCH 1868, **4 M.H.C. App. 6** [*F.*, 4 M.H.C. App. 17.] *See, also*, VENCATAPPAH v. PAPAMMAH, **5 M.H.C. 132.**

(19)—*Bringing convicts to Court in chains, propriety of—Prisoner brought before Court in fetters — Procedure.*—As a general rule, a convict should be relieved of his chains when brought before a Court for trial or as a witness. A Judge should not refuse to try a prisoner, on the ground that he was brought before the Court in chains, but he should direct the removal of the fetters, unless satisfied by representation from the proper officer that they were necessary. HIGH COURT PROCEEDINGS, 24TH AUGUST, 1869, **4 M.H.C. App. 69.**

(20)—*Conviction without allowing opportunity to defence to summon witnesses—Legality.*—A conviction of an accused person without allowing a proper opportunity for the summoning and attendance of the witnesses named for the defence is not legal. HIGH COURT PROCEEDINGS, 5TH JULY 1870, **5 M.H.C App. 27.**

(21)—*Adjournment of trial by public proclamation — Disobedience to summons—Penal Code*, s. 174.—The adjournment of a trial by public proclamation is irregular and objectionable. Magistrates should give special notice to the parties of the date to which the case is adjourned. Where a summons was not personally served upon the accused, but was affixed to the door of his house, *held*, that the accused was not guilty under s. 174, in the absence of any proof that the summons was brought to the knowledge of the accused. HIGH COURT PROCEEDINGS, 1ST AUGUST 1871, **6 M H.C. App. 29.**

(22)—*Exemption of Munsiff to depose to what occurred before him as Munsiff.*—A Munsiff should not be called upon to depose as to what took place before him in the course of a trial which he was conducting as a Munsiff. HIGH COURT PROCEEDINGS, 27TH NOVEMBER 1871, **6 M.H.C. App. 43.**

(23)—*Penal Code*, s. 180—*Refusal to sign deposition given in Revenue inquiry* —A witness is not legally bound to sign a deposition given by him in a Revenue inquiry. HIGH COURT PROCEEDINGS, NO. 40, 9TH JANUARY 1871, **1 Weir 112=6 M.H.C. App. 14.**

(24)—*Right of Magistrate to make disparaging remarks on witnesses.*—The right of a Magistrate to make disparaging remarks on persons who appeared, or are named, in the Courts for a trial, is one that should be exercised with great reserve and moderation, especially where the person discouraged has had little or no opportunity of explaining or defending himself. It will involve a great danger to the administration of justice, if witnesses be restrained from stating their opinions for fear of displeasing the Magistrate before whom they give evidence, and great caution should be taken to avoid producing any such unfortunate result. NURDIN KADA v. EMPEROR, **27 P.R. 1903, Cr.=21 P.L.R. 1904=1 Cr. L.J. 99.** [*F.*, 29 P.W.R. 1909, Cr; *R.*, 3 Ind. Cas. 982=120 P.L.R. 1909, 12 P.W.R. 1911, Cr., 1 P.R. 1913, Cr.=254 P. L.R. 1912=17 Ind. Cas. 58=13 Cr. L.J. 746=42 P.W.R. 1912.]

(25)—*Witness, conduct of—Practice—Judge's opinion.*—A Sessions Judge cannot turn a witness out of the box before his examination is closed because, in the Judge's opinion, he was not speaking the truth. MEHARBAN ALI v. EMPRESS, **A.W.N. 1900, 149.**

Witness—continued.

——**4.—Miscellaneous Cases**—*continued.*

(26)—*Appeal—Destruction of vernacular records of original Courts—Re-examination of witnesses.*—After the admission of an appeal, the vernacular record of the case in the Magistrate's Court containing, *inter alia*, the depositions of the witnesses, was not forthcoming. The Judge gave orders for taking the evidence of witnesses *de novo* and that the English notes or memoranda of the evidence made by the Magistrate should be admitted and placed on record. *Held* that the Magistrate did not act according to the instructions of the Judge, by reading to the witnesses the notes of the evidence he had made and asking them if the substance of the statements originally made by them was correctly entered in those notes and recording their admissions that such was the case. EMPRESS v. ASHIQ HUSSAIN, **A.W.N. 1883, 226.**

(27)—*Principal witness for defence, attendance of, not procurable—Procedure.*—Where the complainant, who was cited by the accused, as his principal witness, being in a Native State, was not available as a witness, *held* that the Magistrate acted wrongly in having acquitted the accused, because of the absence of the statement of the principal witness for the defence, but he should have pronounced judgment upon the evidence on the record. EMPRESS v. DHAN KISHEN, **A.W.N. 1881, 38.**

(28)—*Power of a Judge to review a criminal judgment to expunge damaging remark against a witness.*—*Held*, that a Judge has power to reconsider and expunge damaging observations regarding a witness in a criminal case, who had at the trial no chance of defending himself. This does not amount to review of a criminal judgment, and there is no question of reconsidering the guilt of the accused. *In re* MALIK UMAR HAYAT KHAN, **2 P.W.R. 1910, Cr. = 5 Ind. Cas. 611 = 11 Cr. L.J. 178.** [*R.*, 12 P.W.R. 1911, Cr.]

(29)—*Crim. Pro. Code* (1898), *ss.* 252, 514— —*Issuing warrant for compelling attendance of witness—Penal Code, s.* 498—*Surety for attendance of witness — Forfeiture of security bond.*—*Held*, that, in a case under s. 498, I.P.C., there is no legal sanction for the Magistrate taking its cognizance to issue a warrant for compelling the complainant's wife to attend as a witness, without first requiring her to attend by a summons as laid down under s. 252, Crim. Pro. Code, and that it is only when the summons is neglected that severe measures can be taken. *Held*, that, under the above circumstances, the security given by a person standing surety for producing the woman in Court is against law and cannot be forfeited, if he fails to comply with the terms of the security bond. *Held*, further, that, in such like cases, forfeiture of the whole sum of security is a harsh measure, in the absence of anything to show that surety was really responsible for disappearance of the person for whose attendance he stood surety, and without inquiry into the circumstances under which he came stand surety. KALA SINGH v. KING-EMPEROR, **22 P.W.R. 1907, Cr. = 6 Cr. L.J. 275.**

(30)—*Evidence of a witness making false entry, whether credible—Confidential correspondence between police officers, right of accused to inspect—Criminating statement made by accused to a police officer inadmissible—Crim. Pro. Code* (1882), *s.* 172.—The conduct of a witness in making a false entry in a departmental register and then declaring it to be false does not entirely discredit his evidence. An accused person is not entitled to see confidential correspondence between police officers. The rule excluding what comes from an accused person in the custody of the police, if it incriminates him, applies equally to a statement made to a police officer by an accused who is not in custody. Where a police officer elicits, by cross-examination of the accused during a departmental inquiry, an admission of a criminating circumstance from him, such admission is not admissible against the accused QUEEN-EMPRESS v. MAUNG BA U, **L.B.R. 1893—1900, 42.** (6 B. 36, 10 C. 1022, 14 B. 263, *F.*; 10 B.L.R. Ap. 2, 6 C. 530, *Not F.*; 6 B.L.R. 507, *D.*; 15 C. 589, *R.*)

(31)—*Retracting false statement when pressed to tell the truth—Prosecution of witness for perjury—Penal Code, s.* 193.—It concerns the public and the administration of justice that a witness, who has begun by recklessly making a false statement, should not have the fear of a criminal prosecution for perjury before his eyes through any self-contradiction, when he is pressed by examining counsel to tell the truth, or warned by the Court of the peril in which he stands if he adhere to a statement which may be shown to be false. A Court may be saved from the peril of acting upon false evidence when a false statement is retracted, and it may be said that the higher interest of public justice is, therefore, better served by letting such a witness go free than by setting the criminal law in motion by proceedings under s. 193 of the Penal Code, to punish the individual, because the statement which he retracted was intentionally false. MURVENA MADOO v. QUEEN-EMPRESS, **L B.R. 1893—1900, 247.** (W.R. Cr. 1864, 10, 11 M. 477, 17 B. 127, 11 B.L.R. P.C. 321, *Relied on.*)

(32)—*Arrest of witness during course of trial improper—Retracting previous statement, prosecution for—Procedure in examining.*—The arrest of witnesses, during the course of a trial, for intentionally giving false evidence at the trial, is highly improper procedure, most unfair to the accused, and very unseemly. The effect may be to intimidate other witnesses into adhearing to false statements made before the committing Magistrate. Courts, knowing the possibility of fabricated evidence being offered, ought not to place obstacles in the way of witnesses retracting previous statements made by

Witness—continued.

——4.—**Miscellaneous Cases**—*continued.*

them, and ought to be very careful in considering in what cases the ends of justice require the prosecution of a witness for intentionally giving false evidence, because a statement which he had made at one time conflicts with a statement which he makes at another time. The witness should be heard patiently and should be calmly examined as to contradictions and as to any explanation he may have to offer. NGA PO TUN v. QUEEN-EMPRESS, **L.B.R. 1893—1900, 355.**

(33)—*Hostile witness, who is not a - Contradiction in the whole texture of story—Effect.*—The mere fact that, at a Sessions trial, a witness tells a different story from that told by him before the Magistrate, does not necessarily make him hostile. The proper inference to be drawn from contradictions in the whole texture of the story is not that the witness is hostile to this side or to that, but that the witness is one who ought not to be believed unless supported by other satisfactory evidence. KALACHAND SIRCAR v. QUEEN-EMPRESS, **13 C. 53.**

(34)—*Each party causing his opponent to be summoned as a witness — Objectionable.*—It would appear that in India it is one of the artifices of a week and somewhat paltry kind of advocacy for each litigant to produce the opponent as a witness, and thus give the counsel for each litigant the opportunity of cross-examining his own client. It is a practice which their Lordships cannot help thinking all judicial tribunals ought to set themselves to render as abortive as it is objectionable. It ought never to be permitted in the result to embarrass judicial proceedings. KISHORI LAL v. CHUNI LAL, **5 M.L.T. 88, P.C. = 9 C L.J. 172 = 13 C.W.N. 370 = 11 Bom. L.R. 196 = 31 A. 116 = 19 M.L.J. 186 = 1 Ind. Cas. 128 = 36 I.A. 9.**

(35)—*Crim. Pro. Code* (1898), *s.* 503—*Issue of commission or letter of request—Examination of witnesses residing in England—High Courts' power to issue commissions in criminal cases.*—An application was made on behalf of an accused in a criminal case, for the issue of a commission or a letter of request for the examination of a witness residing in England: *Held*, that the High Court had no authority either to issue a commission or a letter of request to the English Courts for the examination of a witness in a criminal case. EMPEROR v. CORPORAL ALLEN, **4 Ind. Cas. 400 = 10 Cr. L.J. 571.**

(36)—*Province of Court—S.* 138, *Evidence Act—Examination of witnesses.*—It is not the province of the Court to examine the witnesses, unless the pleaders on either side have omitted to put any material question; and the Court should generally leave the witnesses to the pleaders to be dealt with as laid down in s. 138 of the Evidence Act. The procedure of a Sessions Judge in questioning the witnesses, at the close of the examination in chief, at great length upon points, certain to be dealt with in cross-examination by the pleaders, is irregular and unfair. NOOR BUX KAZI v. EMPRESS, **6 C. 279 = 7 C.L R. 385.**

Witness—concluded.

——4.—**Miscellaneous Cases**—*concluded.*

(37)—*Examination of witnesses—Value to be attached to their testimony—Duty of prosecution to examine all important witnesses.*—An elementary principle of sifting evidence is to test it in the light of probabilities. The piecemeal examination of the testimony of individual witnesses without a broad view of the facts, circumstances and probabilities of a case, generally leads to a failure of justice especially in a case where most of the witnesses are drawn from a class of persons whose testimony is frequently unconvincing and not unfrequently unreliable. Even if the witnesses in a case do not break down in cross-examination or do not contradict each other, yet, if their testimony is opposed to the ordinary course of human conduct and to the natural order of things, such testimony must be accepted with the greatest caution. The dividing of witnesses into two classes—Hindus and Mussalmans—and accepting the evidence of one class and rejecting that of the other, is open to severe criticism. The withholding of important witnesses, who were in one way or other intimately connected with the transaction or the occurrence and the state of things immediately after, gives rise to the irresistible inference that, if they had been examined, they would not have corroborated the prosecution story. NIBARAN CHANDRA ROY v. KING-EMPEROR, **11 C.W.N. 1085 = 6 Cr. L.J. 304.**

(38)—*Crim. Pro. Code,* 1898, *ss.* 503 *and* 506—*District Magistrate requiring subordinate trying Magistrate to examine witness at her house—Order illegal.*—Where a District Magistrate, purporting to act under s. 503, Crim. Pro. Code, directs a Magistrate subordinate to him, before whom a case is pending, to examine a particular witness in her own house, *held*, that s. 503, which applies to commissions, could not apply to the present case, as the trying Magistrate is required to record the evidence. Even if it were to be construed as an order for examination by a Commissioner, the District Magistrate had no jurisdiction to make such order except on a reference made to him under s. 506, Crim. Pro. Code, by the trying Magistrate. S. 503 applies only to cases pending before the Courts therein specified. IMPERATOR v. CHATO *wd.* PIRANO, **2 S.L.R. 8, Cr. = 10 Cr.L.J. 211.**

(39)—*Tendering pardon to prisoner.*—Procedure as to tendering a pardon to a prisoner before examining him as a witness analysed. QUEEN v. GAGALU MAGALU, **6 B.L.R.Ap. 50 = 12 W R. Cr. 80.**

Witness, Arrest of.

(1)—*Crim. Pro. Code.* 1872, *ss.* 160, 352, 355 *and* 185 (= *ss.* 76, 90, 93 *of the Code*)—*Arrest of witnesses—Bail.*—A Magistrate is competent to admit to bail recalcitrant witnesses under

Witnesses, Arrest of—*concluded.*

ss. 352 and 355 (s. 90) of the Crim. Pro. Code. HIGH COURT PROCEEDINGS, 11TH MAY 1881, NO. 957, 2 **Weir 39**.

Wizard.

Commutation of death sentence—Killing a—*See* SENTENCE—TRANSPORTATION, 6 W.R. Cr. 82.

Woman.

See ENTICING AWAY MARRIED WOMAN.

See PARDANASHIN WOMAN.

(1)—*Removal of women to Police station for examining them.*—It is an unusual course for the Police to take a number of women away from their village to the Police station on the pretext that they wished to examine them. The examinations would be, properly conducted at the women's own houses. HALADHAR BHUMIJ v. SUB-INSPECTOR OF POLICE, HURA OUTPOST, **9 C.W.N. 199=2 Cr. L.J. 51** [*F.*, 12 Cr. L.J. 539=12 Ind. Cas. 15=2 P.R. 1912, Cr.=11 P.L.R. 1912 ; *Rel. on.*, 11 Cr. L.J. 205 =5 Ind. Cas. 714=4 P.W.R. 1910, Cr.; *R.*, 13 Cr. L.J. 609=16 C.W.N. 1105=15 C.L.J. 517=16 Ind. Cas. 257.]

Medical examination of the person of a woman—*See* MEDICAL EXAMINATION, 1 C. P.L.R. 163.

Insulting the modesty of a woman—*See* PENAL CODE, s. 509, 5 Bom. L.R. 502.

Evidence of—Charge of adultery—*See* WITNESS—GENERAL—WHO ARE COMPETENT TO BE WITNESSES, 6 W.R. Cr. 92.

Words and Phrases.

"Abetting"—*See* BUR. ACT I OF 1899, s. 10, U.B.R. 1892—1896, Vol. I, 119.

"Abkari officer"—*See* MAD. ACT I OF 1886, s. 62, 1 Weir 651.

"Abscond"—*See* PENAL CODE, s. 172, 4 M. 393=1 Weir 76=1 Weir 891.

"Absconder"—*See* ABSCONDING OFFENDER, 2 Weir 40.

"Absence"—*See* CRIM. PRO. CODE, 1898, s. 199, 3 S L.R. 15=9 Cr. L.J. 450=1 Ind. Cas. 941.

"Abstain from a certain act"—*See* CRIM. PRO. CODE, 1898, s. 144, 3 M. 354=2 Weir 90.

"Abutting on or adjoining a public street," in s. 87 (1) (*a*), Act I of 1900 (N.W.P. and Oudh Municipality)—*See* U.P. ACT I OF 1900, ss. 87 (1) (*a*), 132, A.W.N. 1901, 203.

"Abutting on or adjoining a public street"—*See* MUNICIPALITY, A.W.N. 1901, 203.

"Accepting"—*See* ACCEPTING INSTRUMENT NOT DULY STAMPED, 4 O.C. 168.

"Accepting"—*See* ACT I OF 1879, s. 61, 7 M. 71=1 Weir 302, 20 A. 440=A.W.N. 1898, 108.

"Accepting"—*See* ACT II OF 1899, s. 62, U. B.R. 1892—1896, Vol. I, 311, U.B.R. 1892—1896, Vol. I, 312.

"Accepting"—*See* STAMP, 11 P.R. 1891, Cr.

Words and Phrases—*continued.*

"Access"—*See* BOM. ACT IV OF 1890, ss. 3(*e*) 6 (*i*), 14 Bom. L.R. 499=15 Ind. Cas. 785=13 Cr. L.J. 513=1 Bom. Cr. C. 144.

"Accomplice"—*See* ACCOMPLICE—GENERAL, 27 M. 271=2 Weir 803=14 M.L.J. 226.

"Accomplice"—*See* ACCOMPLICE—ACCOMPLICE EVIDENCE—NECESSITY FOR CORROBORATION, 21 C. 328.

"Accomplice"—*See* EVIDENCE ACT, 1872, ss. 114, Ill. (*b*) 133, 27 M. 271=2 Weir 803=14 M.L.J. 226.

"Accused"—*See* ACCUSED PERSON, 16 B. 661, 23 C. 493, 131 P.L.R. 1905=42 P.R. 1905, Cr.

"Accused"—*See* CRIM. PRO. CODE, 1898, s. 342, 16 B. 661.

"Accused"—*See* EVIDENCE ACT, 1872, s. 132, 23 B. 213.

"Accused"—*See* FURTHER ENQUIRY, 2 L. B.R. 80.

"Accused"—*See* SECURITY FOR GOOD BEHAVIOUR, 21 A. 107=A.W.N. 1898, 185.

"Accused person"—*See* ACCUSED PERSON, 23 C. 493, 16 B. 661, 9 C.W.N. 983=2 C.L.J. 149=2 Cr. L.J. 575, 10 W.R. Cr. 16, 24 P.R. 1903, Cr. 42 P.R. 1905, Cr.=131 P.L.R. 1905.

"Accused person"—*See* COMPENSATION—TO ACCUSED, 14 P.R. 1888, Cr.

"Accused person"—*See* CRIM. PRO. CODE, 1898, ss. 94, 96, 342, 36 P.R. 1914, Cr.

"Accused person"—*See* CRIM. PRO. CODE, 1898, ss. 106, 226, 354, 7 M.L.T. 104.

"Accused person"—*See* CRIM. PRO. CODE, 1898, ss. 107, 119, 437, 153 P.L.R. 1911, F.B. =6 P.R 1911 Cr.=10 Ind. Cas. 178=12 Cr. L.J. 232=30 P.W.R. 1911, Cr.

"Accused person"—*See* CRIM. PRO. CODE, 1898, ss. 110, 118, 437, 20 P.L.R. 1904.

"Accused person"—*See* CRIM. PRO. CODE, 1898, ss 110, 437, 6 C.W.N. 163.

"Accused person"—*See* CRIM. PRO. CODE, 1898, ss. 133, 342, 488, 9 C.W.N. 983=2 C.L. J. 149.

"Accused person"—*See* CRIM. PRO. CODE, 1898, ss. 145, 526, 10 A.L.J. 27=13 Cr. L.J. 452=15 Ind. Cas. 84=34 A. 533.

"Accused person"—*See* CRIM. PRO. CODE, 1898, s. 437, A.W.N. 1891, 106.

"Accused person"—*See* FURTHER ENQUIRY, 2 L.B.R. 80=42 P.R. 1905, Cr.=131 P.L.R. 1905.

"Accused person"—*See* SECURITY FOR GOOD BEHAVIOUR, 21 A. 107, 6 O.C. 262, 27 C. 656.

"A certain act"—*See* CRIM. PRO. CODE, 1898, s. 144, 16 C. 80.

"Acquittal"—*See* COMPENSATION—GENERAL, A.W.N. 1891, 63.

"Acquitted"—*See* CRIM. PRO. CODE, 1898, ss. 110, 118, 437, 20 P.L.R. 1904.

"Act"—*See* ACT XX OF 1865, s. 5, 19 W.R. Cr. 8.

Words and Phrases—*continued.*

"Acting"—*See* ACT XX OF 1865, s. 11, 9 B. L.R. App. 18=18 W.R. Cr. 27.

"Actual possession"—*See* DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 9 B.L.R. 229=18 W.R. Cr 11.

"Act under colour of such office"—*See* PENAL CODE, s. 170, 9 Bom. L R. 222=5 Cr.L.J. 211.

"Adultery"—*See* CRIM. PRO. CODE, 1898, ss. 4, 488, 17 M. 260=2 Weir 641=4 M.L.J. 83.

"Adultery"—*See* MAINTENANCE, L.B.R. 1872—1892, 596.

"Adultery, living in"—*See* MAINTENANCE, 30 M. 332=2 M L.T. 166=17 M.L.J. 279=5 Cr. L.J. 359.

"Affray"—*See* AFFRAY, 1 Weir 71.

"Aggregate sentences"—*See* CRIM. PRO. CODE, 1898, s. 408 (3), 11 A.L.J. 111=14 Cr. L.J. 119=18 Ind. Cas. 679=35 A. 154.

"Aggrieved person"—*See* BIGAMY, 26 C. 336.

"Aggrieved person"—*See* DEFAMATION, L. B.R. 1872-1892, 617.

"Agricultural purposes"—*See* MAD. ACT IV OF 1884, s. 63, cl. 3, 25 M. 627=1 Weir 727 =12 M.L.J. 393.

"Aiding and abetting"—*See* BUR. ACT I OF 1899, s. 10, U.B.R. 1892-1896, Vol. I, 119.

"Allowed by law"—*See* SENTENCE—IMPRISONMENT—IMPRISONMENT IN DEFAULT OF PAYMENT OF FINE, ETC., 10 M. 166, Note=2 Weir 26.

"All parts of ammunition"—*See* ACT XI OF 1878, ss. 4, 19, cl. *(f)* *(a)*, 7 Bom. L.R. 474=2 Cr. L.J. 449.

"All prosecutions under this Act shall be instituted before a person exercising the powers of a magistrate"—*See* ACT III OF 1877, s. 83, 10 W.R. Cr. 21=6 B.L.R. 693, Note.

"Also"—*See* CRIM. PRO. CODE, 1898, s. 106 (1) (3), 14 M.L.T. 235=1913 M.W.N. 769=25 M L J. 403=14 Cr. L.J. 574=21 Ind. Cas. 174, F.B.

"Alter"—*See* CRIM. PRO. CODE, 1898, ss. 226, 227, 8 B. 200.

"Ammunition"—*See* ACT XI OF 1878, s. 4, 7 A.L.J. 102=4 Ind. Cas. 405=10 Cr. L.J. 573 =32 A. 152.

"Ammunition"—*See* ACT XI OF 1878, ss. 4, 19, 5 M. 159=1 Weir 655.

"Ammunition"—*See* ACT XI OF 1878, ss. 4, 19, 23 P.W.R. 1910, Cr.=16 P.R. 1910= 6 Ind. Cas. 952=11 Cr L.J. 421=191 P.L.R. 1910.

"Ammunition"—*See* ACT XI OF 1878, s. 19, 8 M. 202=1 Weir 664.

"Ammunition"—*See* ACT XI OF 1878, ss. 19, 20, 20 P.R. 1890, Cr.

"Animal"—*See* ACT XI OF 1890, ss. 2, 3, 1 C.W.N. 642.

"Animals"—*See* ANIMALS, 24 C. 881.

"Animal"—*See* PENAL CODE, s. 429, 22 C. 457.

"Annoy"—*See* CRIMINAL TRESPASS, 2 A. 465.

"Annual value"—*See* BEN. ACT IV OF 1876, s. 88, 11 C. 275.

"Any accused person"—*See* CRIM. PRO. CODE, 1898, ss. 437, 200, 119, 13 Bom. L.R. 505=11 Ind. Cas. 614=12 Cr. L.J. 430.

"Any consequence which has ensued"—*See* CRIM. PRO. CODE, 1898, s. 179, 4 O.C. 376, 67 P.L.R. 1901.

"Any manner prevents the service"—*See* PENAL CODE, s. 173, 5 M. 199=1 Weir 80=6 Ind. Jur. 410.

"Any other reasonable cause"—*See* ACT XVIII OF 1879, ss. 13, 14, 27 C. 1023=4 C.W. N. 389.

"Any person"—*See* CRIM. PRO. CODE, 1898, ss. 195, 495, 11 A.L.J. 313=14 Cr. L.J. 389= 20 Ind. Cas. 213.

"Any person in possession"—*See* PENAL CODE, ss. 426, 441, 21 B. 536.

"Any person within the local limits"—*See* CRIM. PRO. CODE, 1898, s. 110, 23 M.L.J. 535=17 Ind. Cas. 413=13 Cr. L.J. 781=36 M. 96.

"Any person who sells"—*See* MUNICIPAL RULES (CAWNPORE), 11 A.L.J. 39=13 Cr. L. J. 787=17 Ind. Cas. 541.

"Any public street, place or thoroughfare"—*See* ACT III OF 1867, s. 13, Colm. Dig. Cr. 1 of 1871.

"Any remaining witnesses"—*See* CRIM. PRO. CODE, 1898, s. 252, 11 Bom.L.R. 1153= 10 Cr. L.J. 530=4 Ind. Cas. 268.

"Any such misconduct as aforesaid"—*See* ACT XVIII OF 1879, ss. 13, 14, 29 A. 61=3 A. L.J. 811=A.W.N. 1906, 268.

"Any such offence.—*See* CRIM. PRO. CODE, 1898, ss. 195, 478, 22 C. 1004.

"Any such offence"—*See* ESCAPE FROM LAWFUL CUSTODY, 28 C. 253=5 C.W.N. 289.

"Any such woman"—*See* PENAL CODE, s. 498, 16 P R. 1891, Cr.

"Anything which has been done"—*See* CRIM. PRO. CODE, 1898, s. 179, 4 O.C. 376.

"Appellate judgment of acquittal"—*See* APPEAL—APPEAL FROM ACQUITTAL, 24 W.R. Cr. 41.

"Are employed"—*See* BOM. ACT III OF 1888, s. 249, 23 B. 528=1 Bom. L.R. 12.

"Arms"—*See* ACT XI OF 1878, s. 4, 11 C.W. N. 971=34 C. 749=6 Cr. L J. 227, 20 P.R. 1900, Cr.=33 P.L R. 1901, 5 L.B.R. 207=3 Bur. L.T 91=8 Ind. Cas. 972, 1 Weir 654.

"Arms"—*See* ACT XI OF 1878, ss. 4, 19, 7 M. 70=1 Weir 658=38 P.R. 1880, Cr., 1 L. B.R. 271.

"Arms"—*See* ACT XI OF 1878, ss. 4, 20, 15 Cr. L.J. 685=26 Ind. Cas. 133.

Words and Phrases—*continued.*

"Arms"—*See* ACT XI OF 1878, ss. 4, 27, L.B.R. 1893-1900, 416.

"Arms"—*See* ACT XI OF 1878, s. 5, 3 L.B.R. 1=2 Cr. L J. 372=11 Bur. L.R. 183.

"Arms"—*See* ACT XI OF 1878, s. 19 (*a*), L. B.R. 1893-1900, 487.

"Arms"—*See* ARMS, U.B.R. 1897-1901, Vol. I, 1.

"Arms"—*See* CHHAVI, 16 P.R. 1900, Cr.

"Artificer"—*See* ACT XIII OF 1859, Rat. Un. Cr. C. 204=Cr. Rg. 24-7-1884, 7 L.B.R. 82=15 Cr. L.J. 235=23 Ind. Cas. 187.

"Artificer"—*See* ACT XIII OF 1859, s. 2, 6 C.L.J. 180=6 Cr. L.J. 191, 8 C.L.J. 254, 4 B. L.R. App. 1=13 W.R. Cr. 1, 28 P.R. 1904, Cr. Rat. Un. Cr. C. 537=Cr. Rg. 9 of 1861.

"As a motive or reward"—*See* PENAL CODE, s. 161, 9 Bom. L.R 331=31 B. 335=5 Cr.L.J. 309.

"Assault"—*See* BOM. ACT VIII OF 1867, s. 14, 1 Bom.L R. 687.

"Assault"—*See* ASSAULT, 1 B.H.C. 205.

"Assault"—*See* MAD. REG. XI OF 1816, s. 10, 1 Weir 923.

"Assistance"—*See* PENAL CODE, s. 187, 26 M. 419=1 Weir 136, F.B.

"As such Judge or Magistrate"—*See* MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION, 18 B. 380, F.B.

"At any time"—*See* CRIM PRO. CODE, 1898, ss. 125, 107, 118, 1913 M.W.N. 715=14 M.L. T. 328=25 M L.J. 459=21 Ind. Cas. 146=14 Cr.L J. 546.

"At any time"—*See* SANCTION TO PROSECUTE—MISCELLANEOUS CASES, 18 W.R. Cr. 62.

"Attempt"—*See* PENAL CODE, ss. 420, 511, 13 P.W.R. 1914, Cr.=66 P.L.R. 1914=15 Cr. L.J. 265=23 Ind. Cas. 473=14 P.R. 1914, Cr.

"Attempt"—*See* PENAL CODE, ss. 457, 442, 379, 511, 24 P.R. 1914, Cr.

"At the same time"—*See* ABSCONDING OFFENDER, 4 M.H.C. App. 48.

"Authorised pleaders"—*See* LEGAL PRACTITIONERS—PLEADER, 2 Weir 402.

"Authorized distribution"—*See* ACT VIII OF 1873, s. 70 (4), 217 P.L.R. 1913=19 Ind. Cas. 713=21 P.W.R. 1913, Cr.=14 Cr.L.J. 281 =19 P.R. 1913, Cr.

"Bahin-ki-gali—*See* DEFAMATION, A.W.N. 1883, 36.

"Bailiff"—*See* PENAL CODE, s. 147, 17 C. W.N. 941=14 Cr.L.J. 274=19 Ind. Cas. 706.

"Beinchi" (or half-consumed opium is a preparation of opium,—*See* ACT I OF 1878, s. 9, cl. (*c*), U.B.R. 1892—1896, Vol. I, 133.

"Being the holder of a license"—*See* MAD. ACT I OF 1886, ss. 56 and 64, 21 M. 63=1 Weir 648.

"Being tried jointly"—*See* EVIDENCE ACT 1872, s. 30, L.B.R. 1893—1900, 642.

Words and Phrases—*continued.*

"Believe"—*See* STOLEN PROPERTY, 6 B. 402.

"Betting" is not gambling—*See* GAMBLING, 13 B. 681.

"Bicycle"—*See* BUR. ACT III OF 1898, s. 162-B, 12 Cr. L.J. 573=12 Ind. Cas. 837=4 Bur.L.T. 134.

"Books regularly kept in the course of business"—*See* EVIDENCE ACT, 1872, ss. 3, 34, 114 (*b*), 133, 6 S.L.R. 195=14 Cr.L.J. 262=19 Ind. Cas. 534.

"Booth"—*See* BOM. ACT VII OF 1867, s. 33, 22 B 742.

"Boycott"—*See* PENAL CODE, ss 109, 114 and 124-A, 5 M L.T. 16=32 M. 3=9 Cr.L.J. 130=1 Ind. Cas. 36.

"Brothel"—*See* BEN. ACT III OF 1906, s. 2, 6 C.L.J. 710.

"Brought under notice of Court"—*See* CRIM. PRO. CODE, 1898, ss. 476, 478, 6 A.L J. 392= 9 Cr. L.J. 219=1 Ind. Cas. 306.

"Building" in s. 3 (25), Act III of 1899 (Calcutta Municipal)—*See* BEN. ACT III OF 1899, s. 3 (25), 8 C.W.N. 487.

"Building"—*See* BOM. ACT VI OF 1873, s. 3, Rat. Un. Cr. 428=Cr. Rg. 92 of 1888.

"Building"—*See* BOM. ACT VI OF 1873, s. 3, (1), Rat. Un. Cr. 145.

"Building"—*See* BOM. ACT III OF 1901, ss. 96, 3 (7), 13 Bom. L.R. 494=11 Ind. Cas. 610 =12 Cr.L.J. 426=35 B. 412.

"Building"—*See* MAD. ACT IV OF 1884, s. 3, 1 M.L.J 37.

"Building"—*See* MAD. ACT IV OF 1884, ss. 180 (1) and (5) and 263, 8 M.L.T. 431=8 Ind. Cas. 148=1910 M.W.N. 740.

"Building"—*See* HOUSE TRESPASS, Rat. Un. Cr. C. 484.

"Building"—*See* PENAL CODE, s. 436, 68 P.L.R. 1903.

"Building"—*See* PENAL CODE, ss. 457, 442, 379, 511, 24 P.R 1914, Cr.

"Building"—*See* THEFT—THINGS WHICH MAY BE THE SUBJECT OF THEFT, Rat. Un. Cr. C. 293=Cr. Rg. 36 of 1886.

"Bull and cow and any other animal" of —*See* PENAL CODE, s. 429, 22 C. 457.

"Buys or hires or otherwise obtains possession"—*See* PENAL CODE, s. 373, 1 Weir 377= 5 M.H.C. 473.

"Called in question"—*See* BUR. ACT III OF 1898, ss. 130, 147, 180, 4 L.B.R. 144=14 Bur L.R. 125=7 Cr.L.J 441.

"Canal"—*See* ACT VIII OF 1873, ss. 70, 74, A.W.N. 1907, 18=4 A.L.J. 204=5 Cr.L.J. 196.

"Cannot be found"—*See* EVIDENCE ACT, 1872, s. 33, A.W.N 1905, 202.

"Capital"—*See* MAD. ACT III OF 1904, sch. V, 3 M.L.T. 400=18 M.L.J. 349=31 M. 408=9 Cr. L J. 68.

Words and Phrases—*continued.*

"Cart-stand"—*See* MAD. ACT IV OF 1884, s. 189, 21 M. 293=1 Weir 738.

"Case"—*See* ACT X OF 1875, ss. 115, 147, 12 B. H. C. 217.

"Case"—*See* CRIM. PRO. CODE, 1898, ss. 408, 413, 4 L.B.R. 354=9 Cr. L.J. 356.

"Case"—*See* CRIM. PRO. CODE, 1898, ss. 528, 190 (1) (*a*), 7 N.L.R. 97=11 Ind. Cas. 621=12 Cr. L.J. 437.

"Causing grievous hurt"—*See* GRIEVOUS HURT, 6 P.R. 1901, Cr.

"Chandul"—*See* BOM. ACT V OF 1878, 9 Cr. L.J. 254=1 S.L.R. 8, Cr.

"Change in the circumstances"—*See* CRIM. PRO. CODE, 1898, s. 489, A.W.N. 1891, 32

"Charge"—*See* CHARGE—GENERAL, 8 B. 200, 28 C. 434=5 C.W.N. 609.

"Charge"—*See* FALSE CHARGE, 26 M. 640=1 Weir 190, 5 M.L.T. 269, F.B.=9 Cr L.J 170=32 M. 258.

"Charged"—*See* PENAL CODE, s. 218, 27 C. 144.

"Charged"—*See* PENAL CODE, s. 224, Rat. Un. Cr. C. 298.

"Charges"—*See* ACT I OF 1871, s. 20, 11 C. P.L.R. Cr. 10.

"Cheating"—*See* CRIM. PRO. CODE, 1898, s. 562, 3 L.B.R 95=3 Cr. L.J. 21, F.B., 12 A.L.J. 465=15 Cr. L.J. 375=23 Ind. Cas. 743.

"Child"—*See* CHILD, 5 C.P.L.R. Cr. 21.

"Child"—*See* MAINTENANCE, 28 P.W.R. 1910, Cr.

"City"—*See* BOM. ACT III OF 1888, s. 24, 30 B. 126=7 Bom. L R. 726=2 Cr. L J. 604.

"Civil Court"—*See* CRIM. PRO. CODE, 1898, s. 476, 15 Bom. L.R. 53=2 Bom. Cr. C. 9=18 Ind. Cas. 416=14 Cr. L.J. 80.

"Claim"—*See* FORGERY, 15 A. 210=A.W. N. 1893, 96.

"Class of offences"—*See* CRIM. PRO. CODE, 1898, s. 269, 23 M. 632=2 Weir 331.

"Clerk"—*See* PENAL CODE, s. 381, 157 P.L.R. 1905=50 P.R. 1905, Cr.=3 Cr. L.J. 70.

"Clerk"—*See* THEFT—GENERAL — WHAT CONSTITUTES THEFT, 8 W.R. Cr. 32.

"Cocaine" in ss. 3 (9) and 62, Bom. Act V of 1878—*See* BOM. ACT V OF 1878, ss. 3 (9), 62, 5 Bom. L.R. 498=27 B. 551.

"Cognizance of any offence" is not equivalent to "cognizance of any offender"—*See* CRIM. PRO. CODE, 1898, s. 190, cls. (*a*), (*b*), (*c*), 351. cl. (2), 4 S.L.R. 258=11 Ind. Cas. 683=12 Cr. L.J. 399.

"Coin"—*See* COUNTERFEITING COIN, A. W.N. 1882, 100.

"Comes in the performance of his function"—*See* ACT II OF 1899, ss. 33, 38 (2), 40, 25 M. 525=2 Weir 670.

"Commencement of hearing"—*See* CRIM. PRO. CODE, 1898, s. 526, 8 C.W.N. 77.

Words and Phrases—*continued.*

"Committed for trial"—*See* TRIAL, Rat. Un. Cr. C. 830, F.B.=Cr. Rg. 73 of 1895.

"Committed to prison"—*See* SECURITY FOR GOOD BEHAVIOUR, 30 A. 334=5 A.L.J. 318, F.B.=A.W.N. 1908, 133=7 Cr. L.J. 427=4 M.L.T. 41.

"Common gaming house"—*See* ACT III OF 1867, 3 N.W.P 134.

"Common gaming house"—*See* ACT III OF 1867, s. 1, 27 A. 567=A.W.N. 1905, 106=2 Cr. L.J. 245.

"Common gaming house"—*See* ACT III OF 1867, ss. 1, 3, 14 P.R. 1896, Cr.

"Common gaming house"—*See* ACT III OF 1867, ss. 5, 6, A.W.N. 1882, 182.

"Common gaming house"—*See* BOM. ACT IV OF 1887, s. 3, Rat. Un. Cr. C. 840=Cr. Rg. 9 OF 1896.

"Common gaming house"—*See* BOM. ACT I OF 1890, s. 3, 17 B. 184.

"Common gaming house"—*See* BUR. ACT I OF 1899, ss. 3,6,7, 7 Bur. L.T. 163=15 Cr. L.J. 523=24 Ind. Cas. 835.

"Common gaming house"—*See* MAD. ACT III OF 1889, ss. 3, 6 and 7, 18 M. 46=1 Weir 919.

"Common gaming house"—*See* MAD. ACT III OF 1889, ss. 6, 7, 1 Weir 917.

"Compartment"—*See* ACT IX OF 1890, s. 110, 24 B. 293=1 Bom. L.R. 688.

"Compelled"—*See* EVIDENCE ACT, 1872, s. 132, 16 A. 88=A.W.N. 1894, 23.

"Compelled to give evidence"—*See* EVIDENCE ACT, 1872, s. 132, 12 B. 440, Rat. Un. Cr. C. 360=Cr. Rg. 2 of 1888.

"Compensation for the loss caused by seizure and detention"—*See* ACT VII OF 1870, s. 31, 7 M. 345=1 Weir 713.

"Complainant"—*See* CRIM. PRO. CODE, 1898, ss. 4 (1) (*h*), 190, cls. (*a*) (*c*), 18 C.W.N. 921=15 Cr. L J. 546=24 Ind. Cas. 954=41 C. 1013.

"Complaint"—*See* COMPLAINT—WHAT IS, AND WHO SHOULD INSTITUTE, 14 C. 707, F B., 30 C. 910, F.B.=8 C.W N. 17, 24 P.R. 1888, Cr., Rat. Un. Cr. C. 554=Cr. Rg. 29 of 1891, Rat. Un. Cr. C. 584=Cr. Rg. 44 of 1891.

"Complaint"—*See* CRIM. PRO. CODE, 1898, ss. 4 (1) (*h*), 190, cls. (*a*) (*c*), 18 C.W.N. 921=15 Cr. L.J. 546=24 Ind. Cas. 954=41 C. 1013.

"Complaint"—*See* MAINTENANCE, L.B.R. 1893—1900, 662.

"Complaint"—*See* PENAL CODE, ss 182, 211, 13 Cr. L J. 826=17 Ind. Cas. 570=40 C. 360

"Complaint"—*See* PENAL CODE, s. 498, 32 P.R. 1910, Cr.

"Complaint"—*See* SANCTION TO PROSECUTE—CONDITIONS REQUISITE FOR GRANT OF SANCTION, ETC., 6 O.C. 1.

"Completion"—*See* BOM. ACT III OF 1888, s. 353, 19 B. 372.

Words and Phrases—*continued.*

"Compounding"—*See* PENAL CODE, ss. 336, 337, U.B.R. 1892—1896, Vol. I, 219.

"Concealing"—*See* PENAL CODE, ss. 362, 361, 15 O.C. 351=14 Cr. L.J. 93=18 Ind. Cas. 653.

"Concealing offence"—*See* PENAL CODE, s. 214, 14 M. 400=1 Weir 195=1 M.L.J. 163.

"Conceals or detains"—*See* PENAL CODE, s. 498, 1 Weir 571=4 M.H.C. 20.

"Concerned in the dispute"—*See* DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 4 C.W.N. 753.

"Conduct"—*See* BOM. ACT IV OF 1890, s. 48 (*a*) (1), 22 B. 715.

"Conduct"—*See* EVIDENCE ACT, 1872, ss. 8, 9, 32, 7 A. 385, F.B.

"Conducting house-search in person"—*See* CRIM. PRO. CODE, 1898, ss. 165, cl. 2, 103, 23 M.L.J. 445=(1912) M.W.N. 1111=17 Ind. Cas. 75=13 Cr. L.J. 763.

"Confession"—*See* ADMISSION, 51 P.L.R. 1905=2 Cr. L.J. 230.

"Confession"—*See* CONFESSION—GENERAL, 7 A. 646=51 P.L.R. 1905=2 Cr. L.J. 230=20 P.R. 1905, Cr.

"Confession—*See* CONFESSION — CONFESSIONS MADE TO POLICE OFFICERS, 5 L.B.R. 131.

"Confession"—*See* CONFESSION — RETRACTED CONFESSIONS, 1 L.B.R. 133.

"Confession"—*See* EVIDENCE ACT, 1872, ss. 25, 26, 114, ill. (*b*), 133, 157, 1912 M.W.N. 549=12 M.L.T. 1=13 Cr. L.J. 352=14 Ind. Cas. 896=35 M. 397.

"Consequence"—*See* CRIM. PRO. CODE, 1898, s. 179, 10 A.L.J. 45=15 Ind. Cas. 319=13 Cr. L.J. 479=34 A. 487, 5 L.B.R. 57=2 Ind. Cas. 546.

"Consequence of his conduct"—*See* PENAL CODE, s. 83, 22 W.R. Cr. 27.

"Consequential or incidental order"—*See* CRIM. PRO. CODE, 1898, ss. 250, 423, (1) (*d*), 14 C.L.J. 437, F.B =16 C.W.N. 10=12 Cr.L.J. 559.

"Constitute an offence"—*See* PENAL CODE, s. 71, paragraph 3, 10 A. 58=A.W.N. 1887, 274.

"Continuing breach"—*See* U. P. ACT XV OF 1883, s. 55, A.W.N. 1895, 226.

"Contraband Salt"—*See* MAD. ACT IV OF 1889, ss. 3 and 74 (*b*), 1 Weir 896.

"Control"—*See* ACT XI OF 1878, s. 19 (*f*), 4 N.L.R. 146.

"Conversion"—*See* CRIM. PRO. CODE, 1898, s. 517, 12 Cr. L.J. 473.

"Cooly Sirdar or recruiter" not an artificer, workman or labourer—*See* ACT XIII OF 1859, s. 2, 6 C.L.J 180=6 Cr. L.J. 191.

"Corpus delicti"—*See* CORPUS DELICTI, 1 Weir 427=7 M.H.C. App. 19.

Words and Phrases—*continued.*

"Correct"—*See* PENAL CODE, ss. 265, 266, U.B.R. 1908, 3rd Qr., Penal Code, 17=9 Cr. L.J. 415.

"Corrupts or fouls"—*See* PENAL CODE, s. 277, 13 C.P.L.R. 92.

"Country liquor"—*See* ACT XXII OF 1881, ss. 3, 21, 41, 24 P.R. 1885, Cr.

"*Court*" *in s.* 30, *Evidence Act, meaning of.*—The word "*Court*" in s. 30 means not only the Judge in a trial by a Judge with a jury, but includes both Judge and jury. *In re* ASHOOTOSH CHUCKERBUTTY, **1 J.G. 79.** *But see. In re* RAM MULLA, **1 J.G. 77.**

"Court"—*See* ACT III OF 1877, s. 34, 11 M. 3.

"Court"—*See* ACT III OF 1877, s. 41, 10 M. 154=2 Weir 170=11 Ind. Jur. 140.

"Court"—*See* ACT III OF 1877, ss. 72, 73, 74, 75, 15 M. 138=2 M.L.J. 64, F.B.

"Court"—*See* ACT III OF 1877, s. 84, 22 W.R. Cr. 10=13 B.L.R. App. 40.

"Court"—*See* ACT I OF 1894, s. 53, 27 C. 820.

"Court"—*See* BEN. ACT VIII OF 1885, ss. 69, 70, 17 C. 872.

"Court"—*See* COURT, 4 C. 483=3 C.L.R. 270, F.B., 1 Agra 17, 12 B. 36.

"Court"—*See* CRIM. PRO. CODE, 1898, s. 195, 11 M.L.T. 391=14 Ind. Cas. 593=13 Cr. L.J. 241=1912 M.W.N. 536, 2 M.L.J. 286.

"Court"—*See* CRIM. PRO. CODE, 1898, s. 195, cls. (*b*) (*c*), 16 Bom. L.R. 449=2 Bom. Cr. C. 199=38 B. 642=15 Cr. L.J. 581=25 Ind. Cas. 333, F.B.

"Court"—*See* CRIM. PRO. CODE, 1898, ss. 195. 476, 11 C.W.N. 568=34 C. 551, F.B. =5 C.L J. 508=5 Cr. L.J. 398=2 M.L.T. 298.

"Court"—*See* CRIM. PRO. CODE, 1898, ss. 250, 476, 12 Cr.L.J. 521=12 Ind. Cas. 289 =4 Bur. L.T. 246.

"Court"—*See* CRIM PRO. CODE, 1898, s. 476, 9 A.L.J. 156=13 Cr. L.J. 190=13 Ind. Cas. 1006, 12 A.L.J. 1003, 16 Bom. L.R. 946 =2 Bom. Cr. C. 264.

"Court"—*See* CRIM. PRO. CODE, 1898, s, 487, Colm. Dig. Cr. 27 of 1875.

"Court"—*See* EVIDENCE ACT, 1872, s. 3, 13 B.L.R. App. 40=22 W.R.Cr. 10.

"Court"—*See* REVISION—GENERAL PRINCIPLES, 3 S.L.R. 66.

"Court"—*See* SANCTION TO PROSECUTE, AUTHORITIES COMPETENT TO GRANT SANCTION, ETC.,5 C.L.J. 176=5 Cr. L.J. 186, 11 M. 375 =2 Weir 163.

"Court"—*See* SANCTION TO PROSECUTE —CONDITIONS REQUISITE FOR GRANT OF SANCTION, ETC., 22 B. 936, 4 M.L.J. 189, 11 O.C. 358=9 Cr.L.J. 54.

"Court before which such objections raised" —*See* EVIDENCE ACT, 1872, s. 167, 2 B. 61.

Words and Phrases—*continued.*

"Court before whom he is convicted"—*See* CRIM. PRO. CODE, 1898, s. 562, 29 M. 567=5 Cr. L.J. 136.

"Court may take into consideration"—*See* EVIDENCE ACT, 1872, s. 30, 4 O.C. 69.

"Court of appeal"—*See* CRIM. PRO. CODE, 1898, ss. 517, 520, 1 C.L.R. 339=3 C. 379.

"Court of competent jurisdiction"—*See* CRIM. PRO. CODE, 1898, s. 537, 10 B. 319.

"Court subordinate to the Magistrate"—*See* REFERENCE TO HIGH COURT, Rat. Un. Cr. C. 133.

"Court to which appeal ordinarily lies"—*See* CRIM. PRO. CODE, 1898, ss. 195 and 407, 26 M. 656=2 Weir 202, F.B.

"Court which passed the sentence"—*See* ACT VI OF 1864, 33 P.R. 1901, Cr.

"Court which passed the sentence"—*See* CRIM. PRO. CODE, 1898, s. 395, 20 P.L.R. 1902.

"Cow"—*See* PENAL CODE, s. 429, 22 C. 457.

"Credible information"—*See* ACT III OF 1867, ss. 4, 5, 6, A.W.N. 1905, 257=28 A. 210.

"Credible information"—*See* CRIM. PRO. CODE, 1898, s. 112, 2 M.H C. 240.

"Credible information"—*See* SECURITY TO KEEP THE PEACE—ON CREDIBLE INFORMATION, 7 W.R. Cr. 30.

"Criminal case"—*See* CRIM. PRO. CODE, 1898, ss. 107, 526 (8), 18 C.W.N. 274=15 Cr. L.J. 171=22 Ind. Cas. 747=41 C. 719.

"Criminal case"—*See* CRIM. PRO. CODE, 1898, ss. 145, 526, 25 B. 179=2 Bom. L.R. 755, 26 M. 188=12 M.L.J. 391, 10 A.L.J. 27 =13 Cr. L.J. 452=15 Ind. Cas. 84=34 A. 533.

"Criminal case"—*See* CRIM. PRO. CODE, 1898, ss. 145, 526, 435, 439, 28 C. 709=5 C.W. N. 749.

"Criminal case".—*See* CRIM. PRO. CODE, 1898, s. 526. 28 C. 709=5 C.W.N. 749, 3 O.C. 247.

"Criminal case"—*See* DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 12 M.L.J. 391=2 Weir 678=26 M. 188, 11 O.C. 61=7 Cr. L.J. 423.

"Criminal case"—*See* TRANSFER OF CRIMINAL CASES—TRANSFER BY HIGH COURT, 26 M. 188=12 M.L.J. 391.

"Criminal force"—*See* CRIM. PRO. CODE, 1898, s. 522, 5 C.W.N. 250, 18 C.W.N. 1150= 15 Cr. L.J. 720=26 Ind. Cas. 168.

"Criminal prosecution"—*See* BOM. ACT III OF 1852, Rat. Un. Cr. C. 59=Cr. Rg. 14-12-1871.

"Criminal trespass"—*See* PENAL CODE, ss. 297, 441. 17 C.W.N. 531=18 Ind. Cas. 677 =14 Cr. L.J. 117=40 C. 548.

"Criminal trial"—*See* DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY. 17 M L.J. 158=5 Cr. L.J. 343, F B.

"Crops or other produce of land"—*See* CRIM. PRO. CODE, 1898, s. 145 (2), A.W.N. 1905, 278 =28 A. 266=3 A.L.J. 13.

Words and Phrases—*continued.*

"Crops and other produce of land"—*See* CRIM. PRO CODE, 1898, ss. 145, 146, 30 C. 110=6 C.W.N. 881.

"Cruelty"—*See* MAINTENANCE, 11 A. 480.

"Dacoity"—*See* DACOITY, 3 W.R. Cr. 60.

"Dahmyaung"—*See* ACT XI OF 1878, s. 19 (*e*), L.B.R. 1893—1900, 320.

"Daing"—*See* BUR. ACT I OF 1899, ss. 10, 11 and 12, 4 L.B.R. 47=6 Cr. L.J. 285.

'Dandidar'—*See* U.P. ACT I OF 1900, s. 128, cls. (*h*) (*i*), 13 Cr. L.J. 797.

"Danger"—*See* ACT IX OF 1890, s 101, 13 P.R. 1906, Cr. =5 Cr. L.J. 81=59 P.L.R. 1907.

"Dealers of every description"—*See* MAD. ACT III OF 1904, s. 176, 23 M.L.J. 591=18 Ind. Cas. 271=14 Cr. L.J. 47.

"Debt or liability"—*See* MAINTENANCE, 5 C. 536=5 C.L.R. 458.

"Deceitful means"—*See* PENAL CODE, s. 362, 4 A.L J. 482=A.W.N. 1907, 199=6 Cr. L.J. 9

"Decision"—*See* CRIM. PRO. CODE, 1898, ss. 145. 148, 9 Ind. Cas. 289=9 M.L.T. 324= 12 Cr. L.J. 49.

"Defacing"—*See* CANTONMENT CODE, 1899, s. 66 (*a*), (xi), 2 Bom. L.R. 540.

"Defects"—*See* CANTONMENT CODE, 1899, ss. 83, 85, 283, 7 O.C. 51.

"Defile"—*See* PENAL CODE, s. 295, 1 Weir 253.

"Defraud"—*See* PENAL CODE, s. 23, 25 C. 512=1 C.W.N. 255, F.B.

"Defraud"—*See* PENAL CODE, s. 415, 32 C. 775=9 C.W.N. 807=2 Cr. L.J. 368=1 C.L.J. 469.

"Defraud"—*See* PENAL CODE, s. 475, Rat. Un. Cr. C. 627.

"Denatured spirit"—*See* BEN. ACT V OF 909, ss. 2, cls. (6) (7), and (14), 46. 48, 19 C.L. J. 53=18 C.W.N. 486=22 Ind. Cas. 425=15 Cr. L.J. 73=41 C. 694.

"Design"—*See* TRADE-MARK, 8 S.L.R. 39 =15 Cr L.J. 670=25 Ind. Cas. 998.

"Detained in prison"—*See* SECURITY FOR GOOD BEHAVIOUR, 30 A. 334=A.W.N 1908, 133=5 A.L.J. 318=7 Cr. L.J. 427=4 M.L.T. 41, F.B.

"Detains"—*See* PENAL CODE, s. 498, 1 Weir 571=4 M.H.C. 20.

"Directory"—*See* SECURITY TO KEEP THE PEACE—LIKELIHOOD OF BREACH OF THE PEACE, 1 S.L.R. 60, Cr. =8 Cr. L.J. 170.

"Disaffection"—*See* PENAL CODE, s. 124-A, 20 A. 55, F.B. =A W.N. 1898, 1, 22 B. 152, F.B., 19 C. 35.

"Disapprobation"—*See* PENAL CODE, s. 124-A, 20 A. 55, F.B. =A W.N. 1898, 1, 19 C. 35.

"Discharge"—*See* CRIM. PRO. CODE, 1898, ss. 119, 209, 253, 259, 437, 6 M.L.T. 133=33 M. 85=20 M.L.J. 137=4 Ind. Cas. 1057=11 Cr. L.J. 162.

Words and Phrases—*continued.*

"Discharge"—*See* FURTHER ENQUIRY, 2 L.B.R. 80.

"Discharge"—*See* SECURITY FOR GOOD BEHAVIOUR, 6 O.C. 262, 27 C. 662.

"Discharged"—*See* CRIM. PRO. CODE, 1898, ss. 110, 437, 6 C.W.N. 163.

"Discharged"—*See* CRIM. PRO CODE, 1898, ss. 437, 200, 119, 13 Bom. L.R. 505=11 Ind. Cas. 614=12 Cr. L.J. 430.

"Dishonestly" — See CRIMINAL BREACH OF TRUST, 1 Weir 460=3 M.H.C. App. 6.

"Dishonestly"—See PENAL CODE, s. 415, 32 C. 775=9 C.W.N. 807=2 Cr. L.J. 368=1 C.L.J. 469.

"Dishonestly"— *See* THEFT — THINGS WHICH MAY BE THE SUBJECT OF THEFT, A.W.N. 1888, 97.

"Dishonest misappropriation"—*See* CRIM. PRO. CODE, 1898, s. 562, 12 A.L.J. 465=15 Cr. L.J. 375=23 Ind. Cas. 743.

"Disposal"—*See* CRIM. PRO. CODE, 1898, ss. 523, 517, 203, 24 M.L.J. 1=18 Ind. Cas. 171=14 Cr.L.J. 27=1913 M.W.N. 851=14 M. L.T. 431.

"Disposal"—*See* PENAL CODE, s. 372, 15 M. 75=1 Weir 372.

"Disposal"— *See* RESTORATION OF PROPERTY, 5 N.L.R. 59=9 Cr. L.J. 539=2 Ind. Cas. 233.

"Dispose of"—*See* ACT XXII OF 1881, U. B.R. 1897—1901, Vol. I, 178.

"Dispose of"—*See* PENAL CODE, s. 372, 1 Weir 359.

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"Dispute"—*See* DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 6 C. 835 =8 C.L.R. 217.

"Dispute concerning the use of any land" —*See* CRIM. PRO. CODE, 1898, s. 147, 29 M. 97=15 M.L.J. 394=3 Cr. L.J. 31.

"District Magistrate"—*See* ACT IX OF 1894, s. 52, 32 M. 303.

"Disturbance"—*See* PENAL CODE, s. 296, 1 Weir 259.

"Divisional Officer"—*See* CRIM. PRO. CODE, 1898, s. 476, 2 Weir 598.

"Documentary"—*See* SANCTION TO PROSECUTE — CONDITIONS REQUISITE FOR GRANT OF SANCTION, ETC., 8 O. C. 313.

"Domestic"—*See* BOM. ACT III OF 1888, s. 394, Rat. Un. Cr. C. 793=Cr. Rg. 51 of 1895.

"Drives"—*See* BUR. ACT III OF 1898, s. 162-B, 12 Cr. L.J. 573=12 Ind. Cas. 837= 4 Bur. L T. 134.

"Duly stamped"—*See* ACT I OF 1879, ss. 3 (10), 61, 18 C. 39.

"Earth"—*See* PENAL CODE, ss. 22 and 379, 27 M. 531=1 Weir 417=14 M.L.J. 155, F.B.

"Earth-salt"—*See* MAD. ACT I OF 1882, ss. 2 and 26, 7 M. 163.

"Easement"—*See* EASEMENT, 23 C. 55.

"Employs" —*See* U. P. ACT II OF 1911, s. 13 (b), 17 O.C. 311=15 Cr. L.J. 677=25 Ind. Cas. 1005.

"Enclosure"—*See* BOM. ACT VI OF 1873, s. 3, Rat. Un. Cr. C. 428=Cr. Rg. 92 of 1888.

"Enforcing a right"—*See* PENAL CODE, ss. 141, 143, 17 C.W.N. 1132=14 Cr. L.J. 463 =20 Ind. Cas. 623.

"Enquiry"—*See* CRIM. PRO. CODE, 1898, ss. 4 (k), 145, 13 C.W.N. 420=9 Cr. L.J. 278= 1 Ind Cas. 336.

"Enquiry"—*See* CRIM. PRO. CODE, 1898, ss. 337, 339 (2) and 3, 157, 164, 5 S.L R. 174 =13 Ind. Cas. 273=13 Cr. L.J. 33.

"Enquiry"—*See* CRIM. PRO. CODE, 1898, ss. 350, 437, 254, 253 (2), 16 M.L T. 303=23 M.L.J. 589=1914 M.W.N. 646=15 Cr. L.J. 673=25 Ind. Cas. 1001.

"Enquiry"—*See* DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 2 W.R. Cr. 44.

"Enquiry"—*See* PARDON, 3 P.R. 1897, Cr.

"Enters"—*See* PENAL CODE, ss. 447, 454, A.W.N. 1900, 151.

"Erect"—*See* BOM. ACT III OF 1888, ss. 337 (2), 342, 9 Bom. L.R. 932=6 Cr. L.J. 236.

"Erect"—*See* U.P. ACT I OF 1900, s. 3 (9), 9 A.L.J. 694=14 Ind. Cas. 602=13 Cr. L.J. 250.

"Erection"—*See* BOM. ACT III OF 1888, ss. 337 (2), 342, 9 Bom. L.R. 932=6 Cr. L.J. 236.

"Escape from confinement"—*See* PENAL CODE, s. 223, 32 P.R. 1890, Cr.

"European" — *See* CRIM. PRO. CODE, 1898, s. 450, 16 A. 88=A.W.N. 1894, 23.

"European soldier"—*See* ACT III OF 1880, s. 14, S.C. 104, Oudh.

"Evidence"—*See* ACT III OF 1867, s. 6, A. W.N. 1884, 286.

"Evidence"—*See* CRIM. PRO. CODE, 1898, s. 342, 14 A. 242=A.W.N. 1892, 83.

"Evidence"—*See* EVIDENCE—GENERAL, 4 M. 393=1 Weir 76.

"Evidence"—*See* PENAL CODE, s. 174, 1 Weir 95.

"Evidence of general repute"—*See* HABITUAL OFFENDER, 5 O.C. 203.

"Exchange"—*See* CRIM. PRO. CODE, 1898, s. 517, 12 Cr. L.J. 473.

"Excise officer"—*See* ACT XII OF 1896, ss. 44, 57, 36, 37, 38, 2 P.R. 1914, Cr.=138 P. L.R. 1914=15 Cr. L.J. 336=23 Ind. Cas. 688.

"Execution"—*See* EXECUTION, U.B.R. 1892-1896, Vol. I, 303.

"*Execution proceedings*"— Execution proceedings are judicial proceedings. PONNUSAMI PILLAI v. CHOKALINGAM PILLAI. **25 M.L.J. 593=14 M.L.T. 12=1913 M.W.N. 1002=21 Ind. Cas. 672=14 Cr. L.J. 624.**

Words and Phrases—*continued.*

"Executive authority"—*See* BUR. ACT XVII OF 1884, s. 75, L.B.R. 1893—1900, 371.

"Export"—*See* ACT I OF 1878, s. 9 (*e*), 2 P. R. 1911, Cr. = 6 P.W.R. 1911, Cr. = 9 Ind. Cas. 682 = 12 Cr. L.J. 116 = 108 P.L.R. 1911.

"Factory"—*See* ACT XV OF 1881, s. 2, 1 N.L.R. 115.

"False charge"—*See* FALSE CHARGE, 5 M. L.T. 269, F.B. = 9 Cr. L.J. 170 = 32 M. 258.

"False document"—*See* PENAL CODE, s. 471, 7 M.L T. 428 = 20 M.L J. 534 = 6 Ind. Cas. 776 = 11 Cr. L.J. 401.

"Falsely charges"—*See* FALSE CHARGE, 26 M. 640 = 1 Weir 190.

"False statement"—*See* PENAL CODE, ss. 193, 210, 511, 10 B. 288.

"Fermented liquor"—*See* ACT XII OF 1896, s. 51, 1 L.B.R. 172.

"Ferry"—*See* BEN. ACT III OF 1884, ss. 155, 156, 27 C. 317 = 4 C.W.N. 348.

"Filth"—*See* BOM. ACT VIII OF 1867, s. 16 (5), Rat. Un. Cr. C. 379 = Cr. Rg. 30 of 1888.

"Finder"—*See* ACT VI OF 1878, ss. 4, 20, 27 M.L.J. 477 = 15 Cr.L.J. 632 = 25 Ind. Cas. 640.

"Fine"—*See* BOM. ACT VI OF 1873, s. 84, 18 B. 400.

"First conviction"—*See* U.P. ACT I OF 1900, ss. 132, 147, 11 O.C. 122 = 7 Cr. L.J. 454.

"Fishery"—*See* BUR. ACT VII OF 1875, s. 2, L.B.R. 1893—1900, 202.

"Fit"—*See* SECURITY FOR GOOD BEHAVIOUR, 8 C.L.J. 243 = 13 C.W.N. 80 = 4 Ind. Cas. 560.

"Fit"—*See* SURETY, 8 C.L.J. 243 = 13 C. W N. 80 = 8 Cr. L.J. 388 = 4 Ind. Cas. 560.

"Food"—*See* MAD. ACT III OF 1904, s.409, cl. (19), 16 M.L.T. 585 = 26 Ind. Cas. 311.

"For any other reasonable cause"—*See* ACT XX OF 1865, s. 15, 16 W.R. Cr. 15 = 7 B.L.R. 179.

"Foreign liquor"—*See* ACT XXII OF 1881, ss. 3, 21, 41, 24 P.R. 1885, Cr.

"Forest"—*See* BUR. REG. V OF 1898, rules 75 (1), 76, U.B.R. 1897—1901, Vol. I, 196.

"Forfeit"—*See* ACT VI OF 1882, s. 35, 20 C. 676.

"Fraud"—*See* FRAUD, 13 B. 515, Note.

"Fraud"—*See* PENAL CODE, ss. 463, 467, 15 Bom. L R. 708 = 2 Bom. Cr C. 115 = 14 Cr. L.J. 518 = 20 Ind. Cas. 998 = 37 B. 666.

"Fraud"—*See* PENAL CODE, s. 477-A, 1 Weir 554.

"Fraudulently"—*See* CHEATING—FALSE PERSONATION, 4 L.B.R. 315, F.B = 9 Cr. L J. 15.

"Fraudulently"—*See* FALSE ENTRY, 12 C. W.N. 581 = 7 Cr. L.J. 378 = 35 C. 450.

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"Fraudulently"—*See* FORGERY, 15 A. 210, 19 C. 380, 22 C. 313, A.W.N. 1906, 48 = 3 A.L. J. 149 = 3 Cr. L.J. 249 = 28 A. 358, L B.R. 1893—1900, 437.

"Fraudulently"—*See* PENAL CODE, ss. 24, 471, 5 C.W.N. 897.

"Fraudulently"—*See* PENAL CODE, s. 415, 32 C. 775 = 9 C.W.N. 807 = 2 Cr. L.J. 368 = 1 C.L J. 469.

"Fresh enquiry"—*See* FURTHER ENQUIRY, 15 C. 608, F.B.

"Frivolous"—*See* COMPENSATION—GENERAL, 9 Cr. L.J. 255 = 1 S.L.R. 12 Cr.

"Frivolous"—*See* CRIM. PRO. CODE, 1898, s. 250, 28 C. 251.

"Full owner"—*See* CRIM.PRO. CODE, 1898, ss. 87, 88, 19 P.W.R. 1908, Cr. = 15 P.R. 1908, Cr. = 8 Cr. L.J. 89.

"Full power magistrate"—*See* MAGISTRATE, JURISDICTION OF—TRANSFER OF CASE—REFERENCE TO OTHER MAGISTRATES, ETC., Rat. Un. Cr. C. 18 = Cr. Rg. 27-7-1869.

"Further application"—*See* CRIM. PRO. CODE, 1898, ss. 435 (4), 436, 437, 438, 10 P.R. 1912, Cr. = 18 Ind. Cas. 886 = 14 Cr. L.J. 134 = 117 P.L.R. 1913.

"Further enquiry"—*See* CRIM. PRO. CODE, 1898, ss. 110, 118, 437, 20 P.L.R. 1904.

"Further enquiry"—*See* CRIM. PRO. CODE, 1898, s. 437, 14 C.P.L.R. Cr. 161, 2 C. P.L.R. 82, 8 A.L.J. 45 = 9 Ind. Cas. 274 = 12 Cr. L.J. 45, 9 A.L.J. 310 = 13 Cr. L.J. 255, 14 Ind. Cas. 607.

"Further enquiry"—*See* FALSE EVIDENCE, 1 L.B.R. 101.

"Further enquiry"—*See* FURTHER ENQUIRY, 12 C. 522, 14 M. 334 = 1 M.L.J. 343 = 2 Weir 557, F.B., 15 C. 608, F.B., 8 M. 336, 14 C.P.L.R. 161.

"Further enquiry"—*See* SUMMARY TRIAL, 1 L.B.R. 9.

"Gambling"—*See* GAMBLING, 13 B. 681.

"Game"—*See* BUR. ACT I OF 1899, s. 3, U. B.R, 1892-1896, Vol. I, 112.

"Game"—*See* BUR. ACT I OF 1899, ss. 4, 10, 11, 12, U. B. R. 1897—1901, Vol. 1, 209.

"Gaming"—*See* BOM. ACT IV OF 1887, 4 Bom. L.R. 297.

"Gaming"—*See* WAGER, 17 B. 184.

"Gambling house"—*See* BOM. ACT III OF 1866, s. 14, 7 B. H. C. Cr. 74.

"General reputation"—*See* SECURITY FOR GOOD BEHAVIOUR, 1 L.B.R. 90.

"Give a satisfactory account of himself"—*See* CRIM. PRO. CODE, 1898, s. 109, 8 A.L.J. 1097.

"Giving or fabricating false evidence"—*See* PENAL CODE, s. 191, 9 C.P.L.R. Cr. 5.

"Going armed"—*See* ACT XI OF 1878, ss. 4, 13, L.B.R. 1893-1900, 284.

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"Going armed"—*See* ACT XI OF 1878, ss. 4 and 19 (*e*), 1 L.B.R. 271.

"Going armed" — *See* ACT XI OF 1878, ss. 13, 19, cl. (*e*), 1 Weir 663.

"Going armed"—*See* ACT XI OF 1878, s. 19, 24 A. 454=A.W.N. 1902, 123.

"Goods"—*See* ACT IV OF 1889, s. 2 (4), 26 C. 232=3 C.W.N. 97.

"Government stores and equipages"—*See* MAD. ACT V OF 1884, s. 87, 20 M. 16=1 Weir 793.

"Guilty but not voluntarily"—*See* GRIEVOUS HURT, 12 C.W.N. 530=7 Cr. L.J. 362.

"Habitually"—*See* BEN. ACT III OF 1884, ss. 142, 146, 23 C. 52.

"Habitually committing dacoity"— *See* DACOITY, 5 M.L.T. 100=32 M. 179=9 Cr. L.J. 567=2 Ind. Cas. 307.

"Habitual offender"—*See* CRIM.PRO. CODE, 1898, s. 348, Rat. Un. Cr. C. 143.

"Habitual offender"—*See* HABITUAL OFFENDER, L.B R. 1872—1892, 291.

"Habitual thief"—*See* HABITUAL OFFENDER, L.B.R. 1872-1892, 291.

"Harbouring offender"—*See* PENAL CODE, s. 216, 14 Bom. L.R. 583=16 Ind. Cas. 509=13 Cr. L.J. 701=1 Bom. Cr. C. 151.

"He"—*See* PENAL CODE, ss. 482, 486, 15 Cr. L.J. 337=23 Ind. Cas. 689=7 Bur. L.T. 116.

"High Court"—*See* SANCTION TO PROSECUTE—EXPIRY OF SANCTION AND LIMITATION, 32 C. 379=9 C.W.N 321=2 Cr.L J. 106.

"Hires"—*See* PENAL CODE, s. 373, 1 Weir 377=5 M.H.C. 473.

"Holder of license"—*See* MAD. ACT I OF 1886, s. 56 (*b*), 1 Weir 647.

"Horse" — *See* MAD. ACT III OF 1871, sch. (*c*), 5 M. 269.

"Hotel"—*See* BOM. ACT XLVIII OF 1860, s. 11, cl. (2), 15 B. 530.

"House"—*See* HOUSE-TRESPASS, Rat. Un. Cr. C. 484.

"Hunting"—*See* ACT VII OF 1878, s. 25, cl. (*i*), 12 Bom L.R. 520=7 Ind. Cas. 450=11 Cr.L.J. 486.

"Illegal"—*See* ILLEGALITY, 24 C. 494=1 C.W.N. 274.

"Illegal obstruction"—*See* PENAL CODE' ss. 224, 225, 1 Weir 211.

"Illict intercourse" — *See* PENAL CODE, s. 366, 4 A.L J. 482=A.W.N. 1907, 199=6 Cr. L.J. 9, L.B.R. 1872-1892, 202.

"Ill-treatment" if includes starvation—*See* ACT XI OF 1890, s. 3, cls. (*a*) (*c*), 2 C.L J. 624 =3 Cr. L.J. 116.

"Immediately subordinate" — *See* DISTRICT MAGISTRATE, 7 W.R. Cr. Cir. 1.

"Implement"—*See* MAD. ACT III OF 1864 ss. 21, 23-A, 55 (*g*), 1 Weir 640.

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"Import" — *See* BOM. ACT V OF 1878, ss. 3 (10), 9 and 43, 11 Bom. L.R 221=33 B. 380=1 Ind. Cas. 343=9 Cr.L.J. 291.

"Import"—*See* EVIDENCE—ADMISSIBILITY OF EVIDENCE, 18 C.L.J. 567.

"Imprisonment"—*See* ACT VIII OF 1897, s. 16, 1 L.B.R. 42.

"Imprisonment"— *See* CRIM. PRO. CODE, 1898, ss. 123, 397, 7 S.L.R. 203=15 Cr.L.J. 592=25 Ind. Cas. 344.

"Imprisonment"— *See* CRIM. PRO CODE, 1898, s. 395, A.W.N. 1889, 93.

"Imprisonment"—*See* BOM. REG. XIV OF 1827, ss. 7, 19, Rat. Un. Cr. C. 41=Cr. Rg. 29-9-1870.

"Imprisonment as well as fine"—*See* PENAL CODE, s. 65, L.B.R. 1893—1900, 494.

"In any case"—*See* EVIDENCE ACT, 1872, s. 167, 19 B. 749.

"Incapable of giving evidence"—*See* EVIDENCE ACT, 1872, s. 33, 6 C. 774=8 C.L.R. 124, 4 C.L.R. 504.

"Incitement"—*See* ACT VII OF 1908, 9 C. L J. 143=13 C.W.N. 672=36 C. 405=9 Cr.L. J. 545=2 Ind. Cas. 285.

"Include"—*See* ACT I OF 1868, s. 1, cl. 13, 2 M. 5=2 Weir 123.

"Includes"—*See* ACT XI OF 1878, s. 4 (3), 1 Weir 654.

"Includes"—*See* STATUTES, CONSTRUCTION OF, A.W.N. 1901, 10.

"Including" — *See* BOM. ACT III OF 1901, ss. 96, 3 (7), 13 Bom. L. R. 494=11 Ind. Cas. 610=12 Cr.L.J. 426=35 B. 412.

"Income"—*See* MAD. ACT IV OF 1884, ss. 53, 262, 27 M. 547=14 M.L.J. 410.

"Inconvenience"—*See* CRIM. PRO. CODE, 1898, ss. 503, 505, 5 A. 92.

"Indignity"—*See* PENAL CODE, s. 297, 1 Weir 287.

"In direct and immediate management and charge"—*See* BOM. ACT II OF 1891, s. 29 (1) (*b*). 4 N.L.R. 95=8 Cr.L.J. 31.

"Inferior"—*See* CRIM. PRO. CODE, 1898, ss. 435, 437, 8 M. 18=2 Weir 540.

"Inferior Criminal Court"—*See* CRIM. PRO. CODE, 1898, s. 435, 10 C. 268

"Inflammable material"—*See* MAD. ACT IV OF 1884, s. 179, 1 Weir 733.

"Information"—*See* BUR. ACT I OF 1899, ss. 6, 14, 2 L B.R. 212.

"Information"—*See* COMPLAINT— WHAT IS, AND WHO SHOULD INSTITUTE, 24 P.R. 1888, Cr.

"Information"—*See* CRIM.PRO. CODE, 1898, s. 161, Rat. Un. Cr. C. 124.

"Information"—*See* CRIM.PRO.CODE, 1898, s. 190, 87 P.L.R. 1910=8 Ind. Cas. 247=11 Cr. L.J. 602.

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"Information given to police officer"—*See* CRIM. PRO. CODE, 1898, ss. 45 (c), 250, 435, 439, 15 Cr. L.J. 431 = 24 Ind. Cas. 167 = 27 M. L.J. 37 = 1914 M.W.N. 804.

"Injury"—*See* PENAL CODE, ss. 44, 285, 5 B.H.C. Cr. 67.

"In lieu of any other punishment"—*See* ACT VI OF 1864, s. 5, 5 L.B.R. 22 = 2 Ind Cas. 620.

"Inquiry"—*See* WORDS AND PHRASES "ENQUIRY."

"Insanitary State"—*See* CANTONMENT CODE, 1899, ss. 83, 85, 283, 7 O.C. 51.

"In so committing"—*See* PENAL CODE, s. 396, 17 M.L.J. 118 = 5 Cr. L.J. 201.

"Instituted"—*See* ACT III OF 1877, s. 83, 15 W.R. Cr. 58 = 6 B.L.R. F.B. 692.

"Institution of a criminal proceeding"—*See* PENAL CODE, s. 211, 13 Cr. L.J. 303 = 14 Ind. Cas. 767 = 1912 M.W.N. 1125.

"Institution of criminal proceedings"—*See* FALSE CHARGE, 20 M. 79 = 1 Weir 188 = 7 M. L.J. 16.

"Instruments of gaming"—*See* ACT III OF 1867, ss. 1, 4, 12 W.R. Cr. 34.

"Instruments of gaming"—*See* ACT III OF 1867, s. 6, 18 A. 23.

"Instruments of gaming"—*See* BOM. ACT I OF 1890, s. 3, 17 B. 184.

"Instrument, which, used as a weapon of offence is likely to cause death"—*See* PENAL CODE, s. 324, U.B.R. 1897—1901, Vol. I, 311.

"Intending to take dishonestly"—*See* THEFT—THINGS IN RESPECT OF WHICH THE OFFENCE OF THEFT CANNOT BE COMMITTED, 22 C. 669.

"Intention"—*See* CRIMINAL TRESPASS, 26 B. 558 = 4 Bom. L.R. 280.

"Intentionally"—*See* CHEATING—GENERAL, 36 P. R. 1888, Cr.

"Intention to defraud"—*See* PENAL CODE, s. 475, Rat. Un. Cr. C. 627.

"Interested"—*See* CRIM. PRO. CODE, 1898, s. 556, 8 Bom. L.R. 947 = 5 Cr. L.J. 2.

"In the case"—*See* CRIM. PRO. CODE, 1898, s. 337, 24 M. 321 = 2 Weir 396.

"*In the neighbourhood*" *meaning of—Bom. Act* VII *of* 1867, *s.* 28.—The words "*in the neighbourhood*" in s. 28 of Bom. Act VII of 1867 do not exclude the operation of the Police at or within the places of public worship for the purpose of preserving order and regulating traffic. REG v. BAPUJI GANGARAM, **7 B H. C. Cr. 2.**

"In the service and pay of Government"—*See* PUBLIC SERVANT, 28 C. 314 = 4 C.W.N. 798.

"In the way of school discipline"—*See* CRIM. PRO. CODE, 1898, ss. 391 and 392, 5 C. P.L.R. Cr. 31.

"Intoxicating drug"—*See* BOM. ACT V OF 1878, ss. 3 (9), 62, 27 B. 551 = 5 Bom. L.R. 498.

"In transit"—*See* ACT I OF 1878, ss. 15 and 19, 5 L.B.R. 56, F.B. = 2 Ind. Cas. 546.

"Investigation"—*See* ACT XVIII OF 1879, ss. 14, 40, 15 C.W.N. 269 = 9 Ind. Cas. 225 = 12 Cr. L.J. 33 = 13 C.L.J. 457.

"Investigation"—*See* CRIM. PRO. CODE, 1898, s. 4 (h), 26 B. 533 = 4 Bom. L.R. 271.

"Involve"—*See* CRIM. PRO. CODE, 1898, s. 106, 8 A.L.J. 925 = 12 Cr. L.J. 405 = 11 Ind. Cas. 589.

"Involving a breach of the peace"—*See* SECURITY TO KEEP THE PEACE—APPELLATE COURT, 29 M. 190 = 3 Cr. L.J. 461.

"Iron" includes steel. GANGA NARAIN PAL v. CORPORATION OF CALCUTTA, **10 C.L.J. 486 = 4 Ind. Cas. 438 = 11 Cr. L.J. 277.**

"Jail"—*See* CRIM. PRO. CODE, 1898, ss. 383, 541, 7 L.B.R. 62.

"Joint trial"—*See* CONFESSION—CONFESSION BY CO-ACCUSED—ADMISSIBILITY, 26 P.R. 1901, Cr.

"Judgment"—*See* APPEAL—CASES WHERE APPEAL LIES, 29 C. 286 = 6 C.W.N. 254, F.B.

"Judgment"—*See* CRIM. PRO. CODE, 1898, ss. 253, 366, 31 M. 543 = 5 M.L.T. 184 = 9 Cr. L.J. 80.

"Judgment"—*See* DISCHARGE OF ACCUSED, 31 M. 543 = 5 M.L.T. 184 = 9 Cr. L.J. 80.

"Judicial determination"—*See* JUDICIAL DETERMINATION, 5 C.W.N. 254.

"*Judicial proceedings*"—Execution proceedings are judicial proceedings. PONNUSAMI PILLAI v. CHOKALINGAM PILLAI, **25 M.L.J. 593 = 14 M.L.T. 512 = 1913 M.W.N. 1002 = 14 Cr. L J. 624 = 21 Ind. Cas. 672.**

"Judicial proceedings"—*See* CRIM. PRO. CODE, 1898, ss. 4, 88, 89, 6 A. 487.

"Judicial proceedings"—*See* CRIM. PRO. CODE, 1898, ss. 4 (m), 195, 476, 10 N.L.R. 177.

"Judicial proceedings"—*See* CRIM. PRO. CODE, 1898, ss. 4 (m), 476, 28 A. 89 = A.W.N. 1905, 195 = 2 A L.J. 717 = 2 Cr. L.J. 454.

"Judicial proceedings"—*See* CRIM. PRO. CODE, 1898, ss. 195, 476, 10 A L.J. 174 = 34 A. 602 = 16 Ind. Cas. 525 = 13 Cr. L.J. 717, 32 C. 367 = 9 C.W.N. 364 = 1 C.L.J. 161 = 2 Cr. L.J. 110.

"Judicial proceedings"—*See* CRIM. PRO. CODE, 1898, ss. 435, 476, 15 M.L.J. 489 = 3 Cr. L J. 118 = 2 Weir 601.

"Judicial proceedings"—*See* CRIM. PRO. CODE, 1898, s. 476, 9 C.W. N. 1030 = 2 Cr. L.J. 851.

"Judicial proceedings"—*See* FALSE EVIDENCE, 2 M.H.C. 43, P.L.R. 1900, p. 63, Cr.

"Judicial proceedings"—*See* JUDICIAL PROCEEDINGS, Rat. Un. Cr. C. 59, F.B.

"Judicial proceedings"—*See* MAINTENANCE, L.B.R. 1893—1900, 662.

"Judicial proceedings"—*See* PERJURY, 26 M. 89 = 3 Cr. L.J. 370.

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"Judicial proceedings"—*See* REVISION—GENERAL PRINCIPLES, A.W.N. 1882, 229.

"Judicial proceedings"—*See* SANCTION TO PROSECUTE—CONDITIONS REQUISITE FOR GRANT OF SANCTION, ETC., 13 O C. 198.

"Jungle-path"—*See* PENAL CODE, s. 431, L.B.R. 1893—1900, 629.

"Jurisdiction"—*See* ACT XVIII OF 1850, 12 A. 115=A.W.N. 1890, 32, 10 M.L.J. 232.

"Juvenile offender"—*See* ACT VI OF 1864, s. 5, L B.R. 1872—1892, 355.

"Juvenile offender"—*See* ACT VI OF 1864, ss. 5, 10, 6 A. 482=A.W.N. 1884, 213.

"Juvenile offender"—*See* JUVENILE OFFENDER, L.B.R. 1893—1900, 79.

"Keep"—*See* PENAL CODE, ss. 11, 34, 294, A. 15 Cr. L J. 243=23 Ind. Cas. 195=7 Bur. L.T. 187.

"Keeping"—*See* KIDNAPPING, 6 Bom. L.R. 785.

"Knew"—*See* PENAL CODE, s. 149, 6 S.L.R. 101=17 Ind. Cas. 408=13 Cr.L.J. 776.

"Knowing the nature of the Act"—*See* PENAL CODE, s. 84, 15 O.C. 321=18 Ind. Cas. 641=14 Cr. L.J. 81.

"Kulabrashta"—*See* PENAL CODE, ss. 95, 500, 1911, 2 M.W.N. 8=10 M.L.T. 96=12 Cr. L.J. 497=12 Ind. Cas. 217.

"Labourer"—*See* ACT XIII OF 1859, Rat. Un. Cr. C. 204=Cr. Rg. 24-7-1884, 7 L.B.R. 82=15 Cr. L.J. 235=23 Ind. Cas. 187.

"Labourer"—*See* ACT XIII OF 1859, s. 2, 4 B.L.R. App. 1=13 W.R.Cr. 1, 2 B.L.R. A Cr. 32, 6 C.L.J. 180=6 Cr.L.J. 191, 28 P.R. 1904, Cr., Rat Un. Cr. C. 537=Cr. Rg. 9 of 1861.

"Labouring classes"—*See* MAD. ACT I OF 1858, 6 M. 199=1 Weir 784.

"Land"—*See* CRIM. PRO. CODE, 1898, s. 145, 2 Weir 108.

"Land"—*See* DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 14 C.W.N. 611 =6 Ind. Cas. 182=11 Cr. L J. 292=12 C.L J. 22=37 C. 578.

"Land"—*See* PENAL CODE, ss. 22, 379, 27 M. 531=1 Weir 417=14 M.L.J. 155, F.B.

"Land at the disposal of Government"—*See* MAD. ACT V OF 1882, ss. 2 and 50 (*d*), 14 M. 247=1 Weir 776.

"Lands used solely for agricultural purposes"—*See* MAD. ACT IV OF 1884, s. 63, cl. 3, 25 M. 627=1 Weir 727=12 M.L.J. 393.

"Lawful discharge of his duty"—*See* PENAL CODE, ss. 99, 147, 323, 332, 18 A. 246.

"Lawful guardian"—*See* PENAL CODE, s. 361, 8 C. 971.

"Lawfully detained in custody"—*See* ESCAPE FROM LAWFUL CUSTODY, 1 Weir 199.

"Lawful order"—*See* ACT V OF 1861, s. 29, 12 C. 427.

"Laying down the law"—*See* CHARGE TO JURY—MISDIRECTION, 5 L.B.R. 149=5 Ind. Cas. 981=11 Cr. L.J. 340.

Words and Phrases—*continued.*

"Legally bound"—*See* PENAL CODE, ss. 43, 177, 14 M. 484=1 M L.J. 741=1 Weir 109.

"Legally bound"—*See* PENAL CODE, s. 177, 4 M. 144=1 Weir 108.

"Legally competent to investigate"—*See* EVIDENCE ACT, 1872 ss 25, 26, 114, ill (*b*), 133, 157, 1912 M.W.N. 549=12 M L.T. 1=13 Cr. L.J. 352=14 Ind. Cas. 896=35 M. 397.

"Letting value"—*See* BOM. ACT VI OF 1873, s. 84, 23 B. 446.

"Likely"—*See* SECURITY TO KEEP THE PEACE—LIKELIHOOD OF BREACH OF THE PEACE, 1 S.L R. 50, Cr.=8 Cr. L.J. 170.

"Livery stable"—*See* MAD. ACT IV OF 1884, ss. 188, 189, 1 Weir 737.

"Living in adultery"—*See* MAINTENANCE, 26 A. 326=1 A.L.J. 18=A.W.N. 1904, 23, 5 N.L.R. 19=9 Cr. L.J. 390=1 Ind. Cas. 801, 30 M. 332=2 M.L.T. 166=17 M.L.J. 279 =5 Cr. L.J. 359.

"Local area"—*See* JURISDICTION OF CRIMINAL COURTS—GENERAL, 16 C. 667, 25 C. 858=2 C W.N. 577.

"Locality"—*See* CRIM. PRO. CODE, 1898, s. 103, 12 Cr. L J. 479=12 Ind. Cas. 87.

"Lottery"—*See* ACT XXVII OF 1870, 10 B. 97.

"Lottery"—*See* PENAL CODE, s. 294-A, 14 P.W R. 1910, 1 Cr.=17 P R 1910=6 Ind. Cas. 620=11 Cr. L.J. 382=92 P.L R. 1910.

"Lower castes of people"—*See* MAD. REG. XI OF 1816, s. 10, 7 M.L.T. 305=5 Ind. Cas. 797 =11 Cr. L.J. 249.

"Lurking-house trespass"—*See* HOUSE-BREAKING, 1 W.R.Cr. Letters 9.

"Magistrate"—*See* ACT XXII OF 1855, ss. 46, 62, 5 B.H.C. Cr. 14.

"Magistrate"—*See* ACT XXXI OF 1860, s 35, Rat. Un. Cr. C. 80=Cr. Rg 15-1-1874.

"Magistrate"—*See* BEN. ACT III OF 1899, ss. 449, 628, 629, 631, 9 C.W.N. 18.

"Magistrate"—*See* CONFESSION—CONFESSIONS TO MAGISTRATES—ADMISSIBILITY—RECORD OF CONFESSIONS, 7 B.H.C. Cr. 56.

"Magistrate"—*See* EVIDENCE ACT, 1872, s. 26, Rat. Un. Cr. C. 855=Cr. Rg. 22 of 1896.

"Magistrate"—*See* MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION, 4 M. H.C. App. 2.

"Magistrate of first class"—*See* ACT IX OF 1894, s. 52, 32 M. 303.

"Magistrate of first class"—*See* MAINTENANCE, 9 B. 40.

"Magistrate of Police"—*See* ACT XIII OF 1859, ss. 1, 4, 25 C. 637.

"Magistrate of the District"—*See* MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION, 3 M.H.C. App. 29.

"Magistrate resident"—*See* BOM. ACT VII OF 1867, s. 31, Rat. Un. Cr. C. 483=Cr. Rg. 49 of 1889.

Words and Phrases—*continued.*

"Maim"—*See* PENAL CODE, s. 428, L.B. R. 1872—1892, 404.

"Maiming"—*See* MAIMING, 7 P.R. 1891, Cr.

"Maiming"—*See* PENAL CODE, s. 428, L.B. R. 1872—1892, 404.

"Maiming"—*See* PENAL CODE, s. 429, 1911 2 M.W.N. 141=10 M.L.T. 192=21 M.L.J. 843 =12 Cr. L.J. 482.

"Maintenance"—*See* MAINTENANCE, 11 Cr. L.J. 40=4 Ind. Cas. 758=U.B.R 1909, I Qr., Crim. Pro. Code 17.

"Make, execute, sign or be a party to"—*See* ACT X OF 1862, s. 3, 3 M.H.C. App. 27.

"Making of document"—*See* PENAL CODE, s. 464, 7 C. 352=8 C.L.R. 572.

"Making or publishing"—*See* DEFAMATION, 14 W.R. Cr. 27.

"Malice"—*See* DEFAMATION, 9 Bom. L.R. 230=5 Cr. L.J. 237=31 B. 293.

"Malice"—*See* MALICE, 24 A. 363=A.W.N. 1902, 93.

"Malignantly"—*See* PENAL CODE, s. 153, 18 B 758.

"Mandatory"—*See* SECURITY TO KEEP THE PEACE—LIKELIHOOD OF BREACH OF THE PEACE, 1 S.L.R 50, Cr.=8 Cr. L.J. 170

"Man of desperate and dangerous character"—*See* EVIDENCE—GENERAL REPUTE, 11 C W. N. 789=6 Cr. L J. 1.

"Manufacture"—*See* ACT XI OF 1878, ss. 5, 19 (*a*), 1 Weir 653.

"Manufacture"—*See* BEN. ACT V OF 1909, ss. 2, cls. (6), (7), (14), 46, 48, 19 C.L.J. 53=18 C.W.N. 486=22 Ind. Cas. 425=15 Cr. L.J. 73 =41 C. 694.

"Manufacture"—*See* BOM. ACT V OF 1878, s. 43 (c), Rat. Un. Cr. C. 415=Cr. Rg. 82 of 1888, Rat. Un. Cr. C. 834=Cr. Rg. 77 of 1895.

"Manufacture"—*See* BOM. ACT II OF 1890, s. 3 (*g*), Rat. Un. Cr. C. 528=Cr. Rg. 60 of 1890.

"Manufacture"—*See* MAD. ACT III OF 1864, ss. 2, 21, 22, 5 M.H.C. App. 26.

"Manufacturing"—*See* ACT XII OF 1896, s. 45, L B.R. 1893—1900, 336.

"Market"—*See* BUR. ACT III OF 1898, ss. 142 (*f*), 180, 1 U.B.R. 1902—1903, Municipal, 1.

"Mashirnama"—*See* EVIDENCE ACT, 1872, s. 159, 4 S.L.R. 38=7 Ind. Cas. 38=11 Cr.L.J. 498.

"Masonry building"—*See* BEN. ACT III OF 1899, s. 3 (25), 8 C.W.N. 487

"Material alteration of the structure of any house"—*See* BEN. ACT II OF 1888, ss. 236, 241, 7 C.W.N. 374.

"Material for manufacturing liquor"—*See* MAD. ACT I OF 1886, s. 55 (9), 24 M. 417=1 Weir 641.

"May"—*See* CRIM. PRO. CODE, 1898, ss. 195, 477, 28 C. 434=5 C.W.N. 609.

"May"—*See* MAINTENANCE, 3 M.L.T. 269=18 M.L.J. 150=31 M. 185=7 Cr. L.J. 346.

"May"—*See* SENTENCE — CUMULATIVE AND SEPARATE SENTENCES, Rat. Un. Cr. C. 597=Cr. Rg. 17 of 1892.

"May be considered"—*See* CONFESSION—CONFESSIONS BY CO-ACCUSED—ADMISSIBILITY, A.W.N. 1884, 38.

"May take cognizance of"—*See* COMPLAINT—PROCEDURE ON RECEIPT OF COMPLAINTS, 13 C. 334.

"May take cognizance of an offence"—*See* CRIM. PRO. CODE, 1898, ss. 190, 202, 4 O.C. 127.

"Means"—*See* STATUTES, CONSTRUCTION OF, A.W.N. 1901, 10.

"Medicated article"—*See* BOM. ACT V OF 1878, ss. 3 (9), 62, 27 B. 551=5 Bom. L.R. 498.

"Members of family"—*See* BOM. ACT VI OF 1873, s. 53 (1), Rat. Un. Cr. C. 412=Cr. Rg. 78 of 1888.

"Merely on the ground that no charge was framed"—*See* CRIM. PRO. CODE, 1898, ss. 233, 236, 13 Cr. L.J. 593=16 Ind. Cas. 161.

"Mere skill"—*See* BEN. ACT II OF 1867, ss. 10, 11, 15 Cr. L.J. 276=23 Ind. Cas. 484.

"Military stores"—*See* ACT XI OF 1878, ss. 14, 19, U.B.R. 1892—1896, Vol. I, 1.

"Minor offence"—*See* CRIM. PRO. CODE, 1898, s. 238, 22 C. 1006.

"Misappropriation"—*See* CRIM. PRO. CODE, 1898, s. 562, 3 L.B.R. 95=3 Cr. L.J. 21, F.B.

"Miscarriage"—*See* MISCARRIAGE, 9 M. 369 =1 Weir 331.

"Misdirection"—*See* CRIM. PRO. CODE, 1898, ss. 297, 423 (2), 11 Cr. L.J. 13=4 Ind. Cas. 597=3 S.L.R. 102.

"Modify"—*See* CRIM. PRO. CODE, 1898, ss. 9 (1) to (5) 31, 193, 4 B. 239.

"Modify"—*See* CRIM. PRO. CODE, 1898, ss. 30, 34, Colm. Dig. Cr. 62 of 1876.

"Money"—*See* ACT XIII OF 1859, s. 2, 2 P R. 1914, Cr.=15 Cr. L.J. 603=25 Ind. Cas. 515.

"Money"—*See* BOM. ACT XVII OF 1879, ss. 64, 67, 2 (2) (4), 16 Bom. L.R. 683=2 Bom. Cr. C. 248.

"Money"—*See* COUNTERFEITING COIN, 11 B.H.C. 172.

"Mortgage"—*See* ACT I OF 1879, s. 3, sub-s. 13, 27 C. 587=4 C.W.N. 524.

"Moveable property"—*See* MOVEABLE PROPERTY, 6 Bom. L.R. 513.

"Moving"—*See* MAD. ACT V OF 1882, ss. 35 and 36, 4 Ind. Cas. 405.

"Must"—*See* CRIM. PRO. CODE, 1898, ss. 195 and 477, 28 C. 434=5 C.W.N. 609.

"Native Indian Subject of Her Majesty"—*See* JURISDICTION OF CRIMINAL COURTS—GENERAL, 1 P.R. 1885, Cr.

Words and Phrases—*continued.*

"Native Indian Subject of Her Majesty"—*See* JURISDICTION OF CRIMINAL COURTS—JURISDICTION OVER NATIVES, 16 B. 178.

"Natural produce of land or trees"—*See* MAD. ACT V OF 1882, s. 26, 1 Weir 769.

"Near"—*See* CRIM. PRO. CODE, 1898, s. 43, Colm. Dig. Cr. 14 of 1874.

"Nearest Magistrate"—*See* CRIM. PRO. CODE, 1898, ss. 476, 537, 1 S.L.R. Cr. 84=8 Cr. L.J. 209.

"Nearest Magistrate of the first class"—*See* SANCTION TO PROSECUTE — MISCELLANEOUS CASES, 16 M. 461=2 Weir 590.

"Neglect"—*See* BOM REG. XII OF 1827, s. 37, 6 S.L.R. 124=19 Ind. Cas. 505=14 Cr. L.J. 249.

"Negligence"—*See* PENAL CODE, s. 304-A, 1 Weir 324=7 M.H.C. 119.

"Neighbouring"—*See* MAD. ACT I OF 1858, s. 1, 1 Weir 783.

"Newspaper"—*See* NEWSPAPERS, INCITEMENTS TO OFFENCES IN ACT, 12 C L.J. 294.

"No evidence"—*See* CRIM. PRO. CODE, 1898, s. 289, 16 B. 414, S.C. 274, Oudh, A.W.N. 1888, 153.

"No evidence"—*See* PENAL CODE, s. 396, 1 O. C. 84.

"No ostensible means of subsistence"—*See* CRIM. PRO. CODE, 1898, s. 109 (*b*), 5 C.W.N. 28.

"No person"—*See* ACT XII OF 1896, s. 51, L.B.R. 1893—1900, 405.

"No secret disposition of the body"—*See* PENAL CODE, s. 318, 1911, 2 M.W.N. 379=12 Cr. L. J. 562.

"Not authorised"—*See* PENAL CODE, s. 11, 34, 294-A, 15 Cr. L.J. 243=23 Ind. Cas. 195=7 Bur. L.T. 187.

"Notice"—*See* NOTICE, 13 A. 171=A.W.N. 1891, 48.

"Notice"—*See* PENAL CODE, s. 172, 5 W. R. Cr. 71, 28 P.R. 1890, Cr.

"Noxious"—*See* PENAL CODE, s. 273, 12 C. W.N. 608=7 Cr. L.J. 405.

"Nuisance"—*See* BEN. ACT III OF 1899, ss. 632, 449, 14 C.W.N. 637.

"Nuisance"—*See* BOM. ACT VII OF 1867, s. 31, Rat. Un. Cr. C. 134=Cr. Rg. 8-4-1878.

"Nuisance"—*See* NUISANCE UNDER PENAL CODE, 1 Weir 29=1 Weir 495.

"Nuisance"—*See* PENAL CODE, ss. 268, 290, 7 M.L J. 95.

"Oath"—*See* ACT V OF 1840, 1 W.R. Cr. Letters, 13.

"Oath"—*See* SOLEMN AFFIRMATION, 1 W.R. Cr. Letters, 13.

"Object"—*See* PENAL CODE, ss. 295, 378, 403, 425, 17 C. 852.

"Object"—*See* RELIGION, OFFENCES RELATING TO, 10 A. 150, F. B.=A.W.N. 1888, 17.

Words and Phrases—*continued.*

"Obscene"—*See* PENAL CODE, s. 292, 15 C.L.J. 151=13 Ind. Cas. 993=13 Cr. L.J. 177=39 C. 377.

"Obscene pamphlet"—*See* PENAL CODE, s. 292, A.W.N. 1905, 203=2 Cr. L.J. 520=28 A. 100.

"Obscene publication"—*See* OBSCENE PUBLICATION, 20 B. 193.

"Occupation"—*See* ACT XV OF 1881, ss. 14, 15 and 17, 10 Bom. L.R. 38=7 Cr. L.J. 44.

"Occupation"—*See* CRIM. PRO. CODE, 1898, s. 133 (3), 25 C. 425=2 C.W.N. 113.

"Occupier"—*See* ACT XV OF 1881, ss. 14, 15, 17, Rat. Un. Cr. C. 902=Cr. Rg. 11 of 1897.

"Occupier"—*See* ACT XV OF 1881, s. 17, 15 Bom. L R 328=20 Ind. Cas. 144=14 Cr. L.J. 384=2 Bom. Cr C. 71.

"Occupier of land"—*See* MAD. ACT V OF 1882, s. 6, 12 M. 203=1 Weir 758, F B.

"Offence"—*See* ACT III of 1857, s. 14, 8 B. H.C. Cr. 22.

"Offence"—*See* ACT I OF 1871, s. 20, 4 L.B. R. 11=6 Cr. L.J. 122.

"Offence"—*See* ACT I OF 1871, s. 22, 1 Weir 712=2 Weir 320.

"Offence"—*See* ACT XXI OF 1879, s. 6, 26 M. 607=1 Weir 13=1 Weir 757.

"Offence"—*See* ACT XII OF 1896, 1 L.B.R. 308.

"Offence"—*See* CRIM. PRO. CODE, 1898, ss 4 (O), 250, 29 M. 517=5 Cr. L.J. 86.

"Offence"—*See* CRIM. PRO. CODE, 1898, ss. 107, 250, 12 A.L.J. 506=36 A. 382=15 Cr. L.J. 578=25 Ind. Cas. 330.

"Offence"—*See* CRIM. PRO. CODE, 1898, s. 195 (1) (*c*), 12 Bom. L.R. 383=6 Ind. Cas. 529=11 Cr. L J. 368.

"Offence"—*See* ESCAPE FROM LAWFUL CUSTODY, 3 L.B.R. 221=4 Cr. L.J. 389.

"Offence"—*See* EVIDENCE ACT, 1872, s. 30, S.C. 143, Oudh.

"Offence"—*See* EVIDENCE ACT, 1872, s. 122, 10 P.R. 1914, Cr.=261 P.L.R. 1914=15 Cr. L.J. 613=25 Ind. Cas. 525.

"Offence"—*See* NUISANCE UNDER CRIM. PRO. CODE, 24 C. 395=1 C.W.N. 217.

"Offence"—*See* OFFENCE, L.B.R. 1893—1900, 315, 29 M. 517=5 Cr. L.J. 86, 16 P.R. 1893, Cr.

"Offence"—*See* SENTENCE — ENHANCEMENT OF SENTENCES, L.B.R. 1893—1900, 315.

"Offence attended by criminal force"—*See* CRIM. PRO. CODE, 1898, s. 522, 25 C. 434=2 C.W.N. 305.

"Offence involving breach of the peace"—*See* SECURITY TO KEEP THE PEACE—LIKELIHOOD OF BREACH OF THE PEACE, 4 M.L.T. 468=9 Cr. L J. 88.

"Offences"—*See* ACT XIII OF 1859, 1 Weir 697.

Words and Phrases—*continued.*

"Offences involving a breach of the peace"—*See* CRIM. PRO. CODE, 1898, ss. 106 and 110, 30 C. 366.

"Offences of the same kind"—*See* JOINDER OF CHARGES—GENERAL, 9 C. 371=11 C.L.R. 522.

"Offences punishable under any law other than the Indian Penal Code"—*See* ACT V OF 1861, s. 29, 25 W.R. Cr. 20.

"Offensive and dangerous trades"—*See* MAD. ACT IV OF 1884, s. 188, cl. (n), 2 M.L.T. 54=5 Cr. L.J. 189=30 M. 220=17 M L.J. 371=6 Cr. L J. 128.

"Offensive water"—*See* BOM. ACT VI OF 1873, s. 54, 20 B. 83.

"Offers to sell"—*See* ACT VII OF 1870, s. 34, 24 M. 319=1 Weir 725.

"Officer"—*See* PUBLIC SERVANT, 12 B. H.C. 1.

"Officer invested with the full powers of a Magistrate"—*See* ACT III OF 1867, s. 5, 10 A.L.J. 169=34 A. 597=16 Ind. Cas. 524=13 Cr. L.J. 716.

"Official Register"—*See* PENAL CODE, s. 176, 10 O.C. 238=6 Cr. L J. 301.

"Omission"—*See* ACT X OF 1873, s. 5, 11 C.P.L.R. Cr. 16.

"Omission"—*See* ACT X OF 1873, s. 13, 23 W.R. Cr. 12=14 B L.R. F.B. 294.

"Omission"—*See* EVIDENCE ACT, 1872, s. 118, 11 C P.L.R. 16, Cr.

"One transaction"—*See* CRIM PRO. CODE, 1898, s. 235, 1911, 2 M.W.N. 467=12 Ind. Cas. 655=12 Cr. L J. 567.

"Open place"—*See* ACT V OF 1861, s. 34, 27 C. 655.

"Opinion"—*See* CRIM. PRO. CODE, 1898, s. 307, 29 M. 91=3 Cr. L.J. 371.

"Opinion of the Sessions Judge and of the Jury"—*See* CRIM. PRO. CODE, 1898, s. 307 (c), 18 C.L.J. 522.

"Opium"—*See* ACT I OF 1878, s. 4, L.B.R. 1872-1892, 619.

"Opportunity to cross-examine"—*See* EVIDENCE ACT, 1872, s. 33, 19 B. 749=17 C.W.N. 230=18 Ind. Cas. 406=14 Cr L J. 70.

"Or"—*See* ACT III OF 1867, ss. 3, 4, 16, L.B.R. 1872—1892, 378.

"Or"—*See* BUR. ACT XVII OF 1884, s. 84, L.B.R. 1893—1900, 348.

"Order"—*See* CRIM. PRO. CODE, 1898, s. 349, 1 L.B.R. 124.

"Order"—*See* CRIM. PRO. CODE, 1898, ss. 435, 439, 4 M.H.C. App. 70.

"Order"—*See* MAGISTRATE, JURISDICTION OF—COMMITMENT TO SESSIONS COURT, 4 B. 240.

"Order"—*See* PENAL CODE, s. 172, 5 W.R. Cr. 71, 28 P.R. 1890, Cr.

Words and Phrases—*continued.*

"Order a person to be apprehended for an offence"—*See* PENAL CODE, s. 216, 11 C.L.J. 109.

"Order him to be committed for trial"—*See* COMMITMENT TO SESSIONS COURT, 10 B. 319.

"Order the attachment of any moveable and immoveable property"—*See* ABSCONDING OFFENDER, 4 M.H.C. App. 48.

"Ordinarily"—*See* CRIM. PRO. CODE, 1898, s. 195, sub-s. 7 (a), 8 N.L.R. 57=13 Cr. L.J. 498=15 Ind. Cas. 642.

"Ordinarily"—*See* CRIM. PRO. CODE, 1898, ss. 197, 527, 4 L.B.R. 265=8 Cr. L.J. 70.

"Or other proceeding"—*See* ACT X OF 1875, s. 147, 9 C. 397.

"Or other thing"—*See* HURT, 1 W.R. Cr. 7.

"Or otherwise"—*See* BOM. ACT IV OF 1902, s. 120, 10 Bom. L.R. 92=7 Cr. L.J. 118.

"Or otherwise"—*See* DISTRICT MAGISTRATE, 28 A 91=2 A.L.J. 589=A.W.N. 1905, 198=2 Cr. L.J. 515.

"Other legal proceedings"—*See* ACT III OF 1909, ss. 17, 103, 12 Bom. L R. 750=7 Ind. Cas. 953=11 Cr. L.J. 548.

"Other reasonable cause"—*See* ACT XVIII OF 1879, s. 13, 13 M.L J. 65=26 M. 448.

"Otherwise"—*See* BOM. ACT IV OF 1902, s. 120, 10 Bom. L.R. 92=7 Cr. L.J. 118.

"Otherwise"—*See* CRIM. PRO. CODE, 1898, ss. 110, 117, A.W.N. 1904, 140.

"Otherwise"—*See* CRIM. PRO. CODE, 1898, ss. 435, 438, 2 N.L.R. 149=4 Cr. L.J. 422.

"Otherwise"—*See* DISTRICT MAGISTRATE, 28 A. 91=2 A.L.J. 589=A.W.N. 1905, 198=2 Cr.L.J. 515.

"Otherwise obtains possession"—*See* PENAL CODE, s. 373, 1 Weir 377=5 M.H.C. 473.

"Ought to be tried in Court of Session"—*See* CRIM. PRO. CODE, 1898, ss. 207, 254, 347, 4 Bom.L.R. 85.

"Owner"—*See* ACT XV OF 1881, s. 17, 15 Bom. L.R. 328=20 Ind. Cas. 144=14 Cr.L.J. 384=2 Bom.Cr.C. 71.

"Owner"—*See* BEN. ACT III OF 1899, ss. 3 (32), 408, 574, 17 C.W.N. 1034=21 Ind. Cas. 169=14 Cr.L J. 569.

"Owner"—*See* BEN. ACT III OF 1899, ss. 320 and 574, 30 C. 721=7 C.W.N. 706.

"Owner"—*See* BEN. ACT III OF 1899, s. 407, 408, 574, 8 Ind. Cas. 53=11 Cr.L.J. 558.

"Owner"—*See* BOM. ACT III OF 1888, s. 248, 20 B. 617=Cr. Rg. 32 of 1895.

"Owner"—*See* MAD. ACT III OF 1885, s. 6, 1 Weir 851.

"Parties"—*See* CRIM. PRO. CODE, 1898, ss. 145, 146, 123 P.L.R. 1911=18 P.W.R. 1911, Cr.=11 Ind. Cas. 687=12 Cr.L.J. 403.

Words and Phrases—*continued.*

"Parties concerned"—*See* CRIM. PRO. CODE, 1898, s. 145, 30 C. 155=6 C.W.N. 373, F.B.

"Parties concerned"—*See* DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 21 C. 29, 24 C. 55=1 C.W.N. 3, F.B., 27 C. 892 =4 C.W.N. 613, 4 C.W.N. 753.

"Parties concerned in the dispute"—*See* CRIM. PRO. CODE, 1898, ss. 107, 145, 12 A.L.J. 162=22 Ind. Cas 171=15 Cr. L.J. 27=36 A. 143.

"Parties concerned in the dispute"—*See* CRIM PRO. CODE, 1898, s. 145, 30 C. 155=6 C.W.N. 737, F.B.

"Parties concerned in the dispute"—*See* DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 21 C. 404.

"Parties to the proceeding"—*See* SANCTION TO PROSECUTE—CONDITIONS REQUISITE FOR GRANT OF SANCTION, ETC., 3 M. 400=2 Weir 170.

"Parts of arms"—*See* ACT XI OF 1878, ss. 4, 19, 1 Weir 658.

"Party"—*See* DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 18 M. 51=2 Weir 105.

"Party to criminal proceedings"—*See* ACT X OF 1873, ss. 8 to 11, 13 B. 389.

"Passenger"—*See* ACT IX OF 1890, ss. 102, 108, 109, 120, 31 P.W.R. 1910, Cr.=7 Ind. Cas. 355=11 Cr. L.J. 451=26 P.R. 1910, Cr = 200 P.L.R. 1910.

"Payable in advance"—*See* BOM. ACT VI OF 1873, ss. 14, 82, Rat. Un. Cr. C. 868.

"Penalty"—*See* ACT VI OF 1882, s. 35, 20 C. 676.

"Penalty"—*See* BOM. ACT VI OF 1873, s. 84, 18 B. 400.

"People in general"—*See* PUBLIC NUISANCE, 1 L.B R. 213.

"Perishable articles"—*See* CANTONMENT CODE, 1899, s 167, cl. (1), 3 A.L.J. 694=4 Cr.L.J. 374=A.W N. 1906, 303.

"Permit"—*See* ACT XI OF 1890, s. 6 (1), 20 A. 186=A W.N. 1898, 20=9 A.L.J. 262=14 Ind. Cas. 658=13 Cr. L.J. 274.

"Person"—*See* ACT I OF 1879, s. 61, 27 C. 324=4 C.W.N. 440.

"Person"—*See* CRIM. PRO. CODE, 1898, ss. 94, 96, 342, 36 P.R 1914, Cr.

"Person aggrieved"—*See* BIGAMY, 26 C. 336, 10 B. 340.

"Person aggrieved"—*See* CRIM. PRO. CODE, 1898, s. 198, 32 C 425=8 C.W.N. 515, 25 A. 132=A.W.N. 1902, 193, 11 O.C. 148=7 Cr.L. J. 457, 3 C.L.J. 38=3 Cr.L.J. 187.

"Person aggrieved"—*See* DEFAMATION, 26 M. 43=2 Weir 232=12 M.L.J. 413.

"Person aggrieved"—*See* PENAL CODE, s. 494, 13 Cr.L.J. 204=14 Ind. Cas. 204.

Words and Phrases—*continued.*

"Personally interested"—*See* CRIM. PRO. CODE, 1898, s. 556, 27 A. 25=A.W.N. 1904, 154, 27 A. 33=A.W.N. 1904. 157, 15 A. 192, F.B.=A.W.N. 1893, 79, U.B.R. 1897—1901, Vol. I, 125.

"Personally interested"—*See* CRIM. PRO. CODE, 1898, ss. 556, 435, 439, 9 N L.R. 81= 14 Cr. L J. 385=20 Ind. Cas. 209.

"Personally interested"—*See* MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION, 14 B. 572, 20 C. 857.

"Personally interested"—*See* PRACTICE AND PROCEDURE, U B R. 1897—1901, Vol. I, 123.

"Personally interested"—*See* TRIAL, U.B. R. 1897—1901, Vol. I, 123.

"Personal right"—*See* BOM. ACT XLVIII OF 1860, ss. 11, 12, 3 Bom. L.R. 653.

"Person appointed to sell stamps"—*See* ACT I OF 1879, s. 68, Rat. Un. Cr. C. 317=Cr. Rg. 3 of 1887.

"Person bound"—*See* CRIM. PRO. CODE, 1898, ss 514, 106, 22 P.R. 1894, Cr.

"Person carrying on business"—*See* ACT XIII OF 1859, ss. 1, 2 (1), U.B.R. 1909, 2nd Qr., W.B. of C. Act, 1.

"Person in authority"—*See* CONFESSION—CONFESSIONS OBTAINED BY INDUCEMENT, THREAT, ETC., 9 C.W.N. 474=2 Cr. L.J. 255.

"Person who professes the Christian religion"—*See* ACT XV OF 1872, ss. 3 and 68, 18 M. 230=1 Weir 813.

"Person within local limits"—*See* SECURITY FOR GOOD BEHAVIOUR, 9 Bom. L.R. 244=5 Cr. L.J. 247.

"Place"—*See* BEN. ACT II OF 1867, s. 11, 6 C.W.N. 33.

"Place"—*See* BEN. ACT VI OF 1873, ss. 3 and 66, 9 B. 272.

"Place"—*See* BOM. ACT XLVIII OF 1860, s. 11, cl. (2), 15 B. 530.

"Place"—*See* BOM. ACT VI OF 1873, s. 3, 9 B. 272.

"Place"—*See* BOM. ACT IV OF 1887, s. 4 (*a*) (*c*), 15 Bom. L.R. 689=2 Bom. Cr. C. 96= 14 Cr. L.J. 419=20 Ind. Cas. 609=37 B. 651.

"Place lawfully set apart"—*See* BEN. ACT III OF 1899, ss. 299, 574, 8 Ind. Cas.706=13 Cr. L.J. 327=15 C.W. N. 412.

"Place of public resort"—*See* MAD. ACT IV OF 1884, ss. 75. 23, 6 M.L T. 16=9 Cr. L.J. 496=2 Ind. Cas. 84=33 M. 83.

"Place, street or thoroughfare" in s. 12, Bom. Act IV of 1887—*See* BOM. ACT IV OF 1887, ss. 4 and 12, 7 Bom.L.R. 333=29 B. 386.

"Pleader"—*See* MAD. ACT III OF 1871, cl. (4), sch. (*b*), 6 M. 100=7 Ind. Jur. 78.

"Pleader"—*See* EVIDENCE ACT, 1872, ss. 126, 127, 25 C. 736=2 C.W.N. 484.

"Plying"—*See* ACT VIII OF 1878, s. 79, 12 Cr. L.J. 476=12 Ind. Cas. 84.

Words and Phrases—*continued.*

"*Police officer*"—The words "Police officers" in ss. 25, 26 of the Evidence Act include also Foreign Police officers. PUBLIC PROSECUTOR v. VEERARAGHAVA PILLAI, **11 M.L T. 407 = 15 Ind. Cas. 800 = 13 Cr.L J. 528.** (1 C. 207, 22 B. 235, *F.*)

"Police officer"—*See* MAD. ACT XXIV OF 1859, ss. 11, 44, 1 Weir 836 = 7 M.H.C. App. 4.

"Police officer"—*See* MAD. ACT III OF 1864, s. 26, 9 M. 97 = 1 Weir 630.

"Police officer"—*See* CONFESSION—CONFESSIONS MADE TO POLICE OFFICERS, L.B.R. 1893—1900, 22, 17 B. 485.

"Police officers"—*See* CRIM. PRO. CODE, 1898, ss. 288, 364, 533, 11 A.L J. 286 = 14 Cr. L J. 211 = 19 Ind. Cas. 307 = 35 A. 260.

"Police officer"—*See* EVIDENCE ACT, 1872, s. 26, Rat. Un. Cr. C. 855 = Cr. Rg. 22 of 1896.

"Police officer"—*See* POLICE OFFICER, 1 C. 207 = 25 W.R. Cr. 36.

"Police report"—*See* CRIM. PRO. CODE, 1898, ss. 4 (1) (*h*) and 190 (1) (*b*), 2 L.B.R. 146.

"Police report"—*See* CRIM. PRO. CODE, 1898, ss. 4 (*h*), 250, 173, 6 S.L.R. 82 = 17 Ind. Cas. 64 = 13 Cr. L.J. 752.

"Police report"—*See* CRIM. PRO. CODE, 1898, s. 190, 1 L.B.R. 59.

"Police report"—*See* CRIM. PRO. CODE, 1898, ss. 191 (*c*) and 200, U.B.R. 1892—1896, Vol. 1, 28.

"Police report" and "report of police officer"—*See* CRIM. PRO. CODE, 1898, s. 190, 1 L.B. R. 18.

"Possession"—*See* ACT I OF 1878, s. 9, 16 C.P.L.R. 13.

"Possession"—*See* ACT I OF 1878, s. 10, L. B.R. 1872—1892, 573.

"Possession"—*See* ACT XI OF 1878, ss. 13, 14, 4 N.L.R. 78 = 8 Cr. L.J 18.

"Possession"—*See* ACT XI OF 1878, s. 19, 4 N.L.R. 146.

"Possession"—*See* MISCHIEF, 15 C. 388.

"Possession"—*See* PENAL CODE, s. 441, 14 Cr. L.J. 633 = 21 Ind. Cas. 681.

"Possession of opium"—*See* ACT I OF 1878, s. 9 (*c*), 1911, 1 M W.N. 361.

"Practising vakil"—*See* MAD. ACT III OF 1871, cl (4), sch. (*b*), 6 M. 100 = 7 Ind. Jur. 78.

"Prejudice"—*See* ACT XI OF 1878, ss. 19, 29, 4 L.B.R. 247 = 8 Cr. L.J. 65.

"Preliminary enquiry" whether a trial—*See* PRELIMINARY ENQUIRY, 4 C.L.R. 413.

"Premises"—*See* BOM ACT III OF 1888, ss. 305, 302 to 307, 12 Bom. L.R. 669 = 34 B. 593 = 7 Ind. Cas. 935 = 11 Cr. L.J. 544.

"Premises" in s. 394, City of Bombay Municipality Act, 1888—*See* BOM. ACT III OF 1888, s. 394, 3 Bom. L.R. 436.

"Prepare"—*See* ACT XIV OF 1866, s. 50, 1 Weir 862.

Words and Phrases—*continued.*

"Presented"—*See* APPEAL — APPEAL—PRACTICE AND PROCEDURE, 19 M. 354 = 2 Weir 468.

"Presenting"—*See* ACT II OF 1899, s. 62, U.B.R. 1892—1896, Vol. I, 312.

"Presidency Magistrate"—*See* MAINTENANCE, 9 B. 48.

"Previous conviction"—*See* ACT VI OF 1864, s. 3, U.B.R. 1907, 3rd Qr., Whipping, 3 = 7 Cr. L J. 212 = 14 Bur. L.R. 186.

"Previous conviction"—*See* SENTENCE—ENHANCEMENT OF SENTENCES, L.B.R. 1893—1900, 315.

"Prima facie grounds for believing"—*See* CANTONMENT CODE, 1899, s 203, 3 S.L.R. 184.

"Prison"—*See* ACT XXVI OF 1870, L.B.R. 1872—1892, 596.

"Prison"—*See* CRIM. PRO. CODE, 1898, ss. 383, 541, 7 L.B.R. 62.

"Probably"—*See* CRIM. PRO. CODE, 1898, s. 514 and sch. V, Form 10, 22 P.R. 1914, Cr. = 262 P.L.R. 1914 = 15 Cr. L.J. 605 = 25 Ind. 517 = 47 P.W.R. 1914, Cr.

"Proceeding in a civil cause"—*See* RULES OF THE HIGH COURT, CALCUTTA, 8 B.L.R. 433 = 17 W.R. 364.

"Proceedings"—*See* SECURITY TO KEEP THE PEACE—GENERAL, ETC., 27 M. 510 = 1 Weir 787 = 14 M.L.J. 394.

"Proceedings under chap. XII, Crim. Pro. Code"—*See* CRIM. PRO. CODE, 1898, ss. 145, 435, 5 O.C. 1.

"Proclaimed offender"—*See* CRIM. PRO. CODE, 1898, s. 45, A.W N. 1901, 10.

"Produced"—*See* CRIM. PRO. CODE, 1898, s. 195, 1911, 2 M.W.N. 526 = 13 Ind. Cas. 211 = 13 Cr. L J. 19.

"Production and giving document in evidence"—*See* SANCTION TO PROSECUTE—MISCELLANEOUS CASES, 9 Bom. L R. 735 = 6 Cr. L J 78.

"Propelled by electricity"—*See* MAD. ACT III OF 1904, sch. VI, cl. 1. 18 M.L.J. 149.

"Propelled by electricity"—*See* TRAILER CARS, 18 M.L.J. 149.

"*Property.*"—"*Property*" in s. 420, I.P.C., includes money. BIRENDRA LAL BHADURI v. EMPEROR, **32 C. 22 = 8 C.W.N. 784 = 1 Cr. L J. 794.**

"Property"—*See* MAD. ACT III OF 1885, s. 6, 1 Weir 851.

"Property"—*See* CRIM. PRO. CODE, 1898, s. 88, 2 Weir 43.

"Property"—*See* CRIM. PRO. CODE, 1898, s. 517, 1 Weir 318 = 2 Weir 665.

"Property"—*See* CRIM PRO. CODE, 1898, ss. 517, 524, 15 Cr. L.J. 175 = 22 Ind. Cas. 751 = 18 C.W.N. 1146.

"Property"—*See* PENAL CODE, s. 22, 1 Weir 28.

Words and Phrases—*continued.*

"Property"—*See* PENAL CODE, ss. 403, 410, 411, 8 A. 51.

"Property"—*See* PENAL CODE, s. 405, 27 A. 28 = A.W.N. 1904, 153.

"Property"—*See* PENAL CODE, s. 409, 16 A. 88 = A.W.N. 1894, 23.

"Property"—*See* PENAL CODE, s. 425, Rat. Un. Cr. C. 387.

"Property"—*See* STOLEN PROPERTY, 9 A. 348.

"Property regarding which offence has been committed"—*See* RESTORATION OF PROPERTY, 4 L.B.R. 229 = 7 Cr. L.J. 490.

"Prosecution"—*See* BEN. ACT IV OF 1866, s. 99 (1), 7 C.W.N. 883.

"Prosecutor"—*See* MALICIOUS PROSECUTION, 9 O.C. 357.

"Public"—*See* PENAL CODE, s. 273, 3 P.R. 1908, Cr. = 5 P.W.R. 1908, Cr. = 7 Cr. L.J. 278 = 139 P.L.R. 1908.

"Public document"—*See* ACCUSED PERSON, 20 M. 189 = 2 Weir 763, F.B. = 7 M.L.J. 167.

"Public document"—*See* CRIM. PRO. CODE, 1898, s. 154, U.B.R. 1892—1896, Vol. I, 24.

"Public document"—*See* PENAL CODE, ss. 192, 196, 1 P.R. 1914, Cr = 139 P.L.R. 1914 = 15 Cr. L.J. 344 = 23 Ind. Cas. 696.

"Public gaming"—*See* BUR. ACT I OF 1899, ss. 4, 10, 11, 12, U.B.R. 1897—1901, Vol. I, 209.

"Public nuisance"—*See* PENAL CODE, ss. 268, 290, 7 M.L.J. 95.

"Public officer"—*See* CRIM. PRO. CODE, 1898, s. 154, U.B.R. 1892—1896, Vol. I, 24.

"*Public place.*"—A "private garden" is not a public place. QUEEN-EMPRESS v. NGA CHET KYI, **L.B.R. 1872—1892, 333.**

"Public place"—*See* ACT XXII OF 1864, s. 17, A.W.N. 1887, 19.

"Public place"—*See* ACT III OF 1867, s. 13, A.W.N. 1904, 92, L.B.R. 1872—1892, 317, Col. Dig. I of 1871, A.W.N. 1881, 17, A.W.N. 1881, 8, 11 P.R. 1890, Cr., 9 N.L.R. 164.

"Public place"—*See* BEN. ACT II OF 1867, 31 C. 542 = 8 C.W.N. 458.

"Public place"—*See* BEN. ACT II OF 1867, s. 11, 31 C. 912, Note.

"Public place"—*See* BOM. ACT III OF 1867, rule 71, Rat. Un. Cr. C. 361 = Cr. Rg. 4 of 1888.

"Public place"—*See* U.P. ACT I OF 1900, ss. 87 (1), 88, 147, A.W.N. 1901, 56.

"Public place"—*See* GAMBLING, A.W.N. 1904, 92.

"Public resort"—*See* MAD. ACT III OF 1888, ss. 75, 23, 6 M.L.T. 16 = 9 Cr. L.J. 496 = 2 Ind. Cas. 84 = 33 M. 83.

"Public safety"—*See* CANTONMENT CODE, 1899, ss. 94, 104, 240, 1 P.R. 1906, Cr. = 48 P.L.R. 1906 = 3 Cr. L.J. 346.

Words and Phrases—*continued.*

"Public servant"—*See* PENAL CODE, s. 21, 9 P.R. 1898, Cr.

"Public servant"—*See* PENAL CODE, s. 218, 27 C. 144.

"Public servant"—*See* PUBLIC SERVANT, 1 Weir 27 = 1 Weir 129, 1 Weir 28 = 1 Weir 128, 7 W.R. Cr. 63, 26 C. 158 = 3 C.W.N. 115.

"Public spring"—*See* PENAL CODE, s. 277, 4 M. 229 = 1 Weir 230, Rat. Un. Cr. C. 14 = Cr. Rg. 2-7-1869, Rat. Un. Cr. C. 963 = Cr. Rg. 17 of 1898, 2 C. 383.

"Public street"—*See* ACT III OF 1867, s. 13, Colm. Dig. Cr. I of 1871, 11 P.R. 1890, Cr.

"Public street"—*See* BOM. ACT III OF 1888, ss. 3 (10), 61 (*b*), Rat. Un. Cr. C. 802 = Cr. Rg. 58 of 1895

"Public street"—*See* MAD. ACT IV OF 1884, ss. 3 (27), 169 and 263 = 31 M. 181 = 8 Cr. L.J. 72.

"Public street"—*See* MAD. ACT III OF 1889, s. 3 (10), 1 Weir 915.

"Publisher"—*See* ACT XXV OF 1867, ss. 1, 3 and 12, A.W.N. 1887, 95.

"Publisher"—*See* ACT XXV OF 1867, ss. 3 and 12, 23 C. 414.

"Publisher"—*See* ACT XXVII OF 1870, 10 B. 97.

"Publishing"—*See* DEFAMATION, 14 W.R. Cr. 27.

"Punishable"—*See* PENAL CODE, s. 216, 11 C.L.J. 109.

"Punishable with imprisonment as well as fine"—*See* SENTENCE—IMPRISONMENT—IMPRISONMENT AND FINE, 1 Weir 31.

"Punishment"—*See* ACT VI OF 1864, s. 2, 16 B. 357, 11 C.P.L.R. 13, Cr.

"Punishment"—*See* CRIM. PRO. CODE, 1898, ss. 565, 221, 537, 9 N.L.R. 88 = 14 Cr. L.J. 390 = 20 Ind. Cas. 214.

"Punishment"—*See* PUNISHMENT, 16 B. 357.

"Purports"—*See* EVIDENCE ACT, 1872, s. 73, 14 Bom. L.R. 310 = 15 Ind. Cas. 649 = 13 Cr. L.J. 505 = 1 Bom. Cr. C. 119.

"Pwe"—*See* BUR. ACT III OF 1898, s. 13-A, 1 L.B.R. 110, F.B., 3 L.B.R. 93 = 3 Cr. L.J. 18.

"Pwe"—*See* PWES, U.B.R. 1897—1901, Vol. I, 370.

"Question"—*See* EVIDENCE ACT, 1872, s. 33, 3 M. 48 = 2 Weir 756.

"Rashly"—*See* PENAL CODE, s. 336, L.B.R. 1893—1900, 426.

"Rashness"—*See* PENAL CODE, s. 304-A, 1 Weir 324 = 7 M.H.C. 119.

"Rashness"—*See* PENAL CODE, s. 336, 1 Weir 337, L.B.R. 1893—1900, 426.

"Rate"—*See* PENAL CODE, s. 292, 15 C. L.J. 151 = 13 Ind. Cas. 993 = 13 Cr. L.J. 177 = 39 C. 377.

Words and Phrases—*continued.*

"Reasonable and probable cause"—*See* MALICIOUS PROSECUTION, 24 A. 363=A.W.N. 1902, 92.

"Reasonable cause"—*See* LEGAL PRACTITIONERS—PLEADER, 6 M L.T. 253, F.B.=11 Cr. L J. 274.

"Reason to believe"—*See* STOLEN PROPERTY, 27 P.R. 1888, Cr.

"Re-build" does not include repair. MAUNG SEIN v. MUNICIPAL COMMITTEE OF PAKOKKU, U B.R. **1904, 3rd Qr., Municipal, 3=1 Cr. L J. 1049.**

"Re-call"—*See* CRIM. PRO. CODE. 1898, s. 254, 8 A L J. 707=11 Ind. Cas. 1007=12 Cr. L.J. 471.

"Receipt"—*See* ACT I OF 1879, s. 3 (17), Arts. 52, 54, Rat. Un. Cr. C. 732=Cr. Rg. 61 of 1894.

"Receipt"—*See* ACT I OF 1879, s. 51, 1 Weir 901.

"Receipt"—*See* ACT I OF 1879, ss. 62, 30, 1 Weir 901.

"Record"—*See* CALENDAR, 6 M. H. C. App. 6.

"Record"—*See* CONFESSION — CONFESSIONS TO MAGISTRATES—ADMISSIBILITY—RECORD OF CONFESSIONS, 16 C.P.L.R. 122.

"Record"—*See* CRIM. PRO. CODE, 1898, s. 162, 28 C. 348=5 C.W.N. 65.

"Record"—*See* CRIM. PRO CODE, 1898, s. 164 (3), 8 Bom. L.R 950=5 Cr.L.J. 4.

"Record"—*See* RECORD, 8 Bom. L.R. 950=5 Cr. L.J. 4.

"Re-erect" does not include repair. MAUNG SEIN v. MUNICIPAL COMMITTEE OF PAKOKKU, U.B.R. **1904, 3rd Qr., Municipal, 3=1 Cr. L.J. 1049.**

"Re-erect"—*See* BOM. ACT III OF 1888, ss. 337 (2), 342, 349-C, 9 Bom. L.R. 932=6 Cr L J. 236.

"Re-erect"—*See* U.P. ACT I OF 1900, s. 3 (9), 9 A.L.J. 694=14 Ind. Cas. 602=13 Cr. L. J. 250.

"Re-erection"—*See* BOM. ACT III OF 1888, ss. 337 (2), 342, 349 C, 9 Bom. L.R. 932=6 Cr. L J. 236.

"Re-erection" of building—*See* BEN. ACT III OF 1899, s. 3, cls. (3), (39) (a), 12 Cr. L.J. 461=16 C W.N. 23=11 Ind. Cas. 997.

"Refuse or filth"—*See* BOM. ACT VIII OF 1867, s. 16 (5), Rat. Un. Cr. C. 379=Cr. Rg. 30 of 1888.

"Refuse to obey a lawful order issued by a police patel personally"—*See* BOM. ACT VIII OF 1867, s. 15 (1), Rat. Un. Cr. C. 610=Cr. Rg. 30 of 1892.

"Register case"—*See* CRIM. PRO. CODE, 1898, s. 350, 5 M L.T. 218=9 Cr. L J. 146=32 M. 218=1 Ind. Cas. 54.

"Regulating the travelling"—*See* BOM. ACT I OF 1874, s. 24, 22 B. 739.

"Relating to trial"—*See* CRIM. PRO. CODE, 1898, s. 423, 13 B. 506.

"Renewed"—*See* MAD. ACT IV OF 1884, s. 179, 19 M. 241=1 Weir 732.

"Rent"—*See* MAD. ACT IV OF 1884, s. 269, 26 M. 475=1 Weir 752.

"Report"—*See* BUR ACT I OF 1899, ss. 6, 14, 2 L.B.R. 212.

"Report of Police officer"—*See* CRIM. PRO. CODE, 1898, ss. 4 (1) (*h*) and 190 (1) (*b*), 2 L. B.R. 146.

"Report of police officer—*See* CRIM. PRO. CODE, 1898, s. 190, 1 L.B.R. 18.

"Representative in interest—*See* EVIDENCE ACT, 1872, s. 122, 40 C. 891.

"Reservoir"—*See* PENAL CODE, s. 277, 2 C. 383.

"Respectable inhabitants"—*See* BUR. ACT I OF 1899, s. 7, 12 Cr. L.J. 251, F B.=10 Ind. Cas. 796.

"Respectable inhabitants"—*See* CRIM.PRO. CODE, 1898, s. 103, 15 Cr. L J. 441=24 Ind. Cas. 321=7 Bur. L.T. 143, F.B.

"Result of such examination"—*See* CRIM. PRO. CODE, 1898, ss. 435, 438, 488 (3), 5 O.C. 316.

"Retained in prison"—*See* SECURITY FOR GOOD BEHAVIOUR, 5 A L J. 318, F.B.=A.W.N. 1908, 133=30 A. 334=7 Cr. L.J. 427=4 M. L.T. 41.

"Retaining"—*See* PENAL CODE, ss. 362, 361, 15 O.C. 351=14 Cr. L.J. 93=18 Ind. Cas. 653.

"Return from transportation"—*See* PENAL CODE, ss. 224, 226, 13 Cr. L.J. 54=13 Ind. Cas. 390=4 Bur. L.T. 261.

"Return of verdict"—*See* CRIM.PRO. CODE, 1898, s. 227, 8 B. 200.

"Reverse the finding and sentence"—*See* CRIM. PRO. CODE, 1898, s. 423, 26 M. 478=2 Weir 483=13 M.L J. 263.

"Review"—*See* SENTENCE—POWERS OF APPELLATE COURT — REVERSAL. B.L.R. Sup. Vol. 459=5 W.R. Cr. 80.

"Right to do anything in or upon immoveable property"—*See* CRIM. PRO. CODE, 1898, s. 147, 23 C. 55.

"River"—*See* BOM. ACT VII OF 1867, s. 31 (2), Rat. Un.Cr. C. 55=Cr. Rg 31-8-1871.

"Road"—*See* BEN. ACT III OF 1884, ss. 6 (13), 13, 17 C. 684.

"Road"—*See* PENAL CODE, s. 431, L.B.R. 1893—1900, 629.

"Sale"—*See* ACT VII OF 1870, s. 34, 30 C 921=7 C.W.N. 704.

"Sale"—*See* ACT XII OF 1896, s. 49, 4 P.R, 1911, Cr.=5 P.W.R. 1911, Cr.=89 P.L.R. 1911 =9 Ind. Cas. 1082=12 Cr. L.J. 192=10 Ind. Cas. 682.

"Sale"—*See* MAD. ACT III OF 1864, s. 2, 9 M. 141=1 Weir 645.

"Same offences"—*See* ACT VI OF 1864, s. 3, 6 C.P.L.R. 19, Cr.

Words and Phrases—*continued.*

"Same offence"—*See* CRIM. PRO. CODE, 1898, ss. 233. 239, 14 Cr. L.J. 563=21 Ind. Cas. 163=7 L B.R. 68=6 Bur. L.T. 191.

"Same transaction"—*See* CRIM. PRO CODE, 1898, s. 239, 15 Cr. L.J. 695=26 Ind. Cas. 143.

"Same transaction"—*See* JOINDER OF CHARGES—MISJOINDER OF CHARGES, 3 L B. R. 231=4 Cr. L.J. 489, 26 M. 454=2 Weir 296.

"Same transaction"—*See* JOINT TRIAL, 113 P.L.R. 1906=4 Cr. L.J. 178, 1 S.L.R. 73, Cr.=8 Cr. L.J. 191.

"Same transaction"—*See* THEFT—MISCELLANEOUS, 5 C.L.R 574.

"Sampans"—*See* BUR. ACT II OF 1898, ss. 25, 26 (*b*), 14 Bur. L.R. 22=7 Cr. L J. 311.

"Sanitary defects"—*See* CANTONMENT CODE, 1899, ss. 83, 85, 283, 7 O.C. 51.

"Satisfied"—*See* PENAL CODE, s. 210, 10 B. 288, 16 C. 126.

"Screening any person from legal punishment for any offences"—*See* PENAL CODE, s. 214, 14 M. 400=1 Weir 195=1 M.L.J. 163.

"Section"—*See* CRIM. PRO. CODE, 1898, ss. 225, 233 to 237, 10 Bom. L.R. 801=8 Cr. L.J. 272=33 B. 77=1 Ind. Cas. 641.

"Seizure"—*See* FORFEITURE OF PROPERTY, 14 W.R. 114.

"Sell"—*See* BOM. ACT V OF 1878, s. 43, Rat. Un. Cr. C. 415.

"Sells or offers to sell"—*See* ACT VII OF 1870, s. 34, 24 M. 319=1 Weir 725.

"Sentence"—*See* SECURITY PROCEEDINGS, 6 C.P.L.R. Cr. 13.

"Sentence of imprisonment exceeding four years"—*See* CRIM. PRO. CODE, 1898, s. 408, cl. (*b*) Proviso, 1 L.B.R. 57.

"Sentence or order"—*See* CRIM. PRO. CODE, 1898, ss. 435, 439, 4 M.H.C. App. 70.

"Servant"—*See* PENAL CODE, s. 381, 157 P. L.R. 1905=50 P.R. 1905, Cr.=3 Cr.L.J. 70.

"Servant"—*See* THEFT—GENERAL, ETC., 8 W.R. Cr. 32.

"Sessions case"—*See* CRIM. PRO. CODE, 1898. ss. 436, 438, 4 C. 16, 7 C.L.R. 168.

"Sessions case"—*See* SESSIONS CASE, 11 B. H.C. 98.

"Sessions Court"—*See* CRIM. PRO. CODE, 1898, s. 296, 7 C.L.R. 168.

"Shall"—*See* BOM. ACT XLVIII OF 1860, ss. 11, 12, 4 Bom. L.R. 1=26 B. 396.

"Shall"—*See* CRIM. PRO. CODE, 1898, s. 342, 9 Bom. L.R. 356=5 Cr.L.J. 332.

"Shall"—*See* DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 2 S.L.R. 18, Cr, =10 Cr. L.J. 231.

"Shall"—*See* SECURITY TO KEEP THE PEACE—LIKELIHOOD OF BREACH OF THE PEACE, 1 S.L.R. 50, Cr.=8 Cr. L.J. 170.

"Shall add to any existing embankment"—*See* BEN. ACT II OF 1882, ss. 76 (*a*), 79, 30 C. 481=7 C.W.N. 284, F.B.

"Shall add to existing embankments"—*See* BEN. ACT II OF 1882, s 76, cl. (*b*), 11 C. 570.

"Shall be made"—*See* MAD. ACT III OF 1901, ss. 262, 420, 1912. M.W.N. 84=13 Ind. Cas. 832=13 Cr. L.J. 144.

"Shall exercise"—*See* CRIM. PRO. CODE, 1898, ss. 526, (8), 344, 19 M. 375=2 Weir 680 =6 M.L.J. 195.

"Shall try a person"—*See* CRIM. PRO. CODE, 1898, s. 487, 16 C. 121.

"Shop"—*See* BOM. ACT XLVIII OF 1860, s. 11, cl. (2), 15 B. 530.

"Single transaction"—*See* JOINDER OF CHARGES—MISJOINDER OF CHARGES, 10 M.L.T. 13=10 Ind. Cas. 349.

"Situate"—*See* CRIM. PRO. CODE, 1898, ss. 7 (3), 408, 435, 16 M.L.J. 444=4 Cr L.J. 443=30 M. 136=1 M.L.T. 402.

"Situate"—*See* JURISDICTION OF CRIMINAL COURTS—GENERAL, 30 M. 136=1 M.L.T. 402 =16 M.L J. 444=4 Cr. L.J. 443.

"Soldier"—*See* ACT III OF 1880, s. 14, 3 A. 214.

"Solmnize"—*See* ACT XV OF 1872, s. 68, 20 M. 12=1 Weir 820.

"Some person aggrieved"—*See* CRIM. PRO. CODE, 1898, s. 198, 2 Weir 231.

"Special laws"—*See* ACT IV OF 1909, ss. 3, 4, 5, 7 L B.R. 63.

"Special warrant"—*See* BOM. ACT IV OF 1887, s. 6, 3 S.L.R. 56, Cr.=2 Ind. Cas. 371.

"Springed vehicles"—*See* TRAILER CARS, 18 M.L.J. 149.

"Spirit"—*See* BOM. ACT V OF 1878, 9 B. 462.

"Spirituous liquor"—*See* BEN. ACT VII OF 1878, s. 14, 15 C. 452.

"Spirituous liquor"—*See* BEN. ACT VII OF 1878, s. 53, 24 C. 157=1 C.W.N. 1.

"Spontaneous salt"—*See* MAD. REG. I OF 1805 s. 18, 3 M. 17, F.B.

"Stand to ply for hire"—*See* BOM. ACT VI OF 1863, s. 21, Rat. Un. Cr. C. 539= Cr. Rg. 10 of 1891.

"Statement"—*See* PENAL CODE, ss. 193, 210, 511, 10 B. 288.

"Strake"—*See* ACT X OF 1841, 14 B. 170

"Strake"—*See* ST. 17 AND 18, VIC. C. 104, ss. 24 and 26, 14 B. 170.

"Street"—*See* BEN ACT III OF 1899, ss. 3, cl. 35, 361, 416 (1), (5), 419, 17 C.W.N. 1250=14 Cr. L.J. 511=20 Ind. Cas. 991.

"Street" in s. 12, Bom. Act IV of 1887—*See* BOM. ACT IV OF 1887, ss. 4, 12, 29 B. 386 =7 Bom. L R. 333.

"Street"—*See* BOM. ACT III OF 1888, s. 3 (*w*), 8 Bom. L.R. 457=4 Cr. L.J. 23=30 B. 558.

Words and Phrases—*continued.*

"Street"—*See* BOM. ACT IV OF 1890, ss. 3 (e), 61 (i), 14 Bom. L.R. 499=15 Ind. Cas. 785=13 Cr.L J. 513=1 Bom. Cr. C. 144.

"Street"—*See* MAD. ACT IV OF 1884, ss. 3 (27), 169, 263, 31 M. 181=8 Cr. L.J. 72.

"Street"—*See* MAD. ACT IV OF 1884. s. 222, 30 M. 221=17 M.L.J. 372=6 Cr.L J. 129.

"Street"—*See* MAD. ACT III OF 1889, s. 4, 28 M. 17=1 Weir 916.

"Street"—*See* U. P. ACT I OF 1900, s. 3, (4). A.W.N. 1908, 15=5 A.L.J. 45.

"Street"—*See* U. P. ACT I OF 1900, s. 88, A.W.N. 1907, 2=4 A.L J. 8.

"Street"—*See* STREET, 20 B. 83.

"Subject to the provisions herein before contained"—*See* SANCTION TO PROSECUTE—MISCELLANEOUS CASES, 17 M.L.J. 533=2 M L T. 493=31 M. 80=6 Cr. L.J. 382.

"Subordinate"—*See* CRIM. PRO. CODE, 1898, ss. 435, 437, 8 M. 18=2 Weir 540.

"Subordinate Magistrate"—*See* REFERENCE TO HIGH COURT, Rat. Un. Cr. C. 50.

"Substance of evidence"—*See* SUMMARY TRIAL, 4 L.B.R. 338=9 Cr. L.J. 23.

"Such minor"—*See* PENAL CODE, ss. 372, 373, 13 M.L.T. 131=24 M L J. 211=14 Cr. L. J. 33=18 Ind. Cas. 257.

"Such offence"—*See* CRIM. PRO. CODE, 1898, 10 M.L J 147, F.B.

"Such offender"—*See* DACOITY, 21 A. 263.

"Such officer"—*See* ACT VII OF 1878, s. 67 (2), Rat. Un. Cr. C. 591=Cr. Rg. 6 of 1892.

"Such woman"—*See* PENAL CODE, s. 498, 10 A. 580=A.W.N. 1888, 217.

"Sufficient ground"—*See* COMMITMENT TO SESSIONS COURT, 1 L B.R. 348.

"Sufficient ground"—*See* COMPLAINT—DISMISSAL OF COMPLAINT, 13 B. 590, F.B.

"Sufficient ground"—*See* DISCHARGE OF ACCUSED, 5 A. 161.

"Sufficient ground for committing"—*See* CRIM. PRO. CODE, 1898, s. 209, 148 P.L.R. 1903.

"Suit or other legal proceedings"—*See* ACT III OF 1909, ss. 17, 103, 12 Bom. L.R. 750=7 Ind. Cas. 963=11 Cr. L J. 548.

"Summons"—*See* PENAL CODE, s. 172, 5 W.R. Cr. 71.

"Summons case"—*See* ACT VII OF 1878, s. 26, P.L.R. 1900, p. 50, Cr.=19 P.R. 1900, Cr.

"Summons, notice or order"—*See* PENAL CODE, s. 17?, 28 P.R. 1890, Cr.

"Supply"—*See* ACT XIII OF 1889, s. 13, 9 Bom. L R. 703=6 Cr L J 67=31 B. 523.

"Supposed"—*See* APPROVER, 7 A. 160.

"Suspect"—*See* STOLEN PROPERTY, 6 B. 402.

Words and Phrases—*continued.*

"Swaraj"—*See* COMPLAINT—PROCEDURE ON RECEIPT OF COMPLAINTS, 5 M.L. T. 1=32 M. 3=9 Cr. L.J. 108=1 Ind. Cas. 22.

"Swaraj"—*See* PENAL CODE, ss. 109, 114, 124-A, 5 M.L.T. 16=32 M. 30=1 Ind. Cas. 36 =9 Cr. L J. 130.

"Swaraj"—*See* SECURITY FOR GOOD BEHAVIOUR, 34 C. 991=6 C.L.J. 699=11 C. W.N. 1050=6 Cr L.J. 297.

"Taken into account"—*See* COMPENSATION—GENERAL, 22 W.R. 336.

"Taken into consideration"—*See* EVIDENCE ACT, 1872, s. 30, Rat. Un. Cr. C. 311=Cr. Rg. 64 of 1886.

"Takes or agrees, or consents to take"—*See* PENAL CODE, s. 215, 20 A 389=A.W.N. 1898, 84.

"Taking"—*See* PENAL CODE, ss. 361, 366, 15 Cr. L.J. 630=25 Ind. Cas. 638.

"Taking"—*See* PENAL CODE, ss. 362, 361, 15 O. C. 351=14 Cr. L J. 93=18 Ind. Cas. 653.

"Taking into consideration"—*See* CONFESSION—CONFESSIONS BY CO-ACCUSED—ADMISSIBILITY, 22 A. 445.

"Tangible immoveable property"—*See* DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 15 A. 394=A W.N. 1893. 145, 11 C. 413, 12 C. 539, 13 C. 179, 15 C. 527, 23 C. 80.

"Tavern"—*See* BOM. ACT XLVIII OF 1860, s. 11, cl. (2), 15 B. 530.

"Tenant"—*See* MAD. ACT I OF 1900, s. 3, 7 M.L.T. 121=5 Ind. Cas. 834=11 Cr. L J. 258.

"Territory"—*See* CRIM. PRO. CODE, 1898, s. 188. 5 L B.R. 221=10 Ind. Cas. 705=12 Cr. L.J. 198.

"Theft"—*See* CRIM PRO. CODE, 1898, s. 562, 3 L.B.R. 95=3 Cr. L J. 21, F.B.

"Then"—*See* CRIM. PRO. CODE, 1898, s. 145, S.C. 115, Oudh.

"Then"—*See* CRIM. PRO. CODE. 1898, s. 145 (4), 33 C. 68=9 C.W.N. 1016=2 C.L J. 241=2 Cr. L J. 618.

"Then"—*See* DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 2 C L J. 241=2 Cr. L J. 618=33 C. 68, F B.=9 C W.N. 1016.

"There is no evidence"—*See* CRIM PRO. CODE, 1898, s. 289, 10 A. 414.

"Thoroughfare"—*See* ACT III OF 1867, s. 13, Colm. Digt. I of 1871.

"Thoroughfare" in s. 12, Bom. Act IV of 1887—*See* BOM. ACT IV OF 1887, ss. 4, 12, 29 B. 386=7 Bom. L.R. 333.

"Threatens another"—*See* CRIMINAL INTIMIDATION, 5 C.P.L.R. Cr. 50.

"Three miles"—*See* BOM. ACT III OF 1866, s. 1, cl. 2, 4 B.H.C. Cr. 9.

"Ti"—*See* BUR ACT I OF 1899, s 3, U.B. R. 1892—1896, Vol. 1, 112.

"Timber"—*See* MAD. ACT V OF 1882, ss 2, 43, 9 M. 373=1 Weir 757.

Words and Phrases—*continued.*

"Toddy"—*See* MAD ACT III OF 1864, s. 21, 5 M.H.C. App 36.

"Toddy producing tree"—*See* BOM. ACT V OF 1878, ss. 14, 20, 64, 65, 66, 67, 6 B. 398.

"Toll"—*See* MAD. ACT IV OF 1884, s. 269, 26 M. 475=1 Weir 752.

"To try any case"—*See* MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION, 23 C. 44.

"Town"—*See* ACT III OF 1867, s. 2, 23 P. R. 1887, Cr.

"Town"—*See* MAD. ACT XXIV OF 1859, s. 48, 6 M.H C. App. 34.

"Trade"—*See* PENAL CODE, s. 168, 147 P.L.R. 1903=22 P.R. 1903, Cr.

"Trade-mark"—*See* TRADE-MARK, 8 S L.R. 39=15 Cr. L.J. 670=25 Ind. Cas. 998.

"Trade or occupation"—*See* CRIM. PRO. CODE, 1898, s. 133 (3), 25 C. 425=2 C.W.N. 113.

"Trailer cars"—*See* MAD. ACT III OF 1904, sch. VI, cl. 1, 19 M.L.J. 149.

"Transaction"—*See* CRIM. PRO. CODE, 1898, s. 235 (1), U.B.R. 1897—1901, Vol. I, 31.

"Transaction"—*See* CRIM. PRO. CODE, 1898, s. 239, 20 C 537.

"Transaction"—*See* JOINDER OF CHARGES—GENERAL, 2 N L.R. 147=4 Cr. L.J. 420.

"Transit"—*See* MAD. ACT V OF 1882, ss. 35, 36, 4 Ind. Cas. 405.

"Transport" in s. 47 (c), 3 (*m*), Bom. Act II of 1890—*See* BOM. ACT II OF 1890, s. 47 (c), 3 (*m*), 4 Bom. L.R. 83.

"Tree"—*See* BOM. ACT V OF 1878, ss. 14, 20, 64, 65, 66, 67, 6 B. 398.

"Trespass"—*See* ACT I OF 1871, s. 24, Rat. Un. Cr. C. 602=Cr. Rg. 22 of 1892.

"Trespass"—*See* PENAL CODE, ss. 297, 411, 17 C.W.N. 534=18 Ind. Cas 677=14 Cr. L.J. 117=40 C. 548.

"Triable by a Magistrate"—*See* CRIM. PRO. CODE, 1898, ss. 28, 30, 250, 139 P.L.R. 1902.

"Triable exclusively by a Court of Sessions"—*See* CRIM. PRO. CODE, 1898, ss. 30, 436, 60 P. L.R. 1904.

"Triable exclusively by a Court of Sessions"—*See* PARDON, 3 P.R. 1897, Cr.

"Trial"—*See* ACT XIII OF 1859, s. 1, 6 Bom. L.R. 255.

"Trial"—*See* CRIM. PRO CODE, 1898, ss. 350, 437, 254, 253 (2), 16 M.L.T. 303=27 M.L.J. 589=(1914) M.W.N. 646=15 Cr. L.J. 673=25 Ind. Cas. 1001.

"Trial"—*See* CRIM. PRO. CODE, 1898, ss. 350, 537, 25 C. 863=2 C.W.N. 465.

"Trial"—*See* JOINT TRIAL, 3 L.B.R. 280=5 Cr. L.J. 417.

"Trial"—*See* LETTERS PATENT—LETTERS PATENT, 1865—MAD. cl. 15, 1911, 2 M.W.N. 479=10 M L.T. 502=12 Cr. L.J. 565.

"Trial"—*See* SECURITY TO KEEP THE PEACE—GENERAL, 27 M. 510=1 Weir 787=14 M.L.J. 394.

"Trial of an offender"—*See* CRIM. PRO. CODE, 1898, ss. 190, 251, 253, 529, 530, U.B. R. 1905, Crim. Pro. Code, 41.

"Tried"—*See* AUTREFOIS ACQUIT, PLEA OF, 9 M.L T. 93=9 Ind. Cas. 253=12 Cr. L.J. 41=34 M. 253

"Tried"—*See* CRIM. PRO. CODE, 1898, ss. 247, 403, 9 M.L.T. 93=9 Ind. Cas. 253=12 Cr. L.J. 41=34 M. 253.

"Try a case"—*See* TRIAL, Rat. Un. Cr. C. 830, F.B.=Cr. Rg. 73 of 1895.

"Try any case"—*See* CRIM. PRO. CODE, 1898, ss. 556, 435, 439, 9 N.L.R. 81=14 Cr. L. J. 385=20 Ind. Cas. 209.

"Try any case"—The words 'try any case,' whether includes proceedings under s. 437—*See* CRIM. PRO CODE, 1898, ss. 556, 437, 5 S.L.R. 137=13 Ind. Cas. 222=13 Cr. L.J. 30.

"Undergoing imprisonment"—*See* CRIM. PRO. CODE, 1898, s. 397, 2 Weir 451.

"Under misconception of fact"—*See* PENAL CODE, ss 90, 366, 36 M. 453.

"Unfit"—*See* SECURITY FOR GOOD BEHAVIOUR, 8 C.L.J. 243=13 C.W.N. 80=4 Ind. Cas. 560

"Unfit"—*See* SURETY, 8 C.L.J. 243=13 C. W.N. 80=8 Cr. L J. 388=4 Ind. Cas. 560.

"Unfitness"—*See* SURETY, 8 C.L.J. 243=13 C.W.N. 80.

"Unlawful"—*See* ACT IX OF 1890, ss. 122, 47, 4 P.R. 1914, Cr.=155 P.L.R. 1914=15 Cr. L J. 468=24 Ind. Cas. 348.

"Unlawful"—*See* ILLEGALITY, 24 C. 494=1 C W.N. 274.

"Unlawful"—*See* PENAL CODE, ss. 372, 373, Rat. Un. Cr. C. 440.

"Unlawful means"—*See* PENAL CODE, ss. 23, 411, 408, 114, 4 S.L.R. 159.

"Unless in any case in which a higher penalty is imposed by this Act"—*See* ACT X OF 1862, s. 3, 3 M.H.C. App. 27.

"Unsoundness of mind"—*See* PENAL CODE, ss. 84, 324, 326, 7 L.B.R. 13=20 Ind. Cas. 411=14 Cr. L.J. 427.

"Uses"—*See* PENAL CODE, ss. 397, 398, 392, 6 L.B.R. 41=13 Cr. L.J. 267=14 Ind. Cas. 651=5 Bur. L.T. 9.

"Uses"—*See* PENAL CODE, s. 471, A.W.N 1887, 195.

"Using premises"—*See* BEN. ACT III OF 1864, s. 77, 16 W.R. Cr. 4.

"Utensil"—*See* MAD. ACT I OF 1886, s. 65, 1 Weir 652.

"Vakil"—*See* MAD. ACT III OF 1871, cl. (4), sch. (*b*), 6 M. 100=7 Ind. Jur. 78.

"Valuable security"—*See* FORGERY, 11 W.R. Cr. 15.

Words and Phrases—*continued.*

"Vehicle" includes bicycle— Meaning of 'drives'—*See* BUR. ACT III OF 1898, s. 162-B, 12 Cr. L.J. 573=12 Ind. Cas. 837=4 Bur. L. T. 134.

"Vellati"—*See* SLAVERY, 7 M. 277=1 Weir 354.

"Verbal"—*See* EVIDENCE ACT, 1872, ss. 8, 9, 32, 7 A. 385, F.B.

"Verbal statement"—*See* EVIDENCE ACT, 1872, ss. 8, 9, 32, 7 A. 385, F.B.

"Verdict"—*See* CRIM. PRO. CODE, 1898, s. 423, 22 C. 377.

"Verdict of jury"—*See* CRIM. PRO. CODE, 1898, ss. 297, 303, 304, 307, 36 M. 585.

"Verdict, return of"—*See* CRIM. PRO. CODE, 1898, s. 227, 8 B. 200.

"Vexatious" — *See* COMPENSATION — GENERAL, 9 Cr. L.J. 255=1 S.L.R. 12, Cr., 9 Cr. L.J. 268, F B.=1 S.L.R. 28, Cr.

"Vexatious"—*See* CRIM. PRO. CODE, 1898, s. 250, 28 C. 251.

"Vicinity"—*See* MAD. ACT I OF 1858, s. 1, 1 Weir 783.

"Village".—*See* BOM. REG. XII OF 1827, s. 37, 4 S L.R. 269=12 Cr. L.J. 391=11 Ind. Cas. 255.

"Voluntary"—*See* RELIGION, OFFENCES RELATING TO, 23 C. 60.

"Wash"—*See* MAD. ACT I OF 1886, s. 55, (9), 24 M. 417=1 Weir 641.

"Was not competent to try"—*See* CRIM. PRO. CODE, 1898, ss. 269, 403, 536, 24 M. 641 =2 Weir 548.

"Watching proceedings"—*See* CRIM. PRO. CODE, 1898, s. 202, 10 Ind. Cas. 33=12 Cr. L. J. 207.

"Watering place"—*See* BOM. ACT VII OF 1867, s. 31 (2), Rat. Un. Cr. C. 55=Cr. Rg. 31-8-1871.

"Wattle-fence"—*See* BOM. ACT VI OF 1873, s. 3, Rat. Un. Cr. C. 428=Cr. Rg. 92 of 1888.

"Welfare—*See* MINOR, 8 M.L.T. 47=6 Ind. Cas. 751=33 M. 288.

"Where the trial was by Jury"—*See* CRIM. PRO. CODE, 1898, ss. 418, 439, 536, 25 B. 680= 3 Bom. L R 279, F.B.

"Which at the time when he became possessed of it he knew to be counterfeit"—*See* COUNTERFEITING COIN, 3 N.W.P. 150.

"Whoever"—*See* PENAL CODE, ss. 482, 486, 15 Cr. L J. 337=23 Ind. Cas. 689=7 Bur. L.T. 116.

"Wilfully"—*See* MAD. ACT III OF 1889, s. 3, (5) (6), 1 Weir 912.

"With child"—*See* MISCARRIAGE, 9 M. 369=1 Weir 331.

"Within the limits of the Charter of the said United Company"—*See* JURISDICTION OF CRIMINAL COURTS—GENERAL, 4 W.R.P. C. 109=7 M.I.A. 72=Boul. 189.

Words and Phrases—*concluded.*

"Within two months from the date of such order"—*See* ACT I OF 1910, s. 17, 126 P.L.R. 1914=15 Cr. L.J. 222=32 P.W.R. 1914, Cr.= 22 Ind. Cas. 1006=16 P.R. 1914, Crl. S.B.

"Without any excuse"—*See* MURDER, 40 P R. 1887, Cr.

"Witnesses for the defence"—*See* CRIM. PRO. CODE, 1898, s. 213, sub-s. 2, 16 C.W.N. 1155= 39 C. 885=17 Ind. Cas. 406=13 Cr.L.J. 774.

"Woman with child"—*See* MISCARRIAGE, 9 M. 369=1 Weir 331.

"Wood" — *See* BUR. ACT III OF 1898, ss. 133 (1) and 160, 2 L.B.R. 70.

"Workman"—*See* ACT XIII OF 1859, Rat. Un. Cr. C. 204=Cr Rg. 24-7-1884, 7 L.B.R. 82=15 Cr. L.J. 235=23 Ind. Cas. 187.

"Workman"—*See* ACT XIII OF 1859, s. 2, 6 C.L.J. 180=6 Cr. L J. 191, 2 B.L.R.A. Cr. 32, 4 B.L.R. App. 1=13 W.R. Cr. 1, 28 P.R. 1904, Cr., Rat. Un. Cr. C. 537=Cr. Rg. 9 of 1861, 7 S.L.R. 100=15 Cr. L.J. 383=23 Ind. Cas. 751.

"Wrongful gain"—*See* CRIMINAL BREACH OF TRUST, 2 L.B.R. 216.

"Wrongful loss"—*See* CRIMINAL BREACH OF TRUST, 2 L.B.R. 216.

"Yielding a yearly rent"—*See* BOM. ACT VI OF 1873, s. 84, Rat. Un. Cr. C. 658=Cr. Rg. 23 of 1893.

'Youthful offender'—*See* ACT VIII OF 1897, s. 8, 3 L.B.R. 46.

"Youthful offender"—*See* ACT VIII OF 1897, s. 11, 1 L.B.R. 126.

"Zayat"—*See* BUR. ACT I OF 1899, s. 10, U.B.R. 1897—1901, Vol. 1, 215.

Words, Construction of.

See WORDS and PHRASES.

(1)—*Proper mode of construing words* —The popular and not the scientific or the historical meaning of the words is to be considered. HARI SINGH v. JADU NANDAN SINGH, **31 C. 542=8 C.W.N. 458=1 Cr. L.J. 349.**

Workman.

See ACT XIII OF 1859, Rat. Un. Cr. C. 204 =Cr. Rg. 24-7-1884.

Cooly Sirdar or recruiter, whether an artificer, workman or labourer—*See* ACT XIII OF 1859, s. 2, 6 C.L.J. 180=6 Cr. L.J. 191.

See ACT XIII OF 1859, s. 2, 10 B. 96.

Workman's Breach of Contract Act.

See ACT XIII OF 1859.

Worship.

Place of public—*See* MAD. ACT V OF 1878, s. 119, 6 M. 287.

See CRIM. PRO. CODE, 1898, s. 144, 2 Weir 70=5 M. 301.

Offerings given by worshippers to deity— Whether profits arising out of building—*See* CRIM. PRO. CODE, 1898, s. 145, 9 Ind. Cas. 6 =12 Cr. L.J. 3=13 C.L.J. 445=38 C. 387.

Worsh'p—*concluded.*

Dispute concerning the right to perform religious, in mosque—*See* DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERY, 11 M. 323 = 2 Weir 117.

Worshippers.

Temple resorted to by pilgrims on festive occasions—Duty of person in charge to ensure safety of pilgrims attending by license and invitation—*See* PENAL CODE, s. 336, 18 C W. N. 1176.

Writ.

See CERTIORARI, WRIT OF.

See HABEAS CORPUS, WRIT OF.

Written Statement.

Refusal to grant time for filing, in disputes about land—*See* CRIM. PRO. CODE, 1898, s. 145, 8 C.W.N. 642.

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 14 C.W.N. 80.

See SANCTION TO PROSECUTE—CONDITIONS REQUISITE FOR GRANT OF SANCTION, ETC., 3 Ind. Cas. 723 = 6 M.L.T. 346 = 10 Cr. L.J. 364.

Wrongful Confinement.

See PENAL CODE, ss. 340—342.

See WRONGFUL RESTRAINT.

(1)—*Penal Code, s.* 340—*Wrongful confinement by police constable, what amounts to—Essentials of the offence.*—The accused, a police head constable, detained some persons as suspects for several days. They were not fettered; but they were made to stay in a circumscribed limit. Their meals were brought to them, or police or village servants were sent with them to their houses for their meals and they were brought back. *Held* on these facts that the accused was guilty of wrongful confinement. *Per Fulton, J.*—To support a charge of wrongful confinement, proof of actual physical obstruction is not essential. It must be proved in each case that there was at least such an impression produced in the mind of the person confined as to lead him reasonably to believe that he was not free to depart and that he would be forthwith restrained if he attempted to do so. The mere threat of some future harm in case of departure will not suffice if such person knows that it is open to him to go away, and refrains from doing so lest he may suffer such harm. But if the circumstances are such as to justify and create the belief that he cannot depart without being seized immediately, then it would be proper to hold that he was obstructed and confined. KING-EMPEROR v. SHAMLAL, **4 Bom. L.R. 79.** [*R.*, 34 M. 547 = 11 Cr. L J. 708 = 8 Ind. Cas. 757 = 9 M.L.T. 103 = 1910 M.W.N. 727.]

(2)—*Penal Code, s.* 346—*Offence under.*—To render a person liable, under s. 346 of the Penal Code, it must be shown that the wrongful confinement was of such a nature as to indicate an intention that the person confined should not be discovered. *In the matter of the petition of* SREENATH BANERJEE, EMPRESS v. SREENATH BANERJEE, **9 C. 221 = 5 Shome L R. 82.**

(3)—*What constitutes.*—The use of physical force is not a necessary ingredient of the offence of wrongful confinement. The mere detention of a person at a police station by moral force, exercised by the police or others guarding him, would be sufficient to constitute the offence. ACTING GOVERNMENT PLEADER v. VENKATACHALA MUDALI, **1 Weir 341.**

(4)—*Penal Code, s* 340—*Wrongful confinement—Malice.*—A person may be guilty of wrongful confinement though he acts without malice. DHANIA v. F.L. CLIFFORD, **13 B. 376.** [*R.*, 19 B. 72.]

(5)—*Penal Code, ss.* 79, 114 *and* 342—*Wrongful confinement—Confinement in a cell of a prisoner in jail, whether illegal.*—Confinement of a prisoner already undergoing imprisonment in a cell within the jail for the purpose of administering enema, against his will, and without legal authority, amounts to wrongful confinement and is not protected by s. 79, Penal Code. BAISTAB CHARAN SHAHA v. EMPEROR, **30 C. 95 = 6 C.W.N. 511.**

(6)—*Penal Code, ss.* 340 *and* 342—*Wrongful confinement—Power of Village Magistrate to arrest.*—Where a Village Magistrate and a Village Kurnam directed the arrest of certain persons for resisting the detention of some pigs found trespassing, and two Police Officers acted in obedience to such an order and effected the arrest of the person, *held*, that, as there was no enactment which would authorise the Village Magistrate to order the arrest of the persons, both the Village Officers and the Constables were properly convicted of wrongful confinement. HIGH COURT PROCEEDINGS, 13TH JUNE 1870, **1 Weir 338 = 5 M.H.C. Ap. 24.**

(6-*a*)—*Penal Code, s.* 342 — *Unlawful imprisonment by policemen —Village Magistrate assisting policemen, effect of.*—Assistance given by a village Magistrate, not in a judicial, but in an executive capacity, will not render an illegal custody legal. ACTING GOVERNMENT PLEADER v. VENKATACHALA MUDALI, **1 Weir 341.**

(7)—*Consent of person wrongfully confined.*—There can be no wrongful confinement when a desire to proceed has never existed, nor can a confinement be wrongful if it was consented to by the person affected. MUHAMMAD DIN v. EMPRESS, **36 P.R. 1894, Cr.**

(8)—*Penal Code, s.* 452—*Policemen acting under colour of his office and apparently in good faith—Whether he should be convicted, and if so, whether only on clear proof that his action was illegal.*—Information of a cognizable and non-bailable offence was laid at the police station, and the applicant was deputed to investigate. The applicant did so, and, finding the offence proved arrested the accused (Po Thaw), handcuffed him in spite of protest, took

Wrongful Confinement—*continued.*

him to the police station, and refused to release him on bail. The applicant was convicted of wrongful confinement, the ground of the conviction being that the accused had not committed the offence complained of but only a non-cognizable offence. *Held* that, when a policeman acts under colour of his office and apparently in good faith, he should not be convicted without clear proof that his action was illegal, and that, therefore, the conviction and sentence should be set aside. MAUNG AUNG DUN v. KING-EMPEROR, **14 Bur. L R. 258 = 8 Cr. L J. 424.**

(9)—*Penal Code, ss.* 78, 79 *and* 349—*Oral order as to custody of civil prisoner to bailiff—Bailiff giving prisoner in charge of process-server—Process server detaining him in his house—Wrongful confinement — Civ. Pro. Code, ss.* 478 *and* 481.—A person was arrested before judgment, on a warrant issued, under s. 478, Civ. Pro. Code, and was brought before the Court. The Judge did not issue any committal warrant, but orally ordered a bailiff to keep him in custody. The bailiff gave his prisoner in charge to a process-server, with oral orders to detain him. The process-server detained him in his own house till the Deputy Commissioner, on the complaint of that person's wife, ordered his release. The bailiff and the process-server were prosecuted and convicted of wrongful confinement, under s. 344, I.P.C. *Held*, that, as the law laid down in s. 481 of the Crim. Pro. Code, is that the Court may commit the defendant to jail,—and the form of order for committal is prescribed in the fourth schedule, No. 159—S. 78 of the Penal Code does not extend to the oral order of a Judge, that the mistake with the Judge, bailiff and process-server made in supposing that the warrant of arrest and the oral orders of the Judge and the bailiff were legal and justified the further detention of the man after he had been brought before the Court, was ignorance of the law as so laid down and a pure mistake of law and not of fact, and that, therefore, they were rightly convicted. MAUNG PU v. KING-EMPEROR, **4 L B.R. 253 = 8 Cr. L J. 68.**

(10)—*Crim. Pro. Code, s.* 54—*Cognizable offence committed outside British India—Power to arrest without warrant.*—The word "offence" as used in s. 54 does not include acts of British subjects outside of British India, which if done in British India will amount to cognizable offences. A police officer is not, therefore, empowered to arrest, without a warrant, a British subject in British India on a charge of a cognizable offence committed outside British India. A police officer of the Sangli territory, an Independent State, came to Belgaum, with a written request from one of the chief officials to the chief constable to arrest the complainant, a Native Indian subject residing at Belgaum, on a charge of criminal breach of trust committed in the Sangli territory. The chief constable directed the arrest, which was performed by the Sangli officer, and the complainant was brought before the chief constable and showed him a letter for the District Magistrate of Belgaum to the effect that he could not be arrested without a warrant from either the Political Agent at Sangli or from the District Magistrate. Whereupon the chief constable brought the complainant before a Magistrate, who discharged him from custody. *Held* that, as the chief constable had no power to arrest without a warrant, he was guilty, under s. 342, Penal Code, of wrongful confinement. *In re* MUKUND BABU VETHE, **19 B. 72.** [*D.*, 7 Bom. L R. 463.]

Wrongful Confinement—*concluded.*

Money paid to obtain release—Receiving illegal gratification—Extortion—*See* ACCOMPLICE—GENERAL, 27 C. 925 = 4 C.W.N. 755.

See COMPENSATION—GENERAL, 7 W. R. Cr. 11.

Malice whether essential ingredient of offence—*See* FURTHER ENQUIRY, 13 B. 376.

Separate sentences for wrongful confinement and attempt at kidnapping—*See* KIDNAPPING, 6 N.W.P. 293.

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Separate sentences for rioting and, validity of—*See* PENAL CODE, ss. 71, 147, 342, 8 C. W.N. 483.

Robbery by causing wrongful confinement—Separate convictions for wrongful confinement and robbery, validity of—*See* ROBBERY, 1 Weir 445.

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Wrongful Distraint.

See DISTRAINT.

See DISTRESS.

(1)—*Penal Code, s.* 379 — *Wrongful distraint under Bengal Act* VIII *of* 1869, *s.* 6.—Persons removing property, under the provisions of law relating to distraint, cannot be convicted of theft, but should be proceeded against under the provisions of the Rent Act. *In the matter of* SHAIKH AGHANI v. BHAGI HALWAI, **8 C. L. R. 204.**

Wrongful Gain.

See CRIMINAL BREACH OF TRUST, 2 L.B. R. 216.

See PENAL CODE, ss. 23, 379, 411, 57 P.L. R. 1914 = 19 P.W.R 1914, Cr. = 15 Cr. L.J. 522 = 24 Ind. Cas. 834.

Wrongful Gain or Loss.

See PENAL CODE, s. 420, 9 Cr. L J. 261 = 1 S.L.R. 20, Cr.

See THEFT—GENERAL—WHAT CONSTITUTES THEFT, 25 C. 416 = 2 C.W.N. 317.

See THEFT—THINGS IN RESPECT OF WHICH THE OFFENCE OF THEFT CANNOT BE COMMITTED, 22 C. 669.

See THEFT—THINGS WHICH MAY BE THE SUBJECT OF THEFT, 22 C. 1017.

Wrongful Loss.

(1)—*Letting cattle stray—Offence—Intention.*—The mere permitting of cattle to stray does not establish the intention of the accused to cause wrongful loss or damage or his knowledge that he is likely to cause such loss or damage. REG. v. TOOREBAJKHAN, **Rat. Un. Cr. C. 11.**

See CRIMINAL BREACH OF TRUST, 2 L.B. R. 216.

See MISCHIEF, 12 C. 660.

See PENAL CODE, ss. 23, 379, 411, 57 P.L. R. 1914 = 19 P.W.R. 1914, Cr. = 15 Cr. L.J. 522 = 24 Ind. Cas. 834.

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See WITNESS—MISCELLANEOUS CASES, 6 M.H.C. App. 29.

Wrongful Restraint.

See PENAL CODE, ss. 339—342.

See WRONGFUL CONFINEMENT.

(1)—*Penal Code, s.* 341—*Wrongful restraint, what constitutes.*—The slightest unlawful obstruction to the liberty of the subject to go *when* and *where* he likes to go, provided he does so in a lawful manner, cannot be justified, and is punishable as an offence under s. 341, Penal Code. Where the complainant was taken to a police station, registered as a "suspect" and passed on in charge of policemen from one police beat to another, *held*, that an offence under s. 341 had been committed, inasmuch as the complainant's freedom of movement had been wilfully obstructed. *In re* SWAMINATHA PILLAI, **1 Weir. 339.**

(2)—*Penal Code, ss.* 79 *and* 341—*Wrongful restraint—Locking house under claim of right —Acts done in good faith.*—A person cannot be convicted of wrongful restraint where he locks up a house under a *bona fide* claim to the same. QUEEN-EMPRESS v. HAWANA, **Rat. Un. Cr. C. 451 = Cr. Rg. 10 of 1889.**

(3)—Where a Civil Court peon in executing a warrant of arrest against a judgment-debtor's stopped a *palkai* with closed doors coming out of the male apartments of the judgment-debtor's house, believing that the judgment-debtor was making his escape thereby, and a *purdanishin* lady of rank was in the *palkai*, *held*, that having regard to the terms of s. 79, the peon could not be convicted under s. 341 of the Code. KANAI LAL GOWALA v. QUEEN-EMPRESS, **24 C. 885 = 1 C.W.N. 665.**

(4)—*Penal Code, ss.* 339, 341.—Where the accused believed that they had a right to prevent the complainant from passing over their ground, and erected a wall between their premises in good faith, *held*, that their case was covered by the exception to s. 339, I.P.C., and that they were not, therefore, guilty of an offence, under s. 341, I.P.C. HAVELI v. EMPRESS, **25 P R. 1886, 7, Cr.** [*F.*, 46 P.W.R 1910, Cr. = 22 P.R. 1910, Cr. = 7 Ind. Cas. 493; *R.*, 11 Cr. L.J. 495 = 121 P.L.R. 1910.]

Wrongful Restraint—*continued.*

(5)—*Penal Code, s.* 341—*Direction or demonstration, if constitutes wrongful restraint.*—Mere direction or demonstration will not constitute wrongful restraint. *In re* SUBBA ROW, **4 M. L.T. 141 = 8 Cr. L J. 212.**

(6)—*Penal Code, s.* 341—*Wrongful restraint —Verbal remonstrance.*—The mere act of verbally prohibiting another from ploughing does not constitute wrongful restraint. *In re* KARATURI NAGAMMA, **1 Weir 339.**

(7)—*Penal Code, s.* 341—*Wrongful restraint —Preventing a neighbour from building a party wall within his backyard.*—A person preventing his neighbours from building a party-wall within their backyards is not guilty of wrongful restraint within the meaning of s. 341. *In re* VENKATACHELLAM PILLAI, **1 Weir 339.**

(8)—*Penal Code, s.* 341—*Obstruction in a road.*—The accused placed an obstruction in a road over which the complainant had a right of passage for men and cattle. The obstruction prevented the cattle from passing, but a portion of the way had been left in such a condition as to be passable by human beings. *Held*, that the accused had not committed an offence within the definition of s. 399, as it could not be said that the obstruction prevented *a prson* from proceeding in any direction in which that person had a right to proceed. CRIMINAL REVISION CASE, NO. 125 OF 1899, **1 Weir 340.**

(9)—*Penal Code, ss.* 341 *and* 350—*Criminal force, what constitutes—Removing a ladder thereby detaining a person on roof.*—Criminal force does not necessarily imply a causing or cessation of motion by personal contact. But, where the accused removed a ladder, thereby detaining a person on the roof, *held*, that the act of the accused did not amount to criminal force, but amounted to wrongful restraint. *In re* TELAPOLU SUBBADU, **1 Weir 340.**

(10)—*Penal Code, s.* 339—"*Wrongful restraint*"—*Taking away boat licenses from boatmen* —Where the accused took away boat licenses from the boatmen, with the result that the authorities did not permit the boat to proceed further up the channel: *Held*, that it did not constitute an offence of wrongful restraint or confinement. Under s. 339, I.P.C., there must be obstruction attributable directly to the person charged. The legislature apparently did not intend to include within the scope of the section an act which, in its remote and indirect consequence, might obstruct the free movement of a person. *In re* VENKATRAMIAH, **5 M.L T. 207 = 4 Ind. Cas. 1117 = 11 Cr. L.J. 192.**

(11)—*Penal Code, s.* 339—*Wrongful restraint —Causing pariahs to stand in a public street for preventing complainant from conducting a procession, whether amounts to obstruction.*—A person will not be justified in complaining of wrongful restraint against a pariah, who, being lawfully in the public street on his own business, refused to move when directed to remove himself to a distance, knowing that, if he remained,

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the complainant would be deterred, by fear of pollution, from passing near him. So, where A caused certain pariahs to stand in the public street in the vicinity of a temple, with the object of preventing B from conducting a procession from the temple through the street, *held*, the act of A did not amount to an obstruction within the meaning of s. 339, and it was B's disinclination to go near the pariahs, and not the presence of the pariahs, which prevented him from going where he would, and that A did not therefore commit the offence of wrongful restraint. *In re* VENKATASUBBA REDDI, **7 M.L.T. 366 = 5 Ind. Cas. 851 = 11 Cr. L.J. 263.**

(12)—*Penal Code, s.* 339—*Wrongful restraint —Moral influence.*—Where the complainant, invited by the accused to his house so as to be ready to give evidence for him in a judicial proceeding, remained in that house not by the coercion of the accused but under the moral influence of a dislike to give offence to the accused, *held* that no offence of wrongful restraint was committed. REG. v. LEKSHMAN KALYAN, **Rat. Un. Cr. C. 89 = Cr. Rg. 11-1-1875.**

(13)—*Penal Code, ss.* 341 *and* 425, *wrongful restraint — Objection to removal of goods.*— Where the accused came up and ordered the complainant not to remove certain things he was removing from a shop to another, and overturned the cart with the things, and the complainant went to the other shop leaving the things lying on the road, *held* that the accused could not be convicted under s. 341 of the Penal Code, but that an offence under s. 425 had been established. JUGGESHWAR DASS v. KOYLASH CHUNDER CHATTERJEE, **12 C. 55.**

(14)—*Crim. Pro. Code, ss.* 171, 288—*Evidence given before committing Magistrate—Duty of Sessions Judge in admitting it—Wrongful restraint by Police officer—Enquiry.*—Sessions Judges should act with great caution in exercising the discretion given to them by s. 288, in admitting evidence given by a witness before the committing Magistrate. When an allegation is made by a witness that his statement before the Magistrate was given under pressure and threat by the Police, he will be acting discreetly if he first makes some inquiry by examining the Police officer as to the restraint and the pressure alleged to have been used in obtaining the statement. A Sessions Judge is not competent to admit statements made before a committing Magistrate, when the witness is not examined in the Sessions Court with regard to those statements, and when he does not repeat those statements before the Sessions Court. The evidence of a Medical officer given before a committing Magistrate is not admissible in the Sessions Court when the committing Magistrate does not certify that the evidence was given in the presence of the accused. There is no warrant in law for the police to keep a witness under surveillance for four days, and statements thereby obtained cannot be regarded as voluntary. BAJRANGI LALL v. EMPRESS, **4 C.W.N. 49.** (21 W.R. Cr. 49 = 12 B.L.R. App. 15, 7 A. 862, *F. & R.*)

(15)—*Penal Code, ss.* 143, 341—*Erection of a fence in pursuance of a decree of Civil Court—Wrongful restraint — Duty of Magistrate.*— Where a person accused of wrongful restraint by erection of a fence over a way contended that that he had acted in accordance with a decree of a Civil Court, *held*, that a Magistrate should confine his attention to observing or enforcing the terms of the decree of the Civil Courts without obtaining evidence to modify or question it. RASH MOHAN PAL v. MOHIM CHANDRA CHAKRAVARTY, **5 C.W.N. 215.**

(16)—*Penal Code, ss.* 52, 79, 99, 342—*Private defence—Public servant acting in good faith, under colour of office—Arrest by police officer—Crim. Pro. Code, s.* 54.—The accused, a police sepoy, was on duty at a temporary post near the Arthur Crawfor Market. His term of duty lasted from 4 to 7 A.M. About 6-30, or between that time and 7, he saw the complainant there, carrying under his arm three pieces of cloth. Suspecting whether these cloths might not be stolen property, he went up to the complainant and began to question him about them. The complainant answered the questions apparently truthfully. One of the answers, however, was that the cloths were made in England. But the cloths bore Gujarathi names on them, and the accused, who did not know that such names were placed on English-made goods, presumed from this that the answer was a false one, and that the goods were stolen property. He did not, however, at once arrest the complainant, but took hold of one of the pieces of cloth in order to look at it more closely. The complainant objected to this and there was a scuffle, each trying to obtain possession of the cloth. After this, the accused arrested the complainant and took him to a European Inspector, to whom he narrated the facts, distinctly stating that he had arrested him because he had assaulted him. The Inspector on seeing that the complainant was an old man and on the accused saying that he was not hurt, let the complainant go. The Magistrate convicted the accused of wrongful confinement and sentenced him under s. 342, I.P.C. *Held*, on revision, that the conviction was wrong. The accused having an honest suspicion that the cloths may be stolen property, even though the same facts might not have raised any suspicion in the mind of a police officer of higher grade, had acted with due care in putting questions the answers to which might clear up his suspicions. The putting of questions, under these circumstances, was in itself an indication of good faith. Having received answers which did not satisfy him as to the honesty of the complainant, he was legally justified in detaining the cloth; and though he was entirely mistaken as to the character of

Wrongful Restraint—*concluded.*

the complainant, his belief as to his legal right was a *bona fide* belief, and he was protected by s. 79, I.P.C. Even though his act might not have been strictly justifiable by law, *i.e.*, even though there might not have been a complete basis of facts to justify a reasonable suspicion that the cloth was stolen property, still the complainant had no right of private defence, as the accused was a public servant acting under colour of his office, and his act was not one which caused the apprehension of death or of grievous hurt. The complainant had no right to resist him, and he was, therefore, legally arrested under s. 54, Crim. Pro. Code. BHAWOO JIVAJI v. MULJI DAYAL, **12 B. 377.** *R.*, 21 M. 78=1 Weir 123 ; *D.*, 24 C. 324.]

(17)—*Preventing person from going home until he gave bail.*—A police officer refusing to let a person go home until he had given bail would be guilty of wrongful restraint. SHEO SURUN SAHAI v. MOHOMED FAZIL, **10 W.R.Cr. 20.**

(18)—*And taking money on false plea.*—The act of preventing a person from proceeding in a certain direction, with his carts and exacting from him a sum of money on a false plea would constitute the offence of wrongful restraint, and not theft. JOWAHIR SHAH v. GRIDHAREE CHOWDHRY, **10 W.R.Cr. 35.**

(19)—*Mistaken exercise of powers.*—Mere excessive and mistaken exercise of powers not civilly excusable in a police officer, would not amount to the offence of wrongful restraint. *In re* BUDROOL HOOSSEIN, **24 W.R.Cr. 51.**

(20)—*Penal Code, ss.* 339, 341—*What amounts to wrongful restraint.*—The complainants in this case charged six accused persons with the offence of wrongful restraint, inasmuch as they had restrained the complainants from passing through certain fields on their way to their well. *Held* that the accused cannot be convicted of an offence under s. 341, I.P.C., because (1) complainants' right of way is not sufficiently established ; and (2) it is not shown that accused acted otherwise than *bona fide* in obstructing them. NATHA SINGH v. CROWN, **22 P.R. 1910, Cr.=120 P.L.R. 1910=7 Ind. Cas. 493=11 Cr. L.J. 495.** (25 P.R. 1886, Cr., *R.*)

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* Read 11 A L J 452 for 11 A L J 462.
† Read 12 Cr L J 430 for 11 Cr L J 430.
‡ At Cols. 1064, 3832, read 2 Cr L J 388 for 2 Cr L J 368.

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* At Col. 1489, read 4 P R 1910 for 4 P R 1909.

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* 2 Weir 240 is wrongly printed as = to case to 27 M 237.
† Read 11 W R 26 for 11 W R Cr 26.
‡ At Col. 4816, read 11 W R 26 for 11 W R Cr 26.

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* Read 25 P W R 1914 for 25 P W R 1814.
† At Col. 4030, read 14 C W N 1114 for 11 and 114 respectively.

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* Read 4 Cr L J 142 for 5 Cr L J 144.
† Read 6 Bom L R 1096 for 6 Bom L R 1906.
‡ Read 32 B 162 for 32 B 163.

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* At Col. 811, read A W N 1908, 54 for A W N 1908, 64.

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* Read 13 Cr L J 246 for 8 Cr L J 246.

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* Read 20 Ind Cas 613 for 20 Ind Cas 453.
† Read 25 A 531 for 25 A 537.

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* 3 A L J 463 is wrongly printed as = to case.

† Read 14 Ind Cas 671 for 14 Ind Cas 971.

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* Read 2 Cr L J 749 for 2 Cr L J 149.
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* Read Cr Rg 8-12-1870 for Cr Rg 8-2-1870.
† Read 21 M L J 748 for 12 M L J 748.

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* Read 5 Ind Cas 44 as 5 Ind Cas 744.

† At Col. 1194, read 2 Cr L J 230 for 2 Cr L J 239.

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† At Col. 2540 read 10 C W N 57 for 10 C W N 67.

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* At Col. 1671, read 1 P R 1901, Cr for 1 P R 1900, Cr.
† Read 5 Ind Cas 973 for 5 Ind Cas 793.

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† Read 1 Ind Cas 203 for 1 Ind Cas 103.

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* Read 26 M L J 233 for 26 M L J 223.
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‡ Read 2 Cr L J 417 for 2 Cr L J 470.

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† At Col. 3515, read, 2 Cr L J 307 for 2 Cr L J 207.

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* Read 24 A 155 for 24 A 555.

† Read 36 A 315 for 3 A 365.

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† Read 13 Cr L J 571 for 13 Cr L J 570.

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* Omit = Cr Rg 33 of 1890.
† Read 9 B 556 for 9 B 566.

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* At Col. 2926, 17 M L J 219 is wrongly printed as equal to case to 29 M 569.
† Read 1914 M W N 168 for 1914 M W N 368.
‡ At col. 2244, Read 15 Cr L J 164 for 15 Cr L J 564.

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* Read 1911, 1 M W N 125 for 1911 M W N 125.
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* At Col. 2553, read 1 L B R 71 for 1 B L R 71.
† Read 20 Ind Cas 990 for 20 Ind Cas 90.
‡ Read L B R 1893—1900, 7 for L B R 1893—1900, 8.

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* At Cols. 257, 2707, read Agra F B Ed 1874 for Agra F B Ed. 1871.

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* Read 14 M 121 for 14 M 21.
† Read Rat Un Cr C 145 for 45.
‡ Read 23 M 626 = 2 Weir 310 for 23 M 625 = 1 Weir 310.

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* At Col. 3098, read 24 C 499 for 24 A 499.

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* At Col. 3812, read A W N 1886, 7 for A W N 1887, 7.

† Read A W N 1886, 253 for A W N 1896, 253.

‡ At Col. 2897, read Cr Rg 31-8-1881 for Cr Rg 31-3-1881.

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* At Col. 49, read A W N 1885, 311 for A W N 1885, 31.

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* Read U B R 1892-1896, Vol I, 76 for U B R 1882—1896, Vol, I, 76.

† At Col. 1240, read Cr Rg 12 of 1886 for Cr Rg 12 of 1880.

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* At Cols. 335 and 4467 read 91 P L R 1910 for 91 P L R 1910.
† At Col. 3984, read 7 Ind Cas 641 for 7 Ind Cas 741.
‡ Read 14 Cr L J 387 for 14 Cr L J 287.

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† At Col. 2437, read 1910 M W N 821 for 1910 M W N 811.
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61	1721
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143	3164
173	920
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317	4641
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107	3164
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246	3415
301	871
350	2988
353	1125
358	4319
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380	1790
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597	208
602	1726
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24	797
29	2996
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61	120
63	4595
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382	1474
395	3372
403	1737
430	800
468	1399
469	1740
474	3865
481	1900
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537	4033
574	3877
630	2982
656	3778
658	1522
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355	1525
370	3826
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694	793
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286	799
294	1738
351	1491
353	1465
354	1510
355	200
357	2218
361	1738
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383	1493
426	797
429	3597
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439	1778
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254	800
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312	800
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390	1598
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550	3369
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254	3393
268	1455
272	2032
337	1259
345	2240
353	1704
412	1490
424	1953
439	3728
466	2147
469	4682
470	3687
477	2056
479	3528
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52	189, 3510, 3541, 3554
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73	1646
74	4247
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95	2252
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157	455
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209	4231
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273	4259
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219	1276
223	4539
228	582
232	3009
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653	4283
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19	586, 1077
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126	17, 3429, 3902
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575	4644
591	631
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258	583, 805, 2984
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659	1632, 4290
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307	428, 2313, 3973
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359	269, 4828
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* At Col. 989, read 9 B 173 for B 173.

† Read 9 B 556 for 9 B 566.

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729	2268
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293	284
369	1001
485	1213
573	2346, 4628
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205	2331
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263	2648
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751	871, 2053, 4557, 4578
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195	1272
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362	4310
363	36, 53, 1212, 4604
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193	3319
215	1044, 3242, 4791
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439	4559
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680	2010
694	913
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* Read 23 B 248 for 13 B 248.

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626	1028
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152	618
178	1520
181	348
365	662
369	1885
374	580
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402	640
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651	636
658	3602
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15	854
16	2700
18	835
20	3013
29	3132
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* Read 32 B 162 for 32 B 163.
† Read 37 B 376 for 36 B 376.

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38	3511
39	1297
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165	3546
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172	4526
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346	3611
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73	2186
77	3380
88	3795
92	3405
96	1947
108	132
109	2593
129	457
137	1890
138	683

* Read 4 Bur L T 261 for 216.

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6 Bur L T—	
140	456
144	2121
146	3437
153	3422
183	2607
191	1816
193	421
201	3844
7 Bur L T—	
20	1918
23	1532
25	3561
26	1795
34	2174
37	874
71	2174, 3366
73	4637
99	493
101	435
116	3898
143 (F B)	1450
163	685
165	343
167	3923
187	3350
205	1741
209 (F B)	3811
222	2855
225	2175
8 Bur L T—	
17	3869
43	1988
53	1502
82	3519

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1 C—	
78	905
207	1237, 2662, 3062, 3959
219	4731
281	866
282	4193, 4202
330	2481
354	276, 2535
356	277
450	2134, 3993
2 C—	
23	67, 2947, 2985, 4808
110	4148, 4363
117	3109
225 (F B)	168
273	867, 2963
278	277
290	4756
293 (F B)	2842

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2 C—	
354	2281
356	2885
383	3637
384	4363
399 (F B)	227
405	1316, 2372, 2948, 3097, 4168, 4193
425	505
436 (F B)	867
466	293
3 C—	
63 (F B)	3058
189	2848
320	2417
366	502
379	258, 2029, 2203, 2204
389	2374, 4841
412	3608
495	1100
497	4043
540	2907
573	1562, 1796, 2417, 2842, 3222, 4208, 4815, 4836
621	3502
622	228
623	2865, 4792
688	815
742	2883
754	947
756	1228
757	4453
758	293
765	913
4 C—	
10	12, 3430
16	2087, 4193, 4203
18	2269, 4670
20	3333, 3974
124	972, 997, 2336
172 (P C)	3058
231	3061
339	2484
366	8, 4692
374	3153
376	3493, 4043
378	2418
417	2418
*483	1267, 1334, 2598, 2951
570	4581
603	821, 1373
623	2881
647	2076
650	2417, 2895, 3277, 3969
655	1301
659	517
667	671
696	1228
710	517

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4 C—	
712	4232
764	3701
815	3703
837	2287
865	4451
869	4340
5 C—	
7	283, 1543
31	3245
121	293
124	4619
132	3282
184	76, 2684, 4288
194	2417
281	2679, 4272
351	2304
536	3169
558	3163
566	813
614	4845
717	3889
768	2617, 3999
826	74, 1010, 3943
871	4793
875	3298
954	1229
958	1229
6 C—	
14	1374, 4364
49	4739
59	294, 3036, 3039
83	2501, 4808
88	2985
96	67, 70, 2897, 2938, 4808
154	2300
163	222
247	2615
279	1266, 4866
291	2972, 4204
307	2979
308	2269, 2833, 3932
440	2726, 4274
445	2882, 3556
476	3110
482	2771
491	4735
496	2509, 2682, 3097, 3948
523	293
530	809, 1211, 3959
532	2539
575	529, 530
579	1891, 2286
581	1121
582	2694
584	2833, 4273
620	2684
621	528
624	4520

* At Col. 2598, read 4 C 483 for 4 C 348.

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6 C—	
625	158
655	2562
709	298
714	4836
718	1316, 4522
762	2624
774	2610, 4846
789	3584
832	527, 529
835	2418, 2441, 2975, 3097, 4434
7 C—	
26	2276
28	4846
42	1005, 1027, 2611, 3009
46	2441
65	2600
87	2682
96	2695
121	2706
208	1724, 4235
322	522, 523
352	920, 3878
385	2418
447	294
523	2986
662	1100, 2898, 4574
8 C—	
24	255, 1187, 4639
63	1066, 4756
121	4845
154	2510, 2555
166	295
195	1005, 1319
207	526
211	995, 2547
214	527, 4630
259	360
331	2495
393	4752
435	2683, 4306
450	2919, 4568
473	346, 351, 356
481	2919
560	890, 3974
580	1543, 1554, 4203
616	1229
618, Note	73
634	2919
644	2075, 4501
724	4430
728	7
736	3163
739	2553, 2555, 3227, 3696, 3956, 4793
851	271, 3133
875	4067

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8 C—	
883	1529
891	523
895	87
896	1079
969	2313, 3022
971	3746
985 (F B)	393, 2786, 2986
9 C—	
38	524
53	2771, 4793
96	947
103	1544
215	4381
221	4912
223	529
288	2754
341	97, 188
371	2903
397	275, 277
455	1634, 2539, 2550, 2554
513	4200
637	3281
639	4776
847	530, 4067
849	278
861	32, 918
875	915, 1932, 2516
877	4549
878	852, 1518
10 C—	
18	3540
67	3098
78	2413
85	2987
109 (P C)	1302
140	69, 70, 1962, 2510, 2515, 3978, 4794
194	950
207	2095, 3276
268	2075, 2794, 2843
302	2563
338	4208
405	2706, 2717
408	4664
551	1167, 3131
584	2772
604	287, 288
642	296
643	671
775	1230
931	4838
936	3336
937	2717
970	78, 895, 896, 1019
1022	1211
1024	1914, 2614
1026	1065, 2539

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10 C—	
*1027	2800
1029	868
1030	2254
1047	285, 4170
1070	4838
1079	1029
1097	2191
1100	4323
11 C—	
8	3299
10	1030
13	4381
52	2483
77	1375, 4355
79	1187
81	3907
84	3016
85	4794
91	2904
106	1011, 4208
160	4646
236	3131
267	369
271	3297
275	523, 524
349	4527
365	2394
410	3944
413	2419
449	2953
530	4561
†566 (F B)	288, 4295
570	531, 532
577	4338
580	2535
619	1422, 3584
635	1211, 3251, 4692
737	4427
762	2420
12 C—	
55	3211, 4917
58	4317
133	4427
137	3290
190	2491
192	370
427	157, 158
438	114
473 (F B)	2073
495	4208, 4524
520	4382
521	2394
522	2090, 2787
535	3169
536	500, 4471
539	2392, 2394
558	947

* Read 10 C 1027 for 11 C 1027.

† At Col. 288, read 11 C 566, F B for 11 C 586, F B.

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12 C—	
660	3212
696	3291
13 C—	
53	4865
108	524
110	2953
121	1092, 2539
175	2442
179	2392
270	2695, 4297
272	4179
275	3016
304	1132
305	3124
334	1160
349	2772
14 C—	
42 (F B)	4141
128	2920
141	1163, 1758
164	1019, 2510, 4794
169	2442
174	2961
175	242
245	4114, 4844
314	2742
355	3126
357	4544, 4551
358	2269
361	2442, 4169
395	2238
513	2772
539	1230
566	2302, 3700
633	2686
653	818
656	3312
707 (F B)	1144, 1679, 2691
721	2617, 4627
834	4124
887	4145
15 C—	
31	2420
109	2890
152 (P C)	384, 390
194	160
269	3884, 4173
386	3517
388	1361, 3215
390, Note	2286, 4706
392	4706
402	4706
452	394, 526
455	935, 2255
460	284
511	4647
527	2419, 2457

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15 C—	
564	3298
589	2583, 2615
595 (F B)	1230
608	1788, 2091, 2788, 4193
671	1356
712	241
775	2188
16 C—	
9	3304
80	1549
121	2163
126	3592
206	4209
238	3325, 4612
281	2395
310	925, 4472
349	2705
442 (F B)	4537
487	2251
513	2420
610	1636, 1914
612, Note	1636
657	2288
661	4322
667	2987
715	2287, 4664
725	4528
730	1722, 2130, 4299
766 (F B)	2166, 2469
779	1453
781	946, 2166, 2643
799	530, 2034, 4459
17 C—	
298	3025
485	862
562	3290
566	527
574	2691
606	3832, 3839
642	1030
684	533
852	3658, 4627
862	1231
872	543, 1078
930	4115
18 C—	
39	358
49	2869, 3700, 3769
75	3131
129	2623
186	4067
247	2223
264	956, 2854
484	2301
518	543
549	1231

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19 C—	
35	3449
52	2073, 2891
79	957
105	3483, 3486, 4524
113	1080
127	1553, 2849, 4142, 4154
190	4647
192	545, 546
195, Note	522
198, Note	545
345	4268
355	267, 2704
380	1058, 2773, 3355, 4067
605	678
627	954
646	299
20 C—	
316	1422
349	2385, 4264
351	1890
353	2955
358	3502
413	2912
444	338
448	533
469	4847
474	4315
478	4509
481	445
483	1835, 4491
513	2413
*520	2415, 2929
537	1838, 1841
605	548
633	4581
642	1636, 1659
654	539
665	3312
670	512, 514
676	407
687	233
719	289
724	544
729	1379
857	2962, 3109
867	2415
870	947, 1398, 1983
21 C—	
29	2416
92	2956
97	1899, 4035
103	1188
121	2958
262	139
328	52, 4647
337	2495

* At Col. 2415, read 20 C. 520 for 20 C 522.

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21 C—	
*392	819, 1330, 2510, 2557, 2652, 3492, 4010, 4209, 4216, 4860
401	2657, 4851
404	2421
588	3332
609	2421
622	4420
642	1232, 1875, 1910
727	1614
782	2851
827	1014
837	524
915	2412
916, Note	2412
920	1761
931	4170
955	74, 1828, 2039, 2238
979	1122
22 C—	
46	2340
50	1703
123	2276
131	534, 920, 2841, 3929
139	242, 1123
164	859, 1266, 2628
176	422, 1733, 4327
241	831, 2957
276	1023, 2843, 3482
286	525, 3643
291	3169
297	2412
306	4778
313	2767
377	2026, 2029, 2048
384	2421
387	2422
391	2238, 2289, 4174
457	3857
487	4237
573	2800, 4337
581	546
586	1121, 4307
596	229
638	3582
669	4708
717	544, 545, 546
757	357
759	3354
761	2215
805	4467, 4581, 4778
817	1232, 3394
898	2443
935	3134
994	2289
998	4170
1004	1732

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22 C—	
1006	1835, 2840
1017 (F B)	4627, 4698
23 C—	
37	2422
44	3109
52	534
55	1614, 2483, 4628
60	4107
80	2438
174	424, 1826
194	948
248	240
249	4068
250	4068
252	1043, 2239
300	240
328	3098
347	871
350	1089
361	53, 2507
372	1344
414	216
420	2956, 3602
421	520
442	240, 4753
493	61, 4382
495	4740
499	3293
502	2958
532	2833, 4269
557	2422
604	2017, 3394
610	2117, 2510
621	1509
731 (F B)	298
896	3543
971	503, 4331
975	2047, 2109
983	1178, 2239
24 C—	
53	1124
55	2423
155	4364, 4582
157	528
167	3098
193	1002, 1344, 3817
286	1178
288	4851
316	840
317 (Note)	872
320	3411, 4860
324	526
344	4427
360	547
391	2424
395	3300
429	3124

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24 C—	
492	899, 1952
494	2875, 2880, 3632, 4786
†499	3098, 4124
528	1180
551	1080, 4175
638	3146
686	3409
755	287
757	2422
881	444, 826, 1338
885	4915
891	111
25 C—	
20	2990
160	535
207	2773
230	1031
233	4157
274	3557
275	3640
278	3294
291	3170
333	465, 475, 2016
413	1210
416	1031, 4693
419	536
423	2396
425	1538, 1539
432	517, 518
434	2209
440	2615, 4454, 4680
454	400
483	546
492	547
512	2765, 3353
555	3007
557	4540
559	2424
561	1032
625	547, 3974
628	4422, 4428
630	2030
637	134
639	1334
711	1033, 2600
727	4740
736	1020, 1921, 2540, 2650
798	4415
852	3310
858	2987, 4628
863	1987
26 C—	
49	1042, 1960
158	4045
181	1120, 4307
188	2438, 2443, 2831
232	423, 3899

* At Col. 2557, read 21 C 392 for 21 C 892. † At Col. 3098, read 24 C 499 for 24 A 429.

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26 C—	
336	959
359	4343
560	1820
569	1209
571	305
574	4209
576	4421
625	2424
630	1002, 3479, 4211, 4776, 4818
746	2843
748	902
786	1691, 2841, 4295
811	536, 538
852	4288, 4676
863	1007, 3890
869	3016
874	274, 1377, 2831, 3057
27 C—	
126	2061
131	148
133	466, 470, 3393
137	1941
139	2316, 2563, 3803
144	38, 3610
172	872
174	2443
175	4559
259	2444
261, Note	2444
262	2346
295	1251, 1632, 1650, 1659, 1928, 2539, 3971
317	535
320	902, 2495
324	362, 364, 365
366	902, 1068
368	1958, 2325
370	4847
372	2061, 2068
450	323, 4664
452	4281
455	265, 2712
457	902
461	3995
501	4690
565	4509
566	2817, 3431
567	358, 359
587	369
654	503
655	162
656	4382, 4573
658	1770
660	1008
662	4383
692	350
776	3898
781	4384
785	2444

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27 C—	
798	2476, 3059
820	447, 1705, 2133, 3572
839	2847, 2920
892	2425
918	3290
921	1167
925	39
979	3130
981	2414
983	4421
985	446, 1776, 4031
990	1008
992	242
993	1483, 1487
1023	382
1041	2847, 3021
28 C—	
7	1818
10	3785
63	1810, 3923
102	2004
104	1817
164	1860
211	1866, 4615
217	549, 3591, 4280
251	1856, 1859, 2388
253	2192
297	2217
302	1619
314	3848
339	47, 2640
344	4043
348	1637, 3933
362	1344
397	2078
399	3620
411	155, 3471
416	1563, 1602
423	466
434	994, 1731, 3883, 3992
446	1557
504	3490, 4468, 4630
540	1438
571	3242
594	1881, 2385
613	2885
652	2029
689	54, 1250, 1935
709	1389, 1606, 2218
734	1616, 1617
797	1283
29 C—	
128	4068
187	1562, 1571, 2396, 2506
208	1568
211	2225
214	3466, 4779
236	3511, 4044
242	1602

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29 C—	
244	3464, 3465
286	849, 1928
379	1919, 3227
382	1594, 2831
385	1827
387	1810, 4851
389	1396
392	4383, 4384
393	1458
409	1888
410	1662
412	4582
415	4054
417	32
455	1499
457	2800
479	1114
481	1002
483	950, 1641, 3673
489	1345, 3404
491	536
493	4787
496	528, 3368, 3431
606	529
724	3099
726	2901
779	1483
782	895, 1022, 1919
885	1572
887	4297
30 C—	
93	1451
95	4912
97	153, 909
101	1458
107	943, 2193
110	1590
112	1558
121	1844
123	1132, 1853
155	1570, 1572, 1574, 1580, 1608, 1609
285	544, 1385
288	3477
366	1456
394	1742
402	2355
415	1384
418	1357
421	564
443	1471
449	2470
481	532
485	2951
508	1572, 1599
508, Note	2426
593	1574
643	563
690	854
693	1872

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30 C—	
721	553, 4058
822	1021, 3429
872	932
905	4298
910 **(F B)**	1143
918	1595
921	235
923	1627
927	1748
1084	3353
31 C—	
1	248
48	1575
142 **(F B)**	4594
350	1462
411	4728
419	1487, 1488
424	3742
542	516, 2808, 4910
557	1378
664	4295
685	1608
691	3320
710	24, 883, 3974
715	806, 4628, 4678
783	1495
811	4245
858	4637
910	519
912 Note	519
928	1804
979	1526, 1533
983	1994
990	1545, 3553
1007	2940, 3427
1050	4115
1053	2940
32 C—	
22	3231, 3840, 4031, 4582, 4898
73	3704
80	1462, 2185
154	1545
178	2042
180	2695
247	476, 3319
249	254, 1575
287	1575
292	2873
351	4232
367	1724
379	4328
425	1749
431	4730
444	3025
469	1718, 4314
479	3170
550	1647
552	1575, 1607

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32 C—	
557	308
602	1597, 1619
664	3352
756	2346, 2652
759	2551, 4794
771	1562
775	1064, 3832
783	1701
793	3556
796	1590
930	1528
935	1542
941	3834
948	1474, 1522
966	1469, 4435
969	1334, 4728
1069	832, 2993
1085	1650, 2912
1090	2096, 2798, 3979
1093	1559, 1575
33 C—	
1	1328, 1387, 1767, 2692
8	4385
30	2138, 4284
33 **(F B)**	1565, 1566, 2447
50	1055
68	1576, 1607, 2446
151 **(P C)**	2540, 3034, 3048
193	3593, 4236
287	560
292	475, 1813, 2921
295	2065, 4210
352	1566, 2426
646	560, 565
649	38, 51, 2635
699	559
895	4079
1023	22, 1642
1032	485
1036	1994
1183	4746
1256	2940
1282	1762, 2799
1353	39, 48, 2181
34 C—	
1 **(F B)**	4355, 4461
30	557
42	2130, 2682, 4153
73	3312
129	3037
325	1319
341	561
347	4125
551 **(F B)**	1725, 2136
686	3394
698	1018, 1033, 2545, 3724
749	332
840	2445, 4229
897	1547
909	559

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34 C—	
913	553
918	1395
926	240
935	4415
986	1278, 4125
991	4385
35 C—	
103	4012
114	2134
117	4418
133	2136
138	2956
141	218, 1746, 3451, 4311
161	2913
219	348
243	4368
283	3293
315	4422
350	2445
361	520, 3619
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5 C W N—	
xv	2657
xvi	2660, 2661
28	1481
29	1483, 1487
31	1008
32	242
42	537, 539
44	289
65	1637, 3933
67	1616, 1617
71	1577, 2104, 2975, 3100
72	2802
105	1559, 1591
106	1382, 1725
108	532, 4630
110	1093, 3087, 4743
131	446, 1776, 4031
134	155, 3471
169	1866, 4615
173	1529
174	3848
210	468, 472
211	466
213	1122
214	1123
215	4918
248	1346
249	1504
250	1458, 2210, 3432, 4777
252	2233
254	2965, 4273
255	1052
289	2492
291	549, 1619, 3591, 4280
293	2351
294	1346, 2921
296	1159
329	1542
330	2843
331	538
332	830, 3494
335	1615
368	2409
370	1115
372	3131, 4714
374	2209
376	3732
391	3538
411	1091, 4583
413	3620
415	2391
428	1557
432	2213
447	2294, 4810
457 (F B)	2029
488	4743
503	516, 517
517	47, 2640
544	1606
563	1560, 1568
566	1537

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5 C W N—	
567	3650
574	2078
609	994, 1731, 3883, 3992
615	2156
630	2154, 4583
665	2885
670	54, 1250, 1935
686	1598, 1606
708	3242
710	1577, 1591
727	2687, 3595
749	1389, 1606, 2218
771	3490, 4468, 4630
819	1810, 3923
843	3621
864	1651, 4743
866	2898, 2924
897	3358, 3887
900	1571, 1578
6 C W N—	
33	518
34	3808
35	4234
37	4311
38	1568
40	1319
72	1000, 2546, 3794, 4843
98	2243, 2539, 3486, 3696, 3725
101	1557
104	1578
118	548
120	522
141	3511, 4044
143	3466, 4779
161	2423
163	1499, 2090
164	3464, 3465
167	536, 539
175	1438
202	1682, 3740
203	1346
206	1578
208	5
251	2225
253	4068
254 (F B)	849, 1928
290	1602
291	1499
292	1919, 3227
295	1164, 2683, 3100, 3596
337	1420
340	1580, 3974
342	15, 909
343	957
370	3217
378	1572
380	1253, 2701
382	2765

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6 C W N—	
386 (P C)	1562, 1571, 2396, 2506
417	1558
422	1458
424	2295
466	1549
468	1827
469	1594, 2831
471	1451
506	4787
507	4211
511	4912
548	3087
550	1810, 4851
552	1396
553	895, 1022, 1919
593	1497
595	4383, 4384
596	950, 1641, 3673
599	1002
633 (F B)	2801
638	2800
674 (F B)	529
677	4054
678	1458
680	32
713	1888, 3099
715	914
717	807
737 (F B)	1570, 1572, 1574, 1580, 1608, 1609
799 (F B)	1132, 1853
840	1757, 3933
841	1569
843	3100
845	3619
881	1590
882	1580
883	1470, 1563
885	943, 2193
886	1536
887	3009
921	2606
923	1581, 1586
925	1581
926	1384
927	3510
7 C W N—	
25	1451
27	564
29	1473
30	2958
32	4435
74	2355
77	1085
80	2045, 2801
112	4297
114	1742, 4738
116	1357
117	1526

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7 C W N—	
118	1559, 1568
135	4797
140	1543, 1549
142	2429
143	3908
174	1471
176	1188
188	77, 1900
206	1114
208	1582
220	1234
245	3491
246	2354, 2647
284 (F B)	532
286	531
301	3491, 4133, 4627
327	1092
345	1621, 1645, 1906, 1926, 1959
351	1582
374	547, 555
390	1574
404	1572, 1599
423	4336
457	899, 1401, 1656
461	1582
462	1560
493	1884
494	4298
510	1595
512	3481, 3486
521	909, 3087
522	1443
524	1392
525	1627
527	4753
554	555, 561
556	16
558	1583
599	1570
634	854
635	2511
637	563
639	1021, 3429
658	483
661	1328
663	3470
704	235
705	1583
*706	553, 4058
708	4583
710	3632
711	87
713	3853
714	807
729	936
746	1470
750	1748
795	4299

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7 C W N—	
825 (F B)	1575
853	562, 565
859	3087
883	512, 515, 4626, 4628
889	248
8 C W N—	
17	1143
22	2665, 3694
73	2843
75	4743
76	1583
77	807, 2217, 4742
142	563
143	1527
178	1583
180	1461, 1475
218	1622, 3263
278	997, 1069, 3836, 3881
292	2351
305	1411
307	4728
344	4212, 4537
349	315, 317, 319
369	3640
373	1544, 1555
376	1546
378	481
421	3899, 4726
456	2798
458	516, 2808, 4910
483	3378
485	1584
487	550
515	1749
517	1451
519	22, 3377
528	4115
538 (F B)	3320
543	1477, 1484
587	2005
589	4746
590	1567, 1608
592	519
641	4746
642	807, 1581
643	4321
645	3701
714	3723
715	2940
717	1331, 2940, 3427
719	1581, 1582
779	1462, 2185
781	1545, 3553
784	3231, 3840, 4031, 4582, 4898
797	4328
807	1801
838	78

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8 C W N—	
839	1994
862	1400
864	1692
883	1718, 4314
885	254, 1575
887	2199
908	3491
909	1495
910	806, 4678
9 C W N—	
18	562, 806, 1967
69	3433
72	1526, 1533
125	3413
127	1707, 2568
195	2335
199	1164, 3948, 4867
277	4232
†321	4328
364	1724
392	1546
438	4032
474	1199, 1243, 2511, 2589
495	98, 2200
520	2551, 4794
547	2873
549	2391
551	1470
591	95
597	1278, 2198
599	4777
618	1462
619	4744
621	1562
623	2042
624	238
719	308
764	1063
792	1462
807	1064, 3832
810	1701
816	543
829	1082
859	2134
860	1474, 1522
863	1597, 1619
864	1542
887	1562, 1611, 1620
898	1468
909	1608
911	2346, 2652
974	2990, 3774, 4167
983	61, 63, 1538
1006	3834
1027	2916, 4648
1030	2129
1046	1576, 1607, 2146
1065	1566, 2426

* At Col. 553, read 7 C W N 706 for 7 C. W. N. 106. † Read 9 C W N 321 for 9 C W N 521.

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10 C W N—	
30	2138, 4284
32	475, 1813, 2921
51	1650, 2912
53	2921
55	2138
*57	2540, 3034, 3048
79	157, 160, 1891
82	155, 1078, 2407, 2476, 3501, 4721
107	4728
153	1038
158	1378, 1387, 1767, 2692
181	2429
182	560
219	3827
220	3936
222	4300
246	2844
257	1565, 1566, 2447
287	1429, 3617
288	1469, 4435
311	4078
322	156
441	4744
446	2110
518	2022
520	2921
544	1115
600	1659
642 (F B)	1399
667	554
669	38, 51, 2635
725	3398
727	153
773	1755
775	1693
793	4746
845	1536
847	1406
890	22, 1642
912	2940
962	39, 48, 2181
982	960
1004	560, 565
1005	1058
1026	4332
1027	4408
1029	477
1030	2429
1031	2023
1059	384
1062	2005
1086	1757
1088	2430
1090	4674
1091	2140
1093	935

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10 C W N—	
1095	2430
1099	3936
11 C W N—	
25	4355, 4461
28	4212
30	561
51	4829
54	2922
79	2431
100	431
119	4282
121	4445
125	2130, 2682, 4153
129	4386
170	1151, 1756
171	2274, 4764
173	75, 432, 2091, 2796
†176	2431, 3467, 4422
195	4312
198	2431, 2844
223	1545, 4434
247	146
266	2562
271	2431
273	3036
316	75, 2797, 4757
370	3037
390	2333
413	4402
415	937, 4418
467	2209, 3855
470	525
472	2938, 4442
507	4747
508	556
512	2428
554	1621, 1657
568	1725, 2136
583	430
666	1018, 1033, 2545, 3724
671	557
712	4229
715	2913, 4069
743	2432
789	1881, 2544, 2552, 2825, 2904
832	1076
835	2414
836	4013, 4810
838	3887
840	4423
885	553
887	2990, 3896
904	2575, 3679, 4485
909	4234
911	2709
942	1547

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11 C W N—	
971	332
972	517
1002	4415
1046	1278, 4125
1050	4385
1085	3364, 3679, 4866
1097	559
1099	542
1128	2937, 3197, 4422
12 C W N—	
1	2141
3	4270
47	289
68	1771
70	974, 1529
72	558
96	3075, 3351, 3466, 4044
117	1092
134	2956
136	1976
138	4757
139	328, 530
140	40, 68, 1983 ,3943, 4808
246	2163
248	4335
267	3293
269	4125
271	555
272	348
299	4368
344	531
366	156
367	520, 3619
381	380
384	4010
416	1986
438	1694
461	528
463	4386
487	4418
530	2817
534	4709
575	4300
577	997
579	4013
581	2703
602	487
604	3100
605	2445
606	4417
608	3634
678	2840
703	4417
727	156
748	4745
750	1069
752	4458
771	2432

* At Col. 2540, read 10 C W N 57 for 10 C W N 67.
† At Col. 4422, read 11 C W N 176 for 1 C W N 176.

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12 C W N—	
773	2432
774	1040
817	3191
822	4322
840	2433
842	373
845	3937
848	2449
869	149
896	2450
919	373
944	4210, 4780
973	355
992	4445
1014	1784
1016	4028
1017	3189
1041	4665
1044	964
1047	3017
1075	1442
1113	2745
1116	557
13 C W N—	
43	940
51	941
74	561
76	2798
77	4126
80	4388, 4680
104	2451
122	2148
124	346
125	2450
160	3170
161	61, 4414
188	1544, 1546
191	3518
193	1772
195	1548
197	1644
244	4369
318	4370
340	2349
362	3706
367	3288
370	4865
398	4230
418	2933
420	1389
422	4271
458	1447
485	4764
501	2536
507	2933
530	2451
550	1984
552	62

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13 C W N—	
555	4447, 4454
580	4428
601	1586, 2451
605	491
622	3205
672	490
677	4012
680	3366
684	3978
685	3937
728	1062
753	4145
754	1040, 3747
757	1932
801	4780
804	2922
827	4781
859	2452
861	961, 1234, 1283
942	4324
973	2570
1038	4238
1062	4316
1067	999
1087	2350
1089	2922
1091	1431
1113	2923
1180	4009
1221	2083, 2799
14 C W N—	
49	4387
78	2452
80	1591, 2452
82	2774
132	2710
179	2445
212	1111
233	308
234	3556
259	2197
280	1876
282	3544
304	1682
306	1524
308	313
326	1623
330	4273
404	567
408	3773, 4707
422	3077
479	4296
512	491
516	492
521	3053
544	1537
589	1693
591	554

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14 C W N—	
593	2589
611	2458
614	564
637	565
666	4408
681	2458
708	2457
709	4409
710	317
713	3073
765	3526
767	4276
799	4342
806	4241
839	3536
911	559
912	560
936	4714
957	2654
1073	2045
1076	3356
*1114	1204, 2566, 3033, 3318, 3436, 3456, 3950, 3984, 4029, 4030, 4107, 4243, 4350, 4598, 4614, 4771, 4807, 4808
15 C W N—	
18	3275, 3984
25	2567
98	3437
100	550
141	3459
169	1710, 4227
171	53
198	1041
224	3866
269	385
271	1596, 2437
296	319
316	550
319	3494
343	1444
366	1503, 4380
390	3200
409	3042
413	553
414	3080
434	2320
440	340
461	3805
463	1838
565	1739
568	1610, 2437
593	3441
646	86
667	1538
691	2131
732	1824

* At Col. 4030, read 14 C W N 1114 for 14 C W N 114.

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15 C W N—	
734	1417
735	393
736	484
737	484
770	4603
771	1295
811	1620
885	3639
906	555
1001	3620
1002	558
1051	1328
1053	2822
16 C W N—	
10	1863
23	549
46	3230
49	2601
69	3802
83	1471
143	1761
145	1624
238	3788
263	3856
336	3478
384	1473
426	3079
431	2647
451	3904
455	563
471	3348
499	1479
503	2654
549	3618
550	941
551	571
574	2439
600	1802
623	3888
645	1743
669	2641
696	3872
768	3490
785	569
811	2058
812	3457
858	514
885	1764
903	1740
909	3014
934	540
983	1937
984	1893
1007	3861
1031	2221
1049	568
1052	1592
1053	4012
1055	3691
1077	3364
1078	2080
1105	1288, 3447
1155	1792
17 C W N—	
72	1418
91	1721
94	3882
144	1573
205	1590
207	483
227	3896
230	2613
238	1486
290	1386
294	3835
297	3347
331	1505
332	444
354	3380
379	3600
419	1814
448	1384
449	3924
451	1773, 2077
479	3814
505	514
531	538
534	3662
536	1475
538	3475
571	2140
647	2153
761	1673
787	1923
793	1560
795	1695
824	1382
825	1418
827	1811
883	1480
911	3472
937	1736
939	572
944	1569
948	1973
976	1735
978	1429
979	347
*980	1382
1004	1662
1077	1929
1081	3483
1084	551
1110 (P C)	3687
1129	3830
1130	2174
1132	3465
1207	1673
1209	1444
1213	1625
1245	497
1247	3491
1248	1777
1250	552
1253	1295
18 C W N—	
1	497
94	1582
95	1763
98 (P C)	876
147	2046
180	3228
183	1813
274	1475
275	3414
279	869
309	570
374	874
385	2182
386	2537
391	3097
393	1602
†394	950
397	3776
399	1766
424	3920
484	3753
486	570
498	3799
548	3418
550	46
580	3362
584	1849
615	1931
646	2114
666	1879
668	1930
700	1609
702	1859
705	4624
723	2026
785	3923
918	572
921	1383
959	2055
992	3481
1020	1700
1023	571
1086	1531
1088	1604
1120	541

* Read 17 C W N 980 for 17 C W N 930.
† Read 18 C W N 394 for 18 C W N 384.

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1143	566
1144	1070
1146	2205
1147	2211
1148	1527
1150	2212
1152	1803
1176	3733
1178	1669
1180	1849
1182	498
1211	1849
1212	1972
1213	2182
1215	827
1242	1993
1244	1886
1245	3470
1247	1892
1271	145
1273	513
1274	3476
1276	3475
1277	1854
1279	3678
1323	1708
1342	3575
19 C W N—	
28	3434
121	1840
123	1577
124	1599
125	3890
127	2132
179	1940
181	1826
184	1886
217	1633
220	1497
221	487
223	1487
224	1431
273	3718
295	1946
330	2508
332	1535
334	1848
335	1780
391	554
447	1723
556	3685
557	1821
584	1931
653	3064
672	1837
957	3359
959	1588
972	1820
990	2213

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1022	1490
1043	3391
1239	3330

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25	3649
100	3774
112	3638
115	1236
163	3204, 3717
2 C P L R—	
66	2019
73	4015
82	2097
153	3715
161	1349
198	2358
4 C P L R—	
1	52, 3793
142	1526
174	3775
5 C P L R—	
1	39, 58, 72
3	2541, 3941
5	1332
7	2992
9	69, 2595
11	71, 4032
13	70, 1645
17	4507
18	994
20	2098, 2515, 3656
21	1067, 3210
23	3383
24	2962, 3090, 3803
29	3715
31	2011
32	3661
33	1989
38	3125
41	3724
43	194, 3629
44	401
45	3272
47	1366
48	2992, 4505
50	1356
53	3920
55	2343
57	700
69	3720
70	3323
78	4270
92	154, 700

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1	2642
3	3255
5	3548
7	3663
9	1410
11	2101
13	4405
15	4133
17	200, 210, 1338
19	181, 182
21	2407
24	2044
27	4450
29	4649
31	941, 4628
32	701
34	185
36	3778, 4519
38	29, 1434
7 C P L R—	
1	1983
2	1973
4	701
5	3634
6	3601
9	4436
12	3146
14	2483
17	1835
20	2353
21	23
22	1642
24	175
29	1411
32	185
34	3778, 4069
36	1772
39	3166
41	306
45	3657
47	4146
8 C P L R—	
1	1411
5	3715
6	1653
7	3367
9	1901, 3664
13	1859, 2260
15	3406
17	181, 4002
19	3198
21	2236
23	3379
9 C P L R—	
1	431
4	4558
5	3566
8	2193
14	927

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18	3728
21	3167
23	1818
24	916, 1907
26	345
27	852, 4233
29	4563
33	1636
35	1270
37	1270
38	1957
10 C P L R—	
1	23, 366, 368, 369, 1842
7	368
11	4058
13	1794
15	4574
16	265, 2579, 2621
20	3794
23	2514
25	2591
11 C P L R—	
1	3795
2	3432
5	2190
6	3768
8	185
9	994
10	239
13	179
14	3148
16	265, 2642
72	3173
12 C P L R—	
1	177, 928
2	2407
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*At Col. 4406, read 6 Cr L J 332 for 1 Cr L J 332.
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342	1059
344	528
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* Read 8 Cr L J 128 for 8 Cr L J 628.

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* At Col. 923, read 9 Cr L J 11 for 9 Cr L J 5.

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367	2763
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* Read 10 Cr L J 460 for 10 C L J 460.

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* At Col. 310, read 11 Cr L J 138 for 11 Cr L J 133. † Rread 11 Cr L J 191 for Cr L J 191.
‡ At Col. 1515, read 11 Cr L J 252 for 11 Cr L J 259.

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* At Col. 3879, read 11 Cr L J 440 for 11 Cr L J 404.
† Read 11 Cr L J 496 for 12 Cr L J 496.

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723	3855
724	1525
725	3470
726	1849
727	1480
728	1972
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3	476, 1837
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20	3684
24	3554
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39	2156, 2 72
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42	3476
43	2122
44	1823
49	3355
52	1559
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55	2227
56	2219
58	2248
59	537
60	3485
61	1509
62	2581
65	1946
72	3707
73	2228
74	1556, 2197

* At Col. 2634, read 15 Cr L J 578 for 1 Cr L J 578.
† Read 15 Cr L J 641 for 15 Cr L J 614.

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92	1857
93	3677
95	3397
97	2135
100	1507
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106	2135
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113	1598
114	1511
115	1711
117	3749
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131	3733
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138	2216
139	2086
141	3918
144	2019
146	1876
147	3575
152	3694
154	3579
155	2513
156	4843
157	1199
159	2241
160	1525
161	1661
166	2118
167	3693
168	3730
169	3790
170	3434
174	1771
175	4476
176	3469
177	3370
184	2563
190	1551
194	1496
195	3255
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232	2121
233	1909
234	1953
235	1473
237	3757
239	1593
241	2135
244	2224
245	1884
246	3879
247	1971
248	1424
249	1589
250	1877
251	1386
252	2118, 2133
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267	1832
270	2241
271	2287
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286	1723
287	1500
288	1706
289	1731
294	3230
298	1817
300	3805
303	1456
305	3706
307	1786
309	3581
310	2240
312	1487
313	1633
315	3911
316	1704
321	1931
322	1848, 3393
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445	4682
446	3482
453	3608
454	3819
456	3428
457	3528
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482	3925
524	4260
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554	3372
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614	3697
615	3379
617	3885
618	3227
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625	3677
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29—7—1869	3129
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9—8—1869	1899
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20—10—1869	2713
25—11—1869	1041
1—12—1869	2394
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10—2—1870	591
16—2—1870	3977
3—3—1870	3555
10—3—1870	1543
31—3—1870	2158
7—4—1870	2936
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29—9—1870	4088
23—11—1870	616
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*8—12—1870	4701, 482
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5—6—1873	4563
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24—7—1873	3905
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15—10—1873	4692
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11—12—1873	4532
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22—1—1874	2705
11—6—1874	3555
28—7—1874	10[illegible]
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11—1—1875	49[illegible]7
28—1—1875	836
4—6—1875	4500
15—6—1875	4526
21—6—1875	4560
25—9—1875	1050
18—11—1875	3096
25—11—1875	4653
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5—10—1882	615
11—10—1882	4645
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8—5—1884	632
29—5—1884	3637
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7—8—1884	605
26—8—1884	633
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26—2—1885	2932
10—3—1885	2249
26—4—1885	1834
18—6—1885	618
6—8—1885	625
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8—10—1885	586
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* At Col. 4821, read Cr Rg 8 12-1870 for Cr Rg 8-2-1870.
† At Col. 2897, read Cr Rg 31—8—1881 for Cr Rg 31—3—1881.
‡ Read Cr Rg 21 of 1881 for Cr Rg 24 of 1881.

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10 of 1886	1715
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13 of 1886	1675
14 of 1886	629
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18 of 1886	3083
19 of 1886	625
20 of 1886	304
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22 of 1886	1842
23 of 1886	300
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53 of 1886	2044
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67 of 1886	6[illegible]7
68 of 1886	3041
69 of 1886	4579
70 of 1886	4701
72 of 1886	586
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6 of 1887	933
7 of 1887	3108
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9 of 1887	625
10 of 1887	4737
11 of 1887	605
12 of 1887	2897
13 of 1887	3536
14 of 1887	1150
15 of 1887	1897
17 of 1887	165
18 of 1887	2862
19 of 1887	2789
20 of 1887	4828
21 of 1887	2932
22 of 1887	1186
23 of 1887	304
24 of 1887	2623
25 of 1887	1537
26 of 1887	2715
27 of 1887	1088
29 of 1887	599, 883, 2829
30 of 1887	3096
31 of 1887	2105
32 of 1887	2246
33 of 1887	3555
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36 of 1887	4692
37 of 1887	2614, 4076, 485
38 of 1887	2610
39 of 1887	120, 3901
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41 of 1887	879
42 of 1887	3168
43 of 1887	3902
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13 of 1888	3542
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16 of 1888	3779
17 of 1888	1758
18 of 1888	4524
19 of 1888	1268
20 of 1888	608
21 of 1888	1133
22 of 1888	4268
23 of 1888	301
24 of 1888	140
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27 of 1888	3542
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40 of 1888	4042
41 of 1888	4645
42 of 1888	4085
43 of 1888	3861
45 of 1888	4489
47 of 1888	1867
48 of 1888	3916
49 of 1888	2275
50 of 1888	371
51 of 1888	592
52 of 1888	1511
53 of 1888	3357
54 of 1888	625
55 of 1888	608
56 of 1888	231
57 of 1888	607
58 of 1888	985
59 of 1888	606
60 of 1888	54, 1270
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62 of 1888	2624, 2716
63 of 1888	602
64 of 1888	1845
65 of 1888	4324
67 of 1888	3378
68 of 1888	3609

* At Col. 1240, read Cr Rg 12 of 1886 for Cr Rg 12 of 1880.
† At Col. 368, read Cr Rg 2 of 1887 for Cr Rg 3 of 1887.

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*70 of 1888	3543
71 of 1888	2790
72 of 1888	1133
73 of 1888	4379
74 of 1888	4523
75 of 1888	852
76 of 1888	3262
77 of 1888	3536
78 of 1888	606
79 of 1888	1318
80 of 1888	395
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82 of 1888	619
83 of 1888	625
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85 of 1888	144
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22 of 1889	1200
23 of 1889	619
24 of 1889	2875
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28 of 1889	589
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30 of 1889	4070
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32 of 1889	4738
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51 of 1889	595
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55 of 1889	280
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59 of 1889	4085
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61 of 1889	2620
62 of 1889	4123
63 of 1889	4557
Cr Rg 1890—	
19—9—1890	1003
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3 of 1890	590
10 of 1890	1873
11 of 1890	4197
12 of 1890	917
15 of 1890	4123
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19 of 1890	2486
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21 of 1890	3168
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27 of 1890	2938
28 of 1890	591
29 of 1890	620
30 of 1890	2596
31 of 1890	4538
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37 of 1890	2469
38 of 1890	4154
39 of 1890	3308
40 of 1890	2720
41 of 1890	279
43 of 1890	197
44 of 1890	242
45 of 1890	593
46 of 1890	580
48 of 1890	2791
52 of 1890	620
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57 of 1890	1376
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45 of 1891	657
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13 of 1892	4646
14 of 1892	3087
15 of 1892	3881
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17 of 1892	4524
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* Read Cr Rg 70 of 1888 for 79 of 1888.
† Read Cr. Rg. 13 of 1889 for Cr. Rg 13 of 1899.

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43 of 1892	1632
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45 of 1892	4412
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48 of 1892	4067
49 of 1892	598
50 of 1892	71, 2664
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53 of 1892	1926
54 of 1892	4271
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5 of 1894	643
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10 of 1894	605
11 of 1894	3873
13 of 1894	3851
14 of 1894	854
15 of 1894	627
16 of 1894	4580
18 of 1894	660
19 of 1894	609
20 of 1894	4310
21 of 1894	610
24 of 1894	1901
25 of 1894	324
26 of 1894	1957
27 of 1894	4593
28 of 1894	1184
29 of 1894	1187
30 of 1894	1363
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33 of 1894	2153
34 of 1894	828
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36 of 1894	4343
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64 of 1894	654
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6 of 1895	661
7 of 1895	829
8 of 1895	597
10 of 1895	3851
11 of 1895	3010
13 of 1895	1784
14 of 1895	4771
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31 of 1895	4663
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33 of 1895	4381
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38 of 1895	4380
39 of 1895	3607
40 of 1895	3716
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42 of 1875	2881, 4664
43 of 1895	77, 971, 2509
44 of 1895	3589
45 of 1895	1423, 4664
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49 of 1895	4141
50 of 1895	4659, 4851
*51 of 1895	653
52 of 1895	4170
53 of 1895	904
54 of 1895	3796
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56 of 1895	3585
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* Read Cr. Rg. 51 of 1895 for 5 of 1895.

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317	1225
319	2284
320	3672
322	270
3 L B R—	
1	337
2	2264
3	1991
20	2210
21	697
30	474, 1454, 2265
32	1123
33 (F B)	131
43	1521

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3 L B R—	
46	467
52 (F B)	1818
75	1923
93	677
94	1427
95	2261
96	676
97 (F B)	2096
109	2846, 4849
111	2001
112	183, 4556
113	2904
114	2038
116	30, 1436
121	3796
122	3260
128	910
133	2515
161 (F B)	178
163	3249
173	1228
187	119
194	909
196	3717
197	2214
199	1997, 4718
200	1352
204	2143
208 (F B)	810, 1874
213	1655
214	2937
216	2560
218 (F B)	344
221	2492, 2917
222	290
229	1448
231	2928
232	2063
234 (F B)	4153
240	2657
253	2019
254	1362
264	3363
265	2351
278	3862
279	3106
280	2942
283	841, 2580
4 L B R—	
5	4115
8	683
10	244
11	239
12	398, 4399
13	4128
14	4129
24	3864
25	2976

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4 L B R—	
42	2792
43	677
44	684
45	2776
46	2928
47	695
49	4586
53	1406
65	4486
75	4155
80	372
103	2492, 3619
104	695
109	918, 1438
116	1227
121	320
125	2550
132	3261, 3326
134	688
135	4410
137	1629
138	4260
139	434
143	1966
144	682
146	3176
147	1416, 2866
148	4400
149	3355
150	676, 2007
152	4492
153	673
192	4726
205 (F B)	1457, 4449
213	688
227	691
229	4129
233	2796
234	4272
237	2866
239	838
242	2285
244	1228
247	353, 4279
253	4913
265	1748
270	141
271	909, 3431, 3725, 3739
275	4710
276	2285
277	4423, 4667
282	3107
294	2927
300	1680
306	3402
311 (F B)	923, 3710
314	316
315 (F B)	1064
337	2018, 4119

* Read 2 L B R 146 for 2 B L R 146.

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4 L B R—	
338	4667
339	4151
340 (F B)	2176
350	432
353	432
354	2033
359	699
362	2628
367	2305
5 L B R—	
4	2618
12	680
17	1673
20	4667
21	3617
22	185
34 (F B)	4447
49	4134
50	1138
52 (F B)	451
56 (F B)	320
57	1665
72	4372
79	3713
80	2305
83	354
100	3733
129	2034
130	332
131	1206
149	1046, 1921
160	3672
207	333
221 (F B)	1676
6 L B R—	
4	2656
22	4822
25	1739
38	3842
41	3796
46	3821
48	3604
49	2153
50	3598
57	1437
62	3809
89	133
100	3101
127	2173
129	1794
160	3380
172	2196
7 L B R—	
1	1947
13	3399

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7 L B R—	
16	3808
26	3795
33	2607
35	132
53	421
62	2008
63	493
68	1816
72	435
75	3561
76	2121
82	122
84	1915
116	2178
140	1924
143	3844
251	2063
*270	2172
272	1823
319	3350

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1 M—	
54	4558
55	171
56	186
163	1209
164	3762
171	2980
173	3022
174	721
191	1189
223	275
224	2301
262 (F B)	3217
266	1421, 3607
277 (F B)	4499
278	4095
280	120
289	1978
304	873
305	2162
309	298
394	43, 49
2 M—	
5	220, 1225
30	277, 294, 2285, 3871
38	4147, 4175
122	2298
137	21
140	3305, 4788
161	275
169	1459, 2078
3 M—	
4	921, 2774
6	1189, 3190

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3 M—	
17 (F B)	4096
33	2309
48	2060, 2611
112	2949, 4574
129	721, 4639
178	2276
238	4369
254	2162
261	4715
271	2652
351	4583
354	1542, 3310
400	4294
4 M—	
121	2453
130	4848
144	3516
227	76, 4861
228	4701
229	3636
230	3146
231	715
233	1978
234	125
235	710
240	713, 715
241	3523
243	2277
325	3593
327	3125
329	1169, 1783, 2375, 4842
335	703
335, Note (F B)	703
†393	28, 34, 719, 2564, 3499, 4633
5 M—	
11	836
20	2931
22	2495
23	391, 2981, 2991
26	340
28	4488
33	2500, 2965
131	714
137	718
157	4500
158	1798
159	333
160	1168
199	3501
200, Note	3501
230	3101
268	3101
269	723
304	1547
376	140
377	718

* Read 7 L B R 270 for 7 B L R 270.
† Read 4 M 393 for 1 M. 393.

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5 M—	
378	1181
380	4440
381	1121
382	2277
390	4707
401	3223
6 M—	
25	2375
29	4273
32	4634, 4751
37	723
60 (F B)	335
63	77, 938, 1783, 1967, 2185
69	936
100	723
146	4300
176	284
199	703
201	370
203, F B)	2314, 2847, 3101, 3304, 3974
245	4213
247	4098
249	1303
252	373, 2722
280	3313
283	3147
286	1125
287	725
316	1116
336	221, 4633
371	3154
372	1088
373	4647
374	3911
381	1359, 2341, 3929
396	2008, 4665
426	2323
7 M—	
17	4044
18	4044
36	2339
49	1615
63	725
65	720
70	333
71	363
74	721
100	121
102	1270
131	119
161	713
163	726
176 (F B)	362
185	715
187	3166
189	4277
197 (F B)	718
213	865
224	4316
274 (F B)	1630
276	3633
277	3759, 4600
287	1208
289	2709
292	2683
301	2805
314	4332
345	230
347	291
354	134
356	1168
432	713
436	33, 1424
454	2788
460	1596, 2454
537	360
557	2019, 4699
560	4306
563	1115
579	1266
590	3313
8 M—	
5	3713
11 (F B)	364, 365
18	2078
24	4609, 4634
70	3171
140	1357, 2991
202	342
294	142
296	2789
327	722
336	2088, 2787, 2790, 2844
342	726
350	717
365	4620
379	123
421	3643
428	717
429	724, 725
9 M—	
9	2616, 3909
36	1893
38	722
42	4797
61	1011, 3945
83	1902, 1904
97	715
101	3592
102	238, 1115
138 (F B)	368
141	712
167	710
201	3288
224	72, 1235, 2621, 2624
258	296, 2040
282	1157, 1758
284	998
356	4751
369	3210
373	727
374	239, 1119
377	1979
387	217
429	740
431	703
439	4288
448	873, 2205
10 M—	
13	3158
21	127
25	4126
28 (F B)	3087, 3068
108	4620
121	718
126	3657
131	337
154	286
165	4499
166, Note	4499
186	4699
216	744
218	959
232	4320
255	3353
295	68, 1248
353	2892
11 M—	
3	285
98	4110
137	720
139	732
142	1115
145	1362, 3808
199	3171
238	736
250	752
253	734, 4632
257	2865
323	397, 2454
329	365
332	144
339	4115
343	740
359	243
375	4096, 4241
411	2775
441	2496
443	1144
472	752
477	2350
480	2496
500	288
12 M—	
35	2375

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12 M—	
36	4527
39	391
47	4342
49	1364
54	3224
56	2302, 3701
88	2419
92	1422
94	279, 3100
114	1053, 2762
123	1249
148	3404, 3892
151	1053
153	1207
196	1038
201	286
203	728
226	728
231	360, 361, 362
247	733
*273	2893, 2923, 3764
297	718, 3507
338	727
352	1136
450	755
451	3521
459	2886
473	343
475	3285, 3557
13 M—	
17	3154
18	1445
21	732
24	1303
27	2763, 3838
131	738
142	708, 949
144	4252
148	4213
191	301
343	4069
351	121
353	272, 273
423	2978
426	2512
518	740
14 M—	
36	4797
†121	272
126	3463, 4015
140	734
223	724, 758
229	195
247	727
255	152
334	2787, 4584
342	260, 261, 3206

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14 M—	
363	2112, 4191
364	3428
379	2356
398	3159
399	2230
400	3603
484	3369
15 M—	
36	1747, 2159
39	2801
41	3762
63	966
75	3760
83	1844, 2254
91	746
93	3544
94	2230
127	4044
131	1303
132	709
137	870
138	287
156	729
214	2341
221	3541
224	4256
323	3762
352	889, 1702
414	299, 2349
16 M—	
105	266
230	741, 746
234	3172
235	2349
308	3102
347	144
364	712
410	949
421	264, 2710
423	229
443	216
461	4342
463	1296
468	4305
17 M—	
37	706
103	2497
105	4262
118	425
260	1381, 2167
278	705
391	261
397	425
401	4702
402	2235

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18 M—	
41	2395
46	760
48	753
51	2396
189	254
228	442
230	260
394	947
401	2497
402	3309
487	4232
490	760
19 M—	
3	31, 2898, 4027
14	80
18	1555
83	736, 953
209	758, 3975
238	243
240	2277
241	740
263	2254, 2948, 3078
269	1991
273	260, 262
310	762
349	753
354	870
356	2299
375	270, 1900, 2227, 4757, 4837
461	3147
464	3314, 3564
482	1249
483	825, 2500, 3253, 3371, 3930, 4489
20 M—	
1	750
3	3172
8	4294
12	262
16	749
31	1296
79	2686
87	870
88	33
189	80, 2621
339	4278
383	1380
385	439
387	1157, 3134, 3949
388	1156
433	3297
444	4474
445	2269
457	126
470	2167

* Read 12 M 273 for 12 M 373.

† Read 14 M 121 for 14 M 21.

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21 M—	
63	756
74 (F B)	1136
78	3538
83	1041, 1249, 1448
114	870
124	4152
237	1125
246	746, 948
249	4784
293	743
296	749, 751, 3411
360	333
428	748
430	281
641	1896
22 M—	
1	2645
15	1929
47	3133
148	1088
151	1364
153	232
212	237, 3655
238	3374
247, Note	3172
455	742
459	1888
488	424
491	1265, 2629
23 M—	
15	1654
151	1265, 1897
155	366
159	3767
164	735
203	119, 120
205	4584
210	4319
213	748
220, Foot Note	755
223	2727
225	4584
540	4097, 4294
544	2706
544, Foot Note	2713
*626	1181
632	1894, 2237
636	1785
24 M—	
13	471, 473, 4466
17	380
45	1546
70	4293
81	4707
121	4296
124	4777

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24 M—	
136	1785, 1789
161	939
195	739
238	2255
262	1543, 1556
271	4098
284	3023
305	232
317	4739
318	247
319	235
321	1938
337	4341
414	1904
417	755
454	4008
523	10, 13, 884, 1902, 3424, 3425
644	738
660	132
662	1
675	3102
25 M—	
15	736
61	2898, 2924
143	1252, 2657
457	735, 2297, 4615, 4632
525	479
534	2002
546	1758
624	3467
627	739
659	4301
667	1116
671	4311
726	3838, 3929
729	3849
26 M—	
1	38, 868
38	1241
41	2799
43	2356
49	4126
55	3934
56	1722
98	2120
116	4267
124	753
125	2925
127	1122, 1862, 2010
130	2229
137	4256
139	1088, 4242
188	1605, 2467, 4751
189	4340
190	4324
191	2659

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26 M—	
193	4246
243	1836
243, Note	2237, 3783, 4715
249	4014
394	4753
410	1611
419	3549
421	233
448	376
454	2926, 3021
463	3029, 3914
464	2352
465	173
467	1023
469	1452
470	729
471	1506, 1552
475	747
477	1099
478	2048
480	4252
481	3849
554	3489
592	2904, 2936, 4318
596	1400, 4585
598	1895
607	391, 392
640	2234, 2681, 3524
27 M—	
13	3154
52	2278
54	1082, 1795, 4307, 4318
59	1116
61	1754
124	4330
127	2687, 2940
129	3596
223	4304, 4329, 4617, 4804
237	2962
238	2330, 2665
271	36, 2637
510	853, 4416
525	1519
531	3353
547	738
551	4702
28 M—	
13	469
17	761
37	137, 138
90 (F B)	2775
255	1768
304	2974, 4693
308	3938
310	86, 1886
565	1623, 3527

* Read 23 M 626 for 23 M 625.

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29 M—	
89	3938
91	1927
97	1617, 2454
100	2152
122	4334
126	1768
149	4340
185	744
187	1130
188	2048
190	4455
192	707
236	2042
237	2454
331	2141
372	1866
373	1620
375	2206
517	1391, 3323
558	2913, 4626
561	2433
567	2262
569	1808, 2926, 3894
30 M—	
44	1032, 1921
48	1453, 3479, 4457, 4561
94	2235, 2898
103	4557
134	4001
136	1394, 2991
179	3737
182	4458
220	742
221	745
222	2348
224	1096, 1795
226	2832
228	1684
233	4748
282	3277
311	414, 3068, 4252
328	995, 2905, 2941
330	4440
332	3151
382	4333
400	3172
466	1641, 1643
469	4798
523	2966
548	964
550	3902
31 M—	
40	1903
43	4293
80	4339
82	2436
*84	4517

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31 M—	
127	2951
131	1884
133	2377
140	2141
181	737, 4049
185	3173
271	3619
272	3338
276	2930
277	2031
280	3283
315	1419
318	2454
408	406, 766, 4626
416	2455
506	2689
510	2842
515	4389
543	1869, 2376
547	883
548	2267
32 M—	
3	1158, 3426
47	1953
49	2149
90	2702, 2764
173	3337
179	2317
214	2791
218	1983
220	2848
255	4293
258	2691
303	447, 1395
338	3455
384	3454
33 M—	
46	1037
82	764
83	739, 758
85	1514, 2794
89	1116
90	4251
264	2059
288	3208
371	3903
413	1200, 3625
502	2944
514	1944
34 M—	
253	934, 1850
313	3017
346	1681
545	2055
547	3735

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35 M—	
243	2054
247	3443
397	2587
596	343
36 M—	
38	1022
72	991
96	1487
138	1708
159	4352
216	3917
275	1602
308	2023
315	1467
321	1782
†387	1664
392	3888
453	3403
457	3071
470	1981
471	1706
472	3772
474	2185
497	763
501	3687
585	1920
37 M—	
47	3849
107	1715
110	2345
112	1441
119	2027
125	1523
153	1458
236	3795
238	3056
280	732
317	2156
564	1711
565	2174, 4034
567	3752
38 M—	
304	2233
305	3611
479	3402
773	3390

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1 M H C—	
4	4585
30	2679
31	170, 1009, 1048, 2880
38	2707
50	2859
66	3195

* Read 31 M 84 for 39 M 84.

† Read 36 M 387 for 36 M 385.

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1 M H C—	
83	104, 1321
138	2844
193	170
199	70
450	2743
2 M H C—	
43	2705
187	257
240	1504
247	3359
331	3907
396	936, 4489
427	127
438	17
444	3005
473	114
3 M H C—	
251	3581
254	2317
318	1220
354	2987
372	2658
1 App	187
2	998, 1937
4	1938
6	1347
7	958
9	709
11	2497
23	1554, 2497
25	134
27	167
29	2720, 3094
30	4097
31	2726
33	3645
34	1320, 4859
4 M H C—	
14	258
18	2744
20	3908
51	2713
81	4836
146	2034
152	2491
162	1156
185	2711
229	1303
242	4183
410	2323
1 App	4101, 4471, 4574
2	2094
4	188
5	1016, 1370, 3552
6	4060, 4861
7	41
8	1140
9	105
11	998, 1615, 3386

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12	2411
13	4648
15	2611, 3858
17	1140, 3094, 4060, 4861
18	2727, 3521, 4060, 4493
19	4142
20	704, 2391
21	899
22	4388
23	114
24	2393
27	1304, 4523
28	1118, 2757, 3094
29	2245
30	1088, 4709
32	1348
34	3304
36	4564
37	3431
38	4452
39	915
40	1431
41	1140
42	2960, 4648
44	4060
45	3277
46	1477, 4363
48	30
49	2462, 3969
51	1303
52	1303
53	702
54	711
55	4, 816, 2869
57	168, 1371
60	2841
61	222
62	905, 2856, 4676
63	3715
64	125
65	4783
66	1320, 3979, 4466
67	142, 143, 2009
68	1123, 2193, 4493, 4680
69	1314, 3975, 4006, 4862
70	2082
5 M H C—	
132	4060, 4861
212	4750
277	717, 2500, 3076
326	224
373	3568
415	3764, 4632
466	711
473	3767, 3768
1 App	181, 184, 4471, 4473
2	2376
3	3172, 4543
4	1996
5	1161, 4511

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5 M H C—	
6	4783
7	3090
9	3979
10	839, 4175
11	3088
12	2962
13	96
14	2674
15	1297, 3509
16	716, 4768
17	2278
18	176, 4142
19	823, 1546, 3134, 3975, 4142, 4471
21	108, 2203
22	815
23	150
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† Read 1914 M W N 168 for M W N 368.

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15	4056, 4212
16	3273
17	212
18	1403

* Read 32 P R 1878, Cr for 32 P R 1873, Cr.

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27	4429
28	1099
29	3867
30	1309
31	3167
32	1260
33	4754
34	2876
35	881
36	4275, 4339
37	4003
38	4554
39	182, 4554
40	2515
41	4475
42	4248
43	955
44	4754
45	923, 1356
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6	4393
7	836
8	1403
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11	5, 3749, 3914
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16	307
17	3231
18	4187
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20	2719
21	34
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29	1873
30	770
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8	405
9	13, 1060
10	773
11	4104
12	303
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14	1106
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23	4327
24	1147
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26	384
27	3657
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29	403
30	4103
31	2957
32	2742
33	3243
34	4552
35	3263
36	4195
37	1119, 4441
38	4103, 4104
39	838
40	395, 396, 4198
41	4019
42	893, 1099
43	4521
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12	1119
13	1145, 2999, 3182
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30	1195, 2591
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32	1824
33	4103
34	64
35	1402
36	369
37	4321
38	4133
39	2598
40	922
41	202
42	4197
43	4394
44	2997
45	4157
46	303
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2	2548
3	4103
4	4487
5	3860
6	3251
7	4239
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9	1263
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11	4838
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35	4520
36	1309
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11	3240
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14	3506
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26	3661
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31	3182
32	3240
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34	4057
35	4040, 4520, 4570
36	1226
37	769
38	4829
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42	2888
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54	2737
55	4317
56	1109
*57	2863
58	4520
59	4557
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61	3484
62	3266
63	2094
64	4416
65	357
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13	4437, 4752
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21	2813
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27	776
28	777
29	3240
30	2960
31	264
32	3273
33	4057
34	2347
35	4268
36	1351
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38	334
39	3291
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* Read 57 P R 1887, Cr for 57 P R 1877, Cr. † Read 60 P R 1887 for 60 P R 1897.
‡ Read 8 P R 1889, Cr for 8 P R 1869, Cr and read Alam Sher v. Empress for Crown v. Khema.

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23	3240, 3665
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29	832
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31	4156
32	3613
33	4272
34	4046
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9	3265
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12	2541, 2858
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* Read 66 P R 1895, Civil for 66 P R 1895, Cr.

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17	207
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26	2696
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28	4374
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10	450
11	174, 4502
12	2996, 4391, 4392
13	3080, 3111
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16	2815
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22	4460
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24	3135, 4630
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23	1588, 2400, 4201
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7	3215, 3859
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* Read 18 P R 1900, Cr. for 118 P R 1900, Cr. † At Col. 1671, read 1 P R 1901, Cr. for 1 P R 1900, Cr. ‡ Read 50 P R 1901, Civ for 50 P R 1901, Cr. § Read 112 P R 1901, Civ for 112 P R 1901, Cr. ‖ Read 60 P R 1902, Civ for 60 P R 1902, Cr.

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6	4460
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10	2488, 2880, 3461
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9	2579
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12	3668
13	2325
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4	442
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2 1st qr Cr P C	3113
4	4412
8 1st qr	4654
17 2nd qr	3399
34 2nd qr	3165
57 4th qr	1958
66	1438
70	1398
73	1756
U B R 1911—	
87	3683
90 2nd qr	2172
96 3rd qr	55
98	1831
100 4th qr	2052
105	3719
U B R 1912—	
123 1st qr	1992
134	3530
136 2nd qr	3752
148	2021
149	1988
152 4th qr	1990
155	3770
158	2604
U B R 1913—	
159 1st qr	1501
162	699
166	1712
169 2nd qr	2066
170	2604
180 3rd qr	699, 1529
U B R 1914—	
1 1st qr	314
3	1514
5	3714
18 2nd qr	146
19	1626
23 3rd qr	2628
28	3397
31	1857
35 4th qr	3719
43	3605
44	1505

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